

SENTENCING COMMISSION MINUTES

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| Committee | |
| Utah Sentencing Commission | |
| Date | |
| Thursday, June 4, 2015 | |
| Time | |
| Noon – 2 p.m. | |
| Location | |
| Utah State Capitol, Senate Caucus Room | |
| Members Present | |
| Patrick Corum for Patrick Anderson, Chyleen Arbon, Craig Barlow, Paul Boyden, Darin Carver, Judge Michele Christiansen, Mike Haddon for Rollin Cook, Ron Gordon, Rachelle Hill, Rep. Brian King, Judge Thomas Low, Judge Julie Lund, Rep. Marc Roberts, Peter Stirba, Senator Dan Thatcher, Sheriff Tracy, Judge Vernice Trease, Pam Vickrey, Christina Zidow | |
| Members Excused | |
| Shima Baradaran, Chief Craig Black, Susan Burke, Sen. Gene Davis, Al Emery, Scott Garrett, Judge Scott Johansen, Richard Mauro | |
| Staff & Visitors | |
| Staff: Jo Lynn Kruse, Holly Langton, Dr. Ben Peterson, David Walsh, Doreen Weyland Visitors: Dan Becker, Len Engel, Gerri Miller-Fox, Judge Fuchs, Meriam Greenland, Marina Lowe (ACLU), Judge McCullagh, Debra Moore, Tanja Schaffer (UPAN), Gary Syphus, Alex Tarbet | |
| Agenda Item | |
| Welcome – New & Departing Members - Approval of Minutes - Elections | |
| Notes | <p>Peter Stirba called the meeting to order and welcomed everyone. Jennifer recognized and thanked Judge Gregory Orme for his many years of service to the Commission, 2002-2015 and introduced Judge Michele Christiansen who replaces Judge Orme. Jennifer then introduced the Governor's new appointee, Peter Stirba, as Chair and citizen representative to the Sentencing Commission. Peter replaces Carlene Walker. Jennifer opened the nominations for Chair and indicated that the citizen representative appointed by the Governor is traditionally nominated as the chair. Sheriff Tracy made the motion to nominate Peter Stirba as Chair. Senator Thatcher seconded the motion, which passed unanimously.</p> <p>Craig Barlow made the motion to approve the April minutes. Judge Low seconded the motion which passed unanimously.</p> <p>Jennifer recognized and thanked Paul Boyden for his longstanding service to the Commission as Vice Chair. Elections are normally done at the annual meeting, but had to be postponed due to Carlene Walker's departure in June. Jennifer opened the floor to nominations for vice chair. Senator Thatcher made the motion to retain Paul Boyden. Craig Barlow seconded the motion. Darin Carver made the motion to nominate Pam Vickrey as vice chair. Rachelle Hill seconded the motion. Paul Boyden noted that he has served as vice chair for many years and conceded that this presents a great opportunity for someone else to serve and that Pam would do well as vice chair. Pam agreed to take on the responsibility of vice chair. A vote was taken and passed unanimously to approve Pam Vickrey.</p> |
| Agenda Item | |
| Juvenile Subcommittee Update (tape 13:15) | |
| Notes | <p>Pam presented a <i>Draft Research Based Aggravating and Mitigating Factors Specific to Sex Offenders</i>. Pam stated that a smaller working group, led by Krista Airam at the Administrative Office of the Courts has begun comparing aggravating and mitigating factors for sex offenders with factors used in the risk assessment tools for juvenile sex offenders. There are some very specific tools that are used in assessment. One is the JSORRAT (Juvenile Sexual Offense Recidivism Risk Assessment Tool II); another is the ERASOR-II (Estimate of Risk of Adolescent Sexual Offense Recidivism); another is the J-SOAP-II (Juvenile Sex Offender Assessment Protocol-II).</p> <p>The group has contacted Rob Buttars at the U of U Criminal Justice Center to determine whether further research assistance is needed or whether we can proceed without further research. As soon as we have that information, we will meet one more time as a small group before meeting again as the full juvenile subcommittee to discuss next steps. We revised the prefatory language to the juvenile guidelines last year and the next step is revisions to the matrix itself. We want to target risk and need in an evidence-based approach, while also recognizing that aggravating and mitigating factors are not intended to replace the validated tools in use.</p> |
| Agenda Item | |
| Update on Sentencing Commission Implementation of HB348 (tape 21:00) | |
| Notes | <p>Issues remaining in prefatory revisions (Group 1) – Jennifer thanked Commission members for attending numerous subcommittee meetings and extended the invitation to the Commission as a whole to review all the revisions that have been made and to contact her with any additions or revisions. Chyleen Arbon, Dan Blanchard and Mike Haddon emailed Jennifer a number of edits. The area of concern still in dispute is the issue of “zero tolerance” and “revoke and reinstate” practices. We have included on page 6 a fairly specific statement that says “The use of conditions often referred to as “zero tolerance” or “revoke and reinstate” are inconsistent with these evidence-based practices. It is the recommendation of the Commission that the use of such practices be discontinued.”</p> |

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| | <p>Several ideas were put forth about the paragraph, from adding a page of definitions to writing about proximate and distal behavior or deleting the first word of the paragraph (the) and adding “past”. Jennifer stated that she would keep working on the draft and circulate options to the Commission to review.</p> <p>Issues remaining in review of current forms (Group 2) – Craig Barlow talked about modifications made to Form 1. There are some changes in the recommended months or years of a sentence. There is also a change in the counting factors, the primary change being the “<i>prior person crime convictions</i>” used to be just prior convictions. Some of the same changes were carried over to 1a, “<i>prior person crime convictions</i>” is now a category. Changes also were made to “<i>prior juvenile adjudications within past 10 years</i>”. There was some uncertainty if those convictions were measuring duration or numbers. The intent is to eliminate double counting wherever it exists in the current forms and focus on factors relevant to risk to re-offend, consistent with the directives from HB348.</p> <p>As for Form 3, “prior person crime convictions” in the upper right corner were adjusted similarly to forms 1 and 1a. Judge Trease noted that on the “prior juvenile adjudications within past 10 years” should be the same as Form 1 and should say (three Class A misdemeanor adjudications). Mike Haddon noted in the instructions we have added that status offenses should not be counted and that only a “secure care” commitment, not any secure detention facility counts. Patrick Corum suggested removing “secure care” altogether. Pam Vickrey made the motion to tentatively remove “secure care” until we receive some statistics from Dr. Ben Peterson to find out the average number of priors for juveniles who are committed to secure care. Judge Lund seconded the motion. No vote was taken and the Commission agreed to wait for a vote until we receive statistics from Dr. Peterson.</p> <p>Issues remaining for addition of new forms (Group 3) – Form 5 - Jennifer noted we were concerned about county input on form 5 and will likely need input beyond what we can incorporate for this year’s form 5. This draft is the third proposal, which does not change the upper range that is available from our current form 5. We added a zero to whatever as a range of possible jail time is available and we added the explanatory language to indicate that the upper number is a maximum available to the judge, but not what should be the initial recommendation from AP&P. If the box is white, it is a presumptive probation sentence, but we still have numbers in those boxes so some AP&P agents recommend these as though they are the starting point. It is somewhat of a conflicting recommendation to have both “presumptive” probation and an incarceration period indicated. The basis for creating form 5 was initially to establish more uniformity statewide in the use of jail as a condition of felony probation and Judge Low indicates it is probably the most utilized and useful form to him as a judge. It has also created a situation where the counties financial reimbursement for “COP” days for “state” inmates has become an issue. We will still circulate the draft of the guidelines to the counties for further input, but it may be a discussion which will need to continue in the next year to fully resolve.</p> <p>Judge Low suggested changing the asterisk comment to say: Numbers in shaded cells are presumptive probation sentences, meaning jail time is NOT “necessarily” recommended. Also say, alternatives to incarceration and GPS and community service may be most appropriate in that bottom right hand quadrant. Ron Gordon wanted to clarify that the starting point should not be jail.</p> <p>Judge Low added that the supervision history on all of these forms we have a -1 on successful completion of probation and he is happy with that. But there is no number or point for unsuccessful completion. Mike Haddon suggested changing negative one to none on form 1 under prior adjudications within the past 10 years. Judge Low would have us add one point for unsuccessful completions in the supervision history. Ron disagreed. Judge Low made the motion to approve form 1, 1a, 3 and 5 with prior juvenile adjudications to be amended to be class A’s, to remove secure care and to include supervision history of a point for unsuccessful completion of probation. Darin Carver seconded the motion. Ron Gordon countered with a substitute motion to approve 1, 1a, 3 and 5 with the clarifications about class A’s, no additional points for unsuccessful completion of probation. Craig Barlow seconded the substitute motion. The motion passed with one no vote from Judge Low.</p> |
| Agenda Item | Group 3: New Forms Discussion (tape 1:38) |
| Notes | <p>Darin Carver briefly reviewed the work of Group 3. You will find on page 29 of the current draft of the Adult Sentencing and Release Guidelines, Form 6, the Supervision & Treatment Level Matrix. Jennifer wondered if this form should be in the addendum section rather than a form, because it is more conceptual in nature and may be duplicative of the LS/RNR which will be utilized by AP&P in the future. Further discussion may be needed regarding the use of this document as a form or as an addendum.</p> <p>Form 7 – Decision-Making Authority Matrix, is a decision tree approach that includes many factors but is intended to be less complex than the version of the Response and Incentive Matrix currently being piloted. This form incorporates evidence based practice and assures the judiciary what violations will be reported to them (and the BOPP). Sheriff Tracy added that we need to be aware that the counties may have their own probation departments/agencies and that whatever forms are developed need to keep in mind county and private probation agencies will also be using them. They need to specify that we want the counties to follow the same tools and also be written broad enough that it’s not just written for AP&P exclusively. Group 3 will meet again on June 18th. Anyone interested should be there as there are likely to be additional revisions which will be incorporated and addressed in these meetings and via email since the next regularly scheduled meeting of the Sentencing Commission on August 5 will be to finalize the guidelines for publication.</p> |

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| | <p>Form 8 – Revocation Matrix currently states that the guidelines are for technical violations only and that criminal conduct should be addressed through a criminal proceeding and is not considered a technical violation. Please provide any suggestions you may have to Jennifer, as this is a significant issue we need to decide. There will be a meeting immediately following this meeting to further discuss this issue with AP&P, the AOC and the BOPP. Further input and participation is welcome.</p> <p>Judge McCullagh reviewed the current proposal for misdemeanor forms/misdemeanor guidelines. It is still in development and they are anticipating four sets of guidelines: Traffic, Property Crimes, Domestic Violence and Substance Abuse. There will be at least two more focused group meetings before we present to the Commission at the July 20 meeting.</p> <p>Debra Moore indicated that there is a lot of discussion about sentencing of misdemeanor substance abuse offenders since the passage of HB348 and probably something that should be addressed.</p> |
| Agenda Item | BOP/AP&P Review of Standard Conditions (tape 1:41) |
| Notes | Chyleen Arbon discussed changes to the BOP Parole Agreement. The case action plan will drive supervision. On the second page, Supervision Notices changes are: C- My parole and supervision will include the standards and requirements of the Response and Incentive Matrix as created by the Utah Sentencing Commission pursuant to Utah Code §63M-7-404. E – Pursuant to Utah law [Utah Code §77-27-6(3)], I will reimburse AP&P, as restitution, the costs incurred arising out of my stay at an AP&P community center. Offenders may be able to be terminated early and the changes are restitution oriented. Please give any feedback on this to Chyleen. |
| Next Meeting | The next full meeting of the Sentencing Commission will be on August 5, 2015 at noon, Utah State Capitol Bldg, Senate Caucus Room. The next Interim meeting will be on July 20, 2015 at 10:00 a.m., Utah State Capitol, Senate Building, Copper Room. |

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ