

SENTENCING COMMISSION MINUTES

Committee	
Utah Sentencing Commission	
Date	
Wednesday, December 4, 2013	
Time	
Noon – 1:30 p.m.	
Location	
Utah State Capitol, Senate Caucus Room	
Members Present	
Judge Kevin Allen, Patrick Corum for Patrick Anderson, Craig Barlow, Paul Boyden, David Brickey, Mike Haddon for Rollin Cook, Senator Gene Davis, Al Emery, Judge Janice Frost, Jesse Gallegos, Ron Gordon, Judge Thomas Low, Benjamin McMurray, Mark Moffat, Judge Ric Oddone, Judge Gregory Orme, Rep. Jennifer Seelig via telephone, Senator Dan Thatcher, Carlene Walker	
Members Excused	
Chief Craig Black, Susan Burke, Marlene Gonzalez, Rep. Richard Greenwood, Sy Snarr, Sheriff James Winder	
Staff & Visitors	
Staff: Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner Visitors: Susan Allred, Nathan Brady, Rep. Susan Duckworth, Rep. Carol Spackman Moss	
Agenda Item	
Welcome and Approval of Minutes	
Notes	
<p>Carlene Walker called the meeting to order and welcomed everyone. With sadness, Carlene noted the passing of former Utah Senator and Sentencing Commission Director, Kay Cornaby. Mr. Cornaby was a patent and intellectual-property attorney, studied at the University of Heidelberg in Germany and earned a law degree from Harvard, and was a longtime associate attorney for the law firm of Jones Waldo Holbrook & McDonough.</p> <p>The Commission recognized Jacey Skinner's dedicated and distinguished service as Sentencing Commission Director since January of 2009. Governor Gary Herbert has named Jacey Skinner his new general counsel.</p> <p>Judge Low made the motion to approve the October minutes. Senator Davis seconded the motion which passed unanimously.</p>	
Agenda Item	
Jail Release Records	
Notes	
<p>Jacey presented the most recent draft of Rep. Susan Duckworth's changes to code 17-22-5.5, 77-18-1, and 77-18-1.1. The Sheriff's Association has reviewed the draft and has not suggested any changes. The proposal would require sheriffs' to keep records of custody status on prisoners and provide that information to the Department of Corrections, the judiciary, and the Commission on Criminal and Juvenile Justice. Senator Thatcher made the motion to endorse Rep. Duckworth's proposal. Senator Davis seconded the motion which passed unanimously.</p>	
Agenda Item	
Overdose Reporting Amendments (tape 4:42)	
Notes	
<p>Rep. Carol Spackman Moss presented draft legislation dubbed "The Good Samaritan Bill". The bill modifies the Utah Controlled Substances Act and the Criminal Code regarding penalties for controlled substance violations related to the reporting of an overdose incident. Utah is rated the 4th highest in the nation for drug overdose and is a serious problem. Heroin is now cheaper than oxycodone, and subsequently overdoses are increasing.</p> <p>The bill provides that a person who reports a person's overdose from a controlled substance or other substance may claim an affirmative defense to specified charges of violating the Utah Controlled Substances Act if the person remains with the person subject to the overdose, and cooperates with responding medical providers and law enforcement officers; and provides that remaining with a person subject to an overdose and cooperating with medical providers and law enforcement is a mitigating factor when determining the penalty for a related violation of the Utah Controlled Substance Act.</p> <p>The Commission discussed what constitutes "substantial compliance". Some suggested a public relations campaign to inform the public about the law would be good. David Brickey made the motion that the Commission positively recommends this legislation. Judge Orme seconded the motion which passed unanimously.</p>	
Agenda Item	
County and Municipal Offense Levels (tape 47:00)	
Notes	
<p>10-3-703 Criminal penalties for violation of ordinance – Civil penalties prohibited – Exceptions. The word "minimum applied to a maximum class B misdemeanor fine" language does not make sense. The suggestion was made to delete the word minimum for (1) and (2). Jacey will take this suggestion back to the Counties. Judge Allen made the motion to support the language change. Judge Oddone seconded the motion which passed unanimously.</p>	
Agenda Item	
Drug Penalty Enhancements (tape 51:00)	
Notes	
<p>Jacey discussed Utah Drug Offenses and Enhancements, Utah Code Annotated 58-37-8. The Commission discussed how a mere possession charge can be a felony if in a DFZ (Drug Free Zone) or if in front of a minor or if</p>	

	<p>a repeat offender. The question is what do we want to discourage and punish? The meth addict is being punished more than other charges such as beating a wife, which is a misdemeanor. Should addiction be a felony one degree? Is this an appropriate penalty for this crime? The Commission agreed that there needs to be more discussion on the issue and would like the issue placed on the April, annual meeting agenda.</p> <p>Jacey drafted and presented a proposal and added section 17, which reads: <u>(17) <i>Notwithstanding any other provision of this section, a person guilty of a violation of subsection (2) (a) (i) may only be sentenced to a one degree greater penalty than the penalty provided in this Subsection (2).</i></u></p> <p>Jesse Gallegos suggested taking a look at the DFZ statute, because it seriously ratchets up penalties. The practical aspect of the DFZ enhancement is causing problems. Discussion should include some evidence based practices about addiction. We need to address where enhancements have exceeded what they were designed to do. Ron Gordon made the motion to support the draft in concept and continue discussion at the annual meeting. Senator Thatcher seconded the motion which passed unanimously.</p>
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Agenda Item	Proportionality Discussion
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Next Meeting	The next meeting will be on January 8, 2014, Utah State Capitol Bldg., <i>Senate Caucus Room</i>
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Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ