

UTAH SENTENCING COMMISSION ANNUAL REPORT 2006

SCOTT CARVER, DIRECTOR • (801) 538-1645 • www.sentencing.utah.gov

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 primary purposes of sentencing are to punish the offender, protect and compensate the victim and society, and reduce the likelihood of future crimes by the offender through rehabilitation or incapacitation.

Sentencing Commission Policy Statement Focuses on Public Safety and Victim Interests

During the past year, the Utah Sentencing Commission reviewed and made significant modifications to its policy statement. This is the first major revision to the document since the inception of the Utah Sentencing Commission in 1994. The policy statement outlines the principles and philosophies that guide the Commission in determining and developing sentencing policy for the State of Utah. The primary change to the policy statement is an increased focus on achieving public safety through the State's sentencing policy. Another issue receiving focus is the interests of victims of crime. Victim interests include safety,

restitution, and participation in each stage of the criminal justice process. Continuing focuses of the policy statement include Utah's commitment to individualized sentences, enhanced discretion to Utah's judges, and a preservation of the authority of the Utah Board of Pardons and Parole. The policy statement can be viewed on the Sentencing Commission's website at www.sentencing.utah.gov.

Creation of the Utah Sexual Violence Council

During the past year, Governor Huntsman established the Utah Sexual Violence Council (Council) as a subcommittee of the Commission on Criminal and Juvenile Justice. The Council has a broad focus on eliminating sexual violence by coordinating prevention, law enforcement, prosecution, sentencing, treatment, and registration efforts. Each area of focus is tasked with identifying specific and actionable objectives that will lead to a decrease in sexual violence and its impact in the State of Utah. The Utah Sentencing Commission will serve as the venue for discussion of sexual violence sentencing issues.

Sex Offender Registration Issues

The Director of the Utah Sentencing Commission has served as the Chair of the Registration Subcommittee of the Utah Sexual Violence Council over the past year. The Registration Committee has been active in addressing problems and concerns with Utah's Sex Offender Registry. During

the summer of 2006, President Bush signed into law the Adam Walsh Act. In part, this Act strongly urges each state to adopt its policy for state sex offender registries. The Act divides sex offenders into three tiers based on severity of offense, adjusts the frequency of registration for each tier, and establishes the length of registration of offenders in each tier. Over the next two years, this Committee will be considering the provisions of the Adam Walsh Act.

Position on Indeterminate Sentencing

The Sentencing Commission re-affirmed its commitment to maintain and protect Utah's indeterminate sentencing system. Utah is one of a few states who still have this type of sentencing system. In indeterminate sentencing systems, offenses carry penalties with large ranges. For example, in Utah a third degree felony carries a penalty of zero to five years, a second degree felony carries a penalty of one to 15 years, and first degree felonies carry a penalty of five years to life. Once a judge commits an offender to prison within one of these ranges, the offender is turned over to the authority of the Utah Board of Pardons and Parole who makes release and supervision determinations. Several advantages are gained with this type of system. Among the advantages is its flexibility in the handling of offenders who present unique and individual circumstances, histories, and characteristics. It also allows the Board to review offender's progress in treatment and behavior in the institution in making

release decisions. For these and other reasons, the Utah Sentencing Commission continues to support indeterminate sentencing and critically examines efforts that might erode the benefits of this type of sentencing system.

Mandatory Minimum Sentencing

Another sentencing issue that is under review by the Sentencing Commission is mandatory minimum penalties. Mandatory minimum sentences reduce both the discretion of the courts and the flexibility of the Board of Pardons and Parole. In an indeterminate sentencing system like Utah's, the courts, corrections, and the Board of Pardons and Parole work together in making the decisions on the appropriate length of sentence for each individual offender. In Utah's experience with mandatory minimum sentences, it was found that there were unintended consequences that caused concerns. These included more cases going to trial resulting in vulnerable victims having to testify, reduced ability to manage individual case needs by the courts and the Board of Pardons and Parole, and more plea negotiations to lesser sentences. The Sentencing Commission's position on Indeterminate Sentencing and mandatory minimums can be found on their website at www.sentencing.utah.gov.

Adult Sentencing Guideline Improvements

Modifications were made to the Adult Sentencing and Release Guidelines during 2006. Columns were added to the General Disposition Matrix for second and third degree drug possession offenses. Previously, these offenses were included in the Matrix columns of "2nd Degree Other" and "3rd Degree Other". The rationale, in part, was a desire to follow the philosophy embraced in the Drug Offender Reform Act (DORA). DORA incorporates a mechanism to provide assessment and treatment to those offenders who are addicted to illegal substances, thus addressing the root cause of many of our crime problems. By creating the new columns on the Matrix, more drug offenders are eligible for community based

sentences and a chance at receiving drug treatment without occupying costly prison space.

Changes were also made to the Aggravating and Mitigating Circumstances associated with the sentencing guidelines. These changes were the result of legislation passed during the 2006 General Session. The first clarified that the "offender occupied a position of trust" applies specifically to victims of murder/homicide. The second included an aggravating factor related to hate crimes, as enacted by the Legislature in 2006.

Sentencing Commission Reviews Sentencing Enhancements

Two years ago, the Utah Legislature requested that the Sentencing Commission review sentencing enhancements associated with a variety of crimes in Utah statute. After a comprehensive review of the enhancements, several were identified as prospects for revision or removal. One sentencing enhancement that has a significant impact on Utah's justice system is Drug Free Zones. Currently, drug offenses occurring in one of these zones can be enhanced by one degree (e.g. a third degree felony becomes a second degree felony). After reviewing zones in various cities in Utah, it was found that these zones are expansive, covering 75% to 85% of all livable space in the cities analyzed.

As a result of this finding, the Sentencing Commission is working with Representative Wayne Harper to make adjustments to the Drug Free Zone provisions in order to clearly identify those areas Utah holds sacrosanct – where drug offenses will not be tolerated and reduce unforeseen problems. Representative Harper's legislation proposes to decrease the size of the zones from 1,000 feet to 500 feet and eliminate shopping malls, sports facilities, stadiums, arenas, theaters, and parking lots from the list of protected places. The legislation adds libraries to the list of protected places and allows the enhancement if the crime occurs in the presence of a person younger than 18 years of age. Previously to qualify, the offense had to occur in the "immediate" presence of minors.

Utah Sentencing Commission

Sheriff Phil Barney
Utah Sheriff's Association

Senator Greg Bell
Utah State Senate

Representative Carl W. Duckworth
Utah House of Representatives

Paul Boyden, Executive Director
Statewide Association of Prosecutors

Judge Jeffrey Burbank
Juvenile Court Judge

Judge Terry Christiansen
District Court Judge

Kay Cornaby, Chair
Citizen Representative

Scott Daniels
Utah State Bar

Senator Mike Dmitrich
Utah State Senate

Marlene Gonzolez
Ethnic Representative

Keith Hamilton, Chair
Board of Pardons & Parole

John Hill, Director
Salt Lake Legal Defenders

Judge Kimberly Hornak
Juvenile Court Judge

Representative Eric Hutchings
Utah House of Representatives

Randy Kester
Utah State Bar

Dan Maldonado, Executive Director
Juvenile Justice Services

Jim Marchel
Juvenile Treatment

Judge Paul Maughan
District Court Judge

David Brickey
Juvenile Prosecutor

Judge Gregory Orme
Utah Court of Appeals

Thomas Patterson, Executive Director
Department of Corrections

Kathy Peterson
Youth Parole Authority

Kathy Reimherr
Adult Treatment

Chief Ed Rhoades
Utah Chief's of Police Association

Sy Snarr
Victims' Representative

Kirk Torgenson, Chief Deputy
Attorney General's Office

Robert Yeates, Executive Director
Utah Commission on Criminal & Juvenile Justice