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**SOUTH CAROLINA SENTENCING REFORM COMMISSION**

**WORK GROUP 1**

**Proposed Recommendations**

**Sentencing Procedures**

**Sentencing Resources**

- Provide judges with the information necessary to explain sentencing in a manner that the offender, victim, lawyers, and public can understand, including, but not limited to, a description of the minimum and maximum time the offender must and/or may serve.

- Provide judges with a sentencing reference manual that would include, but is not limited to, general statistical information regarding sentencing and alternative sentencing options.

- Provide judges with a voluntary risk assessment tool for post conviction sentencing of non-violent offenders who would otherwise go to prison.

**Bail**

- Provide that a person who, while released on bail pending trial, is accused in this State of a violent offense shall have bail revoked and denied pending trial if a judge during a hearing in this State determines by a preponderance of the evidence that the person violated a condition of release relating to the safety of the community or the safety of any other person. (See S. 5). Consider adding being accused in this State of a controlled substance offense.

- Provide that a court, in determining conditions of release on bail, shall consider any charges pending against the accused, and whether the accused is lawfully present in the United States and poses a substantial flight risk. If a person has been previously released on bail pending trial and during his release is charged with a violent offense, and the court finds by a preponderance of the evidence, that no condition or combination of conditions will reasonably assure the appearance of the person as required or the safety of any other person and the community, then the court shall deny release of the person pending trial. (See S. 6). Consider adding being charged with a controlled substance offense.

- Provide improved training for judges regarding bail. Develop a voluntary risk assessment tool for judges to utilize in making bail decisions.

**Restitution**

- Restitution limits for victims should be equal to the civil jurisdiction limits of each court, possibly including an inflation factor, and/or a legislative review of the restitution limits every 10 years.

**Offenses**

**Violent Crimes**

- Determine if any offenses should be removed and/or added to the “Violent Crimes” statute.

**Most Serious / Serious Offenses**

- Provide that upon conviction for a most serious offense, a person must be sentenced for life without parole if the person has either 1 or more prior convictions for a most serious offense or 2 or more prior convictions for a serious offense. As well, provide that the decision to invoke sentencing under this provision is in the discretion of the solicitor.

**Offenses that have the Most Significant Impact on S.C. DOC**

 - Review the offenses that have the most significant impact on the SC Department of Corrections’ (DOC) prison population to determine if any mandatory minimums should be removed, classifications changed, and/or probation or suspension granted.

- Determine if any such offenses should be removed from the “Violent Crime” statute, “Most Serious and Serious Offense” statute, and/or “No Parole” statute.

- Determine if any such offenses should be eligible for Pre-Trial Intervention (PTI) and/or the “Youthful Offender Act” (YOA) program.

**Controlled Substance Offenses**

General

 - Review the controlled substance offenses to determine if any mandatory minimums should be removed, classifications changed, and/or probation or suspension granted.

- Determine if any such offenses should be removed from the “Violent Crime” statute, “Most Serious and Serious Offense” statute, and/or “No Parole” statute.

- Determine if any such offenses should be eligible for PTI and/or YOA.

Possession

- Require probation or other non-prison sanctions for 1st time (and possibly 2nd time) drug possession, particularly if the risk level is low.

PWID

- Require actual intent to distribute as an element of “Possession with the Intent to Distribute” (PWID).

- Rewrite “Possession with the Intent to Distribute” (PWID) sections to read like trafficking (i.e. call it “Possession of a Distributable Amount” (PDA)) regardless if the person claimed the controlled substance was for personal use. Have a threshold of more than 1 gram but less than 10 grams of cocaine, crack, and meth, and 2 grains of heroin. The marijuana threshold could be more than 1 ounce but less than 10 pounds. The statute should read to allow for the prosecution to make the argument for PWID even though the weight is not present. The argument can be made using other evidence found at the scene of the crime (i.e. baggies, scales, money, etc.). Additional consideration needs to be given to the threshold amounts.

Proximity Offenses:

- Provide that controlled substance proximity offenses do not apply unless the person actually committed the act within the proximity of a restricted area and not based on where the person was stopped for the violation.

- Provide an affirmative defense for a person who did not actually commit the controlled substance offense within the proximity of a school, etc.; but instead, was merely stopped for the violation within the proximity of a school, etc.

Trafficking:

- Rewrite the Trafficking statutes.

Trafficking Marijuana

1st Offense

10-50 lbs = 1-10 years

50-100 lbs = 5-15 years

> 100 lbs = 25 years

2nd Offense

10-50 lbs = 5-15 years

50-100 lbs = 15-25 years

> 100 lbs = 25 years

3rd or Subsequent Offense

10-50 lbs = 15-25 years

50-100 lbs = 25 years

> 100 lbs = 25 years

Manufacturing Marijuana

*\* Regardless of Weight*

1st Offense

1-50 plants = 0-5 years

51-100 plants = 1-10 years

2nd Offense

1-50 plants = 1-10 years

51-100 plants = 5-15 years

3rd or Subsequent Offense

1-50 plants = 5-15 years

51-100 plants = 25 years

Trafficking Marijuana by Manufacturing (*Regardless of weight*)

1st Offense

101-1,000 plants = 5-15 years

>1,000 plants = 25 years

2nd or Subsequent Offense

101-1,000 plants = 25 years

>1,000 plants = 25 years

Trafficking Cocaine, Crack, & Meth

1st Offense

10-28 gms = 1-5 years

28-100 gms = 5-15 years

100-200 gms = 15-25 years

>200 gms = 25-30 years

2nd Offense

10-28 gms = 5-15 years

28-100 gms = 15-25 years

100-200 gms = 25-30 years

>200 gms = 30 years

3rd Offense

10-28 gms = 15-25 years

28-100 gms = 25-30 years

100-200 gms = 30 years

>200 gms = 30 years

Trafficking Heroin

\*No changes

Trafficking Ecstasy

1st Offense

100-500 units = 3-10 years

500-1000 units = 7-25 years

> 1,000 units = 25 years

- Establish controlled substance trafficking offenses for all narcotic pharmaceuticals and some non-narcotic pharmaceuticals.

Prior and Subsequent Offenses

- Provide that a prior controlled substance offense does not count for purposes of determining subsequent controlled substance offenses if the prior offense is not within the same controlled substance offense category.

- Provide that 1st offense possession of marijuana does not count as a prior offense for purposes of determining a subsequent offense unless the 1st offense occurred within the past 5 years. Provide that all other 1st offense controlled substance offenses do not count as a prior offense unless the offense occurred within the past 10 years.

- For purposes of presenting a prior offense, adopt the language used in Rule 609(b), SC Rules of Evidence, dealing with time limitation for the use of convictions for impeachment purposes. “Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date…”

Home Detention Act

- Provide that persons who have committed controlled substance offenses which are not punishable by a mandatory minimum of 25 years or more are eligible to participate in home detention programs. (See H. 3976).

Other Issues

- Eliminate the requirement that a driver’s license be suspended for violation of a controlled substance offense unless the offense is directly related to the operation of a motor vehicle, and/or the judge makes a finding on the record that the person’s driver’s license should be suspended.

- Establish enhanced penalties for the distribution of controlled substances resulting in serious injury and/or death.

- Correct any crack and cocaine provisions that are not equalized.

- Expand “Accommodation” to include meth, crack, Schedule I (b) and (c) narcotic controlled substances, LSD, and Schedule II narcotic controlled substances.

- Allow for conditional discharge of all 1st offense controlled substance possession charges and all schedule II-V pharmaceuticals. Allow a conditional discharge fee to be charged and specifically dedicate the proceeds to controlled substance programs.

- Allow judges the discretion to require defendants to reimburse law enforcement agencies for expenditures incurred while conducting investigations (i.e., repayment of money used to buy controlled substances from defendants).

- Create enhanced penalties if a person is in possession of a weapon during the commission of a controlled substance activity (Possessing, brandishing, firing, injuring a person, killing a person, etc., during a controlled substance deal). Consider enhanced penalties for the use, not the presence, of a weapon in the commission of a controlled substance activity.

- Establish a new offense or enhanced penalties for a person who uses the USPS, UPS, Fed Ex, etc., to ship controlled substances and/or proceeds of the same. The language would have to include: to ship, receive, or aid in anyway.  The offense should be a felony.

- Establish a statute that mirrors the federal law to provide that a person who purchases ephedrine or pseudoephedrine in excess of 9 grams in a 30 day period is a violation of State law.

- Allow for SC’s controlled substance schedules to automatically update when the federal government makes changes to the federal schedule of controlled substances.

- Dedicate or increase fines for controlled substance offenses to pay for services and programs identified by Work Group 3.

**Property Crimes**

- The value limits of property for purposes of sentencing for property crimes should be updated to reflect current values, possibly including an inflation factor, and/or a legislative review of the limits every 10 years.

- Establish one comprehensive “Failure to Return Property” statute to include the “Failure to Return Videotapes” provisions.

**Arson**

- Determine if mandatory minimums should be removed from the Arson statute. Currently, Arson in the 1st Degree is 10-30 years, Arson in the 2nd Degree is 5-25 years, and Arson in the 3rd Degree is 1-10 years.

**Assault and Battery**

- Establish statutory levels of “Assault and Battery” offenses.

- Establish the statutory offense of “Attempted Murder”.

- Determine if mandatory minimums should be removed from specialized “Assault and Battery” offenses. Currently, Assault and Battery against School Personnel does not have a mandatory minimum, Assault and Battery upon a Correctional Facility Employee has a 6 month mandatory minimum; Assault and Battery upon an Emergency Medical Service Provider, Firefighter, or Home Healthcare Worker 1st Offense has a 2 month mandatory minimum and 2nd or Subsequent Offense has a 6 month mandatory minimum; Aggravated Assault and Battery upon an Emergency Medical Service Provider, Firefighter, or Home healthcare Worker has a 1 year mandatory minimum; and Assault and Battery against Sports Officials and Coaches does not have a mandatory minimum.

**Cockfighting**

- Provide that a person who engages in, is present at, or possesses birds for the purpose of cockfighting is guilty of a felony and must be fined $500-$1,000 or imprisoned 6 months-5 years for a 1st offense; or felony and fined $1,000-$3,000 or imprisoned 1-5 years for a 2nd or subsequent offense. Also, remove the exception for “game fowl testing.” Finally, allow for forfeiture of monies, negotiable instruments, and securities specifically gained or used to engage in or further cockfighting for 1st and subsequent offenses. (See. H. 3227).

**Disturbing Schools**

- Require a more serious act as an element in order for a person to be charged with “Disturbing Schools”.

- Provide that the offense of “Disturbing Schools” does not apply to a student, teacher, or other employee while on the premises of the school where he or she is enrolled or employed.

**Driving Without a License**

- Allow “Driving without a License” offenses to be tried in magistrate’s court.

**Harboring a Fugitive**

- Increase the penalties for harboring and/or providing assistance in any way to a fugitive or someone that provides false information to law enforcement that delays or prevents the service of an arrest warrant, bench warrant, and/or indictment from a fine of $50-$1,000 or imprisonment for 3 months-1 year, or both, to a fine of $50-$3,000 or imprisonment for 3 months-3 years, or both. Consider making the penalty a fine up to $3,000 or imprisonment up to 3 years, or both.

**Lynching**

- Require a serious injury or death as an element of “Lynching in the 2nd Degree”, and/or establish “Lynching in the 3rd Degree” for less serious injuries.

- Change the name of “Lynching” (i.e., “Mob Violence”, “Assault and Battery by Mob”, etc.).

**Murder**

- Determine if statutes related to Murder (i.e., “Killing by Poison”, etc.) should be repealed.

**Robbery**

- Establish statutory degrees of Robbery and “Attempted Robbery”.

**Other**

**Downward Departure**

- Allow for “downward departure” for offenders that have already been sentenced. The offender could receive a reduction in his or her sentence if the offender cooperates and provides substantial assistance to law enforcement. Such an action could only be initiated by a prosecutor, and if initiated by a prosecutor other than the original prosecutor, must receive the consent of the original prosecutor.

**Fiscal Impact Statements**

- Require that a criminal law bill that establishes a new offense or amends the sentencing provisions of an existing criminal law statute be introduced by the first day of the legislative session.

- Require a minimum amount of time for preparation of a FIS for a criminal law bill that establishes a new offense or amends the sentencing provisions of an existing criminal law statute (i.e., 12 legislative days or 30 calendar days).

- Require that Fiscal Impact Statements (FIS) be requested automatically upon introduction of a criminal law bill that creates a new offense or amends the sentencing provisions of an existing criminal law statute.

- Require that a criminal law bill that establishes a new offense or amends the sentencing provisions of an existing criminal law statute that is reported out of the House or Senate Judiciary Committee be submitted to the House or Senate Finance/Ways and Means Committee, as applicable, for review before being placed on the House or Senate calendar for 2nd reading.

- Strengthen the Office of State Budget’s (OSB) authority to require the submission of information from State agencies.

- Require the OSB to add organizations and/or associations to the OSB’s FIS information network (i.e., the SC Sheriffs’ Association).

**Prisoner Housing**

- Provide that persons who commit non-violent, low level, misdemeanor offenses sentenced to less than 180 days (or 365 days) are not sent to prison, but remain in local detention facilities.

**Weapons**

- Prohibit a person convicted of a “Violent Crime” from selling, purchasing, and/or possessing a firearm (handgun, rifle, shot gun, etc.), knife, and/or ammunition.

**Work Release Programs**

- Allow certain offenders who are currently prohibited from participating in “Work Release” programs to participate. Consider non-violent but “no parole” offenders.

**Youthful Offender Act**

- Increase or decrease the age limit for participation in the YOA program.

- Allow a person charged with “Armed Robbery” or “Attempted Armed Robbery” to participate in YOA.

- Allow a person charged with “Burglary 2nd” to participate in YOA.

- Provide that judges cannot order YOA unless the statute specifically allows the person to participate in YOA.

- Provide victim notification provisions in the YOA statute.

- Amend the YOA statutes relating to armed robbery so as to allow a person under the age of 21 to receive a youthful offender sentence not below a minimum of 3 years. Also, allow a broader range of persons to participate in YOA. (See H. 3030).

12/10/09 1:40 p.m.