



The City and County of San Francisco
The San Francisco Sentencing Commission

2013 Annual Report San Francisco Sentencing Commission

The first of its kind local Sentencing Commission

December 31, 2013



San Francisco Sentencing Commission 2013 Annual Report

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The activities of the 2013 calendar year of the San Francisco Sentencing Commission are summarized in this annual report as required by County Ordinance 10-12. This is the second of four reports that will be released from the San Francisco Sentencing Commission.

I. EXECUTIVE SUMMARY

The City and County of San Francisco strives to administer criminal justice strategies that lead to lower recidivism rates, create safer communities and ensure that victims are made whole. Through Sentencing Commission testimony, it is clear that San Francisco is a leader in innovation, diversion, and holding offenders accountable while preserving public safety. In 2013, the San Francisco Sentencing Commission completed the first full year of hearings: four meetings were held and included a diverse array of expert presentations on Realignment, Sentencing, Drug Reform, Restorative Justice and Victim Services. The Sentencing Commission utilized the expert testimony and research presented at the 2013 meetings to develop five recommendations. Two of these recommendations require state level legislative change, and three are directed toward local strategies within the latitude of the current law.

STATE LEVEL RECOMMENDATIONS: Call for State Level Sentencing Reform

Create a state level Sentencing Commission.

A comprehensive state level review of sentencing practices and outcomes is essential to addressing the California prison crisis, reducing recidivism, honoring victims and ensuring our communities are safe.

Change the penalty for drug possession for personal use to a misdemeanor. The San Francisco Sentencing Commission recommends penal code reform legislation to change the penalty for drug possession for personal use from a felony to a misdemeanor. This reform would help reduce spending on prisons and jails and invest additional resources in drug treatment, mental health, and other community-based services.

LOCAL RECOMMENDATIONS: Practical Investments to support San Francisco's Sentencing Strategies

Establish Annual San Francisco Sentencing Data Review and invest in adequate support resources. Criminal justice partners and social service agencies are best equipped to respond to San Francisco crime and sentencing trends with regular review and analysis of crime, arrest, sentencing and supervision trends.

Expand Resources for Alternative Sentencing Strategies. Research has shown that alternatives to the traditional criminal justice sentencing system utilizing evidence-based practices contribute toward cost savings and positive participant outcomes.

Invest in pre-booking and pre-charging diversion programs for drug offenses. The San Francisco Sentencing Commission will continue to review the progress of the pre-booking diversion program Law Enforcement Assisted Diversion (LEAD), based in Seattle, WA and Santa Fe, NM. City and County of San Francisco resources will be needed to explore local feasibility and implementation.

Sentencing strategies are not consistent across the state of California and do not meet public safety goals. Criminal justice agencies and social service partners have a collective responsibility to ensure that individuals receive appropriate sentences and do not re-victimize our communities. The San Francisco Sentencing Commission, created under the leadership of District Attorney George Gascón, is committed to pursuing an effective, fair and efficient sentencing system for San Francisco that enhances public safety and creates a livable, sustainable San Francisco community.

II. BACKGROUND

The San Francisco Sentencing Commission, an initiative of the District Attorney's Office, was created through local legislation to analyze sentencing patterns and outcomes, to advise the Mayor, Board of Supervisors, and other City departments on the best approaches to reduce recidivism, and to make recommendations for sentencing reforms that advance public safety and utilize best practices in criminal justice. Ultimately, through this work the commission will make recommendations that establish a sentencing system that retains meaningful judicial discretion, avoids unwarranted disparity, recognizes the most efficient and effective use of correctional resources, and provides a meaningful array of sentencing options. Over the course of the two year mandate, the Sentencing Commission will:

- Evaluate effective and appropriate sentences for the most violent offenders.
- Explore opportunities for drug law reform.
- Examine inconsistencies in the penal code related to realignment sentencing.
- Identify and define the most important factors that reduce recidivism.

The Sentencing Commission was created by County Ordinance 10-12, which amended the San Francisco Administrative Code by adding Article 25, Sections 5.250 through 5.250-3. The purpose of the Sentencing Commission is to encourage the development of criminal sentencing strategies that reduce recidivism, prioritize public safety and victim protection, emphasize fairness, employ evidence-based best practices and efficiently utilize San Francisco's criminal justice resources. The Sentencing Commission is an advisory body to the Mayor and the Board of Supervisors.

Commission Membership

The membership of the Sentencing Commission was developed to ensure representation from City and County partners directly involved in the criminal justice system, and those who come in contact with it. Each seat represents a valuable perspective on criminal justice proceedings; from time of arrest to post release, and the critical access points for support services provided to victims and survivors of crime. In addition to this practical and service experience, the commission includes experts in sentencing and statistical analysis. These are essential components to the commission membership and will contribute to the development of data-informed, sustainable improvements to our sentencing practices. While this membership will serve as a core of the Sentencing Commission's work, they will invite broader participation from practitioners, researchers, and community organizations to inform the proceedings of the Commission.

List of member seats:

District Attorney's Office (Chair), Public Defender's Office, Adult Probation Department, Juvenile Probation Department, Sheriff's Department, Police Department, Department of Public Health, Reentry Council, Superior Court, Member of a nonprofit organization serving victims chosen by the Family Violence Council, Member of non-profit organization working with ex-offenders chosen by the Reentry Council, Sentencing Expert chosen by the Board of Supervisors, and an Academic Researcher with expertise in data analysis appointed by the Mayor.

The San Francisco Sentencing Commission membership was fully formed in July 2012. A current list of commission members and qualifications is found in Appendix A.

III. 2013 MEETINGS

The Sentencing Commission held four meetings in 2013. Full agendas, meeting minutes and materials are available on <http://www.sfdistrictattorney.org/>. Meeting dates and selected subject matter presenters are provided below.

April 4, 2013

Successful National Sentencing Reform

Presenter: Mai Linh Spencer, Legal Consultant, National Council on Crime and Delinquency

California Realignment Sentencing Trends

Presenters: Lizzie Buchen, Post-Graduate Fellow, and Selena Teji, Communication Specialist, Center on Juvenile and Criminal Justice (CJCJ)

San Francisco Realignment Sentencing Trends

Presenter: Chief Wendy Still, San Francisco Adult Probation Department

Alternative Sentencing Planner Overview

Presenter: Luis Aroche, Alternative Sentencing Planner, San Francisco District Attorney's Office

Realignment Research Overview

Presenter: Tara Regan Anderson, San Francisco District Attorney's Office

July 24, 2013

Earned Compliance Credits

Presenter: Mai Linh Spencer, Legal Consultant, National Council on Crime and Delinquency

California Drug Law and Local Practice

Presenter: Sharon Woo, Chief of Operations, San Francisco District Attorney's Office

Design Options for Drug Policy

Presenter: Dr. MacCoun, Goldman School of Public Policy and Berkeley Law, UC Berkeley

Seattle based Law Enforcement Assisted Diversion (LEAD)

Presenters: Lt. Nolette, Seattle Police Department Lisa Daugaard Defender's Association, and Ian Goodhew, Kings County District Attorney's Office.

October 16, 2013

Restorative Justice

Presenter: sujatha baliga, Restorative Justice Project Director, Associate Director National Council on Crime and Delinquency

California Prison Population Reduction Plan

Presenter: Tara Regan Anderson, San Francisco District Attorney's office

December 11, 2013

Victim Services: A Personal and Policy Approach

Presenters: Sonya Shah, Leadership Team Member, Crime Survivors for Safety and Justice and Milena Blake, Policy and Legislative Advocate, Californians for Safety and Justice

Collaborative Outcomes

The San Francisco Sentencing Commission works collaboratively with the Reentry Council and the Community Corrections Partnership in the City and County of San Francisco. Each of these public safety advisory bodies serves a distinct role within the criminal justice system, however there are some issues that overlap and require coordinated analysis and review.

During the 2013 proceedings of the San Francisco Sentencing Commission members received presentations on Earned Compliance Credit programs for community supervision terms initiated in several states. The Reentry Council, the collaborative group facilitating the Justice Reinvestment Initiative, received expert review of San Francisco probation sentencing and completion rates. The analysis found that while 63.5 percent of probationers successfully complete their probation terms, those that fail on probation do so in an average of 1.4 years, with 75 percent of those failing doing so within two years.

Separate from the Sentencing Commission and Reentry Council advisory bodies, but informed by the aforementioned research and analysis, the San Francisco District Attorney and the San Francisco Adult Probation Department developed a Probation Supervision Terms pilot project. The Adult Probation Department and the District Attorney's Office have agreed to embark on this pilot project to reduce the standard length of felony probation sentences in San Francisco from 36 months to 24 months. This pilot is scheduled to begin in 2014. This pilot project is the result of coordinated information sharing both between advisory bodies and public safety departments. The San Francisco Sentencing Commission will continue to work with complementary public safety advisory bodies in 2014.

IV. RECOMMENDATIONS

The Sentencing Commission utilized the expert testimony and research presented at the 2013 meetings to make five recommendations. Two of these recommendations require state level legislative change and three are directed toward local strategies within the latitude of the current law. Summaries of these recommendations are provided below. The detailed meeting minutes and publications presented to the San Francisco Sentencing Commission are available at <http://www.sfdistrictattorney.org/>.

CALL FOR STATE LEVEL SENTENCING REFORM

Recommendation 1. Create a State Level Sentencing Commission.

A comprehensive state level review of sentencing practices and outcomes is essential to addressing the California prison crisis, reducing recidivism, honoring victims and ensuring our communities are safe. The San Francisco Sentencing Commission was created in the absence of a state level public safety body mandated to provide expert research and analysis to inform and reform sentencing practices. While previous attempts to establish a state public safety body addressing sentencing practices have been unsuccessful, the San Francisco Sentencing Commission, in its first full year of implementation, has benefited from a localized review of sentencing practices, expert presentations on best practices from other states, and data analysis providing a baseline understanding of current justice system conditions. The local success of the San Francisco Sentencing Commission demonstrates the value of thoughtful expert dialogue that encourage well-informed decisions to preserve public safety, hold offenders accountable, support victims and ultimately create safe and livable communities. California's growing

public safety, prosecutorial and correctional needs require that the state again explore the development of a California Sentencing Commission.

This recommendation is supported by over twenty years of research and findings from various commissions, panels, elected officials and advocacy groups. The Blue Ribbon Commission on Population Management, the Corrections Independent Review Panel, and the Little Hoover Commission have all recognized the need for independent review of sentencing law and practice. Approximately 20 states have sentencing commissions or public safety bodies addressing penal code reform. These bodies vary in membership, functions and authority; however one key variable that has led to successful legislative outcomes is the investment in independent review of sentencing practices and structure of the penal code. The San Francisco Sentencing Commission urges the Governor and the Legislature to create a California Sentencing Commission to support and inform structured decision-making in sentencing. The Sentencing Commission further recommends that the Mayor and Board of Supervisors of the City and County of San Francisco submit a letter to the Governor and Legislature urging the inclusion of a Sentencing Commission as a component of the *Plata v. Brown* settlement negotiations.

Recommendation 2. Change the penalty for drug possession for personal use to a misdemeanor.

The San Francisco Sentencing Commission recommends penal code reform legislation to change the penalty for drug possession for personal use from a felony to a misdemeanor. This reform would help reduce spending on prisons and jails and invest additional resources in drug treatment, mental health, and other community-based services. It would also facilitate reentry and reduce recidivism by removing consequences that result from a felony conviction, including barriers to employment, housing, financial aid and public benefits. This reform would align California with 13 other states, the District of Columbia, and the federal government – all of whom currently penalize possession of drugs for personal use as a misdemeanor. The Sentencing Commission further recommends that the Mayor and Board of Supervisors of the City and County of San Francisco formally support any reform to drug sentencing length and enhancements recommended by the commission pursuant to California Health and Safety Code Section 11370.2.

PRACTICAL INVESTMENTS TO SUPPORT SAN FRANCISCO'S SENTENCING STRATEGIES

Recommendation 1. Establish Annual Review of San Francisco's sentencing data and invest in adequate analysis and technology support resources.

Criminal justice partners and support services are best equipped to respond to San Francisco's public safety needs when strategies are based upon comprehensive and reliable data. Regular coordinated review of local crime and sentencing trends, including the analysis of crime, arrest, sentencing, jail population and supervision trends, is an essential tool for the deployment of public safety resources. Many departments are under resourced and need additional staff and technology to support the development of data tracking systems, regular review of those systems and data analysis.

Major findings on San Francisco's sentencing trends presented by the Center on Juvenile and Criminal Justice (CJCJ) indicated that since the implementation of Public Safety Realignment, the prison population is plateauing; however, new prison admissions are rising state-wide. San Francisco had the

lowest percentage, second to Alameda, of new admissions to state prison for non-violent offenses for the 58 counties. In addition, San Francisco was far below the state average of prison admissions for violent, property and drug crime. CJCJ presented the glaring conclusion that if the 15 most state prison dependent counties admitted offenders to state prison at the rate of San Francisco it would result in 820 million dollars of savings and 16,000 fewer prisoners in our state department of corrections.

To ensure that the implementation of Public Safety Realignment is successful, San Francisco has invested in strong partnerships and regular review of data amongst our criminal justice leaders. The San Francisco Adult Probation Department, under the leadership of Chief Wendy Still has invested significant time and resources in both using evidence to inform best practices and developing systems to measure local realignment outcomes. During the April 3, 2013 hearing, Chief Still provided an overview of the 1170(h), Public Safety Realignment sentencing trends from October 2011 to February 2013. During this period, 50percent of 1170h sentences were split, with an average increase in the use of split sentences to approximately 60percent starting in July 2012. This is well above the state average of 27percent split sentences for that same time period.

Regular review of sentencing trends, such as those described above, is essential to inform the distribution of department resources. To conduct regular review, departments must have the resources to review analyze and draw conclusions from data. The San Francisco Sentencing Commission urges the Mayor and San Francisco Board of Supervisors to strongly consider budget requests that aim to meet San Francisco's evolving public safety data and technology needs.

Recommendation 2. Expand Resources for Alternative Sentencing.

Research has shown that alternatives to the traditional criminal justice sentencing system utilizing evidence-based practices contribute toward cost savings and positive offender outcomes. These outcomes include, but are not limited to, successful completion of treatment programs, reductions in recidivism and successful family reunification. San Francisco's evidence-based alternative sentencing resources should be expanded to meet demand and studied for replication. These resources include, but are not limited to, the *Alternative Sentencing Planner*, which contributes toward thoughtful sentences that address the seriousness of the crime, the criminogenic needs of the offender and the victim restoration; *Family Impact Statements*, completed by the Adult Probation Department, which ensure that family and children of a convicted person are considered as part of the sentencing determination; and Cameo House, which is a alternative sentencing program for pregnant and parenting women. The San Francisco Sentencing Commission urges the Mayor and San Francisco Board of Supervisors to strongly consider budget requests that aim to expand departmental and program capacity to meet the demand for evidence-based alternative sentencing strategies.

A leader in innovative approaches to criminal justice, the San Francisco District Attorney's Office is embarking on a new approach which will effectively address the causes of crime, hold offenders accountable and preserve public safety. The (ASP) Alternative Sentencing Program gives prosecutors additional information about alternative criminal justice sanctions. The ASP staff is available on all 1170 (h) cases, as well as other selected cases where an alternative to a pure jail or prison sentence may be possible. From February 2012 to October 1, 2013, the Alternative Sentencing Planner conducted 155 in-depth reviews resulting in comprehensive sentencing recommendations to prosecutors. Additionally, the ASP provided 31 case consults, providing a quick review and recommendation for prosecutors at critical junctures in case processing. Preliminary results of the program show that the ASP's recommendations are associated with significant increases in the average amount of time a defendant is sentenced to

rehabilitative programming The Office is pursuing a comprehensive outcome evaluation to further assess program impact on case and defendant outcomes.

Family Impact Statements (FIS) consider the needs of children at the time of sentencing and post disposition. The FIS is utilized by the San Francisco Adult Probation Department as a tool to ensure that the children and families of individuals convicted of a crime are considered as part of the sentencing determination, and in connection with other custodial and non-custodial determinations such as program referrals and supervision terms. FIS can assist the court in making informed decisions about the issues likely to have a substantial impact on children. The FIS does not minimize the actions of the parent, but rather provides an opportunity for the parents to take responsibility for their actions and acknowledge the collateral consequences of their criminal justice involvement on their family.

The Adult Probation Department has partnered with the Center on Juvenile and Criminal Justice and the Human Services Agency to develop an alternative sentencing program for pregnant and parenting women at Cameo House. Cameo House provides housing, treatment, and supportive services to up to 11 women and 22 children in San Francisco's Mission District. Pregnant and parenting women will be identified and assessed for eligibility prior to sentencing; the Adult Probation Department Investigations Division will make recommendations to the Court regarding a defendant's placement at Cameo House. Women sentenced to Cameo House will be under the supervision of the Adult Probation Department and will be required to participate in a range of treatment, educational, and vocational activities according to their assessed needs. Women whose children have involvement with Child Welfare Services will receive support from Cameo House staff in facilitating reunification plans. The goals of this program include preserving family integrity through decreased time spent in custody by primary care-givers; holding women accountable for criminal behavior by requiring participation in a year-long, residential program; and strengthening community-based alternatives to incarceration.

Recommendation 3. Invest in pre-booking and pre-charging diversion programs for drug offenses.

San Francisco currently operates several innovative practices directed to address substance dependent individuals who come into contact with the criminal justice system. Drug diversion has been a collective priority of the Department of Public Health, Police Department, District Attorney's Office, Public Defender, Courts and the community. This value investment has led to multiple criminal justice options for the substance dependent community. San Francisco operates Drug Diversion for first time offenders, Drug Court through The Superior Court Collaborative Courts, the District Attorney's Back On Track program, an intensive job development program for first time drug offenders, the Community Justice Center which combines the courtroom with a social service center and lastly individuals may be referred to Behavioral Health Court if they have both substance use and serious mental health diagnosis. Even with these exemplary programs, the San Francisco Sentencing Commission chose to solicit expert testimony on promising and evidence informed practices that best meet public safety needs and contribute toward making communities whole.

Seattle's Law Enforcement Assisted Diversion Program, formally implemented in 2011, is a recent example of a jurisdiction taking a mindful approach to ensure that communities are safe, and that those struggling with addiction and poverty are directed toward alternatives to the traditional criminal justice system. Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion program that identifies low-level drug offenders for whom probable cause exists for an arrest, and redirects them from jail and prosecution by providing linkages to community-based treatment and support services.

Pre-booking diversion programs consist of both a law enforcement and social services component. The San Francisco Sentencing Commission will continue to review the progress of the pre-booking diversion program Law Enforcement Assisted Diversion (LEAD), based in Seattle, WA and Santa Fe, NM. The Sentencing Commission will review findings for evidence of the effectiveness and cost-benefit of pre-booking and pre-charging interventions in reducing drug dependency, drug crimes and broader public safety outcomes. Local county resources will be needed to explore local feasibility and implementation. The San Francisco Sentencing Commission urges the Mayor and San Francisco Board of Supervisors to strongly consider budget and resource requests that support continued evaluation of the feasibility and benefit of implementing a pre-booking and pre-charging diversion program in San Francisco.

V. MEMBERSHIP UPDATES

Membership Transitions

In the 2013 calendar year the San Francisco Sentencing Commission experienced two member seat transitions. Commission member Minouche Kandel, appointee from the Family Violence Council, accepted a position with the City and County of San Francisco Department of Status of Women in Spring 2013. During the August 2013 meeting of the Family Violence Council members appointed Jerel McCrary Managing Attorney, Bay Area Legal Aid as the new representative of a non-profit serving victims to the Sentencing Commission. During the same time period Juvenile Probation Department Chief William Siffermann retired and Allen Nance was appointed by Mayor Edwin Lee as the new Juvenile Probation Department Chief. The Sentencing Commission is grateful to Ms. Kandel and Chief Siffermann for their leadership, expertise and commitment to the San Francisco Sentencing Commission.

Position of Superior Court

The San Francisco Superior Court is an invited member of the San Francisco Sentencing Commission. After repeated invitations to join the proceedings of the Sentencing Commission the San Francisco Superior Court Presiding Judge the Honorable Cynthia Ming-mei Lee informed the Commission that the court will not participate in the Commission because it is of the opinion that such participation would violate the canons of judicial ethics. In addition, the presiding judge cited concerns involving the separation of powers between the various branches of government as a reason for not practicing in the Commission. The Sentencing Commission will continue to inform the Superior Court of the Commission's research and recommendations and explore the potential for an administrative representative to participate in San Francisco Sentencing Commission proceedings.

VI. FUTURE ACTIVITIES

The San Francisco Sentencing Commission is scheduled to conduct four sessions in 2014. The tentative 2014 session topics are identified below.

Annual Review of San Francisco Sentencing Trends

Penal Code Review: Including enhancements and non-violent felonies.

Collateral Consequences of Convictions

Effective Sentencing for Violent Offenders: with a focused look at 18-24 year olds.

Recidivism Reduction

VII. CONCLUSION

In 2013, the San Francisco Sentencing Commission successfully completed the first full year of hearings including expert presentations on Realignment, Sentencing, Drug Reform, Restorative Justice and Victim Services. The Sentencing Commission utilized the expert testimony and research presented at the 2013 meetings to make five recommendations to inform and reform the state penal code and support local strategies within the latitude of the current law. While this policy body is locally mandated, members are confident that the findings and recommendations that will come from the remaining proceedings over the next 18 months will support not only San Franciscans, but Californians.

Appendix A: San Francisco Sentencing Commission Members

As of October 16, 2013

Agencies & Bodies	Member
District Attorneys' Office	George Gascón, District Attorney
Public Defender	Jeff Adachi, Public Defender
Adult Probation	Wendy Still, Adult Probation Chief
Juvenile Probation	Allen Nance, Juvenile Probation Chief
Sheriff	Ross Mirkarimi, Sheriff
Police	Greg Suhr, Police Chief
Department of Public Health	Barbara Garcia, Director
Reentry Council	Karen Roye, Director Child Support Services
Superior Court*	Honorable Cynthia Ming-mei Lee, Presiding Judge
<i>Member of a nonprofit org serving victims chosen by the</i> Family Violence Council	Jerel McCrary Managing Attorney San Francisco Bay Area Legal Aid
<i>Member of non-profit org working with ex-offenders chosen by the</i> Reentry Council	Catherine McCracken Sentencing Services Program Director Center on Juvenile and Criminal Justice
Sentencing Expert chosen by the Board of Supervisors	Theshia Naidoo Senior Staff Attorney Drug Policy Alliance
Academic Researcher with expertise in data analysis appointed by the Mayor	Steven Raphael PhD Professor Goldman School of Public Policy University of California Berkeley

*Invited