

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	
<b>Utah Sentencing Commission – Annual Meeting</b>	
<b>Date</b>	
Wednesday, April 18, 2012	
<b>Time</b>	
8:30 a.m. – 4 p.m.	
<b>Location</b>	
Utah State Capitol, Senate Caucus Room	
<b>Members Present</b>	
Judge Kevin Allen, Patrick Anderson, Paul Boyden, David Brickey, Susan Burke, Deween Durrant, Judge Janice Frost, Marlene Gonzalez, Ron Gordon, Rep. Richard Greenwood, Judge Thomas Low, Benjamin McMurray, Mark Moffat, Judge Gregory Orme, Mike Haddon for Tom Patterson, Chief Ed Rhoades, Rep. Jennifer Seelig, Sy Snarr, Senator Dan Thatcher, Kirk Torgensen, Carlene Walker, Sheriff James Winder	
<b>Members Excused</b>	
Senator Ben McAdams, Judge Ric Oddone	
<b>Staff &amp; Visitors</b>	
Staff: Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner, David Walsh Visitors: Susan Allred, Nathan Brady, Cliff Butter	
<b>Agenda Item</b>	
<p><b>Welcome and Approval of Minutes</b></p> <p><b>Adoption of by-laws</b></p> <p><b>Commission Elections</b></p>	
<b>Notes</b>	
<p>Carlene Walker called the meeting to order and welcomed everyone. Carlene introduced Jesse Gallegos, our newest member, representing the Board of Pardons. Patrick Anderson made a <b>motion</b> to approve the January minutes. Susan Burke <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p>The annual conference of the National Association of State Sentencing Commissions will be held in Chicago this year on August 5<sup>th</sup> through the 7<sup>th</sup>. Information will be forwarded to Commission members when available for those who may be interested in attending.</p> <p>Jacey reviewed some technical changes to the by-laws: Article V, section 1, change "The Commission shall meet once every other month" to "The Commission shall meet every other month, or as the chairperson deems necessary, or upon the request of any member of the Commission".</p> <p>Article III, section 1, change "They shall be elected by a majority of those present at the annual May meeting" to "annual meeting", striking the word May.</p> <p>The issue of proxy voting was mentioned. Our by-laws do not allow proxy voting, but do allow voting by telephone.</p> <p>A suggestion was made to revise Article V, section 1 to read: The Commission shall meet 6 times per year or as the chairperson deems necessary.</p> <p>Additional by-laws discussion (tape 1:13) Mike Haddon pointed out that having proxies voting in one instance would be helpful, and this is in subcommittees, where ad hoc members with expertise in certain subjects could have a say. The following suggestion was made by David Brickey to change Article VII, section 1: Change "within the Commission" to "by the Commission".</p> <p>Mike added that under Article II, section 1, we need to change "organization to the Sentencing Commission" to "organization of the Sentencing Commission". And under Article III, section 2, strike the apostrophe from the word member's. And lastly, under Article V section 3, change "All regular meeting" to "All regular meetings".</p>	

	<p>Jacey will make the changes, email them to the Commission for review, and a vote will be taken at the June meeting.</p> <p>Jacey opened the floor for nominations for Chair. Paul Boyden made the <b>motion</b> to nominate Carlene Walker as continuing to serve as Chair. Senator Thatcher <b>seconded</b> the motion, which <b>passed unanimously</b>. Jacey then accepted nominations for Vice Chair. Sy Snarr made the <b>motion</b> to nominate Paul Boyden as Vice Chair. Carlene Walker <b>seconded</b> the motion which <b>passed unanimously</b>.</p>
<b>Agenda Item</b>	<b>Legislative Update and Discussion</b> (tape 19:14)
<b>Notes</b>	<p>Jacey reviewed the sentencing related legislative changes that took place this year. The summary provided includes all the bills that passed this legislative session on which the Commission took a position. Jacey will email this document to the Commission and will have it posted on the Sentencing Commission website. Following is a list of bills discussed:</p> <p>HB 10 Department of Corrections Amendments  HB 13 Offender Registry Review (the age difference will need to be fixed)  HB 14 Civil Commitment Amendments  1<sup>st</sup> Sub HB 17 Sex Offender Registry Chapter  HB 38 Competency to Stand Trial Amendments  HB 103 Theft by Deception Amendment  1<sup>st</sup> Sub HB 159 Unlawful Detention Amendments  4<sup>th</sup> Sub HB 175 Second Hand Item Transactions  2<sup>nd</sup> Sub HB 194 Involuntary Feeding and Hydration of Inmates (may re-visit the issue next year)  HB 282 Criminal Offense Amendments  HB 346 Amendments Regarding Competency to Stand Trial  1<sup>st</sup> Sub HB 383 Juvenile Competency Amendments  SB 234 Criminal Procedure Amendments</p>
<b>Agenda Item</b>	<b>Adoption/Discussion of Adult Sentencing &amp; Release Philosophy and Position Statements</b> (tape 1:20)
<b>Notes</b>	<p>Ron Gordon presented revisions made to the Adult Sentencing and Release Determinations, by the Philosophy/Position Statement Subcommittee. This document, originally created several years ago by the Sentencing Commission, is intended to guide the Commission in policy decisions as we seek to fulfill our statutory charge.</p> <p>In addition to the changes recommended by the subcommittee, the Commission made suggestions to the third sentence of Position 4. Position 4 should be changed to read as: Both judges and the Board of Pardons and Parole should use that discretion to make decisions based upon articulated factors, as considered in these positions and the Adult Sentencing and Release Guidelines. Benji McMurray made the <b>motion</b> to accept the document as amended in its entirety. Ron Gordon <b>seconded</b> the motion which <b>passed unanimously</b>.</p>
<b>Agenda Item</b>	<b>Review of Adult Sentencing &amp; Release Guidelines</b> (tape 1:57)
<b>Notes</b>	<p>As new felonies are created, we need to add them to the guidelines and categorize them. Some of these new felonies fit into existing frameworks (such as the theft enhancement) and some do not. Jacey noted some statutory changes that are wrong (failure to respond to officer's signal to stop, and some DUI related offenses). Additionally, 58-37-8 (2)(g), Driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death, needs to be added and will be categorized as a "person" offense. Chief Rhoades made the motion to <b>approve</b> the statutory reference changes and add the above offense. Sy Snarr <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p>Judge Low made the <b>motion</b> to approve classifying Boating Revisions-Duties of Operator involved in an accident as "other". David Brickey <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p>Judge Low made the <b>motion</b> to approve classifying Sales Tax Software as "other". David Brickey <b>seconded</b> the motion which <b>passed unanimously</b>.</p>

	<p>David Brickey made the <b>motion</b> to change Dealing in Material Harmful to Minors as a person crime (previously was classified as other). Chief Rhoades <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p>Kirk Torgensen made the <b>motion</b> to change Child Bigamy from "other" to "person" category. Chief Rhoades <b>seconded</b> the motion. The <b>motion passed</b> with one no vote from Benji McMurray.</p> <p>The guidelines are used in several different stages, AP&amp;P during pre-sentence reports, by judges during sentencing and finally the BOP in making their decisions as well. The Commission then discussed various questions and issues that have been brought up throughout the year by these groups. Issues regarding Form 1 on the General Matrix, deal specifically with multiple criminal episodes being resolved, sentenced and considered within a single presentence report. Jacey receives a lot of questions from AP&amp;P agents regarding multiple criminal episodes. The criminal history score can take into account prior felony and misdemeanor convictions, and prior juvenile adjudications. The problem is where separate criminal episodes are being charged together, AP&amp;P agents often ask "Can I or should I count one of these as a prior conviction for the purposes of the criminal history score, even if one took place two years before, one took place currently and they are being sentenced together?" Regarding crime severity, do they make separate recommendations for those or do they just take the most serious offense and make the recommendation on the guideline based upon the most serious offense? The Commission decided to form a subcommittee to address the matrix and previous convictions. Benji McMurray, Jesse Gallegos, Judge Low, Paul Boyden and Mike Haddon (or Tom Patterson) volunteered to serve on the subcommittee.</p> <p>The Commission also decided to have the subcommittee address issues dealing with multiple criminal offenses being charged at the same time, where there are multiple victims, especially in sex offenses. See Form 3 – Sex Offender Matrix: Number of prior victims and time range. Susan Burke suggested the subcommittee handle this one in a similar manner as the multiple criminal episodes.</p> <p>The next issue that was brought up on Form 1 (use of a weapon), is addressed in the questions, but brings up a lot of questions as well. In the section titled Weapons Use In Current Offense (only when current conviction does not reflect weapon use or when statutory enhancement is not involved). Are the instructions clear enough? Send this issue to the subcommittee.</p> <p>Clarify what "secure care" and "secure placement" means on Forms 1 and 3 under Prior Juvenile Adjudications.</p>
<b>Agenda Item</b>	<b>Recognition of Departing Commission Members</b>
<b>Notes</b>	Carlene recognized outgoing Commission members Doyle Talbot and Curt Garner (in absentia) for their dedicated service and support.
<b>Agenda Item</b>	<b>2011 Sentencing and Length of Stay Data</b> (tape 2:54)
<b>Notes</b>	<p>Cliff Butter presented information about sentencing, length of stay and admission populations for the Department of Corrections.</p> <p>Cliff presented the most recent statistics on the following:</p> <ul style="list-style-type: none"> <li>• Average yearly incarcerated population and changes in average yearly incarceration.</li> <li>• Incarceration rate: U.S. total, versus Western States total, versus Utah.</li> <li>• Property crime rate per 100,000, Utah versus U.S. Note that Utah follows the same model as the nation on property crime, but our violent crime rates are quite a bit lower than the national average.</li> <li>• The Index Crime Rate graph shows Utah's use of incarceration is not in line with the crime index. Factors that affect the rate are increased penalties and the creation of more felonies.</li> <li>• Percent of felonies to prison – Prior to 1995, approximately 25% of all felonies were sentenced to prison, after the court consolidation in 1995-1996; the rate has increased to 32 to 33%. Rates have remained consistent since that time.</li> <li>• Total prison admissions and total new commitment prison admissions. In the last couple years we've seen an approximate 10% drop in admissions.</li> </ul>

	<ul style="list-style-type: none"> <li>• Technical versus new commitment admissions and percent of admissions as new commitment</li> <li>• Offense type distribution in prison. The top three offense types (Murder, Sex Offenses and Person) total 60% of the incarcerated population</li> <li>• Percent of sex offenders to prison by degree</li> <li>• Total felony drug admissions to prison</li> <li>• Felony probation 1988 through 2011 shows a net growth of 271 per year</li> <li>• Percent of probation and parole offenders as female</li> <li>• Sex offender growth in prison compared to treatment funding. The last year that DOC received an increase in sex offender treatment funding was 1996. Since that time, that population has grown 247%.</li> <li>• Probation violations technical (conditions violations) versus new commitment</li> </ul> <p>Jacey will send out an electronic copy of Cliff's presentation.</p>
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<b>Agenda Item</b>	<b>Juvenile Sentencing Guidelines</b> (tape 4:07)
<b>Notes</b>	<p>Jacey gave a brief overview of the Juvenile Sentencing Guidelines, which are intended to be prescriptive.</p> <ul style="list-style-type: none"> <li>• In 1994, the Juvenile Justice Subcommittee of the Utah Sentencing Commission initiated review of sentencing of juvenile offenders. This subcommittee developed a uniform system of sentencing based upon earlier intervention and more intensive supervision for chronic offenders.</li> <li>• In 1996, a legislative task force was created to study major issues in the juvenile justice system, including the sentencing of juvenile offenders.</li> <li>• Although the foundation of the guidelines is sound, they need to be revisited, monitored, and evaluated on a regular basis.</li> </ul> <p>Susan Burke noted that one problem with the juvenile guidelines is, if a juvenile's first crime was with a weapon, they will always be categorized as a level four, even though a subsequent crime, such as truancy, is lower. Judge Orme, Susan Burke, Judge Frost and Paul Boyden volunteered to serve on the Juvenile Guidelines Subcommittee to discuss juvenile guidelines issues. Other persons suggested to be on the Juvenile Guidelines subcommittee are: Judge Oddone, Nada from juvenile probation, someone from the juvenile court administration, Mark Moffat and Reg Garff.</p> <p>Patrick Anderson asked that the Serious Youth Offender subcommittee reconvene. (Mark Moffat, Judge Oddone, Jesse Gallegos)</p>

<b>Agenda Item</b>	<b>Interim Study Items/Study Items/Projects &amp; Issues</b> (tape 4:25)
<b>Notes</b>	<p>The Board of Pardons has asked that we look at aggregate sentences and review Title 76 Chapter 3. We have a cap for felonies, but not one for misdemeanors. It makes sense to have one. Other subjects for study are:</p> <ul style="list-style-type: none"> <li>• Misdemeanor/Justice court related issues</li> <li>• Traffic offense penalties</li> <li>• 2012 Master Study Joint Resolution</li> <li>• SJR3</li> <li>• Capital Punishment</li> <li>• Enticing a Minor</li> <li>• Voluntary Placement on Sex Offender Registry</li> <li>• Court-imposed Taxes and Fines</li> <li>• Study of enhancements on shoplifting</li> <li>• DUI checkpoints</li> <li>• Traumatic brain injury and the criminal justice system and civil commitment</li> </ul>

<b>Next Meeting</b>	The next meeting will be on June 6, 2011, Utah State Capitol Bldg., Senate Caucus Room
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Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ