Utah Law Enforcement Planning Agency's
Project on Criminal Justice
Standards and Goals

JUDICIAL SYSTEMS

CRIMINAL CODE REVISION
BEFORE THE TRIAL
THE TRIAL

Approved by
Utah Law Enforcement Planning Council
Utah Judicial Systems Task Force
August, 1974

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY

CALVIN L. RAMPTON
GOVERNOR

October 22, 1975

Dear Citizens:

This pamphlet is one of a series of reports of the Utah Council on Criminal Justice Administration. The Council's five Task Forces: Police, Corrections, Judicial Systems, Community Crime Prevention, and Information Systems, were appointed on October 16, 1973 to formulate standards and goals for crime reduction and prevention at the state and local levels. Membership in the Task Forces was drawn from state and local government, industry, citizen groups, and the criminal justice profession.

The recommendations and standards contained in these reports are based largely on the work of the National Advisory Commission on Criminal Justice Standards and Goals established on October 20, 1971 by the Law Enforcement Assistance Administration. The Task Forces have sought to expand their work and build upon it to develop a unique methodology to reduce crime in Utah.

With the completion of the Council's work and the submission of its reports, it is hoped that the standards and recommendations will influence the shape of our state's criminal justice system for many years to come. Although these standards are not mandatory upon anyone, they are recommendations for reshaping the criminal justice system.

I would like to extend sincere gratitude to the Task Force members, staff, and advisors who contributed something unknown before--a comprehensive, inter-related, long-range set of operating standards and recommendations for all aspects of criminal justice in Utah.

Sincerely,

Governor

CRIMINAL CODE REVISION

BEFORE THE TRIAL

THE TRIAL

JUDICIAL SYSTEMS
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TABLE OF CONTENTS

INTRODUCTION

CRIMINAL CODE REVISION

The criminal law is always a changing, evolving body that reflects community standards and mores in a far greater way than any other body of law. The criminal law is the most visible of all law because it is here that the community has the most contact and, indeed, the strongest feelings.

Surprisingly, it has been comparatively recent that criminal law has changed from common law forms into criminal codes. But since those nineteenth century changes there has been stagnation, and the various states have failed to keep their codes abreast of changing standards. Besides, criminal statutes rarely had the virtue of being comprehensive. Criminal law was a hodge-podge of scattered code provisions and common law definitions.

This chapter of standards calls for the enactment of new substantive, comprehensive penal codes. Since 1960, 13 states have done the needed work and passed comprehensive, substantive and procedural criminal codes. This chapter of standards outlines the goals and methods for attaining those goals that are needed for the other states to follow.

The standards outline a complete rather than partial revision of the code. The codes should be revamped to eliminate overlapping and inconsistent penalties.

14.1 CRIMINAL CODE REVISION

STANDARD

1. Any state that has not revised its substantive and procedural criminal

law within the past decade should begin revision immediately. Federal or state funds should be provided as appropriate.

2. Code revision should be complete rather than partial; should include general doctrines as well as specific definitions of crime; and should arrange those definitions functionally according to the harms proscribed, rather than alphabetically.

3. General code provisions, including those on sentencing, should apply to criminal status ouside the criminal code itself when practical considerations mandate the continuation of special criminal statues elsewhere in the state's laws. To the maximum extent possible, inherited statutory crimes that are unenforced or can be enforced only randomly or discriminatively, should be eliminated, whether or not they involve identifiable victims.

4. The revised substantive code should simplify the penalty structure, impose procedural controls on the exercise of discretion in sentencing, and encourage use of probation where circumstances so warrant.

5. In determining eligibility for funding of criminal law revision projects, a drafting body should be favored that, in the case of substantive and corrections code revision, maintains maximum effective liaison with the legislautre, or, in the case of procedural revision, maintains liaison with the state supreme court if this court has broad rulemaking powers. An applicant agency should rely either on law faculty members for the preparation of drafts or should employ qualified full-time committee or commission staff members to prepare drafts and commentaries.

6. The drafting commission membership, in combination with special advisory committees, should reflect the experience of all branches of the legal profession, corrections, law enforcement, and key community leadership. There are several alternative methods of organization for revision commissions:

a. Legislative commission;
b. Augmented legislative commission;
c. Executive commission;
d. State bar committee; and
e. Judicial council or advisory committee.

7. All interim and final code drafts should be supported by detailed commentaries that show the derivation of language of each section, the relationship of the section to existing state law, and the changes proposed throughout the draft. A list of statutes to be repealed, amended, or transferred by the effective date of the code also should be submitted to the legislature.

8. After a new code has been enacted and before its effective date, intensive continuing education of bench, bar, prosecution, law enforcement, and citizens is essential to a smooth transition to the new law. Federal or state funds should be allocated to support continuing education programs whenever fees to be charged by continuing education organizations cannot meet the costs of presenting a program series. Subsidy is essential to programs of this nature for judges, prosecutors, and law enforcement officers, because local budgets rarely authorize reimbursement of tuition fees.

UTAH STATUS AND COMMENTS

In July 1973, a new substantive criminal code went into effect in the State of Utah. This project had been undertaken three years earlier by committees formed under the sponsorship of the Utah Bar Association, ULEPA, and the Legislative Council. The committees represented a cross section of legal, community, judicial, legislative, and police personnel. The project was financed with ULEPA and Utah Bar monies. A total of $64,390.20 was expended.

The code revision was divided between substantive and procedural criminal law. July, 1973, saw the enactment of the substantive portion

and it is anticipated that 1975 will complete the project with the enactment of the procedural code. Utah is therfore in accord with paragraph #1.

Utah is in accord also with paragraph #2 and the code is arranged according to this paragraph.

Paragraphs three, four, five and six describe Utah law.

Utah is in accord with paragraph seven in spirit and intent. There is still work to do in making the commentary truly exhaustive.

The continuing education aspect of the standard discussed in paragraph eight has not been a part of the Utah situation. This continuous education would mean a continuing series of seminars and revision of the commentary to reflect current developments and developing methods of informing the bench and bar of judicial decisions effecting the new code.

METHOD OF IMPLEMENTATION

Utah exceeds the requirements of this standard. Its code has been revised, both substantively and procedurally by a qualified committee; steps have been taken to educate the public; commentary has been written for the new code; and the bench, bar and public will be able to benefit from it for years to come.

14.2 CONTINUING CODE REVISION AND CODE REVISION COMMITTEE

STANDARD

A criminal law revision commission should be created: [1] to screen all legislative proposals bearing criminal penalties in order to ascertain whether a need for them actually exists; [2] to review the penalties in proposed criminal statutes to insure that they are consonant with the revised criminal code sentencing and penalty structure; [3] to propose draft statutes for legislative consideration whenever functional gaps in criminal law enforcement appear; and [4] to correlate criminal statues with cognate statutes elsewhere in the body of state statute law.

Placement of the review function within the legislative, executive, or judicial branch should be made.

UTAH STATUS AND COMMENTS

As outlined by the standard, no like commission has been formed. There are, of course, the usual legislative methods of review and anaysis and the staff which formulated the criminal code remains intact while the procedural code is being revised.

METHOD OF IMPLEMENTATION

The commission should be formed through legislative auspices, and its duties and responsibilities defined by the legislature, using the general guidelines of this standard.

SUMMARY OF BEFORE THE TRIAL AND THE TRIAL

The basic goal in this chapter of standards concerns itself with the problems of delay within the trial process. Though the United States Constitution guarantees a speedy trial, a number of reports reveal jurisdictions where months pass before the accused goes on trial. Other reports document cases that took months to litigate, and still the final determination had not been decided. Precisely, the basic goal is a speedy trial. The Commission finds three types of delay which cause this process to be prolonged. The standards outline new

procedures to eliminate, or at least reduce, some of the causes for this delay.

The first cause of delay is called "delay due to overload". Such a delay stems from the situation where cases are numerous, and there is such as considerable amount of litigation that a backlog results. As such, the courts in that jurisdiction are physically incapable of hearing the cases promptly.

The second type of delay is called "procedural delay". The use of grand juries, preliminary hearings in misdemeanor cases, inefficient discovery rules, continuances, and so forth are procedural vehicles which could be either eliminated or streamlined to aid in speeding up the litigation process.

The third type of delay is called "abuse of procedure". The Commission finds that certain procedures, as they are presently constituted, lend themselves to such abuse that delay results. One example is the jury selection process. Instances where it takes weeks and even months to select a jury speak of such abuse.

A few additional important items of background material should also be noted. All of the standards concern themselves with delay in the formal processing of criminal defendants. The major emphasis is placed on pretrial delay through elimination of inefficient and unnecessary pretrial proceedings. It is anticipated that, as the apprehension and punishment of offenders has an effect upon the offenders themselves, and the closer punishment follows the crime, the greater the deterrent value of the punishment. Furthermore, quick processing serves the public's desire to incapacitate those individuals found guilty. Since pretrial liberty of most defendants is necessary for the presumption of innocence until proven guilty, this has the potential of creating a risk factor of additional offenses. Prompt processing of cases has the effect of reducing this risk as well as reducing the tensions upon the defendant and the workload of pretrial services.

In Utah, the massive delay problems that plague some jurisdictions are obviously not a present situation. But such concern is timely, even for the jurisdiction. As the state grows, so will the problems of delay. Some measures have already been taken. The formulation of a new procedural code for criminal cases is ready for legislative action and the establishment of the Office of Court Administrator and Statewide Association of Prosecutors are two examples of this preparation.

BEFORE THE TRIAL

6.1 CITATION AND SUMMONS IN LIEU OF ARREST

STANDARD

Upon the apprehension or following the charging of a person for a misdemeanor or certain less serious felonies, citation or summons should be used in lieu of taking the person into custody.

All law enforcement officers should be authorized to issue a citation in lieu of continued custody following a lawful arrest for such offenses. All judicial officers should be given authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody.

1. Use of Citation or Summons. The use of citation or summons would not be appropriate under the following situations:

a. The behavior or past conduct of the accused indicates that the individual's release presents a danger to individuals or to the community;

b. The accused is under lawful arrest and fails to identify himself satisfactorily;

c. The accused refuses to sign the citation;

d. The accused has no ties to the jurisdiction reasonably sufficient to assure his appearance; or

e. The accused has previously failed to appear in response to a citation or summons.

2. Procedure for Issuance and Content of Citation. Whether issued by a law enforcement officer or a court, the citation should:

a. Inform the accused of the offense with which he is charged;
b. Contain a promise by the accused to appear within 7 days at a specific place.

3. Procedure for Issuance and Content of Summons. Whether issued by law enforcement officer or a court, the summons should:

a. Be personally served upon the accused in felony cases and in the same manner as a civil summons in all other cases;
b. Inform the accused of the offense with which he is charged;
c. Specify the date, time, and location for appearance;
d. State that in misdemanor cases all motions and an election of jury trial must be filed within 3 days after appointment or retention of counsel with copies provided to the prosecutor.

UTAH STATUS AND COMMENTS

a) Utah Law: The only jurisdiction which has already instituted such a procedure as is contemplated by the standard in the state is Salt Lake City. Such a program has been in effect for a little less than two years. The directive allows the police to issue a citation for any midemeanor at the officer's discretion. The criteria upon which he is to make this determination is much like those outlined in the standard. He is to use his common sense to determine if the arrested person is dangerous and it it is against society's interests not to take him into custody. Therefore, a drunk driver is not handled by the procedure of issuing him a citation. On the other hand, if no good purpose is seen in incarcerating the arrested, and the officer is reasonably certain that

he will appear to answer the summons, then a ticket would be more appropriate.

No evaluation has been made of the effect of such a program, nor has a study been done to determine what percentage of those arrested for commiting a misdemeanor are ticketed rather than taken into custody. The general feeling, though, is that citations are used quite sparingly. One reason is the newness of the procedure. Such a technique has not been standard police practice. Another reason is that most of those arrested for misdemeanors fit somewhere within the established guidelines calling for the officer to take the person into custody. It is the rare exception that all the criteria can be met and the officer certain the society's interests are served and that the person will honor the summons.

b) Where Utah Differs: Currently there are no laws in Utah pertaining to the concepts of this standard. Outside of the limited programs in Salt Lake, no geographic governmental unity is practicing this procedure.

METHOD OF IMPLEMENTATION

Legislative action through enactment of statutory language.

6.2 LITIGATION TIME FRAME

STANDARD

The period from arrest to the beginning of trial of a felony prosecution generally should not be longer than 60 days. In a misdemeanor prosecution, the period from arrest to trial generally should be 30 days or less.

UTAH STATUS AND COMMENTS

a) Utah Law: Art. 1, Section II of the Constitution of the State of Utah states "All courts shall be open and every person, for an injury done to him in his person, property or reputations shall have remedy by due course of law which shall be administered without denial or unnecessary delay." The only Utah statute that even alludes to a time frame is that inherent in 76-3-404, the 90-day commitment procedure.

b) Where Utah Differs: There is no common practice or standard in the courts within our state concerning length of time from arrest to trial. In some areas, court administrators have set goals, such as Ogden whose goal is 30 days from arraignment to trial, but there is no coordination or common goal.

METHOD OF IMPLEMENTATION

This standard should be implemented by court rule.

6.3 THE PRESENTMENT

STANDARD

When a defendant has been arrested, the defendant should be presented before a judicial officer within the first day of court following arrest. At this appearance the defendant should be advised of the charges against him and of the date of his trial or preliminary hearing. If the defendant is entitled to publicly provided representation, arrangements should be made at this time.

At the initial appearance the judicial officer should have the authority, upon showing of justification, to remand the defendant to the appropriate peace officer. Such remands should be limited in duration and purpose, and care should be taken to preserve the defendant's rights.

UTAH STATUS AND COMMENTS

a) Utah Law 77 13-17 of the Utah Code of Criminal Procedure provides that when an arrest is made without a warrant the person arrested must, without unnecessary delay, be taken to the nearest magistrate. Unnecessary delay is examined from two viewpoints. The first is in terms of time. In *Mares v. Hill* 22P2d 811, it was determined that 5 days between arrest and presentment or "arraignment," as it is called in Utah, is not excessive but is bordering on the outside limit. In most Utah Jurisdictions, if one is arrested on a Saturday he may be arraigned before Monday.

The second viewpoint is in terms of what the police may do between the time of arrest and the arraignment. If their time is spent in activity that is not proper, then that time is characterized as unnecessary delay. It has been held that the police may delay the arraignment to (1) check on alibi, (2) travel to the magistrate, (3) determine which court has jurisdiction, Delay for interrogation purposes is improper.

At "the arraignment" the court engages in a preliminary examination of the situation, bail is set, the accused is informed of his rights, and arrangements for counsel are made. A date is set for a "preliminary hearing" where the formal charges will be read and the accused may plead. At that hearing such motions, as the motion to quash the indictment, are entertained. (See flow chart on procedure from arrest to trial)

At the federal level, Rule 5 of the Rules of Procedure also declare that the accused is to be presented before the U.S. Commission without unnecessary delay. In 1968, the Omnibus Crime Act amended that there should be a six hour outside time limit placed on the procedure, otherwise there would be a *presumption* of unnecessary delay. This is no doubt from where or why the commission settled on the six hour limit in the standard. In some jurisdictions in Utah such a set time limit may prove a burden because a qualified magistrate is not so accessable. Also, on weekend periods or holidays, it is difficult to have a magistrate readily available.

In terms of post presentment interrogation, it has been held, even at the federal level, that in any questioning of the accused his attorney must be afforded the opportunity to be present. This holds true even for the situation where an undercover agent is employed to engage the accused in coversation to illicit incriminating statements. It's interesting to note that such a position has been held not only in terms of 6th Amendment rights but also under the legal code of ethics. Though this is thought of mostly in connection with civil proceedings, an attorney may not question the client of another attorney without first informing him.

Lineups are permissible after presentment. Of course, an attorney must be present to safeguard the rights of this clients. 77-13-38 (39) of the Utah Code outlines one of the finest lineup procedure statutes in the nation. Counsel must always be provided under the law and a record is kept of how the lineup was conducted. As such, many of the abuses that have been associated with this technique have been eliminated.

Post presentment interrogation seems to have limited value, contrary to the conclusions of the commission. After the accused is arrested, unless there is an express waiver of right, he must be afforded counsel during any interrogation. Any competent attorney would advise his client to remain completely silent. As such, it is difficult to see why the commission believes that a procedure beyond what is already existing is needed to facilitate this type of interrogation.

b) Where Utah Differs: Utah does not have specific time limits for procedure following arrest. Only in Salt Lake City, Salt Lake county,

Weber County, and Ogden City is there any formal pretrial release. There is no specific law or guidelines to limit the duration of custodial investigation in Utah.

METHOD OF IMPLEMENTATION

Utah law would not have to be changed to embrace this standard. However, city and county government units (through respective city and county commissions) would need to adopt and implement a pretrial proceeding (see Standard 6.4).

6.4 PRETRIAL RELEASE

STANDARD

Adquate investigation of defendants' characteristics and circumstances should be undertaken to identify those defendants who can be released prior to trial solely on their own promise to appear for trial. Release on this basis should be made wherever appropriate. If a defendant cannot appropriately be released on this basis. Consideration should be given to releasing him under certain conditions such as the deposit of a sum of money to be forfeited in the event of nonappearance or assumption of an obligation to pay a certain sum of money in the event of nonappearance. In certain limited cases, it may be appropraite to deny pretrial release completely.

Pretrial release on own recognizance and money bail through government units should be expanded throughout Utah. Participation by private bail bond agencies in the pretrial release process should be reduced.

UTAH STATUS AND COMMENTS

a) Utah Practice: Utah has two pretrial ROR programs, one in Salt Lake County and Salt Lake city and one in Ogden City and Weber County. Ogden's pretrial release personnel are authorized as officers of the court to release suspected misdemeanants on their own recognizance. They do not have authority to release suspected felons. Salt Lake's pretrial release personnel do not have authority to release anyone but must work through the Salt Lake bail commissioners. (A "Bail Commissioner" is an officer of the court and is also a guard at the jail. He should be distinguished from a "bail bondsman" for he is in the employ of the county and city through their jail facility.) The personnel have a good relationship with these commissioners and find that their recommendations are usually followed. They have authority to recommend bail reductions, and, for some judges, do pretrial investigations on demand. Both of these services are responsible for the individuals under their care and require that they maintain contact. Both can appeal to the court when an individual released on his own recognizance disappears and have a warrant issued for his arrest. There is no procedure for referral to a social service agency within the pretrial release programs of Utah.

b) Where Utah Differs: Utah pretrial release services do not offer money bail services and bail bondsmen are an integral part of the Utah criminal justice system. Also, Utah does not handle felony offenders. Other than this discrepancy, Utah practice parallels that of the standard.

Utah's two pretrail release programs do not compare with the Philadelphia project in either size or complexity. Philadelphia handles 3,100 inmates a month; both of Utah's projects handle barely one tenth of that month combined. In Philadelphia, the bail bondsman is supplanted completely by the project. Any inmate who receives bail in Philadelphia is under authority of the Philadelphia 10 percent cash bail program. Utah's pretrial release operations give no bail.

The operation of Ogden's and Salt Lake's pretrial services, however, is like that of the Philadelphia operation. Inmates are interviewed as they come into the jail. (In Ogden, the inmates are given a choice of

pretrial ROR or traditional bail arrangements through a bail bondsman). A point system is used (form attached) and those who gain enough points are eligible for ROR. They must check in from time to time at a predetermined schedule and they are reminded of their court appearance times. Both services handle a significant number of cases and Salt Lake plans to expand next year and interview all inmates charged with a felony as well as those charged with a misdemeanor as they do now. The number of inmates handled by both services in the last quarter of 1973 is shown below.

Salt Lake City:

	Interviewed	Released
Oct.	157	126
Nov.	113	101
Dec.	114	144

Odgen:

	Interviewed	Released
Oct.	136	105
Nov.	153	104
Dec.	212	145

Salt Lake releases 83.5 percent of those interviewed and 2.43 percent of those released fail to appear for trial. Ogden released 70.6 percent of those interviewed and has a failure to appear rate of 0.6 percent. Salt Lake has computed that it costs around $18 to service an inmate, or the approximate cost of 4 days in the Salt Lake City Jail.

METHOD OF IMPLEMENTATION

A thorough study should be done by both the Salt Lake and Ogden pretrial release service on the feasibility of a government-run bail

agency and the value and utility of private bail bondsmen. Legislative action is not necessary to embrace this standard. However, unilateral cooperation is necessary from all 29 counties and all Utah cities and towns for implementation. This cooperation must also include police agencies and courts.

6.5 NONAPPEARANCE AFTER PRETRAIL RELEASE

STANDARD

Substantive law should deal severely with offenders who fail to appear for criminal proceedings. Programs for the apprehension and prosecution of such individuals should be established to implement the substantive law.

The substantive law regarding failure to appear after pretrial release should have the following features:

1. The crime of failing to appear should be defined as the failure to appear on the designated date by an individual who, after receipt of a citation or summons to appear in court or after arrest, has released from custody or has been permitted to continue at liberty upon the condition that he will appear subsequently in connection with the criminal action or proceeding, and who has had due notice of the date on which his appearance is required.

2. It should be an affirmative defense to the crime of failing to appear that the defendant was prevented from appearing at the specified time and place by unavoidable circumstances beyond his control.

3. With the exception of capital cases, the penalty provided for the crime of failing to appear should be no greater than the penalty for the substantive crime originally charged.

Programs for apprehension of fugitives should have the following features:

1. If a defendant fails to appear at any scheduled court appearance, the trial court immediately should issue a warrant for his arrest for the offense of failing to appear and immediately should notify the prosecutor.

2. Each jurisdiction should establish an apprehension unit to secure the arrests of defendants who fail to appear for court appearances. This unit should be required to report within two working days to a trial court that has given notice that a defendant has failed to appear for a scheduled court appearance; this report should describe the progress toward arresting the defendant. The trial court should have the power to require further reports as necessary.

UTAH STATUS AND COMMENTS

a) Utah Law: Utah law states that in cases where defendants fail to appear for a scheduled court appearance, a bench warrant may be issued to bring the defendant before the court. The defendant may be cited for contempt of court and his fine would be determined by the judge according to the reasons for nonappearance and the crime charged.

b) Where Utah Differs: There is no special set penalty for failure to appear when the defendant has been given pretrial release. The penalty used in Utah is contempt of court, a misdemeanor. However, Utah is in line with the standard in the ability of the judge to tailor the penalty to reflect the original charge.

Pretrial release is mentioned in Title 77, Chapter 19, Section 3 of the proposed revision of the penal code but no penalty is mentioned for failure to appear.

Section 3 Release on bail or recognizance.--

Any magistrate having jurisdiction over the offense or person arrested may release the defendant on his own recognizance, or either a cash or personal property bond, without sureties,, or may require a bond with sureties, and may increase or decrease the amount of any bond previously fixed, as the magistrate in his descretion may determine. Unless the magistrate determines that a bond with sureties is reasonably necessary to assure the appearance of the defendant when required, the magistrate shall release the defendant on his own recognizance or upon a cash or personal property bond unless he finds that the interest of the public or of justice otherwise demands. In the determination of whether a bond with sureties is to be required, the magistrate may take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; his family; employment; financial circumstances; character; reputation; and mental or physical condition; his residency in the community; any prior arrest record; his past performance record, if any, of appearance or failure to appear in court when required; and any other relevant fact or circumstance having a reasonable bearing upon such determination.

METHOD OF IMPLEMENTATION

Compliance with existing statutues.

6.6 PRELIMINARY HEARING AND ARRAIGNMENT

STANDARD

If a preliminary hearing is held, it should be held within two weeks following arrest. Evidence received at the preliminary hearing should be limited to that which is relevant to a determination that there is a probable cause to believe that a crime was committed and that the defendant committed it.

The initial charging document, as amended at the preliminary hearing, should serve as the formal charging document for trial.

If a defendant intends to waive his right to a preliminary hearing, he should file a notice to this effect at least 24 hours prior to the time set for the hearing.

UTAH STATUS AND COMMENTS

a) Utah Law: The preliminary examination is handled in 77-15-1 of the Utah Code. The accused is arrested and then presented to hear the charge, informated of constitutional rights, and have bail set. There is then a preliminary examination, delayed in order that the defendant's attorney may be secured and prepared. At the hearing, there is an examination to determine if a crime has been committed, and if there is reasonable belief that the defendant is the one who committed it. Both sides may make a presentation. If the accused has been indicted by a grand jury, there is no need for a preliminary hearing. If probable cause has been established, the accused goes to arraignment, where he pleads. This process is covered in 77-22-1 of the Utah Code. Motions to quash and requests for bills of particulars are made at this time.

In felony cases, the accused must be present at the arraignment. For misdemeanors, he may be represented by counsel only and not be physically present himself.

b) Where Utah Differs: In Utah, it is often the case that the preliminary examination and the arraignment are held at the same time, one following the other on the same day in the same session before the court. Also, under Utah's current practice, the arraignment is not a burdensome procedure, as the standard would lead one to believe. However, in Utah the preliminary examination is too frequently used for discovery. Utah has no hard rule on time (such as the 24-hour motion rule, or the two-week hearing rule).

METHOD OF IMPLEMENTATION

To achieve compliance wth the standard, since it deals with procedural law, legislative action is necessary. The two-week time rule and limiting the preliminary hearing evidence to issues relevant only to probably cause matters will need to be drafted in harmony with Title 77 of Utah law. The code revision committee, through the legislative council, is probably the best course of action. It would need to be completed before the 1975 general session of the legislature.

6.7 PRETRIAL DISCOVERY

STANDARD

The prosecution should disclose to the defendant the following:

1. The names and addresses of persons whom the prosecutor intends call as witnesses at the trial;

2. Written, recorded, or oral statements made by the accused or by any co-defendant and written statements by witnesses whom the prosecutor intends to call at the trial;

3. Results of physical or mental examinations, scientific tests, and any analyses of physical evidence, and any reports or statements of experts relating to such examinations, tests, or analyses; and

4. Physical evidence which the prosecutor intends to introduce at trial.

The prosecutor should disclose, as soon as possible, any evidence within this description that becomes available after initial disclosure.

The prosecutor should also disclose any evidence or information that might reasonably be regarded as potentially valuable to the defense, even if such disclosure is not otherwise required.

The defendant should disclose any evidence defense counsel intends to introduce at trial and the names and addresses of witnesses whom to defense intends to call at trial. Notice of intent to rely on an alibi or an insanity defense must be filed with the court. No disclosure need be made, however, of any statement of the defendant or of whether the defendant himself will testify at trial.

All disclosure should take place within a reasonable time prior to trial but need not include information of which both parties are aware. It should be the responsibility of both prosecutor and defense to arrange the circumstances of a discovery meeting.

The court may authorize either side to withhold evidence sought if the other side establishes in an *ex parte* proceeding that a risk of physical harm to the witness or others would be created by the disclosure and that there is no feasible way to eliminate such a risk.

Evidence, other than the defendant's testimony, that has not been disclosed to the opposing side may be excluded at trial unless the trial judge finds that the failure to disclose it was justifiable. The desire to maximize the tactical advantage of either the defendant or the prosecution should not be regarded as justification under any circumstance.

UTAH STATUS AND COMMENTS

a) Utah Law: In Utah, there are no rules of discovery in criminal procedure. The preliminary examination is the chief vehicle to evaluate the type of case each side has and to be informed of what witnesses and theories will be used.

b) Where Utah Differs: In Utah, certain defenses, though, must be revealed before trial. In this sense, some of the goals of the standard have already been implemented. For example, 77-22-16 of the Utah Code requires that if the defendant is going to plead insanity, such a

defense must be revealed at arraignment, or at least four days before trial. Likewise, under 77-22-17, if the defendant has an alibi, he must reveal its basis before trial. The difference between these discovery procedures and what the Commission envisions is that such matters will be brought to light not only before trial, but before or at the preliminary hearing.

METHOD OF IMPLEMENTATION

Insertion into Title 77 UCA by the code revision committee and legislative action.

6.8 PRETRIAL CONFERENCE

STANDARD

No case should proceed to trial until a pretrial conference has been held, unless the trial judge determines that such a conference would serve no useful purpose. If pretrial motions have been made which have not been resolved prior to the conference, they should be resolved at the conference; and maximum effort should be made to narrow the issues to be litigated at the trial.

Where possible, this conference should be held immediately following and as a part of the motion hearing. In any event, it should be held within 5 days of the motion hearing.

UTAH STATUS AND COMMENTS

a) Utah Law: In Utah, most of the major pretrial motions are a matter of statutory procedure. The major pretrial motion, a motion to quash the indictment or information, is made at the arraignment and heard immediately upon its being made (77-23-1 to 5). Other motions, such as change of venue or change of judge, are made before trial or at the

time the case is called for trial (77-25-5; 77-26-2). Therefore, all the motions that could be considered as "pretrial motions" are exercised before the trial and usually between the arraignment and the date of trial.

b) Where Utah Differs: The difference between the standard and Utah practice is that the standard contemplates having these motions exercised at the preliminary hearing, where in Utah they may be made up until the time of trial.

Regarding the pretrial conference, Utah has no set procedure for such a device in a criminal proceeding. At the discretion of the judge, such a meeting between the defense and the prosecution may be called where there are special problems that the judge feels could be readily worked out at such a meeting.

METHOD OF IMPLEMENTATION

Voluntary compliance of the prosecution, defense, and courts.

6.9 GRAND JURIES

STANDARD

Every two years the district judges or judges of each district should hold hearings in each county en banc and in secret to decide if a grand jury should be called.

The grand jury should have the power to inquire into public offenses and malfeasance in office within the county.

The grand jury need not hear evidence for the defendant.

The grand jury must inquire into the conditions of the jails and all

inmates confined for more than 30 days, and they shall have access to all jail records.

The actions of the grand jury shall be secret except when proscribed by law.

The grand jury may present recommendations for changes in governmental practice or procedures which they feel merit consideration.

The judge or judges of each district may call a grand jury for a specific purpose. The grand jury will be limited to that specific purpose and shall be discharged after the completion of that purpose unless the court, in its discretion, shall otherwise order.

UTAH STATUS AND COMMENTS

a) Utah Law: In Utah the functions and powers of the grand jury are outlined in the Utah Code 77-18-1 to 7 and 77-19-1 to 12. A grand jury consists of seven citizens of which 5 are required to deliver a true bill. The grand jury must receive none but legal evidence and the best evidence in degree to the exclusion of hearsay or secondary evidence. It has been determined that all those accused, that appear to be questioned before the grand jury, are afforded an attorney if they so desire and they are read their constitutional rights as outlined in the *Miranda v. Arizona* decision, 384 U.S. 436 (1966.)

Before section 77-18-1 was repealed it was the duty of the district court to call a grand jury when "public interest demands it". They determined this in a secret hearing. The new section still requires the district court to determine when such a jury is called, but these secret meetings *must* be held at least every two years.

The grand jury meets in secret and hears evidence from concerned citizens and the county attorney. There is no requirment to hear

evidence from the defense. The jury acts when hearing from concerned citizens as an investigative body to determine where there has been wrong doing. When hearing a presentation by the county attorney they act to determine if there is probable cause in the evidence to indict.

The grand jury will sit until the end of the year. The tendency has been for grand juries to try to extend their life. Thus, the practice has been that if a jury is called in May, no true bills have been delivered until December.

Under the new procedural code, which will be submitted to the legislature, (Chapters 11 and 12), there is one significant change in grand jury procedure. The judges' hearings still take place every two years, but, under the new code, the judges may call a jury to hear one specific issue only. Also, grand juries may be terminated by the court without having run until the end of the year. This is hoped to alleviate the problem of juries which sit beyond their purpose and become in effect witch hunts. (See attached Chapters 11 and 12).

b) Where Utah Differs: Utah law provides for no waiver of indictment by the accused. There is no provision for the prosecutor to disclose to the defense all testimony relating to the charges.

For more detail, see the chart showing current Utah procedure from arrest to trial.

METHOD OF IMPLEMENTATION

Drafting by the code revision committee and passage by the legislature in 1975.

6.10 CONTINUANCES

STANDARD

Continuances should not be granted except upon written motion submitted within 24 hours prior to the date of trial and only upon a showing of good cause.

UTAH STATUS AND COMMENTS

a) Utah Law: The rules dealing with how a court shall handle requests for continuances is a function of the *rules of court*. Section 77-29-1 of the Utah Code stipulates that postponements are only granted for "sufficient cause shown."

One example that could be cited as representative of the way Utah courts approach the problem is the rules for the Third Judicial District. Rule 11 of the 1970 issuance stipulates that no continuance shall be allowed except for good cause shown. The continuance may be granted upon motion of counsel made in open court, or by written motion in which the grounds therefore are stated, or by written stipulation of the parties and approval by the court.

ULEPA Region 12 has done a recent study in the Third District Court (Salt Lake and Tooele Counties) to determine what part continuance play in the total picture of delay at trial.

The study reveals that it takes, on the average, six months from the initial filing of the complaint until the trial is terminated in some final manner. In City Court, there is a 33 percent chance that the case will experience at least one continuance, and in the District Court, there is a 50 percent chance. On breaking down the source of the request for the continuance, the study shows that in City Court, the prosectuion

asks for a continuance 70 percent of the time, while the defense accounts for 10 percent of the requests.

A comprehensive analysis of why certain continuances are asked for has not been done in this state, though there are some theories and opinions. One such theory cites the high rate of continuances requested by the prosecution as an indication that their office is so understaffed that may trials will begin with them unprepared to present a case. Therefore, more time will have to be given. If this is the situation, the solution to the problem is not just requiring that the request for a continuance be in writing, as the standard projects. Such a requirement is but the first step in eliminating the entire problem.

b) Where Utah Differs: Even though Utah has language that deals with continuances (see "Utah Law" above), the problem of continuance abuse is still present. In effect, Utah practice differs greatly with the intent of the standard. How to stiffen or enforce Utah current law or the standard is a question unanswered.

METHOD OF IMPLEMENTATION

Amend 77-29-1 to include specific continuance criteria.

6.11 PRIORITIZING CASES

STANDARD

Cases should be given priority for trial where one or more of the following factors are present:

1. The defendant is in pretrial custody;
2. The defendant constitutes a significant threat of violent injury to others;
3. The defendant is a recidivist;

4. The defendant is a professional criminal; that is, a person who substantially derives his livelihood from illegal activities; or
5. The defendant is a public official.

UTAH STATUS AND COMMENTS

a) Utah Law: Title 77, Chapter 28, Section 3, says: "Order of disposing of issues. --The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

(1) Prosecutions for felony, when the defendant is in custody.
(2) Prosecutions for misdemeanor, when the defendant is in custody.
(3) Prosecution for felony, when the defendant is on bail.
(4) Prosecutions for misdeameanor, when the defendant is on bail."

This section is repealed in the proposed revision of the Procedural section of the Penal Code.

b) Where Utah Differs: The above section of the Penal Code is ignored for the most part. Some jurisdictions will give priority on a case by case review, but there is no standard procedure. Case scheduling and hearings in Utah are fortuitous as a rule. The main problem stems from lack of sound court management. Even though Utah now has a Court Administrator and "field court administrators" in each of Utah's 8 District Courts, the Court Administrator doesn't involve itself with case scheduling. The field adaministrators are really county clerks, or under the employ for the most part of the county clerk. Few do case scheduling, and none are full time. Only one court in the state has a full-time administrator that handles all aspects of court management/administation, and this is Ogden City Court.

METHOD OF IMPLEMENTATION

Voluntary compliance of prosecution, defense, and courts.

6.12 THE COMPLAINT

STANDARD

No criminal complaint, except infractions of minor traffic violations, shall be filed without first obtaining the approval of the prosecuting attorney.

UTAH STATUS

UCA 77-11-1 states that the complaint must state; the name of the accused, if known, the county in which the offense accurred, the general name of the crime of public offense, the acts or omissions complained of as constituting the crime or public offense names, the victim or the property if it is an offense against property. The prosecutor, who must deal with the complaint is not given any input here.

METHOD OF IMPLEMENTATION

Legislative action to amend UCA 77-11-1.

THE TRIAL

7.1 CRIMINAL TRIALS

STANDARD

In every court where trials of criminal cases are being conducted, daily sessions should commence promptly as scheduled and continue at

the court's discretion unless business before the court is concluded at an earlier time and it is too late in the day to begin another trial.

All criminal trials should conform to the following:

1. Opening statements to the jury by counsel should be limited to a clear, nonargumentative statement of the evidence to be presented to the jury.

2. Evidence admitted should be strictly limited to that which is directly relevant and material to the issues being litigated. Repitition should be avoided.

3. Summations or closing statements by counsel should be limited to the issues raised by evidence submitted during trial and should be subject to time limits established by the judge.

4. Standardized instructions should be utilized in all criminal trials as far as is practical. Requests by counsel for specific instructions should be made at, or before, commencement of the trial. Final assembling of instructions should be completed by support personnel under the court's direction prior to the completion of the presentation of the evidence.

UTAH STATUS AND COMMENTS

a) Utah Law: The mass of Supreme Court, District Court and City Court judges work more than 40 hours a week. Most from 8 a.m. to 5 p.m.

In the Second, Third, and Fourth Districts, LEAA funds a Research Clerk. This is an idea that the standard doesn't mention which enables a judge to remain on the bench and the trial continue while research on points of law is carried on. The case of the State vs. Robert E. Roll took seven days to complete. Judge Frank Wilkins estimates that

without the use of a Research Clerk, the trial would be continued for another month.

Commencing the selection of a new jury immediately after the jury of the preceding trial has gone to deliberate is done in Utah. However, it is a rare occurrence.

Training is offered Utah judges in courtroom management by numerous agencies. There is no minimum amount of type of training set by statute however.

b) Where Utah Differs: Utah practice doesn't differ in any substantive way from the standard.

STAFF RECOMMENDATION

The staff recommends approval of this standard.

METHOD OF IMPLEMENTATION

The knowledge to implement this standard in the courtroom is offered judges in Utah by numerous schools. It is suggested by the staff that the judicial council, with the aid of the National Center for State Courts, the Institute of Court Management, the National Center for Prosecution Management, the American Judicature Society, and whatever other agencies are available, set minimum standards for judicial training in courtroom management.

7.2 MISDEMEANOR PROSECUTIONS

STANDARD

All motions in jury cases should be heard within 3 days prior to trial. Copies of motions should be served upon the prosecutor by defense counsel.

UTAH STATUS AND COMMENTS

a) Utah Law: The procedure for misdemeanor court appearances is the same as that of felony court appearances.

Preliminary hearings are required in Title 77, Section 15 of the present code, and Rule 8 of the proposed revision of the procedural section of the penal code. There is no time limit mentioned setting a date for filing motions and electing a non-jury trial after appointment of counsel, and there is no law stating that motions requiring testimony, arguments, hearings of motions for continuance, and setting of a new trial date must all be done in one appearance in court whether for a misdemeanor or a felony.

b) Where Utah Differs: There is no special time frame in Utah Law nor is the preliminary hearing prohibited, nor are there any restrictions on continuances.

METHOD OF IMPLEMENTATION

The judicial council should implement this standard through court rule.

7.3 JURY SELECTION

STANDARD

The court should conduct the examination of prospective jurors. Preemptory challenges and challenges for cause should be retained.

UTAH STATUS AND COMMENTS

a) Utah Law: Title 77, Chapter 28, Section 1 reads: "Trial juries for criminal cases are formed in the same manner as trial juries in civil cases, except that the examination of jurors shall be conducted by the

judge." The number of preemptory challenges is limited in multiple defendants' cases to two extra per defendant in cases punishable by death, one extra per defendant in cases not punishable by death. Both defense and prosecution have an equal number of preemptory challenges.

Section 28, Title 77 has been repealed in the proposed revision of the Procedural Section of the Penal Code. Title 77, Rule 20 of the proposed revision of the procedural section of the Penal Code does not preclude the questioning of prospective jurors by counsel, but in the matter of preemptory challenges it reads: "If the defense charged is punishable by death, each side is entitled to ten preemptory challenges. If the offense charged is punishable by imprisonment for more than one year, each side is entitled to four preemptory challenges. If the offense charged is punishable for not more than one year, or by fine, or both, each side is entitled to three preemptory challenges. If there is more than one defendant, the court may allow the defendants additional preemptory challenges and permit them to be excerised separately or jointly.

b) Where Utah Differs: Present law is in line with the standard on prospective juror selection, but the proposed revision allows the judge to permit questioning of the prospective jurors by counsel or defendant; however, the court retains the authority to conduct the entire examination itself.

METHOD OF IMPLEMENTATION

The judicial council should implement this standard through court rule.

END