# SENTENCING COMMISSION

## MINUTES

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| **Committee:** | **SENTENCING COMMISSION ANNUAL MEETING** |

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| **Date:** | Wednesday, Apr. 7, 2004 | **Time:** | 8:30am – 4:00 pm | **Place:** | University of Phoenix, 5373 S Green St |

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| **Members Present** | Sheriff Phil Barney, Senator Gregory Bell, Paul Boyden, Judge Jeffrey Burbank, Scott Carver, Blake Chard, Judge Terry Christiansen, Calvin Clegg, K.S. Cornaby, Mary S. Corporon, Senator Mike Dmitrich, Marlene Gonzalez, John Hill, Jim Marchel, Ed McConkie, Judge Paul Maughan, G. Fred Metos, Brian Namba, Judge Gregory K. Orme, Kathy Reimherr, Chief Ed Rhoades, Michael Sibbett, Sy Snarr, Rep. Mike Thompson, Kirk Torgenson, Judge Robert S. Yeates |
| **Members Excused** | |
| **Staff** | Cliff Butter, Chris Mitchell, Julie Christenson, Ron Gordon, Mike Haddon, Jo Lynn Kruse |

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| **Visitors** | Larry Chatterton, Pat Fleming, Jim Hatch, Leo Lucey, Fraser Nelson, Tim Whalen |

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| **Agenda Item:** | **Welcome and Approval of Minutes** |
| Notes: | Kay Cornaby called the meeting to order and welcomed everyone. Mike Sibbett made the **motion** to approve the minutes from the December 3, 2003 meeting. Judge Orme **seconded** the motion and it **passed unanimously**. |

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| **Agenda Item:** | **Criminal Thinking Errors – Kathy Reimherr** |
| Notes: | Kathy Reimherr works for Valley Mental Health, in Adult Treatment. She gave a presentation on criminal thinking errors and explained methods Valley Mental Health uses to help the people they serve. Three influences that may cause errors of thinking are biological, situational and environmental. At the same time, it is a mistake to blame criminal behavior on such things. Kathy emphasizes criminal thinking and offender choices in assisting offenders. She provided examples of criminal thinking errors and responded to questions. |

| **Agenda Item:** | **Restitution – Ron Gordon, Mike Sibbett, Cliff Butter, Judge Orme** |
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| Notes: | Three restitution-related items were discussed. The Sentencing Commission and the Utah Council of Victims of Crime will jointly study some issues relating to restitution that surfaced during the last legislative session.<br><br>The question posed was "Who should be entering restitution orders: the courts or the Board of Pardons and Parole?" The statutory process for restitution makes explicit that the Courts (Judges) should order restitution. In many cases, the court does not have sufficient information to enter a restitution order and simply orders restitution "in an amount to be determined by the Board of Pardons and Parole." This is often done in cases where the victims were still receiving medical treatments, or therapy and the extent of those costs was not known at the time of sentencing.<br><br>There was a court decision called *Shultz* that says, when the Board loses jurisdiction, the case either expires or is terminated statutorily after three years on supervision if it's a non sex offender case, that the board does not then have the right to submit a restitution request back to the courts for civil judgment. The Board of Pardons then decided they have to do something for the victims. To complicate matters worse, the BOP is now getting requests from juvenile court judges, asking the Board to order restitution on juvenile cases. The victims are the ones right now on the losing end. Mike feels the Sentencing Commission and the Victims Council really need to look into this as something needs to be refocused.<br><br>Judge Orme spoke about the definition of restitution and pointed out that the Legislature needs to fix the statute. The way the statute is now drafted, you only get special damages and not the actual value of an item.<br><br>Paul Boyden made a **motion** to form a subcommittee to clarify the issues even by statute if needed. Mike Sibbett **seconded** the motion and it **passed unanimously**.<br><br>Cliff Butter made a presentation on DOC Victim Restitution and Other Offender Obligations. Restitution collection is inhibited by:<br>1. The length of time an offender is on probation or parole (usually 36 months)<br>2. The offender's ability to find employment, lack of job experience, education, budgeting skills, etc.<br>3. Other fines and fee ordered<br>4. Incarceration – The DOC does not collect restitution while an offender is in prison or in jail. The only exception to this is if an inmate is earning inmate wages, then the department will attempt to collect child support.<br><br>Offenders may have a number of other financial obligation possibilities. Over the last two years, the Legislature has added payment for DNA tests and county jail cost-per-day reimbursements as obligations that offenders may be required to pay. Obligations have a priority of payment as listed below:<br>1. Restitution<br>2. Supervision Fees<br>3. UDC Obligations (DNA, etc.) |

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| | 4. Court Fines/Surcharges<br>5. Extradition Cost Reimbursement<br>6. Accrued interest on unpaid restitution amounts<br>7. Offender Loans |

| **Agenda Item:** | **Drug Offense Guidelines** |
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| Notes: | Chris Mitchell handed out a Proposed Drug Guidelines Matrix. We need to look at how we are sentencing drug offenders. Many third degree felony drug offenders are being sentenced to prison. The matrix was presented for discussion purposes and was not a recommendation of the Adult Guidelines Revision Subcommittee. Any drug offense guideline would likely distinguish among possession, prescription, manufacturing, and distribution offenses. Mike Sibbett added that he is in favor of having separate guidelines for drug offenders. Judge Christiansen mentioned that it would be better to get treatment for many of these low-level, non-violent offenders rather than incarceration. Mike Sibbett made the **motion** that the Sentencing Commission adopt a separate set of guidelines for drug offenses, and that the actual matrix for that be finalized at the next Sentencing Commission meeting. John Hill **seconded** and it **passed unanimously**. |

| **Agenda Item:** | **Female Offenders** |
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| | Cliff Butter showed a couple charts that detail female incarceration trends. There was an explosion of the female population July 2002 where they actually exceeded maximum capacity. Resource availability directly impacts the sentence reality for these offenders. Females are twice as likely as males to be incarcerated for drugs.<br><br>Julie Christenson presented the findings from the recent female offenders' survey. This survey was done with women in jail as well as prison. Female inmates constitute the fastest growing population and doubled between 1990 to 2001. Some of the survey findings include the following:<br>1. The female population is increasing at a rate of seven percent or more per month.<br>2. The average age of female offenders are from 31 to 40.<br>3. Their race is mostly white with the highest level of education achieved prior to incarceration was 9th to 12th grade with no diploma.<br>4. Sixty three percent had been physically assaulted<br><br>Kathy Reimherr, Pat Fleming and Tim Whalen made a presentation on female offender treatment needs. Salt Lake County Substance Abuse Treatment Services only has 18 full time employees. Everything is contracted out and they re-bid all their services every three years. Their services provide a complete range of treatment including screening, problem assessment, patient placement criteria, treatment plans and aftercare. The Sentencing Commission may make some recommendations. |

| **Agenda Item** | **Jail as a Condition of Probation Guidelines – Chris Mitchell** |
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| Notes: | The Adult Guidelines Revision Subcommittee is trying to develop some kind of time guideline for jail as a condition of probation. Sixty to sixty five percent of felonies that get probation have some jail time. This is a huge budget issue for the state. The average jail days ordered for felonies has gone from 119 in 1997 to 172 in 2003 and the percent of felons going to prison has not changed. Ron Gordon added that one of the things that made it difficult for the subcommittee is that the current adult sentencing and release guidelines has an in/out decision for the court and then a length of time |

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| | recommendation for the BOP. In cases of jail as a condition of probation, the court orders a specific numbers of days in jail and the county sheriff determines the actual length of stay. The Commission would need to decide to whom the length of stay recommendation is directed. One other thing that complicates the matter is that the sheriffs are very eager for the Sentencing Commission to develop some recommendations so they can ease the strain on their jails. The subcommittee surveyed all district court judges regarding whether jail guidelines would be helpful and they were evenly split. However, over two-thirds of PSI writers felt such guidelines would be helpful. Judge Orme made the **motion** to ask the subcommittee to come back with some recommendations, by felony degree or some percentage of the in/out guideline. In other words, that we endorse having some sort of guideline. Senator Bell **seconded** the motion and it **passed unanimously**. |

| **Agenda Item** | **Resources -** |
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| Notes: | Cliff Butter, Chris Mitchell and Mike Haddon presented an updated statistical report on justice data for 2004. Mike Haddon said that rather than examining reported index crime rates over the past decade, the slides look at total numbers of offenses cleared and the total number of adult arrests for index crimes and drug related crimes. The report shows that arrests are down but sentences to prison have gone up. Because the prison is full, more people are being sent to the county jails.<br><br>Chris Mitchell – Pre Sentence Investigation Reports<br>Right now we are experiencing a five to six percent annual increase and we're doing about 9000 of them per year. There is a need for three new agents but haven't gotten any. Agents have to take on additional work loads.<br><br>Larry Chatterton – LSI<br>The Level of Services Inventory, or LSI, is an instrument used internally by the DOC to assist in offender management and accomplishes three basic purposes:<br>1. Predicts the risk of recidivism by an offender, thus aiding in offender classification.<br>2. Identifies criminogenic risk factors, also known as dynamic risk factors, that contribute to criminal behavior. These risk factors then become target areas for intervention by probation, parole and treatment staff. These factors also assist in recommending conditions of supervision to the courts and parole board.<br>3. Gauges the effectiveness of our supervision and interventions through a reassessment process. |

**The next meeting is scheduled for Wednesday, June 2, 2004 at noon, (Conference Room 1st Floor of East Capitol Complex Bldg. if available)**

Minutes prepared by Jo Lynn Kruse - Executive Secretary CCJJ