



# Utah Sentencing Commission

# 2009 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 the 2009 legislative session, the Utah Sentencing Commission reviewed and made recommendations on all proposed

legislation related to sentencing policy.

In 2009, the Utah Legislature created 8 new felonies, 23 new misdemeanors, and 2 new infractions. The Commission completed a report summarizing all off the new 2009 sentencing laws and their penalties. This report is available on the Sentencing Commission's website

## Sentencing Amendments

Modifications were made to the Adult Sentencing and Release Guidelines instructions during 2009 to accommodate newly passed legislation. The most significant change was the loss of the diagnostic evaluation process as a sentencing tool. This resulted from a loss of funding and the Legislature's repeal of §76-3-404. This tool provided a sentencing judge with the ability to request an observation period and additional evaluations of an offender's risk to assist in their final sentencing decision. While the process was only used in a relatively small number of serious cases, the Commission views this loss as

detrimental to the overall sentencing process. The Commission will continue to monitor the effect of this significant change to the sentencing system. The reinstatement of this process or a similar option is a priority for the Sentencing Commission.

In an effort to improve the understanding of the Adult Sentencing and Release guidelines and increase uniformity in the use of the guidelines, the Commission conducted training on the Guidelines and their instructions with AP&P, the Judiciary, and the Legislature.

## Jail as a Condition of Felony Probation

In 2009, the Sentencing Commission undertook the project of creating sentencing guidelines for the use of jail as a condition of felony probation. The Commission completed a study of the use of jail in conjunction with felony probation, and with the input of other agencies and the counties, created a set of guidelines to be used together with the Adult Sentencing and Release guidelines in sentencing felony

offenders to jail as a condition of their probation.

The research of the Commission estimated that, in 2009, jail time was served in 63% of felony probation cases across the state, but that the number of jail sentences and the length of jail sentences varied greatly by county. (This figure does not include cases where the offender was sentenced to prison.) The new guidelines are intended to increase consistency across the state in the sentencing of similarly situated offenders for similar offenses.

The Commission is in the process of finalizing these guidelines and plans to implement them in April of 2010.

### **Evidence Based Sentencing**

In 2009, the Commission joined with the Board of District Judges in an effort to more effectively use evidence based practices in all areas of our sentencing system. Judge Paul Maughn, a member of the Commission, has spearheaded this effort to integrate evidence based practices into all levels of Utah's sentencing system in an effort to reduce recidivism, increase public safety, and use resources and funding in the most effective way possible.

This joint subcommittee of the Commission and the Board of District Court Judges, has created a strategic action plan that it has begun to implement with the cooperation of Adult Probation and Parole and other agencies. The implementation of this plan will be an ongoing process and priority for the Commission.

### **Initiatives and Studies**

In accordance with the Commission's responsibility to provide meaningful recommendations to the other branches of government, the Commission has several initiatives and committees that are able to focus on and study specific areas of sentencing and the criminal justice system. In 2009, in addition to those specific initiatives and committees, the Commission partnered with several other policy groups on specific projects.

#### **Juveniles Charged as Adults**

The Juvenile Justice Subcommittee of the Sentencing Commission began the project of studying and evaluating the Serious Youth Offender statute and other statutes that charge juveniles in District Court as adults. With the cooperation of the Courts and Juvenile Justice Services, the committee is studying these statutes, the sentences in cases where juveniles are charged as adults, and other related issues.

This subcommittee is also reviewing the Juvenile Sentencing Guidelines.

Both of these projects will continue 2010.

#### **Juvenile Competency**

The Sentencing Commission also adopted a committee that has been studying the issue of mental competency in Juvenile Court cases. This committee is in the process of developing best practice models for the evaluation of competency in juvenile delinquency cases, and plans to

conduct training on those practices in 2010.

#### **Scheduling of Controlled Substances**

In an effort to provide a formal and consistent method for scheduling controlled substances in Utah, the Sentencing Commission participated in the Controlled Substances Scheduling Work Group facilitated by the Utah Substance Abuse and Anti-Violence Coordinating Council. Because penalties for controlled substances violations are tied to the substance's listed schedule, this new process will provide a mechanism for Utah's Legislature to schedule substances in a more credible and deliberate manner. Rep. Paul Ray will sponsor legislation to implement this process during the 2010 legislative session.

#### **Domestic Violence Guidelines**

The Commission had the opportunity to continue its work with the Utah Office on Domestic and Sexual Violence in creating guidelines for use in domestic violence sentencing. The committee is working with the Utah Criminal Justice Center to determine the most effective sentencing practices in domestic violence cases and plans to complete the new guidelines early in 2010.

#### **Mental Health Initiative**

The Sentencing Commission's Mental Health Initiative was created to address the issues faced by the criminal justice system when individuals with mental health issues become involved in the criminal justice system. The initiative has been successful in expanding the

number of Mental Health Courts in the state, and continued that effort in 2010 in Washington County.

The Initiative has also focused on increasing the number of Crisis Intervention Team (CIT) trained law enforcement officers in the state. These specially-trained, certified officers are called to respond to and deescalate highly emotional, dangerous situations involving individuals with mental illness. As a result of Initiative member Detective Ron Bruno's efforts, the state has made significant progress in this area and currently has nearly 1,000 officers with this specialized training.

In 2009, the Initiative began an evaluation of the criminal justice related mental health services available in each county in the state. The evaluation is in its final stages and will be completed in early 2010.

### Changes in Commission Leadership

The membership of the Sentencing Commission saw many changes in 2009. Most significantly, the Commission said goodbye to its Chair, former State Senator Kay S. Cornaby. Kay was appointed to the Commission by Governor Leavitt in 2002, and has served as the Chair of the Commission since that time. Kay brought a wealth of knowledge, experience, and perspective to the Commission and led the Commission through many difficult and significant issues. The Commission wishes to thank Kay for his contribution to both the Commission and the State of Utah-- will miss his sense of humor, experience, and leadership.

The Commission welcomed, as its new Chair, former state Senator Carlene Walker. During her time in the Utah State Legislature, Carlene championed many important criminal justice policy issues. She brings a new perspective to the Commission, and we look forward to her leadership

## COMMISSION MEMBERSHIP

Carlene Walker, Chair  
*Citizen Representative*

Patrick Anderson  
*Director, Salt Lake Legal Defenders*

Paul Boyden  
*Executive Director, Statewide Association of Prosecutors*

David Brickey  
*Juvenile Prosecutor*

Judge Terry Christiansen  
*District Court Judge*

Scott Daniels  
*Utah State Bar*

Rep. Lorie Fowlke  
*Utah House of Representatives*

Curt Garner  
*Chair, Board of Pardons and Parole*

Marlene Gonzalez  
*Ethnic Representative*

Ron Gordon  
*Executive Director, Commission on Criminal and Juvenile Justice*

Senator Jon Greiner  
*Utah State Senate*

Judge Kimberly Hornak  
*Juvenile Court Judge*

Randy Kester  
*Utah State Bar*

Dan Maldonado  
*Director, Juvenile Justice Services*

Jim Marchel  
*Juvenile Treatment*

Judge Paul Maughan  
*District Court Judge*

Senator Scott McCoy  
*Utah State Senate*

Judge Gregory K. Orme  
*Utah Court of Appeals*

Tom Patterson  
*Executive Director, Department of Corrections*

Kathy Reimherr  
*Adult Treatment*

Chief Ed Rhoades  
*Utah Chiefs of Police Association*

Rep. Jennifer Seelig  
*Utah House of Representatives*

Sheriff Brad Slater  
*Utah Sheriffs Association*

Sy Snarr  
*Victims' Representative*

Doyle Talbot  
*Youth Parole Authority*

Kirk Torgensen  
*Attorney General's Office*

Judge Stephen Van Dyke  
*Juvenile Court Judge*