

SENTENCING COMMISSION MINUTES

Committee	
Utah Sentencing Commission	
Date	
Wednesday, January 6, 2016	
Time	
Noon – 2 p.m.	
Location	
Utah State Capitol, Senate Caucus Room	
Members Present	
Patrick Anderson, Judge Mark Andrus, Chyleen Arbon, Craig Barlow, Shima Baughman, Chief Craig Black, Paul Boyden, Susan Burke, Darin Carver, Rollin Cook, Al Emery, Scott Garrett, Ron Gordon, Rachelle Hill, Rep. Brian King, Judge Julie Lund, Richard Mauro, Peter Stirba, Senator Dan Thatcher, Judge Vernice Trease, Pam Vickrey, Christina Zidow	
Members Excused	
Judge Michele Christiansen, Sen. Gene Davis, Judge Thomas Low, Rep. Marc Roberts, Sheriff James Tracy	
Staff & Visitors	
Staff: Jo Lynn Kruse, Sofia Nystrom, David Walsh, Doreen Weyland Visitors: Dan Blanchard, Anna Brower, Gerri Miller-Fox, Mike Haddon, Wayne Jones, Matt Lloyd, Marina Lowe, Rick Schwermer	
Agenda Item	
Welcome – Approval of Minutes	
Notes	
Peter Stirba called the meeting to order and welcomed everyone. Craig Barlow made the motion to approve the December minutes. Patrick Anderson seconded the motion which passed unanimously .	
Agenda Item	
Recognition of Northern Region, Logan & Brigham City AP&P	
Notes	
Jennifer recognized AP&P's Northern Region for their contribution and work on JRI (Justice Reinvestment Initiative). A few of the AP&P agents related touching experiences where offenders responded affirmatively to the JRI program and the effects of experiencing positive interactions with their parole/probation officers.	
Patrick Anderson will serve as co-counsel with his wife, Joan, at the Supreme Court in February, and thus will not be in attendance at the Monday meetings during the legislative session. Richard Mauro has agreed to substitute for Patrick on the executive committee until he returns. Senator Thatcher made the motion to approve Richard Mauro as a substitute for Patrick Anderson. Rollin Cook seconded the motion which passed unanimously .	
Wayne Jones, Assistant Attorney General, presented proposed changes to §76-6-502(4). The proposal aims to amend the current provision that prohibits the transfer of false identification documents to include <i>possession of false identification documents with intent to transfer them</i> . Utah's controlled substance statute takes this approach. As with illegal drugs, intent to transfer can be established by circumstances surrounding the possession, by general admissions of intent, or by other relevant facts.	
Agenda Item	
JRI Implementation Issues (tape 30:00)	
Notes	
Rollin Cook took a moment on the Sentencing Commission's behalf, to thank Jennifer for her leadership and countless hours of work on the Justice Reinvestment Initiative.	
Criminal History Scoring –	
We are about 100 days into JRI now. Many training sessions have been conducted and some issues have come to light. Jennifer presented a document titled <i>Frequently Asked Questions And Answers Regarding the 2015 Adult Sentencing & Release Guidelines</i> and changes to Addendum B and requested feedback. Judge Andrus made the motion to revise Addendum B to more accurately reflect the misdemeanor crimes which were not included previously. The motion was also to post it on the Sentencing Commission website rather than republish the Guidelines entirely. The revised Addendum B may be viewed on the Public Meeting Website http://www.utah.gov/pmn/index.html . Paul Boyden seconded the motion which passed with one no vote from Patrick Anderson.	
Christina Zidow made the motion to approve the FAQ Sheet essentially as the position of the Commission with respect to the guideline issues that have been raised. Chyleen Arbon seconded the motion which passed unanimously .	
Jennifer played a short video clip regarding transformations and avoiding the "fear cycle" from a presentation by Frasier Bullock called <i>Operational Excellence</i> . https://youtu.be/JFo7Xtv_bLU?t=28m28s	
Pre-Sentence Reports – (tape 46:00)	
Gerri Miller-Fox discussed issues and possible remedies for pre-sentence reports. JRI changes have created a significant work-load impact for AP&P agents. She has been meeting with agents and getting their input. She is working on improvements. More funding may be needed and she is hopeful to attain that during the legislative session. One option for DUI cases, cases involving violence, and domestic violence, may be a sentencing memorandum to provide to the courts or a shorter version of a PSI. Hopefully this can be worked out with the JRI	

	<p>Implementation Task Force at the next meeting.</p> <p>Legislative Recommendations – Jennifer discussed misdemeanor reclassification which has been discussed over the last few years and has culminated in a full review of all Class C offenses. Jennifer distributed the full list which contains the Sentencing Commission’s position: The Sentencing Commission recommends that the Legislature recodify all simple traffic and boating offenses (and local ordinances regulating similar conduct) that are classified as Class C Misdemeanors, as Infractions. These are strict liability regulatory offenses and should not carry jail consequences. Other direct and collateral consequences (points accumulation, license suspension) available in this highly regulated area and a financial consequence, are sufficient consequences. Only those traffic offenses involving a direct threat to public safety as a result of improper operation of a motor vehicle should be retained as Class C Misdemeanors. The Sentencing Commission further recommends that the Legislature remove traffic infractions from the definition of “criminal activity” for purposes of restitution, codifying the rule of State v. Robinson. The full list may be viewed on the Public Meeting Notice website, http://www.utah.gov/pmn/index.html.</p> <p>Chief Black had concerns about the intoxication section and made the motion to retain 76-9-701 and 76-9-701(1) as a Class C. Judge Andrus seconded the motion which passed unanimously.</p> <p>Rick Schwermer noted that 41-12A-303.2, 41-12A-303.2(2) No Proof of Insurance, and 41-12A-303.3(2) No Proof of Insurance – 2nd or subsequent offense and 41-12A-303.3 Provide False Evidence of Insurance, should not be a crime and asked for consideration to make infractions. Senator Thatcher made the motion to change those to infractions. Patrick Anderson seconded the motion which passed unanimously.</p> <p>Susan Burke pointed out that Speeding in a School Zone is a Class C on page 3 of the misdemeanor revisions, yet on the draft of 41-6a-601 Speed Regulations –Safe and appropriate speeds at certain locations, it appears as an infraction. It is ambiguous. Peter stated that this has not been adopted by the Commission. All agreed that it should remain a Class C. Judge Andrus made the motion to adopt the revisions with changes made today. Chief Black seconded the motion which passed unanimously.</p> <p>Pam Vickrey updated everyone about the draft of 78A-6-1101 Violation of order of court –Contempt—Penalty, the Valid Court Order exception for status offenses which the Juvenile Justice Subcommittee has been discussing. There will be changes in 2016 to eliminate the VCO exception with reauthorization of the OJJDP Act. There is no sponsor nor any bill drafted which has consensus now. Ron Gordon suggested that we look at the policy on its face even though UBJJ could lose funding if Utah does not comply. No vote was taken today.</p> <p>The Anomalies Subcommittee presented a draft of 77-38-3 Notification to victims – Initial notice, election to receive subsequent notices – Form of notice – Protected victim information – Pretrial criminal no contact order. Questions arose whether it is appropriate to encourage prosecutors to address restitution sooner without limiting the victim the ability to receive restitution. Training needs to occur with judges and prosecutors to address restitution sooner than later. It appears that (5)(a) is written inconsistently and vague which creates problems. There is also a problem with 5(v) subsection d. Patrick Anderson said it needs to be rewritten. No vote was taken. The Anomalies Subcommittee will continue to meet with Crime Victims, prosecutors, and other interested parties to try to reach a resolution regarding the issue from State v Poole.</p>
Next Meeting	The next meeting of the Sentencing Commission will be the Annual Meeting on April 6, 2016 at 8 a.m., Utah State Capitol Bldg., Senate Caucus Room.

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ