



Utah Sentencing Commission

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 statement reflects the underlying philosophy of the Sentencing Commission:

The Commission promotes evidence-based sentencing policies that effectively address the three separate and independent goals of any criminal sentence:

- ***Risk Management***
- ***Risk Reduction***
- ***Restitution***

A Year of Transformational Change

2015 was truly a year of transformational change, not only to the composition of the Sentencing Commission and the Adult Sentencing & Release Guidelines; but to the criminal justice system itself. The data, research and policy discussions which the Sentencing Commission participated in during 2014 with CCJJ as part of the Justice Reinvestment Initiative (“JRI”) provided the single most significant opportunity since the Guidelines’ inception in 1993 to analyze their actual impact. The subsequent analysis of the Guidelines on criminal justice system policies and practices could be viewed as a once-in-a-lifetime opportunity. The Sentencing Commission views this opportunity as the first step of many needed to fully realize meaningful criminal justice reform.

While the process of reflection, change, and ultimately transformation is not easy, the Sentencing Commission recognizes the need to engage in such a process on a much more regular basis. The revisions which were approved as recently as January 6, 2016 represent the Commission’s sincere commitment

to continual process and product improvement.

2015 Adult Sentencing and Release Guidelines’ Revision Process

The incorporation of the directives and principles contained in House Bill 348, commonly referred to as JRI, required active participation by the entire Commission in an unprecedented process beginning April 1, 2015. Three active working groups were formed and a detailed timeline was established to address: 1) revisions to the prefatory language, including the underlying philosophical approach to sentencing; 2) revisions to existing Forms 1-5; and 3) the development of new Forms 5a-10.

Between April 1 and August 5, 2015, the Commission added two additional public Interim Meetings; coordinated additional working group meetings; communicated via email and telephone; attended targeted meetings regarding specific stakeholder concerns; published and distributed a tentative version of the Guidelines for a month-long public comment period in July 2015; received both formal and informal feedback from a pilot conducted during May and June; and received a report from the pilot from the University of

Utah Criminal Justice Center. The four month period of time from April through August 2015 was the most transparent, comprehensive, and collaborative process for revision of the Guidelines that has ever occurred in Utah.

While budgetary issues remain a significant concern for successful implementation of JRI, the Commission was unanimous in its support of the underlying philosophical approach contained in the 2015 Guidelines.

2015 Adult Sentencing and Release Guidelines

The Sentencing Commission's website, located at www.sentencing.utah.gov has been fully updated and includes the complete 2015 Adult Sentencing & Release Guidelines which became effective on October 1, 2015; the revised and interactive e-Forms; an updated Addendum B as of January 6, 2016; a PowerPoint utilized in trainings on the Guidelines conducted prior to statewide implementation on October 1, 2015; a PowerPoint utilized by the Department of Corrections, Adult Probation & Parole in training on the Response & Incentive Matrix ("RIM") statewide; and a link to the RIM itself.

Training sessions on the detailed changes to the Guidelines (approximately two hours in length) have occurred state-wide since August 20, 2015. No less than thirty (30) such sessions have been presented by the Sentencing Commission's Director to the Department of Corrections, Salt Lake County Probation Services, Utah County Attorneys, Salt Lake County District Attorneys, Davis County Attorneys, Weber County Attorneys, Salt Lake Legal Defenders, treatment providers, Justice Court Judges, District Court Judges, and the Sheriff's Association. Approximately 800 hard copies of the Guidelines

themselves have been distributed. The use of these manuals by supervision agents in particular signifies a first step towards ushering in a new era of public safety professionals in Utah. Please contact jvalencia@utah.gov for further training requests. A 'Frequently Asked Questions & Answers' sheet regarding the guidelines has also been developed and is available at www.sentencing.utah.gov.

In summary, forms 1-5a address the goal of **Risk Management** for both felony and misdemeanor offenses, which includes the imposition of a punishment proportionate to the offense; holding offenders accountable for violations of law; and the incapacitation of offenders who present a substantial and imminent threat to public safety.

Forms 6-10 and corresponding addenda address the goal of **Risk Reduction** as a separate and independent goal of sentencing, which has not been structured previously. While labeled as "forms," they are essentially a structured approach to decision-making, including who supervision services should target; which entity is best situated to respond to accomplishments and violations while on supervision; the magnitude or proportionality of responses; and the available incentives and sanctions.

The Department of Corrections and the Administrative Office of the Courts participated with the Sentencing Commission and the University of Utah Criminal Justice Center in the development of what is contained in Forms 6-10 and corresponding addenda, which are commonly referred to as the Response & Incentive Matrix ("RIM"). The development of the RIM began in October 2013 in response to the Legislative Audit of the Department of Corrections, Adult Probation and Parole.

An "implementation pilot" of the RIM was conducted in the Northern Region, Ogden and Farmington Offices; and in the Region IV, Roosevelt Office between April and June of 2015. The implementation pilot was not a "proof-of-concept" pilot, but rather a pilot similar to "beta" testing of a preliminary version of the RIM. The pilot was intended to assess stakeholder understanding of the basic principles of the RIM; to identify additional training needs; and to determine which revisions were crucial prior to statewide implementation.

The Sentencing Commission sincerely thanks the men and women within the Department of Corrections who have dedicated countless hours to the development, testing, editing and implementation of the RIM. The Sentencing Commission recognized the pilot regions for going "Above the RIM" and presented them with a basketball in a glass case which was signed by Governor Gary R. Herbert in recognition of their significant efforts. In addition, the Sentencing Commission presented the Northern Region, Cache and Brigham City Offices with the same award, as they have achieved the highest ratio of rewards to sanctions of any region. The use of rewards and sanctions by these regions are not only exemplary models for other agents throughout the state, but to the Commission as well.

Sentencing Commission Membership

In 2015, the Chair of the Sentencing Commission, Mrs. Carlene Walker, stepped down after almost seven years of dedicated service in order to serve an LDS mission along with her husband in Berlin, Germany. Mrs. Walker's service and leadership has been invaluable and her presence is dearly missed.

Renowned Salt Lake City attorney, Peter Stirba, was selected as the Governor's Citizen Representative and Chair of the Commission in June 2015. Mr. Stirba has superbly navigated the transition of leadership of the Commission during this time of transformation with professionalism, thoroughness, and diligence.

Mr. Stirba is a graduate of the S.J. Quinney College of Law and was admitted to the Bar in 1976. Mr. Stirba is one of only a handful of Utah lawyers who have had the privilege of arguing before the United States Supreme Court. He successfully argued the 2009 case of *Pearson v. Callahan*, which was a unanimous decision in his clients' favor, which established important precedent concerning the defense of qualified immunity in federal civil rights litigation. Mr. Stirba was honored as the 2013 Utah Lawyer of the Year; awarded an Honorary Sheriff's Designation by the Utah Sheriff's Association in 2015; and a Service to the Court Award from the Utah Judicial Council in 2015.

In addition to the appointment of a new Chair of the Commission, the Commission also selected Pamela Vickrey, Utah State Bar Juvenile Attorney, to serve as Vice Chair.

During the 2016 Legislative Session, the Executive Committee of the Sentencing Commission will meet each Monday and has been expanded this year to include broader representation of those most impacted by sentencing and release policy decisions. The composition of the Executive Committee will include **Peter Stirba**, Chair; **Pamela Vickrey**, Vice Chair; **Judge Vernice Trease**, Third District Court; **Chyleen Arbon**, Board of Pardons & Parole; **Rollin Cook**, Director, Department of Corrections; **Darin Carver**, Juvenile Treatment Provider; **Rich Mauro**, Utah State Bar, Defense Attorney; and **Scott Garrett**, Statewide Association of Prosecutors.

2016 Recommendations

The revision process which occurred during 2015 has highlighted a number of potential legislative items which the Sentencing Commission has discussed and presented to the November 2015 Legislative Interim Law Enforcement Committee.

Of particular note is the Sentencing Commission's recommendation to re-categorize a number of Class C Misdemeanors to Infractions, retaining those with direct threats to public safety as Class C's. The recommendation stems not only from an objective analysis of the proportionality of all crimes, but also the Sixth Amendment Center's Indigent Defense Report; the Judicial Council's Constitutional Right to Counsel Report; and the Judicial Council's Pre-Trial Practices Report. To the extent that the reduction of certain Class C's to Infractions will reduce the number of misdemeanor offenses for which the Constitutional right to counsel applies, the reductions also consider the fiscal impact upon local jurisdictions who could be required to provide for indigent defense in those cases. Initial estimates indicate the re-categorization would alleviate the need for appointment of counsel in as many as 200,000 court filings.

The Sentencing Commission has also recommended several amendments regarding domestic violence. In coordination with a previously identified issue regarding the issuance of jail release agreements, the Sentencing Commission has presented proposed revisions which would ensure Constitutional due process protections and also address issues of concern regarding mandated treatment.

The Sentencing Commission recognizes the need for evidence-based interventions in domestic

violence cases generally. However, to the extent that evidence-based interventions for domestic violence exist, they are primarily developed to address intimate partner violence. Under the current statute, the court is mandated to order treatment for all cohabitants in crimes of domestic violence. Revising the statute from a "shall" to a "may" would provide judges with the ability to more appropriately tailor sentences to the individual offender.

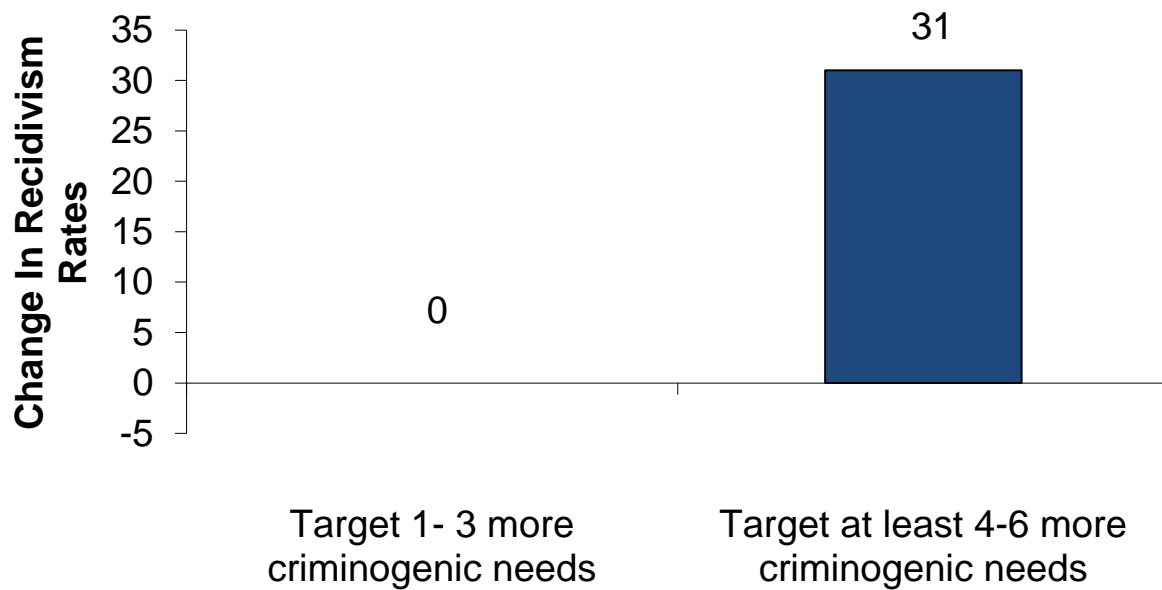
Juvenile Justice Subcommittee

The Juvenile Justice Subcommittee has continued its review of the Juvenile Disposition Guidelines since April 2014. While the current guidelines have been updated and are accessible on the Commission's website, the matrix itself and the aggravating and mitigating factors remain under review. The need for a more efficient means of data collection as measure of effective policies and practices is one of pressing concern for the Juvenile Justice Subcommittee. The assistance provided to CCJJ by the Pew Charitable Trusts in 2014 in the adult system would be especially helpful to the Sentencing Commission in revising the Juvenile Disposition Guidelines as well.

Form 6 Supervision & Treatment Levels Framework (Risk/Need/Responsivity Conceptualization)

Risk Level		Need Level	Dynamic Factors						Supervision	Treatment	Responsivity Factors						
Low	Low							Court	None								
	Moderate							Court	Clinical								
	High							Court	Clinical								
Mod	Low							Supervised	Criminogenic								
	Moderate							Supervised	Criminogenic								
	High							Supervised	Criminogenic								
High	Low							Supervised	Criminogenic								
	Moderate							Supervised	Criminogenic								
	High							Supervised	Criminogenic								

How Many of the “Dynamic Factors” Should We Target?



A complete copy of the 2015 Legislative Penalty Changes summarized below can be located at:
<http://www.sentencing.utah.gov/Penalty%20Distribution/2015%20Legislative%20Update%20Final.pdf>

2015 Totals *									
1st New Degree Felonies	2nd New Degree Felonies	3rd New 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*
1		5	11	16	38	257	9		\$15,051,000
2014 Totals									
		4	5	7	1		5		\$105,600
2013 Totals									
3	10	4	2	11	1			7.3	\$6,663,850
2012 Totals									
1	12	16	13	26	6	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
<p>* New Crime totals include penalties increased or decreased from a previously existing penalty. † The anticipated fiscal impact predicts costs to state agencies in only the fiscal year indicated 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.</p>									

2015 SENTENCING COMMISSION MEMBERSHIP

Peter Stirba, Chair

Citizen Representative

Pamela Vickrey

Juvenile Defense Attorney, Utah State Bar

Rollin Cook

Executive Director, Department of Corrections

Chyleen Arbon

Board of Pardons and Parole

Judge Vernice Trease

District Court Judge

Rich Mauro

Defense Attorney, Utah State Bar

Scott Garrett

Juvenile Prosecutor, Statewide Association of Prosecutors

Darin Carver

Adult Treatment

Patrick Anderson

Director, Salt Lake Legal Defenders

Paul Boyden

Executive Director, Statewide Association of Prosecutors

Judge Michelle M. Christiansen

Utah Court of Appeals

Judge Thomas Low

District Court Judge

Judge Mark Andrus

Juvenile Court Judge

Judge Julie Lund

Juvenile Court Judge

Senator Daniel Thatcher

Utah State Senate

Senator Gene Davis

Utah State Senate

Rep. Brian King

Utah House of Representatives

Rep. Marc Roberts

Utah House of Representatives

Ron Gordon

Executive Director, Commission on Criminal and Juvenile Justice

Susan Burke

Director, Juvenile Justice Services

Christina Zidow

Juvenile Treatment

Chief Craig S. Black

Utah Chiefs of Police Association

Rachelle Hill

Victims' Representative

Shima Baughman

Ethnic Representative

Al Emery

Youth Parole Authority

Craig Barlow

Attorney General's Office

Sheriff Jim Tracy

Utah Sheriff's Association