

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	
<b>Utah Sentencing Commission – Annual Meeting</b>	
<b>Date</b>	
Wednesday, April 3, 2013	
<b>Time</b>	
8:30 a.m. – 4 p.m.	
<b>Location</b>	
Utah State Capitol, Senate Caucus Room	
<b>Members Present</b>	
Patrick Corum for Patrick Anderson, Craig Barlow, Paul Boyden, David Brickey, Chris Roach for Susan Burke, Senator Gene Davis, Deween Durrant, Jesse Gallegos, Marlene Gonzalez, Rep. Richard Greenwood, Mike Haddon, Mark Moffat, Judge Gregory Orme, Rep. Jennifer Seelig, Sy Snarr, Senator Dan Thatcher, Carlene Walker, Scott Carver for Sheriff James Winder	
<b>Members Excused</b>	
Judge Kevin Allen, Judge Janice Frost, Ron Gordon, Judge Thomas Low, Benjamin McMurray, Judge Ric Oddone, Chief Ed Rhoades	
<b>Staff &amp; Visitors</b>	
Staff: Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner, David Walsh Visitors: Susan Allred, Nathan Brady, Cliff Butter, Scott Reed, Kirk Torgensen	
<b>Agenda Item</b>	
<p><b>Welcome and Approval of Minutes</b></p> <p><b>Review 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 new members Craig Barlow (representing the Attorney General), Senator Gene Davis, and Rollin Cook who could not attend today (representing the Department of Corrections).</p> <p>Mark Moffat made a <b>motion</b> to approve the January minutes. Sy Snarr <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p>Jacey reviewed the by-laws, which were approved in June 2012.</p> <p>Jacey opened the floor for nominations for Chair. Paul Boyden made the <b>motion</b> to nominate Carlene Walker continue serving as Chair. David Brickey <b>seconded</b> the motion, which <b>passed unanimously</b>. Jacey then accepted nominations for Vice Chair. Carlene Walker made the <b>motion</b> to nominate Paul Boyden continue serving as Vice Chair. Sy Snarr <b>seconded</b> the motion which <b>passed unanimously</b>.</p>	
<b>Agenda Item</b>	
<b>Legislative Update and Discussion</b> (tape 12:18)	
<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. The document will be posted on the Sentencing Commission website. Eleven bills originated from the Commission this year. Jacey thanked the Commission for their hard work. Following is a list of bills discussed:</p> <p>HB 19 Election Code Criminal Provisions          HB 27 Threat of Terrorism Amendments          HB 119 Fire Prevention Amendments          HB 192 County Clerk Misconduct Penalty          HB 232 Criminal Penalty Amendments          HB 234 Corporate Franchise and Income Tax Fine and Penalty Amendments          HB 237 Surety Bond Penalty          SB 105 Board of Pardons and Parole Revisions          SB 142 Repeal of Blacklisting Provisions          SB 228 Penalties for Specified Juvenile Offenses – Removes life without parole penalties and the death penalty related to juveniles          HB 105 Serious Youth Offender Amendments</p>	

**Bills With Enhancements**

HB 102S01 Arson Penalties Amendments – New class A misdemeanor, New 3<sup>rd</sup> degree felony, New 2<sup>nd</sup> degree felony

HB 108 Metal Theft Amendments – 2 New class A misdemeanors

HB 328 Highway Littering and Failing to Secure a Load Amendments - 2 New \$200 fines, 2 new \$500 fines, new \$1000 fine

SB 131 Assault Amendments – New 3<sup>rd</sup> degree felony, new 2<sup>nd</sup> degree felony

SB 160 Patronizing a Prostitute Amendments – New class A misdemeanor

**Drug Offenses**

SB 270 Controlled Substance Amendments – New class B misdemeanor, new 3<sup>rd</sup> degree felony

HB 52 Controlled Substances Revisions

**Civil Disabilities**

HB 64 Felon's Right to Hold Office

HB 152S01 Parent-time Restriction Amendments

HB 235S01 Process Server Amendments

**Removal of Disabilities**

HB 33 Expungement Process Amendments

HB 320 Temporary Identification Card

HB 408 Criminal Suspect Photographs - *needs more discussion*

HB 243 Offender Registry Review

**Repeals**

HB 41 Campaign Filing by Media Owner – Repeals class B misdemeanor

SB 142 Repeal of Blacklisting Provisions

SB 147S01 Workers' Compensation and Occupational Safety Related Amendments – Repeals 2 class C misdemeanors

HB 50 Dating Violence Protective Orders – New class B misdemeanor

HB 163 Human Trafficking – Reduced 1<sup>st</sup> degree felony to a 2<sup>nd</sup> degree felony, 2 new 1<sup>st</sup> degree 15 to life, new 1<sup>st</sup> degree felony, new 2<sup>nd</sup> degree felony, 3 new 3<sup>rd</sup> degree felonies

HB 87 Attempted Aggravated Murder Amendments - With Serious Bodily Injury, New 15 years to Life

**Driving and DUI**

HB 103 Wireless Telephone Use Restrictions – New infraction, New \$25 fine

HB 128 Driver License Suspension Modifications

HB 295 Electronic Proof of Owner's or Operator's Security – New class B misdemeanor

HB 13 Protection of Children Riding in Motor Vehicles – New infraction, \$45 fine

SB 104S02 Vulnerable Users of Highways Amendments – New class C misdemeanor, New class B misdemeanor

SB 146 Driving Under The Influence Amendments

**Miscellaneous Bills**

HB 170 Deoxyribonucleic Acid Collection and Retention Amendments

SB 161 Restitution Amendments – New class B misdemeanor – New class B misdemeanor

SB 196S03 License Plate Reader Amendments – New class B misdemeanor

SB 233 Request For Emergency Medical Assistance Amendments

HB 10S01 Sex Offense Amendments

**Items We Opposed that Passed**

HB 317S01 Protection of Concealed Firearm Permit Information – New class A misdemeanor

HB 155 Federal Law Enforcement Amendments – New class B misdemeanor

HB 239S02 Jury Service Amendments

	Mark Moffat and David Brickey asked permission to show these statistics with others. Jacey indicated that this information would be put on the Commission's website.
<b>Agenda Item</b>	<b>Commission Member Roles</b> (tape 1:31)
<b>Notes</b>	<p>During the next few meetings, we will be hearing from members of the Commission, explaining what their specific role is on the Commission.</p> <p><b>Sy Snarr</b> serves on the Commission as a victim advocate. She represents this group because her son was killed sixteen years ago. Sy appreciates the opportunity to speak out on behalf of victims.</p> <p><b>Mark Moffat</b> represents juvenile defense attorneys and is a criminal defense lawyer. He was appointed by the Utah State Bar. Marks role is to represent the perspective as juvenile defense attorney on the Commission.</p> <p><b>David Brickey</b> is the elected County Attorney for Summit County and is the Juvenile Prosecutor on the Commission. He was appointed by the State Wide Association of Public Attorneys. David provides a prosecutor perspective on juvenile court matters.</p>
<b>Agenda Item</b>	<b>2012 Sentencing and Length of Stay Data</b> (tape 1:40)
<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. There was a reduction in 2002 due to an early release caused by severe overcrowding, halted growth from 2007 through 2009 and an upward trend in 2012.</li> <li>• Incarceration rate: U.S. total, versus Western States total, versus Utah. Utah has the lowest incarceration rate in the West.</li> <li>• Property crime rate per 100,000, Utah versus U.S. Note that Utah generally follows the same model as the nation on property crime, but our violent crime rates are much 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. Index crimes include willful homicide, forcible rape, robbery, burglary, aggravated assault, larceny over \$50, motor vehicle theft, and arson.</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 30%. 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> <li>• Condition Violations 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 almost 60% of the incarcerated population</li> <li>• Percent of sex offenders to prison by degree. The last year that DOC received any increase in sex offender treatment funding was 1996. Since that time, that population has grown approximately 247%. Length of stay has increased.</li> <li>• Total felony drug admissions to prison. A sharp decrease since 2002 is due to less meth production because the ingredients were made illegal.</li> <li>• Total 3<sup>rd</sup> Degree Drug Admits to Prison versus Probation shows that drug courts are influencing prison admissions.</li> <li>• Felony Probation 1988 through 2012 indicates a net growth of 266 per year.</li> <li>• Sex offender growth in prison compared to treatment funding. Again, the last year of additional General Fund allocation for treatment funding increases to address growth was in 1996. Since then the prison population of sex offenders has doubled.</li> <li>• Probation Violations Conditions versus New Commitment 1988 – 2012. Data shows a huge jump since 2008. Cliff will look at doing a blind study to determine if judges' time in tenure is having an effect. We do have a large number of new judges. Also a probation violator center</li> </ul>

	<p>is sorely needed.</p> <ul style="list-style-type: none"> <li>Parole Violations Conditions versus New Commitment shows a spike occurred in 1999, possibly due to a new 3<sup>rd</sup> degree felony absconding law.</li> </ul>
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<b>Agenda Item</b>	<b>Recognition of Departing Commission Members</b>
<b>Notes</b>	Carlene recognized outgoing Commission members Kirk Torgensen and Tom Patterson (in absentia) for their dedicated service and support.

<b>Agenda Item</b>	<b>White Collar Fraud Subcommittee Report</b> (tape 3:00)		
<b>Notes</b>	<p>Scott Reed reported on the findings from this subcommittee, who were charged with determining if the current laws related to fraud crimes have appropriate penalties, and if the Utah Sentencing Guidelines adequately deal with these crimes. Members of the subcommittee included Scott Reed (Chair), Judge Kevin Allen, Matthew Bates, Paul Boyden, Patrick Corum, Mike Haddon, Clark Harms and Rick VanWagoner.</p> <p>The Subcommittee concluded that the current penalties and current guidelines allow for an appropriate response in each case and that the cases are generally being handled as we expect that they would be, and as they should be.</p> <p>However, because these cases often involve many aggravating factors, when the offender is sent to prison, their length of stay is typically much longer than they guidelines would suggest. Accordingly, the Subcommittee recommends the following changes in an effort to better explain the purpose of the Guidelines and how specific aggravating factors may affect a potential sentence.</p> <p><b>Final Recommendations:</b></p> <ul style="list-style-type: none"> <li>Amend the instructions of the guidelines and the Aggravating and Mitigating Forms.</li> </ul> <table border="1" data-bbox="324 982 1539 1591"> <tr> <td data-bbox="324 982 928 1591"> <p><b>INTRODUCTION</b></p> <p><u>It is important to note that these are guidelines only. They are intended to inform the sentencing authority, but do not dictate their decision. They do not create any right, expectation, or liberty interest on behalf of the offender. The calculated matrix recommendation on the Forms creates a starting point and reflects a recommendation for a typical case. However, aggravating and mitigating circumstances are taken into consideration by both the sentencing judge and the Board of Pardons and Parole in making their final decisions. An offender sentenced to prison is legally subject to the full length of the sentence pronounced by the sentencing judge. Ultimately, the final decision regarding the actual length of incarceration is the responsibility of the Board of Pardons and Parole: that decision may, or may not reflect the guideline recommendation, and may be up to the full length of the indeterminate range pronounced by the sentencing judge.</u></p> </td> <td data-bbox="928 982 1539 1591"> <p><b>Form 2</b>  <b>This list of aggravating and mitigating factors is non-exhaustive and illustrative only.</b>  <u>The weight given to each factor by the sentencing authority will vary in each case. Any one factor could outweigh some or all other factors.</u></p> <p><b>Form 4</b>  <u>The weight given to each factor by the sentencing authority will vary in each case. Any one factor could outweigh some or all other factors.</u> The pre-sentence investigator should note any aggravating or mitigating circumstance that merits consideration by the court by entering the page number of the presentence report where the court can find supporting information.</p> </td> </tr> </table> <ul style="list-style-type: none"> <li>Conform the Rationale sheet used by the Board of Pardons and Parole with the Aggravating and Mitigating Forms 2 and 4 of the Adult Sentencing and Release Guidelines.</li> <li>Continue to study issues relating to restitution and how to collect restitution in order to better serve the needs of victims.</li> <li>Focus on education regarding the guidelines as they relate to white collar, fraud, and other high dollar crimes.</li> </ul>	<p><b>INTRODUCTION</b></p> <p><u>It is important to note that these are guidelines only. They are intended to inform the sentencing authority, but do not dictate their decision. 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	<p>The Commission desires to find more creative ways to recoup restitution for victims. We can investigate how other states accomplish this. It was suggested that we need to detect assets on the front end where they can be protected and ultimately victims can be paid.</p> <p>The subcommittee will meet again to finalize these recommendations so they can be included in the Guidelines.</p>
<b>Agenda Item</b>	<b>Review of Adult Sentencing &amp; Release Guidelines</b> (tape 3:42)
<b>Notes</b>	<p>Senator Thatcher made the <b>motion</b> to approve the language on page number one and the additions to Form 2 and Form 4 from the White Collar Fraud Subcommittee Guideline recommendations. Jesse Gallegos <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p><b>Statutory Considerations</b></p> <p>The following offense need to be considered in the guidelines as a result of new legislation:</p> <ul style="list-style-type: none"> <li>• <b>Attempted Aggravated Murder with serious bodily injury</b> (1<sup>st</sup> degree Person offense) – Aggravated Murder is not included on the guidelines. New legislation makes this crime 15 years to Life. Jacey stated that we can either create a new category for it or leave it as is. What we have now is a sentence that is higher than what the guideline matrix reflects. We can make a line in the crime category section that says these are not considered in the guidelines and that the minimum penalty is 15 to Life. The general thought was to leave it as is.</li> <li>• <b>Human Trafficking and Human Smuggling</b> – Rep. Seelig’s bill creates several new felony offenses, including a new section for Aggravated Exploitation of a Prostitute, Solicitation of Prostitution, and Patronizing a Prostitute. The question is how do we categorize them? Judge Orme suggested categorizing as sex crimes the ones that involve minors and the ones that involve adults could be person crimes. Jesse Gallegos made the <b>motion</b> to reconvene the guidelines subcommittee. Paul Boyden <b>seconded</b> the motion which <b>passed unanimously</b>. Last year’s guidelines subcommittee included Ron Gordon, Paul Boyden, Mark Moffat, Jesse Gallegos and Mike Haddon.</li> <li>• <b>Aggravated Kidnapping</b> – no sexual component</li> </ul> <p>All of these issues and additional questions will be referred to the subcommittee to review and make recommendations.</p>
<b>Agenda Item</b>	<b>Juvenile Parole Guidelines &amp; Juvenile Length of Stay Data</b> (tape 4:20)
<b>Notes</b>	<p>Chris Roach, Deputy Director of Juvenile Justice Services gave a presentation on Utah’s Juvenile Justice System. Chris displayed a graph that shows the numbers of youth served and the average cost, breakdown of the juvenile population by youth referred to juvenile court, receiving centers, detention, probation, community placement and secure care. Chris also discussed:</p> <ul style="list-style-type: none"> <li>• Age at admission during FY 2012 by program area (detention, observation &amp; assessment and secure care)</li> <li>• Gender of admissions during FY 2012 by program area (detention, O &amp; A, and secure care.</li> <li>• Percent of race-ethnicity of admissions during the FY 2012 program area</li> <li>• Delinquency history at the time of FY 2012 admission by program area</li> <li>• Prior placements at the time of FY 2012 admission by program area</li> <li>• Average length of stay (days) during FY 2012 by program area</li> <li>• Admission reasons for detention during FY 2012. These include: Orders to Detention 36%, Warrant/Admin. Hold 28.1%, Person Offenses 9.1%, Property Offenses 7%, Waiting JJS 6.9%, Public Order Offenses 4.1%, Waiting OTH 2.4%, Waiting DCFS 1.8% and Other 4.5%</li> <li>• Locations of Utah’s detention facilities and average length of stay days</li> <li>• Locations of Utah’s O &amp; A facilities and average length of stay days</li> <li>• Locations of Utah’s secure care facilities and average length of stay days</li> <li>• Freedom from new charges while in O &amp; A and Secure Care by quarter, 90 days after leaving, and 360 days after leaving</li> </ul>

	Chris also displayed forms used by the Youth Parole Authority for delinquency history, guideline matrix, and aggravating and mitigating circumstances.
<b>Agenda Item</b>	<b>Juvenile Transfer Data</b> (tape 5:07)
<b>Notes</b>	As part of the Serious Youth Offender bill that the Commission worked on this year, Jacey and Dr. Ben Peterson studied transfer cases for the last five years with help from the courts. From the information it was clear that we have fewer cases than we imagined, and that the large majority of juveniles transferred to the adult system are placed on probation for their offense. Also that they do poorly on probation. Now that the data has been gathered, we need to decide how to go forward with it and where we can follow up. Judge Orme suggested we compare these cases with any cases that come in the next few years to see what, if any difference the change in law results in.
<b>Agenda Item</b>	<b>Interim Study Items</b> (tape 5:33)
<b>Notes</b>	<p>A list of potential study items was reviewed by the Commission to determine areas that they would like to focus their work during the upcoming year. Commission members expressed an interest in studying the following items:</p> <ul style="list-style-type: none"> <li>• Professional licensing violation penalties</li> <li>• Ankle monitor, use and reporting – credit for time served</li> <li>• Incarceration v. Imprisonment – uniformity in code (housekeeping bill)</li> <li>• Sentencing Enhancements – use of, effect, use of multiple enhancements</li> <li>• Fines ordered and rates of restitution received – supervision fees are taking priority over victim restitution.</li> <li>• Probation supervision</li> </ul> <p>These items will be placed on future agendas.</p>
<b>Next Meeting</b>	The next meeting will be on June 5, 2013, Utah State Capitol Bldg., Senate Caucus Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ