



# Utah Sentencing Commission

# 2007

# ANNUAL REPORT

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## Utah Sentencing Commission

The Utah Sentencing Commission is responsible for developing sentencing guidelines for adult and juvenile offenders and for proposing recommendations to all three branches of government regarding the sentencing and release of adult and juvenile offenders. The following policy statement guides the Sentencing Commission in these efforts: The primary purposes of sentencing are to punish the offender, protect and compensate the victim and society, and reduce the likelihood of future crimes by the offender through rehabilitation or incapacitation.

## Legislative Action and Initiatives

During 2007, the Utah Sentencing Commission reviewed, provided input to, and made recommendations on many important legislative bills. Among them were HB 86 which made sweeping changes to the penalties for grievous sexual offenses; HB 93 which created a new capital felony for a child abuse homicide; and SB 114 which made improvements to the procedure for prosecuting a capital felony.

At the conclusion of the 2007 legislative session, the commission provided a report on the impact of the session creating new laws, and increased or decreased penalties.

This initiative will be continued each session to track the changes in sentencing law. The session saw new criminal penalties in almost every category as well as enhancements in almost every category.

The commission will be working on several important bills in the 2008 session. Among them will be versions of Jessica's Law, Henry's Law and the implementation of the federal Adam Walsh Act. Jessica's Law, as proposed, will provide a 25 years to life sentence for first time convictions of certain child sex crimes. Henry's Law toughens the penalty for a conviction of torture of an animal. The Adam Walsh Act requires sex offenders to register and report more frequently and for much longer periods of time.

## Commission Initiatives and Studies

In an effort to improve the Commission's ability to provide meaningful recommendations to the other branches of government, several new initiatives and studies were initiated. A working group was developed to work with the Governor's Violence Against Women and Families Cabinet Council to develop a much needed sentencing matrix for domestic violence cases. Another working group has been developing a philosophical position paper for the juvenile justice system to help guide future policy positions and statements.

A new resource handbook entitled "Penalty Distribution for Select Crimes" was developed to provide legislators, judges, and criminal justice professionals a means to compare criminal penalties between the many criminal offenses. A copy of the handbook may be found on the Commission website.

We are fortunate to be able to join with the Utah Criminal Justice Center and benefit from their research capabilities on several important studies. We currently have in process studies that will analyze the use and impact of incarceration as a condition of probation and sentence inflation in drug, sex and DUI crimes. The information gained will be used to aid policy makers in making good public policy.

We were also presented a report on adherence to the adult Guidelines that showed significant agreement exists (85%) between the guideline recommendations and the actual court sentence.

## Position on Indeterminate Sentencing

The Sentencing Commission re-affirmed its commitment to maintain and protect Utah's indeterminate sentencing system. In indeterminate sentencing systems, offenses carry penalties within a range of years rather than a set number of years. Once a judge commits an offender to prison within one of these ranges, the

Utah Board of Pardons and Parole (Board) makes the release and supervision determinations. Among the advantages is its flexibility in the handling of offenders, allowing the Board to review offender's progress in treatment and behavior in the institution in making release decisions.

One sentencing policy that endangers Utah's indeterminate sentencing system is mandatory minimum penalties. Mandatory minimum sentences take discretion from the courts and flexibility from the Board of Pardons and Parole. In their most basic form, an offender convicted of an offense is required to receive a prison sentence, and the Board of Pardons and Parole is unable to release the offender until a minimum time requirement is met. On its face, these sentencing policies appear to be tough on crime. However, Utah's experience with mandatory minimums revealed that they caused more cases to go to trial forcing vulnerable victims to testify, and they lead to more plea negotiations to lesser sentences – thus eliminating the tough on crime mantra espoused by those advocating this policy. The Sentencing Commission's position on Indeterminate Sentencing can be found on their website at [www.sentencing.utah.gov](http://www.sentencing.utah.gov).

### **Adult Sentencing Guideline Modification**

Modifications were made to the Adult Sentencing and Release Guidelines during 2007 to accommodate the newly passed legislation. The majority of these changes were due to the penalty changes in the sexual offense category. Another major change was in the restructuring of the guidelines themselves to help the user be more efficient. The forms were moved to be in order of their use and adjacent to the instructions for each. Also, at the request of many end users, the forms were converted to an electronic format to enable the user to fill them out electronically and download them for attachment to the pre-sentence report.

### **Commission Update**

The commission saw several changes during 2007. We said good-bye to Senator Greg Bell who served the commission as the senate representative for many years. His dedicated service was invaluable as he was able to provide insight into legislative operations and fight to protect Utah's indeterminate sentencing structure during the session. His service was very much appreciated. Also, we bid farewell to Sheriff Phil Barney who represented the Utah Sheriff's Association. Sheriff Barney's service was also very appreciated. He did a great job in representing the interests and perspective of the sheriff's in Utah.

While we said good-bye to friends, we welcomed new members to the commission. Senator Jon Greiner was appointed to the commission by the senate as their representative and Sheriff Brad Slater was appointed by the Utah Sheriff's Association as their representative. We look forward to working with these great public servants and benefiting from their participation.

### **Legislative Awareness Effort**

In an effort to better educate the legislature and others as to what the mission and membership of the Commission is, we had the opportunity to attend the October Caucus meetings of both house parties and senate parties. This meeting was arranged by our House Representatives, Eric Hutchings and Carl Duckworth. The Commission Chair, Kay Cornaby, Director Scott Carver, CCJJ Director Robert Yeates, and Commission member and former Representative Scott Daniels attended.

The message delivered was a discussion of the mission and membership of the Commission, and more importantly, our role in assisting them in developing sound policy that will better accomplish the intended goal. Based on the comments and questions posed, the effort was well-received.

### **Utah Sentencing Commission**

#### **Kay S. Cornaby, Chair**

*Citizen Representative*

#### **Paul Boyden, Executive Director**

*Statewide Association of Prosecutors*

#### **David Brickey**

*Juvenile Prosecutor*

#### **Judge Jeffrey Burbank**

*Juvenile Court Judge*

#### **Judge Terry Christiansen**

*District Court Judge*

#### **Scott Daniels**

*Utah State Bar*

#### **Senator Mike Dmitrich**

*Utah State Senate*

#### **Representative Carl Duckworth**

*Utah House of Representative*

#### **Marlene Gonzalez**

*Ethnic Representative*

#### **Senator Jon Greiner**

*Utah State Senate*

#### **Curt Garner**

*Chair, Board of Pardons and Parole*

#### **John Hill, Director**

*Salt Lake Legal Defenders*

#### **Judge Kimberly Hornak**

*Juvenile Court Judge*

#### **Representative Eric Hutchings**

*Utah House of Representatives*

#### **Randy Kester**

*Utah State Bar*

#### **Dan Maldonado**

*Juvenile Justice Services*

#### **Jim Marchel**

*Juvenile Treatment*

#### **Judge Paul Maughan**

*District Court Judge*

#### **Judge Gregory Orme**

*Utah Court of Appeals*

#### **Tom Patterson**

*Director, Department of Corrections*

#### **Kathy Reimherr**

*Adult Treatment*

#### **Chief Ed Rhoades**

*Utah Chiefs of Police Association*

#### **Sheriff Brad Slater**

*Utah Sheriffs Association*

#### **Sy Snarr**

*Victims' Representative*

#### **Doyle Talbot**

*Youth Parole Authority*

#### **Kirk Torgenson, Chief Deputy**

*Attorney General's Office*

*Robert Yeates, Executive Director,  
Commission on Criminal and Juvenile  
Justice*