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1987

# THE UTAH CRIMINAL JUSTICE SYSTEM

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U.S. Department of Justice  
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(over for Appendices)

The printing of this report and the collection of much of the data included was financed by a JS-2 Grant from the Bureau of Justice Assistance.

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## COMMISSION PRIORITIES

The 1983 Legislature created the Utah Commission on Criminal and Juvenile Justice UCA § 62-25 (See Appendix A). The Commission is comprised of 17 key criminal justice leaders (see inside front cover) throughout the State. Its eight member staff also provides the criminal justice staffing for the Governor's Office. The Commission is charged to ensure broad philosophical agreement concerning the objectives of the criminal and juvenile justice system in Utah and to provide a mechanism for coordinating the functions of the various branches and levels of government concerned with criminal justice. It is also charged to:

- (1) Provide analysis and recommendations on all criminal and juvenile justice legislation, state budgets, and facility requests;
- (2) Provide public information on the criminal and juvenile justice system;
- (3) Promote criminal justice research and program evaluation;
- (4) Provide a criminal justice plan annually;
- (5) Develop, monitor, and evaluate sentencing and release guidelines;

- (6) Forecast future demands for the criminal justice system.

During 1986 the Commission emphasized: (1) Coordinating the Criminal Justice System, (2) Victims' Rights, (3) Coordinating Criminal Justice Information Systems, (4) Sentencing and Release Guidelines, (5) Privatization of Corrections, and (6) Revision of Grand Jury Provisions. The Commission also administered three federal grant programs: (a) Juvenile Justice and Delinquency Prevention (JJDP); (b) Justice Assistance Act (JAA); and (c) Victims of Crime Act (VOCA). For 1987, the Commission will also administer the Anti-Drug Abuse Act Funds for Utah. A description of each of these areas follows.

### Coordinating the Utah Criminal Justice System

The Commission met monthly to discuss items of mutual concern. Innovations and budgets were reviewed centrally (see Appendix B for Budget Recommendations) as was proposed legislation. Where proposed changes effected other agencies, the Commission encouraged those agencies to comment on the impact and provide fiscal notes. The 1987 Legislature considered approximately 150 bills with criminal justice impact and passed 58 of them (see Appendix C).

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## Victim Rights

The Commission reestablished a victim rights task force. Membership consisted of: Senator LeRay McAllister; Judge Scott Daniels; Representative Michael Dmitrich; Aileen Clyde (Commission Chairman); Steven Love (State Court Administrator's Office); Myron March (Dept. of Corrections); Victoria Palacios (Board of Pardons); Robert Parrish (Attorney General's Office); Lloyd Poelman (Kirton, McConkie, and Bushnell Law Firm); Sheriff Brandt Johnson (Davis County); Karma Dixon (Salt Lake County Victim Services Coordinating Council); Marilyn Sandberg (State Advisory Council on Child Abuse and Neglect); Cheryl Hansen (Bear River Mental Health); Blythe Ogilvie (Citizen); Dan Davis (Office of Victim Reparations) and Stephen Mecham (Commission Executive Director).

The Task Force drafted and successfully sponsored legislation establishing a Victims' Bill of Rights (Appendix D). It is now developing materials for criminal justice agencies use to help victims understand their role in the criminal justice process. The Task Force also sponsored a major conference/workshop on Helping Victims of Crime. It is working with the Constitutional Revision Commission to modify the Utah Constitution to allow consideration of dangerousness in making bail decisions. The task force and Judicial Council are developing policies and procedures to resolve common problems that victims and witnesses experience in the criminal justice process. Also legislation is being prepared to provide victim/counselor privileged communication.

## Coordination of Criminal Justice Information Systems

The Commission also determined to re-establish links between the Department of Public Safety, the Department of Corrections, and the State Court Administrator's Office to plan common keys to facilitate access to their information systems.

Following joint requests for proposals from the Utah Sheriffs' Association and the Utah Chiefs' of Police Association, more than 30 local law enforcement agencies have installed computer systems to help manage their local operations and to provide communications with the State mainframe.

Plans to install a new criminal history system with a common index to corrections' information system are being rejuvenated.

Commission staff created software on the State Mainframe to provide statewide access to warrants and to automatically refer specified warrants to the Office of Recovery Services for collection. The Fifth Circuit Court is updating this file on a regular basis and other courts will soon be involved as well.

The Commission established a "warrants task force" to develop policy to guide the operation of the statewide warrants system. Members are: LeRoy Griffiths, Circuit Judge (Chairman); District Court Judges Phillip Eves and Frank Noel; Brent West, Circuit Court Judge; Dan Armstrong, Justice of the Peace; Richard Townsend, Bureau of Criminal Identification; Darcy Dixon, Salt Lake County Council of

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Governments; Rodney Young, Delta Chief of Police; Charles Shepherd, S.L. County Sheriff's Office; Paul Vance, 5th Circuit Court Administrator; Mike Phillips, Deputy Juvenile Court Administrator; Ron Gibson, Deputy State Court Administrator; and Larry Bench, Salt Lake County Attorney's Office.

#### Sentencing and Release Guidelines

The Commission reconstituted its sentencing guidelines subcommittee. Vicki Palacios (Board of Pardons), Judge Scott Daniels (Third District Court), Steven Love (State Court Administrator's Office), Gary DeLand (Dept. of Corrections), Myron March (Correction's Field Services), John Nielsen (Public Safety), and Stephen Mecham (Commission on Criminal and Juvenile Justice) serve as members.

The Commission monitored sentencing and release decisions and compared them to the guidelines. Feedback regarding guidelines and suggestions for their modification were provided by those who used them. The guidelines were generally well accepted and the forms were being filled out accurately. Aggravating circumstances were being utilized much more frequently than mitigating circumstances to justify departure from the guidelines. As a result, more people were being sentenced to prison for longer terms than the base guidelines suggested. The committee determined that the guideline forms should be modified so that the base recommendation for serious offenders with an "excellent" criminal history score would be prison rather than "alternate". The report and the resulting modified forms appear in

Appendix E.

#### Privatization of Corrections

The Commission studied privatization of corrections and discovered several problems that should be resolved before privatization should be seriously considered. The most significant problem is the legal liability of the state. An executive summary of the Commission report is contained in Appendix F.

#### Grand Jury Recommendations

The recent Salt Lake County grand jury uncovered several major concerns with the system. The Commission formed a task force consisting of: David Schwendiman (Attorney General's Office); Ron Yengitch (Attorney At Law); Paul Boyden (Statewide Assoc. of Prosecutors); Brent Ward (U.S. Attorney); Senator Lyle Hillyard; Judge Scott Daniels; Rodney Snow (Attorney at Law); Professor Michael Goldsmith (B.Y.U.); William Vickrey (State Court Administrator); and John Nielsen (Commissioner of Public Safety).

Task force members felt it was inappropriate to comment on the grand jury process while it was in progress. The task force will reconvene once the Salt Lake County grand jury has completed its investigation.

#### Justice of the Peace Study

The Commission, together with the Court Administrator's Office established a task force to study the Justice of the Peace system.

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Members include: Dr. Ted Hebert (University of Utah Political Science Dept.), Chair; Justices of the Peace James Kilby, Thad Wasden, and Geraldine Christensen; Stanton Taylor (Circuit Judge); Tom Allen (State Auditor); Representative Nolan Karras; Senator Rex Black; Douglas Bodrero (Public Safety); Jim Davis (Mayor of South Salt Lake); Bill Hyde (Salt Lake County Attorney's Office); Ed Phillips (Millard County Sheriff) and Stephen Mecham, (Commission Executive Director).

The task force is formulating recommendations, and preparing legislation for the 1988 session.

#### GRANT FUNDS

##### Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Since its inception in 1983, the Commission has administered OJJDP funds under the Direction of the Juvenile Justice Board. Each year the Board formulates a plan and allocates approximately \$400,000 to private and governmental agencies to accomplish the plan. Currently there are 27 grants underway (See Appendix G1).

##### Justice Assistance Act (JAA)

In 1985 the Governor gave the Commission responsibility to administer JAA funds. Approximately \$500,000 per year is available. The Federal Bureau of Justice Assistance pre-determined that at least 51 percent of the funds must go to local government. The remainder is to be used to fund state government activity. (See Appendix G2).

##### Victims of Crime Act (VOCA)

The Governor also assigned the Commission responsibility for VOCA funds. During 1986 there was \$348,000 available. Awards were made to nine private and governmental agencies to assist victims (See Appendix G3).

##### Anti-Drug Abuse Act of 1986

This year the Commission must develop a statewide plan and administer \$1,500,000 for criminal justice purposes under the Anti-Drug Abuse Act of 1986. The Commission will also administer \$426,000 for education and prevention programs with high risk youth.



## CRIME IN UTAH

### What is Crime?

For purposes of this report, crime includes all behaviors and acts for which Utah laws provide a formally sanctioned punishment. Crime is defined primarily by state statute. The definition of crime varies somewhat from jurisdiction to jurisdiction. Violent crime refers to acts that involve the use or threat of force against a person. Property crimes are unlawful acts with the intent of depriving another of property, but do not involve the use of force or threat of force against an individual. Larceny (theft), burglary, and motor vehicle theft are examples of property crime.

### How do Felonies Differ From Misdemeanors?

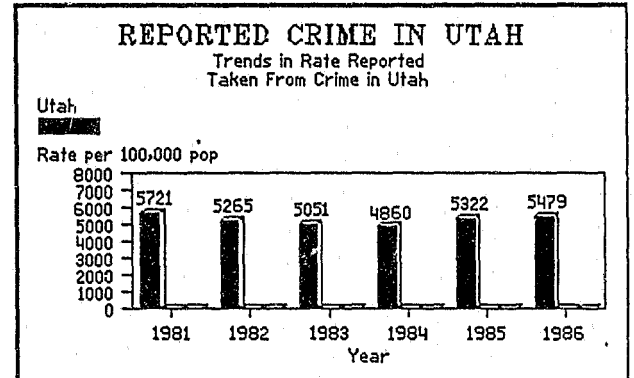
A felony is an offense for which an offender can be sentenced to more than one year in prison. A misdemeanor is an offense for which an offender can be sentenced to a year or less (normally in a county jail).

### What is a "Part 1 Index Offense" as reported by the Federal Bureau of Investigation?

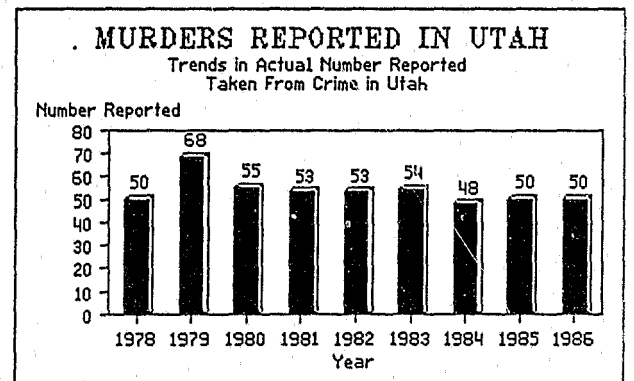
To provide nation-wide uniformity in reporting crime, standardized definitions were adopted for the following crime categories: Murder, Manslaughter, Forcible Rape, Robbery, Burglary, Larceny (Theft), Motor Vehicle Theft, and Arson. To make it possible to compare crime among jurisdictions and over time as populations change, it is customary to report crime as a rate per 100,000 population. The rates for

some common offenses reported to police each year are shown in charts below. The definitions for arson and assault have both changed during the period.

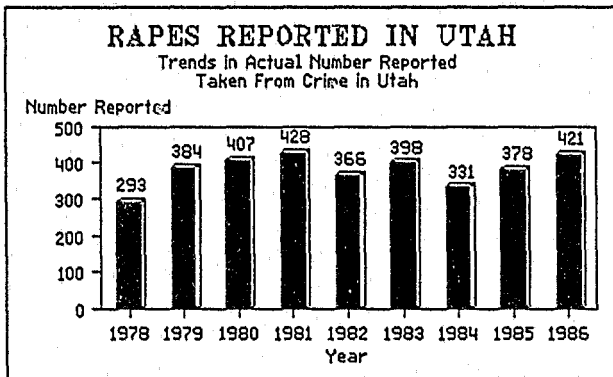
During the past few years, the crime rate in Utah declined and then increased slightly.



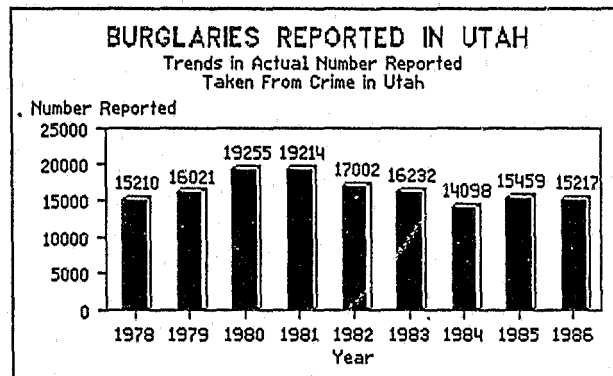
Murder is the unlawful, willful (non-negligent) killing of another person. The number of murders in Utah has varied between 48 and 55 each year since 1979 when 68 murders were reported.



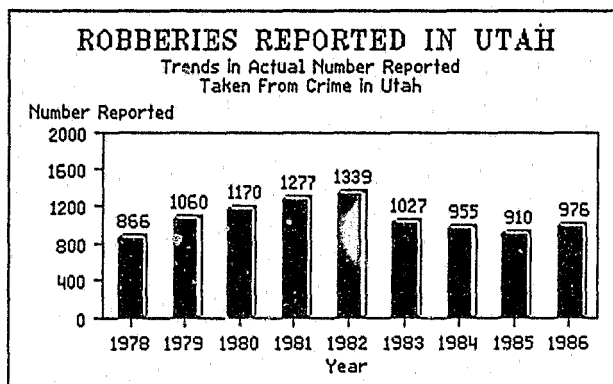
Rape is sexual intercourse with another person, not the actor's spouse, without that person's consent. The number of rapes reported in Utah has varied from a low of 293 in 1978 to a high of 428 in 1981.



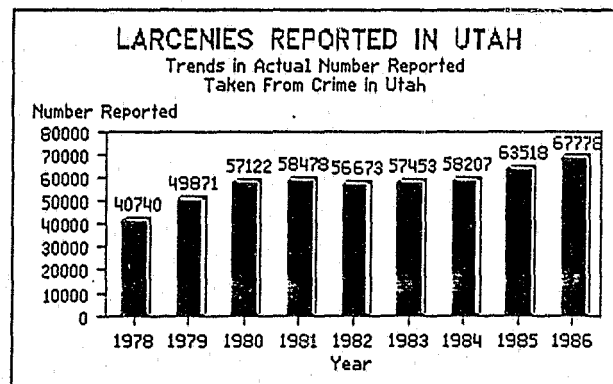
Burglary is the unlawful entry of any fixed structure, vehicle, or vessel used for overnight accomodation, industry, or business, with or without force, with the intent to commit a felony, theft or assault. The number of burglaries reported has varied from a low of 14,098 in 1984 to a high of 19,255 in 1980.



Robbery is the unlawful and intentional taking of personal property that is in the possession of another from his person or immediate presence by force or threat of force. The number of robberies reported has ranged from a low of 866 in 1978 to a high of 1,339 in 1982.



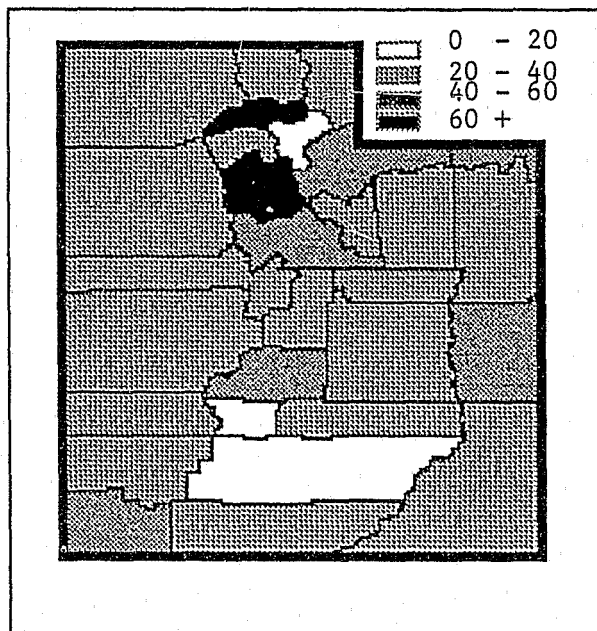
Larceny/Theft is the unauthorized control over the property of another with the intent to permanently deprive the owner of the property. Larceny/theft is by far the most frequently reported of the part 1 index offenses. The range varied from a low of 40,740 reported in 1978 to a high of 58,478 reported in 1981.



Crime Rate by County

The crime rate varies considerably by county and also varies from one part of a city to another. Generally crime is higher in urban and recreational areas. The map below portrays 1986 reported crime rates.

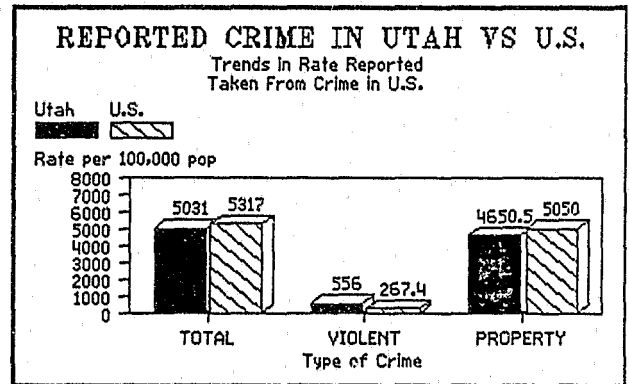
Crime Rate By County  
Rate per 1,000 Population



Comparison with the rest of the Nation.

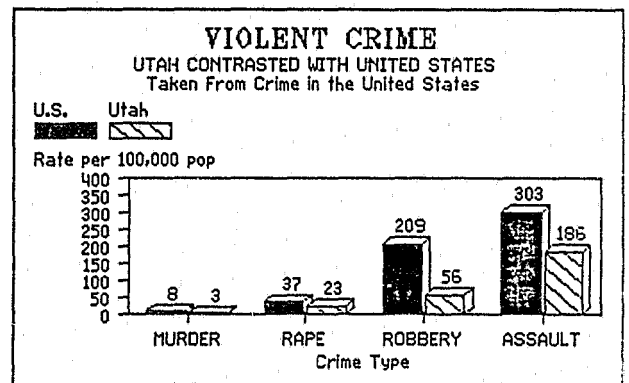
How does reported crime in Utah compare with reported crime in the United States as a whole? According to Crime in the United States:1985,

Utah's overall crime rate (5,317 per 100,000 pop.) is just slightly higher than the national average (5,031 per 100,000 pop.).



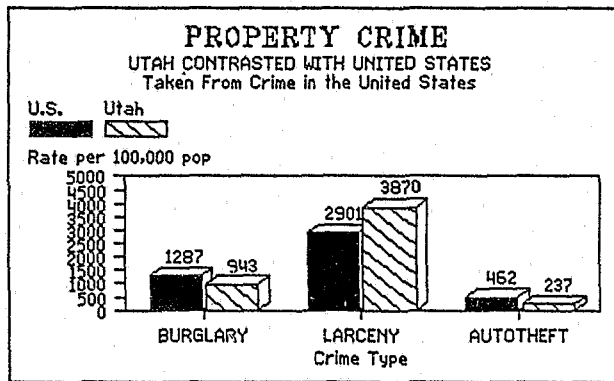
Although Utah has a slightly higher than average total crime rate, its violent crime rate is more than 40 percent lower than the national average.

The comparisons are deceiving until the rates for individual crimes are examined. Utah's rate per 100,000 pop. is well below the national average for all types of violent crime.

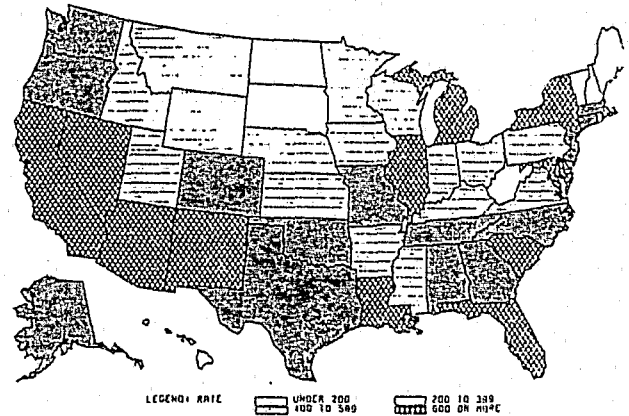


Similarly Utah's rates are well below the national figures for all the index property offenses except larceny (theft) where we report a much higher rate than the nation as a whole. Since larceny is the most frequently reported crime and Utah has a high rate of reported larceny, our crime rate is artificially inflated in comparison to the rest of the nation. With the exception of larceny, Utah's rate of reported crime is substantially lower than most other states.

Since most violent crimes result in offenders going to prison, the violent crime rate directly influences the prison population. As was previously discussed, Utah's violent crime rate is substantially below the national average. The violent crime rates of the various states is portrayed below.



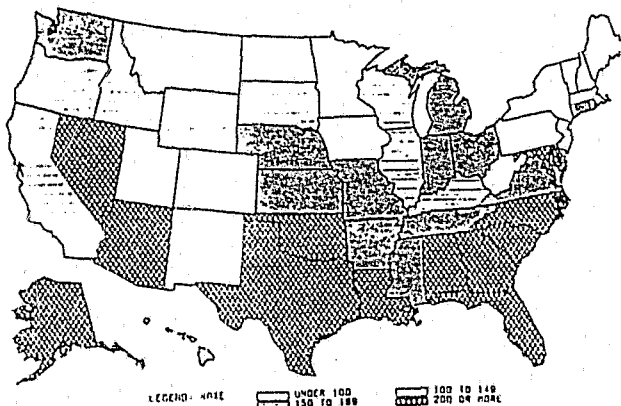
1985 VIOLENT CRIME RATE BY STATE  
RATE PER 100,000 POPULATION



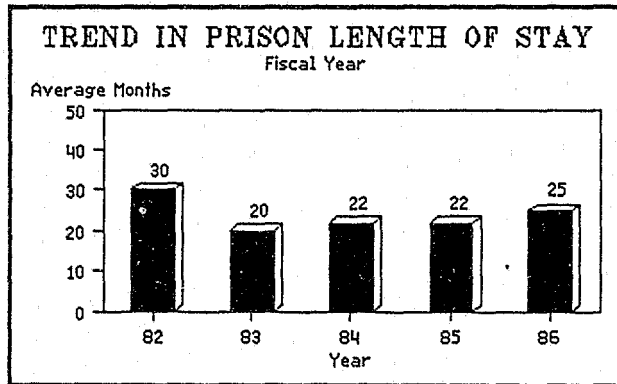
Adult Corrections in Utah

Utah's incarceration rate in 1986 was 93 per 100,000 population. The national average was 201 per 100,000 population. A map depicting the incarceration rates of the various states is shown below.

Incarceration rate is in large measure a function of public policy. There is no generally accepted formula determining who should go to prison and how long they should serve. There is considerable difference among the states over these two factors. With Utah's prison population approaching 2,000 inmates, an increase in the average length of stay of 1 month would require an additional 167 cells. Statutory changes, particularly regarding offenses against children, and changes in policy are both resulting in increasing the length of stay at the prison. Formal policy changes are documented in sentencing guidelines. The Board of Pardons frequently exercises its discretion and keeps nearly half the inmates beyond the minimum

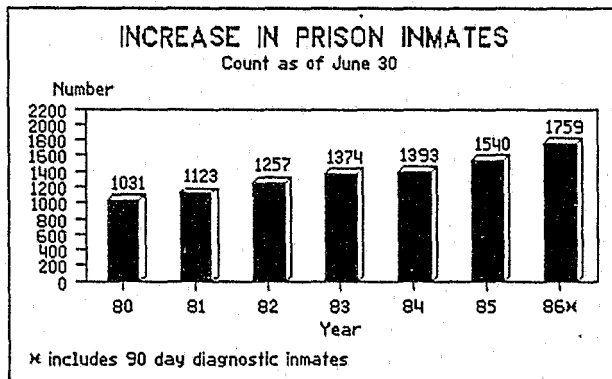


terms suggested by the guidelines. The next chart shows the recent changes in length of stay at the prison.



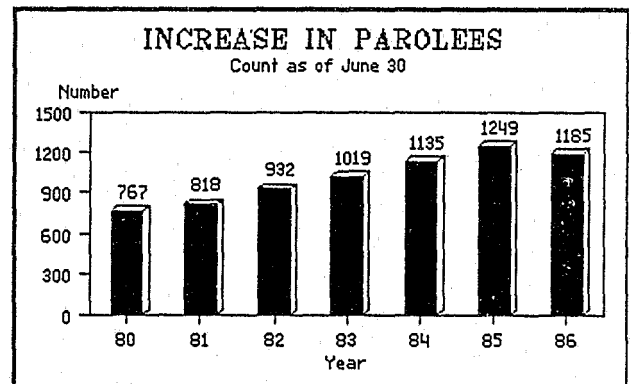
Length of stay will likely continue to increase because established minimum terms for those convicted of offenses against children and 1st degree offenses now exceed prior practice.

Prison population in Utah, like that in most other states is increasing rapidly. The following chart depicts the growth in recent years.

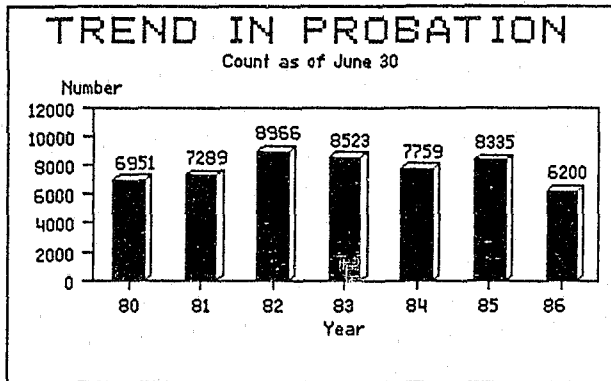


The growth in the prison population is not only a function of increased length of stay. Court policy with input from Adult Probation and Parole formalized in the Utah Sentencing and Release Guidelines has also increased the percentage of incarcerated felons. In addition, informal probation and parole policy changes have resulted more offenders being imprisoned for parole or probation violations.

The parole population peaked in 1986 and then declined as intensive supervision and surveillance efforts returned more offenders to prison. A graph portraying the trend in parole population follows.



The probation population has declined, but for different reasons. The Department of Corrections has attempted to avoid supervising misdemeanor offenders unless they have serious problems or extensive criminal histories. Fewer of these offenders are being referred and those that are referred are being supervised for much shorter periods of time. The graph that follows portrays the trend in the probation population.



### Juvenile Justice

The Juvenile Court refers youth with serious criminality to the Division of Youth Corrections. Youth Corrections has made serious efforts to limit the number of juveniles housed in secure confinement. In 1980 the state closed the Youth Development Center in Ogden and opened two 30 bed secure facilities. Currently only 60 beds are available for secure confinement. The last several years, the number of juveniles securely confined has ranged between 50 and 60.

Youth Corrections also contracts with "private providers" for community programs to supervise youthful offenders. Since 1980 the number of youth in these programs has ranged between 200 and 250.

In 1986 Youth Corrections sampled youth it supervised and conducted a one year follow-up recidivism study. It found:

72 percent of youth terminated from custody were conviction free.

55 percent of the youth in community placement were

conviction free.

The number of crimes directed against people was reduced significantly while youth were in community placement.

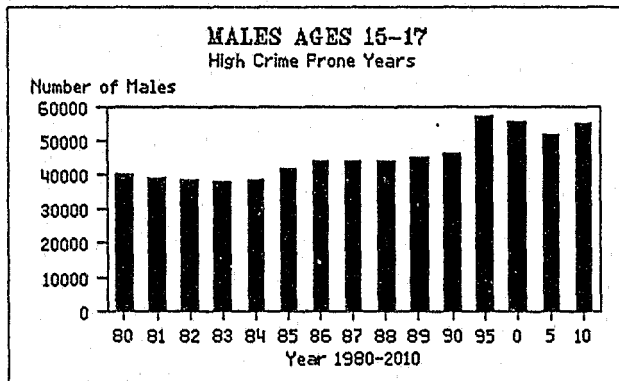
24 percent of the youth on parole remained conviction free for at least one year. Most of the crime committed by youth on parole was property oriented and occurred within 90 days of release from secure confinement.

A study conducted by the National Council on Crime and Delinquency found that Youth Corrections' programs had "a substantial impact on suppressing delinquency."

Intake and probation services for juvenile offenders are provided by the juvenile court. It should be noted that crime is in large measure a phenomenon of youth. Approximately 1/3 of those arrested are juveniles. The following breakdown of the percentage of some common crimes that Utah juveniles were arrested for in 1984 is informative:

- Assaults - 32 percent
- Thefts - 54 percent
- Burglaries - 58 percent
- Car Thefts - 64 percent
- Arsons - 78 percent

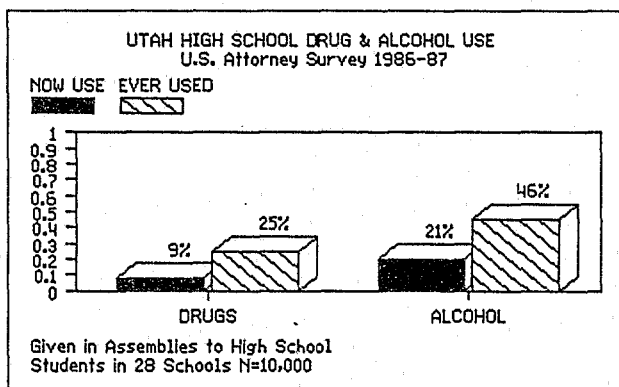
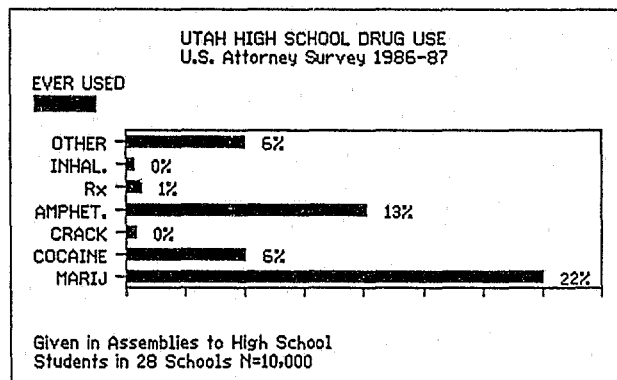
The most frightening thing facing the juvenile court, and the entire criminal justice system is that the number of youth in the high crime years (ages 15 to 17) is increasing rapidly and will not peak until 1995 as shown in the next chart.



The resources of the juvenile court as well as Youth Corrections will be severely taxed. Adult Corrections is currently in a relative lull as far as the population at risk is concerned, but it will experience a dramatic influx about five years after the juvenile court. Future years will hold many challenges for the criminal justice system.

DRUG USE IN UTAH

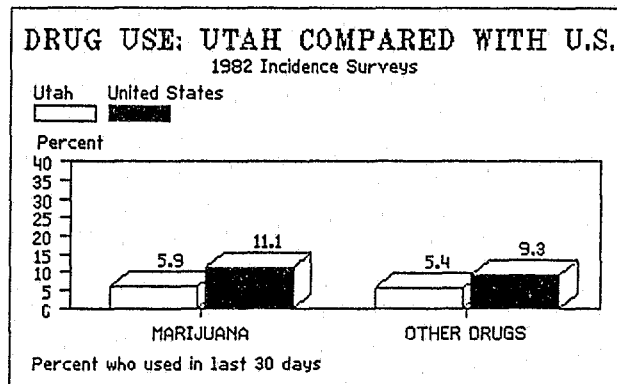
This report portray's in a simplified fashion the drug problems in the State of Utah. The most recent data available come from a survey of 28 high schools and over 10,000 students conducted by the U.S. Attorney as part of an assembly on drug abuse. The survey found that approximately 46 percent of those surveyed had used alcohol and 26 percent had used drugs. Nine percent were currently using drugs and 21 percent were currently using alcohol.



The survey also identified specific types of drug use. The survey suggested that marijuana was the most frequently abused of the listed drugs (22%), then amphetamines (13%), and then cocaine (6%). It is interesting to note that very few students reported using "Crack". Apparently "crack" has yet to become popular in Utah. Also, very few students were inhaling volatile substances.

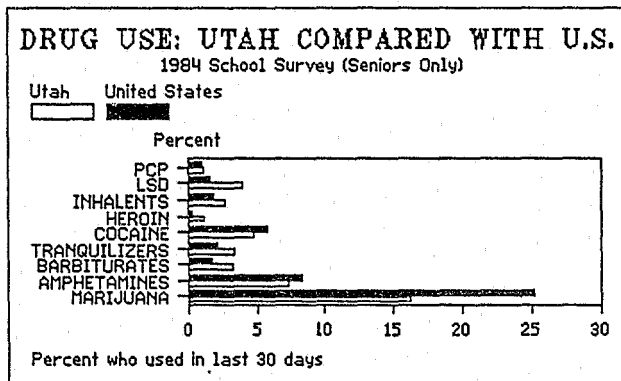
How does drug abuse in Utah compare with the U.S. as a whole.

In 1982 the National Institute on Drug Abuse published a "Household Survey on Drug Abuse." The Utah Division of Alcohol and Drugs attempted to replicate their procedure by sampling within each of the state's seven planning districts. The findings suggest that drug abuse in Utah is nearly 50 percent lower than the national average.





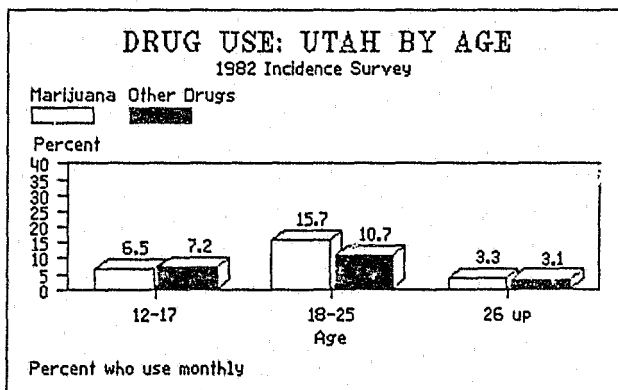
More specific information comparing Utah and the U.S. suggests that although Utahns tended to not abuse commonly abused drugs like marijuana, cocaine, and amphetamines as frequently as typical Americans, they seemed to abuse other drugs more frequently.



In 1984, the Division of Alcohol and Drugs estimated that 70,300 Utahns were regular users of marijuana and that 64,300 Utahns were regular users of cocaine, heroin, amphetamines, sedatives, tranquilizers, or analgesics.

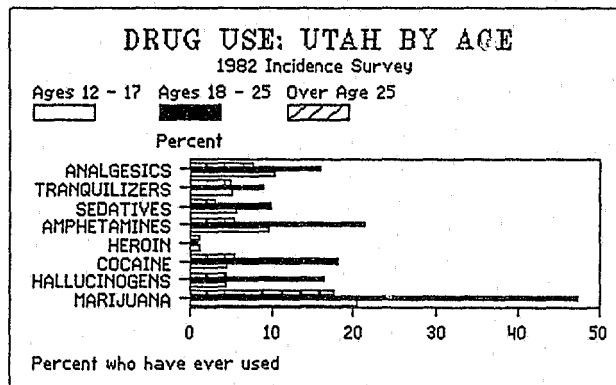
Drug Use by Age

Drug abuse appears to be quite age related.



The highest use age range was 18 to 25 where 15.7 percent used marijuana and 10.7 percent used other drugs at least monthly. Those ages 12 to 17 abused at about half the rate the 18 to 25 year olds. Those over 26 abused at about half the rate of the 12 to 17 year olds.

More specific information in the Figure below suggests that this pattern holds for most types of drugs. The 18 to 25 years olds abused drugs at substantially higher rates in all categories. However the other two groups abused cocaine, heroin, tranquilizers, and analgesics at about the same rates. Some caution should be exercised regarding this conclusion because the numbers are small and it is difficult to duplicate methodology.

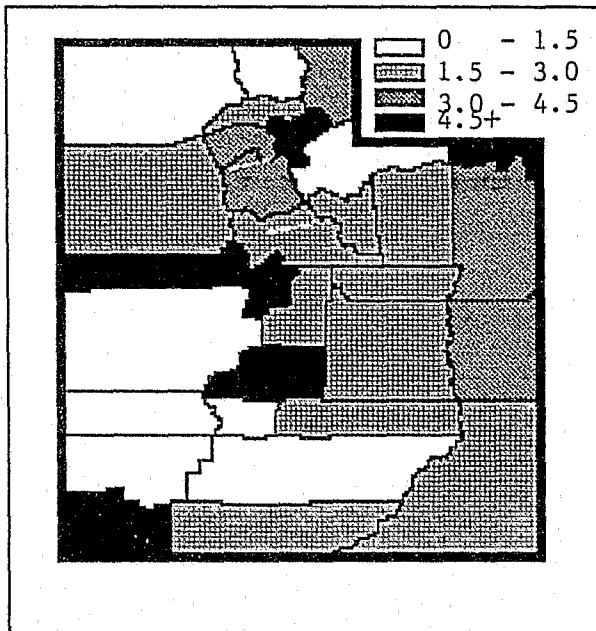


How do counties compare in the rate of arrests for drug sales and possession in 1986?

There is considerable difference in the arrest rates among the counties. Many factors are involved.

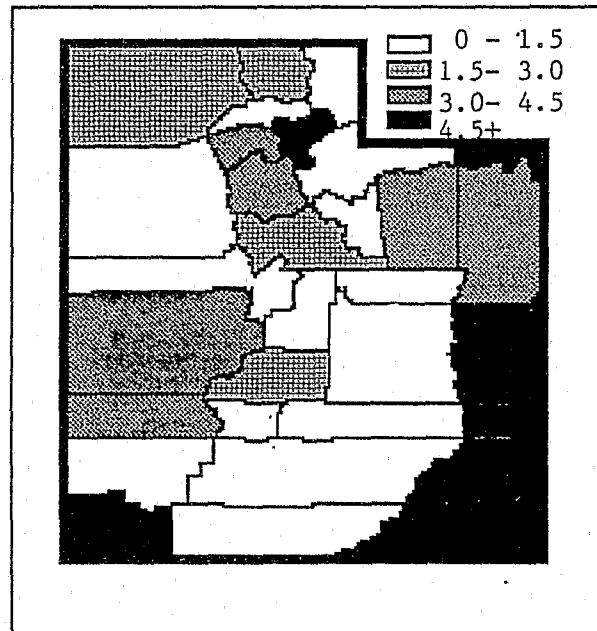
The arrest rate seems to be influenced significantly by amount of transient workers or vacationers in the county, especially in counties of small populations. Another factor is the capacity of law enforcement to work on drug cases.

Drug Arrests by County 1986  
Arrests per 1000 Population



How did the counties compare in drug arrests in 1984.

Drug Arrests by County 1984  
Arrests per 1000 Population

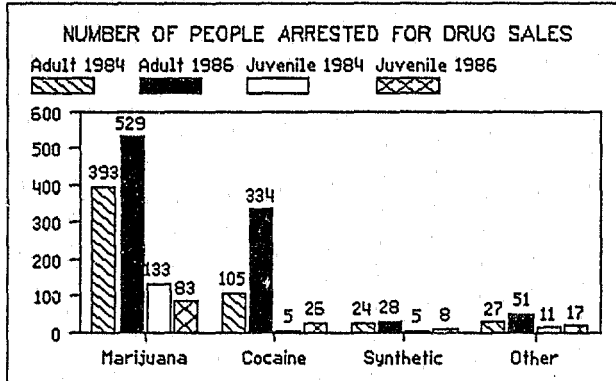


Arrests per 1000 persons were down from 4.20 in 1983 and 3.30 in 1984 to 3.04 in 1986.

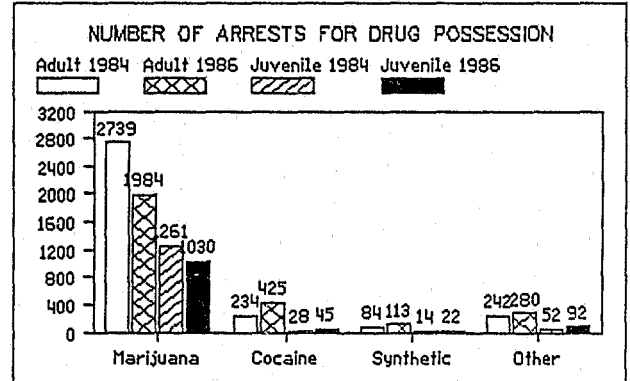
Arrests in 1986 were down somewhat from 1984 in the Colorado border counties. It seems that decline in energy development and the transient workers associated with it might have reduced the drug problems in those counties.

How does the number of arrests for drug crime in the State in 1986 compare with 1984?

Arrests for Sales



arrests were down 12 percent, from 1355 to 1189, due to an 18 percent decrease in possession of Marijuana and in spite of a 61 percent increase in arrests for possession of Cocaine.



The majority of arrests are for marijuana. The arrests for sales of all types of drugs were 72 percent higher in 1986 than in 1984 (549 in 1984 to 942 in 1986). This was due to three times the arrests for the sale of cocaine in 1986 as compared to 1984 and a 35 percent increase in arrests for the sale of marijuana. Adult possession arrests were down 15 percent, from 3299 to 2802.

Juvenile sales were down 13 percent from 154 in 1984 to 134 in 1986, due mostly to a 38 percent decrease in sales of marijuana. Arrests for juvenile sales of cocaine were 5 times greater in 1986 than in 1984.

Arrests for possession of drugs were lower in 1986 than in 1984. There were 750 less adult arrests for possession of marijuana, but an 80 percent increase in arrests for the possession of cocaine.

Juvenile arrests for possession paralleled adult arrests. Possession

APPENDIX A

COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

1983

GENERAL SESSION

Engrossed Copy

H. B. No. 205

By Beverly J. White

Olene S. Walker

Nolan E. Karras

Norman H. Bangerter

Mike Dmitrich

M. James Macfarlane

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; PROVIDING FOR THE CREATION, COMPOSITION, AND DUTIES OF THE STATE COMMISSION ON CRIMINAL AND JUVENILE JUSTICE.

THIS ACT REPEALS AND REENACTS SECTIONS 63-25-1, 63-25-5, AND 63-25-6, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 237, LAWS OF UTAH 1977, SECTION 63-25-2, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 237, LAWS OF UTAH 1977, SECTIONS 63-25-3 AND 63-25-4, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 184, LAWS OF UTAH 1961; AND REPEALS SECTION 63-25-7, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 237, LAWS OF UTAH 1977.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 63-25-1, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1977, is repealed and reenacted to read:

63-25-1. The state commission on criminal and juvenile justice is hereby created within the governor's office. The commission's purpose is to ensure broad philosophical agreement concerning the objectives of the criminal and juvenile justice system in Utah and to provide a mechanism for coordinating the functions of the various branches and levels of government

H. B. No. 205

concerned with criminal and juvenile justice to achieve those objectives.

Section 2. Section 63-25-2, Utah Code Annotated 1953, as enacted by Chapter 237, Laws of Utah 1977, is repealed and reenacted to read:

63-25-2. (1) The commission on criminal and juvenile justice shall be composed of 17 voting members as follows:

(a) The chief justice of the supreme court or a judge or justice designated by the chief justice;

(b) The state court or juvenile court administrator designated by the chief justice;

(c) The presiding judge of the board of juvenile court judges, or a member of the board designated by the presiding judge;

(d) The director of the division of corrections;

(e) The director of the division of youth corrections;

(f) The commissioner of public safety;

(g) The attorney general;

(h) A representative of the statewide association of prosecutors designated by the association's officers;

(i) The president of the chief of police association or a chief of police designated by the association's president;

(j) The president of the sheriffs' association or a sheriff designated by the association's president; and

(k) The chairman of the board of pardons or a member designated by the chairman.

(2) The remaining six members shall be appointed by the governor to two-year staggered terms as follows:

(a) One attorney appointed from a list of three nominees submitted by the Utah State Bar Association;

(b) One state senator;

(c) One state representative;

(d) One representative of public education;

(e) One citizen representative; and

H. B. No. 205

(f) One representative from a public or private organization that offers or provides rehabilitative treatment to juveniles or adults convicted of crime.

In appointing the members, the governor shall take into account the geographical makeup of the commission and the representation from local criminal justice advisory groups.

Section 3. Section 63-25-3, Utah Code Annotated 1953, as enacted by Chapter 184, Laws of Utah 1961, is repealed and reenacted to read:

63-25-3. The governor with the advice of the senate shall appoint a person experienced in the field of criminal justice and in administration to act as the executive director of the commission on criminal and juvenile justice. The director, under the direction of the commission, shall administer the duties of the commission and act as the governor's advisor on state, regional, metropolitan, and local government planning as it relates to criminal justice.

Nothing in this chapter, however, shall be deemed to derogate the planning authority conferred on state, regional, metropolitan, and local governments by existing law.

Section 4. Section 63-25-4, Utah Code Annotated 1953, as enacted by Chapter 184, Laws of Utah 1961, is repealed and reenacted to read:

63-25-4. The duties of the state commission on criminal and juvenile justice administration are to:

(1) Promote the coordination of all criminal and juvenile justice agencies;

(2) Provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

(3) Provide public information on the criminal and juvenile justice system and give technical assistance to

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agencies or local units of government on methods to promote public awareness;

(4) Promote research and program evaluation as an integral part of the criminal and juvenile justice system;

(5) Provide a comprehensive criminal justice plan annually;

(6) Develop, monitor, and evaluate sentencing and release guidelines for adults and juveniles; and

(7) Forecast future demands on the criminal justice system, including specific projections for secure bed space.

Section 5. Section 63-25-5, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1977, is repealed and reenacted to read:

63-25-5. The membership of the commission on criminal and juvenile justice by simple majority vote of those in attendance shall annually elect one of their number to serve as chairperson. The chairperson is responsible for the call and conduct of meetings. Meetings shall be called and held at least bi-monthly. One of the bi-monthly meetings shall be held while the legislature is convened in its annual session. Additional meetings may be called upon request by a majority of the commission's members.

Section 6. Section 63-25-6, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1977, is repealed and reenacted to read:

63-25-6. Members of the commission on criminal and juvenile justice administration shall serve without pay but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

Section 7. Section 63-25-7, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1977, is hereby repealed.

APPENDIX B  
CRIMINAL JUSTICE BUDGETS  
FOR  
STATE AGENCIES

Taken from Governor's Summary of Legislative Action for 1987 - 1988

Prepared by the Utah Office of Planning and Budget



## STATE COURTS

### Major Legislation

During the 1987 legislative session, the legislature passed several bills which have significant impact on the state courts. Senate Bill 51, the Judges' Retirement Benefits Amendment, made modifications in the retirement program for judges, increasing the benefit formula for judges during the first ten years of service. The bill also allows a judge to retire at age 62, with 10 years of service, and allows retirement with full benefits after 25 years on the bench, regardless of age. Senate Bill 155, Judicial Nominating Commissions, clarified the procedures for the selection of judicial nominees by the nominating commissions, provided for the circulation of notices of vacancies, and provided for notification to the Senate of nominees.

Two bills affecting the justice of the peace courts delineated the procedure for appointing temporary municipal justices of the peace and clarified when a municipality can establish a justice of the peace court or a municipal department of the circuit court. Senate Bill 213 provided that local government must inform the Court Administrator's Office when there has been a change in an incumbent justice of the peace.

Senate Bill 121 establishes a "Victim's Bill of Rights" including the right of victims to be informed about the progress of the case. The bill encourages the maintenance of separate waiting areas for victims and establishes a local committee in each judicial district to facilitate improved treatment for victims and witnesses in the courts.

There were several other bills passed which impact upon court operations and procedures, including small claims, expungements, appeals in capital cases, juvenile court commissioners, and guardians ad litem.

### Appropriations Summary

The legislature approved a total General Fund budget of \$28,497,700 for the state courts which represents a 2.1 percent increase over the original 1986-87 appropriation or a 5.5 percent increase over the revised 1986-87 appropriation. The 1987-88 budget includes full year funding of the new Court of Appeals. In addition, the legislature adopted the governor's recommendation to consolidate the courts' budget into two line items. This will allow the courts greater management flexibility in their day-to-day operations. The 1987-88 appropriation level for state courts is \$208,200 lower than the level recommended by the governor, excluding salary increases. The differences from the governor's budget were the following:

- \$60,000 reduction in juror and witness fees;
- \$30,000 reduction in salary levels allocated to the Circuit and District Courts;
- \$44,300 reduction in data processing costs; and
- \$73,900 reduction in miscellaneous items such as memberships, publications, and subscriptions to law-related materials.

\*\*  
STATE COURTS  
Appropriations Summary

	General Fund	Uniform School Fund	Federal Funds	Dedicated Credits	Restricted and Trust Funds	Other	Total
<b>Court Administration/ Judicial Council</b>							
Original 86-87	27,475,900	0	0	139,900	0	0	27,615,800
Adjusted 86-87	26,584,400	0	0	139,900	0	0	26,724,300
Appropriated 87-88	27,672,700	0	56,200	19,300	0	0	27,748,200
<b>Court Administration/ Juror and Witness Fees</b>							
Original 86-87	425,000	0	0	0	0	0	425,000
Adjusted 86-87	425,000	0	0	0	0	0	425,000
Appropriated 87-88	825,000	0	0	0	0	0	825,000
<b>TOTAL OPERATIONS BUDGET</b>							
Original 86-87	27,900,900	0	0	139,900	0	0	28,040,800
Adjusted 86-87	27,009,400	0	0	139,900	0	0	27,149,300
Appropriated 87-88	28,497,700	0	56,200	19,300	0	0	28,573,200

# CORRECTIONS

## Major Legislation

During the 1987 legislative session, the legislature passed four bills which impact adult and youth corrections. Three of these bills directly impact the adult system. The first, Senate Bill 14, Information Registration of Sex Offenders, moves responsibility for maintaining the registry of sex offenders within the state from the Department of Public Safety to the Department of Corrections.

The second major bill, House Bill 167, Misdemeanor Probation Amendments, excludes those offenders convicted of Class C misdemeanors and infractions from probation supervision and gives the department the option to supervise those convicted of Class B misdemeanors. The concept of "rehabilitation" is abandoned in favor of the concept of "treatment". Probationers may now be required to participate in community service restitution programs and pay for the costs of investigation, probation, and treatment services.

Finally, House Bill 174, Corrections Department Amendments, provides major housekeeping changes to UCA Section 64-13. These changes include eliminating the word "rehabilitation" from the statute, limiting the responsibility to provide jobs and services based on "available resources", and authorizing Corrections to require each offender to place his/her income from employment in an account administered by the department.

In youth corrections, the major piece of legislation passed, Senate Bill 92, State Responsibility for Juvenile Detention, provides that the responsibility for juvenile detention facilities, as well as employees and facilities of current county detention, pass from the counties to the State Division of Youth Corrections. Youth Corrections shall establish a local detention advisory board.

## Appropriations Summary

The legislature approved a total General Fund budget of \$64,991,900 for Corrections which represents a 10.7 percent increase over the original 1986-87 appropriation or a 15.0 percent increase over the revised 1986-87 appropriation. The action by the legislature was significant because it enables both youth and adult corrections to open up new facilities so that additional bed space capacity can be available on July 1, 1987. Finally, the Board of Pardons will have the funds necessary to restore a hearing officer to assist in Board hearings.

The legislature appropriated \$244,800 less to the Department of Corrections than was recommended by the governor, excluding salary increases. The major differences from the governor's budget were the following: (1) a \$363,500 reduction in jail reimbursement; (2) a \$140,300 reduction in residential treatment programs for field operations; (3) a \$243,800 reduction in the base budget for data processing costs, personal services, and miscellaneous charges; and (4) a \$566,300 increase for the prison, most of which is attributed to increased utility costs.

The legislature appropriated \$1,894,200 more to the Division of Youth Corrections than was recommended by the governor, excluding salary increases. The major differences are as follows: (1) \$1,731,000 for full state funding of juvenile detention pursuant to Senate Bill 92; (2) \$95,200 for additional pass-through funds for private providers; and (3) \$51,000 for additional detention costs at the Cedar City secure/detention facility to implement Senate Bill 92.

The legislature appropriated \$654,200 for the Board of Pardons or \$32,100 less than the governor recommended. The major difference was in separate line item costs for the Board of Pardons.

**CORRECTIONS**  
**Appropriations Summary**

	General Fund	Federal Funds	Dedicated Credits	Mineral Lease	Restricted and Trust Funds	Other	Total
<b>Adult Corrections</b>							
Original 86-87	46,004,800	0	579,100	0	0	4,500	46,588,400
Adjusted 86-87	44,776,300	0	579,100	0	0	4,500	45,359,900
Appropriated 87-88	51,533,300	67,000	550,000	0	0	0	52,150,300
<b>Jail Reimbursement</b>							
Original 86-87	1,025,000	0	0	0	0	0	1,025,000
Adjusted 86-87	975,000	0	0	0	0	0	975,000
Appropriated 87-88	600,000	0	0	0	0	0	600,000
<b>Jail Contracts</b>							
Original 86-87	1,000,000	0	0	0	0	0	1,000,000
Adjusted 86-87	500,000	0	0	0	0	0	500,000
Appropriated 87-88	0	0	0	0	0	0	0
<b>Correctional Industries</b>							
Original 86-87	0	0	2,859,100	0	0	0	2,859,100
Adjusted 86-87	0	0	2,859,100	0	0	0	2,859,100
Appropriated 87-88	0	0	2,697,000	0	0	0	2,697,000
<b>Board of Pardons</b>							
Original 86-87	573,000	0	0	0	0	0	573,000
Adjusted 86-87	553,500	0	0	0	0	0	553,500
Appropriated 87-88	654,200	0	0	0	0	0	654,200
<b>Youth Corrections</b>							
Original 86-87	10,083,900	0	2,393,300	0	75,000	0	12,552,200
Adjusted 86-87	9,718,500	0	2,393,300	0	75,000	0	12,186,800
Appropriated 87-88	12,204,400	67,000	2,416,800	0	88,000	0	14,776,200
<b>TOTAL OPERATIONS BUDGET</b>							
Original 86-87	58,686,700	0	5,831,500	0	75,000	4,500	64,597,700
Adjusted 86-87	56,523,300	0	5,831,500	0	75,000	4,500	62,434,300
Appropriated 87-88	64,991,900	134,000	5,663,800	0	88,000	0	70,877,700

## DEPARTMENT OF PUBLIC SAFETY

### Major Legislation

Legislation directly affecting the Department of Public Safety includes some technical changes in traffic rules and vehicle operator statutes. One bill raised the license reinstatement fee of drunk drivers from \$25 to \$50, which will generate an additional \$250,000 per year for the Transportation Fund. In response to a report by the Auditor General's Office, the legislature also changed the status of ports of entry personnel from full authority police to special function officers. Expected savings to the Transportation Fund as a result of this change are \$200,000. Legislation also established a State Liquefied Petroleum Board in the Fire Marshal's Office.

### Appropriations Summary

The legislature approved a budget of \$39,043,400 for the Department of Public Safety for fiscal year 1987-88. This represents a decrease of 4.7 percent in the total amount originally appropriated in fiscal year 86-87. The amount of state funds (General Funds, Transportation Funds, and Certificates of Participation) approved for fiscal year 1987-88 is \$31,554,500, a 1.7 percent decrease from the amount originally appropriated in fiscal year 1986-87. Program changes in the legislature's budget include the transfer of the sex offender registry program to the Department of Corrections, and consolidations in the areas of fleet and dispatch communications.

The legislature approved a measure enacting Congress' 1986 Emergency Planning and Community Right to Know Act. Comprehensive Emergency Management was appropriated \$52,000 to fulfill the requirements of this act. The legislature approved funding for one additional organized crime agent, four additional narcotics agents, and a one-time \$250,000 appropriation to consolidate dispatch communications services at the Point of the Mountain facility. The approved budget also incorporates many efficiencies made by the department through its own initiative and as part of the governor's SCOPE process.

The legislature fell short of meeting the governor's budget recommendation for Public Safety. It omitted funding for the Highway Patrol's retirement health benefits and much of the capital required to upgrade outdated telecommunications equipment. The governor's emphasis on drug interdiction in Utah also lost out in the fiscal crunch. The legislature chose not to fund a recommended addition of eight narcotics agents, eight troopers, ten police vehicles, and upgrades in the department's aircraft. A helicopter recommended by the governor to improve law enforcement efforts and fight the growing drug problem in the state was also not funded by the legislature.

**PUBLIC SAFETY**  
**Appropriations Summary**

	General Fund	Transportation Fund	Federal Funds	Dedicated Credits	Certificates of Participation	Other	Total
<b>Emergency Management</b>							
Original 86-87	420,800	0	3,802,200	0	0	0	4,223,000
Adjusted 86-87	396,200	0	3,802,200	0	0	0	4,198,400
Appropriated 87-88	376,600	0	3,474,600	62,500	0	0	3,913,700
<b>Highway Patrol</b>							
Original 86-87	633,300	17,273,000	556,000	385,100	1,250,000	0	20,097,400
Adjusted 86-87	552,200	17,151,000	556,000	385,100	1,250,000	0	19,894,300
Appropriated 87-88	561,800	16,416,600	562,900	385,300	0	0	17,926,600
<b>Safety Promotion</b>							
Original 86-87	107,900	0	0	0	0	0	107,900
Adjusted 86-87	102,900	0	0	0	0	0	102,900
Appropriated 87-88	102,100	0	0	0	0	0	102,100
<b>POST</b>							
Original 86-87	0	0	0	13,000	0	957,200	970,200
Adjusted 86-87	0	0	0	13,000	0	957,200	970,200
Appropriated 87-88	0	0	0	63,000	0	937,200	1,000,200
<b>Law Enforcement</b>							
Original 86-87	1,527,800	0	0	0	0	0	1,527,800
Adjusted 86-87	1,463,900	0	0	0	0	0	1,463,900
Appropriated 87-88	1,375,200	0	0	27,200	0	0	1,402,400
<b>Driver License</b>							
Original 86-87	254,200	6,077,900	0	18,000	0	0	6,350,100
Adjusted 86-87	226,200	6,024,900	0	18,000	0	0	6,269,100
Appropriated 87-88	254,100	6,066,600	0	18,000	0	0	6,338,700
<b>Commissioner</b>							
Original 86-87	1,353,400	0	0	52,500	0	0	1,405,900
Adjusted 86-87	1,281,500	0	0	52,500	0	0	1,334,000
Appropriated 87-88	1,278,700	150,500	0	0	0	0	1,429,200
<b>Highway Safety</b>							
Original 86-87	86,000	0	950,100	500,000	0	942,000	2,478,100
Adjusted 86-87	83,500	0	950,100	500,000	0	942,000	2,475,600
Appropriated 87-88	82,100	0	1,182,400	0	0	0	1,264,500
<b>Narcotics</b>							
Original 86-87	1,546,100	0	68,200	10,000	0	0	1,624,300
Adjusted 86-87	1,521,600	0	68,200	10,000	0	0	1,599,800
Appropriated 87-88	1,711,200	0	136,600	12,000	0	0	1,859,800
<b>Medicaid Fraud</b>							
Original 86-87	147,200	0	441,700	0	0	0	588,900
Adjusted 86-87	137,200	0	411,700	0	0	0	548,900
Appropriated 87-88	136,800	0	410,200	0	0	0	547,000
<b>Communications</b>							
Original 86-87	419,700	238,700	0	162,000	258,000	0	1,078,400
Adjusted 86-87	419,700	238,700	0	162,000	258,000	0	1,078,400
Appropriated 87-88	940,300	1,626,800	0	205,000	0	0	2,772,100
<b>Fire Marshal</b>							
Original 86-87	521,100	0	0	0	0	0	521,100
Adjusted 86-87	518,100	0	0	0	0	0	518,100
Appropriated 87-88	475,100	0	0	12,000	0	0	487,100
<b>TOTAL OPERATIONS BUDGET</b>							
Original 86-87	7,017,500	23,589,600	5,818,200	1,140,600	1,508,000	1,899,200	40,973,100
Adjusted 86-87	6,703,000	23,414,600	5,788,200	1,140,600	1,508,000	1,399,200	40,453,600
Appropriated 87-88	7,294,000	24,260,500	5,766,700	785,000	0	937,200	39,043,400

**ELECTED OFFICIALS**  
**Appropriations Summary**

	General Fund	Federal Funds	Dedicated Credits	Mineral Lease	Restricted and Trust Funds	Other	Total
<b>Attorney General</b>							
Original 86-87	4,169,600	0	2,505,000	0	300,000	206,200	7,180,800
Adjusted 86-87	4,017,500	0	2,505,000	0	300,000	226,200	7,048,700
Appropriated 87-88	3,887,400	0	2,413,000	0	330,000	0	6,630,400
<b>TOTAL OPERATIONS BUDGET</b>							
Original 86-87	10,205,200	694,200	4,482,800	0	486,700	399,700	16,268,600
Adjusted 86-87	10,024,600	694,200	4,482,800	0	486,700	419,700	16,108,000
Appropriated 87-88	9,421,800	2,023,500	3,121,400	0	519,300	41,300	15,127,300

The General Fund appropriation for the Attorney General's Office for fiscal year 1987-88 represents a 6.8 percent decrease from the original fiscal year 1986-87 appropriation. The fiscal year 1987-88 appropriation is approximately \$640,000 less than the governor's recommendation, excluding salary increases. This difference includes reductions in career ladders, capital outlay, data processing, 5 full time equivalent positions, and contract attorney fees. The action by the legislature did, however, restore two critical attorney positions in the area of water rights and financial institutions.

APPENDIX C

Passed Legislation Impacting Criminal Justice  
1987 Legislature

Criminal Justice

H.B. 31 - Expungement and Sealing of Records - limits expungement for those who commit capital felonies, first degree felonies, or forcible second degree felonies and for those who have extensive criminal histories. It also extends the length of time that must elapse prior to expungement from time of conviction for a felony to seven years and for an alcohol related traffic offense to five years. It also allows the court clerk to charge a reasonable fee for processing the expungement order.

H.B. 42 - Theft of Utility Service - makes it a class a misdemeanor to obtain gas, electricity, water or sewer services from a public, municipal, or cooperative utility by circumventing in any way the metering and billing process of the utility provider.

H.B. 79 - Seizure of Property in Illegal Operation - extends the provision for the seizing agency, or other agency, to retain property that may be used to further enforcement of controlled substance laws to real property if more than \$1,000 of controlled substance were associated with the property.

H.B. 96 - Dangerous Materials in the Public Schools - makes it a class b misdemeanor to possess a weapon, inflammable material, or other material dangerous to persons or property in or around a school, and allows for exceptions.

H.B. 183 - D.U.I. Restitution Amendments - corrects an oversight and provides that the money in the dedicated DUI restitution fund is transferred to the Victim Reparations Trust Fund. Victims of DUI after Jan. 1, 1985, and some victims prior to that time, may be eligible for reparations.

H.B. 236 - Prosecutive Powers of City Attorneys - authorizes city attorneys to be sworn as deputy public prosecutors by the Attorney General or the county prosecutor. As a result of this new power, the city attorney will be able to prosecute in the name of the state any class a misdemeanor. This deputization allows additional resources for prosecuting class a misdemeanors.

S.B. 14 - Information Registration of Sex Offenders - moves responsibility for maintaining the registry of sex offenders within the State from the Department of Public Safety to the Department of Corrections. Law enforcement agencies and the courts have the responsibility to notify corrections of actions related to sex offenders. Corrections has the responsibility to make the registry available to law enforcement and the courts statewide.



S.B. 16 - Custodial Education Amendments - requires the State Board of Education to assume responsibility for education of persons under 21 years old who are in the custody of the Department of Social Services or who are in a juvenile detention facility. In addition, the State Board assumes responsibility of persons in custody of the Department of Corrections. Corrections' education related resources are transferred to the Board of Education.

S.B. 22 - Appeals in Capital Cases - provides that in capital cases appeals must be consolidated to include all relevant matters. Once an appeal is filed, the appellate briefs must be filed within sixty days. Respondent briefs must be filed within sixty days of appellate briefs. Appellate reply briefs must be filed within thirty days of the filing of respondent briefs. Subsequent appeals must raise new matter (not previously resolved).

S.B. 26 - Statute of Limitations Reform - removes imprisonment as a legal disability and enables civil actions and judgements to be pursued against those who are imprisoned.

S.B. 37 - Prohibition Against Fighting Dogs - makes it a 3rd degree felony with up to \$25,000 fine to own or train a dog to fight for amusement or gain. Similarly it is a class b misdemeanor to be a spectator or participant in arranging such a fight. Property used for training or exhibiting such activity shall be forfeited.

S.B. 57 - Peace Officer Assault Amendments - expands the definition of assault on a peace officer from one who is 'on duty' to 'one who is acting within the scope of his authority as a police officer'.

S.B. 106 - Library Theft Amendments - redefines and clarifies the crime of library theft. It provides that a library employee may detain a person if there is probable cause to believe that person has committed library theft and clarifies that an employee who causes a detention or arrest is not civilly or criminally liable where reasonable and probable cause exist. Allowed to become law without signature by Governor because the Attorney General suggested that simple failure to return library materials after notice did not constitute proof of "intent" to commit theft.

S.B. 112 - Controlled Substances Amendments - clarifies the nature of controlled substance offenses, particularly those relating to an imitation controlled substance. The bill also provides safeguards to allow registered practitioners to conduct research on drugs.

S.B. 116 - Criminal Law Definitions - makes more explicit the definition of sexual activity as it relates to the offense of prostitution.

S.B. 118 - Commission on Uniform State Laws - increases the commission from three to four members of the bar, one of which must be a legislator and one which a designee of the Office of Legislative Research and General Counsel. It also transfers the responsibility for the "commission" from the Office of

the Attorney General to the Office of Legislative Research and General Counsel.

S.B. 121 - Victim Bill of Rights - provides that victims have the right to be informed regarding: (a) the level of protection available to them; (b) their role in the criminal justice process; (c) what to expect in relevant legal proceedings; and (d) changes in scheduling of relevant legal proceedings. The bill also encourages separate waiting areas during trials, the prompt return of personal property, and reasonable employee intercession. Special rights are delineated for children and a victim rights committee is established in each of seven judicial districts to further the cause of victim rights.

S.B. 124 - Repeal of Statutory Presumption of Fraud in Sales Without Changing of Possession - lessens the presumptions of fraud in such cases.

S.B. 145 - Patterns of Unlawful Activity Act - broadens the old racketeering statute by adding new offenses and eliminating qualifying language. The criminal portion of the bill is frightening because it would allow an offender who committed three related offenses to be charged as a second degree felon. Those involved with the bill suggest that practical limitations in cost and resources involved in prosecuting these cases will prevent abuse. Most parties feel that the bill is a model piece of legislation. There is some concern with Section 76-10-1065-8 which provides that the prevailing party in a law suit is entitled to recover reasonable expenses incurred in defending against the action from the party who brought the action. It was suggested that this might discourage the filing of many legitimate actions.

#### Juvenile Justice

H.B. 28 - Repeal of Missing Children's Registry - eliminates the requirement that all adoptive children are placed on the missing children registry and that the registry be searched prior to the adoption of any child.

H.B. 37 - Child Support Long Arm Statute - expands the ability of a Utah court to order collection of child support to persons who may reside out of state, but are subject to Utah courts for any of a variety of reasons.

H.B. 106 - Juvenile Court Commissioners - changes the name 'juvenile court referee' to 'juvenile court commissioner'.

H.B. 170 - Juvenile Court/Director of Court Services - exempts the position of regional Director of Court Services in the Juvenile Court from the state merit system. This bill allows the juvenile court administrator to remove the director of court services upon his or her recommendation subject to the approval of the district judge or the presiding judge in multiple court districts.

H.B. 184 - Juvenile Court Guardian Ad Litem and Volunteers - requires that volunteers who assist juveniles as guardian ad litem shall have their names recorded in the official court record and may assist in the investigation

and preparation of information regarding the case. Guardian ad litem are considered employees of the state for purposes of indemnification under the Governmental Immunity Act.

H.B. 204 - Juvenile Court - Adoption Procedures - provides concurrent jurisdiction in adoption proceedings where the court has previously entered an order terminating the rights of a parent and the court finds that adoption is in the best interests of the child.

S.B. 92 - State Responsibility for Juvenile Detention - provides that the responsibility for juvenile detention facilities as well as employees and facilities of current county detention, pass from the counties to the State Division of Youth Corrections. Youth Corrections shall establish local detention advisory board.

S.B. 208 - Assessments for Teen Drug and Alcohol Schools - provides that assessments ordered by the juvenile court when a juvenile or his legal guardian is ordered to attend teen drug/alcohol school shall go to the county treasurer of the county that provides the school.

#### Courts

H.B. 39 - Municipal Justice of the Peace Locations - prohibits cities in primary locations of the circuit court from creating new justice of the peace courts. This bill closes a loophole that has developed since the State took over the funding of Circuit Courts. The bill would prevent new justice of the peace courts from springing up and modifying existing revenue splits.

H.B. 108 - Justice of the Peace Courts - provides that a retired justice of the peace may hear cases as called upon.

H.B. 119 - Small Claims Court - increases the maximum length of time from notification to appearance from twenty to forty five days.

H.B. 130 - Warrants for Arrest - extends the authority to arrest on a misdemeanor warrant at any time if the person to be arrested is upon a public highway, or in a public place, or is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest. This was intended to open the door to jurisdictions to set up night court.

H.B. 218 - Commitment of the Mentally Ill - provides that a person who has involuntarily been committed to the State Hospital may continue to be committed if the court finds that the patient is still mentally ill, and that absent an order of involuntary hospitalization and without continued treatment the patient will suffer severe and abnormal mental and emotional distress, and will experience deterioration in his ability to function in the least restrictive environment, thereby making the patient a substantial danger to himself or others.

S.B. 51 - Judges' Retirement Benefits Amendments - increases the benefit formula per year of service for the first ten years; changes the judge's

eligible retirement age to 62 with ten years of service; increases benefits for surviving spouses to 65 percent of the retirees benefit; and provides full retirement benefits after 25 years of service at any age.

S.B. 155 - Judicial Nominating Commission - delegates responsibility for the establishment of procedures for the judicial nominating commission to the judicial council and makes the nominating commission exempt from public meetings requirements and rule making requirements.

S.B. 213 - Notification of Service by Justices of the Peace - requires that the State Court Administrator be notified of elections, appointments, and vacancies or other changes regarding justices of the peace within 30 days of their occurrence.

### Corrections

H.B. 140 - Restitution Amendments - Court Assessment - provides that those who are extradited, either from within or without the state, and subsequently convicted can be assessed the cost of their extradition to be reimbursed to the appropriate unit of government.

H.B. 167 - Misdemeanor Probation Amendments - provides technical amendments to improve language and better reflect the philosophy of Corrections. The Bill requires that the judicial council establish procedures regarding who should be entitled to see the presentence investigation and when. The concept of "rehabilitation" is eliminated from statute in favor of the concept of "treatment". Probationers may now be required to participate in community service restitution programs and pay for the costs of investigation, probation, and treatment services.

H.B. 174 - Corrections Department Amendments - provides major housekeeping changes to UCA § 64-13 to accommodate a changing philosophy and operation in Corrections as well as to protect the Department from legal action. These include elimination of the word "rehabilitation" from the statute, limiting the responsibility to provide jobs and services based on "available resources", authorizing Corrections to require each offender under the custody of the department to place his income from employment in an account administered by the department. It also makes clear that an inmate in the act of escaping from a secure correctional facility is presumptively considered to pose a threat of death or serious bodily injury to others. Persons responsible for providing any dangerous weapon to an inmate may be charged with a second degree felony.

### Personnel

H.B. 16 - Governmental Immunity Act - provides for periodic payments where a judgement for future damages against a governmental entity or employee exceeds \$100,000 and clarifies application of notice requirements and liability limits to all noncontracts against governmental entities and employees.

S.B. 50 - Retirement Recodification - provides a recodification of the pension laws of the State; clarifying board duties and standards with respect to investment of the fund; granting the retirement office the power to self-insure against liabilities; removing limitations of redeposits; providing distribution of retired reserves; improving the organization and clarity of the code; correcting problems of readability, clarity, and consistency; eliminating duplicative and unnecessary sections of the code; providing minor policy alterations in order to clarify intent, define terms, and resolve conflicts within and among statutes.

S.B. 81 - Peace Officer Training Amendments - makes technical amendments the qualifications, training, and certification of peace officers in the State. It also, under certain circumstances, allows other agencies to provide certification courses and provides for those not continuously involved in law enforcement activities to be placed in an inactive status and require recertification.

H.B. 145 - Drug and Alcohol Testing Act - provides that the legislature finds fair and equitable drug testing is in the best interest of all parties. Employers may require employees or prospective employees to provide samples for testing as well as require those who provide samples to properly identify themselves. Testing should occur on employers time and be paid for by the employer. The bill also provides for the conditions associated with testing and limits the liability of the employer who requires the tests.

S.B. 154 - Public Safety Chiefs - repeals UCA § 10-3-911 which provided that the chief of police or fire department may be removed without a trial or opportunity to be heard by the board of commissioners. The removal of public safety chiefs in the future would fall under the normal rules and regulation of the cities for all appointed positions which provide for probable cause removal by the mayor or chief executive. In addition, the bill provides that the marshal is not appointed by the mayor after each municipal election. This removes the marshal from constant turnover after elections, but still provides the ability to remove for cause through normal rules and regulations of a city.

#### Highway, Traffic, and Drinking

H.B. 4 - Penalty for Removing Road Signs and Barriers - makes it a class b misdemeanor to unlawfully remove, deface, or interfere with road signs, signals, barriers, and warnings. The offense becomes a class a misdemeanor if it results in injury or damage to persons or property.

H.B. 18 - License Plates of Leased State Vehicles - provides that all leased state vehicles should display the EX license plate.

H.B. 117 - Boating Under the Influence - provides penalties for boating under the influence that parallel driving under the influence including the impoundment of the boat.

H.B. 212 - DUI Offenses, Sworn Reports - provides that applicants must verify and sign before a person authorized to administer oaths that the

required information to receive a drivers license is correct. The fee for reinstatement of drivers license is increased from \$25 to \$50 in the case of suspension for an alcohol related offense. Refusal to submit to a chemical test justifies the officer providing immediate notice of the Dept. of Public Safety's intent to revoke the driving privilege. The officer may take the Drivers License and issue a temporary license.

H.B. 220 - Local Alcohol and Drug Authority Amendments - Before distributing any public funds, the local alcohol and drug authority shall determine community needs, develop a priority list of projects, services, and programs to meet those needs. The local drug and alcohol authority shall award all public funds by competitive bids.

H.B. 229 - Defining Reportable Violations - relates to motor vehicles and replaces the term "moving violations" with "reportable violations" meaning those violations for which the Dept. of Public Safety assigns driving points. This appears to broaden the base for emergency medical services, peace officer standards and services, prosecutor training, and victim reparations.

H.B. 230 - Motor Vehicle Operator License Revision - is a recodification of the laws relating to motor vehicle operator licensing to update the language and pull together statutes from different parts of the code.

H.B. 231 - Traffic Rules Revision - is a recodification of the law relating to traffic rules to update the language and pull together statutes from different parts of the code.

S.B. 38 - Off-Highway Vehicle Registration - requires that off highway vehicles be registered and provides for minimum safety standards.

S.B. 39 - Off-Highway Vehicle Operator Training - provides that operators of off-highway vehicles be at least eight years of age and sets minimum educational standards.

S.B. 139 - Port of Entry Operation Amendments - provides for the Highway Patrol to operate the ports of entry using special function peace officers instead of deputized highway patrol officers.

S.B. 141 - Reckless Driving/Penalty Clarification - clarifies existing language.

S.B. 165 - 55 Mile Per Hour Speed limit - would up the speed limit from 55 mph to 65 mph on the highway systems of the state. This bill was vetoed by the Governor to preserve \$150,000,000 that could have been lost by federal sanctions. The governor does support modification of federal statute to allow increasing the speed limit.

#### RESOLUTIONS

H.R. 5 Juvenile Justice Federal Funds Resolution - requests the Commission on Criminal and Juvenile Justice to apply for a federal grant for a program

denying driving privileges to teenagers convicted of alcohol and drug offenses; and directing them in applying for the grant to follow the program outlined in H.B. 44.

#### APPROPRIATIONS

H.B. 299 - State General Obligation Bond - provides funding for; (1) Corrections to proceed with prison renovation, construction as well as planning and site acquisition money for a regional prison; and (2) for Youth Corrections funding to construct a building to house an observation and assessment unit in Weber County.

H.B. 301 - Supplemental Appropriations Act - provides to the Division of Youth Corrections \$1,731,000 funding for implementation of S.B. 92 (State Takeover of Detention) and provides \$10,000 to the Department of Corrections to implement H.B. 177 (Boating Under the Influence).

H.B. 304 - Supplemental Appropriations Act - provides the funding for a variety of building blocks as a result of revenue enhancements.

H.B. 310 - Supplemental Appropriations Act - reduces funding for the current fiscal year by one percent with a few exceptions.

S.B. 250 - Appropriations Act - provides a base budget (91 percent of the original FY'87 budget to most state agencies).

S.B. 251 - Supplemental Appropriations Act - provides \$1,200 for juror and witness fees as claims against the State and \$300,000 for the continuation of the grand jury to be used solely for investigation of Utah Power and Light.

#### INTERIM STUDY RESOLUTIONS TOPICS

##### Study Item Number

1. Alcoholic Beverage Profits and Law Enforcement Amendments.
4. Bad Checks (treble damages)
55. School Bus Safety (higher seat backs and seat belts)
123. Constables (whether they should be abolished)
124. Court Reporters (double jeopardy)
126. Dispute Resolution (prelitigation as an alternative)
127. Electronic Surveillance of Misdemeanants (feasibility)
128. Frivolous Court Cases (prevailing party to receive court costs?)
129. Gasoline Shoplifting Fines (should they be increased?)
130. Home Confinement Issues (H.B. 10)
133. Justice of the Peace (examine the Justice of Peace system)
134. Juvenile Court Purpose (H.B. 30)
135. Juvenile Detention (H.B. 127-appropriate post adjudication disposition)
139. Youth Corrections Costs (existing vs larger facility costs)
163. State Agency Budget Surpluses (retain percentage of under-run)
168. Traffic Penalty Revenues (distribution of fines and forfeitures)
170. Child Abuse Crime Sentences (study sentencing practice)
171. Child Sexual Abuse (H.B. 261)

177. False Reporting of Child Abuse (H.B. 259 should it be a crime)
187. State Hospital Corrections Clients (should State Hospital continue to house offenders not committed to hospital by the court).
188. Victim and Counselor Communications (H.B. 125 privileged communications)
190. Attorney General Procedures (interaccount billing, pay plan, etc.)
200. County Jail Funding (total review S.B. 64)
205. Election of Sheriffs (residence requirements for Sheriffs)
209. Governmental Immunity (H.B. 16 exemptions from immunity)
211. Jury Pools (to examine jury selection procedures)
240. DUI Penalties (increased penalties for repeater DUI)
244. Highway Traffic Monitoring (use of video equipment to monitor speed and traffic on highways.
246. Minimum Driving Age (increase from 16 to 17)
250. Revocation of Minors License (feasibility of lesser requirements)
253. Seatbelts (Failure to wear constitutes mitigation of damages)



APPENDIX D

VICTIMS' BILL OF RIGHTS

1987

GENERAL SESSION

Enrolled Copy

S. B. No. 121

By LeRay L. McAllister

Lyle W. Hillyard

AN ACT RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR A VICTIMS' BILL OF RIGHTS; AND PROVIDING ENFORCEMENT PROCEDURES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:

64A-1-1, UTAH CODE ANNOTATED 1953

64A-1-2, UTAH CODE ANNOTATED 1953

64A-1-3, UTAH CODE ANNOTATED 1953

64A-1-4, UTAH CODE ANNOTATED 1953

64A-1-5, UTAH CODE ANNOTATED 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 64A-1-1, Utah Code Annotated 1953, is enacted to read:

64A-1-1. (1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this

chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

Section 2. Section 64A-1-2, Utah Code Annotated 1953, is enacted to read:

64A-1-2. In this chapter:

(1) "Child" means a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.

(2) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.

(3) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.

(4) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason

of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

Section 3. Section 64A-1-3, Utah Code Annotated 1953, is enacted to read:

64A-1-3. (1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form that is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims are entitled to restitution or reparations, including medical costs, as provided in Sections 63-63-1, 77-27-6, 55-11b-23, and 76-3-201. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims' Reparations Board, and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement, or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation

of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(2) Informational rights of the victim under this chapter are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

Section 4. Section 64A-1-4, Utah Code Annotated 1953, is enacted to read:

64A-1-4. In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

Section 5. Section 64A-1-5, Utah Code Annotated 1953, is enacted to read:

64A-1-5. Remedies available are:

(1) In each judicial district, the presiding district court judge shall appoint a person who shall establish and chair a victims' rights committee consisting of:

- (a) a county attorney;
- (b) a sheriff;
- (c) a corrections field services administrator;
- (d) an appointed victim advocate;
- (e) a municipal attorney;
- (f) a municipal chief of police;
- (g) other representatives as appropriate.

(2) This committee shall meet at least semiannually to review progress and problems related to this chapter. Victims and other interested parties may submit matters of concern to the victims' rights committee. These matters shall also be considered at the meetings of the victims' rights committee. The minutes of the semiannual meeting shall be forwarded to the Commission on Criminal and Juvenile Justice.

(3) A violation of this chapter is not a criminal offense, but is subject to civil remedies under Subsection (4).

(4) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. Failure to provide the rights enumerated above does not constitute cause for a judgment for monetary damage or an attorney's fee.

(5) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Appendix E

EVALUATION OF UTAH'S NEW SENTENCE AND  
RELEASE GUIDELINES

by

Richard J. Oldroyd, Ph.D.

and

David B. Hartvigsen

This research was related to the Guidelines established in Jan. 1986 in Utah

Utah Commission on Criminal and Juvenile Justice  
101 Utah State Capitol  
Salt Lake City, Utah 84114



## EVALUATION OF UTAH'S NEW SENTENCE AND RELEASE GUIDELINES

### Executive Summary and Forms Modification

The Utah Commission on Criminal and Juvenile Justice is charged by statute (UCA §63-25-1) to develop, monitor, and evaluate Sentence and Release Guidelines. The original guidelines and their development is described in a 1985 publication: Utah Sentence and Release Guidelines. The material presented here is the evaluation of those guidelines and their implementation.

Surveys were conducted regarding use of and familiarity with the Guidelines. Of those responding, all of the members of the Board of Pardons were very familiar with the Guidelines and considered them in every case. Ninety percent of the District Court Judges reported they were very familiar with the Guidelines while ten percent reported being somewhat familiar with them. Fifty-two percent of the judges reported always considering the Guidelines and an additional forty-three percent usually considered them. Sixty-five percent of the prosecutors reported being very familiar with the Guidelines and an additional 24 percent were somewhat familiar with them. Eighteen percent of the prosecutors reported always considering the Guidelines and an additional forty-seven percent usually considered them. The Guidelines seem to have good acceptance and most practitioners are utilizing them.

Adult Probation and Parole forwarded presentence investigation information to Commission staff who entered the information for computer analysis. Forms were generally being filled out properly. Of the first 500 cases reviewed, there were eleven cases where errors would have changed the Guideline recommendation. Presentence recommendations agreed with the Guideline recommendations in eighty percent of the cases where the recommendation was prison, probation, or jail. The judges' dispositions agreed with the Guidelines in fifty-four percent of the cases recommended for prison, sixty percent recommended for jail, and seventy six percent recommended for probation. Aggravating or mitigating circumstances were generally cited when the Guideline recommendations were not followed. Aggravated circumstances were cited approximately twenty percent more frequently than mitigating circumstances. Aggravating circumstances were utilized more frequently than mitigating circumstances to justify departure from the guidelines. This must be taken into consideration when looking at the Guidelines in making projections or gaining and understanding of the functioning of the criminal justice processes.

The Board of Pardons frequently exceeded the minimum term prescribed by the Guidelines. Thirty-nine percent received dates corresponding with the minimum term, forty-three percent received longer dates, and eighteen percent received shorter dates. The most frequent departure was three months although the mean departure was 12.6 months.

Many suggestions were received during the evaluation. Some of these resulted in modification of the Guideline forms. The following modifications should be noted:

1. The recommended disposition for offenders in the 1st degree "excellent" and "good" categories was changed to "prison" from "probation" and "alternate". (Form 3)
2. The Aggravating/Mitigating Circumstances document was modified to allow inclusion of the formal evaluation procedures currently being developed by the Department of Corrections. (Form 5)
3. H.B. 209 provisions on "attempted offenses" were originally construed to be included under mandatory sentence provisions. Current interpretation of the law maintains the degree of the offense but not the mandatory sentence. (Form 1)
4. Guidelines were modified so that second degree manslaughter corresponded with second degree sex offenses both in terms of recommended disposition and time served. (Forms 3 & 4)
5. The "forgiveness factor" was removed from the Criminal History Assessment (Form 3) and included as a mitigating circumstance. (Form 5)
6. Possession of drugs with intent to distribute has been included as a "person crime". (Forms 3 & 4)
7. The "fine and restitution only" category is not relevant to district court cases. It has been removed. (Form 3)
8. The Conditions of Probation section has been eliminated. (Form 4)
9. The Ninety-Day Diagnostic should no longer be considered as an "alternate" disposition. Rather, it should be used to help identify sentencing alternatives and make recommendations when a judge is undecided as to the appropriate disposition.

# MANDATORY MATRICES

## DRIVING UNDER THE INFLUENCE

ALL DUIS                      MANDATORY ADDITIONS TO SENTENCE

2-6 MONTHS JAIL \$299 FINE OR BOTH 12 MONTH & \$1000 MAX. IF OTHERS ARE INJURED	PLUS	\$100 RESTITUTION & 2-10 DAYS IN JAIL OR COMMUNITY SERVICE
	PLUS	\$100 RESTITUTION & 2-10 DAYS IN JAIL OR 10-30 DAYS COMM. SERVICE
	PLUS	\$100 RESTITUTION & 30-90 DAYS IN JAIL OR COMMUNITY SERVICE

1ST VIOLATION

2ND VIOLATION  
WITHIN 5 YEARS

3RD VIOLATION  
WITHIN 5 YEARS  
OF 2ND VIOLATION

## PORNOGRAPHY

\$500 MINIMUM FINE AND 30 DAYS IN JAIL...W/O EXCEPTION
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## MANDATORY SENTENCES (HB 209)

CHILD RAPE  
 CHILD OBJECT RAPE  
 CHILD KIDNAPPING  
 CHILD SODOMY  
 AGG. SEX ASSAULT  
 AGG. KDNPG.      AGG. SEX ABUSE OF A CHILD\*

ADD 3 YEARS FOR EACH PRIOR CONVICTION FOR THESE CRIMES (LIFE, IF MORE THAN 2)	15 YEARS	9 YEARS	SUBSTANTIAL BODILY INJURY OR AGGRAVATING CIRCUMSTANCES	
	10 YEARS	6 YEARS		NO AGGRAVATING OR MITIGATING CIRCUMSTANCES
	5 YEARS	3 YEARS		
Probation			SEE U.C.A. 76-5-406.5	

\*SEX ABUSE OF A CHILD IS A 2nd DEGREE FELONY (1-15 YRS)

AGGRAVATING AND MITIGATING CIRCUMSTANCES ASSOCIATED WITH  
MANDATORY SENTENCES REQUIRED BY H.B. 209

House Bill 209 passed by the 1983 Utah Legislature established "mandatory minimum sentences" for those convicted of certain crimes. Probation is only a possibility in these cases if the victim is over 5 years of age and there is a familial relationship between the offender and the victim and if 12 specified mitigating conditions can be established. The 12 required conditions are found in Utah Code Annotated §76-5-406.5. If these conditions do not exist, the offender must be sentenced to the Utah State Prison.

The length of the mandatory minimum sentence is either 10 years or 6 years, depending on the specific crime of conviction (see Form 1). If aggravating circumstances exist, then the mandatory minimum sentence is increased to 15 and 9 years respectively. Similarly, if mitigating circumstances exist, the mandatory minimum sentence is reduced to 5 and 3 years respectively. The responsibility to weigh aggravating and mitigating circumstances in each case rests with the individual judge.

The presentence investigator should circle the number associated with any aggravating or mitigating circumstance that merits consideration by the judge. The page number from the presentence investigation report where any such circumstance is discussed should be noted in the blank next to that circumstance.

Aggravating Circumstances

NOTE: The following aggravating circumstances should only be considered if they are not inherent in the definition of the crime of conviction.

PSI  
Page

- \_\_\_ 1. The victim suffered substantial bodily injury.
- \_\_\_ 2. The offender has an extensive history of such offenses. Relevant factors include number of victims, length of involvement, number of incidents, and continued involvement after arrest.
- \_\_\_ 3. The offense was characterized by extreme cruelty or depravity.
- \_\_\_ 4. The victim was unusually vulnerable.
- \_\_\_ 5. There existed a non-familial relationship of trust.

Mitigating Circumstances

- \_\_\_ 1. The offense represents a single incident and the offender has no prior history of such offenses.
- \_\_\_ 2. The offender was exceptionally cooperative with law enforcement.
- \_\_\_ 3. Incest offender has strong, supportive family relationships.
- \_\_\_ 4. Offender is a good candidate for a recognized treatment program. Substance abuse treatment may be appropriate if the offense was specifically substance related.
- \_\_\_ 5. Developmental disabilities of the offender may be considered in mitigation if highly structured alternatives can be utilized to control the offender's criminal behavior.

# CRIMINAL HISTORY ASSESSMENT

**PRIOR FELONY CONVICTION**  
(SEPARATE CRIMINAL INCIDENTS)

- 0 NONE
- 2 ONE
- 4 TWO
- 6 THREE
- 8 MORE THAN THREE

**CRIMINAL HISTORY CATEGORY**

- POOR 16 - 28
- FAIR 12 - 15
- MODERATE 8 - 11
- GOOD 4 - 7
- EXCELLENT 0 - 3

**PRIOR MISD. CONVICTIONS**  
(SEPARATE CRIMINAL INCIDENTS)  
(INCLUDES DUI & RECKLESS)  
(EXCLUDES OTHER TRAFFIC)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 FIVE TO SEVEN
- 4 MORE THAN SEVEN

**PRIOR JUVENILE REFERRALS**  
(FINDINGS OF DELINQUENT FOR  
INCIDENTS THAT WOULD HAVE BEEN  
FELONIES IF COMMITTED BY AN ADULT)  
[3 NON-STATUS MISD. = 1 FELONY]

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 MORE THAN FOUR
- 4 SECURE PLACEMENT

PLEASE CIRCLE THE  
CORRECT CATEGORY

**SUPERVISION HISTORY**  
(ADULT OR JUVENILE)

- 0 NO PRIOR SUPERVISION
- 1 PRIOR SUPERVISION
- 2 PRIOR RESIDENTIAL PLACEMENT
- 3 PRIOR REVOCATION
- 4 CURRENT SUPERVISION OR PRE-TRIAL RELEASE

**SUPERVISION RISK**  
(ADULT OR JUVENILE)

- 0 NO ESCAPES OR ABSCONDINGS
- 1 FAILURE TO REPORT (ACTIVE OFF.) OR OUTSTANDING WARRANT
- 2 ABSCONDED FROM SUPERVISION
- 3 ABSCONDED FROM RESIDENTIAL PROG. OR EXTRADITION REQ'D
- 4 ESCAPED FROM CONFINEMENT

**WEAPONS ENHANCEMENT**  
(ACTIVE OFFENSE)

- 0 NONE
- 2 OTHER
- 3 KNIFE
- 4 FIREARM OR EXPLOSIVE

\*\* NOTE: 2nd FIREARMS CONVICTION  
REQUIRES A MANDATORY 5 - 10 YEAR  
CONSECUTIVE SENTENCE \*\*

TOTAL PLACEMENT SCORE: \_\_\_\_\_

## GENERAL DISPOSITION MATRIX

CRIMINAL HISTORY	CRIME SEVERITY									
	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR II	OTHER	HOMICIDE 2ND SEX	2ND DEG 3RD SEX	3RD DEG	2ND DEG	3RD DEG	A	B
POOR										JAIL
FAIR			PRISON							
MODERATE										
GOOD				ALTERNATE			PROBATION			
EXCELLENT										

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE CONSIDERED "PERSON" CRIMES

# TIME MATRIX

USED TO CALCULATE MINIMUM TIME IF SENTENCE IS INCARCERATION

## CRIME SEVERITY

CRIMINAL HISTORY	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR II	OTHER	HOMICIDE	2ND DEG	3RD DEG	2ND DEG	3RD DEG	A	B
				2ND SEX	3RD SEX					
POOR		12 YRS	10 YRS	6 YRS	36 MON	24 MON	24 MON	18 MON	12 MON	6 MON
FAIR		10 YRS	7 YRS	5 YRS	30 MON	21 MON	21 MON	15 MON	10 MON	5 MON
MODERATE		7 YRS	5 YRS	4 YRS	24 MON	18 MON	18 MON	12 MON	8 MON	4 MON
GOOD		5 YRS	5 YRS	3 YRS	21 MON	15 MON	15 MON	9 MON	4 MON	3 MON
EXCELLENT		5 YRS	5 YRS	2 YRS	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
----- CONSECUTIVE ENHANCEMENTS -----										
		36 MON	30 MON	24 MON	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
----- CONCURRENT ENHANCEMENTS ADDED BY B.O.P. -----										
		18 MON	15 MON	12 MON	9 MON	6 MON	6 MON	3 MON	3 MON	3 MON

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE CONSIDERED "PERSON" CRIMES

## ACTIVE CONVICTIONS

	DEGREE	YEARS	MONTHS
MOST SERIOUS	_____	_____	_____
NEXT MOST SERIOUS	_____	_____	_____
OTHER	_____	_____	_____
OTHER	_____	_____	_____
<b>TOTAL</b>	_____	_____	_____

SENTENCES SHOULD GENERALLY BE CONCURRENT. HOWEVER, THE EXISTENCE OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES SUGGEST CONSIDERATION OF CONSECUTIVE SENTENCES:

1. ESCAPE OR FUGITIVE
2. UNDER SUPERVISION OR BAIL RELEASE WHEN OFFENSE WAS COMMITTED
3. UNUSUAL VICTIM VULNERABILITY
4. INJURY TO PERSON OR PROPERTY LOSS WAS EXTREME FOR CRIME CATEGORY
5. OFFENSE CHARACTERIZED BY EXTREME CRUELTY OR DEPRAVITY

IF THE SENTENCES ARE TO BE CONSECUTIVE, USE THE CONSECUTIVE ENCHANEMENTS PORTION OF THE "TIME MATRIX" FOR ALL CONSECUTIVE SENTENCES EXCEPT THE "MOST SERIOUS" CONVICTION.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 2 for Mandatory Sentence Situations)

The presentence investigator should circle the number associated with any aggravating or mitigating circumstance that merits consideration by the judge. The page number from the presentence investigation report where any such circumstance is discussed should be noted in the blank next to that circumstance.

Aggravating Circumstances

NOTE: The following aggravating circumstances should only be considered if they are not inherent in the definition of the crime of conviction.

PSI

Page

- \_\_\_ 1. There are established instances of repetitive criminal conduct.
- \_\_\_ 2. The offender presents a serious threat of violent behavior.
- \_\_\_ 3. The victim was particularly vulnerable.
- \_\_\_ 4. Injury to person or property loss was unusually extensive.
- \_\_\_ 5. The offense was characterized by extreme cruelty or depravity.
- \_\_\_ 6. There was multiple charges or victims.
- \_\_\_ 7. Offender's attitude is not conducive to less restrictive supervision.
- \_\_\_ 8. Offender continued criminal activity subsequent to arrest.
- \_\_\_ 9. Sex Offenses: Corrections' formal evaluation assessment classifies as a high risk offender.
- \_\_\_ 10. Other (specify) \_\_\_\_\_

Mitigating Circumstances

- \_\_\_ 1. Offender's criminal conduct neither caused nor threatened serious harm.
- \_\_\_ 2. Offender acted under strong provocation.
- \_\_\_ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
- \_\_\_ 4. Offender is young.
- \_\_\_ 5. Offender assisted law enforcement in the resolution of other crimes.
- \_\_\_ 6. Restitution would be severely compromised by incarceration.
- \_\_\_ 7. Offender's attitude suggests amenability to supervision.
- \_\_\_ 8. Domestic crime victim does not want incarceration.
- \_\_\_ 9. Offender has exceptionally good employment and/or family relationships.
- \_\_\_ 10. Imprisonment would entail excessive hardship on offender or dependents.
- \_\_\_ 11. Offender has maintained an extended period of arrest-free street time.
- \_\_\_ 12. Other (specify) \_\_\_\_\_

PLEASE COMPLETE THIS SECTION

Days of Jail Credit \_\_\_\_\_

GUIDELINE Recommendation \_\_\_\_\_

AP&P Recommendation \_\_\_\_\_

Reason for Departure \_\_\_\_\_

Community Demand \_\_\_\_\_

SENTENCE ACTUALLY IMPOSED \_\_\_\_\_

## EVALUATION OF UTAH'S NEW SENTENCE AND RELEASE GUIDELINES

### Background

The Utah Commission on Criminal and Juvenile Justice is charged by Statute to develop, monitor, and evaluate Sentence and Release Guidelines (UCA §63-25-1). To do this the Commission established a subcommittee consisting of Ted Cannon, President of the Statewide Association of Prosecutors; Victoria Palacios, Vice-chairman of the Utah Board of Pardons; William Vickrey, State Court Administrator; Craig Barlow, Executive Director of the Commission; Gary DeLand, Director of the Department of Corrections; Brandt Johnson, Davis County Sheriff; Judge Philip Fishler, Third District Court Presiding Judge, Judge Rodney Page; Second District Court; and Judge Sheila McCleve, Fifth Circuit Court.

Guideline Development. Input was sought from all aspects of the Criminal Justice System as the Guidelines were developed. The Board of Pardons endorsed the Guidelines and formally began to use them effective July 1, 1986. They were endorsed by Corrections' Executive Staff on Oct. 22, 1985, the Statewide Association of Prosecutors on Nov. 7, 1985, and the District Judges Association on Dec. 6, 1985 and the Utah Judicial Council on Dec. 23, 1985. The Guidelines forms were filled out by Presentence Investigators and provided to District Court Judges on all presentence investigations due after Jan. 1, 1986.

Guideline Monitoring. Adult Probation and Parole accepted the assignment to forward the Guideline forms associated with each District Court Presentence Investigation to the Commission on Criminal and Juvenile Justice. Information from the forms was entered into a computer for analysis.

Guideline Evaluation. The Guidelines were intended to be dynamic. Evaluation was to serve as a feedback mechanism so that the Guidelines could be modified and kept current. The following questions were framed to guide the initial evaluation.

1. What training and follow-up procedures were carried out in implementing the Guidelines?
2. How accurate are the presentence investigators in filling out the Guideline forms?
3. How often are the dispositions recommended by the Guidelines consistent with the dispositions recommended by Adult Probation and Parole and the dispositions actually imposed by the Courts?
4. Where on the General Disposition Matrix are deviations from the Guideline recommendations most frequently occurring?
5. What proportion of the cases have dispositions of probation, of prison, and of alternate settings?
6. How has the time actually served compared with the Guidelines' recommended time to be served?
7. What questions did the various users of the Guidelines raise?



ANSWERING THE EVALUATION QUESTIONS

1. What training and follow-up procedures were carried out in implementing the Guidelines?

Initially training occurred as the various entities of the criminal justice system were making the decision to endorse the Guidelines. Several sessions were held with Board of Pardons' staff prior to their beginning to use the Guidelines for release decisions in July of 1985. An hour training session was held with the membership of the Statewide Association of Prosecutors at their annual meeting on November 7, 1985. District Court judges were briefed on the Guidelines at the District Court Judges Meeting as part of the Judicial Conference in December. In addition Dr. Richard Oldroyd of the Commission Staff visited each District individually to get input and answer questions from the judges. Corrections' staff was trained in the Guidelines in conjunction with regional classification seminars that were conducted throughout the State during December. As part of the training, all criminal justice practitioners were encouraged to call Commission staff if they had any questions.

Follow-up has consisted of Commission staff collecting the Guideline forms on each District Court Presentence Investigation. These forms have been carefully reviewed and any problems noted. Commission staff visited all but one probation region and returned these forms with appropriate feedback to the presentence investigators. Judges were surveyed for feedback on use of the Guidelines and for any problems, concerns, or suggestions regarding the Guidelines. Prosecutors and legal defenders were also surveyed. Table 1 highlights the response to the following two questions posed in the survey.

- (1) Are you familiar with the Guidelines?  
 Yes \_\_\_ Somewhat \_\_\_ No \_\_\_
- (2) Do you consider the Guidelines recommendation in your decision making?  
 Always \_\_\_ Usually \_\_\_ Sometimes \_\_\_ Never \_\_\_

Table 1

Group (N)	Familiar w/ GLs			Consider Guidelines		
	Yes	Somewhat		Always	Usually	
Prosecutors (17)	55%	24%	(89%)	18%	47%	(65%)
Judges (21)	90%	10%	(100%)	52%	43%	(95%)
Board of Pardons (3)	100%		(100%)	100%		(100%)

2. How accurate are the presentence investigators in filling out the Guideline forms?

Each presentence investigator was encouraged to send the Presentence Investigation Report along with the Guideline forms on the first five presentence investigations conducted under the new Guidelines. Commission staff reviewed these. Of the first 500 Guideline forms reviewed, there were 11 cases where errors would have changed the Guideline recommendation. Critical criminal history information is still not complete and readily available. Modifications contemplated that could substantially improve the process include the creation of a one-print verified misdemeanor criminal history file and better tracking and flow of information between criminal justice information systems.

3. How often are the dispositions recommended by the Guidelines consistent with the dispositions recommended by Adult Probation and Parole and the dispositions actually imposed by the Courts?

The first 400 cases with dispositions were used to answer this question. Because the question is deceptively complex, a series of tables will convey the information. Figure 1 shows the number and percentage of cases recommended for and receiving each disposition. There is no attempt to relate the recommendations and dispositions of individual cases with their respective aggravating and/or mitigating circumstances, plea bargains, or violent nature (e.g. sex offenses). The effect of such factors are considered in answering question #4.

Figure 1

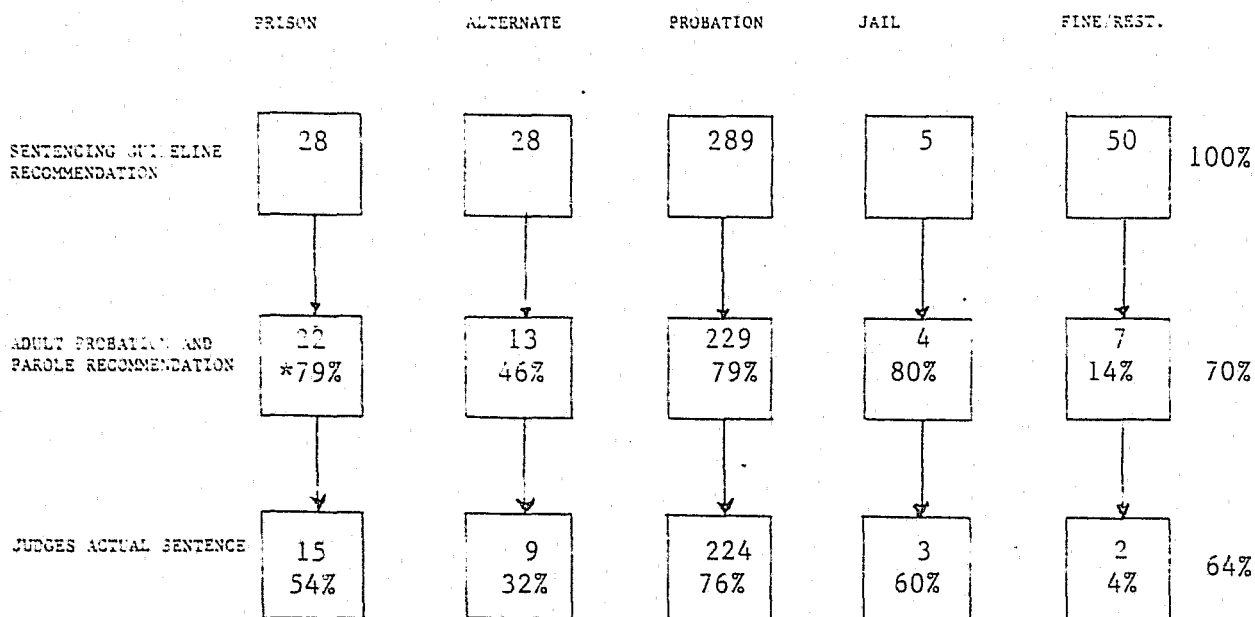
	PRISON	ALTERNATE	PROBATION	JAIL	FINE/REST.
SENTENCING GUIDELINE RECOMMENDATION	28 *7%	28 7%	289 72%	5 1%	50 13%
ADULT PROBATION AND PAROLE RECOMMENDATION	59 15%	42 11%	273 68%	17 4%	9 2%
JUDGES ACTUAL SENTENCE	41 10%	42 11%	308 77%	7 2%	2 1%

\* Percent of total cases (N=400)

Some items of special note on Figure 1 are: (i) The Guidelines recommended that 7 percent of those included in the sample be placed in prison, Adult Probation and Parole recommended 15 percent, and the judges actually sentenced 10 percent to prison. (ii) The Guidelines recommended that 13 percent of the cases be sentenced to pay a fine or restitution with no formal probation imposed. This category is an artifact of some work that was being done for the circuit court. It is really irrelevant to District Court cases and will be eliminated in the revised form. Adult Probation and Parole recommended two percent and the judges actually sentenced only 1 percent to pay with no probation supervision. (iii) The Guidelines recommended 72 percent of the cases be placed on probation, Adult Probation and Parole recommended 68 percent, and the judges actually sentenced 77 percent of the cases to probation.

Figure 2 starts with the Guidelines recommendation, then shows how many of those Adult Probation and Parole recommended for the same disposition, and finally shows how many of those Adult Probation and Parole recommended were actually sentenced to the disposition. Adult Probation and Parole agreed with the Guideline recommendation in approximately 80 percent of the cases if the recommendation were "Prison," "Probation," or "Jail;" approximately 46 percent if the recommended disposition was "Alternate;" and 14 percent of the time if no supervision was recommended. The judges' disposition agreed with the Guideline recommendation in 76 percent of the cases if the recommendation was "Probation," 60 percent if the recommendation was "Jail," 54 percent if the recommendation was "Prison," 32 percent if the recommendation was "Alternate;" and 4 percent if the recommendation was "Fine &/or Restitution without Probation."

Figure 2



\* Percent of Guideline Recommendation (columns)

Figures 3, 4 and 5 show the actual judicial disposition of those receiving various Guideline recommendations. Of the 28 offenders recommended by the Guidelines for "Prison," 15 were sentenced to prison, 6 to alternate settings, and 7 to probation. Of the 50 offenders recommended by the Guidelines to be sentenced to "Fine &/or Restitution without Probation," 47 were placed on probation, 1 was sent to jail, and 2 actually were fined or ordered to pay restitution without probation. Of the 289 offenders recommended by the Guidelines for "Probation," 246 were actually placed on probation, 25 were placed in alternate supervision, 15 were sentenced to prison, and 3 to jail.

Figure 3

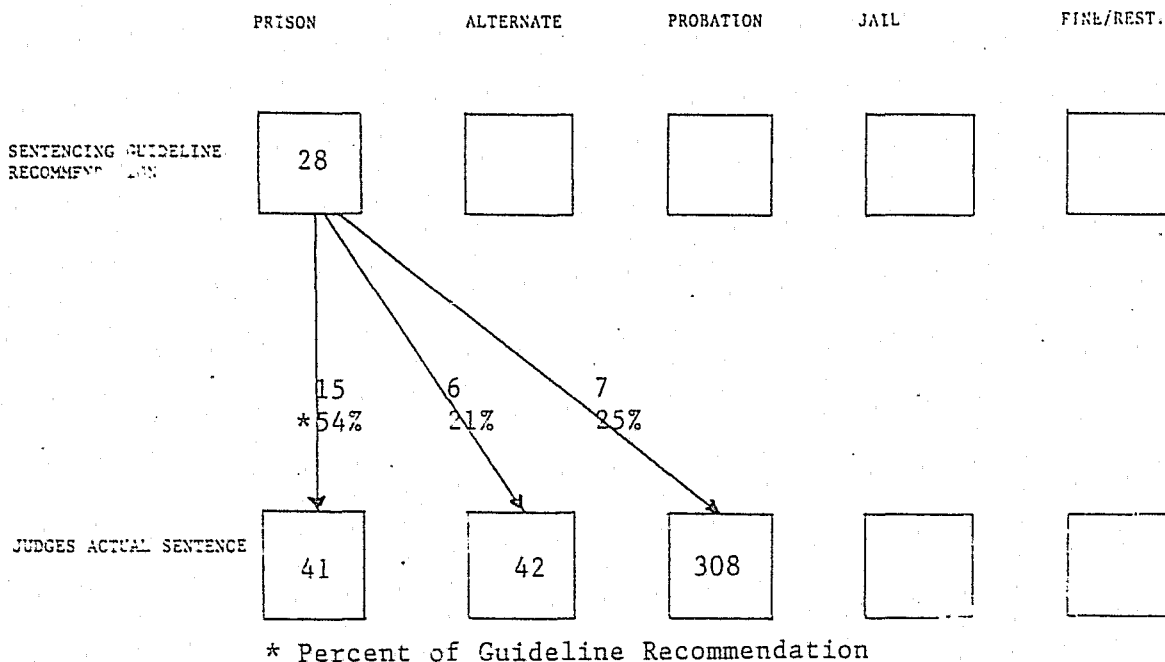


Figure 4

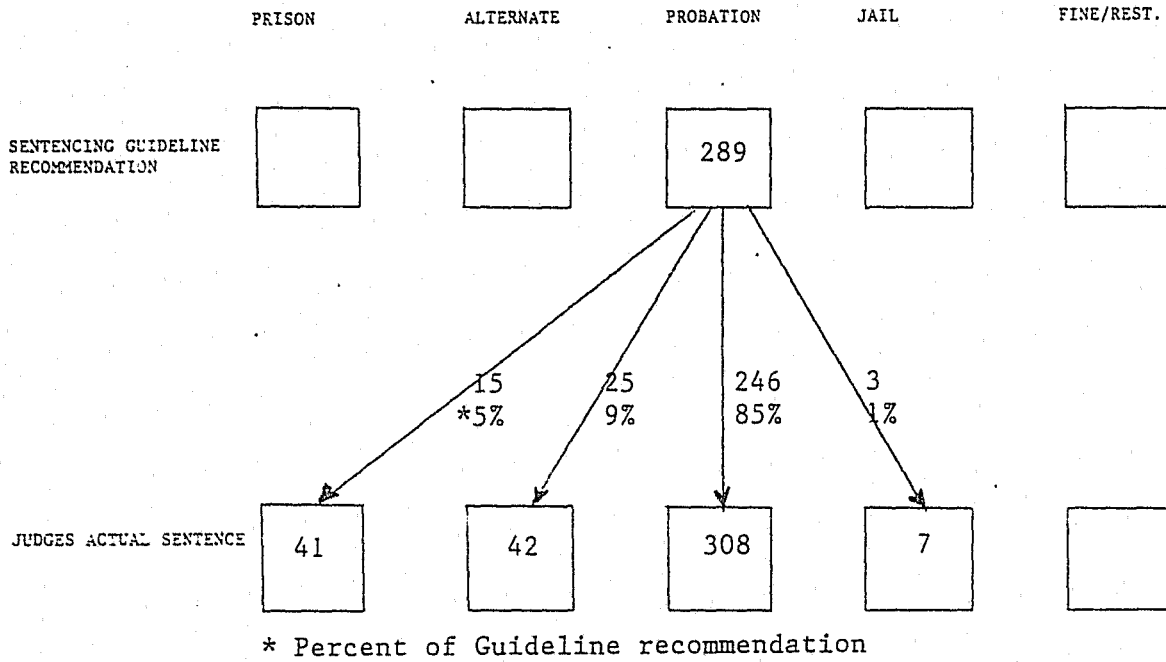
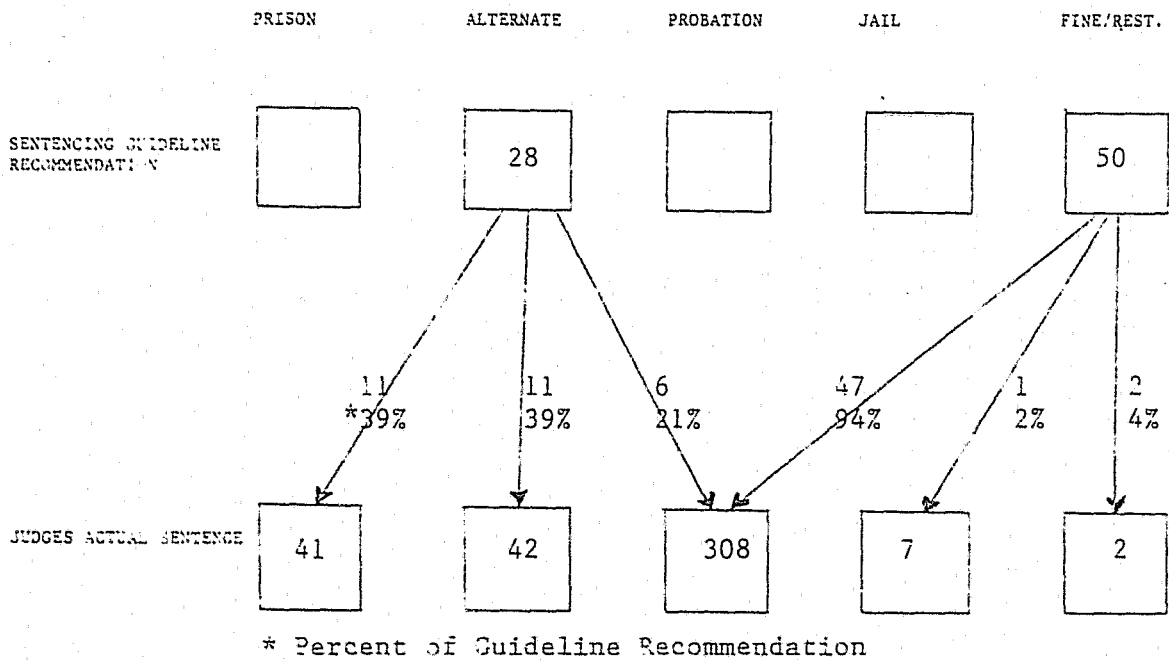


Figure 5



Figures 6, 7, 8, and 9 contrast the Adult Probation and Parole recommendation with the disposition actually imposed by the judge. The judges followed the AP&P recommendation in 85 percent of the cases (see Figure 6). Judges followed 96% of the recommendations for "Probation," 72 percent of the recommendations for "Alternate" dispositions, 63 percent of the recommendations for "Prison," 29 percent of the recommendations for "Jail" only, and 22 percent of the recommendations for "Fine &/or Restitution without Supervision."

Figure 6

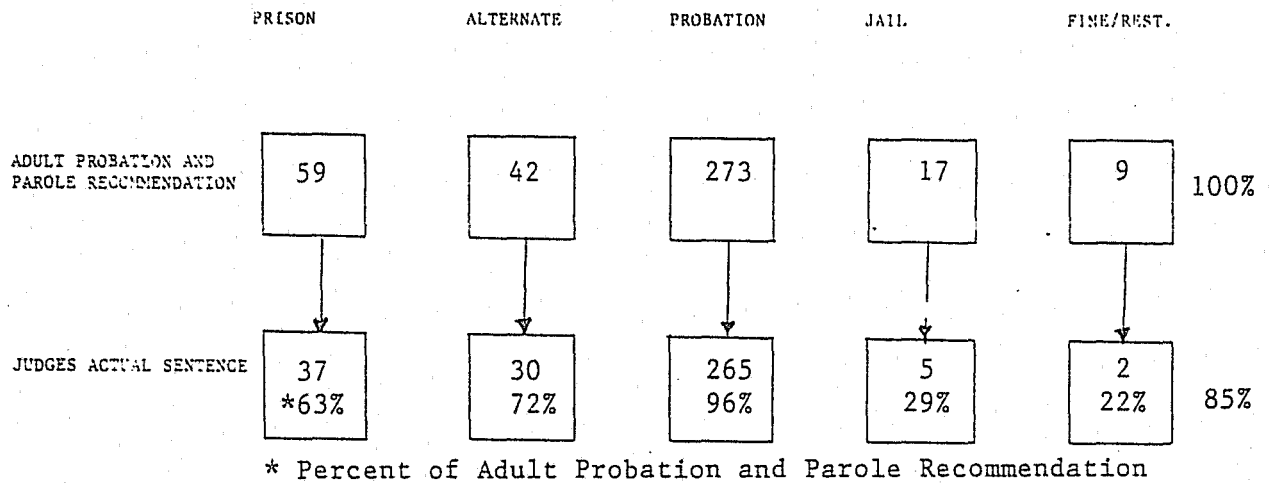


Figure 7

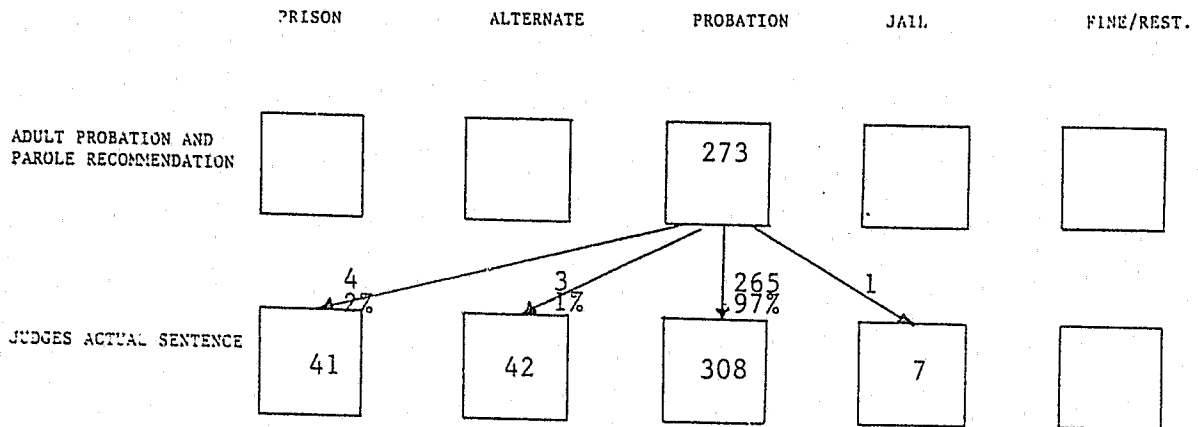


Figure 8

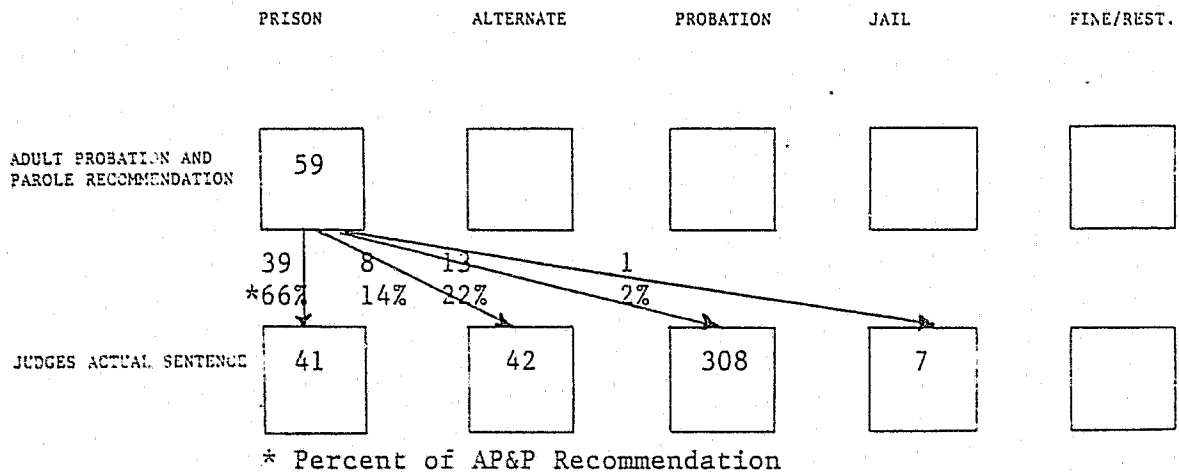
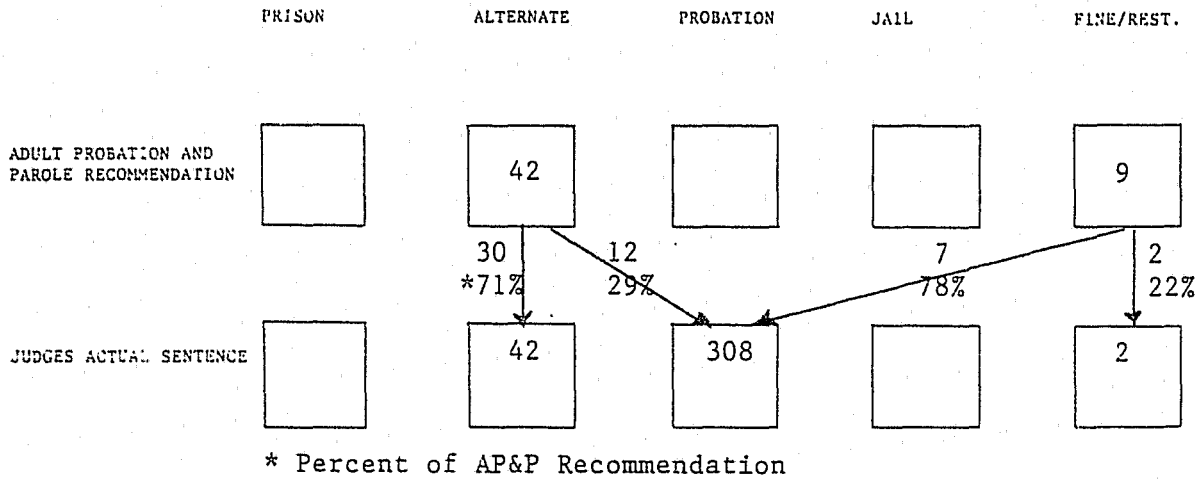


Figure 9



4. Where on the General Disposition Matrix are deviations from the Guideline recommendations most frequently occurring?

While the number of cases falling into an individual cell of the matrix may not be enough in many instances to form a statistically accurate picture of where the deviations are occurring, there are enough cases in a sample of 400 to make some generalizations. As expected, deviations occur most commonly along dispositional borders. The courts are following AP&P's recommendations closely except in the "Prison" area under "Person Crimes." AP&P deviated from the Guidelines at least half of the time when the criminal history was "Fair" or when the recommended disposition was "Alternate" or "Fine." The Courts deviated from the Guideline recommendation at least half the time also when the criminal history was "Fair" or when the recommended disposition was "Prison," "Alternate," or "Fine."

Figure 10 highlights what AP&P's presentence recommendations were by cell. Figure 11 shows the actual court dispositions by cell. Figure 12 shows the direction in terms of severity of disposition that the deviations are taking. For example, a "+" dispositional step off Guidelines would be a recommendation of "Alternate" when the Guidelines recommended "Probation" and a "+ +" step would be "Prison" instead of "Probation." Deviations by AP&P and the courts from the Guideline recommendations are skewed to the harsher dispositions while deviations by the courts from AP&P recommendations are skewed to the more lenient side.



Figure 10  
**PRESENTENCE RECOMMENDATIONS BY CELL**

P=PRISON  
 A=ALTERNATE  
 PB=PROBATION  
 J=JAIL  
 F=FINE

		CRIME SEVERITY									
		CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
			MUR II	OTHER	2ND SEX	2ND DEG	3RD DEG	2ND DEG	3RD DEG	A	B
CRIMINAL HISTORY	POOR		P1		P2	P1	P1	P6	J4 PB1	JAIL	
	FAIR		PRISON		P2 PB1	P3 A2	P3 A1	P8 A5	P1 J1		
	MODERATE		P2		P1 PB2	P2 A1	P1 A3	P7 A1 PB11	PROBATION A1 PB5 J1		
	GOOD	P1	A1	P1 A2	P1 A1 PB2	A2 PB1	P2 A2 PB10	P3 A7 PB28	PB10 J2	FINE &/OR RESTITUTION	
	EXCELLENT		P1	P3 A3 PB17 J1	P2 PB14 A2	PB3 A1	P2 PB26	P2 A5 J5 PB112 F1	PB26 J3 F17	PB2	

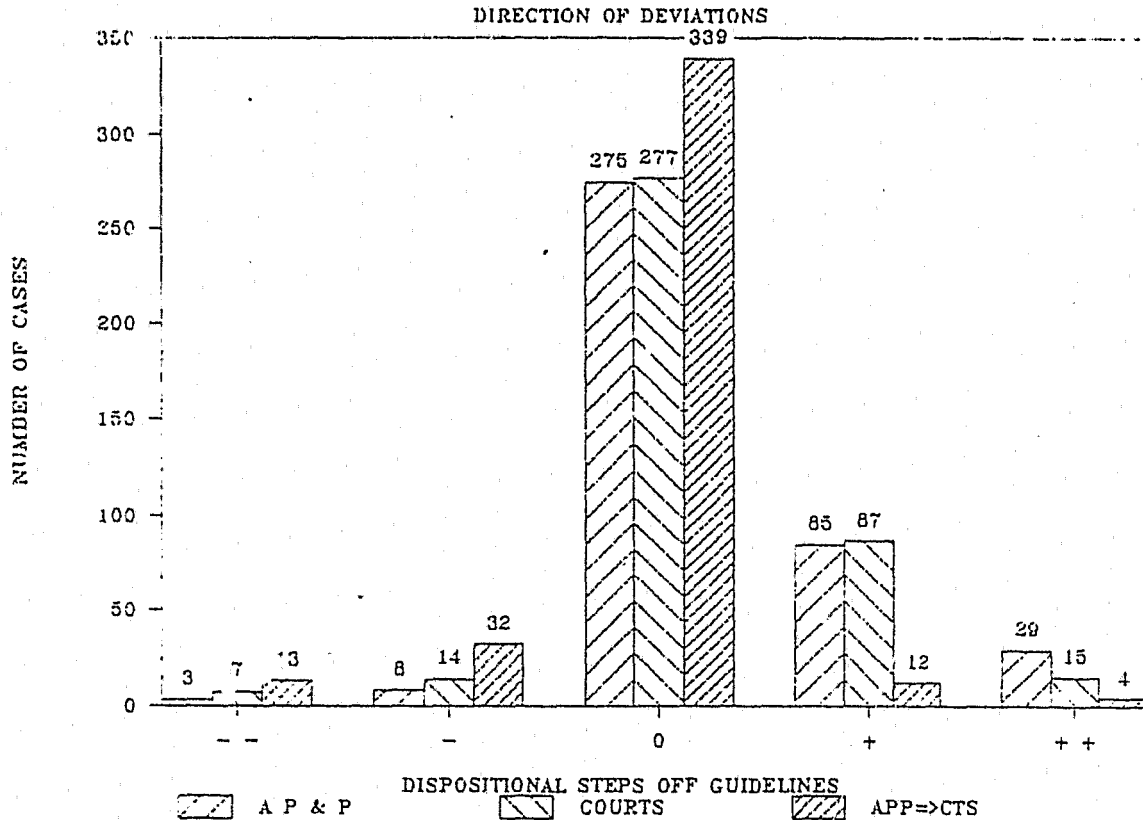
Figure 11

**ACTUAL COURT DISPOSITIONS BY CELL**

P=PRISON  
 A=ALTERNATE  
 PB=PROBATION  
 J=JAIL  
 F=FINE

		CRIME SEVERITY									
		CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
			MUR II	OTHER	2ND SEX	2ND DEG	3RD DEG	2ND DEG	3RD DEG	A	B
CRIMINAL HISTORY	POOR		P1		P1 A1	P1	P1	P4 A2	J3 PB2	JAIL	
	FAIR		PRISON		P2 PB1	P2 A2 PB1	P3 A1	P5 A4 PB3	PB2		
	MODERATE		P1 PS1		PB3	P1 A1 PB1	P1 A2 PB1	P4 A2 PB13	PROBATION A1 PB5 J1		
	GOOD	P1	A1	P1 A2	P1 A1 PB2	A2 PB1	P2 A2 PB10	P2 A5 PB31	PB12	FINE &/OR RESTITUTION	
	EXCELLENT		P1	P1 A5 PB17 J1	P2 PB16	PB4	P1 A1 PB26	P1 A6 PB118	PB33 J1 F2	PS2	

Figure 12  
GUIDELINES EVALUATION



Reasons for Departure

The Guidelines were designed to promote uniformity in the criminal justice system, not inflexibility or insensitivity to individual circumstances. A mechanism that provides for structured flexibility was incorporated in the Guidelines with the documentation of established aggravating and mitigating circumstances. Whenever AP&P or the courts listed a reason for departing from the Guideline recommendations, it was because of one or more of these aggravating or mitigating circumstances. However, as the reason for deviating often was not stated, a study was done to see whether departures were related to instances of plea bargaining or multiple counts as well as to aggravating and mitigating circumstances. A summary of the results is presented in Table 2.

On the average, both AP&P and the courts deviated from the Guidelines in 31% of the cases. But in the cases where there were no plea bargains, multiple counts, aggravating, or mitigating circumstances involved, AP&P and the courts still departed from the Guidelines in 14% and 11% of the cases respectively. Apparently, they must believe there are still other significant factors that are not currently being captured in the Guidelines. The courts and AP&P also seem to be giving considerable weight to the pre-plea bargained charges, particularly when plea bargaining reduced the degree of the offense. The greatest percentage of deviations occurred, as expected, when there were aggravating circumstances but no mitigating circumstances.

Multiple counts and multiple counts that were plea bargained away appear to be given less weight because they were probably taken into account as an aggravating circumstance. Table 3 lists the aggravating and mitigating circumstances incorporated into the Guidelines and the number of times each was cited in the 400 sample cases. "Established instances of repetitive criminal conduct" and "There were multiple charges or victims" were the most frequently cited aggravating or mitigating circumstances.

Table 2

Percent of Cases with Deviations

Group of Cases	AP&P	Courts	AP&P=>Cts
All Cases (n=400)	31%	31%	15%
No Pleas, Multiple Counts, Agg., or Mit. Circumstances (n=37)	14%	11%	8%
No Agg. or Mit. Circum. (n=135)	27%	28%	12%
No Plea Bargains (n=105)	29%	24%	13%
No Multiple Counts (n=104)	29%	28%	14%
Agg. but no Mit. Circum. (n=76)	49%	46%	28%
Mit. but no Agg. Circum. (n=61)	25%	28%	13%
Agg. and Mit. Circum. (n=110)	28%	26%	13%
Plea Bargained Counts (n=104)	26%	19%	13%
Plea Bargained Degree (n=108)	36%	42%	19%
Plea Bargained Both (n=78)	36%	47%	15%

Table 3

Aggravating and Mitigating Circumstances

Aggravating Circumstances	Number of Times Cited
1. Established instances of repetitive criminal conduct.	124
2. Offender presents a serious threat of violent behavior.	22
3. Victim was particularly vulnerable.	59
4. Injury to person or loss of property was unusually extensive.	14
5. Offense was characterized by extreme cruelty or depravity.	7
6. There were multiple charges or victims.	97
7. Offender's attitude is not conducive to supervision in a less restrictive setting.	32
8. Offender continued criminal activity subsequent to arrest.	20
9. Other.	32
	Total 407

Mitigating Circumstances	
1. Offenders criminal conduct neither caused nor threatened serious harm.	53
2. Offender acted under strong provocation.	7
3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.	5
4. Offender is young.	73
5. Offender assisted law enforcement in the resolution of other crimes.	13
6. Restitution would be severely compromised by incarceration.	22
7. Offender's attitude suggests amenability to supervision.	88
8. Domestic crime victim does not want incarceration.	17
9. Offender has exceptionally good employment &/or family relationships.	21
10. Imprisonment would entail excessive hardship on offender or dependents	29
11. Other.	9
	Total 337

5. What proportion of the cases have dispositions of probation, of prison, and of alternate settings?

The proportion of cases recommended for or receiving probation ranged from 68% to 77% of the 400 cases. Prison was recommended or received in 7% to 15% of the cases. And a disposition to an alternate setting was recommended or received 7% to 11% of the time. Figure 1 above shows the number and percentage of cases recommended for or receiving each of the various dispositions by the Guidelines, by AP&P, and by the courts respectively.

6. How has the time actually served compared with the Guidelines' recommended time to be served?

Roger Pray of Corrections (June 1986) conducted a statistical analysis of how close actual prison terms have been to the length of stay recommendations of the Guidelines in cases heard after the Guidelines were officially adopted by the Board of Pardons on July 1, 1985. The results of this study showed that of the 533 cases where a release date was set, 39% were given prison terms that equaled the Guidelines' recommended time to be served. On the other hand, the prison terms were longer than the Guideline recommendation in 43% of the cases and shorter in the remaining 18%.

Prison terms that were longer than the Guideline recommendation ranged from 1 to 240 months longer. The mean departure (arithmetic average) in this group was 12.6 months. The median departure (middle value in the range) was 6 months and the mode (most frequent value) 3 months. On the other side where the prison terms were shorter than the Guideline recommendation, departures ranged from -1 to -66 months with the mean, median, and mode of the departures were -8.4 months, -6 months, and -3 months respectively. Figure 13 shows the "Time Matrix" with the number of cases in each cell, the average length of stay, the range, and the recommended minimum term.

It can be seen from this study that when the Board of Pardons departed from the Guidelines, it was most commonly by only 3 months in either direction. It can also be said that in at least 70% of the cases where a release date was set, the time to be served was within a 6 month range in either direction of the Guideline recommendation. In accordance with the policy that the Guideline recommendations be minimum times to be served, terms longer than the recommended time exceeded those shorter than the recommended time in both frequency (2.4 times more often) and magnitude (1.5 times longer). However, as mentioned earlier, the time to be served was the same as the recommended time to be served in only 39% of the cases, considerably fewer cases than was anticipated to follow the Guidelines.

Figure 13

ACTUAL LENGTH OF STAY VS. RECOMMENDED MINIMUM LENGTH OF STAY  
BY CELL ON GUIDELINES' MATRIX

K E Y

-----  
# of Cases  
Average LOS  
Recommended  
-----

CRIME SEVERITY  
-----

CRIMINAL HISTORY	CAPITAL		1ST DEG.		PERSON CRIMES			OTHER CRIMES		TOTALS
			MUR. II	Other	Homicide & 2nd Sex	2nd Deg. & 3rd Sex	3rd Deg.	2nd Deg.	3rd Deg.	
POOR	0		2	5	0	6	6	16	42	77
	0		192	162	0	45	29	38	22	41
			144	120	72	36	24	24	18	31
FAIR	1		0	5	0	5	5	16	42	74
	240		0	81	0	59	31	30	21	33
			120	84	60	30	21	21	15	22
MOD.	1		3	5	5	7	9	44	95	169
	504		142	94	56	45	30	26	16	29
			84	60	48	24	18	18	12	18
GOOD	2		4	7	2	7	7	18	41	88
	354		99	68	39	28	25	20	15	34
			60	60	36	21	15	15	9	18
EXCL.	0		3	2	4	8	5	7	4	33
	0		112	156	30	38	16	32	24	45
			60	60	24	18	12	12	6	21
TOTAL	4		12	24	11	33	32	101	224	441
	363		129	103	43	42	27	28	18	34
			80	78	37	25	18	18	13	21

GRAND TOTAL

7. What questions did the various users of the Guidelines raise?

QUESTIONS RAISED BY THE GUIDELINES EVALUATION  
followed by Guidelines Subcommittee Response

- A. Should drug history and/or employment history be used in plea bargains and prosecution provisions? Ultimately each office must decide its own policy. It is difficult to to gather this information in an accurate routine manner.
- B. Should the Guidelines be expanded to include the Circuit Courts? Not at this time.
- C. What percent of prison commitments are coming from probation violations, 90-day diagnostics, parole violations, and from commitments directly to prison? Two thirds of the prison commitments are regular commitments and one fourth are parole violators. No good data on probation violations or commitment following 90-day evaluation was available.
- D. Should we track these 400 cases for five years to find out? Maybe.
- E. What were the Criminal History Scores of the offenders being committed on probation violations and what were the respective Guideline recommendations for these offenders? No data is currently available to answer this question.

QUESTIONS RAISED BY THE FOLLOW-UP INTERVIEWS AND SURVEY

- F. How should we deal with the H.B. 209 sex offenders who have "Excellent" Criminal History Scores as they are often being placed on probation as a result of plea bargaining the charge down to Forcible Sexual Abuse? (AP&P). The Suggested Disposition Matrix will be modified so that these offenders will be recommended for the 'alternate disposition'.
- G. Can we make the Guidelines more sensitive to the seriousness of various sex crimes and to the offenders' amenability to treatment? (Steve Krammer, Corrections) Corrections is currently developing formal assessment measures for sex offenders. The guidelines aggravating and mitigating circumstances document will be modified to include this assessment.
- H. Can we raise the Guideline recommendations for 2nd degree manslaughter offenses to put them on par with the 1st degree sex offenses? (BoP) The guideline forms have been so modified.
- I. Can the forgiveness factor for arrest-free street time be changed to a mitigating circumstance from a Criminal History factor? (AP&P) The guidelines forms have been so modified.
- J. Is the \$500 drug limit on making distribution a "Person Crime" appropriate (BoP) and should it include possession with intent to distribute? (Ut County Atty). The guidelines forms have been modified to include possession with intent to distribute as a 'person crime'.

- K. Should more weight be given to non-status juvenile offenses that would have been misdemeanors if committed by an adult? No. If a younger offender has an extensive juvenile record, the juvenile court guidelines information could serve as the basis for making the recommendation.
- L. Should 90-Day Diagnostics be classified as something besides an "Alternate" setting? Yes. The actual disposition will follow the 90-day diagnostic period.
- M. Should the Board of Pardons use the statutory minimum sentence in consecutive sentence cases? No. The statutory minimum is already built into the guidelines.
- N. Should the Board of Pardons treat all crimes involving the use of a weapon as a person crime? The decision was made to treat crimes as they are charged.
- O. How should parole violations be treated in consecutive sentence cases? Parole violations, if a finding of fact hearing has occurred, should be treated as concurrent enhancements.
- P. Should the Board of Pardons adopt ceilings for times to be served? The Board of Pardons prefers not to adopt such ceilings.
- Q. Should the "Conditions of Probation" section be modified or eliminated? Still undecided.
- R. Should the recommendation of "Probation" be changed to "Alternate" for the 1st degree "Other" and 2nd degree "Sex" cells in the "Excellent" row of the matrix? Yes. The form has been so modified.
- S. Should outstanding warrants and/or resisted extradition be added as factors to the "Supervision Risk" section of the Criminal History Assessment? No. The legal processes associated with extradition comprise a right of the accused.
- T. How can we get more uniformity in the use of the Guidelines by prosecutors?
- U. Should Mental Health and/or Alcohol & Drugs be represented on the committee? Yes.
- V. Since the guidelines are currently being used only in the District Court, doesn't it make sense to eliminate the "fine and restitution only" category on the suggested disposition matrix. The form has been so modified.



## APPENDIX F

### REPORT ON CORRECTIONS AND THE PRIVATE SECTOR

by Jeanine Duncan (June 1986)

abstracted by Richard J. Oldroyd

In recent years there has been increasing interest in shifting to the private sector many functions that have been provided by government. It has been argued that in many instances services can be provided less expensively and more flexibly and efficiently by the private sector and that government should only provide services that are inappropriate for the private sector.

There are counter arguments, however. The question: "Should the private sector should play an increased role in the field of corrections?" has sharply divided the field. The American Sheriff's Association has opposed proprietary jail facilities. The American Correctional Association has suggested that "we ought to give business a try". The American Bar Association recommended that "jurisdictions that are considering the privatization of prisons and jails not proceed to so contract until the complex constitutional, statutory, and contractual issues are developed and resolved." The nations's governors support privately operated prisons as a method to reduce overcrowding and costs. Both deep reservations and high expectations have also come from the research community. Recognizing the flexibility and economic capabilities that reside in the private sector, some foresee the opportunity to introduce efficiency and innovation into a field laboring under the burden of outmoded facilities, rising staff costs, declining resources, increasing executive and judicial demands for improved services, and public calls for more prisoners at less cost. Others fear that the profit motive will interfere with professional corrections practice, and question whether any part of the administration of justice is an appropriate market for economic enterprise.

The study reviews the major correctional programs that have been contracted to private providers and discusses related advantages and disadvantages. Most existing programs are in the juvenile area. Contracts are generally oriented to providing services and treatment. Contracting to provide custody is unusual.

The study concludes that privatization in corrections involves very complex issues. It should not be viewed simply as a quick, cheap fix to solve all of the mistakes made by government. Yet, neither should it be adjudged to be a catastrophic move placing the responsibility of corrections at the mercy of profit-hungry entrepreneurs. The notion that private organizations can do the same job at a lower cost is very attractive, but may not prove to be realistic. The greatest promise of the private sector may instead lie in its capacity to develop facilities that can satisfy unique demands or provide the grounds for testing new models of corrections practice. The task then, is not to replace public functions with private equivalents, but to develop a corrections system that employs both sectors to their best advantage.

If it is determined that privatization in corrections would be a useful alternative in solving some of Utah's correctional needs, attention should be given to dealing with the complex issues on a statutory level before

contracting. The following are suggestions for actions that could be taken in regard to these potential problem areas:

1. Statutorily define correctional facilities and their role and legal status in Utah. This could include specification as to the circumstances, conditions and procedures under which state and/or county prisoners may be placed in private facilities.

2. Statutorily outline the status of private employees in regards to matters such as use of weapons, deadly force, and the right to strike.

3. Make provision for the intervention of governmental agencies in the event of emergency occurrences at privately operated facilities.

4. Make provision for a mechanism of governmental regulation, monitoring, licensing, evaluation, and inspection.

5. Require the contractor to make periodic reports to the public.

6. Make provision for coordination and cooperation with other elements of the criminal justice system. For example, the private operator could be required to maintain all records necessary for other agencies, and to report all inmate escapes, criminal acts, or disturbances.

7. Provision should be made to protect the constitutional rights of inmates and to ensure a fair grievance procedure.

8. Provision should be made to ensure reasonable financial stability of the contractor and to determine what involvement is appropriate for persons with criminal backgrounds.

9. Provision could be made to require that all relationships between operators and government jurisdictions be formalized by written contracts, and that the contracts be public documents.

10. Provision could be made to require program regulations defining various categories of facilities specifying physical facility requirements, minimum staffing, capacity and characteristics of the prisoners to be served.

11. Provision should also be made to define responsibility for the privacy and security of offender information as well as the precise data that is required to be kept as well as distributed to other agencies.

Perhaps most important is that there be provision in state law for a mechanism for governmental oversight of private facilities, including the development of regulations, licensing and inspection programs.

APPENDIX G1

JUVENILE JUSTICE AND DELINQUENCY PREVENTION GRANTS 1985

Division of Family Services	Youth Services Center	\$61,790
State Court Administrator	Divorce Mediation/Children	\$25,000
Naples City Police Dept.	Police Youth Association Center	\$12,500.
Southwest Utah Mental Health	School Peer Counseling	\$7,500
West Valley City Police Dept.	Jr. High School Resource Center	\$37,488
State Division of Alcohol & Drugs	Document Juvenile Substance Abuse	\$18,244
Moab City	Community Youth Center Project	\$24,752
State Division of Family Services	Youth Services Center	\$43,273
	Shelter/Foster Care/Older Teens	\$12,000
	Youth Services Center	\$61,790
Salt Lake County Detention Center	Home Detention Project	\$30,924
Logan School District	School Remedial Program	\$18,270
Institute of Human Resource Devel.	Juvenile Runaway Service	\$22,806
Juvenile Court	Restitution Program	\$43,000
Division of Youth Corrections	Program Monitoring/Standards	\$10,000

JUVENILE JUSTICE AND DELINQUENCY PREVENTION GRANTS 1986

Weber School District	Options/Alternative Schools	\$40,000
Division of Family Services	Youth Services Center	\$18,636
	Treatment of Juv. Sex Offenders	\$52,000
	Youth Services Center	\$24,848
	Youth Services Center	\$43,273
Juvenile Court	Educational Enhancement Program	\$3,000
	On-call Rural Referees Project	\$13,236
	Upgrading Juv. Info. System	\$25,000
Murray School District	Law-Related Medication Project	\$35,915
Youth Enhancement Association	Research to Identify Effective Prevention & Early Intervention Strategies	\$44,500
Institute of Human Resource Devel.	Services for Runaways and Girls	
	Youth Club Program	\$30,163
Logan School District	School Remedial Program	\$18,270

APPENDIX G2

JUSTICE ASSISTANCE ACT GRANTS 1985

West Valley City Police Dept.	Crime Prevention	\$12,366
Ogden City Police Dept.	Crime Prevention	2,721
Council for Crime Prevention	Crime Prevention	30,000
Washington City Police Dept.	Crime Prevention	500
Metro Major Felony Unit	Property Crime	46,000
Weber County Attorney	Property Crime	31,324
Weber County Attorney	Victim/Witness Asst.	14,375
Cache County Sheriffs Office	Victim/Witness Asst.	6,350
Salt Lake County Attorney	Victim/Witness Asst.	18,290
Weber County Attorney	Information Systems	25,200
Davis County Sheriff	Information Systems	50,000
Roy City Police Dept.	Information Systems	2,068
Kaysville City Police Dept.	Information Systems	5,024
Utah Dept. of Public Safety	Information Systems	38,995
Salt Lake County Attorney	Information Systems	70,000
Tremonton City Police Dept.	Information Systems	4,867
Uintah Basin Dept. of Public Safety	Information Systems	25,000
Naples City Police Dept.	Information Systems	8,336
State Court Administrator	Information Systems	57,852
Morgan County Sheriff	Information Systems	5,989
Logan City Police	Information Systems	10,000
State Court Administrator	Court Delay Reduction	20,000
Utah Narcotics Bureau	Drug Trafficking	50,000

APPENDIX G2 (continued)

JUSTICE ASSISTANCE ACT GRANTS 1986

West Valley City Police	Crime Prevention	\$11,302
Hurricane City Police Dept.	Crime Prevention	1,000
Davis County Sheriff	Crime Prevention	1,750
Commission Grant Awards		
Metro Major Felony Unit	Property Crime	80,000
Utah County Sheriff	Property Crime	10,032
Weber County Attorney	Property Crime	20,515
Utah Attorney General	White Collar Crime	27,000
Salt Lake County Attorney	Victim/Witness Asst.	22,201
Weber County Attorney	Victim/Witness Asst.	20,810
Davis County Attorney	Victim/Witness Asst.	2,350
Cache County Attorney	Victim/Witness Asst.	14,896
Utah Dept. of Public Safety/BCI	Information Systems	8,600
Rich County Sheriff	Information Systems	5,000
Alpine City Police Dept.	Information Systems	4,000
Utah County Sheriff	Information Systems	33,991
Salt Lake County Attorney	Information Systems	14,900
Farmington City Police Dept. (pending)	Information Systems	4,500
Utah Dept. of Public Safety/Narcotics	Drug Trafficking	77,660
Metro Narcotics	Drug Trafficking	20,000
Logan City Police Dept.	Drug Trafficking	8,000
Ogden City Police Dept.	Drug Trafficking	14,843
Utah Dept. of Public Safety/Org. Crime	Organized Crime	11,280

APPENDIX G3

VOCA GRANTS 1986

<u>Agency</u>	<u>Purpose</u>	<u>Amount</u>
Legal Aid Society of Salt Lake City	Spouse Abuse	\$65,000
Rape Crisis Center - Salt Lake City	Sexual Assault	31,819
Weber/Morgan DFS/OCO	Child Abuse	80,000
Family Support Center - Salt Lake City	Child Abuse	34,600
Tooele County Mental Health	Comprehensive Victim	32,400
Women & Children in Crisis - Provo	Comprehensive Victim	40,000
CAPSA - Logan	Sex. Assault/Domes. Viol.	25,000
Child/Family Support - Logan	Child Abuse	20,000
Bear River Mental Health - Logan	Victim Counseling	20,000

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STAFF OF THE COMMISSION

**Stephen F. Mecham, J.D., Executive Director**

Serves as the Governor's staff person for criminal justice matters - Directs the efforts of the Commission staff - Serves on a variety of Boards and Task Forces.

**David Walsh, M.P.A., Administrative Officer**

Manages the Commission budget including nearly 100 grants totalling some \$5,000,000 - Provides Governor's budget analysis for Adult Corrections, Youth Corrections, Adult Courts, Juvenile Court, and the Attorney General - Coordinates legislation and fiscal analysis for the Criminal Justice Commission.

**Richard J. Oldroyd, Ph.D., Director of Research**

Serves as the Director of the Criminal Justice Statistical Analysis Center - Serves as staff to the Sentencing Guidelines Subcommittee of the Commission, the Victim Rights Task Force and Justice of the Peace Task Force.

**Willard Malmstrom, M.S.W., Program Specialist**

Serves as staff to the Utah Board of Juvenile Justice and Delinquency Prevention in planning, administering, and monitoring the juvenile justice system including pass through of some \$400,000 annually in Juvenile Justice and Delinquency Funds.

**Rolen Yoshinaga, Senior Programmer Analyst**

Serves as data processing staff to the Criminal Justice Commission. Projects include: developing a statewide warrants system; creating a master-plan for criminal justice information systems in the State; setting data and communication standards to provide for the exchange of computerized information between criminal justice entities; and ensuring that information development in one area of criminal justice does not adversely effect other areas.

**John Walch, J.D.**

Administers the Anti-drug Abuse Act Grant Program to plan for and then award, and monitor approximately \$1,500,000 in federal grants to fight drug abuse - Assists in the administration of other federal grant programs.

**Amy Wylie, Administrative Assistant**

Provides office manager and secretarial services to the Criminal Justice Commission and its staff as well as serving as extradition coordinator for the Governor.

**Calene Brown, Secretary**

Serves as secretary to the Commission and its staff.

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**UTAH COMMISSION  
ON CRIMINAL AND  
JUVENILE JUSTICE**

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