

SENTENCING COMMISSION

MINUTES

Committee:	SENTENCING COMMISSION ANNUAL MEETING
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Date:	Wednesday, April 11, 2007	Time:	9:00am – 3:00 pm	Place:	Utah Law & Justice Center
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Members Present	Paul Boyden, David Brickey, Judge Jeffrey Burbank, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Senator Mike Dmitrich , Senator Jon Greiner, Curt Garner for Keith Hamilton, John Hill, Judge Kimberly Hornak, Rep. Eric Hutchings, Randy Kester , Gaby Anderson for Dan Maldonado, Jim Marchel, Judge Paul Maughan, Judge Gregory Orme, Tom Patterson, Kathy Reimherr, Chief Ed Rhoades, Sheriff Brad Slater, Sy Snarr, Kirk Torgensen, Robert Yeates
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Members Absent	Rep. Carl Duckworth, Marlene Gonzalez, Kathy Peterson
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Staff and Visitors	Staff: Scott Carver, Mary Lou Emerson, Jo Lynn Kruse, Chris Mitchell Visitors: Senator Greg Bell, Cliff Butter, Mike Haddon, Dr. Moises Prospero, Adria Swindle from Utah Criminal Defense Attorneys, Russ Van Vleet
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Agenda Item:	Welcome and Approval of Minutes
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Notes:	Kay Cornaby called the meeting to order and welcomed new members Senator Jon Greiner (replaces Senator Bell) and Sheriff Brad Slater (replaces Sheriff Barney). Robert Yeates is now the executive director of CCJJ, Scott Carver is the director of the sentencing commission and Tom Patterson is the executive director of the Department of Corrections. Judge Maughan and Judge Orme have been re-appointed to the sentencing commission. Paul Boyden made the motion to approve the January minutes. Tom Patterson seconded the motion and it passed unanimously .
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Agenda Item:	2007 Legislative Session Update
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Notes:	<p>Scott led discussion regarding legislation that specifically deals with sentencing issues and tracking new penalties. Starting this year a running total will be kept on enhancements, decreases that may occur, any new crimes created during the legislative session, prison admits and fiscal impact. Scott has asked the UCJC at the University of Utah to conduct research on sentence inflation going back twenty years. UCJC will look at DUI, sex offense laws and others. Sentencing enhancements effect prison population by causing spikes years down the road.</p> <p>HB0086S03 – Penalties for Sexual Offenses and Kidnapping Was intended to be a “Jessica’s Law” for Utah and increases the penalties for child sex offenses. This bill defines “Grievous Sexual Offense” which did not exist in statute previously and now creates enhanced penalties. If the offense involves serious bodily injury or there is a prior conviction for any of the offenses in the statute, the sentence changes to life without parole.</p> <p>HB0093 – Capital Offenses Amendments Creates a new capital felony. If a person commits child abuse and in the commission of that the child dies, the case can be prosecuted as a capital offense.</p> <p>SB0114 – Aggravated Murder Amendments 76-5-202 Provides that aggravated murder is a capital felony if the prosecutor elects to file notice of intent to seek the death penalty within 60 days after the arraignment. Provides that the court</p>
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	<p>may not receive a plea to a non-capital first degree aggravated homicide offense during the filing period unless agreed to by the prosecution. Provides that if the prosecutor does not file notice of intent to seek the death penalty, the offense is non-capital first degree felony aggravated homicide. 76-3-207.7 Provided that a person who has been convicted of or has pled to a non-capital aggravated homicide offense: (1) shall be sentenced by the court; and (2) shall be sentenced to life in prison without parole or an indeterminate term of 20 years to life. 78-46-5 Clarifies that a trial jury for a non-capital first degree felony aggravated murder case consists of eight members rather than twelve.</p>
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Agenda Item:	Sentencing Changes and Enhancements
Notes:	Representative Hutchings distributed a handout that shows how changes in law directly effect prison population growth. Scott noted that UCJC at the University of Utah will be conducting a study on where enhancements have occurred over the years.

Agenda Item:	Penalty Distributions for Selected Crimes
Notes:	The sentencing commission has begun a pilot project of compiling <u>Penalty Distributions for Selected Crimes</u> . The document will serve as an educational tool and desk reference for members of the legislature. Please contact Scott should others be included or may benefit from this document. When complete, it will be posted on our website

Agenda Item:	Adult Sentencing and Release Guidelines Update
Notes:	The guideline needs to be updated each year after the legislative session. Scott has updated it with the latest changes. Please review and contact Scott regarding any anomalies or additional information by April 23. Completion is due by April 30. Sheriff Slater asked Scott to email the document to the commission.

Agenda Item	Cunningham vs. California – Kirk Torgensen
Notes:	<p>John Cunningham, who was given the maximum sentence by a Contra Costa County judge in 2003, is challenging a system that allows a judge to add years to a prison term based on facts that never came before a jury.</p> <p>The Supreme Court ruled in 2004 that sentencing laws in the state of Washington violated a defendant’s right to a jury trial because they allowed judges to increase sentences beyond the term prescribed by the jury’s verdict. A similar ruling in Cunningham’s case would require California courts to reconsider thousands of cases and force the state to change its law, a step that several other states have taken since the 2004 ruling.</p> <p>What’s good for Utah is that if this were done on our indeterminate sentencing scheme, it would be a moot point and wouldn’t have created this dilemma. Indeterminate sentencing is getting more discussion recently. This case should have no impact on Utah’s sentencing system because it is indeterminate.</p>

Agenda Item	Adam Walsh Update – Mike Haddon
Notes:	The FBI conducted an audit of our Sex Offender Registry file and made suggestions. Our state has decided to wait to enact legislation until we see what the Federal government ends up with. If Utah does not come into compliance we will suffer funding losses. Most other states will pass legislation and that would make Utah more attractive for offenders to re-locate here. Our proposal will be to draft the legislation with Representative Paul Ray’s help and put together most of the requirements into a bill for the 2008 legislative session. Mike explained the tier level assessments that identify high, medium and low risk offenders and that Utah needs to adopt the federal tiered approach. Tier I are

	<p>misdemeanor offenses. Anything that's not a tier II or tier III is a tier I.</p> <p>Our area of biggest concern is the impact that the Adam Walsh act will have on the juvenile system. Addressing the juvenile side of the law legislatively has been put off till next year because the issue is so large.</p> <p>In addition to youth transferred into the criminal justice system, certain juveniles adjudicated delinquent in juvenile court will be included on the state and national sex offender registries including those who are "14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense." Failure to register will be punished at a felony level.</p>
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Agenda Item	Recognition of Departing Members
Notes:	During lunch break, Senator Bell was recognized for his service on the Sentencing Commission from 2002 – 2006. Sheriff Phil Barney, unable to attend, was also recognized for his service from 2002 – 2007.

Agenda Item	UCJC Probation Study – Dr. Prospero
Notes:	<p>A report from the Utah DOC revealed that jail as a condition of felony probation (JCFP) sentencing has increased by 59% from 1997 to 2006. Inappropriate use of JCFP increases financial cost, injustice and public safety. The problem lies in the amount of days that courts have sentenced felons to JCFP varies dramatically throughout the state.</p> <p>Determining the optimal amount of time to be served is important and to implement that uniformly state wide. Cliff Butter, Dr. Prospero and Chris Mitchell will get together and analyze the data.</p>

Agenda Item	Prison Growth – Cliff Butter
Notes:	<p>The average daily incarcerated population from February 1991 to February 2007 grew from 2,716 to 6,451. There is a downward spike in 2001 from early releases. Prison population is growing about 252 offenders per year. When comparing Utah incarceration rates to total U.S. Western States, Utah has the lowest incarceration rates. Cliff displayed charts showing prison admissions and releases, percentages of offenses by degree and percentages of offenses by admits to prison versus probation from 1988 to 2006.</p>

Agenda Item	DORA Update – Mary Lou Emerson
Notes:	<p>Senate Bill 50, sponsored by Senator Chris Buttars passed this past legislative session will go into effect July 1st and allow us to expand the Drug Offender Reform Act statewide. A pilot project in the 3rd Judicial District, Salt Lake County, has been underway the last year and a half. Data will be available in another year and a half, which is anticipated to show a positive impact.</p> <p>The purpose of DORA is to change the way that Utah deals with offenders that have a drug problem. The goal is to reduce substance abuse and crime and reduce the burden on the prison system, freeing prison beds for the most serious offenders and making our community safer.</p> <p>Utah's prison system is at capacity and the inmate population continues to grow. The "war on drugs" is among the factors leading to the growth in the inmate population. Drug problems drive criminal behavior. The frequency and severity of offending escalates as drug use increases. DORA funding provides for the early identification of offenders with</p>

	<p>drug problems. SB 50 provides the monies appropriated by the Legislature for the funding of the screening, assessment and substance abuse treatment provided are not subject to any requirement regarding matching funds from a state or local government entity. Mary Lou then discussed the role of the USAAV Coordinating Council, the role of Local Substance Abuse Authorities, the Department of Corrections, the Courts and the Board of Pardons and Parole.</p>
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Agenda Item	Wrap up, Calendar Future Meetings
Notes:	<p>A new DUI Sentencing Handbook has been put together by Brent Berkley and will be available on the Sentencing Commission website.</p> <p>Future topics of discussion: How can we be more effective during the Legislative session? Form a legislative sub-committee Mode of execution Review statutory duty to get restitution for identity theft victims PSI evaluation Jail as a condition of probation Work group to study a Jessica's Law for Utah (Paul Boyden, Kirk Torgensen, Sy Snarr, Scott Carver, Bob Yeates)</p> <p>Future meeting dates are: June 6, August 1, September 5 and November 7.</p>

The next meeting is scheduled for Wednesday, June 6, 2007 at noon, Utah State Capitol Complex, East Office Bldg. Beehive Room

Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ