

AN OVERVIEW OF SECTION 46-18-604, MCA, AND THE REPORTING OF CRIMINAL SENTENCING DATA

Prepared for the Law and Justice Interim Committee
by
David D. Bohyer, LSD Research Director

March 2002

Published By



Legislative Services Division
PO Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://legmt.gov/>

AN OVERVIEW OF SECTION 46-18-604, MCA, AND THE REPORTING OF CRIMINAL SENTENCING DATA

Prepared for the Law and Justice Interim Committee
by
David D. Bohyer, LSD Research Director

March 2002

REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

In a July 2001 letter to the Law and Justice Interim Committee (LJIC), the Legislative Audit Committee (LAC) asked the LJIC to "review the requirements of the law [46-18-604, MCA] and make recommendations to the LAC as to the value of this law and the necessity to retain this law on the books".¹ Thus, the issue of the relative and ongoing value of 46-18-604, MCA, is before the LJIC.

BACKGROUND

Section 46-18-604, MCA, was enacted in 1981 as House Bill No. 773 (Ch. 459, L. 1981).² In general, the bill required the clerk of the supreme court to provide a form to the clerks of district courts, on which form each clerk, with the assistance of the district judge, would record various information relating to decisions rendered by the judge in criminal cases. Subsequently, the district court clerk would forward the completed form to the clerk of the supreme court on a quarterly basis. Finally, the clerk of the supreme court would compile, by April 1 of each year, the information submitted by the district court clerks and provide the compiled information to the clerks and make it generally available for public review.

Section 46-18-604, MCA, remains today as it was enacted in 1981 and reads as follows:

46-18-604. Transmittal of sentencing data to supreme court -- compilation. (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:
(a) the name of the case;

¹ Letter from Legislative Audit Committee to Senator Steve Doherty, Law and Justice Interim Committee, July 11, 2001. Included as Attachment 1 to this "Overview".

² See Attachment 2, the legislative history of House Bill No. 773 (Ch. 459, L. 1981).

- (b) whether the conviction was by verdict or plea;
 - (c) the fine or imprisonment, or both, allowed by law;
 - (d) the actual fine or imprisonment, or both, imposed;
 - (e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;
 - (f) the amount of fine or number of years of imprisonment, or both, that are suspended;
- and
- (g) the percentage of fine or imprisonment, or both, imposed that is suspended.
- (2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.
- (3) The clerk of district court shall report the names of the cases in which sentencing was deferred.
- (4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.
- (5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.
- (6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.
- (7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.
- (8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

APPLICATION OF THE LAW

Since enactment in 1981, the provisions of 46-18-604, MCA, have been applied sporadically at best.³ More recently, the information required to be recorded, forwarded, and compiled has not been collected as required by the language in the code. Anecdotally, the requirements of 46-18-604, MCA, have not been looked upon favorably by some members of the Judiciary⁴ or by some

³ Author conversations with the Honorable Ed Smith, Clerk of the Supreme Court, December 2001 and February and March 2002.

⁴ Memorandum from the Honorable Diane G. Barz, Chief Judge, 13th Judicial District (Billings), to the Honorable Jean Thompson, Clerk of Court, Yellowstone County, June 22, 2001, as contained in the *Minutes*, Legislative Audit Committee, June 25 & 26, 2001. (Attachment 3 to this "Overview".)

clerks of court^{5, 6}

AUDIT FINDINGS AND RESPONSES TO AUDITS

Notwithstanding the perceived lack of popularity or value of 46-18-604, MCA, its provisions remain legal requirements of the clerk of the supreme court, district court judges, and clerks of district courts. The statutory requirement has been noted in the two most recent financial compliance audits of the Judiciary as conducted by the staff of the LAD⁷, because the audits found that the requirements of 46-18-604, MCA, were not being carried out.

In replies to the audits, the clerk of the supreme court has mentioned the dubious quality and value of the statute⁸ and instructions from a former Chief Justice to comply with the statute in a certain, limited manner⁹. Additionally, the clerk of the supreme court has theorized that the statute may violate the statutory prohibition against "unfunded mandates"¹⁰ and has stated that no requests for the report have been made.¹¹

Finally, the clerk of the supreme court has pledged to work with others, if others are amenable, to have the statute repealed.¹² Thus, the issue has been before the LAC and is now before the LJIC for review and action.

⁵ See testimony of the Honorable Jean Thompson, Clerk of Court, Yellowstone County, in *Minutes*, Legislative Audit Committee, June 25 & 26, 2001. (Attachment 4 to this "Overview".)

⁶ *Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 1998*, Legislative Audit Division, December 1998, (98-27), p. B-5.

⁷ See *Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 1998*, Legislative Audit Division, December 1998, (98-27), p. 11; p. B-5. See also *Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 2000*, Legislative Audit Division, March 2001, (00-24), p. 7; pp. B-4, B-5.

⁸ *Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 1998*, Legislative Audit Division, December 1998, (98-27), p. B-5.

⁹ *Ibid.*

¹⁰ It appears the Clerk is referring to 1-2-112, MCA, the historied "Drake Amendment". Since at least 1979, 1-2-112, MCA, has exempted from "unfunded mandates" the expenditure of additional funds in an insubstantial amount, approximated to be the lesser of the amount equal to a 1-mill levy within the jurisdiction or \$10,000. (See Attachment 5 to this "Overview".)

¹¹ *Op. cit.*

¹² *Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 1998*, Legislative Audit Division, December 1998, (98-27), p. B-5; and *Financial-Compliance Audit For the Two Fiscal Years Ended June 30, 2000*, Legislative Audit Division, March 2001, (00-24), pp. B-4, B-5.

OTHER FACTORS

Prior attempts to analyze data of criminal cases have been challenging and, arguably, only marginally successful. A component of the study conducted in 1995-96 by the Montana Sentencing Commission characterized analysis of criminal cases as presenting "logistical challenges".¹³ One of the Commission's primary goals was to answer the question: "Are sentences for similar offenders with similar criminal histories consistent across Montana?" The "challenge" confronted by the Commission is captured in a quote from the Commission's report to the 55th Legislature.

One of the lessons the commission learned from this endeavor is that good data is not readily available in Montana, but it should be -- otherwise informed decision-making is an ideal rather than a reality. The other lesson the commission learned is that the data it collected is not enough to establish any trends in sentencing practices and to conclude whether unwarranted sentencing disparity is of serious concern in Montana. There are many who will say there is unwarranted sentencing disparity based upon improper factors such as race or sex. There are equally as many who will say there is not unwarranted sentencing disparity. The problem lies in the reality that the available data is too limited to give a fact-based answer to the question....

The greatest piece of information the commission gained from the data collection project is that the State of Montana must develop a mechanism to collect data about sentencing practices on an ongoing basis. There must be a body clearly identified to fulfill this responsibility, and that body must be properly funded.¹⁴

Following the LAC's June 2001 meeting, the Legislative Services Division received a legislative request for information regarding 46-18-604, MCA. In responding to the request, LSD Research Analyst Susan Fox provided summarized insights of her work analyzing, at different times, various criminal justice, corrections, and sentencing data. Ms. Fox referred to study efforts in 1987, 1995, and 1999 that may have been less than optimally successful due, in some measure, to lack of data.

¹³ *Montana Sentencing Commission: Report to the Montana 55th Assembly (1997)*, Montana Sentencing Commission, Montana Department of Corrections, Helena, MT, p. 17.

¹⁴ *Op. cit.*, *Montana Sentencing Commission: Report to the Montana 55th Assembly (1997)*, MT, pp. 17-18.

... efforts that I am aware of in the past dozen years to explore the sentencing patterns in the system have been unsuccessful due in part to the lack of data that is available from the courts. Past attempts at [establishing] sentencing guidelines or determinate sentencing have made many reluctant to collect data, but the data can be used to strengthen the current system and does not have to represent a threat to the current system.... The Department of Corrections and the Department of Justice can only maintain certain statistics in their databases if they can access the sentencing data from the courts. The 1995 Montana Sentencing Commission requested¹⁵ that the Supreme Court adopt a uniform sentencing order to assist in the collection of sentencing data and that request was declined.¹⁶

In the related matter of data transfers and data compilation, one of the current protocols of criminal sentencing process includes the judge orally pronouncing a judgment and issuing a written judgment. Following the judgment, the clerk of court forwards the case disposition information to the Department of Justice (DOJ) for inclusion in, among other things, the DOJ's Criminal History Records System or CHRS.¹⁷ Research suggests that different clerks forward the information at varying times -- sometimes sooner, sometimes later.¹⁸ To the extent that the disposition information is transmitted to DOJ in an untimely manner, various law enforcement activities can be negatively impacted. Further, the disposition information reported to the DOJ from the clerks of court can be and frequently is inconsistent, both in form and substance, which makes data compilation and analysis difficult.

Clearly, the information required to be compiled and reported under 46-18-604, MCA -- even if it were done exceedingly well -- would provide only a portion of the information found lacking by the Montana Sentencing Commission and others. Nevertheless, the information required under 46-18-604, MCA, might

¹⁵ Op. cit., *Montana Sentencing Commission: Report to the Montana 55th Assembly (1997)*, pp. 29, 31.

¹⁶ Memorandum from Susan Byorth Fox to Rep. Jeff Pattison, (undated), on file in LSD, Room 110, State Capitol, Helena, MT (2001).

¹⁷ According to the U.S. Dept. of Justice, CHRS repositories are typically charged under state law with the following: establishing comprehensive criminal history records; establishing an efficient and timely record retrieval system; ensuring accurate and up-to-date records; establishing rules and regulations governing the dissemination of criminal history records to criminal justice and noncriminal justice users. The U.S. DOJ avers that all 50 states, Puerto Rico, and the District of Columbia have established central repositories for criminal history records. (Excerpted from *Use and Management of Criminal History Record Information: A Comprehensive Report, 2001 Update*, U.S. Department of Justice, Office of Justice Programs, Washington, DC.)

¹⁸ Author conversations with Wilbur Rehmann, Manager, Criminal Justice Information Services Project, Montana DOJ, February and March 2002.

have been used if it had been available or, if it becomes available in the future, it might be used for other purposes, including legislative or administrative policymaking, managing corrections populations, assessing the adequacy of various resources (e.g. cells, probation or parole officers, judges or judicial districts, computer hardware or software, etc.).

SELECTED OPTIONS

The LJIC has numerous options for legislation that fall into one of two very narrow and one very broad categories:

- ? Affirm the *status quo* by making a finding that 46-18-604, MCA, is appropriate, advisable, necessary, etc., conclude that the statutory text should remain in the MCA, and inform the Judiciary, including the clerk of the supreme court and clerks of court, of the LJIC's finding and conclusion.
- ? Reject the *status quo* by making a finding that 46-18-604, MCA, is inappropriate, inadvisable, unnecessary, etc., conclude that the statutory text should be repealed, and request that appropriate legislation be prepared for introduction in the 58th Session.
- ? Revise 46-18-604, MCA, to provide:
 - ? clarify the Legislature's expectations regarding the reporting of sentencing information that is currently required in 46-18-604, MCA;¹⁹ or
 - ? provide new or additional direction in 46-18-604, MCA, of the Legislature's expectations regarding the reporting of criminal sentencing information, e.g.:
 - ? the form on which or the format (i.e., paper, computer input, etc.) in which the information must be provided to, e.g., the DOJ, DOC;
 - ? the time by which the information must be transmitted to, e.g., the DOJ, DOC;
 - ? when or how the accumulated information may or must be made available and by and to whom (DOJ, DOC, Clerk of Supreme

¹⁹ Section 46-18-604, MCA, reporting requirements currently include: the name of the case; whether the conviction was by verdict or plea; the fine or imprisonment, or both, allowed by law; the actual fine or imprisonment, or both, imposed; the percentage of fine or imprisonment, or both, allowed by law that is actually imposed; the amount of fine or number of years of imprisonment, or both, that are suspended; and the percentage of fine or imprisonment, or both, imposed that is suspended.

- Court, Supreme Court (administrator), etc.);
- ? other criteria considered by the LJIC to be appropriate.

The LJIC has the statutory authority and standing to make recommendations regarding 46-18-604, MCA, directly to the 58th Legislature. However, the LJIC may also make recommendations indirectly, i.e., to the LAC as requested in the July 2001 letter from the LAC, if the LJIC prefers that option.

POSSIBLE COMMITTEE ACTION

- ___ Recommend retaining 46-18-604, MCA, in its current form.
- ___ Recommend the repeal of 46-18-604, MCA.
- ___ Recommend revising 46-18-604, MCA, to convey current legislative policy.
- ___ Request the Judiciary to:
 - ___ carry out the provisions of 46-18-604, MCA;
 - ___ consider and, if appropriate, propose revisions to 46-18-604, MCA;
 - ___ consider and, if appropriate, propose the repeal of 46-18-604, MCA.

Regardless of the action the LJIC takes -- retain, revise, repeal, request, etc. - on the matter of 46-18-604, MCA, the Committee should notify the LAC and the Judiciary, including the clerk of the supreme court, of its actions, both as a courtesy and to preclude duplication of effort among legislative committees or other entities.