

SENTENCING COMMISSION MINUTES

Committee	Utah Sentencing Commission
Date	Wednesday, June 3, 2009
Time	Noon – 1:30 p.m.
Location	Utah State Capitol, Senate Bldg., Spruce Room
Members Present	Patrick Anderson, Paul Boyden, David Brickey, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Rep. Lorie Fowlke, Curt Garner, Marlene Gonzalez, Ron Gordon, Senator Jon Greiner, Judge Kimberly Hornak, Randy Kester, Dan Maldonado, Judge Paul Maughan, Judge Gregory K. Orme, Tom Patterson, Kathy Reimherr, Chief Ed Rhoades, Sy Snarr, Kirk Torgensen, Sheriff James Winder
Members Excused	Representative Jennifer Seelig, Doyle Talbot, Judge Stephen Van Dyke
Staff	Jo Lynn Kruse, Dr. Chris Mitchell, Ben Peterson, Jacey Skinner, David Walsh
Visitors	Cliff Butter, Scott Carver, Brent Gardner, Kent Hart, Reed Richards
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 April meeting. Curt Garner seconded the motion which passed unanimously .
Agenda Item	Changes to Bylaws
Notes	Jacey presented previously discussed changes to Article V, item 2 – Meetings of the Utah Sentencing Commission By-Laws. Previous discussion centered on members being able to vote and participate by phone if unable to physically be at the meeting. The proposed changes are: “...If a Commission member must miss a meeting, <u>the member may vote and participate by means of telephone conference</u> ” and “ <u>If a member elects to participate in a scheduled meeting by telephone conference, the member must notify the director of that intent 48 hours prior to the meeting.</u> ” Any changes to the by-laws must be sent to the Commission fourteen days in advance of a vote. Jacey will send an email with changes to the Commission for review and a vote will be take place at the next meeting.
Agenda Item	Guideline Instructions
Notes	<p>The 2009 legislative session necessitated several changes to the instructions to the sentencing guidelines:</p> <p>Page 4 – Delete the section addressing sentencing judges. This is in response to the removal of the option of a diagnostic evaluation as a sentencing option. Discussion centered on added language that states the option is now gone due to the repeal of §76-3-404 and additional language stating “<i>when the court feels it is necessary to supplement a presentence report with a psychological, psychosexual, or other evaluation, the court may order that it be performed as part of the presentence investigation</i>”. The consensus was to not include the italicized language until a payment option is found The commission decided to add the language “<i>was repealed during the 2009 Utah legislative session due to budgetary restraints</i>” to clarify that the only reason the evaluations were eliminated was due to budget shortfalls. Then, at some future date, go before the legislature to seek re-funding. Tom Patterson will put together a one page document with statistics that demonstrate the need for funding these evaluations and the effects of the repeal of §76-3-404.</p> <p>Page 5 – Delete the word “all” from the following sentence: “<i>Except for consecutive and concurrent enhancements, all-statutory sentencing enhancements are not included in the context of these guidelines.</i>”</p>

Page 15 –

Question arose as to how long the language “*There are significant changes*” should remain in the instructions and the consensus was to leave the language as is for a while longer.

Under the heading, **Offenses with Alternative Minimum Sentences**, Representative Fowlke made the **motion** to change the language to read: “*Additionally, if the trier of fact finds that in the course of the commission of the crime the defendant caused serious bodily injury or has been previously convicted of a grievous sexual offense, the court may order a sentence of life without the possibility of parole.*” Randy Kester **seconded** the motion which **passed unanimously**.

Page 16 –

All changes on page 16 are to conform to language that is in the statute. The language will now read: “*However, if the trier of fact finds that during the course of the commission of the crime the defendant caused serious bodily injury to another (not necessarily the victim), ~~they can~~ the court may sentence the defendant to a term of 15 years to life term.*”

The third paragraph was changed to: “*Additionally, if the court finds that it is in the interests of justice and states the reasons for this finding on the record, the court may reduce the sentence to 10 years to life or 6 years to life.*”

Forcible Sexual Abuse - § 76-5-404 was changed to:

“Forcible Sexual Abuse § 76-5-404 remains is a second degree felony with a 1 to 15 year sentence. However, if the trier of fact finds that during the commission of the crime the defendant caused serious bodily injury, the crime is a first degree felony and the court may sentence the defendant to a term of 15 years to life. If it is found that it is in the ~~best interests~~ of justice and the court states the reasons for this finding on the record, the court may reduce the sentence to 10 years to life or 6 years to life.”

Utah's “Jessica’s Law” 25 Years to Life section will be changed as follows: “*If the current conviction is for one or more of the following three sex offenses that qualify as “Jessica’s Law”, the required mandatory sentence is imprisonment of 25 years to life without the possibility of the court suspending or reducing the sentence in consideration of mitigating circumstances.*”

Page 18 –

The sentence beginning “As listed above” was changed to: “*As listed above, several sex offenses as well as attempts and solicitations carry a presumptive sentence of 15 years to life. If the court finds that, based upon mitigating factors, it is in the best interest of justice and states the reasons for this finding on the record, it may sentence a defendant to 10 years to life, 6 years to life, or 3 years to life.*”

Page 24 – Crime Categories

The following crimes were removed from the list because they have been repealed from state code:

17A 2-536- Conflict of interests, drainage districts

17A 2-726- Conflict of interests, Irrigation District Act.

The Code reference for Providing prohibited treatments to change patient’s concept of God was changed from 17a-3-611 to 17-43-308.

Page 26 –

The following crimes were added to the list:

41-6a-401.3- Failure to stop at an accident involving injury

41-6a-401.5- Failure to stop at an accident involving death

Patrick Anderson made the **motion** to categorize both of these crimes as “Other.” Randy Kester **seconded** the motion which **passed with dissenting votes** from Sheriff Winder, Chief Rhoades and Senator Greiner.

Page 27 & 28 -

The following have been repealed:

63-25a-410- Filing a false claim with Crime Victims Reparations

63-56-72- Accepting emolument

63-56-73- Offering emolument

63-95-403- Unlawful benefit from privatization of quasi governmental entity

	<p>Page 29 – The following crimes were added to the list: 76-5-207.5, Automobile homicide involving text messaging or electronic mail. Judge Christiansen made the motion to categorize this crime as “Death.” Randy Kester seconded the motion which passed unanimously.</p> <p>Page 30 – 76-6-523- Obstruction of the leasing of real property for natural resource production, was added and will be categorized as “Other.”</p> <p>Page 34 – The code reference for Possession of firearm, ammunition, or dangerous weapon within a secure area established by the Judicial Council was changed from 78-7-6 to 78A-2-203</p> <p>Page 40 – 76-9-702- Felony Lewdness was added to the list. This statute will be classified as “I.”</p>
Agenda Item	2008 Incarceration Rates
Notes	Cliff Butter gave a presentation on growth and sentencing patterns that is normally given at the annual meeting. The presentation covered the average daily incarcerated population from 1991 to 2009, reported crime rates, felony sentencing, prison admissions and releases, breakdown by crime and degree, and numbers of probationer and parolees.
Agenda Item	Evidence Based Sentencing
Notes	<p>Judge Maughan spoke about Evidence Based Sentencing and handed out an article published by PEW’s Center on the States titled <i>Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs</i>. The article references a comprehensive study by the Washington legislature that showed that greater use of evidence-based practices would reduce Washington’s crime rate by 8 percent while saving taxpayers over \$2 billion in additional prison construction. Reduction in offender recidivism and resulting high crime rates could be achieved through the use of cost-effective evidence-based practices. These practices include:</p> <ol style="list-style-type: none"> 1. Establish Recidivism Reduction as an Explicit Sentencing Goal 2. Provide Sufficient Flexibility to Consider Recidivism Reduction Options 3. Base Sentencing Decisions on Risk/Needs Assessment 4. Require Community Corrections Programs to be Evidence-Based 5. Integrate Services and Sanctions 6. Ensure Courts Know About Available Sentencing Options 7. Train Court Officers on Evidence-Based Practice (EBP) 8. Encourage Swift and Certain Responses to Violations of Probation 9. Use Court Hearings and Incentives to Motivate Offender Behavior Change 10. Promote Effective Collaboration among Criminal Justice Agencies <p>There will be a seminar on this subject in two weeks at the Red Lion. The Sentencing Commission can pay for registration for anyone interested in attending. Judge Maughan thanked CCJJ for grant monies provided for this event. Please contact Jacey if interested.</p>
Agenda Item	Counties’ Jail Reimbursement Committee
	This item is moved to the August meeting.
Next Meeting	The next meeting will be, August 5, 2009.

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ