

SENTENCING COMMISSION

MINUTES

Committee:	SENTENCING COMMISSION MEETING
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Date:	Wednesday, Sept. 7, 2005	Time:	12:00pm- 2:00pm	Place:	State Capitol Complex East Wing, Beehive Room
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Members Present	Paul Boyden, Michele Christiansen, K.S. Cornaby, Scott Daniels, Marlene Gonzalez, John Hill, Rep. Eric Hutchings, Dave Loden for Dan Maldonado, Jim Marchel, Brian Namba, Judge Gregory K. Orme, Mike Sibbett, Sy Snarr
Members Excused	Sheriff Phil Barney, Rep. Duane Bordeaux, Senator Gregory Bell, Judge Jeffrey Burbank, Scott Carver, Judge Terry Christiansen, Calvin Clegg, Senator Mike Dmitrich, Judge Kimberly Hornak, Randy Kester, Judge Paul Maughan, Kathy Reimherr, Chief Ed Rhoades, Kirk Torgenson
Staff	Jo Lynn Kruse, Tom Patterson

Visitors	Cliff Butter, Chris Mitchell, Mr. Eraldo Soares
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Agenda Item:	Welcome and Approval of Minutes
Notes:	Kay Cornaby welcomed everyone and called the meeting to order. Scott Daniels made the motion to approve the July minutes. Brian Namba seconded the motion and it passed unanimously .

Agenda Item:	Raising Minimum on Murder? - Paul Boyden
Notes:	After the last meeting, Speaker Curtis spoke with Paul Boyden, stating that he anticipated sponsoring a bill to raise the minimum on murder from 5 to 15 years. The felony murder rule states that if someone commits a violent felony and if someone dies during the commission of the felony, it is murder. See 76-10-508(2). On line 54 of 5-205.5 of the bill it says: <u>Murder is a first degree felony. A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than fifteen years and which may be for life.</u> There is a very important reason for raising the minimum to 15 years, and that is so that victims of crime and the public in general don't just hear that the perpetrator could be out in 5 years or 6 years with a weapon enhancement. The way the law is currently written, it is not descriptive of what is going on in the system, i.e. the Lori Hacking case. The Board of Pardons determined Mark Hacking would have to wait 30 years for an initial parole hearing.

	<p>Another section in Speaker Curtis’ bill (76-3-406.5) reads: Aggravating factors in imprisonment for certain criminal homicide cases. (1) As used in this section, “position of trust” includes, but is not limited to, a spouse, parent or cohabitant. (2) It is an aggravating factor that the person occupied a position of trust in relation to the victim.</p> <p>Mr. Eraldo Soares, father of Lori Hacking, spoke to the commission in support of House Speaker Greg Curtis’ sponsorship for a bill to codify the proposal. Mr. Soares expressed his devastation upon learning that Hacking faced a minimum of just six years – five for the murder and one for using a firearm. He and the citizens of Utah felt insulted and were furious about this five-to-life. Even after learning that most Utah murderers never leave prison, Soares stated that he still worries about Hacking’s powers of deception on the parole board. Mr. Soares feels the best way he can thank Utah for all their support is to hopefully save someone else from the fate his daughter suffered.</p> <p>Kay Cornaby recommended that while we have some points to discuss on the position of trust issue, changing the 5 year minimum to 15 should be ready for a vote. Sy Snarr made the motion to change the minimum on murder from 5 years to 15 years. Paul Boyden seconded the motion and it passed with one vote to the contrary.</p>
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Agenda Item:	Sex Offender Registry
Notes:	<p>Lewdness involving a child appears on the sex offender registry and is a Class A misdemeanor. Following that is a voyeurism offense which is not presently classified as a sex offense. Tom asked the commission if voyeurism should be included as a sex offense, and if so, should it also be added to the sex offender registry. Lengthy discussion ensued. It was noted that as presently constituted, voyeurism does not include an element of sexual intent. It was concluded that its scope exceeded that of a sex offense. Brian Namba noted that adding an element of sexual intent would make prosecuting considerably more difficult. Mike Sibbett stated that putting it on the sex offense registry would not protect society any more than they are now. Brian Namba made the motion not to include voyeurism as a sex offense. Paul Boyden seconded the motion and it passed unanimously. Representative Hutchings stated that we need to look at the issue again in the future.</p> <p>Tom then asked the commission to review item Q on the sex offender registry, lewdness involving a child, but is not listed in sex offenses. Should it be moved out of the miscellaneous category and moved to a more logical place (sex offenses) in the code? Judge Orme made the motion to have the anomalies committee discuss this issue. Mike Sibbett seconded the motion and it passed unanimously.</p>

Agenda Item:	Anomalies Committee Status Report
Notes:	The committee will meet with Representative Harper on enhancement issues. The interim committee asked the sentencing commission to look at enhancements overall and it's been decided that the anomalies committee will address the subject. The committee suggests that we first focus on drug enhancements and move on from there.

Agenda Item:	Other
Notes:	Judge Orme gave a follow up note on criminal court-ordered restitution and bankruptcy. Judge Bruce Jenkins reversed the defendant's appeal to have restitution owed dischargeable by bankruptcy. Now, pending additional appeal rights, restitution orders are not dischargeable by bankruptcy.

The next meeting is scheduled for Wednesday, October 5, 2005, East Office Bldg. Beehive Room
Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ