

| SENTENCING COMMISSION MINUTES – pending approval |   |
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| <b>Committee</b>                                 | <b>Utah Sentencing Commission</b>   |
| <b>Date</b>                                      | Thursday, August 21st, 2025   |
| <b>Time</b>                                      | 12 PM – 2 PM  |
| <b>Location</b>                                  | Hybrid Zoom Virtual meeting – Capitol Board Room 240, Capitol Building  |
| <b>Members Present</b>                           | <p><u>Virtual Attendance</u>: Alissa Black, Craig Peterson (for Stewart Young), Sheriff Michael Smith, Sonia Sweeney (JJOC)</p> <p><u>In-Person Attendance</u>: Tom Ross, Ryan Robinson, Jeff Buhman (for Meghann Mills), Blake Hills, Mark Moffat (for Richard Mauro), Pam Vickrey, David Ferguson (for Amy Fowler), Rebecca Brown (for Christina Zidow), Mike Schoenfeld (for Jared Garcia)</p>   |
| <b>Staff &amp; Visitors</b>                      | <p><u>Staff</u>: Danica Bodley, Dan Strong, Elizabeth Kl, Katie Fox (virtual), Van Nguyen, Erica Wood (virtual)</p> <p><u>Visitors</u>: Steve Burton, Rachel Lizon (virtual), Tim Kincaid (virtual), Lacey Johnson (virtual), Brittany Karzen, Brett Robinson, Rep. Verona Mauga, Robert Steed (virtual), Thomas Elliot (virtual), Michael Dreschel</p>   |
| <b>Agenda Item</b>                               | <b>Welcome and Introductions – Dan Strong, Director</b>   |
| <b>Notes</b>                                     | <p>Dan Strong welcomes the commission to the August 21st, 2025 Utah Sentencing Commission meeting.</p> <p>The commission reviewed the previous meeting minutes from Thursday, June 26th, 2025.</p> <p><b>Motion</b>: Mark Moffat (for Richard Mauro) motions for the commission to approve the minutes as presented. Tom Ross seconds the motion. The motion passes unanimously.</p>  |
| <b>Agenda Item</b>                               | <b>Stalking Amendments Presentation – Brett Robinson &amp;&amp; Rep. Verona Mauga</b>   |
| <b>Notes</b>                                     | <p>Representative Verona Mauga and Brett Robinson presented a bill aimed at enhancing protections for victims of stalking.</p> <p>The bill seeks to address cases where stalking escalates to a home invasion. The intent is to elevate such an act to a second-degree felony, reflecting a severity comparable to burglary. Representative Mauga stated, "your home is supposed to be a place of safety. And we are trying to capture that to ensure that when victims are being stopped and there's a history or pattern of it and someone actually comes into your home and invades that safe space that we can capture that for what it actually is." The proposal would amend the stalking statute by adding an enhancement for an offender who enters or remains unlawfully in a resident's own lease occupied by the victim. This language is borrowed from the existing burglary statute.</p> <p>While supportive of the concept, commission members raised several critical concerns about the proposed language:</p> <ul style="list-style-type: none"> <li>● "Remaining Unlawfully": This phrase could unintentionally capture individuals like squatters in vacant homes, who are not the intended target of the legislation.</li> <li>● High-Conflict Domestic Cases: A significant concern was the potential for the law to be "weaponized" in high-conflict divorces or child custody disputes. It was argued that the "course of conduct" definition of stalking could be triggered by an initial entry into a shared or previously shared residence, allowing one party to gain legal leverage over another.</li> <li>● Intent Standard: The current stalking statute includes a recklessness standard regarding whether conduct would cause fear. Concerns were raised that combining this lower intent standard with a home entry enhancement could lead to unintended felony charges in complex domestic situations.</li> </ul> |

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|                    | <ul style="list-style-type: none"> <li>● Proposed Refinements: The discussion yielded suggestions for refining the bill, including adding a more specific intent requirement for the entry, or making the enhancement contingent on the pre-existence of a stalking injunction or protective order.</li> </ul>  |
| <b>Agenda Item</b> | <b>Adult Guidelines Proposal – Dan Strong, USC Director</b>   |
| <b>Notes</b>       | <p><b>SWAP Proposals</b></p> <p>Daniel presented proposed language added to allow scoring cases on Form 4 when parties stipulate a restitution amount on a single charge, when other charges giving rise to that restitution amount are dismissed. Form is still scored on a per-count basis, to avoid double-counting complications.</p> <p><b>Motion:</b> Jeff Buhman (for Meghann Mills) motions for the commission to implement the change for Form 4 score changes. Tom Ross seconds the motion. The motion passes unanimously.</p> <p><b>Crime Free Gap Calculation Change</b></p> <p>The commission addressed a proposal to refine the calculation of the "crime-free gap," which reduces an offender's criminal history score after a period without new offenses.</p> <p>Currently, the crime-free clock starts at sentencing for probation cases, even if that sentence includes a term of initial jail time. Prosecutors argued that time spent incarcerated should not count toward a "crime-free" period in the community. As Daniel Strong summarized, prosecutors have raised a concern that you know you're in jail is obviously more difficult to commit crimes while you're in jail and so that shouldn't really be part of the crime tree gap.</p> <p>A compromise was proposed and adopted to create a third category for calculating the gap. For individuals sentenced to probation with an initial jail term imposed, the crime-free clock will begin at the conclusion of that imposed jail time. The calculation will be based on the judgment and commitment order, not the actual time served.</p> <p>Proponents argued the change promotes fairness by recognizing that the gap is intended to reward free-will behavior in the community rather than behavior in a "very closely watched, managed" incarcerated environment. A concern that this might disincentivize good behavior in jails was countered by Sheriff Michael Smith, who noted that jails already have their own behavior-based incentive systems.</p> <p><b>Motion:</b> Jeff Buhman (for Meghann Mills) motions for the commission to adopt the new language and approve the changes presented. Tom Ross seconds the motion. The motion passes.</p> <p><b>Abstention(s):</b> One (1) Abstention; David Ferguson (for Amy Fowler)</p> <p><b>Credit for Jail Time Served</b></p> <p>To address inconsistencies across courts, the guidelines will now explicitly state that courts "shall" give credit for time served in jail prior to sentencing if it was for the same offense. This codifies existing Supreme Court case law and Board of Pardons rules. The language also clarifies that courts retain the discretion to award credit in other circumstances.</p> <p><b>Motion:</b> Jeff Buhman (for Meghann Mills) motions for the commission to approve the clarification. Tom Ross seconds the motion. The motion passes unanimously.</p> |

### **Credit for Home Confinement**

The commission addressed similar inconsistencies in awarding credit for time spent on home confinement or an ankle monitor. The amendment reflects the existing Board of Pardons rule that such alternatives do not count toward a prison sentence. For courts, the initial proposed language stating they "may award some credit" was deemed insufficient. After discussion, the language was amended to state that courts may award "full, partial, or no credit" at their discretion. This change was intended to provide clearer guidance while preserving judicial flexibility.

**Motion:** Jeff Buhman (for Meghann Mills) motion for the commission to approve the language as amended. David Ferguson (for Amy Fowler) seconds the motion. The motion passes unanimously.

### **Bias as a Mitigating Factor**

The commission discussed a SWAP proposal related to the guideline section that allows improper bias (including racial bias) to be considered a mitigating factor at sentencing. It was noted that the section is rarely used. SWAP representatives argued that sentencing should focus on the offender's conduct, and that allegations of police impropriety have other legal avenues for redress. Others noted the section holds symbolic importance for community members. Defense representatives commented that mitigating factors in general are not given sufficient weight in the current system.

The discussion was tabled until the next meeting. Daniel Strong will research language in the federal guidelines concerning the treatment of "similarly situated co-defendants" to inform future conversation.

### **Class B Misdemeanor Proposal**

A SWAP proposal to give more weight to certain repeat misdemeanor offenses in criminal history calculations was approved. The guidelines will now count prior Class B person or DUI convictions toward an offender's criminal history score. Currently, only felonies, Class A misdemeanors, and limited exceptions are counted. The change is intended to better reflect an offender's pattern of behavior and aligns with a recent legislative focus on habitual offenders. It was argued that recognizing this behavior earlier could lead to more effective interventions.

This change means a Class B assault, for example, could add multiple points to a criminal history score. While this creates a form of "double counting" (as points are awarded in two different categories for the same offense), it was noted that this is consistent with the existing structure of the "bonus points" category in the guidelines.

**Motion:** Jeff Buhman (for Meghann Mills) motions for the commission to approve the Class B Misdemeanor proposal changes. Mark Moffat (for Richard Mauro) seconds the motion. The motion passes unanimously.

### **Enticement of a Minor Proposal**

SWAP proposed moving enticement offenses on the sentencing matrix to a presumptive prison column. Prosecutors argued that current guidelines result in sentences with "little to no jail time" for conduct they view as "quite dangerous."

The proposal faced strong opposition based on three main concerns:

1. **Fiscal Impact:** Data presented by Raechel Lizon indicated the change could impact 50 to 100 individuals annually, with a potential fiscal cost of over \$2.2 million per year. Commission members, particularly from the Department of Corrections, expressed alarm at absorbing such a cost without legislative appropriation.
2. **Preference for Statutory Change:** There was a strong consensus that a policy shift of this magnitude and expense should be handled by the legislature through a statutory change, not by the Sentencing Commission through a guideline amendment. A statutory process would include a formal fiscal note and allow for dedicated funding. Tom Ross argued, "when you do changes through a guideline there's no fiscal note there's no additional funding there it just is what it is and then they end up having to absorb."
3. **Data Deficiencies:** Steve Burton questioned the underlying policy without data on the nature of the cases, asking, "Do we have any idea what percentage of these charges are actual victims versus how many of them are task force manufactured cases?" This data was unavailable, and its absence made it difficult for some members to support a presumptive prison sentence for all offenders.

**Motion:** Ryan Robinson motions to support the proposal to move 2F Enticement one column left, resulting in presumptive prison for a first offense. Jeff Buhman (for Meghann Mills) seconds the motion. The motion **fails**.

**Supports:** Four (4); Ryan Robinson, Jeff Buhman (for Meghann Mills), Craig Peterson (for Stewart Young), Sheriff Mike Smith

**Oppositions:** Nine (9); Mike Schoenfeld (for Jared Garcia), Tom Ross, Blake Hills, David Ferguson (for Amy Fowler), Mark Moffat, Rebecca Brown (for Christina Zidow), Alissa Black, Sonia Sweeney (JJOC), Pam Vickrey

**Motion:** Tom Ross motions for the commission to hold on the proposal and to continue discussing the issue and explore a legislative/statutory process. Jeff Buhman (for Meghann Mills) seconds the motion. The motion passes unanimously.

| Agenda Item | Public Comment   |
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|             | Time for public comment was given but no comment was addressed.  |
| Agenda Item | Adjourn  |
| Notes       | <p><b>Motion:</b> Mark Moffat (for Richard Mauro) motions for the commission to adjourn. Jeff Buhman (for Meghann Mills) seconds the motion. The motion was unanimously agreed upon.</p> <p><b>The commission adjourns.</b></p> <p>Next meeting is scheduled for Wednesday, October 8th, 2025 from 12 PM - 2 PM.</p> <p>Location: Anchor Location: CCJJ Conference Room, E. Senate Building</p> <p>Google Meet Link: <a href="https://meet.google.com/brg-oagu-jxs">https://meet.google.com/brg-oagu-jxs</a></p> |
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