

SENTENCING COMMISSION MINUTES

Committee	Utah Sentencing Commission
Date	Wednesday, November 7, 2012
Time	Noon – 1:30 p.m.
Location	Utah State Capitol Complex, Senate Bldg., Copper Room
Members Present	Judge Kevin Allen, David Brickey, Patrick Corum for Patrick Anderson, Paul Boyden, Susan Burke, Jesse Gallegos, Deween Durrant, Marlene Gonzalez, Ron Gordon, Rep. Richard Greenwood, Judge Thomas Low, Benjamin McMurray, Mark Moffat, Judge Ric Oddone, Judge Gregory Orme, Tom Patterson, Chief Ed Rhoades, Rep. Jennifer Seelig, Sy Snarr, Senator Dan Thatcher, Carlene Walker
Members Excused	Judge Janice Frost, Senator Ben McAdams, Kirk Torgensen
Staff & Visitors	Staff: Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner Visitors: Susan Allred, Nathan Brady, Brent Kelsey
Agenda Item	Welcome and Approval of Minutes
Notes	Carlene Walker called the meeting to order and welcomed everyone. Chief Rhoades made the motion to approve the September minutes. Mark Moffat seconded the motion which passed unanimously .
Agenda Item	Recognition of Departing Member Chief Rhoades (tape 01:30)
Notes	Carlene thanked Chief Rhoades for his service to the Utah Sentencing Commission. Chief Rhoades has been a member of the Commission since 2002.
Agenda Item	Justice Courts and Sentencing Subcommittee (tape 30:00)
Notes	The subcommittee identified the need to be provide more guidance in the selection of treatment providers, i.e. who is doing the assessment for treatment, who is doing the treatment and realized early on that this could be a very expensive, very labor intensive program for the Division of Occupational and Professional Licensing (DOPL), the Division of Substance Abuse and Mental Health, or anyone else to be manage. The subcommittee, after consultation with Brent Kelsey recommends the process of accreditation.
Agenda Item	Accreditation of Treatment Programs (tape 35:00)
Notes	Based upon the recommendation for the Justice Courts and Sentencing Subcommittee, as discussed above, Brent Kelsey, the Assistant Director of the Division of Substance Abuse and Mental Health, spoke about putting together a subcommittee to work out accreditation for treatment programs. Many states are moving to an accreditation model. Brent asks that the Sentencing Commission participate with him in hopes to bring in accredited entities and take a look at all the standards and use combined leverage to raise standards in some areas. The following volunteered or were mentioned to serve on this subcommittee: Susan Burke (or someone from her staff), Judge Allen, Nori Huntsman, Rep. Seelig and Rick Schwermer, and members of our Justice Courts and Sentencing Subcommittee. This subcommittee will work together with a legislative task force to make sure the interests of sentencing and the criminal justice system are satisfied as accreditation standards are established.
Agenda Item	Justice Court Jurisdiction (tape 03:26)
Notes	Jacey discussed Representative Cox's draft legislation that would remove DUIs from the jurisdiction of justice courts and limit the court's sentencing power. The bill would remove driving under the influence, reckless driving, and impaired driving from the jurisdiction of justice courts; and limit the sentencing power of justice courts by prohibiting justice court from sentencing a person convicted of multiple misdemeanors to consecutive terms of imprisonment. Ron Gordon noted that this would have a serious fiscal and work-load impact on district courts. Judge Orme pointed out that this would also remove the right of appeal to District Courts in these cases. Paul Boyden pointed out that the inability to sentence consecutively does not consider the interests of multiple victims. Other concerns expressed were, the lack of clarity about consecutive sentences and whether this would be limited to a single criminal episode, or Information, and the severe limiting of judicial discretion. The consensus of the Commission is that this bill will not likely proceed without major changes. Jacey will speak with Rep. Cox about the Commission's suggestions and present those concerns to the Law Enforcement Interim Committee during their meeting this month.
Agenda Item	Theft Study (tape 59:00)
Notes	Ron Gordon, Paul Boyden and Dr. Ben Peterson discussed handouts titled: <i>Snapshot of Offenders in Prison Due to</i>

	<p><i>Felony Theft Enhancements in Utah and Examining the Potential Deterrent Effects of Felony Theft Enhancements in Utah.</i></p> <p>Utah has a substantial history with felony enhancement for multiple theft offenses. In Utah code, a third qualifying class B misdemeanor offense within a ten-year period triggers an enhancement on this offense to a 3rd degree felony. CCJJ agreed to study the impact of these enhancements in terms of prison stays. In the 2012 Legislative Session, Utah lawmakers considered the option of lowering this enhancement to a class A misdemeanor instead of a 3rd degree felony in some cases.</p> <p>Conclusions of the study #1a show:</p> <ul style="list-style-type: none"> • Those who go to prison due to the theft enhancement have most often previously failed on probation or parole and thus appear to be poor prospects for probation supervision. • There were no cases where the offender was sentenced to prison, in which the prison commitment seemed unjust considering the offender’s criminal history. • There were no cases in which an offender was sentenced to prison after a third minor shoplifting case without other factors involved. • There were cases in which chronic offenders were sent to prison for thefts involving very small amounts, as low as \$5.25. <p>Conclusions of the study #1b show:</p> <ul style="list-style-type: none"> • The identified 2002 offense was the first qualifying theft conviction in the previous ten years for 78.6% of the offenders. And 42.8% of this first-time group committed at least one subsequent offense, and 16.9% went on to commit at least a third (qualifying for the enhancement). Thus, 39.4% of those convicted of two thefts were not deterred from committing a third. • Those with a history of drug arrests and/or convictions and younger offenders were significantly more likely to commit a third offense in this group of first-time offenders.
Agenda Item	Attempted Aggravated Murder (tape 1:33)
Notes	<p>Ron Gordon presented draft legislation from the Utah Council on Victims of Crime. The draft would amend 76-4-102 Attempt—Classification of offenses. Specifically it recommends that the penalty for attempt to commit aggravated murder, Section 76-5-202 which attempt results in serious bodily injury is punishable by imprisonment for an indeterminate term from a term of not fewer than 5 years and which may be for life to 15 years and which may be for life. The Commission discussed several issues related to the recommendation and suggested the possibility of setting alternative minimum sentence structure similar to that laid out for other offenses in the same section. Ron will take these ideas back to the Council.</p>
Agenda Item	Custody of Juveniles Tried and Convicted as Adults (tape 1:58)
Notes	<p>Paul Boyden discussed issues related to the custody of juvenile offenders who are transferred to district court for trial. And specifically asked the Commission to consider matters of physical custody pre-trial, and when they are sentenced to prison. Paul asked that we create a small working group to discuss and make recommendations on these issues. He doesn’t anticipate legislation for this year, but would like the Commission to consider the possibility of creating a system for transferring these youthful offenders between the adult system and the juvenile system.</p> <p>Paul made the motion to form a subcommittee made up of the following persons: a prosecutor, a defense attorney, someone from district court, the Director of Corrections or designee, someone from the Sheriff’s Association, Juvenile Court, Susan Burke, Board of Pardons, and the Youth Parole Authority. Judge Oddone seconded the motion, which passed unanimously. Judge Oddone volunteered to serve on this subcommittee. Jesse Gallegos suggested Bob Yeates be on the committee also.</p>
Agenda Item	Subcommittee Updates
Notes	This agenda item moved to the December meeting.
Next Meeting	The next meeting will be on December 5, 2012, State Capitol Complex, Senate Bldg., Copper Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ