

SENTENCING COMMISSION MINUTES

Committee	Utah Sentencing Commission
Date	Wednesday, September 5, 2012
Time	Noon – 1:30 p.m.
Location	Utah State Capitol Complex, Senate Bldg., Copper Room
Members Present	Judge Kevin Allen, Patrick Anderson, Paul Boyden, Chris Roach for Susan Burke, Jesse Gallegos Deween Durrant, Ron Gordon, Judge Thomas Low, Mark Moffat, Judge Ric Oddone, Judge Gregory Orme, Tom Patterson, Chief Ed Rhoades, Senator Dan Thatcher, Kirk Torgensen, Carlene Walker, Sheriff James Winder
Members Excused	David Brickey, Rep. Richard Greenwood, Judge Janice Frost, Marlene Gonzalez, Senator Ben McAdams, Benjamin McMurray, Rep. Jennifer Seelig, Sy Snarr
Staff & Visitors	Staff: Jo Lynn Kruse, Jacey Skinner Visitors: Susan Allred
Agenda Item	Welcome and Approval of Minutes
Notes	Carlene Walker called the meeting to order and welcomed everyone. Tom Patterson made the motion to approve the June minutes. Mark Moffat seconded the motion which passed unanimously .
Agenda Item	Recognition of Departing Member Sheriff Winder
Notes	Carlene thanked Sheriff Winder for his service to the Utah Sentencing Commission. Sheriff Winder has been a member of the Commission since 2009.
Agenda Item	Anomalies Committee Report (tape 7:52)
Notes	<p>Jacey first discussed the following legislative drafts:</p> <p>Threat of terrorism: As a result of a recent restructuring of the statute, Subsection (1) (b) (iii) was inadvertently left without a specified penalty. In the prior version of the statute, the penalty was a class B misdemeanor. Ron Gordon made the motion to adopt the draft and specify the class B penalty. Sheriff Winder seconded the motion which passed unanimously.</p> <p>"Other Statutes": The subcommittee is recommending several changes to statutes that have penalties' inconsistent with our existing penalty structure. Many of these are older statutes and just need to amended for the sake of consistency. The subcommittee reviewed the existing statutes and recommended the penalty closest to what was described. Mark Moffat made the motion to accept all changes as presented in the draft. Jesse Gallegos seconded the motion, which passed unanimously.</p> <p>Pornographic material statutes: This set of statutes was first enacted in 1977. Since that time, technology has come into play, and has changed the nature of the crimes which should be addressed in statute. Judge Low made the motion to recommend the repeal of 76-10-1222, Distribution of pornographic film – Penalties for violations, because it lessens the sentence and same conduct is covered in 76-10-1204. Jesse Gallegos seconded the motion, which passed unanimously. Carlene suggested getting a credible sponsor, preferably an attorney to re-write all the other sections, not with the idea of lessening penalties, but to assure they are consistent and reflect what indeed is happening, i.e. updating to reflect newer technology and media. Paul Boyden made the motion to re-do the remaining sections, clarify language and come up with a proposal to present for a vote at the November meeting. Tom Patterson seconded the motion, which passed unanimously.</p> <p>Draft recommendations for Elections code: The Elections code contains some penalties that are inconsistent with our general structure and need to be updated. The subcommittee reviewed each of the statutes and recommended the penalty most consistent with the language in the existing law.</p>

	<p>Judge Low made the motion to approve the draft recommendations to the Elections code as presented by the Anomalies subcommittee. Mark Moffat seconded the motion, which passed unanimously.</p> <p>The Anomalies subcommittee also updated language, clarified terms and changed a few terms on the Influencing the Board of Pardons statute. Judge Allen made the motion to accept the updates recommended by the Anomalies subcommittee. Judge Orme seconded the motion, which passed unanimously.</p>
Agenda Item	Juvenile Subcommittee Report (tape 1:20)
Notes	<p>Aggravated Murder: Mandatory Life without the possibility of parole statute and the death penalty. Jacey discussed the recommendation of the Juvenile subcommittee that we recommend an amendment to the Aggravated Murder statute to conform with recent U.S. Supreme court Rulings. The Subcommittee recommends the language on lines 118 and 119 of the draft, <i>(e) If the defendant is younger than 18 years of age at the time of the offense, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.</i> This change would make it clear in statute, consistent with the Supreme Court decisions that the death penalty is not constitutional as applied to a juvenile, and that life without the possibility of parole for a death case can be an option, but cannot be a mandatory sentence. Mark Moffat made the motion to approve the draft as presented. Patrick Anderson seconded the motion, which passed unanimously.</p> <p>Life without the possibility of parole statute: The Juvenile Subcommittee also recommends language be added similar to (see line 16) <i>"at the time of commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or (c) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense."</i> to each statute that requires life without the possibility of parole as the sentence. These changes are to accommodate the ruling by the U.S. Supreme Court in <u>Graham v. Florida</u>, 560 U.S.____. In <u>Graham</u>, the Court held that it is unconstitutional to impose a sentence of life without the possibility of parole on a juvenile. Mark Moffat made the motion to approve the Juvenile Subcommittee's recommendations. Paul Boyden seconded the motion, which passed unanimously.</p>
Agenda Item	Other (tape 1:31)
Notes	<p>Jesse Gallegos suggested the Commission study the option of using the word "incarcerated" for jail terms and "imprisonment" for prison terms. Jacey will look into how often the words are used to see where the word "imprisonment" is perhaps misapplied. Jesse stated that the problem exists across the board throughout the criminal code. Susan Allred suggested changing the wording as improvements and changes are made, rather than making across the board changes. Jacey will investigate and discuss this at the November meeting.</p>
Next Meeting	The next meeting will be on November 7, 2012, State Capitol Complex, Senate Bldg., Copper Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ