

SENTENCING COMMISSION MINUTES

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| Committee | Utah Sentencing Commission |
| Date | Wednesday, November 7, 2007 |
| Time | Noon – 2:00 p.m. |
| Location | State Capitol Complex, Beehive Room |
| Members Present | Judge Jeffrey Burbank, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Senator Mike Dmitrich, Senator Jon Greiner, Judge Kimberly Hornak, Dan Maldonado, Jim Marchel, Judge Paul Maughan, Judge Gregory K. Orme, Robyn Williams for Tom Patterson, Kathy Reimherr, Kirk Torgensen, Bob Yeates |
| Members Excused | Paul Boyden, David Brickey, Representative Carl Duckworth, Curt Garner, Marlene Gonzalez, John Hill, Representative Eric Hutchings, Randy Kester, Chief Ed Rhoades, Sheriff Brad Slater, Sy Snarr, Doyle Talbot |
| Staff | Scott Carver, Mary Lou Emerson, Jo Lynn Kruse, Chris Mitchell, Ben Peterson |
| Visitors | Gaby Anderson, Susan Burke, Cliff Butter, Senator Allen M. Christensen, Rob Layton, Adria Swindle, Mike Tanana, Russ Van Vleet, Ray Wahl, Sarah Wilson, Representative Carl Wimmer |
| Agenda Item | Welcome and Approval of Minutes |
| Notes | Kay Cornaby called the meeting to order and welcomed everyone. Judge Christiansen made the motion to approve the minutes from the September meeting. Senator Greiner seconded the motion which passed unanimously . |
| Agenda Item | Sentencing Inflation Study – Russ Van Vleet, Mike Tanana, Sarah Wilson |
| Notes | <p>This is the beginning of a broad request for the Criminal Justice Center (CJC) to study sentencing inflation in general. They are looking at the impact that policy has on sentences. The subject has been narrowed down to three sentence types: drugs, DUI and sex offenders. If this is beneficial we will look at the effect of policy making on length of stay in the prison system and the inmate population in general. Today's report is not a final report. Finding what drives prison population is a complex matter, considering enforcement, public policy, prosecution, offense incidence, statutory changes and parole boards. The report used o-track data, which is highly reliable.</p> <p>Utah DUI:</p> <ul style="list-style-type: none"> ▪ 8,000 to 11,000 DUI Arrests per year ▪ DUI Arrest Counts are relatively constant over the last twenty years ▪ Most of the important statute changes involve felony enhancements for prior offenses <p>Possession/Use of Controlled Substances:</p> <ul style="list-style-type: none"> ▪ About 1000 of the 6500 prisoners in Utah are incarcerated with possession as their most serious offense ▪ In 1986 there were 14 inmates with Possession as their most severe crime ▪ Possession Statutes have not changed very much in that time <p>Mike stated that possession/use cases show large prison population growth without statute changes concurrent with that growth.</p> <p>Sex Offenses:</p> <ul style="list-style-type: none"> ▪ Approximately 1800 of the 6500 inmates in Utah are incarcerated for sex offenses being their most serious offense |

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| | <ul style="list-style-type: none"> ▪ There is a low arrest count per year, a low number of new commitments, yet a high prison population (relative to arrest rate) due to length of stay ▪ The rate of increase in prison population remains steady ▪ A major statute change occurred in 2007 ▪ April 1996 changes in statute reducing minimum prison time ▪ Mandatory minimums do not necessarily have an impact on the prison population ▪ It is possible that increasing the severity of one offense can increase the prison population for a lower offense (through the plea process) <p>Sex offender arrests are broken into two categories, forcible rape (which has remained steady) and “all other” category which has a big upswing.</p> <p>The prison population is increasing relative to the population in Utah. Utah rates are lower than the national average. However, if we had more bed space, that number may be higher. Russ Van Vleet suggested that it could be helpful to study that issue by looking at other states imprisonment and crime rates. Judge Maughan made the motion that CJC study what our incarceration rate would be if we were to have more bed space. Judge Orme seconded the motion which passed unanimously.</p> |
| Agenda Item | Henry’s Law Presentations |
| Notes | <p>Senator Allen Christensen presented before the commission on his draft bill known as Henry’s Law. The Senator feels that having the punishment of a first offense be a felony is out of line in comparison to other potential crimes, so he got involved. He looked at what other states have done and decided to have the punishment be that a second conviction becomes a felony. Senator Christensen’s draft breaks the crime down into three classifications: Neglect, Animal Cruelty, and Animal Torture. Animal torture on a second offense could become a felony. Senator Christensen will work with Senator Davis and we will invite Senator Davis to our next meeting.</p> <p>Mitch Brooks, CCJJ’s legal intern put together a comparison of the 50 states’ criminal code on animal torture which was given to the commission members.</p> |
| Agenda Item | Jessica’s Law Presentation |
| Notes | <p>Representative Wimmer spoke about HB 86 which ran last legislative session. The bill included increased penalties for child sex offenders, changing the four biggest child sex offenses to 15 to Life. At that time, Rep. Wimmer did not realize how detrimental that would be to the current system that we have, i.e. indeterminate sentencing. Paul Boyden worked with Rep. Wimmer and drafted a bill that the Victim Advocates Council approved in concept. As it is written now, the bill offers Utah the most flexibility of any state in the nation and may well become the gold standard in child sex offense sentencing. This bill offers every option possible, while satisfying the public outcry for Jessica’s Law (which is a minimum mandatory sentence). The bill creates a 25 to Life minimum mandatory sentence for rape of a child, object rape of a child, and sodomy on a child. It then creates a law called “attempted”. The attempted sentencing structure will be exactly the same as written in HB 86, 3 – 6 – 10 – 15 to life for an attempt. The bill is drafted and is currently in protected status. Governor Huntsman strongly supports this bill. As written, this bill offers tough penalties and also offers an out if the victim will not testify.</p> |
| Agenda Item | Juvenile Court Presentation |
| Notes | <p>The Sentencing Commission is going to adopt a philosophical statement about juvenile sentencing and have invited Ray Wahl and Susan Burke to speak about Juvenile Court, how the system works and some of the things that have impacted the philosophy. Ray</p> |

cited things that have shaped the Juvenile Justice System: Evidence-based practices (1990's), Balanced and Restorative Justice Approach (1993), The State Fairgrounds Shooting and Special Session in 1995, Sentencing Guidelines adopted (1997), Legislative Audits (1999, 2001), JJS Assessment instruments and skill building with staff (1999 – present) and On-going concerns, money and resources.

The Premise of the Guidelines are:

- To better protect society through earlier intervention and more intensive supervision
- To communicate a general standard
- To preserve judicial discretion and individualized sentencing

There are only two things that are considered in the guidelines approach, and that is delinquency history and the seriousness of the offense, quite different than the adult system. The way that the guidelines fit within the Juvenile Court's philosophy are:

- Juvenile Court believes in the Balanced and Restorative Justice approach (BARJ)
- The Court strives to utilize evidence-based practices to achieve BARJ within the sentencing options identified by the Sentencing Guidelines

Ray discussed what we need to incorporate Evidence-Based Practices, what works and what does not work with high risk youth, and the principles of effective interventions.

Ray's recommendations for the philosophical statement are that the draft needs to include: Focus on the philosophical approach of balanced and restorative justice principles, include evidence based practices/principles of effective intervention, include information on the use of aggravating and mitigating factors, use correct terminology and finally to accurately reflect history of the guidelines.

The next Juvenile Justice Subcommittee meeting will be scheduled. The committee will refine the document and bring back to the Sentencing Commission for approval.

Next Meeting

The meeting schedule for 2008 is as follows: January 2, April 9 (Annual Meeting), June 4, August 6, September 3, and November 5.

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ