

**SENTENCING COMMISSION**

**MINUTES**

<b>Committee:</b>	<b>SENTENCING COMMISSION ANNUAL MEETING</b>
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<b>Date:</b>	Wednesday, April 5, 2006	<b>Time:</b>	9:00am – 4:00 pm	<b>Place:</b>	Cabela’s 2502 W Grand Terrace Lehi Utah
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<b>Members Present</b>	Sheriff Phil Barney, Senator Gregory S. Bell, Paul Boyden, David Brickey, Judge Burbank, Scott Carver, Michele Christiansen, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Keith Hamilton, John Hill, Judge Kimberly Hornak, Jim Marchel, Judge Paul Maughan, Judge Gregory Orme, Kathy Peterson, Kathy Reimherr, Chief Ed Rhoades, Sy Snarr, Kirk Torgensen
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<b>Members Excused</b>	Senator Mike Dmitrich, Marlene Gonzalez, Randy Kester
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<b>Staff and Visitors</b>	Staff: Mike Haddon, Jo Lynn Kruse, Tom Patterson Visitors: Don Blanchard, Cliff Butter, Derek Byrne, Chris Mitchell, Brian Namba, Shahrzad Talieh
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<b>Members Absent</b>	Rep. Duane Bourdeaux, Rep. Eric Hutchings
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<b>Agenda Item:</b>	<b>Welcome and Approval of Minutes</b>
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Notes:	In Kay Cornaby’s absence, Tom Patterson called the meeting to order. Tom welcomed new members, Keith Hamilton, the new chair of the Board of Pardons and David Brickey, Summit County Attorney, who replaces Brian Namba. John Hill made the <b>motion</b> to approve the January minutes. Paul Boyden <b>seconded</b> the motion and it <b>passed unanimously</b> .
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<b>Agenda Item:</b>	<b>Annual Report – 2006 Legislative Session Update – Changes to Form 4</b>
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Notes:	<p>The Commission has continued to evaluate sentencing practices for drug offenses and has considered whether those practices warrant the development of a separate guideline for drug offenses. The Commission concluded to amend the current Adult Sentencing and Release Guidelines by adding two new offense category columns for drug “possession only” offenses. The new columns recommend prison for drug “possession only” offenses at a slightly lower rate than for drug manufacturing and drug distribution offenses and recommend slightly shorter prison sentences for those offenders convicted of a drug “possession only” offense who are sentenced to prison compared with drug manufacturing and distribution offenses.</p> <p>Mike Haddon has added a blog feature on the Sentencing Commission website. The blog is helpful to get reaction to Jessica’s law and we would also love to have your feedback on it. There is also a tool available for AP&amp;P personnel to be able to prepare PSI’s online.</p> <p>The Legislative session update handout shows positions taken by the Sentencing Commission during the last session. All those areas shaded in grey did not pass.</p> <p><b>HB0010</b> – Domestic Violence and Dating Violence Amendments We supported in concept. It is not actually within our scope, but would like to support.</p> <p><b>HB0056</b> – Sex Offender Registration Amendments We supported and it passed. This bill takes care of juveniles in State custody 30 days prior to their 21<sup>st</sup> birthday. Before, they were released on their 21<sup>st</sup> birthday with no supervision and no</p>
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way of monitoring them. This measure at least helps identify those and monitor them (via a sex offender registry) after they leave custody.

**HB0060** – Controlled Substance Amendments - passed

**HB0061** – Criminal Penalty for Animal Cruelty - did not pass. We supported it in concept.

**HB0090** – Criminal Penalty Amendments

This bill underwent substantial changes and passed. The focus of the bill was to address hate crimes via aggravating factor at sentencing and prior to parole. The real value of this bill was a statement across the political spectrum that hate crimes are disruptive of society more than other crimes and should receive greater punishment.

**HB0102** – Sentencing for First Degree Felony Murder

When a defendant is sentenced to 5 or 6 years to life for a murder, the victim’s family is terribly distressed to think that the defendant might be released after 5 years. The Board of Pardons seldom lets out murders at less than 20 years, but the public is not aware of this. Setting the minimum any higher than 15 years may discourage homicide defendants from pleading guilty. The second change in this bill is to add drive-by shooting as a predicate offense to the felony murder provisions of 76-5-203. The third change is to add as an aggravating factor to be considered by the sentencing judge or Board of Pardons “...that the person occupied a position of trust in relation to the victim.”

**HB0104** - Commission on Racial and Ethnic Fairness - We supported - did not pass.

**HB0149** – Law Enforcement Drug Task Funding - We supported - did not pass.

**HB0153** – County Jail Work Release Process Amendments - We supported - did not pass.

**HB0158** – Sex Offender Amendments

A sex offender applying for a driver license or identification card is now required by law to identify himself as a sex offender. Their driver license or identification card will then expire on their birthday of the following year.

**HB0161** – Sexual Offenses Against Children – Sentencing Amendments

Increases from three to five years the additional term added to a sentence for a sex offense for each prior felony sexual offense. An offender whose second sex offense is against a child will now be sentenced to the same sentence given murderers in the state of Utah – 15 years to life.

**HB0164** – Compensation for Wrongful Conviction and Incarceration

We opposed - did not pass. It would have provided compensation for wrongful convictions.

**HB0170** – Prosecution and Prevention of Child Pornography Offenses Amendments

This bill adds duties to the Utah Commission on Criminal and Juvenile Justice (CCJJ) to allocate and administer certain grants for approved treatment programs for sexually exploited children and their offenders. It also creates an Internet Crimes Against Children unit within the Office of the Attorney General. Richard Ziebarth will be administering the grants.

**HB0187** – Criminal Law Amendments - did not pass

**HB0195** – Criminal Procedure Amendment

We supported – it passed. Allows the prosecution to appeal from a court’s pretrial order dismissing a misdemeanor charge on specified grounds, so that the appeal authority is the same as is currently provided regarding felonies.

**HB0208** – Aggravated Murder Amendment - We supported – it passed.

**HB0212** – DNA Database Amendments – passed

**HB0223** – Trespass Law Amendments

Passed. Includes as the offense of criminal trespass the act of entering property with the intent to commit a theft or felony. Increases the penalties for each of two specified types of criminal trespass to one higher level of misdemeanor.

**HB0239** – Child Welfare Amendments – We opposed – did not pass

**HB0243** – Controlled Substance Possession Amendment – did not pass

**HB0244** – Aggravated Assault by Prisoners Amendment – We supported – it passed.

**HB0248** – Executive and Legislative Coordination Act – We opposed - did not pass.

**HB0253** – School Truancy Amendments – We supported in concept - did not pass.  
**HB0321** – Organized Retail Theft Offenses – We supported - did not pass.  
**HB0362** – Enforcement of Controlled Substance Laws – did not pass.  
**HB0388** – Traumatic Brain Injury Fund – We opposed - did not pass.  
**HB0391** – Drug Abuse Amendments – A hold was put on that one.  
**HB0402** – Sentencing Amendments – did not pass. We need to meet with DOC and Association of Counties because there is a lot at stake here.  
**HB0412** – Addressing Major Disruptions by Public School Students – We opposed - did not pass. The concern is that we would be escalating juveniles into the system at a quicker rate and dramatically increase the number of cases the juvenile judges are handling.  
**HB0414** – Petition for Involuntary Medication of Incompetent Person – We supported – it passed.  
**HB0429** – Methamphetamine – Restriction on Components  
We supported in concept - did not pass. The Patriot Act is actually stronger than this bill.  
**SB0018** – Driving Under the Influence Amendments. We supported – it passed.  
Strengthens our DUI laws in regard to ignition interlock systems.  
**SB0024** – Weapons Amendments – Did not pass, we may see this one again. We feel this amendment would put law enforcement at greater risk than they already are, and children too.  
**SB0051** – Driving with a Controlled Substance in the Body – Amendments – We supported - it passed.  
**SB0052** – Antiphishing Provisions – We supported - it passed.  
**SB0055** – Election Reform – Passed, but creates an anomaly in that giving false information in other crimes is usually a Class B Misdemeanor. This bill provides a 3<sup>rd</sup> degree felony for providing false information.  
**SB0106** – Uniform Interstate Enforcement of Domestic Violence Protection Orders Act – We supported – it passed. If we have a foreign order made in another state, we have to enforce it also.  
**SB0125** – Malik’s Law – Homicide Amendment – We opposed - did not pass. We don’t want to get into the practice of naming laws after victims.  
**SB0150** – Restitution Amendments – passed. It prohibits a reduction of judgment where restitution remains unpaid; and Public Safety may not issue a certificate of expungement eligibility if restitution orders by the court OR Board of Pardons remains unpaid.  
**SB0175** – Correctional Facility Bidding Process – We opposed - did not pass. We believe running the prison should be a State function. The issue is not dead and will continue.  
**SB0185** – Drug Offender Reform Act Amendments – passed. Amends the Drug Offender Reform Pilot Study to require screening and assessment for all felony offenders within the jurisdiction of the pilot project, rather than only those felony offenders convicted of a violation of the Controlled Substance Act.

On Form 4, Aggravating and Mitigating Circumstances of the Sentencing and Release Guidelines, Tom proposes the following changes:

#13 Include Offender occupied “position of trust” in relation to victim(s) (U.C.A. 76-3-406.5(2)) This would be the first time we include the statute citation. We don’t usually refer to code because those can change. Judge Orme suggested it should say “murder/homicide victim.” Tom will modify the statement and get that out to the Commission.

#14 Tom proposes: Offense Constitutes a “hate crime” and likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4) Paul Boyden suggested changing it to say, “Offense constitutes a “hate crime in that it is...”

<b>Agenda Item:</b>	<b>Sentencing Commission Mission Statement and Philosophical Approach</b>
Notes:	Review of Commission Mission Statement. Discussion ensued regarding what we stand for, uniformity and application of new laws and what the Commission does. The primary purpose of the Sentencing Commission is to make recommendations concerning sentencing. The Commission discussed at length the creation of a new mission statement. Tom will draft and present at next meeting for further discussion and approval by the body. It may be appropriate to have a separate statement regarding juvenile sentencing.

<b>Agenda Item:</b>	<b>Recognition of Departing Members</b>
Notes:	During lunch break, Don Blanchard was recognized for his service on the Sentencing Commission from 2005 – 2006. Brian Namba was also recognized for his service from 2002 – 2006.

<b>Agenda Item:</b>	<b>Juvenile Justice Subcommittee</b>
	<p>The Juvenile Justice Subcommittee was asked to convene and look at some issues, one was the ZC case and the other was juvenile sentencing guidelines. The ZC case is presently on appeal to the Utah Supreme Court. A 13 year old girl and a 12 year old boy had what is being referred to as “mutually welcome” sex. It is a serious sentencing issue and there are predatory individuals of that age. What we came up with was to allow prosecutors to offer diversion agreements which would appropriately address these unique circumstances on an individual basis.. Diversion is an agreement.</p> <p>In February of 2006 a review of sanction consistency with the Juvenile Sentencing Guideline Matrix was done. An effort was made to systematically review inconsistent sentences to determine the accuracy of the SAS program. A total of 3,319 sanctions were included in the analysis. The conclusions of the report are that the juvenile guideline matrix does not accurately reflect judicial practice. This is not to say judges are making inappropriate placements. More likely, it appears the matrix, in its current format, does a poor job of describing Utah juvenile court decision making. The current analysis indicates the SAS program, developed at the inception of the juvenile guideline matrix, is fairly accurate in scoring a juvenile’s delinquency history and placing them in the appropriate cell on the guideline matrix. After reviewing individual cases and adjusting the overall findings, consistency between the matrix and the sanction still fall in the 30% to 40% range.</p> <p>In reviewing individual cases, some patterns begin to emerge. Those patterns could form a basis for modifying the guideline matrix. All information findings warrant further consideration. The Utah Sentencing Commission should seriously consider what are the purposes of a Juvenile Guideline System, and if the current system is accomplishing those purposes. The Juvenile Subcommittee will continue to examine this issue and present recommendations along with proposing a Commission Mission Statement applicable to the Juvenile System.</p>

<b>Agenda Item</b>	<b>Rape in Utah Report</b>
Notes:	<p>The Utah Commission on Criminal and Juvenile Justice (CCJJ), in conjunction with the Office of Crime Victim Reparations, developed and administered a survey of Utah women about their experience with sexual violence. The study was conducted as a random telephone survey of Utah women, 18 years of age or older. The survey includes:</p> <ul style="list-style-type: none"> <li>Utah’s Sexual Assault Prevalence</li> <li>Victim Characteristics and Sexual Assault</li> <li>Sexual Violence Victim Experience</li> <li>Impacts of Sexual Violence on Victims</li> <li>Justice System, Reporting, and Sexual Assault</li> <li>Demographics</li> </ul>

	The entire report can be viewed on the <a href="http://www.justice.utah.gov">www.justice.utah.gov</a> website.
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<b>Agenda Item</b>	<b>Interim Study Proposals, Issues for Subcommittees</b>
Notes:	<p>Tom asked the Commission members to make suggestions for upcoming meetings. Those are:</p> <ul style="list-style-type: none"><li>• Follow up on drug-free zones issue. This may entail drafting some language.</li><li>• Study on sentencing and actual sentence imposed. How effective are our sentences if we don't have adequate jail space? (possible agenda item on way to solve the Salt Lake County problem)</li><li>• Sex offender sentencing and penalties as it relates to the sex offender registry and some mandatory minimums.</li><li>• Have the juvenile justice committee look at what we do with juvenile sex offenders and research what other states are doing. If they commit a sex offense at 16 or 17, do they go directly to a secure confinement even if first offense?</li><li>• Study uniformity on restitution.</li></ul>

<b>Agenda Item</b>	<b>Wrap up, Calendar Future Meetings</b>
Notes:	Future meeting dates are: June 7, August 2, September 6 and November 1.

**The next meeting is scheduled for Wednesday, June 7, 2006 at noon, Utah State Capitol Complex, East Office Bldg. Beehive Room**

Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ