

SENTENCING COMMISSION

MINUTES

Committee:	SENTENCING COMMISSION ANNUAL MEETING
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Date:	Wednesday, May 11, 2005	Time:	8:30am – 4:00 pm	Place:	Huntsman Clinic, Alta View Room
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Members Present	Sheriff Phil Barney, Senator Gregory S. Bell, Paul Boyden, Judge Burbank, Scott Carver, Blake Chard, Michele Christiansen, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Senator Mike Dmitrich, John Hill, Judge Kimberly Hornak, Rep. Eric Hutchings, Jim Marchel, Judge Paul Maughan, G. Fred Metos, Brian Namba, Judge Gregory Orme, Kathy Reimherr, Michael R. Sibbett, Sy Snarr, Kirk Torgensen
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Members Excused	Calvin Clegg, Marlene Gonzalez, Chief Ed Rhoades
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Staff	Julie Christenson, Mike Haddon, Jo Lynn Kruse, Tom Patterson
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Visitors	Kerry Clarkson, Ron Gordon, Bill Greer, Judge Yeates
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Agenda Item:	Welcome and Approval of Minutes
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Notes:	Kay Cornaby welcomed everyone and introduced Michele Christiansen, the new executive director of CCJJ, Tom Patterson, the new Sentencing Commission Director, and new members Representative Eric Hutchings and Judge Kimberly Hornak. A presentation was made for departing member Judge Yeates and former Sentencing Commission director, Ron Gordon. Mike Sibbett made the motion to accept the November 2004 minutes. Judge Maughn seconded the motion and it passed unanimously .
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Agenda Item:	Sentencing Commission Mission Statement – Tom Patterson
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Notes:	Tom Patterson reviewed the Mission Statement, which is: 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. The seventeen positions of the sentencing commission include: Individualized Sentences, Visible Discretion, Victims’ Interests, Resource Sensitivity, Continuum of Sanctions, Alternatives to Incarceration, Self-Support and Restitution, Serious Offenders, Prison Sentences and Commitments (Length of Sentences and Commitments and Mandatory Minimum Sentences), Prison Release Criteria (Requisite Punishment, Community Protection and Indications of Possible Reform), Post-Release Considerations, Research and Recommendations (On-Going Research, Coordination and Commission Recommendations).
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Agenda Item:	Restitution – Kevin Olsen
Notes:	Kevin Olsen, assistant attorney general, briefed the commission regarding a case where a Utah debtor successfully argued in bankruptcy court that his restitution obligation was a dischargeable civil debt rather than a non-dischargeable criminal penalty. The case is now on appeal. The commission is concerned about the implications of such a ruling, but deferred action pending exhaustion of the appeals process.

Agenda Item:	Length of Stay in Prison – Chris Mitchell, Cliff Butter
Notes:	Cliff reviewed Length of Stay (LOS) for all offense types in the sentencing matrix. We have a small problem with the BOP. There is a certain amount of time an offender may serve in the county jail prior to being admitted to the prison system. We figure admission rates for offense types and LOS and that helps us calculate bed needs for the future. We need to understand that length of sentences show how the prison population piles up. Mike Sibbett put it this way. Four people, serving ten years, equal one million dollars. Chris Mitchell stated that when you up an offense to a first degree, it has a huge impact on prison load. We don't want to be soft on crime, but we have to be realistic. HB 209 is a perfect example of that.

Agenda Item:	Juvenile Justice Subcommittee –Blake Chard, Mike Haddon
	<p>Unlike adults that get arrested and taken to jail and allowed to post bail, juveniles don't have the right to bail. So there has to be a balance in detaining a juvenile based on the risk to society and themselves, versus making sure they appear in court. No action is needed by the commission. Blake will take the language and get public comment.</p> <p>Blake Chard presented the proposed changes to the Juvenile Detention Guidelines. They are:</p> <ul style="list-style-type: none"> • Add class A misdemeanor assault, 76-5-102(3) • Add class B misdemeanor assault, 76-5-102(1)(c) against a parent or guardian with release language similar to 77-36-2.5. • Include all felonies on holdable offense list. <p>Blake is leaving service of the state in June. Dan Maldonado has been appointed to replace Blake temporarily.</p> <p>Mike Haddon recently received a phone call from Chuck Hastings at the courts regarding the reprogramming of the juvenile guidelines into the CARE system. There were a number of offenses that we weren't sure if they are drug related or not. One question that came up is, why do we have a drug related split cell in juvenile sentencing guidelines? Mike thinks it was not for therapeutic reasons. He believes that the primary reason the cell was split was because we knew how many resources were available in the juvenile system and we needed a way to divide up those kids. Discussion then led to the question, what would happen if we eliminated the split? The subcommittee does not have a recommendation to give one way or the other. Judge Maughan made the motion to keep the cells split. Judge Hornak seconded the motion and it passed unanimously.</p>

Agenda Item	Adult Guidelines Revision Subcommittee – Chris Mitchell, Mike Haddon
Notes:	Revised Criminal History - Chris looked at other states sentencing guidelines and found that Utah has one of the most complicated criminal history screens. We have lots of items, they are hard to score, and a lot are debatable. What most other states are only looking at convictions. They are not asking questions about anything else.

The following categories would be removed from the criminal history and added to the list of aggravating factors: supervision history, supervision risk, violence history, and weapons use in current offense. The criminal history on the sex offender matrix would retain the categories of number of prior victims and time range in addition to prior convictions and adjudications.

Judge Maughan stated we don't get an accurate count on a person's criminal history with Chris' approach. Cliff added that issue is particularly important to the sentencing commission because if you agree to the design that the subcommittee came up with, it will change the way people move in the criminal and history risk. They won't move up as fast in increased risk for possession only offenses. It will change the PSI recommendation for possession offenders. Judge Christiansen pointed out that 95% of cases are going to be negotiated down. We did change the matrix by adding two new columns last November. Judge Christiansen made the **motion** that we not tinker with it in the way it relates to scoring and leave the system as it is. Mike Sibbett **seconded** the motion. Fred Metos suggested looking at it as a mitigating factor. Judge Christiansen accepts the **amended motion**. Mike Sibbett **seconded** the motion. There were seven no votes (Sheriff Barney, Judge Burbank, Scott Carver, Eric Hutchings, Judge Maughan, Kathy Reimherr and Kirk Torgenson) and twelve yes votes. The chair rules and the **motion passes**.

Research for Jail as a Condition of Probation Guidelines - Mike Haddon spoke about the disparities in the amount of jail days ordered by county across the state (time ordered vs. time served). Mike is trying to identify actual number of days served in jail. Each jail uses a different data management system which is not a good solution and is cost prohibitive. The VINE (Victim Information Notification Everyday) system has just gone into effect and we are going to use VINE to get the data we need. It will tell us the exact day an offender enters jail and leaves jail, so that we can determine the number of days served. We need a full year of data, so it will be seven or eight months before we can craft a sentencing matrix. Scott Carver would like this to be part of a formal topic for full discussion at an upcoming meeting, as it pertains to jail reimbursement. There are no guidelines at all right now. PSI writers should be consistent and length of stay is important.

Agenda Item	Drug Offenders
Notes:	<p>Drug Offender Reform Act Update (DORA) – Mike Haddon DORA is an attempt to overhaul delivery of substance abuse treatment services. It covers all areas, from probation to incarceration, those on parole, and screening and assessment to make appropriate placement of offenders according to their needs. Then it provides sufficient treatment resources. The full price tag on DORA was 17 million dollars. This year we went to the legislature asking for 6 ½ million dollars for the first year and an addition 6 million for subsequent years. In the end, we ended up with a Salt Lake County pilot program with 1 ½ million funding total, spread over three years. DORA will begin July 1st. The DORA workgroup will meet each week to iron out a plan. In 2008 we will find out if it's been effective.</p> <p>Sentencing Patterns for Drug Offenses – Chris Mitchell, Cliff Butter Cliff showed a series of graphs that show overall admissions to prison. Prior to court consolidation about 25 percent of felonies sentences ended up in prison. After court consolidation, about 30 - 35 percent. Really hasn't changed much. The sentencing practice is fairly stable since 1995. There has been an increase in the number of felony sentences coming to the DOC over the last 15 years. It is not because of sentencing practice, but rather an increase in more felonies coming to the DOC.</p> <p>Review New Matrix with Columns for Drug Offenses – Chris Mitchell Chris showed the new guideline matrix with two new columns added. The new columns are 2nd degree Possession and 3rd degree possession.</p>

Agenda Item	Misdemeanor Guidelines
Notes:	<p>Misdemeanor Sentencing Practices Survey Update – Mike Haddon The sentencing commission was interested in creating a misdemeanor sentencing guideline. Rather than create a sentencing guideline matrix, we wanted to approach it the same way we did the DUI guideline handbook. There was a lot of literature found on DUI, but where misdemeanors vary from state to state, we decided to do a survey of justice court judges and district court judges. Mike met with Judge Kwan and Derek Tollison to develop survey questions. Within the next couple weeks we will get the data and look at patterns and try to draft something equivalent to a best practices guidebook.</p>

Agenda Item	Where do we go from here?
Notes:	<p>Suggested possible areas of focus for the future: Hate Crimes, Mental Illness, Sexual Crimes, Pornography, and does voyeurism constitute a sex crime? Also mentioned were: Jail time as condition of probation, more follow up during legislative sessions and interim session. More face to face contact with legislature and list endorsements on paperwork given to them. Send reminder notes to legislature before votes. Drug Court, Mental Health Court, Alternative Sanctions, Intermediate Sanctions, Juvenile Sex Offenders, Anomaly subcommittee.</p>

The next meeting is scheduled for Wednesday, July 6, 2005 at noon, Utah State Capitol Complex, East Office Bldg. Beehive Room

Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ