



# Utah Sentencing Commission

# 2008 ANNUAL REPORT

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## 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.

## Legislative Action and Initiatives

During 2008, the Utah Sentencing Commission reviewed and made recommendations on many important bills proposed by the Legislature. Among them were HB 256, Utah's Jessica's Law, which increased the penalties for first degree sexual offenses against children; SB 297, which made animal torture a felony on the first offense; SB 81, which addressed issues raised by illegal immigration; and HB492, Utah's response to the Adam Walsh sex

offender registration and notification statute.

At the conclusion of the 2008 Legislative Session, the Commission provided a report on the impact of new legislation in creating new crimes and increasing or decreasing penalties. A similar report will be compiled after each session to track the changes in sentencing law. The 2008 Session saw new criminal penalties in many crime categories as well as enhancements in many categories.

The Commission will be working on several important bills in the 2009 Legislative Session. Among them are bills to address the problems of cell phone-transmitted pornography among juveniles, gang activity, granting protective orders in cases of dating violence, and adding strangulation to the criteria which move a crime from simple to aggravated assault. The 2009 General Session will also see continued discussion of SB 81, Illegal Immigration, from the 2008 session. This bill has a number of implications for the criminal justice system and any changes to the statute will be tracked.

## Commission Initiatives and Studies

In an effort to improve the Commission's ability to provide meaningful recommendations to the other branches of government, several projects were undertaken in 2008. A working group was developed to coordinate with the Governor's Violence Against Women and Families Cabinet Council on developing a sentencing matrix for domestic violence cases. Another working group has been drafting a philosophical position paper for the juvenile justice system to help guide future policy positions and statements.

A new resource handbook entitled "Penalty Distribution for Select Crimes" was developed to provide legislators, judges, and criminal justice professionals with a tool to assist in comparing criminal penalties among the many criminal offenses. A copy of the handbook may be found on the Commission website.

The Sentencing Commission partnered with the Utah Criminal Justice Center (CJC) on several important research projects last

year. During 2008, the CJC completed studies which analyzed the use of jail incarceration as a condition of probation and sentence inflation in drug, sex, and DUI crimes.

### Indeterminate Sentencing

The Sentencing Commission continued its effort to maintain and protect Utah's indeterminate sentencing system. In indeterminate sentencing systems, offenses carry penalties which specify a range of years rather than a set number of years to be served in prison. Once a judge commits an offender to prison within one of these ranges, the Utah Board of Pardons and Parole (Board) makes the release decision. Among the advantages of indeterminate sentencing is its flexibility in the handling of offenders, allowing the Board to include an offender's progress in treatment and his or her behavior in prison release decisions.

One sentencing policy that endangers Utah's indeterminate sentencing system is mandatory minimum penalties. Mandatory minimum sentences take discretion from the courts and flexibility from the Board of

Pardons and Parole. In their most basic form, an offender convicted of a particular offense is required to receive a prison sentence, and the Board of Pardons and Parole is unable to release the offender until a minimum time requirement is met.

On its face, these sentencing policies appear to be tough on crime. However, Utah's experience with mandatory minimums has revealed that they caused more cases to go to trial forcing vulnerable victims to testify, and they led to more plea negotiations to lesser sentences – a result which is the opposite of that intended by those advocating this policy. The Sentencing Commission's position on indeterminate sentencing can be found on their website at [www.sentencing.utah.gov](http://www.sentencing.utah.gov).

### Adult Sentencing Guideline Modification

Modifications were made to the Adult Sentencing and Release Guidelines during 2008 to accommodate newly passed legislation. The majority of these changes were due to the penalty changes in the sexual offense

category and the addition of new offenses.

### Commission Update

The Commission saw several changes during 2008. We said goodbye to Representative Eric Hutchings who served the Commission as the Utah House of Representatives member for three years. His dedicated service was invaluable in providing insight into the legislative process.

John Hill, who represented Salt Lake Legal Defenders on the Commission for many years, retired and left his position on the Sentencing Commission. He was tireless in his commitment to the work of the Commission and will be missed.

While we said goodbye to friends, we welcomed new members to the Commission. Representative Lorie Fowlke was appointed by the House of Representatives to replace Representative Hutchings. Patrick Anderson, the new Director of Salt Lake Legal Defenders, has replaced John Hill. We are grateful to these new members for their willingness to serve on the Commission.

**Kay S. Cornaby, Chair**  
*Citizen Representative*

**Patrick Anderson**  
*Salt Lake Legal Defenders*

**Paul Boyden, Executive Director**  
*Statewide Association of Prosecutors*

**David Brickey**  
*Juvenile Prosecutor*

**Judge Jeffrey Burbank**  
*Juvenile Court Judge*

**Judge Terry Christiansen**  
*District Court Judge*

**Scott Daniels**  
*Utah State Bar*

**Senator Mike Dmitrich**  
*Utah State Senate*

**Representative Carl Duckworth**  
*Utah House of Representatives*

**Representative Lorie Fowlke**  
*Utah House of Representatives*

**Curt Garner**  
*Chair, Board of Pardons and Parole*

**Marlene Gonzalez**  
*Ethnic Representative*

**Senator Jon Greiner**  
*Utah State Senate*

**Judge Kimberly Hornak**  
*Juvenile Court Judge*

**Randy Kester**  
*Utah State Bar*

**Dan Maldonado**  
*Juvenile Justice Services*

**Jim Marchel**  
*Juvenile Treatment*

**Judge Paul Maughan**  
*District Court Judge*

**Judge Gregory Orme**  
*Utah Court of Appeals*

**Tom Patterson**  
*Director, Department of Corrections*

**Kathy Reimherr**  
*Adult Treatment*

**Chief Ed Rhoades**  
*Utah Chiefs of Police Association*

**Sheriff Brad Slater**  
*Utah Sheriffs Association*

**Sy Snarr**  
*Victims' Representative*

**Doyle Talbot**  
*Youth Parole Authority*

**Kirk Torgenson, Chief Deputy**  
*Attorney General's Office*

**Robert Yeates, Executive Director,**  
*Commission Criminal & Juvenile Justice*