

# UTAH SENTENCING COMMISSION ANNUAL REPORT 2002

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## Utah Sentencing Commission

The purpose of the Commission shall be to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council about the sentencing and release of juvenile and adult offenders in order to:

1. respond to public comment;
2. relate sentencing practices and correctional resources;
3. increase equity in criminal sentencing;
4. better define responsibility in criminal sentencing; and
5. enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority.

## Sentencing Commission Analyzes Mandatory Prison Sex Offenses

The Utah Sentencing Commission completed a study on the implementation of Senate Bill 26, Crime Penalty Adjustments, passed by the Utah Legislature in 1996. Senate Bill 26 repealed mandatory minimum sentences for certain sex offenses while preserving mandatory prison and a lifetime maximum sentence for each offense (see Figure 1). It also enacted a plea bargain option of attempted aggravated sexual abuse of a child, a non-mandatory prison offense that maintains a lifetime maximum sentence.

Mike Haddon, Utah Commission on Criminal and Juvenile Justice (CCJJ) Director of Research, conducted an extensive analysis of SB 26 and issued a report to the Sentencing Commission which addresses the following: outcomes in cases where a mandatory prison sex offense was charged, how often mandatory prison sex offense charges are reduced to non-mandatory prison offenses, how often charges of mandatory prison sex offenses are dismissed, how often the non-mandatory plea option of attempted aggravated sexual abuse of a child is used, and offender pleas. His analysis relied on data drawn from the Court database and included records from 1997 through July 2001. Leif Rundquist, Criminal and Juvenile Justice Consortium, interviewed prosecutors in order to gain an understanding of charging and plea negotiation practices. These two efforts provide a wealth of information on the implementation and success of SB 26. They also identify areas where the Sentencing Commission can focus attention in the coming years. The full report is available on the Sentencing Commission's web page.

The analysis identified 905 cases that contained at least one charge for a mandatory prison sex offense.

In 114 of those cases, all charges were ultimately dismissed leaving 791 cases with a mandatory prison sex offense charge. Interviews with prosecutors revealed several reasons why all charges would be dismissed.

These include:

- evidentiary problems
- prosecutor becomes convinced of defendant's innocence
- charges filed prematurely
- lack of resources available to the prosecution.

Figure 2 depicts the outcomes of the 791 cases that retained a charge for at least one mandatory

prison sex offense. Of these cases, 382 (48.3%) resulted in an adjudication for a mandatory prison sex offense (lifetime maximum sentence); 112 (14.2%) resulted in an adjudication for attempted aggravated sexual abuse of a child (lifetime maximum sentence); 27 (3.4%) resulted in an adjudication for some other first degree felony (lifetime maximum sentence); and 270 (34.1%) resulted in an adjudication for an offense less than a first degree felony (maximum of less than life in prison). This means that 521 cases (65.9%) resulted in adjudication for an offense with a lifetime maximum sentence.

These results are encouraging as they indicate success in a number of areas. First, nearly half of the cases that began with a mandatory prison sex offense charge (and did not have all charges dismissed) resulted in an adjudication for a mandatory prison sex offense. Second, two-thirds of cases that began with a mandatory prison sex offense charge (and did not have all charges dismissed) resulted in an adjudication for an offense with a lifetime

### MANDATORY PRISON SEX OFFENSES

- Aggravated sexual assault (6, 10, or 15 to life)
- Aggravated sexual abuse of a child (5 to life)
- Aggravated kidnapping (6, 10, or 15 to life)
- Child kidnapping (6, 10, or 15 to life)
- Object rape of a child (6, 10, or 15 to life)
- Attempted object rape of a child (3 to life)
- Rape of a child (6, 10, or 15 to life)
- Attempted rape of a child (3 to life)
- Sodomy on a child (6, 10, or 15 to life)
- Attempted sodomy on a child (3 to life)

Figure 1

maximum sentence. Third, attempted aggravated sexual abuse of a child is a viable plea option as demonstrated by its use in at least 112 cases. However, interviews suggested that some prosecutors are unaware of the existence of attempted aggravated sexual abuse of a child as a plea bargain option suggesting that the Sentencing Commission can do more to educate prosecutors on this possible charge. Analysis of the 905 cases involving a charge for a mandatory prison sex offense revealed several other interesting facts.

- Of the 456 cases that had at least one charge for an initial mandatory prison sex offense reduced at some point, 55% retained a first degree felony charge.
- Of the cases that had a mandatory prison sex offense charge after charges were reduced or otherwise modified, 85% retained a first degree felony as the highest level charge not dismissed from the case.
- Prosecutors sometimes combine the strategies of reducing and dismissing charges in the same case.
- Offenders pled guilty to approximately 62% of the mandatory prison sex offense charges.
- Of the charges leading to a not guilty plea, 73.8% were dismissed and over 20% resulted in findings of guilt.

Other findings from interviews with prosecutors include:

- The sex offender registry is irrelevant in determining an initial charge but is considered during plea negotiations.
- The most common plea negotiation involves dismissal of several counts if the defendant pleads guilty to the most serious charge.
- Approaches to filing multiple charges in a single case vary significantly and include filing a representative amount, determining how to get the “biggest bang for the buck,” filing as many charges as possible, and a formulaic approach.
- Most, but not all, prosecutors felt that it is important to maintain a first-degree felony charge during the plea negotiation process to preserve the lifetime maximum sentence.

The Sentencing Commission will continue to analyze this study to identify further training needs or additional changes that might be necessary. However, results indicate successful implementation of SB 26 and support the policy of repealing mandatory minimum sentences while maintaining mandatory prison and lifetime maximum sentences.

### MANDATORY PRISON SEX OFFENSE CASE OUTCOMES EXCLUDING CASES WHERE ALL CHARGES WERE DISMISSED

791 cases remaining where all charges were not dismissed

<b>382 (48.3%)</b> Cases with at least one adjudication for a mandatory prison offense	<b>112 (14.2%)</b> Cases with at least one adjudication for attempted aggravated sexual abuse of a child	<b>27 (3.4%)</b> Cases with an adjudication for 1st degree felony	<b>270 (34.1%)</b> Cases with highest adjudication at 2nd degree or less
<b>521 (65.9%)</b> Cases with a lifetime top adjudication			<b>270 (34.1%)</b> Cases without a lifetime top adjudication

Figure 2

## DUI Sentencing Best Practices Manual

The Sentencing Commission formed a DUI Subcommittee during 2002 to establish a best practices manual for sentencing DUI offenders. After many months of reviewing relevant literature and discussing policy issues, the subcommittee is prepared to transition from research and discussion to drafting. Aimed at judges, prosecutors, and probation officers, the manual will address the effectiveness and appropriate use of sanctions and interventions including jail, compensatory work service, fines, ignition interlock, electronic monitoring, supervised probation, license actions, education, and treatment. The information on sanctions and interventions is primarily research-based as it is drawn from an extensive review of literature and studies addressing DUI sentences and DUI offenders. This research-based approach is supplemented with a practical approach drawn from the expertise of the DUI Subcommittee members. The manual will also provide recommendations regarding low-risk and high-risk offenders. The Sentencing Commission expects to produce a final manual during the summer of 2003.



Utah Commission  
on Criminal and  
Juvenile Justice

## UTAH SENTENCING COMMISSION

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## Sentencing Commission Membership

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<b>Sen. Greg Bell</b> Utah Senate	<b>Brian Namba</b> Juvenile Prosecutor
<b>Paul Boyden</b> Prosecutors Association	<b>Judge Gregory Orme</b> Appellate Judge
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<b>John Hill</b> Legal Defenders	<b>Judge Robert Yeates</b> Juvenile Judge
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<b>Chris Mitchell</b> Department of Corrections	<b>Ron Gordon</b> Director