



Utah Sentencing Commission

2014

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 Commission promotes policies that punish the offender, protect and compensate the victims and society, and reduce the likelihood of future criminal conduct through the use of appropriate and evidence-based rehabilitation and incapacitation.

2014 Adult Sentencing and Release Guidelines

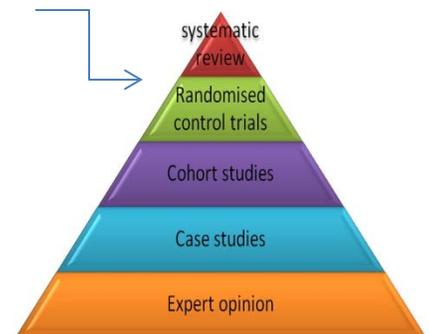
The 2014 Adult Sentencing and Release Guidelines were updated to specifically include the statutory purposes of the Sentencing Commission listed in §63M-7-404, now located on page 1.

In addition, the *Action Research Approach* subheading beginning on page 2 was amended to include the definition of “evidence-based practices” in the sentencing context. The additional language added on page 3 states that,

“Research on reducing offender recidivism has highlighted the need to incorporate evidence-based practices into sentencing policies and practices. Evidence-based practices are those practices that have been empirically shown to improve offender outcomes and reduce recidivism through an emphasis on meta-analysis research, control of confounding variables, and cross-site replication of results.”

This addition signifies the commitment of the Commission to move beyond the mere use of the label of “evidence-based practices” and to establish a meaningful standard. Programs, policies, and practices that have been subjected to rigorous testing and analysis and therefore contain the highest degree of confidence are considered “evidence-based.” The following diagram has been used for illustrative purposes to clarify

that expert opinion, case studies, and cohort studies, while potentially promising, do not constitute evidence-based practices. A minimum of two or more randomized controlled trials or a systematic review (also known as a “meta-analysis”) constitutes evidence-based practices.



The Commission also amended the language under the *Presentence Investigations* subheading on page 3 to specify that a validated criminogenic risk and needs assessment should be conducted in all felony convictions and class A misdemeanor sex offense convictions prior to sentencing. The Commission intended to emphasize the importance of the presentence investigation process, including the administration of validated tools, as central to “diagnosing” the criminogenic risk and needs of offenders. Subverting this diagnostic process subverts the

basic tenets of evidence-based practices and potentially increases the risk to public safety by failing to appropriately tailor supervision and treatment orders to offenders.

The Commission has received public comment regarding the decision factors utilized by the Board of Pardons in determining length of stay. The *Board of Pardons and Parole* subheading on page 3 was updated to include a link to the website of the Board of Pardons and Parole which contains the general rationale for Board decisions. Additional discussion of this issue occurred during the Justice Reinvestment Initiative meetings with the Commission on Criminal and Juvenile Justice, and included a Sentencing Commission tour of the Utah State Prison as well as observation of the Board of Pardons Hearings.

The Commission also reviewed and updated the Guideline's Crime Column Severity Listing (Addendum A) and Crime Categories (Addendum B), by adding all newly enacted offenses. The 2014 Adult Sentencing and Release Guidelines, with the above changes, can be found on the Commission's website at www.sentencing.utah.gov.

CCJJ Justice Reinvestment Initiative

In 2014, several members and staff of the Sentencing Commission devoted a significant amount of time in coordination with the Commission on Criminal and Juvenile Justice ("CCJJ") developing a comprehensive set of recommendations intended to address significant reforms to the criminal justice system as a whole. Three subcommittees within CCJJ were formed and developed the inter-related policies in areas of *Sentencing, Release, and Supervision and Programming*. The entire set of recommendations is contained in the Justice

Reinvestment Initiative Report ("JRI") on the CCJJ website located at www.justice.utah.gov.

Carlene Walker, Chair of the Sentencing Commission, chaired the *Sentencing Subcommittee* of CCJJ. Rollin Cook, Director of the Department of Corrections and member of the Sentencing Commission, chaired the *Supervision and Programming Subcommittee* of CCJJ. The Honorable Fourth District Court Judge Thomas Low also participated in the *Sentencing Subcommittee*, as well as Utah Sheriff's Association President Jim Tracy, who was recently appointed to the Sentencing Commission. Several additional members and staff of the Sentencing Commission also attended the meetings and provided input.

The JRI recommendations include significant impacts and directives to the Sentencing Commission for 2015. Impacts include reductions in Guideline ranges as well as a narrowing of the calculation of criminal history factors. Double-counted criminal history factors were removed, as were those which are not evidence-based.

Specific directives include the Sentencing Commission conducting a full review of all standard conditions of probation and parole as to whether they are evidence-based. Directives also include authorization for the Sentencing Commission to develop and for AP&P to implement the Incentives and Response Matrix, which has been in development by the AP&P Matrix Subcommittee of the Sentencing Commission since the September 2013 Legislative Audit of AP&P. A full PowerPoint presentation on the current status of the Incentives and Response Matrix is available upon request, which incorporates the specific recommendations from the JRI Report, as well as the recommendations from the University of Utah Criminal Justice

Center, contained in their June 2014 Report, which can be located at www.ucjc.utah.edu/adult-offenders/incentiveresponsematrixyear1.

A unique cooperative venture piloting the implementation of the Incentives and Response Matrix by AP&P will begin at the conclusion of the legislative session in the Second District. Collaboration with multiple agencies is ongoing and will be a continual developmental process incorporating evidence-based practices with the programs, policies, and responses available in the Second District. The Sentencing Commission extends its sincere appreciation for the support, cooperation and responsiveness of the Second District Courts, County Jails, AP&P, and the University of Utah in the ongoing development of what will be a state-wide, evidence-based model for responding to technical violations of probation and parole.

Community-based agencies, organizations and/or individuals wishing to contribute suggestions for meaningful incentives and/or non-incarcerative responses to be included in the matrix should contact jvalencia@utah.gov.

Juvenile Subcommittee

The Juvenile Subcommittee of the Sentencing Commission undertook the significant task of revising the Juvenile Sentencing Guidelines, last published in 2004. The Juvenile Subcommittee identified three major areas in need of revision: updating the prefatory language; utilizing aggravating and mitigating factors in an evidence-based manner in the matrix; and sex offenses specifically.

The Sentencing Commission has approved for publication what will now be termed the 2015 Juvenile Disposition Guidelines. They include substantial and significant amendments to the prefatory

language. The objectives for the revisions to the prefatory language were: to more accurately reflect dispositions in the Juvenile Court; to update statutory references; to incorporate evidence-based practices which have developed within the Juvenile Court and Juvenile Justice Services over the past decade; to provide greater transparency regarding jurisdiction in Juvenile and District Court as well as any transfers; and to distinguish the statutory purpose and philosophy of Juvenile Court.

Work groups in coordination with Juvenile Justice Services and the Administrative Office of the Courts are ongoing regarding revisions to the matrix itself and to sex offenses. It is anticipated that further amendment of the Guidelines will result therefrom. The 2015 Juvenile Disposition Guidelines will be updated on the Commission's website at www.sentencing.utah.gov and can be provided upon request.

Justice Courts Subcommittee

The Justice Courts Subcommittee of the Sentencing Commission continued its discussions seeking to establish state-wide accreditation standards for all treatment professionals providing treatment to offenders in relation to a court-imposed sentencing order. The CCJJ *Supervision and Programming Subcommittee* addressed several shared concerns in formulating specific proposals which have been incorporated into the JRI Report.

The Justice Courts Subcommittee also continued ongoing discussion regarding formats and competing concerns in the development of a best practices resource book. Subsequent to the CCJJ JRI meetings and recommendations, the Justice Courts Subcommittee, as well as the full Sentencing Commission, voted to move forward with the development of

what will be termed Utah Misdemeanor Sentencing Guidelines. They are intended to balance ongoing concerns regarding proportionality, equity, and the incorporation of evidence-based practices with the ability of cities and counties to most appropriately self-manage.

2015 Recommendations

As a result of the work of the Commission's various subcommittees, the Commission is recommending several pieces of legislation for consideration during the 2015 legislative session.

Justice Reinvestment Initiative

The Sentencing Commission supports the comprehensive set of criminal justice reforms proposed by CCJJ known as the Justice Reinvestment Initiative. The Sentencing Commission has collectively discussed the incorporation of evidence-based practices into sentencing for nearly a decade. This legislation presents the single greatest opportunity in Utah history, not only to advance evidence-based practices, but to increase public safety through reduced recidivism, to provide greater transparency, accountability, and ultimately to increase public confidence in our criminal justice system as a whole.

Assault Re-Categorization

Senator Thatcher is sponsoring proposed legislation from the Sentencing Commission which re-categorizes the underlying elements of assault in the assault, aggravated assault, and threat of violence statutes (§§76-5-102, -103, and -107 respectively). The placement of threats in the threat of violence statute should serve to more appropriately categorize the underlying criminal behavior, as well as to ameliorate any inaccuracies in BCI reporting of assault offenses.

Sex Offender Registry Anomalies

Representative Jack Draxler is sponsoring legislation endorsed by the Sentencing Commission to address a number of anomalies brought to light through AP&P's administration of the Registry. The amendments should provide greater transparency, clarity and consistency in its administration.

Domestic Violence Pleading and Sentencing

The Sentencing Commission is also supporting legislation by Senator Weiler to conform pleading and sentencing for domestic violence cases to best practices. The same standard which currently exists in DUI cases, wherein a prosecutor must review the criminal record of the defendant and agree in court or in writing to any plea of guilty or no contest, would also apply to a qualifying domestic violence offense under 77-36-1(4).

2014 Penalty and Sentencing Policy Changes

Each year the Sentencing Commission tracks changes to sentencing policy, the creation of new crimes, and changes to existing penalties. During the 2014 session, the Utah Legislature created 4 new third degree felonies and 13 new misdemeanors: 5 Class A's, 7 Class B's, and 1 Class C. 5 new fines or fees were added. 1 first degree felony, 2 third degree felonies, 1 Class A and 2 Class B misdemeanors were repealed. 1 fine or fee was reduced.

A brief summary of these changes is displayed in the table on the following page. A report summarizing all of the 2014 sentencing related legislation is available on the Commission's website at www.sentencing.utah.gov.

| 2014 Totals * | | | | | | | | | |
|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-----------------|--------------------|--|--|
| New 1 st Degree Felonies | New 2 nd Degree Felonies | New 3 rd Degree Felonies | New Class A Misdemeanors | New Class B Misdemeanors | New Class C Misdemeanors | New Infractions | New Fines or Fees | Anticipated Prison Admissions per year | Anticipated Fiscal Impact ^a |
| 1 removed | | 4 new 2 removed | 5 new 1 removed | 7 new 2 removed | 1 new | | 5 new 1 reduced | | \$105,600 |
| 2013 Totals | | | | | | | | | |
| 3 | 10 | 4 | 2 | 11 | 1 | | | 7.3 | \$6,663,850 |
| 2012 Totals | | | | | | | | | |
| 1 | 12 | 16 | 13 | 26 | 6 | 1 | 4 | | \$1,780,400 |
| 2011 Totals | | | | | | | | | |
| | 10 | 4 | 2 | 11 | 1 | | | 7.3 | \$6,663,850 |
| 2010 Totals | | | | | | | | | |
| 1 | 3 | 4 | 6 | 14 | 4 | | 4 | | \$918,00 |

* New crime totals include penalties increased or decreased from a previously existing penalty. The anticipated fiscal impact predicts costs to state agencies in only the fiscal year indicated and does not include ongoing costs or the costs to county or local governments.

2014 SENTENCING COMMISSION MEMBERSHIP

Carlene Walker, Chair
Citizen Representative

Judge Vernice Trease
District Court Judge

Patrick Anderson
Director, Salt Lake Legal Defenders

Paul Boyden
Executive Director, Statewide Association of Prosecutors

David Brickey
Juvenile Prosecutor

Chris Roach
Deputy Director, Juvenile Justice Services

Judge Janice Frost
Juvenile Court Judge

Jesse Gallegos
Board of Pardons and Parole

Rep. Richard Greenwood
Utah House of Representatives

Shima Baradaran
Ethnic Representative

Ron Gordon
Executive Director, Commission on Criminal and Juvenile Justice

Judge Thomas Low
District Court Judge

Rich Mauro
Defense Attorney, Utah State Bar

Senator Gene Davis
Utah State Senate

Pamela Vickrey
Juvenile Defense Attorney, Utah State Bar

Judge Scott Johansen
Juvenile Court Judge

Judge Gregory K. Orme
Utah Court of Appeals

Rollin Cook
Executive Director, Department of Corrections

Darin Carver
Adult Treatment

Christina Zidow
Juvenile Treatment

Chief Craig S. Black
Utah Chiefs of Police Association

Rep. Jennifer Seelig
Utah House of Representatives

Rachelle Hill
Victims' Representative

Al Emery
Youth Parole Authority

Senator Daniel Thatcher
Utah State Senate

Craig Barlow
Attorney General's Office

Sheriff Jim Winder
Utah Sheriff's Association