



Utah Sentencing Commission

2012

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 Commission promotes policies that punish the offender, protect and compensate the victims and society, and reduce the likelihood of future criminal conduct through the use of appropriate and evidence-based rehabilitation and incapacitation.

2012 Adult Sentencing and Release Guidelines

The 2012 Adult Sentencing and Release Guidelines include a number of changes to the Guideline instructions and amendments to the Crime Category listings. The changes to the instructions include specific definitions for the terms "Secure Placement" and "dangerous weapon," as used in the criminal history assessment. Additionally, the changes to the instructions provide clarification to the meaning of "prior conviction" as it relates to an offender's criminal history score. To see how these definitions are used as part of an offender's sentencing guideline recommendation, please see Form 1 of the Adult Sentencing and Release Guidelines on the last page of this report.

The Commission also thoroughly reviewed and updated the Guideline's Crime Category listings, by adding all newly enacted offenses and reclassifying several existing offenses.

Adult Sentencing and Release Determinations: A Philosophical Approach

In 2012, the Commission published an updated version of its Adult Sentencing Philosophy. This updated philosophy emphasizes the State's commitment to incorporate research and evidence-based principles to its Sentencing Guidelines and practices. This philosophy also emphasizes a focused and specific effort to rehabilitate offenders with the purpose of reducing recidivism and victimization in Utah.

The statement summarizes the Commission's philosophy as:

The Commission promotes sentencing policies that: punish the offender, protect and compensate victims and society, and reduce the likelihood of future criminal conduct through the use of appropriate and evidence-based rehabilitation and incapacitation.

The Commission relies on this philosophy as a basis for making recommendations to the legislature regarding sentencing policy and individual penalties. The Commission encourages policy

makers to refer to this policy when making related decisions. This entire philosophy statement is available at: www.sentencing.utah.gov.

Subcommittees and Working Groups

The Sentencing Commission has many subcommittees that study and make recommendations related to issues that are brought to the attention of the Commission. During 2012, the Commission created several new subcommittees to address pressing issues. Two of those subcommittees are highlighted below.

Justice Courts and Sentencing

This new subcommittee is working to provide resources and guidance to justice court judges across the state. The subcommittee is a cooperative effort between the Commission and the justice courts. The subcommittee is currently working to create a best practices resource book for justice court judges. The guidebook will provide direction in the types of cases most frequently handled by justice courts. Additionally, this guidebook will promote uniformity and the use of research based principles in sentencing.

The subcommittee is also working with various stakeholders to work towards the establishment of accreditation standards for all treatment professionals providing treatment to offenders in relation to a court imposed sentencing order.

Juvenile Sentencing Guidelines

In 2012, the Juvenile Subcommittee began the process of updating and adjusting the Juvenile Sentencing Guidelines. As part of this process, the Subcommittee has been gathering dispositional data from the juvenile

courts and gathering input from all interested parties including, juvenile probation officers and juvenile court judges. The Commission looks forward to adopting the updated guidelines in 2013.

2013 Recommendations

As a result of the work of the Commission's various subcommittees, the Commission is recommending several pieces of legislation for consideration during the 2013 legislative session.

Consistent Penalty Provisions

During the interim, the Commission's Anomalies Subcommittee reviewed the Utah Code and identified several statutes with unusual and inconsistent criminal penalties. Consistent with its charge to increase equity in sentencing, the Commission recommends that, during the upcoming legislative session, the Legislature amend each of these statutes to conform to Utah's established penalty structure.

Juveniles and Life Without the Possibility of Parole Sentences and the Death Penalty

Recently, the United States Supreme Court published a series of decisions relating to the death penalty and life without the possibility of parole sentences as they are applied to juvenile defendants. In order to make Utah Law consistent with these decisions, the Commission recommends that the Legislature amend several statutes consistent with these constitutional rulings: 1) recognizing that the death penalty is unconstitutional as applied to juveniles, and 2) that the option of a life without possibility of parole sentence may only be applied to juveniles in cases involving a death.

Serious Youth Offender Amendments

After an evaluation of the existing process for transferring juvenile offenders from the juvenile court to the district court, the Commission is recommending legislation to amend the existing statute. The amendments will provide guided discretion to juvenile court judges to make transfer decisions that will be in the best interest of both the juvenile offender and the public.

2012 Penalty and Sentencing Policy Changes

Each year the Sentencing Commission tracks changes to sentencing policy, the creation of new crimes, and changes to existing penalties. During the 2012 legislative session, the Utah Legislature created 25 new felony offenses, 31 new misdemeanor offenses, and one new infraction. Some of these new penalties were the result of amending existing statutes, by adding new elements, or enhancing existing penalties. However, most of the new criminal penalties resulted from the Legislature enacting new statutes, and criminalizing activity that was previously unregulated by the criminal justice system. For example, several new substances were added to the list of controlled substances, creating 9 new felonies and 3 new misdemeanors, and a new offense relating to the unlawful use of computer software for the purpose of tax fraud resulted in 5 new felonies. Additionally, new crimes related to prostitution, graffiti, trespass, state procurement policies, and the unlawful possession of weapons all resulted in multiple new criminal penalties.

A report summarizing all of the 2012 sentencing related legislation is available on the Sentencing Commission's website: www.sentencing.utah.gov.

2012 Penalty Change Totals*									
New 1 st Degree Felonies	New 2 nd Degree Felonies	New 3 rd Degree Felonies	New Class A Misdemeanors	New Class B Misdemeanors	New Class C Misdemeanors	New Infractions	New Fines or Fees	Anticipated Prison Admissions	Anticipated Fiscal Impact ^a
1	11	13	11	19	1	1	4		\$1,780,400
2011 Totals									
	10	4	2	11	1			7.3	\$6,663,850
2010 Totals									
1	3	4	6	14	4		4		\$918,000
2009 Totals									
1	7	9	10	4	2	°	1		\$301,700

* New Crime totals include penalties increased or decreased from a previously existing penalty.

^a The anticipated fiscal impact predicts costs to state agencies in the fiscal year FY13 or the year indicated only and does not include ongoing costs or the costs to county or local governments.

[°] Information regarding new fines or fees to offenders was not tracked in these years.

2012 SENTENCING COMMISSION MEMBERSHIP

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District Court Judge

Patrick Anderson

Director, Salt Lake Legal Defenders

Paul Boyden

Executive Director, Statewide Association of Prosecutors

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Juvenile Prosecutor

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Victims' Representative

Doyle Talbot

Youth Parole Authority

Senator Daniel Thatcher

Utah State Senate

Kirk Torgensen

Attorney General's Office

Sheriff Jim Winder

Utah Sheriff's Association

FORM 1 - GENERAL MATRIX CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.
Matrix time frames refer to imprisonment only. Refer to the categorization of offenses.
Capital offenses are not considered within the context of the sentencing guidelines.

PRIOR FELONY CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)

0 NONE
2 ONE
4 TWO
6 THREE
8 MORE THAN THREE

VIOLENCE HISTORY
(PRIOR JUVENILE OR ADULT CONVICTION FOR AN OFFENSE WHICH INCLUDES USE OF A WEAPON, PHYSICAL FORCE, THREAT OF FORCE, OR SEXUAL ABUSE)

0 NONE
1 MISDEMEANOR
2 3rd DEGREE FELONY
3 2nd DEGREE FELONY
4 1ST DEGREE FELONY

PRIOR MISDEMEANOR CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS) (INCLUDES DUI & RECKLESS) (EXCLUDES OTHER TRAFFIC)

0 NONE
1 ONE
2 TWO TO FOUR
3 FIVE TO SEVEN
4 MORE THAN SEVEN

WEAPONS USE IN CURRENT OFFENSE
(ONLY WHEN CURRENT CONVICTION DOES NOT REFLECT WEAPON USE OR WHEN STATUTORY ENHANCEMENT IS NOT INVOLVED)

0 NONE
1 CONSTRUCTIVE POSSESSION
2 ACTUAL POSSESSION
3 DISPLAYED OR BRANDISHED
4 ACTUAL USE
6 INJURY CAUSED

PRIOR JUVENILE ADJUDICATIONS
(ADJUDICATIONS FOR OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT)(THREE MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY ADJUDICATION)

0 NONE
1 ONE
2 TWO TO FOUR
3 MORE THAN FOUR
4 SECURE PLACEMENT

TOTAL SCORE: _____

SUPERVISION HISTORY
(ADULT OR JUVENILE)

0 NO PRIOR SUPERVISION
1 PRIOR SUPERVISION
2 PRIOR RESIDENTIAL PLACEMENT
3 PRIOR REVOCATION
4 ACT OCCURED WHILE UNDER CURRENT SUPERVISION OR PRE-TRIAL RELEASE

CRIMINAL HISTORY ROW	
V	16+
IV	12 - 15
III	8 - 11
II	4 - 7
I	0 - 3

SUPERVISION RISK
(ADULT OR JUVENILE)

0 NO ESCAPES OR ABSCONDINGS
1 FAILURE TO REPORT (ACTIVE OFFENSE) OR OUTSTANDING WARRANT
2 ABSCONDED FROM SUPERVISION
3 ABSCONDED FROM RESIDENTIAL PROGRAM
4 ESCAPED FROM CONFINMENT

CRIME CATEGORY

		A	B	C	D	E	F	G	H	I	J	K	L
		1st Degree Murder	1st Degree Death	2nd Degree Death	1st Degree Person	3rd Degree Death	1st Degree Other	2nd Degree Person	3rd Degree Person	2nd Degree Other	2nd Degree Possession	3rd Degree Other	3rd Degree Possession
CRIMINAL HISTORY	V	24 YRS	10 YRS	*	10 YRS	48 MOS	84 MOS	60 MOS	36 MOS	30 MOS	20 MOS	20 MOS	18 MOS
	IV	22 YRS	9 YRS	*	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	18 MOS	16 MOS
	III	20 YRS	8 YRS	*	8 YRS	36 MOS	72 MOS	36 MOS	24 MOS	20 MOS	16 MOS	12 MOS	12 MOS
	II	20 YRS	7 YRS	*	7 YRS	24 MOS	66 MOS	30 MOS	20 MOS	18 MOS	14 MOS	10 MOS	10 MOS
	I	20 YRS	6 YRS	*	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS

* The statutory range for this category is 1 to 15 years. The Board of Pardons and Parole will consider all aggravating and mitigating factors in determining length of stay. Because the facts of the cases in this crime category are widely divergent, and criminal history is less determinative than in other categories, a single guideline recommendation, in this category, is not helpful in determining length of stay of an offender.

CONSECUTIVE ENHANCEMENTS: 40% of the shorter sentence is to be added to the full length of the longer sentence.
CONCURRENT ENHANCEMENTS: 10% of the shorter sentence is to be added to the full length of the longer sentence.

ACTIVE CONVICTIONS	CRIME CATEGORY	TIME
MOST SERIOUS		
NEXT MOST SERIOUS		
OTHER		
OTHER		

OFFENDER'S NAME: _____ DATE SCORED: _____ SCORER'S NAME: _____

TOTAL: _____