

Number 2026-06



**Policy Critique of H.B. 274
2026 General Session of the
67th Legislature**

February 2026

Office of
UTAH FOR RATIONAL SEX OFFENSE LAWS

Digest of Policy Critique of H.B. 274 2026 General Session of the 67th Legislature

OVERVIEW

H.B. 274 is a politically popular response to one outrageous case, but it lacks evidence of systemic failure and risks hundreds of millions in costs without addressing root causes. If individual judges are making poor sentencing decisions despite having discretion to do otherwise, restructuring an advisory commission won't solve the problem.

KEY ISSUES

1. THE EVIDENCE DEFICIT

- Speaker Schultz admits he hasn't examined commission records to verify defense attorneys influenced child exploitation guidelines
- No data presented showing Utah's sentencing reforms have failed or that crime increased due to lenient sentencing
- Law enforcement and victim groups didn't request this bill—they were approached after the Torgerson case
- The '3-to-1 defense voting block' claim is mathematically impossible: defense attorneys are only 3 of 15 members (20%)

2. THE TORGERSON CASE: MISDIAGNOSED PROBLEM

- Sentencing guidelines are advisory, not mandatory—Judge Torgerson had full discretion to sentence more harshly
- Guidelines may have suggested 0-210 days; judge chose the lower end—this was a judicial decision, not commission mandate
- Unclear if prosecutorial plea agreement constrained the sentence—prosecutors control plea deals, not the commission
- If judges won't use discretion appropriately, changing guidelines won't fix the problem

3. WHAT H.B. 274 ACTUALLY DOES

- Removes all 3 defense attorney positions (criminal, indigent, juvenile defense)
- Adds 6 prosecutor and law enforcement positions (prosecutor seats increase from 1 to 3; sheriff seats from 1 to 3)
- Creates prosecution/law enforcement dominance: 40% of voting seats vs. just 1 victim representative (6.7%)
- Mandates guideline revisions by November 2026 for violent crimes, sexual offenses, and domestic violence
- Eliminates evidence-based input on rehabilitation effectiveness, recidivism data, and unintended consequences

4. FISCAL IMPACT: THE COMING CRISIS

- Utah prisons at 90% capacity (August 2025), projected to hit 96.5% by June 2026—system at breaking point
- H.B. 20 requests \$130M for prison expansion just years after \$1B spent on state prison
- Voters rejected \$507M county prison bond (November 2024)—public resistance to unlimited prison spending
- Cost per inmate: \$55,947/year. Sex offenders now 40% of prison population (2,600 inmates), up from 29.2% in 2008
- Conservative estimate: Adding just 1 year per case for 200 offenders annually = \$8M/year, compounding to \$80M+ over decade

5. CRITICAL GAPS: WHAT H.B. 274 DOESN'T DO

- Doesn't create judicial accountability mechanisms for inappropriate sentencing decisions
- Doesn't address prosecutorial discretion in charging and plea bargaining that often determines outcomes
- Doesn't add a single victim representative despite claiming to center victim interests
- Doesn't provide additional resources for victim services or ensure better victim participation in sentencing

KEY QUESTIONS FOR DEBATE

- If Rep. Clancy admits the problem 'lies squarely at our feet as a legislative prerogative,' why restructure the commission instead of directly changing sentencing laws?
- If centering victims is the goal, why not add victim representatives instead of prosecutors and sheriffs?
- Where is the data showing defense attorneys influenced the specific guidelines Speaker Schultz finds problematic?
- Did a prosecutorial plea deal constrain Judge Torgerson's sentence? If so, how does commission restructuring address that?

RECOMMENDED POSITION

While Judge Torgerson's sentence was outrageous and public safety concerns are legitimate, H.B. 274 is not the right solution. It:

- Lacks evidence of the systemic problem it claims to solve
- Targets an advisory commission when the issue appears to be judicial discretion or plea bargaining
- Will cost hundreds of millions in a prison system already in crisis
- Eliminates evidence-based input critical to effective sentencing policy

Better approach: Request data analysis of sentencing patterns, identify root causes of problematic outcomes (judicial accountability, prosecutorial practices, etc.), consider targeted reforms that directly address identified problems, and add victim representatives if victim interests are truly the priority.



Office of Utah for Rational Sex Offense Laws

PO BOX 231 • LAYTON, UT 84041-9998
(801) 871-5215 • COMMUNICATIONS@UTRSOL.ORG

February 4, 2026

TO HOUSE REPRESENTATIVES

Transmitted herewith is our **Policy Critique of H.B. 274 Substitute #1 Sentencing Amendments** (Publication #2026-06). A digest is found on the pages located in the front of this document. The objectives and scope of the critique are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in this document in order to facilitate the implementation of the recommendations.

Sincerely

Utah for Rational Sex Offense Laws

UTRSOL/lm

Table of Contents

<u>Digest</u>	i
<u>Introduction</u>	1
<u>The Torgerson Case</u>	2
<u>H.B. 274's Core Arguments</u>	3
<u>Origins of H.B. 274</u>	6
<u>Ramifications of H.B. 274 Passing Into Law</u>	9
<u>The Fiscal Crisis</u>	10
<u>Political and Public Perception</u>	12
<u>Behind Closed Doors</u>	17
<u>Conclusion</u>	

Introduction

H.B. 274 represents a dramatic restructuring of Utah's Sentencing Commission based on a single high-profile case—most notably Judge Torgerson's May 2025 sentencing decision, and a broader narrative of systemic leniency. It stands as reactionary legislation that rather than addressing demonstrated systemic failures, seeks to dismantle sentencing reforms perceived as having gone too far, based on the belief that a defense-dominated Sentencing Commission has produced overly lenient guidelines that fail to hold offenders—particularly in extreme cases—accountable. In doing so, the bill reflects a broader pattern of policy making driven by isolated incidents rather than data, trends, or evidence-based analysis.

With voting membership shifting toward prosecutorial and law enforcement representatives and no defense representation, the Commission's policy recommendations would predictably move toward longer prison sentences, extended supervision periods, harsher responses to technical violations, reduced reliance on alternatives to incarceration, minimization of collateral consequences, and weakened constitutional safeguards. This reorientation would not only increase incarceration rates and correctional costs, but also erode proportionality, due process, and the balance of perspectives essential to sound sentencing policy.

If sentencing guidelines are revised to favor presumptive incarceration for a broader range of offenses, the resulting increase in prison admissions and lengths of stay will impose substantial costs on the Utah Department of Corrections (UDC). As of August 2025, prison capacity had reached 90% with forecastings to reach operational threshold targets of 96.5% by June of 2026. Because of this lawmakers have introduced H.B. 20, Correctional Facility Capacity Amendments, which seeks more than \$130 million for prison expansion—just a few years after Utah invested over \$1 billion in constructing a new state prison and after voters rejected a \$507 million county-level prison bond in Salt Lake County in November 2024.

H.B. 274 would further strain an already overextended correctional system and would inevitably drive costs up by hundreds of millions of dollars. Taken together, these developments reflect a legislative approach that prioritizes punitive expansion over evidence-based policy. H.B. 274's restructuring of the Sentencing Commission, when coupled with subsequent prison funding efforts, illustrates a reactive and politically driven cycle: high-profile cases prompt harsher sentencing policies, which then fuel costly prison expansion—often circumventing public input while failing to address underlying systemic issues.

The Torgerson Case

Direct Influence on H.B. 274

In May 2025, Judge Don Torgerson sentenced a 22-year-old man to 112 days in jail (already served) and probation for possessing over 300 images of child sexual abuse material, despite prosecutors requesting prison time.¹ This sparked immediate outrage from Speaker Mike Schultz, who called for the judge's resignation.

The Utah State Courts defended Judge Torgerson's decision, stating that the sentence was fully consistent with the 2025 Adult Sentencing, Release, and Supervision Guidelines issued by the Utah Sentencing Commission. This defense underscored that the sentencing outcome reflected established statewide policy rather than an exercise of judicial leniency or deviation.

During the January 28 House Judiciary Committee meeting, Speaker Schultz expressed frustration that when he raised concerns about the Torgerson sentence, defense attorneys responded that the sentence was consistent with the Sentencing Commission's recommendations. Speaker Schultz explained this was part of a larger pattern where lenient sentences for serious crimes, particularly sexual offenses and domestic violence, were being justified by reference to commission guidelines.

H.B. 274 is Speaker Schultz's response to what he views as the commission having been too influenced by defense perspectives, resulting in guidelines that are insufficiently protective of public safety and victims in serious criminal cases. The bill seeks to recalibrate the Commission by restructuring its membership in a way that shifts decision-making authority toward prosecutorial and law enforcement interests.

How Sentencing Guidelines Work

Sentencing guidelines provide ranges, not mandates. Judges have discretion to depart from guidelines when circumstances warrant. The Torgerson case highlights a critical distinction: the guidelines may have suggested 0-210 days jail as a range, but Judge Torgerson chose the lower end and added probation. This was a judicial decision, not something the Commission forced. Speaker Schultz seems to conflate the Commission's recommendation with the judge's sentencing choice, but judges can and do sentence above guidelines when they believe circumstances warrant it.

Misunderstanding of Plea Deals

During the committee meeting, Schultz doesn't clarify whether the Torgerson case involved a plea agreement. This is crucial because prosecutors often negotiate plea deals that reduce charges or recommend specific sentences. Once a plea deal is struck, judges typically follow the agreed-upon terms. If the prosecutor agreed to recommend probation/time served, the judge may have been honoring that agreement. The Commission's guidelines don't control plea negotiations—prosecutors do. If Speaker Schultz's concern is really about lenient outcomes, he may be targeting the wrong institution. Prosecutorial charging and plea bargaining decisions often determine outcomes more than sentencing guidelines.

H.B. 274's Core Arguments

The "3 to 1 Voting Block" Misconception

This is perhaps the most significant misunderstanding. Looking at the reality of the Commission's composition, there are 15 voting members total: 1 Victim Services Commission representative, 3 defense attorneys (criminal, indigent, juvenile), but also 3+ prosecutors/law enforcement representatives, corrections officials, parole board members, court administrators, rehabilitation professionals, and others.

The math doesn't support a "defense block." Defense attorneys make up 3 out of 15 members, which is only 20%. Even if all 3 voted as a block, they'd need 5 other votes to reach a majority of 8 out of 15. The commission includes multiple law enforcement and prosecution voices. Speaker Schultz's voting block claim is mathematically impossible unless he's suggesting that judges, corrections officials, parole board members, court administrators, and rehabilitation professionals all consistently voted with defense attorneys against victims—which seems implausible.

The Role of Defense Attorneys on Policy Bodies

Speaker Schultz argues defense attorneys should only represent clients in court, not participate in policy-making. But this misunderstands why diverse commissions exist. Defense attorneys see system failures that prosecutors might not, such as wrongful convictions, excessive sentences, and unequal application of the law. Balanced policy-making requires diverse perspectives on what works and what doesn't. Evidence-based sentencing reform requires

input from all stakeholders, and defense attorneys often have valuable data on recidivism, rehabilitation, and cost-effectiveness. The goal is to ensure the commission has access to all relevant expertise.

Defense attorneys bring irreplaceable empirical knowledge to sentencing policy development that no other stakeholder can provide. Through representing clients longitudinally—often the same individuals across multiple cases over years—they observe which interventions actually reduce recidivism versus which merely delay reoffending, giving them pattern recognition about what works in practice rather than theory.

Defense attorneys possess unique access to ground truth about defendants' circumstances through privileged attorney-client communications, allowing them to identify which underlying factors—trauma, mental illness, addiction, economic desperation—actually drive criminal behavior and what would need to change to prevent reoffending. Perhaps most critically, they serve as an early warning system and stress-test for proposed policies, identifying unintended consequences and implementation failures before they become costly disasters—a function that historical prosecution-dominated sentencing policy of the 1990s desperately needed but lacked, resulting in mandatory minimums, three-strikes laws, and mass incarceration that failed to improve public safety while imposing enormous human and fiscal costs.

Their participation isn't about ideological balance or being “soft on crime”—it's about ensuring sentencing guidelines are built on complete rather than partial evidence, tested against real-world rather than theoretical implementation, and designed to actually achieve rather than merely claim to pursue public safety and proportionate justice.

Single Case Policy vs Systemic Policy

Speaker Schultz is using one egregious case (Torgerson) to justify a systemic restructuring. This is problematic because one judge's decision doesn't prove the guidelines are systematically flawed. No analysis was presented showing defense attorneys actually influenced the child exploitation guidelines. The appropriate response to one bad judicial decision might be judicial oversight, not commission restructuring. Notably, Speaker Schultz admits in the hearing that he hasn't reviewed commission records to see if defense attorneys had “outsized influence.” Relying on a single anecdote without supporting data risks conflating individual error with systemic failure, which can lead to unnecessary and potentially harmful reforms.

Potential Constitutional and Due Process Concerns

By removing defense attorney input entirely from sentencing policy, the system loses important checks on potentially excessive or ineffective sentencing. This could lead to guidelines that ignore rehabilitation research and recidivism data, may result in more expensive mass incarceration without improved public safety, and could violate principles of balanced criminal justice policy-making.

Moreover, eliminating this perspective raises serious due process concerns, as defendants' rights to fair and proportionate sentencing rely on meaningful advocacy. Without defense input, the commission risks creating policies that favor punitive outcomes over justice, undermining both constitutional safeguards and public confidence in the legal system.

Relevant Questions Surrounding The Torgerson Case

The more real questions to determine the rationale for H.B. 274 might be to ask: Did prosecutors offer a plea deal in Torgerson that constrained the judge? Did Judge Torgerson have discretion to sentence above guidelines but chose not to? Is there actual evidence that defense attorneys influenced the child exploitation guidelines specifically? Were there victim impact statements presented that the judge ignored? What is the recidivism rate for similar offenders under different sentencing approaches?

Without answers to these questions, H.B. 274 appears to be a reactive measure based on an incomplete understanding of how sentencing actually works—and it may not address the actual problems in the system.

Legislation grounded in anecdote rather than comprehensive data risks unintended consequences, including harsher sentences that do not improve public safety. A thorough, evidence-based review is essential before making structural changes to ensure reforms are effective, proportionate, and constitutionally sound.

Rushing to restructure the commission without this information could undermine trust in the justice system and create policies that prioritize perception over proven outcomes. Careful analysis and stakeholder input are necessary to craft reforms that genuinely enhance fairness, accountability, and public safety. Otherwise, well-intentioned legislation risks solving a problem that may not exist while introducing new, avoidable harms. Any reform should be guided by data and expertise, not isolated cases or political pressure.

Origins of H.B. 274

Law Enforcement Didn't Initiate This

When Representative Miller asked directly whether the bill came “at the request of any law enforcement organization or victims organization,” Speaker Schultz admitted: “It didn't.” This is significant because if there were truly a systemic problem with sentencing guidelines being too lenient due to defense attorney influence, you would expect law enforcement and victims’ advocacy groups to have been raising alarms and requesting legislative action.

Instead, Speaker Schultz describes a reactive process: “But when I had the opportunity to speak with them about the concerns that I had, they had similar concerns.” In other words, he came to them with his theory after the Torgerson case, and they agreed with him. This is very different from law enforcement independently identifying a systemic problem and bringing it to the legislature for a solution.

What This Pattern Suggests

This sequence suggests the bill may be more about political response to public outrage over one case rather than addressing a documented systemic problem. Legislation based on such reactive consensus risks enacting reforms that address a hypothetical problem rather than actual systemic shortcomings.

Law enforcement agencies work within the criminal justice system daily. They see how sentencing works, how guidelines are applied, and what outcomes result. If the Sentencing Commission's guidelines were systematically producing unjust outcomes due to defense attorney influence, law enforcement would likely have been complaining about this for years and bringing specific data to legislators.

The fact that they hadn't raised this issue until Speaker Schultz approached them after the Torgerson case suggests one of two possibilities: either the problem isn't as systemic as Speaker Schultz believes, or law enforcement is simply supportive of any legislation that increases penalties and reduces defense input, regardless of whether there's evidence of a specific problem. Either way, using this post hoc agreement as justification for sweeping reforms is insufficient and undermines the credibility of the bill.

The Danger of Confirmation Bias

Speaker Schultz's approach appears to follow a confirmation bias pattern. He was outraged by the Torgerson sentence, defense attorneys told him it aligned with commission guidelines, and he then looked at the commission composition and developed a theory that defense attorneys must be the problem. He then went to law enforcement with this theory, and they agreed it sounded like a problem. But this isn't the same as law enforcement independently identifying and documenting the issue through their operational experience.

When Representative Miller asked whether Speaker Schultz had “any instances from the commission record to show that the defense attorneys had an outsized influence on developing the guidelines,” Speaker Schultz admitted: “You know, I haven't went into that.” He acknowledges he hasn't actually investigated whether defense attorneys influenced these specific guidelines. His concern is based on watching defense attorneys argue for lighter sentences in committee hearings on other bills, which is a completely different context.

Political Support vs. Evidence-Based Policy

The pattern here—law enforcement supporting a bill they didn't request—is common in “tough on crime” politics. Law enforcement agencies generally support legislation that gives them more tools, increases penalties, and reduces constraints on prosecution. But support from stakeholders doesn't necessarily mean the legislation addresses a real, documented problem or that it will be effective.

What's notably absent from the questions raised is any discussion of data, research, or systematic analysis showing that the commission's current composition has led to problematic outcomes. Speaker Schultz mentions that “people have reached out to me with multiple, multiple, multiple examples” of lenient sentences after he spoke out about Torgerson, but this is anecdotal and doesn't establish that the commission's composition caused these outcomes.

Effective policy requires more than popularity or political convenience; it requires rigorous evidence demonstrating both a problem and that the proposed solution will work. Without data-driven analysis, H.B. 274 risks enacting changes based on perception, anecdotes, and political appeal rather than actual improvements to sentencing outcomes.

The Practitioners

It's worth noting who apparently wasn't consulted or didn't raise concerns: the judges themselves (who actually apply these guidelines), the parole board members, corrections officials, or rehabilitation professionals who are already on the commission. If there were truly a systemic problem with the guidelines, these professionals would be the ones most likely to have documented evidence of it. Their silence on this issue before Speaker Schultz raised it is telling.

The fact that law enforcement organizations support the bill after being approached about it doesn't validate the bill's premise. It may simply reflect the political reality that law enforcement organizations tend to support legislation framed as "getting tough on crime," especially in the wake of a case that generated significant public outrage.

Judicial Discretion and the Role of Judges

A critical issue that Speaker Schultz's argument largely overlooks is the fundamental role of judicial discretion in sentencing. The bill appears to assume that the problem lies with the Sentencing Commission's guidelines, but this misses a key point: judges are not bound by these guidelines. They are advisory recommendations, not mandatory sentences. Judge Torgerson had the authority to sentence above the recommended range if he believed the circumstances warranted it, yet he chose not to.

Speaker Schultz himself acknowledges this in the hearing when he says, "Of course, the judge has the ability to go whatever route that they would want to. They don't have to follow the recommendations." Yet the entire bill is structured around reforming the commission rather than addressing judicial decision-making. This creates a logical inconsistency: if judges have discretion to depart from guidelines but choose not to, then the problem isn't the guidelines themselves—it's how judges are exercising their discretion.

The bill does add language requiring judges to consider certain factors when sentencing, particularly prioritizing victim interests and public safety for violent felonies and sexual offenses. However, judges were already required to consider these factors. The new language doesn't actually change judicial discretion; it merely emphasizes certain considerations. If Judge Torgerson's sentence was problematic, it was because he failed to appropriately exercise the discretion he already had, not because the guidelines constrained him.

This raises an uncomfortable question that the bill doesn't address: if individual judges are making sentencing decisions that the public finds unconscionable, despite having full discretion to do otherwise, is restructuring the Sentencing Commission the appropriate remedy? Or should the focus be on judicial accountability, training, oversight, or retention elections? By targeting the commission's composition rather than judicial decision-making processes, the bill may be addressing the wrong part of the system entirely.

Ramifications of H.B. 274 Passing Into Law

Immediate Structural Changes

The most immediate effect would be a dramatic shift in the Sentencing Commission's composition. The commission would lose all three defense attorney positions (criminal, indigent, and juvenile defense) while gaining six new prosecutor and law enforcement positions (increasing from 1 prosecutor to 3, and from 1 sheriff to 3). This creates a commission heavily weighted toward prosecution and law enforcement perspectives, with prosecutors and sheriffs now holding 6 of 15 voting seats (40%) compared to the single victims' representative.

This composition raises questions about whether the bill actually achieves its stated goal of centering victims. While Speaker Schultz criticized the "3 to 1" ratio of defense attorneys to victim representatives, the new structure creates a "6 to 1" ratio of prosecutors/law enforcement to victims. If the concern was truly about victim representation, adding more victim advocates would have been more consistent with that objective.

Changes to Sentencing Guidelines

The bill mandates that by November 1, 2026, the commission must revise guidelines for felony assaults, homicides, kidnapping, all sexual offenses, domestic violence, and crimes against adults. Given the new composition, these revisions will almost certainly recommend harsher sentences and longer supervision periods. Without defense attorney input to provide data on rehabilitation effectiveness, recidivism rates, or unintended consequences of lengthy sentences, the commission will lack important perspectives on what actually works to reduce crime. As a result, the revised guidelines risk prioritizing punitive measures over evidence-based strategies, potentially increasing incarceration costs without improving public safety.

The bill also requires the commission to prioritize “protection of society” as the primary consideration, with rehabilitation, deterrence, and punishment as secondary factors. This represents a philosophical shift away from evidence-based sentencing reform toward a more punitive approach. While public safety is paramount, research shows that excessively long sentences don't necessarily improve public safety and can actually increase recidivism by making successful reintegration more difficult.

Impact on Judicial Sentencing

Judges will be required to consider new factors that prioritize “the seriousness of the offense” and “protection of the public” while explicitly putting victim interests ahead of defendant interests in violent felony and sexual offense cases. However, this creates minimal actual change since judges already consider these factors. What will change is the political and public pressure on judges to follow the revised (presumably harsher) guidelines.

The real question is whether this addresses the Torgerson problem. If judges like Torgerson choose to sentence at the lower end of guidelines despite having discretion to go higher, will changing the guidelines actually change judicial behavior? Or will judges who are inclined toward leniency simply continue to choose the lower end of whatever new range is established? The bill doesn't create any new accountability mechanisms for judges who impose sentences the public finds inadequate.

The Fiscal Crisis

Fiscal and Correctional System Impacts

Harsher sentencing guidelines will inevitably lead to longer prison sentences and more incarceration, creating a collision course with Utah's already critical correctional capacity crisis. As of August 2025, prison capacity had reached 90% with forecasting to reach operational threshold targets of 96.5% by June of 2026. The system is essentially at a breaking point, operating with minimal buffer for population fluctuations or emergencies.

Because of this crisis, lawmakers have introduced H.B. 20, Correctional Facility Capacity Amendments, which seeks more than \$130 million for prison expansion—just a few years after Utah invested over \$1 billion in constructing a new state prison and after voters rejected a \$507 million

county-level prison bond in Salt Lake County in November 2024. The timing is particularly striking: the state is simultaneously asking for massive new prison spending while also passing legislation that will guarantee increased incarceration demand.

H.B. 274 would further strain an already overextended correctional system and would inevitably drive costs up by hundreds of millions of dollars. The fiscal note for H.B. 274 states “None” for money appropriated, but this is deeply misleading. The downstream costs of increased incarceration are substantial and directly connected to the capacity crisis already forcing the \$130 million request in H.B. 20. When the commission revises guidelines to be harsher for violent crimes, sexual offenses, and domestic violence cases—which are common—the result will be longer prison sentences across numerous cases.

Consider the mathematics: Utah spends \$153.28 per day (approx. \$55,947 per year) to house an inmate. The categories targeted by H.B. 274 (violent felonies, sexual offenses, domestic violence) represent a significant portion of the prison population. Sex offenders made up 29.2 percent of prisoners in 2008, in 2018 that number increased to 34.4 percent, in 2025 UDC reported it is at 40 percent with 2,600 inmates. If the revised guidelines result in even modest increases in average sentence length—say an additional year per case for just 200 offenders annually—the cost would be \$8 million per year, compounding each year as those longer sentences accumulate. Over a decade, this could easily reach \$80 million, at a conservative estimate.

More realistically, if harsher guidelines increase the incarcerated population by even 5-10%, Utah would need additional prison capacity beyond what H.B. 20 provides. This creates a vicious cycle: H.B. 274 increases incarceration demand, requiring more prison construction, which requires more operational funding, which diverts resources from other state priorities. The state just spent over \$1 billion on a new prison and is already asking for \$130 million more—how much additional expansion will be needed to accommodate H.B. 274's effects?

The voter rejection of the \$507 million county-level prison bond in Salt Lake County in November 2024 also signals important public sentiment about unlimited prison spending. Utah voters may support “tough on crime” rhetoric in the abstract, but they've shown reluctance to pay the associated costs. If H.B. 274 requires yet another round of prison expansion beyond H.B. 20, will taxpayers continue to support these expenditures, or will the fiscal reality create political backlash?

Additionally, longer sentences mean fewer resources available for rehabilitation programs, mental health treatment, and substance abuse services—the very interventions that actually reduce recidivism and improve public safety. When prisons are operating at 90-96% capacity, the focus necessarily shifts to managing population rather than providing effective programming. Overcrowded facilities have worse outcomes, higher recidivism rates, and more dangerous conditions for both inmates and staff.

The bill's emphasis on punishment over rehabilitation may ultimately prove counterproductive if it leads to higher recidivism rates among released offenders who had fewer opportunities for treatment and skill development during longer sentences in overcrowded facilities. This creates even more future incarceration demand, perpetuating the cycle of capacity crises and emergency funding requests.

H.B. 274's emphasis on punishment over rehabilitation may ultimately prove counterproductive if it leads to higher recidivism rates among released offenders who had fewer opportunities for treatment and skill development during longer sentences in overcrowded facilities. This creates even more future incarceration demand, perpetuating the cycle of capacity crises and emergency funding requests.

Political and Public Perception

In the short term, the bill will likely be politically popular. “Tough on crime” legislation, especially when tied to an egregious case like Torgerson, resonates with voters concerned about public safety. Speaker Schultz noted that public safety polling shows it's a top concern for Utahns. Passing this bill allows legislators to demonstrate they're taking action in response to public outrage.

However, the long-term political consequences are less predictable. If the revised guidelines lead to sentences that the public perceives as excessively harsh in certain cases, or if the fiscal costs of increased incarceration require tax increases or cuts to other services, public opinion may shift. Similarly, if crime rates don't improve (or worsen) despite harsher sentences, the political narrative that this bill was necessary may be undermined.

Moreover, enacting legislation based on immediate public sentiment rather than careful analysis can create a cycle of reactive policymaking, where short-term approval drives long-term challenges. Sustainable public safety policy requires balancing political considerations with evidence, fairness, and cost-effectiveness to avoid unintended consequences.

What Remains Unanswered

It's important to note what this bill doesn't do. It doesn't create better mechanisms for judicial accountability when judges make problematic sentencing decisions. It doesn't ensure better victim participation in sentencing hearings. It doesn't provide additional resources for victim services. It doesn't address prosecutorial discretion in charging and plea bargaining. It doesn't examine why Judge Torgerson chose the sentence he did or what could prevent similar decisions in the future.

The bill assumes the problem was the Sentencing Commission's composition and guidelines, but if the actual problem was judicial decision-making, prosecutorial plea agreements, inadequate victim impact statements, or public pressure on judges to appear lenient, then this bill won't solve it. Future cases similar to Torgerson may still occur, just with different justifications, leaving the underlying issues unresolved while the state bears the costs of a fundamentally restructured and potentially less effective sentencing framework.

Rep. Tyler Clancy's Closing Support Statement

The cases in which Rep. Clancy cites are horrific and genuinely outrageous. His recitation of them is clearly designed to make opposition to the bill seem callous or indifferent to victim suffering. The emotional weight of these stories is considerable, and that's precisely the point—it's difficult to vote against legislation when doing so can be framed as tolerating such outcomes.

The public outrage over Judge Torgerson's sentence—time served and probation for possessing over 300 images of child sexual abuse material—is entirely justified, as are broader concerns about whether Utah's system adequately holds violent and sexual offenders accountable. Victims deserve meaningful consequences, communities deserve protection, and the fundamental question of whether sentencing outcomes reflect offense seriousness is both valid and important.

However, accepting these concerns as genuine doesn't mean H.B. 274's approach will address them. The Torgerson case could represent a failure of judicial discretion (the judge chose not to sentence more harshly), prosecutorial plea bargaining (an agreement that constrained the sentence), or the guidelines themselves—but without diagnosing which failure actually occurred, restructuring the commission may target the wrong part of the

system entirely. The risk is that H.B. 274 channels legitimate public safety concerns into a response that provides political satisfaction without operational effectiveness, potentially costing hundreds of millions in increased incarceration while failing to prevent future cases like Torgerson's because the actual cause remains unexamined.

Rep. Clancy's framing is politically effective but empirically questionable. He provides no data showing that crime has increased due to sentencing reforms, no evidence that the specific reforms he references caused the cases he describes, and no analysis of whether those cases represent systemic failures or isolated incidents of poor judicial decision-making.

Rep. Clancy explicitly states: "Don't misunderstand me colleagues. I'm not saying that this is the sentencing commission's fault. I actually think it lies squarely at our feet as a legislative prerogative." This is a crucial admission that contradicts the bill's entire premise.

If the problem "lies squarely at our feet as a legislative prerogative," then why is the solution to restructure the Sentencing Commission by removing defense attorneys? The commission doesn't set sentencing laws—the legislature does. The commission provides advisory guidelines based on the statutory framework the legislature creates. If legislators believe that possession of child sexual abuse material should carry mandatory prison time rather than presumptive probation, they have the authority to pass legislation making that change directly.

Why not simply pass legislation changing the presumptive sentence for child sexual abuse material possession from probation to prison? That would be a direct solution to the specific problem he identifies. Instead, H.B. 274 takes an indirect approach—restructuring the commission's membership in hopes that a prosecution-heavy commission will recommend harsher guidelines that judges might then follow. If legislators recognize they have the power to directly change sentencing laws but instead choose to restructure an advisory commission, it suggests they want political cover for harsher sentences without taking direct responsibility.

Rep. Clancy's closing statement is politically effective but less substantive on evidence-based data. It leverages genuine outrage over horrific cases to build support for legislation that may not actually address the causes of those outcomes. Clancy's statement exemplifies a common pattern in criminal justice legislation: horrific cases generate public outrage, legislators feel pressure to respond, and the response focuses on looking tough rather than on carefully diagnosing problems and implementing

evidence-based solutions. The result is often legislation that satisfies the political imperative to “do something” without necessarily making the system work better or preventing future tragedies.

In short, while Rep. Clancy’s rhetoric resonates emotionally and politically, it underscores a broader concern: H.B. 274 prioritizes the appearance of action over targeted, evidence-based reform. Addressing systemic issues effectively requires identifying root causes, analyzing data, and crafting solutions that directly improve outcomes, rather than relying on symbolic measures that may have little practical impact.

The Evidence Deficit

Throughout the hearing and in the bill itself, there's a remarkable absence of evidence for the central claims. Speaker Schultz admits he hasn't examined commission records to determine whether defense attorneys actually influenced the child exploitation guidelines he finds problematic. No data is presented showing that Utah's criminal justice reforms have failed or that crime has increased due to lenient sentencing. No analysis demonstrates that the commission's current composition has produced systematically unjust outcomes rather than isolated cases of poor judicial decision-making.

Instead, the bill rests on anecdotes—the Torgerson case, the examples Representative Clancy recounts in his closing statement, and references to defense attorneys arguing for lighter sentences in legislative hearings. These are emotionally powerful but analytically insufficient. Individual cases, no matter how outrageous, don't prove systemic failures. And defense attorney advocacy in legislative settings tells us nothing about their role in the commission's deliberative, evidence-based guideline development process. Relying on such selective examples risks enacting broad reforms that address perception rather than actual problems within the sentencing system.

Good policy requires diagnosing problems accurately before prescribing solutions. H.B. 274 skips the diagnostic phase entirely, moving directly from outrage over specific cases to structural changes based on assumptions about what must have caused those outcomes. This shortcut undermines the development of effective, evidence-based sentencing policy and increases the likelihood of unintended consequences. Without thorough analysis, the legislation may fail to prevent future problems while imposing new costs and constraints on the justice system.

The Victim Representation Paradox

One of the bill's stated justifications is that victims deserve greater representation on the commission. Speaker Schultz calls it "quite honestly sad that we give victims one spot on this commission and three defense attorney spots." Yet H.B. 274 doesn't add a single victim representative. Instead, it removes defense attorneys and adds prosecutors and sheriffs, creating a 6-to-1 ratio of law enforcement/prosecution to victims—double the imbalance Speaker Schultz criticized.

This reveals that victim empowerment isn't really the bill's purpose. Prosecutors and law enforcement officials, while important stakeholders, don't represent victims' interests in the same way victim advocates do. Prosecutors serve the state's interest in enforcing laws and securing convictions. These interests often align with victims' needs, but not always—victims sometimes prefer restorative justice approaches, treatment for offenders, or sentences focused on rehabilitation rather than retribution.

If the legislature genuinely wanted to center victims in sentencing policy, the obvious solution would be adding more victim services representatives to the commission. The fact that this wasn't done suggests the real goal is shifting the commission's orientation toward punishment and incapacitation, using victim concerns as political justification.

Behind Closed Doors

What the Sentencing Commission and Victim Services Commission Revealed

The day after Speaker Schultz's presentation to the House Judiciary Committee, two critical meetings took place that the public largely never sees. On January 29, the Utah Sentencing Commission convened to discuss H.B. 274 internally. On January 30, the Victim Services Commission (VSC) took up the bill in their own legislative review meeting. What emerged from both conversations was strikingly different from the narrative Schultz presented in committee—and in several cases, directly contradicted it. In both meetings, commissioners and staff raised concerns about the bill's evidentiary basis, questioned whether the proposed enhancements would improve public safety, and emphasized that the data being cited publicly did not align with what sentencing and victim-services professionals were seeing in practice.

The Sentencing Commission

The January 29 Sentencing Commission meeting opened with the CCJJ Director Tom Ross's central concern about the erosion of collaborative governance itself. The Director articulated something that Schultz never acknowledged: that public safety is "much more than incarceration." He pushed back against the binary framing that dominated the committee hearing, where the choice was presented as either locking people up or not caring about public safety. He noted that the very fact commissions have "no direct face attached" makes them easy targets when politicians need someone to blame, and that this dynamic repeats year after year with different groups under attack. If legislators dismantle that, the commissions lose their primary purpose.

What followed the Director's opening was perhaps the most important presentation of the entire H.B. 274 debate—one that never made it into the legislative hearing. Dan Strong, the commission's staff analyst, walked the commission through the actual data on child sexual abuse material (CSAM) sentencing. He explained that the commission had already done extensive work on this issue during the 2023 interim, adding specific aggravating and mitigating factors to distinguish between the most egregious cases and less serious ones.

Aggravating factors included infant or toddler victims, attempted contact with a victim or undercover law enforcement, possession continuing for over two years, and possession of over 10,000 images. A mitigating factor was identified for younger defendants under 25 who only possessed images of individuals over 14. This nuanced framework was developed collaboratively, with input from the Attorney General's office, and was designed precisely to address the concern about one-size-fits-all sentencing.

Dan then presented sentencing outcome data that fundamentally undermined Speaker Schultz's narrative. For first-degree felony aggravated sexual exploitation of a minor cases from 2022 to 2024, approximately 50% were sentenced directly to prison with no probation, and another 35% received suspended prison sentences with probation. For the lesser second-degree felony versions, 30% went directly to prison and 66% received probation with likely jail time. The data revealed something critical: even when guidelines recommended probation, some cases were going to prison anyway. And even when guidelines recommended prison, not all cases ended up there. Judicial discretion was already operating actively and independently of the guidelines in both directions.

Most revealing was what happened when the commission had previously considered changing CSAM possession to presumptive prison. They voted on that proposal and it failed 12 to 3. The three dissenting votes were not from defense attorneys acting as a bloc—they were from commissioners across different constituencies who shared a common concern: they didn't feel comfortable making such a significant change to the system without legislative input on the costs and appropriations it would require. The commission actually tried to flag this issue for the legislature but didn't take the next step of formally bringing it forward for feedback. This is the kind of institutional caution and fiscal responsibility that gets lost when the narrative reduces everything to defense attorneys blocking tough sentences.

The Prosecutor Created the Problem, Not the Defense

One of the most powerful statements in the January 29 meeting came from Mark Moffat, a defense attorney who had served on the Sentencing Commission for four years. His remarks cut directly to the heart of the Torgerson case in a way nobody had dared to in the public hearing. Mark stated plainly that the problem addressed in the Torgerson case “was a problem that the defense bar did not create” and that it “was created by a prosecutor who made bad decisions in a case where he could have achieved the outcome that he wanted, which was prison. Because he was given the tools by this sentencing commission and by legislation to do it. And he didn't use those tools.”

This is the piece of the puzzle that Speaker Schultz completely ignored. The elected county prosecutor in the Torgerson case requested prison time—but the question of why the judge didn't impose it may have everything to do with how the case was charged, what evidence was presented, whether a plea agreement was negotiated, and what the prosecutor actually recommended at sentencing. Mark's point was that if a prosecutor had the legal tools to secure a prison sentence and didn't, blaming defense attorneys on a commission for the outcome is misdirected anger.

Mark also expressed the deep sense of betrayal felt by defense attorneys after the hearing. He noted that not a single person at the committee hearing had anything positive to say about the contributions defense attorneys make to sentencing policy. The trust that had been built over years of collaborative work felt shattered in a single afternoon, and he warned that rebuilding it would take time. He emphasized that this erosion of trust not only damages professional relationships but also undermines the quality of future sentencing policy by discouraging open, good-faith collaboration among key stakeholders.

The 93% Problem: Defense Attorneys Have Almost No Influence

Steve Burton, another commission member, presented data that mathematically demolished Speaker Schultz's theory that defense attorneys were driving problematic sentencing guidelines. The commission had conducted an analysis of votes since the most recent restructuring of the Sentencing Commission. When there was a defense-unfriendly bill or proposal, the defense lost that vote 93% of the time. As Steve put it: "It is frustrating to say, hey, even though 93% of the time they don't make a difference in that vote or things that go against them, they don't win, that's who's causing the problem in making the sentencing guidelines."

This data point is devastating to H.B. 274's premise. If defense attorneys are losing nine out of ten votes on issues where their interests conflict with prosecution, it is factually impossible for them to be the driving force behind guidelines that Schultz finds objectionable. The commission's work product is collective, and when defense perspectives lose that frequently, the outcomes are being determined by the other twelve members—prosecutors, law enforcement, corrections officials, judges, and other stakeholders.

Steve also articulated something that the hearing never addressed: the fundamental power imbalance in the criminal justice system. Over 95% of cases are resolved through plea bargains, and it is prosecutors—not defense attorneys—who hold the power in those negotiations. When public safety outcomes fall short, the institution with the most decision-making authority is the prosecutor's office. Removing defense attorneys from a policy commission doesn't change that reality. It simply removes one of the few counterweights to prosecutorial power in the system.

The Binary Choice Problem

Judge Therese provided critical context about how sentencing actually works from the bench. She explained that judges consider the presentence report, the facts of the case, recommendations from both parties, victim letters, and the sentencing guidelines—all together—before making a determination. She noted that she had sent people to prison despite what the guidelines said, and had done the opposite as well. The guidelines inform the decision; they don't dictate it. Her remarks underscored that sentencing is an exercise of judicial discretion grounded in a holistic evaluation of each case, not a mechanical adherence to guideline ranges.

Another commission member raised a problem that the hearing never touched on: the binary nature of the sentencing structure for CSAM cases creates an unsatisfying choice for judges. The guidelines essentially present two options—presumptive probation with up to 210 days in jail, or a presumptive prison sentence of around 40 months. For a judge who believes the appropriate sentence for a particular defendant falls somewhere between those two extremes, the system offers very little flexibility. This structural problem isn't caused by defense attorneys. It's a design flaw in how the guidelines are constructed, and it's the kind of nuanced issue that gets lost when the debate is reduced to “tough on crime” versus “soft on crime.”

The Attorney General's Office Weighs In

A member noted that portions of the substitute bill's language—specifically lines 186 through 205—is literally copied from the federal sentencing guidelines, language that federal judges have been using for 40 years without controversy. However, lines 206 through 209, which direct courts to “prioritize” certain factors “over any interest of the defendant” in violent felony and sexual offense cases, raised serious concerns. This language could effectively micromanage judicial decision-making by creating a standard against which future sentencing decisions could be evaluated and challenged. It doesn't expand judicial authority—it constrains it, which is precisely the opposite of what Schultz claimed to want when he said judges should have the ability to make their own determinations.

The Victim Services Commission: Prosecutors Are Not Victim Proxies

The January 30 Victim Services Commission (VSC) meeting produced what may be the single most important critique of H.B. 274 from any stakeholder group. Sandy, a former prosecutor of 23 years who now chairs a victim rights organization, delivered a statement that dismantled the bill's central justification with surgical precision.

Sandy's argument was simple but devastating: prosecutors are not victim proxies. She had spent two decades in prosecution and now spent her career advocating for victims, and she stated unequivocally that “conflating voices from the prosecutors and law enforcement as being victim voices is really a poor proxy.” She explained that in her experience, particularly in sexual abuse and domestic violence cases, the wishes of victims were frequently in conflict with what prosecutors thought was necessary for public safety.

Victims are often family members of the offender. They have complicated relationships, complicated feelings, and complicated desires about outcomes. Sometimes they don't want their offender incarcerated for extended periods, particularly when economic dependence is involved.

Sandy went further, noting that the most complaints she receives about victim rights violations come from prosecutors on the case—not from defense attorneys or the Sentencing Commission. When Speaker Schultz claimed the bill was about empowering victims, Sandy's response was blunt: “If you want to have victims' voices, you need to have victims' voices, not proxies for victims' voices.” She called the bill “performative,” saying it claims to protect victims while actually doing nothing to increase their representation or influence. Adding six prosecutors and sheriffs while leaving victim representation at one seat is not victim empowerment. It is prosecution empowerment dressed in victim-advocacy language.

The VSC discussion also revealed an uncomfortable piece of institutional history. The commission had previously been restructured—by the same legislature—in ways the VSC found deeply unfavorable. A lived-experience survivor had been removed from the commission “against great opposition and residual hurt feelings.” The VSC had also lost other victim-focused representatives during that same restructuring. When Schultz stood before the Judiciary Committee and expressed outrage that victims had only one seat on the Sentencing Commission, he was describing a situation his own colleagues in the legislature had created just two years earlier. Nobody at the hearing acknowledged this.

The Intimidation Problem and the Value of Multiple Voices

The VSC discussion surfaced another issue that H.B. 274 makes worse rather than better: the intimidation that victims and victim advocates experience when they are the only non-legal, non-law-enforcement voice in a room full of attorneys and prosecutors. One commission member recounted a victim advocate who “just didn't feel like they should speak up. It was intimidating.” Having more than one victim voice in the room, the group agreed, was essential to ensuring those perspectives actually get heard and aren't drowned out by the legal professionals who dominate these bodies.

HB 274 does the opposite. By removing defense attorneys and adding six prosecution and law enforcement representatives, the commission becomes even more overwhelmingly composed of legal professionals with

institutional authority. The single victim representative—already the minority voice—would now be surrounded by an even larger bloc of attorneys and law enforcement officers. If the goal were truly to amplify victim voices, the bill would increase victim representation, not increase the professional legal establishment's dominance.

The Defense Bar's Willingness to Collaborate

One detail that emerged in the VSC discussion contradicted a claim Speaker Schultz made in the Judiciary Committee hearing. Schultz said he had offered to add one defense attorney back to the commission and that the defense rejected it, which made him “very angry.” However, the VSC reveals that one of the defense attorneys—a different one than Speaker Schultz spoke to—had actually communicated that “they welcomed having victim voice back on their commission.” The defense bar's position, as expressed through the Sentencing Commission meeting, was not blanket opposition to change. It was opposition to being removed entirely while no meaningful victim representation was added in their place.

What These Meetings Tell Us

The January 29 and 30 meetings reveal a stark contrast between the public hearing's emotional narrative and the substantive policy reality. The Sentencing Commission had already done careful, collaborative work on CSAM sentencing guidelines, including adding nuanced aggravating and mitigating factors. They had voted 12-3 against changing to presumptive prison—not because of defense attorney influence, but because of shared fiscal responsibility concerns.

Defense attorneys were losing 93% of votes on contested issues. A prosecutor's failure to use available tools created the Torgerson outcome, not defense influence on the commission. And the Victim Services Commission—the body ostensibly at the center of Schultz's concerns—made clear that prosecutors are not victim proxies and that the bill does nothing to actually increase victim representation.

These meetings also revealed something about the political dynamics at play. The Sentencing Commission felt blindsided and betrayed when other stakeholders didn't defend collaboration at the public hearing. The VSC felt the bill was driven by anger at one judicial outcome rather than genuine concern for victims. Both bodies expressed willingness to work toward solutions but felt that H.B. 274, as written, was not a solution.

What This Reveals About Criminal Justice Politics

H.B. 274 exemplifies broader patterns in how criminal justice policy is made in the United States. An outrageous case generates public anger. Politicians feel pressure to respond quickly and visibly. The response focuses on appearing tough rather than on understanding why the system produced that outcome or whether the proposed changes will prevent similar cases. This cycle often leads to reactive legislation that prioritizes political optics over effective, evidence-based solutions.

Speaker Schultz's comment that he went along with criminal justice reform in his early years but now believes "we're paying the price" reflects a common narrative: that reform went too far and needs to be rolled back. This narrative is politically powerful because it channels legitimate public safety concerns while avoiding difficult questions about whether reforms actually caused increased crime, whether other factors might be responsible, or whether targeted fixes might work better than wholesale reversals.

This framing reveals how criminal justice debates are often driven less by empirical analysis than by story and symbolism. High-profile cases become stand-ins for complex systems, allowing lawmakers to generalize from the exceptional rather than the typical. In that environment, nuance is treated as weakness, and caution is reframed as indifference to victims, even when careful policy design is precisely what reduces harm over time.

The "we're paying the price" narrative also compresses a wide range of reforms—sentencing changes, supervision practices, diversion programs, and reentry policies—into a single causal claim, despite mixed or inconclusive evidence that these reforms are responsible for crime trends. By collapsing distinct policies into a monolithic failure, lawmakers can justify broad rollbacks without identifying which specific mechanisms are actually broken. This approach favors sweeping statutory changes over targeted adjustments that might address real gaps while preserving what works.

Ultimately, H.B. 274 illustrates a deeper tension in criminal justice politics: the desire for fast, decisive action in response to public outrage versus the slow, deliberate work required to craft policies that actually improve safety, fairness, and legitimacy. When legislation is shaped primarily by political urgency rather than institutional understanding, the system becomes more reactive, less coherent, and more prone to repeating the very failures it claims to correct.

Conclusion

H.B. 274 represents a case study in how criminal justice policy can be driven more by political imperatives than by careful analysis of systemic problems and evidence-based solutions. What began as justifiable outrage over Judge Torgerson's sentence in a child sexual abuse material case has evolved into sweeping legislation that may not actually address the root causes of that outcome while creating significant unintended consequences.

The Fundamental Disconnect

The most striking aspect of H.B. 274 is the disconnect between the problem it claims to solve and the solution it proposes. Speaker Schultz and Representative Clancy both acknowledge that judges have discretion to sentence above guidelines, and Clancy explicitly states that the real problem “lies squarely at our feet as a legislative prerogative.” Yet the bill's primary mechanism is restructuring an advisory commission rather than directly changing sentencing laws or creating judicial accountability measures.

H.B. 274 represents political imperative over careful analysis, the power of anecdote over evidence, and the difficulty of maintaining evidence-based policy in the face of public outrage. It offers political catharsis but not effective reform, structural change but not substantive improvement, and the appearance of action without the reality of solving the problems that generated public outrage in the first place.

This disconnect suggests that H.B. 274 is less about fixing a broken system than about political signaling. By removing defense attorneys and adding prosecutors and law enforcement to the Sentencing Commission, legislators can demonstrate they're “getting tough on crime” without taking direct responsibility for mandatory minimum sentences or other controversial measures. The commission becomes a buffer—if harsher guidelines lead to outcomes the public later finds excessive, legislators can point to the commission's recommendations rather than their own statutory choices. Ultimately, this approach risks prioritizing optics over outcomes, potentially increasing incarceration and costs without improving public safety or justice. True reform would focus on evidence, data, and targeted solutions that address the specific causes of lenient or inappropriate sentences, rather than reshaping a commission to achieve politically appealing recommendations.

