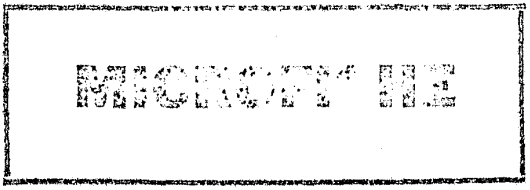

GALVIN L. RAMPTON
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY

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

SENTENCING

This report was published by the Utah Council on Criminal Justice Administration with the aid of Law Enforcement Assistance Administration Funds.

Raymond A. Jackson
Chairman

Robert B. Andersen
Director

Utah Council on
Criminal Justice Administration
(Membership)

D. Gilbert Athay
Attorney at Law

Gerald Bonser
Moab City Councilman

Melvin J. Burke, Commissioner
Uintah County Commission

Mrs. Barbara Burnett
Citizen Representative

George Buzianis, Commissioner
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Judge Bryant H. Croft
Third District County

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Dept. of Employment Security

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Deputy Attorney General

Capt. Norman "Pete" Hayward
Salt Lake County Sheriff's Office

Marion Hazleton
Citizen Representative

Rex Huntsman
Sevier County Sheriff

Chief Joseph Hutchings
St. George Police Department

S. Mark Johnson, Judge
Bountiful City Court

Paul C. Keller, Judge
Juvenile Court, District Five

Reverend Jerald H. Merrill
Citizen Representative

J. Duffy Palmer
Davis County Attorney

Dr. Sterling R. Provost
Utah State System of Higher Ed.

Paul S. Rose, Executive Director
Department of Social Services

Walter D. Talbot, Superintendent
of Public Instruction

Ernest D. Wright, Director
Division of Corrections

James F. Yardley, Commissioner
Garfield County Commission

What is the Utah Council on Criminal Justice Administration (UCCJA)?

In 1968 the Omnibus Crime Control and Safe Streets Act was passed resulting in the creation of the Law Enforcement Assistance Administration (LEAA) in the U.S. Department of Justice. The act required the establishment of a planning mechanism for block grants for the reduction of crime and delinquency.

This precipitated the establishment of the Utah Law Enforcement Planning Council (ULEPC). The council was created by Executive Order of Governor Calvin Rampton in 1968. On October 1, 1975, the council was expanded in size and redesignated the Utah Council on Criminal Justice Administration (UCCJA).

The principle behind the council is based on the premise that comprehensive planning, focused on state and local evaluation of law enforcement and criminal-justice problems, can result in preventing and controlling crime, increasing public safety, and effectively using federal and local funds.

The 27-member council directs the planning and funding activities of the LEAA program in Utah. Members are appointed by the governor to represent all interests and geographical areas of the state. The four major duties of the council are:

1. To develop a comprehensive, long-range plan for strengthening and improving law enforcement and the administration of justice...

2. To coordinate programs and projects for state and local governments for improvement in law enforcement.

3. To apply for and accept grants from the Law Enforcement Assistance Administration...and other government or private agencies, and to approve expenditure...of such funds...consistent with...the statewide comprehensive plan.

4. To establish goals and standards for Utah's criminal-justice system, and to relate these standards to a timetable for implementation.

JUDICIAL SYSTEMS TASK FORCE

Judge Bryant H. Croft (Chairman)
Third Judicial District Court

Courts	Prosecution/Defense
Judge Geraldine Christensen Justice of the Peace	Mr. Jay V. Barney Attorney at Law
Father John Hedderman Citizen Representative	Mrs. Floyd Bliss Citizen Representative
Judge Paul C. Keller Fifth District Juvenile Court	Mr. Hans Chamberlain Iron County Attorney
Mr. Richard Peay Utah Court Administrator	Mr. F. John Hill, Director Salt Lake Legal Defender Assn.
Mr. Paul Peters, Chief Agent Adult Probation and Parole	Mr. Richard Howe Utah State Senator
Mr. E. Keith Stott, Jr. Attorney at Law	Chief Leroy Jacobsen Ogden City Police Department
Professor Kline Strong College of Law, Univ. of Utah	Mr. Franklin Johnson Attorney at Law
Chief Judge Thornley K. Swan Chairman, Utah Judicial Council	Mr. Reid Russell, Director Technical Assistance Bureau of Statewide Assn. of Prosecutors
Judge Stanton Taylor Ogden City Court	Mr. David L. Wilkinson (for Vernon B. Romney) Office of Attorney General
Ms. Julia Newman (for Judge Fred Ziegler) Ogden City Court	Mr. David S. Young, Director Statewide Assn. of Prosecutors

UTAH COUNCIL ON CRIMINAL JUSTICE ADMINISTRATION

Staff Members

Mr. Dennis M. Fuchs	Mr. David L. Marsh
Mr. Jeffery C. Thurmond	Mr. Joseph C. Fratto

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5.1 SENTENCING TO EXTENDED TERMS

STANDARD

Upon conviction of a 3rd felony by the same person, the penalty should be imprisonment for not less than 15 years. Convictions which were pardoned because the defendant was innocent should not count under this standard.

UTAH STATUS AND COMMENTS

Utah has an habitual criminal statute (Section 76-1-18, 19) which authorizes a sentence of not less than 15 years for any defendant twice previously convicted of a felony as defined by the statutes of the state. In **State v. Russum**, 107 U. 94. 152 P.2d 88, the Supreme Court ruled that being an habitual criminal is a status and to be charged with being an habitual criminal is not to be charged with a crime.

In **State v. Walsh**, 106 U.22, 144 P.2d 757, the court found no inconsistencies between the Habitual Criminal Act and the Indeterminate Sentence Act. The 15-year sentence appears, however, to be at least an exception to the indeterminate sentencing practices. Nevertheless, the law has been upheld from attacks upon its validity. The post facto laws. (See Harold Budroff, **Recidivist Procedures**, 4 NYU L.E. 332). However, none of these theories have found judicial sympathy.

The Indeterminate Sentence Act is found in 77-35-20. The development of the law that lead the enactment of this statute is given in **State v. Memier,** 106 U.307, 148 P.2d 327. The Parole Board has the power to release an inmate any time prior to the maximum of his sentence, when release becomes automatic. The Board evaluates each case periodically in the light of the existing situation to determine if the inmate should be paroled.

WHERE UTAH DIFFERS FROM THE STANDARD

In terms of the first part of the standard, Utah has a conventional three-felony conviction threshold before the habitual criminal statute becomes operational. The standard provides for a flexible 25-year sentence, while Utah has a rigid 15-year sanction.

In terms of the second part of the standard, Utah's

indeterminate sentencing structure does not permit the sentencing court to either set minimums, which the parole board could not breach, or have direct influence on any subsequent parole of an inmate. The courts do engage in "recommendations" in which they may take judicial notice of the need to keep a convicted defendant in prison. The Board, however, is not bound by these recommendations.

METHOD OF IMPLEMENTATION

The legislature must adopt an habitual criminal statute for this standard to be adopted.

5.2 PROBATION

STANDARD

Each sentencing court immediately should revise its policies, procedure and practices concerning probation, and where necessary, enabling legislation should be enacted as follows:

1. A sentence to probation should be for a specific term not exceeding the maximum sentence authorized by law, except that probation for misdemeanants may be for a period not exceeding two years.

2. The court should be authorized to impose such conditions as are necessary to provide a benefit to the offender and protection to the public safety. The court also should be authorized to modify or enlarge the conditions of probation at any time prior to expiration or termination of sentence. The conditions imposed in an individual case should be tailored to meet the needs of the defendant and society, and mechanical imposition of uniform conditions on all defendants should be avoided.

3. The offender should be provided with a written statement of the conditions imposed and should be granted an explanation of such conditions. The offender should be authorized to request clarification of any condition from the sentencing judge. The offender should also be authorized on his own initiative to petition the sentencing judge for a modification of the conditions imposed.

4. Specific uniform procedures should be adopted as to the manner in which probation is revoked.

UTAH LAW

The basic provision in the Utah Code dealing with probation is 77-35-17. This authorizes the court to suspend sentence where such a course would be compatible with "the public interest". The court is subsequently empowered to increase or decrease the probation and may revoke or modify any condition at any time. Where it appears to the court that the defendant has complied with the conditions of such probation, it may, even on its own motion, terminate probation and dismiss the action. The statute is very broad as to the court's powers to establish various conditions and requirements on probation, and the length and extent of that probation leaves much to discretion. There is no Utah case law which seems to restrict the judge in this discretion. However, the case load somewhat restricts what could be done.

In August 1974, 416 convicted defendants were placed on probation. Currently there is a total of 4,843 under supervision. These figures do not include the persons on parole who are supervised by Adult Probation and Parole.

In terms of the procedure for revoking probation, a number of early cases establish the precedent that revocation is subsequent to a judicial hearing, (refer State v. Zolantakis, 259 P. 1044 (1927), Williams v. Harris, 149 P.2d 640). Probation is revoked after a judicial proceeding in which the defendant is permitted the due process of his prior adjudication except for the right to a jury. The court as the grantor of the probation would decide its revocation. There is, however, no requirement that the officer be neutral. The judge who presides over the hearing could be the same as the judge who put the defendant on probation in the first instance.

In **State v. Weichler**, 35 U.2d.421, 483 P.2d 887, the Supreme Court ruled that "Inasmuch as hearing to revoke probation involves the possibility of changing the defendant's status he should have assistance of council." This is an interesting development because it was not until decisions in **Mempa v. Rhay**, 389 U.S. 128 (1967) and **Morrissey v. Brewer**, 408 U.S. 471 (1972) that such procedures were established for parole revocation.

WHERE UTAH DIFFERS FROM THE STANDARD

The court in Utah may place a defendant on probation for any length of time and may alter any conditions which are placed upon the probation. Theoretically, the judge is not restricted in the conditions he may impose except as reality may dictate. Those realities, as mentioned above, are, however, somewhat substantial.

METHOD OF IMPLEMENTATION

Utah practice is close enough to the standard that no implementation is needed.

5.3 FINES

STANDARD

In enacting penal code revisions, state legislatures should determine the categories of offenses for which a fine is an appropriate sanction and provide a maximum fine for each category.

Criteria for the imposition of a fine also should be enacted, to include the following:

1. A fine should be imposed where it appears to be a deterrent against the type of offense involved or an appropriate correctional technique for an individual offender. Fines should not be imposed for the purpose of obtaining revenue for the government.

2. A fine should be imposed only where there is a reasonable chance that the offender will be able to pay without undue hardship for himself or his dependents.

3. A fine should be imposed only where the imposition will not interfere seriously with the offender's ability to make reparation or restitution to the victim.

Legislation authorizing the imposition of fines also should include the following provisions:

1. Authority for the court to impose a fine payable in installments.

2. Authority to revoke part or all of a fine once imposed in order to avoid hardship either to the defendant or others.

3. A prohibition against court imposition of such sentences as "30 dollars for 30 days".

4. Authority for the imprisonment of a person who intentionally refuses to pay a fine or who fails to make a good-faith effort to obtain funds necessary for payment. Imprisonment solely for inability to pay a fine should not be authorized.

Legislation authorizing fines against corporations should include the following special provisions:

1. Authority for the court to base fines on sales, profits, or net annual income of a corporation where appropriate to assure a reasonably even impact of the fine on defendants of various means.

UTAH LAW

Under the old criminal code there were provisions which provided for imprisonment or a fine (refer 76-1-15, 16). However, under the new code such provisions have been repealed, and a scale of fines has been substituted. For first and second degree felonies there is a $10,000 fine. For third degree felonies the fine is $5,000. One-thousand dollars is to be fined for Class A misdemeanors and $299 for Class B and C (refer 76-3-301). Under the new penal code a new class of offenses called "infractions" was created. Conviction for an infraction would compel the court to fine $299. There is, however, no imprisonment sanctions for an infraction.

It has been held by the Supreme Court that a judgment of fine rendered in a criminal case is enforceable by imprisonment only when it stands alone and is not coupled with a sentence of imprisonment (**Roberts v. Howells**, 22 U. 389, **Reese v. Olsen**, 44 U. 318). Section 77-35-15 allows the court to imprison for non-payment of a fine at a maximum rate of two dollars per day. Section 77-36-2

directs that execution on a fine constitutes a lien in the same manner as a civil money judgment.

WERE UTAH DIFFERS

The scale of fines in Utah is proportionate to the degree of the offense. Infractions are punishable only by a fine. There is no attempt at further tailoring of the fines to fit the nature of the offense. Thus, property crimes of a felony nature are fined in the same manner as personal crimes such as manslaughter or rape. The provisions dealing with fines and the collection of fines are not mandatory but are discretionary with the court. Thus, the court does have authority to collect fines in installments or to suspend part or all of the fine.

Since the new code revision, the "30 dollars or 30 days" provision no longer exists in the code.

METHOD OF IMPLEMENTATION

The areas of the standard not operational under Utah law should be adopted by the legislature.

5.4 EFFECT OF GUILTY PLEA IN SENTENCING

STANDARD

Sentencing courts immediately should adopt a policy that the court in imposing sentence should not consider, as a mitigating factor, that the defendant pleaded guilty or, as an aggravating factor, that the defendant sought the protections of right to trial assured him by the Constitution.

This policy should not prevent the court, on substantial evidence, from considering the defendant's contrition, his cooperation with authorities, or his consideration for the victims of his criminal activity, whether demonstrated through a desire to afford restitution or to prevent unseemly public scrutiny and embarrassment to them. The fact that a defendant has pleaded guilty, however, should be considered in no way probative of any of these elements.

UTAH LAW

Section 77-24-3 **et seq** outlines the statutory provisions concerning pleading. In Utah, there are three types of pleas. The first is guilty, the second is not guilty, and the third is no prosecution because of double jeopardy. Section 77-24-8 requires that the court consent to any pleading to a lesser offense because of the negotiation between the defense and the prosecution. If the defendant chooses to plead guilty he must do so in person and the court may inquire into and must inform the defendant of the consequences of such a pleading. Such procedures insure that, for the most part, the court will be aware of the reasons for the plea and its relationship to any motives of contrition or cooperation.

There is no provision in these statutes that prohibits the court from being influenced in its sentencing by the type of plea. In fact, the Utah system, which gives so much discretion to the court in sentencing, makes the presence of such influences inevitable. No survey of the Utah judiciary has been conducted on this issue, and there is no case law that would seem to curtail such a situation if it in fact exists. The pre-sentence report requirements, 76-3-404, does give the courts of Utah a broad base upon which to make a judgment in imposing sentence.

WHERE UTAH DIFFERS

Utah has no formal prohibition against the practice of mitigating the sentence contingent on a plea of guilty.

METHOD OF IMPLEMENTATION

A survey should be conducted to determine the extent, if any, of the practices described in this standard. This will both define the problem and bring the attention of the judiciary to the need of recognizing the issue. This chapter of procedures in sentencing, if implemented, would help the court to more fully evaluate the reasons for any guilty plea and to put that plea in its proper perspective.

5.5 CREDIT FOR TIME SERVED

STANDARD

Sentencing courts immediately should adopt a policy of giving credit to defendants against their maximum terms and against their minimum terms, if any, for time spent in custody and "good time" earned under the following circumstances:

1. Time spent in custody arising out of the charge or conduct on which such charge is based prior to arrival at the institution to which the defendant eventually is committed for service of sentence. This should include time spent in custody prior to trial, prior to sentencing, pending appeal, and prior to transportation to the correctional authority.

2. Where an offender is serving multiple sentences, either concurrent or consecutive, and he successfully invalidates one of the sentences, time spent in custody should be credited against the remaining sentences.

3. Where an offender successfully challenges his conviction and is retired and resentenced, all time spent in custody arising out of the former conviction and time spent in custody awaiting the retrial should be credited against any sentence imposed following the retrial.

The court should assume the responsibility for assuring that the record reveals in all instances the amount of time to be credited against the offender's sentence and that such record is delivered to the correctional authorities. The correctional authorities should assume the responsibility of granting all credit due an offender at the earliest possible time and of notifying the offender that such credit has been granted.

Time spent under supervision (in pretrial intervention projects, release on recognizance and bail programs, information probation, etc.) prior to trial should be considered by the court in imposing sentence. The court should be authorized to grant the offender credit in an amount to be determined in the discretion of the court, depending on the length and intensity of such supervision.

UTAH LAW

According to Utah law, the crediting of dead time spent before conviction is not mandatory but is left to the discretion of the court. There is no case law in Utah that shows a challenge to such a system. Also there has not been a study to determine if Utah's judiciary is more disposed to make such a credit in the majority cases. Section 76-3-404 gives credit for time spent in prison during a presentence investigation and 76-3-405 prohibits the court from imposing a harsher sentence for the same conduct when the first conviction has been set aside.

METHOD OF IMPLEMENTATION

None is needed.

5.6 CONTINUING JURISDICTION OF SENTENCING COURT

STANDARD

The Utah Constitution should be amended to allow judges to commute sentences and/or remit fines in misdemeanor cases (class B or less), after sentencing. When new factors discovered since the initial sentencing hearing dictate such modification or reduction or that the purpose of the original sentence is not being fulfilled.

UTAH LAW

In examining Utah law regarding this standard, it would be well to recognize that there are three separate areas of concern. First, there is the area of prisoner's rights and the machinery to safeguard and protect these rights. Second, there is the problem of prison administration. This includes not only devising programs and activities for the prisoners, but also the day-to-day administration of food, clothing, building maintenance, and the like. The third issue is the procedure for determining the prisoner's sentence and the conditions of that sentence.

In Utah, these functions have been divided among separate agencies and represent spheres of influence in which these groups perform various duties.

The question of prisoner's "rights" is both a constitutional and statutory question. There are established procedures by which a prisoner may claim a violation of his rights. In the forefront of these procedures is the writ of habeas corpus. If constitutional rights are in issue, the federal court becomes the reviewing body. Otherwise, violation of rights given by the state are reviewed by state courts.

The question of prison administration is a function of the state prison officials and the Board of Corrections, which have been given statutory authority in this area. Section 64-9-1 **et seq** designates the various duties and responsibilities of this board. The board may classify prisoners and regulate food and clothing. Although the regulations give the board power, there are limitations. For example, 64-9-36 gives the prisoners rights in the exercise of their religious beliefs and 64-9-39 regulates the punishment of convicts while inside the prison.

Under the Utah system of indeterminate sentencing, once a defendant has reached prison, his program of rehabilitation is controlled by the Board of Corrections. After confinement, the prisoner may be paroled. State law, has conferred this power in a Board of Pardons, whose duties are designated in section 77-62-1 **et seq** once these prisoners have been sent to prison, the court no longer has power to regulate their terms of imprisonment. Only in the area of probation may the sentencing court continue to exercise jurisdiction.

WHERE UTAH LAW DIFFERS

Utah law differs, fundamentally, in the overlap that the standard recommends for the courts' jurisdictions. In Utah, the courts are only empowered to sentence people to indeterminate sentences with some recommendations. Thereafter, the programs or rehabilitation are left to the Board of Corrections and the prison officials. The question of subsequent release from this indeterminate sentence has been given to a Board of Pardons. This board is empowered to determine if the convict has reached a level which would allow them to discharge him from prison. The court remains in the picture in terms of reviewing claims of abuse of power or denial of rights, which is also an aspect of the standard.

The philosophy for using the two types of boards to perform these duties is based upon the premise that the court does not have the facilities to monitor the programs of each prisoner and make an

intelligent decision as to issues of parole or institution of punishment. Even if it were feasible for courts to determine rehabilitation programs and parole, there would be no advantage over using these boards.

METHOD OF IMPLEMENTATION

A constitution amendment is needed to give the courts this additional power.

5.7 JUDICIAL VISITS TO INSTITUTIONS

STANDARD

Court systems should adopt immediately, and correctional agencies should cooperate fully in the implementation of, a policy and practice to acquaint judges with the correctional facilities and programs to which they sentence offenders, so that the judges may obtain firsthand knowledge of the consequences of their sentencing decisions.

UTAH LAW

Any visiting which the judiciary does is on its own individual discretion with permission of the prison administration. It is extremely doubtful that all of Utah's judiciary have visited the Utah State Prison or any of the other jails to which they sentence convicted criminals.

METHOD OF IMPLEMENTATION

None is needed.

5.8 REQUIREMENTS FOR PRESENTENCE REPORT AND CONTENT SPECIFICATIONS

STANDARD

Sentencing courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable

and correctionally appropriate dispositions. The guidelines should reflect the following:

1. A presentence report should be presented to the court in every case where there is a potential sentencing disposition involving incarceration and in all cases involving felonies.

2. Gradations of presentence reports should be developed between a full report and a short-form report for screening offenders to determine whether more information is desirable or for use when a full report is unnecessary.

3. A full presentence report should be prepared where the court determines it to be necessary, and without exception in every case where incarceration for more than 5 years is a possible disposition. A short-form report should be prepared for all other cases.

4. In the event that an offender is sentenced, either initially or on revocation of a less confining sentence, to either community supervision or total incarceration, the presentence report should be made a part of his official file.

5. The full presentence report should contain a complete file on the offender — his background, his prospects of reform, and details of the crime for which he has been convicted. Specifically, the full report should contain at least the following items:

a. Complete description of the situation surrounding the criminal activity with which the offender has been charged, including a full synopsis of the trial transcript, if any; the offender's version of the criminal act; and his explanation for the act.

b. The offender's educational background.

c. The offender's employment background, including any military record, his present employment status, and capabilities.

d. The offender's social history, including family relationships, marital status, interests and activities.

e. Residence history of the offender.

f. The offender's medical history and, if desirable, a psychological or psychiatric report.

g. Information about environments to which the offender might return or to which he could be sent should a sentence of nonincarceration or community supervision be imposed.

h. Information about any resources available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, rehabilitative programs of various institutions, and similar programs.

i. Views of the person preparing the report as to the offender's motivations and an assessment of the offender's explanations for his criminal activity.

j. A full description of defendant's criminal record, including his version of the offenses, and his explanations for them.

k. A recommendation as to disposition.

6. The short-form report should contain the information required in sections 5 a, c, d, e, h, i, j, and k.

7. All information in the presentence report should be factual and verified to the extent possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, should bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

UTAH LAW

The pertinent Utah statute is 76-3-404 of the new criminal code. In that provision is set down the general guidance determining what information is sought in the presentence investigation.

The Division of Corrections shall conduct a complete study of the defendant during that time, inquiring into such matters as

the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the rehabilitative resources or programs which may be available to suit his needs.

The court may dictate within these guidelines. Also, the investigators have their own procedures, and the Board of Corrections has its policies for implementation.

WHERE UTAH DIFFERS

The Utah law places great discretion with the court to determine when and how a presentence report is prepared. The standard places a number of refinements, some of which are mandatory. For example, if the crime is a felony with a possible punishment of 5 years or more, there is a requirement imposed by the standard that a full report be completed. In most cases where the crime is of this magnitude, the Utah courts order a presentence report, however, it is not a mandatory procedure.

Also, there is no requirement in Utah that the presentence report be part of the offender's official file. In this area, the court has great discretion to make the decision.

METHOD OF IMPLEMENTATION

The judicial council must set standards and practices to implement this standard, or legislation must be passed.

5.9 DISCLOSURE OF PRESENTENCE REPORTS

STANDARD

1. Presentence report: disclosure; general principles. The presentence report should not be a public record. It should be available only to the following persons or agencies under the conditions stated.

a. The report should be available to the sentencing court for the purpose of assisting it in determining the sentence. The report should also be available to all judges who are to participate in a sentencing council discussion of the defendant.

b. The report should be available to persons or agencies having a legitimate professional interest in the information likely to be contained herein. Examples of such persons or agencies would be a physician or psychiatrist appointed to assist the court in sentencing, an examining facility, a correctional institution, or a probation or parole department.

c. The report should be available to reviewing courts where relevant to an issue on which an appeal has been taken.

d. The report should be available to the parties under the conditions stated in Section 2 below.

2. Presentence report: disclosure; parties.

a. Fundamental fairness to the defendant requires that the substance of all derogatory information which adversely affects his interests and which has not otherwise been disclosed in open court should be called to the attention of the defendant, his attorney, and others who are acting on his behalf.

b. This principal should be implemented by requiring that the sentencing court permit the defendant's attorney, or the defendant himself if he has no attorney, to inspect the report. The prosecution should also be shown the report if it is shown to the defense. In extraordinary cases, the court should be permitted to except from disclosure parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program or rehabilitation, or sources of information which have been obtained on a promise of confidentiality. In all cases where parts of the report are not disclosed under such authority, the court should be required to state for the record the reasons for its action and to inform the defendant and his attorney that information has not been disclosed. The action of the court in excepting information from disclosure should be subject to appellate review.

c. The resolution of any controversy as to the accuracy of the presentence report should be governed by the

principles stated in sections 4.5[b], 5.3[f], and 5.4[a] of the ABA standards on Sentencing Alternatives and Procedures.

3. Presentence report: time of disclosure; presentence conference.

a. The information made available to the parties under Section 2 above should be disclosed sufficiently prior to the imposition of sentence as to afford a reasonable opportunity for verification.

b. In cases where the presentence report has been open to inspection, each party should be required prior to the sentencing proceeding to notify the opposing party and the court of any part of the report which he intends to controvert by the production of evidence. It may then be advisable for the court and the parties to discuss the possibility of avoiding the reception of evidence by a stipulation as to the disputed part of the report. A record of the resolution of any issue at such a conference should be preserved for inclusion in the record of the sentencing proceeding.

UTAH LAW

Utah does not require disclosure of the presentence report. No survey has been done to measure the discretionary practices in individual courts.

WHERE UTAH LAW DIFFERS

Utah differs in the mandatory nature of the standard. Although some courts may feel disposed to reveal the reports and even accept other facts and recommendations from the defense, it is not a mandatory practice.

METHOD OF IMPLEMENTATION

The legislature should amend UCA 76-3-404 to bring it in line with this standard.

END