

Utah Council on Criminal Justice Administration's
Project on Criminal Justice
Standards and Goals

44158

CORRECTIONS

RIGHTS OF OFFENDERS UNDER THE CUSTODY OF THE DIVISION OF CORRECTIONS

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44158

Approved by
Utah Corrections Task Force and
Utah Council on Criminal Justice Administration
255 South 3rd East
Salt Lake City, Utah 84111



GALVIN L. RAMPTON
GOVERNOR

STATE OF UTAH **NCJRS**
OFFICE OF THE GOVERNOR
SALT LAKE CITY

DEC 13 1977

ACQUISITIONS

Dear Citizens:

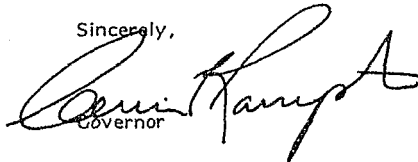
This pamphlet is one of a series of reports of the Utah Council on Criminal Justice Administration. The Council's five Task Forces: Police, Corrections, Judicial Systems, Community Crime Prevention, and Information Systems, were appointed on October 16, 1973 to formulate standards and goals for crime 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

**RIGHTS OF OFFENDERS UNDER
THE CUSTODY OF THE
DIVISION OF CORRECTIONS**

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

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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.

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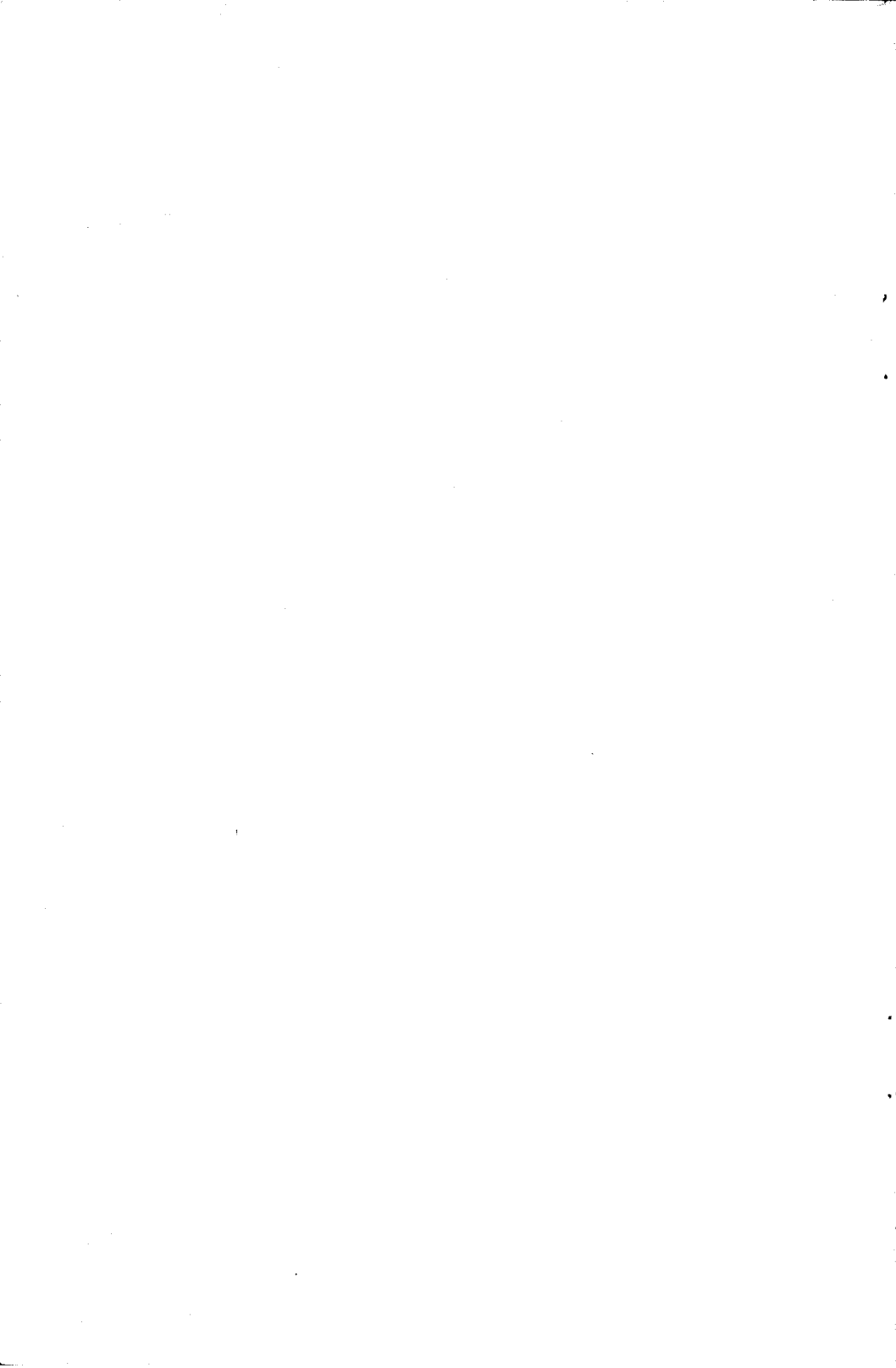
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INTRODUCTION

Until recently, an offender was legally deemed to have forfeited virtually all rights upon conviction and to have retained only those rights that were expressly granted to him by statute or correctional authority. Virtually anything could be done with an offender in the name of "correction," or in some instances "punishment" short of extreme physical abuse. He was protected only by the restraint and responsibility of correctional administrators and their staff. Whatever comforts, services, or privileges the offender received were a matter of grace — in the law's view a privilege to be granted or withheld by the state. As a result, in many places, inhumane conditions and practices were permitted.

The courts have two functions within the criminal justice system: As participants in the process of trying and sentencing those accused of crimes, and as the guardian of the requirements of the Constitution and statutory law. In the second role, they oversee the corrections system through litigation. Litigation alone cannot solve the problems of corrections or insure offender's rights. Case by case litigation is time-consuming, cumbersome, and inevitably results in uncertainties and less than comprehensive rulemaking. Despite this in recent years there have been major changes in the law governing correctional control over sentenced offenders through offenders' complaints. The courts have been evaluating correctional practices against three constitutional demands: (1) State action may not deprive citizens of life, liberty or property without due process of law; (2) state action may not deprive citizens of their right to equal protection of the law; and (3) The state may not inflict cruel or unusual punishment. The courts have found many traditional correctional practices in violation of all three demands.

The eighteen standards in this pamphlet have been—or in the future no doubt will be—the subject of litigation. **Standard 12.1 "Access to the Court"** suggests that the Division of Corrections should develop and implement policies and procedures to insure that offenders under their jurisdiction have proper access to the judicial system.

Standard 12.2 "Access to Legal Services" addresses the issues of the right to and availability of counsel for problems that arise in the court litigation and administrative decisionmaking phases of an inmates status. The policy which supports this standard, is that the presence of counsel assures that the proceedings will be carried out properly and that the factual basis for decisionmaking will be accurate.

The U.S. Supreme Court case of **Younger v. Gilmore**, 404 U.S. 15 (1971), which is interpreted to require a minimum collection for prison law libraries, is the basis for **Standard 12.3, "Access to Legal Materials."** It suggests that the Division of Corrections should facilitate the development of a law library at the prison and suggests what the minimum collection should be.

Standard 12.4 "Protection Against Personal Abuse" is based on a philosophy that corrections is a reintegrative rather than a punitive function. In addition to securing physical custody of an inmate, correctional authorities are charged with the responsibility of promoting the health of the offender. **Standard 12.5 "Healthful Surroundings"** suggests methods correctional authorities can use to meet this responsibility.

Adequate medical care is a basic need of each inmate. One of the most fundamental responsibilities of a correctional agency is to care for the offenders committed to it. **Standard 12.6 "Medical Care"** suggests that medical care provided incarcerated offenders should be equal to that available to the general public. Provisions should be made to adequately handle special medical problems. Complete and accurate records of all medical work should be documented by the physician in charge. The prescription and administration of medication should be closely supervised.

Standard 12.7 "Searches" presents workable policies to preserve the rights of offenders as they relate to search and seizure issues. Types of searches are divided between inmates who are confined in an institution and those who are released from confinement, yet are still under correctional supervision.

Standard 12.8 "Non-Discriminatory Treatment" is directed toward eliminating discriminatory treatment of correction facilities based on race, religion, nationality, sex, or political beliefs. The elements of the policy should include equality of treatment, fair and equitable decisionmaking, and remedies for discrimination against inmates.

An enforceable right to rehabilitative services has not yet been recognized by judicial decisions. Therefore, **Standard 12.9 "Rehabilitation"** is attempting to pioneer and implement novel policies and procedures which would permeate the correction's process. Rehabilitative programs should be established for each offender. The Standard articulates five factors that are requisite for satisfactory rehabilitative treatment.

Standard 12.10 "Retention and Restoration of Rights" seeks to minimize the number and severity of disadvantages to which an accused but unconvicted person may be subjected. It suggests legislation repealing civil death provisions and help for convicted persons to retain or exercise their civil rights or obtain restoration of them.

Standard 12.11 "Rules of Conduct" recommends that correctional agencies should draft and implement rules of conduct, for the various classifications of offenders. Such rules should be limited to observable behavior which can be shown clearly to have a direct adverse effect on an individual or institution. The rules of conduct should be enforced with penalties that are directly related to the gravity of the offense. Current rules of conduct should be available to all offenders who are subject to their provisions.

Standard 12.12 "Disciplinary Procedures" suggests that the Division of Corrections and the prison formally adopt appropriate written disciplinary procedures. The standard is broken down into procedures for minor and major violations of the rules of conduct, the disciplinary hearing and the review or appeal of the decision.

Standard 12.13, "Procedure for Non-Disciplinary Change of Status" seeks to strike an appropriate balance between the interests of the correctional system and those of the offender. It specifies some basic principles of offenders' rights in this area of the law; however, it is undertaken with a specificity and degree of formality that is much less pervasive than the "due process" elements proposed for imposition of major disciplinary sanction.

It is the purpose of **Standard 12.14, "Grievance Procedure"** to insure that offenders' grievances are fairly resolved and thereby alleviate much of the tension which exists in a penal institution. As mandated by the first amendment of the United States Constitution, all correctional agencies have a responsibility and a duty to establish and maintain procedures which are designed to resolve an offender's complaints.

Standard 12.15, "Free Expression and Association" recommends the applicability of the first amendment to all offenders and detainees. The exercise of this right and any imposed limitations should be on the same basis as is applicable to the general population.

Religious freedom has always been given preferred and fundamental status in our concepts of individual liberty and expression. The first amendment both protects the free exercise of religion and prohibits the government from giving special consideration to a particular religion. In attempting to protect this guarded right, **Standard 12.16 "Religious Beliefs and Practices"** suggests that rules and regulations be adopted to allow offenders to exercise their own religious beliefs.

Standard 12.17, "Free Expression and Association," addresses major contexts in which the isolation of the offender from the public can be minimized. Three specific aspects of mail, visitation, and media access are discussed in the standard. Involved in these areas are the rights of an offender to express himself and associate with others.

Standard 12.18, "Violation of an Offender's Rights" seeks to insure that proper administrative and judicial remedies are available to offenders when their rights are abridged. Proper rules and regulations should be adopted to insure adequate administrative relief, while legislative action should be undertaken to provide judicial remedies.

Each standard is provided with a brief description of the current Utah system in relation to the standard and a suggested method to implement the standard. The description of the current Utah system was written at the beginning of 1975 and reflects the system as it existed then. Changes since that time have occurred.

STANDARD 12.1 ACCESS TO COURTS

The Utah State Division of Corrections should immediately develop and implement policies and procedures to fulfill the right of persons under correctional supervision to have access to courts to present any issue cognizable therein, including (1) challenging the legality of their conviction or confinement; (2) seeking redress for illegal conditions or treatment while incarcerated or under correctional control; (3) pursuing remedies in connection with civil legal problems; and (4) asserting against correctional or other governmental authority any other rights protected by constitutional or statutory provision or common law.

1. The state should make available to persons under cor-

rectional authority for each of the purposes enumerated herein, adequate remedies that permit, and are administered to provide, prompt resolution of suits, claims, and petitions. Where adequate remedies already exist, they should be available to offenders, including pre-trial detainees, on the same basis as to citizens generally.

2. There should be no necessity for an inmate to wait until termination of confinement for access to the courts.

3. Where complaints are filed against conditions of correctional control or against the administrative actions or treatment by correctional or other governmental authorities, offenders may be required first to seek recourse under established administrative procedures and appeals and to exhaust their administrative remedies. Administrative remedies should be operative within 30 days and not in a way that would unduly delay or hamper their use by aggrieved offenders. Where no reasonable administrative means is available for presenting and resolving disputes or where past practice demonstrates the futility of such means, the doctrine of exhaustion should not apply.

4. Offenders should not be prevented by correctional authority administrative policies or actions from filing timely appeals of convictions or other judgments; from transmitting pleadings and engaging in correspondence with judges, other court officials, and attorneys; or from instituting suits and actions. Offenders should not be penalized for so doing.

5. Transportation to and attendance at court proceedings may be subject to reasonable requirements of correctional security and scheduling. Courts dealing with offender matters and suits should cooperate in formulating arrangements to accommodate both offenders and correctional management.

6. Access to legal service and materials appropriate to the kind of action or remedy being pursued should be provided as an integral element of the offender's right to access to the courts. The right of offenders to have access to legal materials was affirmed in *Younger v. Gilmore*, 404 U.S. 15 (1971), which is discussed in Standard 12.3.

UTAH STATUS AND COMMENTS

An inmate has the right of appeal and filing Writs of Habeas

Corpus or other writs to the courts. Also, the Utah State Prison has an inmate library where various law books are available to assist inmates in preparing legal documents. The Legal Defenders Association sends an attorney to the prison, when possible, to counsel with inmates and assist them with legal problems. The institution furnishes a Notary Public to notarize such writs, after which a copy is forwarded to the warden's office to be placed in the inmate's file.

An inmate may correspond with an attorney whom he designates as his attorney to assist him with legal problems.

Additionally, the Supreme Court of Utah in *Richardson v. Capwell*, held that an inmate may bring a civil action suit for neglectful and cruel treatment during his incarceration. However, such an action may be limited by the Governmental Immunity Act as provided in Section 63-30-1 (10).

The aforementioned provisions specify a basic structure which begins to satisfy the requirements of this standard. However, much of Utah's experience is not codified. A review of the Utah practice indicates that action by correction officials meets the basic standard. There are specific statutory and procedural provisions which detail the Utah experience.

The Utah State Board of Corrections is responsible for the policies and fiscal affairs of the prison and Adult Probation and Parole. Also, the warden is given specific statutory authority to investigate prison complaints (Section 64-9-13[7]).

Also, the *Manual of Procedures*¹ contains specific procedures regarding grievance procedures for inmates. The inmate who has an administrative grievance is allowed to petition the housing officer, housing lieutenant, deputy warden, and warden in an effort to reach a solution to the problem. Additionally, block officers, caseworkers, chaplains and psychologists, are available to the inmate to assist in solving his grievance.

Following an investigation, the warden is required to file a written report of any action that he intends to take. However, if the inmate still feels that the grievance has not been resolved to his satisfaction, he may appeal to the director of the Division of Corrections, who will make a final determination of the matter and advise the inmate of his findings. An inmate may utilize the judicial system in attempting to gain further relief from his grievance.

¹The *Manual of Procedures* (1975) will be referred to as *Manual* in this publication.

No specific time limit is placed on correctional officials in which they must reach a solution to the grievance. Under no circumstances may any disciplinary action be taken against any inmate as a result of his using the grievance procedures established in the *Manual*.

Compliance with paragraph 4 of the standard is regulated by statutory and procedural provisions. Attorneys on professional business are authorized to visit the prison at their own pleasure as provided by Section 64-9-49.

Although correspondence which is brought in or taken from the prison is limited to the consent of the warden (Section 64-9-8), the inmates' right of access to the courts is encouraged. The *Manual* states that inmates will not be disciplined in any way for legitimately exercising this right. Also correspondence between inmates and any courts, judges, attorneys or legal aid societies will not be censored. (p. 72-B.)

Security measures for transporting inmates to court appearances, as discussed in paragraph 5 of the standard is discussed in the *Manual*.

The *Manual* stipulates that inmates must be dressed in standard prison uniform when going to court. If transporting an inmate in the transportation car, he will be locked in the back. If transporting an inmate to court . . . the inmate will be seated in the rear, right side, if accompanied by more than one officer. If with one officer, he should sit in front with the officer. Proper restraints (according to custody classification) will be used when transporting an inmate.

Finally, a prison library is authorized in Section 64-9-52 as follows:

The prison library for the use of the convicts shall be maintained under such regulations as the board may make.

The *Manual* page 71 (1973) indicates that it is the purpose of the library "to meet the educational, informational and recreational needs of the inmates." By way of observation, the prison libraries appear to be extremely inadequate in meeting the legal needs of the inmates. They contain somewhat incomplete collections of the Utah Code and a few outdated legal treatises which treat a variety of legal fields including criminal law. Standard 12.3 provides the specific information on this topic.

METHOD OF IMPLEMENTATION

Administrative authority with the following suggestions incorporated:

New inmates should be given an orientation session when he arrives at the institution. The prisoner should be informed of his right to appeal, the channels of communication that are available to effectuate such an appeal, his constitutional right to file extraordinary writs with the courts, the legal organizations that are available to assist him in his attempt to gain judicial relief, the location of the prison legal libraries, and other essential factors that concern an inmate's access to the judicial process. Also, individuals placed on parole or probation should also be informed of these factors as they relate to their particular status. They should be informed of the locations of law libraries, including the University of Utah College of Law, Supreme Court Library, and Salt Lake County Library.

Although the present prison legal mail provisions appear to satisfy this standard, additional alternatives are available. For example, since the fear of incoming contraband creates a security concern, this interest could be protected by fluroscoping incoming mail, rather than by censorship. If it is feared that unauthorized persons will obtain attorney stationery, it could be required that the attorney send a sealed letter to the inmate with the cover letter to the official, signed by the attorney.

A thirty day period for resolving administrative grievances of the inmate is a reasonable period and should be adopted by the prison and included in its *Manual*. This requirement is necessary to insure a rapid and responsive solution to the offender's complaint. Along with the addition of a specific time limit, the *Manual* should also be revised to include an exhaustion of administrative remedies provision.

Finally, the prison library must be upgraded if it is to comply with this standard. This will be reviewed in Standard 12.3.

STANDARD 12.2 ACCESS TO LEGAL SERVICES

The Utah State Division of Corrections should immediately develop and implement policies and procedures to fulfill the right of offenders to have access to legal assistance, through counsel or counsel substitute, with problems relating to their custody,

control, management, or legal affairs while under correctional authority. Correctional authorities should facilitate access to such assistance. Governmental authority should furnish adequate attorney representation to meet the needs of those offenders without the financial resources to retain such assistance privately.

The procedures or matters to which this standard applies are limited to the following:

1. Court post conviction proceedings testing the legality of conviction or confinement.
2. Court proceedings, challenging conditions or treatment under confinement or other correctional supervision.
3. Probation revocation and parole revocation proceedings.
4. Proceedings or consultation in connection with civil legal problems relating to debts, marital status, property, or other personal affairs of the offender.

In the exercise of the foregoing rights:

1. Attorney representation should be required for all proceedings or matters related to the foregoing items 1 to 4, except that law students, if approved by rule of court, may be used to provide assistance to attorneys of record or supervising attorneys and may provide consultation, advice and initial representation to offenders in presentation of post conviction petitions.
2. Assistance from other inmates should be prohibited only if legal counsel is reasonably available in the institution.
3. The access to legal services provided for herein should apply to all juveniles under correctional control.
4. Correctional authorities should assist inmates in making confidential contact with attorneys. This assistance includes visits during normal institutional hours, uncensored correspondence, telephone communication, and special consideration for after-hour visits where requested on the basis of special circumstances.

UTAH STATUS AND COMMENTS

Although the Board of Corrections has not formally articulated written policies and procedures regarding an offender's rights to legal services, Utah practice appears to satisfy the requirements mentioned in the standard.

Concerning Writs of Habeas Corpus and other writs, the inmates' rights are outlined in the *Manual*. The methods of assistance which the prison provides for inmates include: (1) providing an inmate library where various law books are available; (2) allowing attorneys from the Legal Defenders Association to counsel with inmates at the prison on a regular basis; (3) furnishing Notary Public services to authenticate legal documents; (4) allowing inmates to correspond with legal counsel of their choice; (5) encouraging prisoners to exercise their right of access to the courts without fear of discipline; and (6) authorizing law clerks to interview and represent inmates pursuant to Utah's Student Practice Rule (as reflected in a recent Utah Attorney General's opinion).

Inmates are allowed other methods of obtaining access to legal services. The Salt Lake County Bar Legal Services has a full time attorney employed in the prison reform area. Every Wednesday, the attorney works with inmates on civil complaints and petitions ranging from suits against prison officials to divorce and other non-criminal oriented litigation. Recently, Legal Services has had the aid of two University of Utah law students in interviewing inmates and investigating and researching inmate complaints. Legal Aid has occasionally given legal services to inmates although, the extent of such service has been limited. The educational system conducted both inside and outside of the prison may offer courses that are helpful in establishing access to legal services. Inmates at the Utah State Prison also have access to several sources of legal services through the mail. The American Civil Liberties Union has litigated on behalf of Utah Prison inmates. Also available through the mail are the legal services of the NAACP Legal Defense and Education Fund, Inc., and the Vinceremos Prison Committee. In accordance with *Johnson v. Avery*, 393 U.S. 483 (1969), the Utah Prison inmate has access to "jailhouse lawyers" within the prison and may utilize the mail to file actions prepared by them or by the inmate himself. The state's executive branch of government has appointed ombudsmen to serve in racially related areas and they could thereby assist offenders; finally, the prison allows an inmate to phone his attorney in the case of an emergency.

There are no specific administrative provisions which authorize counsel or counsel substitute to assist an inmate in challenging his conditions of confinement. However, an inmate is free to request assistance from any of the aforementioned sources of representation. In the past, there was an Inmate Advisory Council to assist the inmates in placing their grievances before the prison administration and to simultaneously create a better relationship between the inmates and prison personnel. The inmate advisory council was abolished by the Prison Administration in 1974, since it was often abused by inmates.

An inmate at the Utah State Prison could administratively challenge the conditions or treatment of his confinement through the "Inmate Grievance Procedures" *Manual* page 149. An inmate with a grievance can obtain relief by first contacting his housing officer, the housing lieutenant, deputy warden, warden and director of Division of Corrections. If these independent investigations and reviews are unsatisfactory, an offender may seek legal relief through the courts.

Paragraph 3 of the standard deals with parole and probation proceedings. In compliance with *Mempee v. Rhay*, 389, U.S. 128 (1967) the Supreme Court of Utah in *State v. Eichler*, 25 Utah 2d 421, 483 P. 2d 887 (1971) held that a defendant was entitled to be furnished counsel at his probation revocation hearing. The court recognized such a hearing involves the possibility of changing the defendant's status from one of liberty to confinement; therefore, in accordance with Utah Const. Article XII, S. 1, an accused should be provided with the assistance of counsel at every important stage of the proceedings against him. See also *Beal v. Turner*, 22 Utah 2d 418, 454 P. 2d 624 (1969).

The Salt Lake County Bar Legal Services Association is the principle vehicle for providing an offender with the assistance counsel on his civil legal problems. As previously mentioned, an attorney visits the prison on a weekly basis and counsels with inmates regarding their debts, marital problems, property, and other personal affairs. Additionally, non-legal social workers and counselors are available to offenders on a daily basis to assist in reaching solutions to the aforementioned problems.

The recent opinion of the Attorney General (1975) regarding counsel substitutes indicates that law students, pursuant to the Utah Practice Rule, rather than correctional staff, should be utilized in this capacity. For the most part, counsel substitute is limited to bona fide law clerks or law students working with an attorney.

Utah practice is in compliance with *Johnson v. Avery*, 393 U.S. 483 (1969) wherein the court held that a state prison regulation barring inmates from assisting other prisoners in preparation of petitions for post-conviction relief was invalid, despite the state's claim that such requirement was necessary to maintain prison discipline. It is arguable, that the State of Utah provides adequate available alternatives to "jailhouse lawyers", however, the "jailhouse lawyers" opportunity to assist other inmates has not been abridged.

Inmates are allowed to communicate freely with counsel. Attorneys on professional business are authorized to visit the prison at their pleasure. They are not subject to the general visitation rules. Prisoners are also permitted to make emergency phone calls to their attorney.

Finally, inmates are encouraged to exercise their right of access to the courts. No correspondence between inmates and attorneys or legal aid societies can be censored, read, or unreasonably delayed by prison authorities. Neither shall any legal mail be opened unless an outward visual or physical examination of the mail indicates the possible presence of contraband. The only restriction is that it must be conducted through standard size envelopes unless an exception is granted by the warden.

The recent decisions of the U.S. Supreme Court have held that prison administrators are not required to adopt every proposal that may facilitate prisoner access to the courts. The extent to which that right is burdened by a particular regulation or practice must be weighed against the legitimate interests of penal administration and proper regard that judges should give to the expertise and discretionary authority of correctional officials. (See *Procunier v. Martinez*, 40L Ed. 2d 224 (1974)). A specific method for providing an inmate with access to legal services is not required. A decision of the adequacy of legal services can only be made after reviewing all the means that a state provides for obtaining legal assistance to inmates.

Standard 12.2 requires the state to provide adequate attorney representation to meet the needs of legal offenders, while correctional authorities need only facilitate access to such assistance.

METHOD OF IMPLEMENTATION

Administrative action.

**STANDARD 12.3
ACCESS TO LEGAL MATERIALS**

1. The Utah Division of Corrections, as part of its responsibility to facilitate access to courts for each person under its custody, should immediately establish policies and procedures to fulfill the right of offenders to have reasonable access to legal materials, as follows:

2. One appropriate law library should be established at the Utah State Prison. A plan should be developed and implemented for all residents of the three security units (maximum, medium, and minimum) to assure reasonable access to the library.

3. The library should include as a minimum collection:

A. Federal Materials

(1) U.S. Code Annotated (West)

The following volumes:

Constitution

Title 28, S. 2241-2255

Title 42, S. 1981-1985

Federal Rules of Appellate Procedure

Rules of the Supreme Court

(2) Supreme Court Reporter (West)

1954 (Warren Court) to date.

Note: Purchase this set only if a digest is purchased.

If no digest is purchased, substitute:

Supreme Court Reports - Lawyer Edition

(Lawyers' Co-op.)

1954 (Warren Court) to date

(3) Federal Reporter - Second Series (West)

(4) Federal Supplement (West)

(5) Rules of Federal District Court for Utah and 10th Circuit Court.

- (6) Federal Rules of Civil Procedure & Criminal Procedure (West).

B. State Materials

- (1) Utah Code (Allen Smith)
- (2) Laws of Utah (State Printer) Current Volumes only
- (3) Utah Reports, Second Series (West)

or

Pacific Reporter, Second Series (West) 1954 to date

- (4) Rules of Courts
Free from court clerks.
Third District (Salt Lake City) available from Salt Lake County Bar Association
- (5) Rules of Evidence (Utah State Bar)

C. Treatises and Reference Materials

- (1) Bailey & Rothblatt, Complete Manual of Criminal Forms, (Lawyers' Co-op)
- (2) Black's Law Dictionary, 4th ed. (West)
- (3) Cohen, Legal Research in a Nutshell, 2d ed. (West)
- (4) Corpus Juris Secundum (West)
- (5) Criminal Law Reporter (BNA)
- (6) Israel & LaFave, Criminal Procedure in a Nutshell (West)
- (7) Prison Law Reporter (Seattle, University of Washington School of Law)
- (8) Prison Rights Newsletter (State University of New York at Buffalo, School of Law)
- (9) Sokol, Federal Habeas Corpus, (Mitchie)

4. The Division should make arrangements to insure that persons under its supervision but not confined also have access to legal materials.

UTAH STATUS AND COMMENTS

Offenders who have been placed on probation or parole enjoy adequate access to legal materials. The law school libraries and the Supreme Court Library would be examples of excellent legal research facilities within the state. Additionally, there are numerous community law libraries which would contain the basic materials as required by the Standard.

The more difficult problem arises when one attempts to compare the libraries of the State Prison with the specifics articulated in this standard.

A library is maintained in each housing building. Minimum and medium security libraries have a capacity of twenty (20) people each. Maximum security has a walk-in library. Presently, the women's facility is being organized. They are inadequate for the prison population.

The legal collections of the various libraries are severely limited. The minimum, medium, and maximum libraries, contain a current set of the Utah Code Annotated, however, pocket parts in volumes eight and nine are missing in two of the three libraries. (The missing pocket-parts contain the Utah Criminal Code and Code of Criminal Procedure). The prison libraries receive the "green" advance sheets from the Supreme Court of Utah, although the regularity and consistency of such publications is sporadic. The libraries also contain an incomplete and outdated set of the United States Code and various legal treatises that are of little practical use to the inmates.

An additional source of legal materials available to the inmates is furnished through the American Association of Law Libraries System. Through this system, the offender can request photocopy reproductions of legal materials from the University of Utah Law Library. Additionally, the library will perform reference work requested by inmates.

In January, 1973, the Appropriations Committee of the Utah

State Legislative rejected a Board of Corrections' request to appropriate \$15,000 to establish a law library at the Utah State Prison. Shortly thereafter an application was made for federal funds to the Law Enforcement Planning Agency which approved a grant for \$6,000. It was stated in a letter opinion of Assistant Attorney General Homer Holmgren, dated February 27, 1974, that the Board of Examiners could not approve the expenditure of this grant for a prison law library, because of the legislative subcommittee's decision not to buy books for the prison law library. This constitutes an intention on the part of the Legislature not to participate in a program of maintaining a prison law library.

The Utah State Library Commission has appropriated approximately \$6,000 to upgrade the prison library system. These funds have been spent largely on fiction and audio-visual materials. Commission officials indicate that the present federal grant money which makes up the greater portion of the library appropriation will expire in 1976.

The question of the adequacy of the Utah State Prison Library system is presently under challenge in the case of *Kelbock v. Wright*, Civil No. C75-91 (1975), filed in the United States District Court, District of Utah, Central Division.

The list of law library materials included in the standard was suggested as a minimum list of necessary materials by George Grossman, a University of Utah Professor of Law and law librarian, in a letter dated January 23, 1973. According to Professor Grossman, the cost of the minimum collection would run between \$6,000 (with the Utah Reports) and \$7500 (with the Pacific Reporter). The annual upkeep for the first year would be somewhat over \$800 (with the Utah Reports) and \$1100 (with the Pacific Reporter). Price increases of over 10% per year should be anticipated.

METHOD OF IMPLEMENTATION

Administrative authority.

STANDARD 12.4 PROTECTION AGAINST PERSONAL ABUSE

The Utah State Division of Corrections should establish immediately policies and procedures to fulfill the right of offenders to be free from personal abuse by correctional staff and other offenders.

The Division of Corrections (Prison) should:

- 1. Evaluate their staff periodically to identify persons who may constitute a threat to offenders and where such individuals are identified, reassign or discharge them.**
- 2. Develop institution classification procedures that will identify violence-prone offenders and where such offenders are identified, insure greater supervision.**
- 3. Implement supervision procedures and other techniques that will provide a reasonable measure of safety for offenders from the attacks of other offenders.**

UTAH STATUS AND COMMENTS

Punishment of convicts at the prison is authorized and limited in Section 64-9-39 (1953), which allows the warden or deputy warden to punish convicts for misconduct according to the regulations of the board. However, punishment by showering with cold water or whipping on the bare body is in no case allowed. Punishment cannot be brutal or inhuman, and no corporal punishment can be inflicted without the presence of the prison physician.

The policy of prison discipline is further defined in the *Manual*. The policy states that disciplinary action must be just, equitable and commensurate with the violation. Discipline cannot contravene any basic human right.

Although Section 64-9-39 allows corporal punishment under certain circumstances, the *Manual* (35), prohibits all corporal punishment.

Correctional officers are given the authority to defend themselves and prison property by UCA 64-9-40.

A basic goal of correctional officials is to safely secure and confirm felons committed to Utah institutions. Inmate violation reports and subsequent disciplinary procedures are utilized to insure the general welfare of the institution. Rules are established by the *Manual* to protect the rights and safety of each individual by setting boundaries which restrict the activities of others. The prison treatment team may change an inmate's classification, job assignment, custody and housing from one status to another in

order to prevent destruction of property, injury to persons, escape or to facilitate the operation of the institution.

The prison periodically evaluates its staff as described in Standard 2.3 "Employee Management Relations."

In summary, the prison meets this standard.

METHOD OF IMPLEMENTATION

Administrative authority.

STANDARD 12.5 HEALTHFUL SURROUNDINGS

The prison should immediately examine and take action to fulfill the right of each person in its custody to a healthful place in which to live.

The facility should provide each inmate with:

1. His own living space of adequate size.
2. Heat or cooling as appropriate to the season to maintain temperature in the comfort range.
3. Natural and artificial light.
4. Clean and decent installations for the maintenance of personal cleanliness.
5. Recreational opportunities and equipment, when climatic conditions permit, and consonant with generally accepted security standards in the open air.

Healthful surroundings, appropriate to the purpose of the area, also should be provided in all other areas of the facility. Cleanliness and occupational health and safety rules should be complied with.

Independent comprehensive safety and sanitation inspections should be performed annually by qualified personnel: State or Local inspectors of food, medical, housing, and industrial safety who are independent of the correctional agency. Correctional facilities should be subject to applicable State and Local statutes or ordinances.

UTAH STATUS AND COMMENTS

An inspection of the prison indicates that Utah has adopted numerous statutory and administrative procedures to insure healthful surroundings. A paragraph by paragraph review of the standard indicates how the state measures up to the specified requirements.

1. Section 64-9-37 indicates that each prisoner should have a separate cell when appropriate space is available. Minimum security has dormitory accommodations with twenty man rooms. The women's facility is made up of individual rooms. One kitchen allows the offenders to prepare their own meals. The medium and maximum facilities are composed of individual cells which are about seven by ten feet in size. The *Manual* (10) indicates that each inmate is assigned a cell or bed. Transfers from assigned cells or beds can be made by contacting the appropriate housing unit officer.

2. There are no specific statutory or administrative provisions which govern the thermostat settings within the prison. Heating appears to be adequate with temperatures in all facilities being at least the sixty-eight degree as suggested by state directive. The only problems in the area of heating are those which may cause some portions of the prison to be too warm—a problem caused by inadequate heating and ventilation design. Additionally, exhaust fans are the only form of cooling during warmer periods of the year. The prison does not have an air conditioning system.

3. All prisoners, including those in maximum security who have a yard permit, have access to natural and artificial light.

4. Installations for personal cleanliness are located in various sections of each facility. Each cell has a toilet and wash basin and the dormitories were constructed with typical public restrooms. Maintenance of such installations is authorized by

Section 64-9-29 and policed by the *Manual*. Maintenance and repair present the biggest challenge to prison officials.

5. Recreational programs and facilities at the prison provide a wide diversity of inmate participation. It is the object of the recreation program to have every man participate in some way in the program, as a spectator or participant.

Intramural teams among prisoners and all-star teams for competition with non-inmate teams are authorized by the *Manual* (92) in volleyball, horseshoes, handball, basketball, softball, boxing, wrestling, and baseball. The rodeo and other activities which are appropriate for an inmate setting may also be authorized by the recreation officer.

Realizing the importance of leisure time activity, the Board of Corrections has approved outside entertainers to put on shows in the institution. Church services and activities are authorized by Section 64-9-36 and the *Manual* (12). UCA 64-9-51 establishes a prison educational system which is operated in accordance to the *Manual* (103). The hobbycraft program assists inmates in using their leisure time more profitably. Completed hobbycraft items can be placed on display at the prison showcase and can be sold or released to the public or the inmate's family. A limited number of prisoners can enroll in a public speaking program which will enable them to converse with the public at large and simultaneously enhance their speaking skills. At least twelve different clubs and organized groups have been approved for participation by the inmates. These organizations are allowed to have guests attend their meetings and are permitted to have one anniversary program each year.

The provisions of Section 69-9-26 addresses inmate's health and well-being. Through this law, prisoners are required to receive adequate food, clothing, and bedding. The cleanliness aspect of these topics are also discussed in the *Manual* (18, 32). Housing unit officers inspect the cells and dormitories for cleanliness on a regular basis. Additionally, laundry and dry cleaning services are available to the inmates at the institution.

All inmates are required to be well groomed. An inmate's general appearance including his shaving habits and haircut as well as the inmates living quarters must meet minimum requirements.

State correctional facilities are subject to applicable state and local statutes and ordinances. Independent tests and inspections are performed, where manpower permits, on the various prison functions which have health and safety aspects.

The Sanitation Division of the County Board of Health performs regular inspections of food, general sanitation, and water and sewage. Tests are performed on the three culinary sections of the state prison every six to eight weeks. General sanitation inspections are undertaken monthly. Water and sewage tests are also conducted on a monthly basis.

The State of Utah has the responsibility of determining whether or not the prison meets statutory and administrative standards. The OSHA Division of the State Industrial Commission has performed one detailed inspection of the prison and several periodic checks. The office of Mr. Christeansen tests for safety and health defects which do not satisfy the state standards as they were adopted from the federal regulations. OSHA also has authority to make accident and complaint inspections.

Although the State Fire Marshal has the authority to inspect all state buildings, inspections have been very limited because of a personnel shortage. The principle function of the Marshal is to approve the plans of new state buildings, such as the infirmary which is presently under construction at the prison.

Periodic inspections are performed by the State Building Board to determine whether statutory and administrative structural and housing standards are met by buildings which are operated by the prison.

METHOD OF IMPLEMENTATION

Administrative policy which should emphasize healthful surroundings and the general well being of the inmate and the institution.

Penal institutions are afforded a reasonable time to initiate changes which would allow them to meet the requirements of this standard. Correctional officers in Utah should consider upgrading the prison cooling ventilation systems that are presently in operation at the state prison. The maintenance of prison installations should comply with the provisions on this subject that are

contained in the *Manual* page 75 (1975). The cooperation and assistance of the various state and county regulatory agencies should offer to aid the prison in meeting appropriate safety, health, and sanitation statutes and ordinances.

STANDARD 12.6 MEDICAL CARE

Utah State Division of Corrections should take immediate steps to fulfill the right of offenders to medical care. This should include services directed toward physical, mental, and social well-being as well as treatment for specific diseases or infirmities. Such medical care should be comparable in quality and availability to that obtainable by the general public and should include at least the following:

1. A prompt examination by a physician upon commitment to a correctional facility.
2. Medical services performed by persons with appropriate training under the supervision of a licensed physician in accordance with accepted medical practices.
3. Emergency medical treatment on a 24-hour basis.
4. Medical problems requiring diagnosis, services, or equipment not available at the prison medical facility should be met by medical furloughs or purchased services at an accredited hospital.

A particular offender's need for medical care should be determined by a licensed physician or other appropriately trained person. Correctional personnel should not be authorized or allowed to inhibit an offender's access to medical personnel or to interfere with medical treatment.

Complete and accurate records documenting all medical examinations, medical findings, and medical treatment should be maintained under the supervision of the physician in charge.

The prescription, dispensing, and administration of medication should be under strict medical supervision.

Coverage of any governmental medical or health program should include offenders to the same extent as the general public.

UTAH STATUS AND COMMENTS

Medical treatment is provided to inmates at the Utah State Prison by Section 64-9-19 and 20. Section 19 gives specific authorization for a prison physician and Section 20 articulates the duties of the physician.

The prison physician is required to provide medical attention to convicts who are sick and may utilize the services of a clinical psychologist, psychiatrist, or social worker in an effort to rehabilitate the inmate. He is required to inspect the facility for general sanitary conditions. Prescribing a diet for sick convicts and keeping daily records of the medical treatments, admissions, and discharges are the physicians responsibilities. He must file an annual report summarizing his daily record and the sanitary conditions. He is also required to make reports that the Board of Corrections or warden may request. Finally, the prison doctor must certify the illness and recovery of an inmate unable to work.

The *Manual* states that all regular medical and dental care is provided without charge to the inmates of this institution. The resident staff consists of a Chief Medical Doctor, Medical Technical Assistants, and a crew of inmate attendants and janitors. (p. 78)

Minor ailments that inmates suffer are cared for by the trained medical technicians, except for the women's facility where the prison physician treats all ailments. In the case of an emergency which cannot be treated at the prison, the inmate will be taken to the University Hospital.

A paragraph by paragraph review of the standard as compared with the Utah experience further indicates the quality of inmate medical care. The Utah State Prison employs a full-time physician, a half-time psychiatrist, a half-time dentist, and a team of trained medical technicians. Treatment by the medical personnel at the institution meets or exceeds the quality of medical treatment that is available to the general public. Minor ailments receive daily attention and emergency problems are treated immediately.

1. The prison medical practice indicates that each inmate who enters the facility is immediately checked by a medical technician and given a complete physical examination by a licensed physician within one week of his entry into the institution.

2. The practice at the prison is to conduct all medical treatment under the direct supervision of an authorized physician. The aforementioned list of personnel that provide medical care at the prison indicates that they are well qualified and adequately trained.

3. Emergency treatment is available to inmates on a twenty-four hour basis. The prison maintains a small hospital which is presently undergoing a major revision, to treat many emergencies. Additional medical treatment is provided by transporting inmates to the University Hospital.

4. The prison operates a small prison hospital at the medium security facility and has access to the University of Utah Medical Center and Hospital.

All medical assistance that requires special treatment that prison personnel or facilities cannot adequately handle, are referred to more sophisticated services.

The inmate's opportunity to obtain adequate medical treatment is administratively and statutorily preserved. Minor illnesses are treated at a scheduled time each day. Emergency treatment is available around the clock. Correction officials cannot limit the available medical treatment.

Documentation of medical treatment is required by UCA 64-9-19. The items specified by the standard are more detailed than those required by statute.

The dispensing and administration of medication is closely supervised by a licensed physician and a registered pharmacist. Each prescription is required to be renewed every thirty days by the issuing physician.

Medical benefits that are available through governmental or private health programs, do not, as a general rule, cover treatment of the offender. For instance, the Veterans Administrations places such unreasonable and inadequate restrictions on the treatment of inmates that are referred to their facility, that it is usually impossible for the prison to utilize VA services.

METHOD OF IMPLEMENTATION

This standard will require both administrative policy changes and additional resources.

Efforts have recently been made to upgrade the medical services at the prison. A new prison hospital, which will contain advanced medical equipment, is presently under construction. Upkeep of this equipment and adequately trained staff to use it requires an adequate budget for medical services.

In order to keep the number of services which must be provided outside the prison medical facility to a minimum, the equipment must be kept up-to-date and adequate medical staff must be available.

STANDARD 12.7 SEARCHES

Utah State Division of Corrections should immediately develop and implement policies and procedures governing searches and seizures to insure that the rights of persons under their authority are observed.

1. Unless specifically authorized by the releasing authority, persons supervised by correctional authorities in the community should be subject to the same rules governing searches and seizures that are applicable to the general public.

2. Correctional agencies operating institutions should develop and present to the appropriate judicial authority or the officer charged with providing legal advice to the corrections department for approval a plan for making regular administrative searches of facilities and persons confined in correctional institutions.

The plan should provide for:

- (1) Avoiding undue or unnecessary force, embarrassment, or indignity to the individual.
- (2) Using non-intensive sensors and other technological advances instead of body searches wherever feasible.
- (3) Conducting searches no more frequently than necessary to control contraband in the institution or to recover missing or stolen property.

(4) Respecting an inmate's rights in property owned or under his control, as such property is authorized by institutional regulations.

(5) Publication of the plan.

Any search for a specific law enforcement purpose or one not otherwise provided for in the plan should be conducted in accordance with specific regulations which detail the officers authorized to order and conduct such a search and the manner in which the search is to be conducted. Only top management officials should be authorized to order such searches.

UTAH STATUS AND COMMENTS

The state has not enacted appropriate statutory or administrative rules and regulations for searches with regard to offenders. Therefore, the exact practice may vary from location to location and even among different situations in the same area.

Non-institutionalized offenders are commonly divided into three categories. They are as follows:

1. The parolee or probationer who is free in the community and is required to report to a supervising officer.
2. Offenders, principally parolees and probationers, who reside in halfway houses and are still under court orders.
3. Community based offenders who are still under a penal institution inmate status.

The parolee or probationer who is free in the community and who makes periodic reports to his supervising officer can be searched pursuant to clause number three of the Adult Probation and Parole Agreement.

The case law indicates that the supervising officer can make searches which are unlawful under the standard that is applicable to the general public and then utilize the evidence which was obtained in convicting the parolee or probationer for a prohibited offense. However, the fact that the supervising officer may be subject to a civil cause of action for violating the inmate's civil rights, makes such searches prohibitive. The real value of the board visiting clause which is included in the Adult Probation and Parole Agreement is merely a license to utilize a de facto pressure to encourage the offender to consent to the search.

Offenders who reside in a halfway house are subject to more permissive searches than are those offenders which are free in the community. These offenders are still under court order. They sign an agreement which allows the officers of the halfway house to search throughout the facility.

Finally, community based offenders are required to sign an agreement developed by the Board of Corrections. This agreement deals with the rules and conduct of offenders who are still under an inmate status and who receive treatment from a community center. Provision eighteen of the agreement is stated as follows:

The staff will make unannounced and unscheduled searches of rooms and automobiles that residents have possession or control of at the center.

The license to search in a community based institution is very similar to that of an inmate at the state prison.

Searches conducted within the state prison appear to be somewhat arbitrary and unpredictable. The most recent edition of the *Manual* does not contain a general provision with regard to searches. The specific items which are mentioned in the proposed plan have not been adequately considered by correctional officials.

The practice at the prison indicates that searches may be undertaken for "any cause" and the test appears to be one of "reasonable suspicion." It is a question of fact to determine whether undue indignity, excessive body searches, overly frequent searches or disrespect for an inmate's property are associated with prison searches.

METHOD OF IMPLEMENTATION

The Division of Corrections (i.e., the prison, the community treatment centers, and Adult Probation and Parole) will need to develop specific policies and procedures for the use of searches by their staff. The level of custody the offender has, (i.e., incarcerated, community treatment center, parole or probation) should be considered in deciding the rules governing searches. The burden of justifying a search is on the administration and not on the offender. Searches must be justified for some legitimate purposes and not on whim or malice.

STANDARD 12.8 NON-DISCRIMINATORY TREATMENT

Utah State Division of Corrections should immediately develop and implement policies and procedures assuring the right of offenders not to be subjected to discriminatory treatment based on race, religion, nationality, sex, or political beliefs. The policies and procedures should assure:

1. An essential equality of opportunity in being considered for various program options, work assignments, and decisions concerning offender status.
2. An absence of bias in the decision process, either by intent or result.
3. All remedies available to non-institutionalized citizens should be open to prisoners in case of discriminatory treatment.

This standard would not prohibit segregation of juvenile or youthful offenders from mature offenders or male from female offenders in offender management and programming, except where separation of sexes results in an adverse and discriminatory effect in program availability or institutional conditions.

UTAH STATUS AND COMMENTS

The state has very few constitutional or statutory provisions that specifically relate to non-discriminatory treatment in a correctional setting. There is no equal protection clause in the Utah State Constitution, however, equal protection rights are commonly preserved through the due process clause.

The forward of the Utah State Prison *Manual* indicates that the penal institution should be operated on a *uniform* basis. Prison procedures are established to insure that the rights of offenders are not abridged in the areas of race, religion, nationality, or sex. With the exception of a limited safety provision, UCA 64-9-36 provides that religious beliefs and exercises cannot be denied. Inmates have the right to the full exercise of their religious beliefs and worship.

The *Manual* contains a specific provision on the subject of religion. Any minister will be permitted to visit an inmate. Additionally, any religious denomination is encouraged to hold ser-

VICES. The prison employs one full-time Latter-Day Saint chaplain, one part-time Catholic chaplain and one part-time Protestant chaplain. The decision to employ chaplains is determined by the ratio of prison inmates who adhere to a particular religious conviction. Unless prohibited by disciplinary action or custody classification, an inmate is allowed to attend religious services of his own choosing.

Divergent political views are tolerated at the prison. However, if the ideologies espoused present a clear and present danger to the safety of the institution, the views are necessarily limited.

Programs, job assignments, and decisions regarding an inmate's status appear to be handled in a nondiscriminatory manner.

Participation in the various prison programs is predicated upon an inmate's security classification. There is no discrimination on the basis of a prisoner's beliefs or physical characteristics.

Job assignments are required by statutory provisions which mandate that a convict be employed at hard labor. Therefore, an inmate may be assigned to a job that is in line with his trade. Certain jobs may be recommended by the classification committee.

An inmate's general status at the prison is regulated by the treatment team which may change an inmate's classification, job assignment, custody and housing status to prevent destruction of property, personal injury, escape or to facilitate the operation of the institution. The actions of the Treatment Team are subject to review by the Executive Classification Committee.

The decision process at the prison is largely characterized by the activity of the disciplinary procedures and the treatment team. Each decisionmaking group has its own set of rules and procedures, which consciously excludes discriminatory treatment. A goal of the administration of discipline, is that of "offering fundamental fairness to the inmate population."

All legal remedies available to the general population are also available to the inmates. In certain situations, a prisoner may be required to initially assert his action through administrative proceedings. After administrative remedies are fully exhausted, he is

free to utilize the judicial system. The grievance procedures indicate that adverse action will not be taken against an inmate for seeking redress of his complaint. Additionally, the prison regulation regarding legal mail states that inmates will not be disciplined for exercising the right of access to the courts.

Segregation of female from male offenders is undertaken as a matter of course. Separate facilities have been erected and are operated to insure the maintenance of such segregation. There is also a limited amount of segregation of youthful offenders from more mature inmates. The implementation of such a practice should more fully insure the safety and well being of younger prisoners.

METHOD OF IMPLEMENTATION

This standard can be implemented by administrative action. Any policies stated, or changes in policy which promote non-discriminatory action should be distributed to all prison staff and adhered to. This standard does not imply that correctional officials cannot appropriately limit certain rights of the offender which may appear to be discriminatory when they pose a serious threat to the prison discipline, safety, and security.

STANDARD 12.9 REHABILITATION

The Division of Corrections and its sections (Adult Probation & Parole and the prison) shall adopt policies, procedures, and resources to provide opportunity for rehabilitation through appropriate programming for all offenders under their care and control. Rehabilitation means internalizing values, social attitudes, and developing the skills necessary for social reintegration. This is a process which requires client cooperation. It can neither be forced upon, nor given to anyone. In this respect, "rehabilitation" is to social reintegration what learning is to education. It should be the objectives of correctional programs to provide the opportunity to be the catalyst for an individual's personal change. The change ultimately is the responsibility of the individual offender and no other person or organization. Programs for rehabilitation should include the following:

1. Legal authority given by statute by the Legislature to the Division of Corrections to establish and conduct rehabilitation programs for the benefit of persons committed to its authority.

2. Rehabilitation programs should be clearly established and provided on a needs basis as established/determined through diagnostic and treatment planning.

3. Emphasis should be on allowing and requiring each offender to become a responsible person within society. Features of the system which operate against this goal should be changed if rehabilitation programs are to have an impact.

4. No offender committed to the authority of the Division should be denied access to rehabilitation programs for arbitrary and/or capricious reasons. Denial must be based upon logically related reasons to the needs of the offender and correctional goals. Denial of access to rehabilitation programs by the division to an offender must be backed by facts for such denial.

When an offender is denied access to rehabilitation programs/ services, it should only be as a result of his own choosing or because of his proper segregation from the general prison population. (Such cases would be those persons under disciplinary action or whose behavior is such that they persistently present themselves to be a physical threat to themselves, other inmates, and/or staff; or are deemed security risks and require closer supervision and custody than is conducive to rehabilitation programming).

5. Rehabilitation programming should include emphasis on the following:

- a. Job Readiness: This should be the principle program objective for those offenders whose patterns of unemployment or job inability have contributed to criminality. Developing adequate job skills is a part of job readiness, but of at least equal importance is development of willingness and ability to work dependably and at a reasonable rate. Institutional work assignments should simulate job demands of the free world.
- b. Offenders who are functionally illiterate or education-

ally retarded should be strongly encouraged to remedy these deficiencies. The functionally illiterate should be provided opportunities to achieve at least sixth grade credentials, those with average intelligence, high school equivalency.

- c. Offenders with psychological problems and conflicts must be provided with the opportunity for appropriate clinical or psychiatric treatment.
- d. A principle objective should be to determine who or which offenders may handle responsibility and can safely be released from control, and who cannot; low risk cases shall be identified as soon as possible and progressively moved out of the prison system into community based programs and high risk cases retained for the protection of society.

UTAH STATUS AND COMMENTS

There is no statutory, constitutional, or administrative right to rehabilitation in the state of Utah. The various programs and plans which are offered by the correctional agencies often assist in the rehabilitation process; however, this is not the verbalized goal. The *Manual* (64) uses the term rehabilitation only in conjunction with a discussion of the inmate-employee relationship. Even in this context, the term merely denotes a "possibility." Similarly, the Adult Probation and Parole Agreement does not articulate rehabilitation as one of its goals. Therefore, there is no codified law and only limited practice to describe the state's experience with this standard. The actions and programs of correctional officials is directed generally toward reforming and rehabilitating the offender who is willing to cooperate in achieving such an end.

METHOD OF IMPLEMENTATION

1. Legislation should be introduced by the Board of Corrections in the 1977 Legislature which would authorize the Division of Corrections to conduct rehabilitation programs.
2. Administrative policy.

STANDARD 12.10 RETENTION AND RESTORATION OF RIGHTS

The State of Utah should enact legislation immediately to assure that no person is deprived of any license, permit, employment, office, post of trust or confidence, or political or judicial rights based solely on an accusation of criminal behavior. Also, legislation totally depriving convicted persons of civil rights should be repealed. This legislation should provide further that a convicted and incarcerated person should have restored to him upon termination of sentence all rights not otherwise retained.

The State of Utah should provide services to convicted persons to help them retain or exercise their civil rights or to obtain restoration of their rights or any other limiting civil disability that may occur.

UTAH STATUS AND COMMENTS

The procedure and definition of an arrest is specified in UCA 77-13-1 et seq. (1953). Within these statutory enactments, there is no codified provision to assure that rights of an accused will not be abridged as a result of his suspected criminal behavior. Most states do not limit expungement provisions for individuals who are accused and acquitted of an offense. However, some states do require through statute that arrest record documents and copies, including fingerprints, photographs, descriptions and records of arrest, be returned (or destroyed) to the suspect who was not convicted. The recent amendment of Section 77-35-17.5 (2) provides for the expungement of arrest records in certain circumstances.

Some courts have also granted a limited form of judicial expungement for accused persons when charges filed against them are dismissed. The U.S. Court of Appeals sustained a trial court order which prevented an accused's record from being disseminated to anyone, including other law enforcement agencies, when he was cleared of the charged crime.² The court did, however, limit its holding by cautioning that expungement should not be allowed in all cases. Before expungement is granted the court indicated that a trial court should ask "what valid law enforcement purposes are served by retaining and disseminating to law enforcement agencies the arrest records might violate one's

²*Morrow v. District of Columbia*, 416 F. 2d 728 (D.C. Cir. 1969)

right of privacy as well as diminish one's employment opportunities." The court further noted that a factor to be considered in balancing these propositions is the nature of the charges against the accused and the grounds upon which they were dismissed. The court suggested in this regard that crimes usually committed by recidivists generally provide a better case for returning arrest records than do other crimes. The court also said that a dismissal for a procedural technicality might provide better reason for keeping records than a dismissal for lack of evidence.

Prior to the 1973 revision of the Utah Criminal Code, the Utah Penal Code contained three statutory provisions regarding the "civil death" of an inmate. These statutes contained the provision that a person sentenced to imprisonment in the state prison is thereafter deemed civilly dead for the term of his imprisonment. These statutes were repealed by the new criminal code which took effect on July 1, 1973.

Since the repeal of the *civil death* statutes, the state has not taken affirmative action to enact legislation that would restore all rights to an offender who is released from state supervision. The legislature has, however, enacted a limited expungement law which may provide for a judicial pardon to clear the offender's prior criminal activity. (Section 77-53-17.5)

Correctional authorities have not undertaken any lobbying responsibilities to repeal laws and regulations depriving an accused or convicted person of his civil rights. They have not aided or assisted in the formulation or execution of any programs that insure accused persons of the retention or restoration of their civil rights. On the other hand, correctional authorities do assist inmates in the regaining and exercising of civil rights. Such activity appears to be the underlying purpose of correctional activity.

METHOD OF IMPLEMENTATION

Legislation will be required, although many rights can be administratively retrieved or retained under existing Utah law.

STANDARD 12.11 RULES OF CONDUCT

Utah State Division of Corrections should immediately promulgate rules of conduct for offenders under its jurisdiction. Such rules should:

1. Be designed to effectuate or protect an important interest of the facility or program for which they are promulgated.
2. Be the least drastic means of achieving that interest.
3. Be specific enough to give offenders adequate notice of what is expected of them.
4. Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.
5. Be promulgated after appropriate consultation with offenders and other interested parties consistent with the Utah Administrative Rule-Making Act (Section 63-46-1 et. seq.).

Correctional agencies should provide offenders under their jurisdiction with an up-to-date written statement of rules of conduct applicable to them.

Correctional agencies in promulgating rules of conduct should not attempt generally to duplicate the criminal law. Where an act is covered by administrative rules and statutory law, the following standards should govern:

1. Correctional officials and the county prosecutor should jointly make a decision as to whether or not a criminal prosecution should be sought concerning acts of violence or other serious misconduct by inmates.
2. Where the state intends to prosecute, disciplinary action should be deferred.

UTAH STATUS AND COMMENTS

The subject of discipline is discussed in UCA 64-9-39. The warden or deputy warden may punish convicts for misconduct in a

manner which is regulated by the Board of Corrections. A record is to be kept of the violation of the prison rules of conduct and the punishment.

The Utah State Prison, *Manual* (37), indicates that the state prison is presently regulated by disciplinary procedures that were drafted in light of *Wolf v. McDonald*.

The policy guidelines in the *Manual* stresses that disciplinary action must conserve human values and dignity. Discipline must be neither capricious, retaliatory, or avengeful. Corporal punishment is prohibited.

Notice to the inmates of what constitutes major misconduct is detailed in the following twenty-five subsections of Provision 4.2 of the *Manual*.

- (1) Any act chargeable as a crime under the laws of Utah or of the United States. (This includes felonies, misdemeanors, and infractions).
- (2) Any act involving violence; or any threat or advocacy of violence made verbally or in writing.
- (3) Contraband which includes: escape materials; burglary tools; unauthorized drugs or intoxicants; unauthorized chemicals; any form of currency; legal tender, weapons, ammunition or explosives; any item not specifically authorized by the institutional staff.
- (4) Destroying or damaging state property or property of another person.
- (5) Possession of anything not authorized for retention on the inmate's property list which is not issued to him through regular institutional channels; possession of property belonging to another person without written staff authorization; loaning of property or anything of value to another person without written staff authorization.
- (6) Engaging in or encouraging others to engage in any demonstration, mass protest, disturbance, or riot.
- (7) Falsification of records or documents; providing a false statement to correctional or law enforcement authorities.

- (8) Escape, attempting to escape, or planning an escape.
- (9) Engaging in sexual acts with others or any serious sexual misbehavior.
- (10) Tampering with or blocking any locking device.
- (11) Possession, introduction or use of any unauthorized drugs or intoxicants. (Any drug or intoxicant prescribed or approved by the prison physician which is used in any manner other than as prescribed is considered an "unauthorized use" under this provision).
- (12) Interfering with or failing to attend count; failure to be at designated or assigned area; being in any unauthorized area.
- (13) Refusing to give a urine sample; a positive urinalysis test.
- (14) Refusing a direct order of any employee; agent of the Division of Corrections; law enforcement officer; associate agency staff member; recognized prison worker; or any prison committee.
- (15) Use of any disguise or mask (including natural hair growth or any artificial means); possession of any correctional staff member's clothing or part of his uniform.
- (16) Violating any community release or home visit agreement or any other agreement involving a community-based program; violating any off-property pass, clearance or agreement.
- (17) Involvement in any gambling activities.
- (18) Misuse of visiting privileges, the telephones, or the mail.
- (19) Any involvement in setting a fire.
- (20) Adulteration of any food or drink.
- (21) Failure to follow safety, security, or sanitary regulations.
- (22) Giving or offering any employee or agent of the Division of Corrections a bribe or anything of value.

- (23) Any other violation which is determined by the hearing examiner or the minor disciplinary committee to be of such a serious nature so as to pose a serious threat to personal or institutional safety or security or undermine authority or destroy rehabilitative goals.
- (24) Involvement in any conspiracy to commit the above; aiding another to commit any of the above; any attempt to commit any of the above (where applicable).
- (25) A cumulative number of minor violations which, taken together, are determined by either the hearing examiner or the minor violation committee to pose a serious threat to personal or institutional safety or security, or which undermine authority or destroy rehabilitative goals.

Minor misconduct includes any misconduct which is not provided for under the major misconduct section. It is doubtful that the general minor misconduct provision, by itself, provides adequate notice to an offender of what conduct is prohibited.

A specific statement of the scope of corrections that can be imposed for each violation is listed in the "Administration of Discipline" rules. Minor violations may be punished by any one or a combination of eleven provisions, whereas major violations provide thirteen alternatives and/or combinations of each. The specified punishments include the following.

Minor violations may be disposed of in one or any combination of the following ways:

- (1) Dismissal.
- (2) Counselling.
- (3) Reprimand.
- (4) Temporary loss of one or more privileges (other than visiting privileges).
- (5) Suspension of a minor violation determination pending completion of an assignment.
- (6) Restitution.
- (7) Completion of extra work assignments.
- (8) Limited cell or dorm restrictions.
- (9) Other appropriate special conditions as determined by the minor disciplinary committee.
- (10) Referral to the inmate's treatment team for review of the inmate's rehabilitational goals.
- (11) Referral to the major disciplinary committee.

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- (1) Dismissal.
- (2) Counselling.
- (3) Reprimand.
- (4) Temporary loss of visiting privileges.
- (5) Suspension of a major violation determination pending completion of an assignment.
- (6) Restitution.
- (7) Extra work assignments.
- (8) Limited cell or dorm restriction.
- (9) Isolation, not to exceed fifteen (15) days. This is not a custody change, but merely a disciplinary action.
- (10) Other appropriate special conditions as determined by the minor disciplinary committee.
- (11) Referral to the inmate's treatment team with recommendations for:
 - a. reduction in custody status (including transfer between facilities);
 - b. rehabilitation program evaluation; and/or
 - c. referral to the Board of Pardons through the warden.
- (12) Referral back to minor disciplinary committee for final disposition.
- (13) Other appropriate action, as determined by the major disciplinary committee, that is warranted, based upon the seriousness of the violation.

The rules of conduct were drafted by the prison counsel, Assistant Attorney General Earl F. Dorius. He received significant input from other attorneys and correctional personnel.

The first section of the "Administration of Discipline" rules specifies that inmates be provided with posted written notice of all prison rules, regulations and procedures of enforcement. Any up-dated orders, directives, or changes are to be written and posted. Disciplinary rules, regulations, and procedures are to be made available to individual inmates upon request.

The prison rules were adopted to promote the continued safety, security, and discipline of the institution, as well as to afford fundamental fairness to the inmate population. The provisions are not a duplication of the criminal code.

Violations of the criminal code may be referred to the appropriate prosecuting attorney for investigation and possible prosecu-

tion. However, such a decision is entirely within the discretion of correctional personnel. The referral of a possible violation of the criminal code to the county attorney does not preclude institutional disciplinary action being taken against the inmate.

Although it is not formally specified in the prison disciplinary rules, an inmate who is prosecuted by the state will not be subject to further correctional disciplinary sanctions when he has been fully investigated and acquitted. However, there have been some notable exceptions to this rule.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.12 DISCIPLINARY PROCEDURES

The Division of Corrections and the prison should immediately adopt, consistent with The Utah Administrative Rule-Making Act (Section 63-46-1 et. seq.), disciplinary procedures for each type of residential facility it operates and for the persons residing therein.

Minor violations of rules of conduct are those punishable by no more than a reprimand, counseling, restitution, completion of extra work assignments, cell or dorm restrictions, or loss of privileges. Rules governing minor violations should provide that:

1. The minor disciplinary committee may impose the prescribed sanctions after informing the offender of the nature of his misconduct and giving him the chance to explain or deny it.
2. If a report of the violation is placed in the offender's file, the offender should be so notified.
3. Where the committee indicates that the offender did not commit the violation, all reference to the incident should be removed from the offender's file.

Major violations of rules of conduct are those punishable by sanctions more stringent than those for minor violations, including but not limited to, loss of good time, transfer to segregation or solitary confinement, transfer to a higher level of

institutional custody or any other change in status which may tend to affect adversely an offender's time of release or discharge.

Rules governing major violations should provide for the following pre-hearing procedures:

1. Someone other than the reporting officer should conduct a complete investigation into the facts of the alleged misconduct to determine if there is probable cause to believe the offender committed a violation. If probable cause exists, a hearing date should be set.

2. The offender should receive a copy of any disciplinary report or charges of the alleged violation and notice of the time and place of the hearing.

3. The offender, if he desires, should receive assistance in preparing for the hearing from a member of the correctional staff, another inmate, or other authorized person (including legal counsel if available).

4. No sanction for the alleged violation should be imposed until after the hearing except that the offender may be segregated from the rest of the population if the head of the institution finds that he constitutes a threat to other inmates, staff members, or himself.

Rules governing major violations should provide for a hearing on the alleged violation which should be conducted as follows:

1. The hearing should be held as quickly as possible, generally not more than 72 hours after the charges are made.

2. The hearing should be before an impartial officer or board.

3. The offender should be allowed to present evidence or witnesses on his behalf.

4. The offender may be allowed to confront and cross-examine the witnesses against him.

5. The offender should be allowed to select someone, including legal counsel, to assist him at the hearing.

6. The hearing officer or board should be required to find substantial evidence of guilt before imposing a sanction.

7. The hearing officer or board should be required to render its decision in writing setting forth its findings as to controverted facts, its conclusion, and the sanction imposed. If the decision finds that the offender did not commit the violation, all reference to the charge should be removed from the offender's file.

Rules governing major violations should provide for internal review of the hearing officer's or board's decision. Such review should be automatic. The reviewing authority should be authorized to accept the decision, order further proceedings, or reduce the sanction imposed.

UTAH STATUS AND COMMENTS

In Utah, the Board of Corrections is authorized to make rules and regulations. The warden or deputy warden may punish convicts for misconduct in such manner and under such regulations as may be adopted by the Board of Corrections. Section 64-9-39 prevents the punishment of inmates by showering an offender with cold water or whipping him. Any kind of punishment that is brutal or inhumane is prohibited. Corporal punishment, that does not violate these exceptions, is statutorily authorized if administered in the presence of the prison physician. However, the most recent rules on the "Administration of Discipline" reject all forms of corporal punishment. Prison officials are required to keep a record of inmate violations of the prison rules of conduct and also the kind and extent of punishment that was inflicted.

The Utah experience, as it relates to this standard, indicates that prison officials have adopted uniform rules which apply to all facilities and inmate classifications at the Utah State Prison. However, separate rules are employed in the halfway houses which are generally of a less restrictive nature.

The sanctions for minor and major violations were described in Standard 12.11.

Staff members are not allowed to take disciplinary action, as this function is reserved for the disciplinary committee.

An inmate who is charged with a minor disciplinary violation must be issued a written inmate violation report at least 48 hours prior to any disciplinary hearing on the violation. At the hearing, the inmate will be fully advised of the charge. Thereafter, the inmate is allowed to make any explanation or statement in his defense.

When an inmate is convicted of a minor violation, it should be properly recorded in the inmates' file, but it need not be included in the inmate's Board of Pardon's progress report.

There are no formal provisions within the disciplinary rules which provide for a formal review of a disciplinary committee decision. However, a type of appeal may be obtained through the Inmate Grievance Procedures. If the matter is subsequently dismissed, any documentation regarding the violation shall be excluded from the inmate's file and any report which is presented to the Board of Pardons.

The prison does not have a formalized pre-hearing investigative procedure as suggested in the standard. Any employee of the Division of Corrections may initiate an inmate violation report for a violation of the prison rules of conduct.

Such report must be based on good cause and it must factually describe the incident. Thereafter the reports are submitted to a hearing examiner which is charged with referring them to the proper disciplinary committee.

After a violation of the prison rules of conduct, the inmate must be issued a copy of the written inmate violation report at least forty-eight hours prior to any disciplinary hearing on the violation.

The prison rules do not allow an inmate to be represented at a major disciplinary hearing by an attorney who is a member of the state bar; however, he may obtain counsel substitute by filling out a Representative Request form which he receives with the written notice of a major disciplinary hearing date. The inmate may request representation by the prison staff members assigned by the chairman of the major disciplinary committee to represent him for that date. The form must be forwarded to the chairman of the major disciplinary committee no later than twenty-four (24) hours prior to the scheduled hearing if representation is desired. The inmate must justify his need for representation in the information he supplies on the request form. Failure to timely complete and submit the request form waives his right to request representation. Requests for representation should be limited to situations where they feel their best interests would better be represented by the staff representative rather than by themselves (i.e., where the complexity of the issues make it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case; where the inmate has difficulty expressing himself; etc.)

A hearing for a major disciplinary violation is guaranteed by the prison "Administration of Discipline" rules. There is no established time limit for the hearing. The experience at the prison indicates that such a rule is too inflexible. Therefore, the new rules simply provide that a hearing date shall be promptly set and written notice of that date must be issued to the inmate no later than forty-eight (48) hours prior to the hearing.

A three-person committee and chairman is selected by the warden or one of his assistants to hearing disciplinary violations. The committee either dismisses the charge or determines appropriate punishment based on facts rationally determined by that committee. Anyone who was directly involved in the incident leading to the disciplinary proceedings cannot be a member of the disciplinary committee assigned to the case.

Upon receiving written notice of the hearing date, the inmate will also receive written notice that he will be allowed to call witnesses and present documentary evidence in his own behalf at the hearing. If an inmate intends to call witnesses or present documentary evidence then he must complete a designated form within a prescribed period of time and justify his need in presenting such testimony or evidence. The hearing committee chairman will make a written ruling, based on the guidelines of *Wolff v. McDonnell*, as to whether or not the evidence is appropriate. *Wolff* suggests the following factors that should be reviewed when making this decision: (1) Is the evidence unduly hazardous to the institutional safety or correctional goals? (2) Would such evidence extend the hearing beyond reasonable limits? (3) Would the witness create a risk of reprisal or undermine authority? (4) Is the evidence irrelevant or unnecessary?

At the discretion of the major disciplinary committee, the inmate may be permitted to cross-examine parties present at the hearing if such cross-examination is relevant to the hearing, non-repetitious, and not unduly hazardous to personal or institutional safety or correctional goals, and does not unduly undermine authority. The regulations emphasize that cross-examination is not mandatory and will only be allowed in the discretion of the committee. Although there is no right of confrontation in prison disciplinary hearings, the committee, at its discretion, may request the reporting employee or any other person, to appear at the hearing and clarify points and provide additional information.

An inmate is not allowed to have legal counsel at a major disciplinary hearing. Inmates may be provided with counsel substi-

tute in situations where they feel their best interests would be better represented by the staff representatives rather than themselves (i.e., where the complexity of the issues would make it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case; where the inmate has difficulty expressing himself, etc.)

The standard suggests that a hearing committee be required to find substantial evidence of guilt before imposing a sanction. The Utah "Administration of Discipline" rules do not contain such a standard but rather, require that the decision of any disciplinary committee must be based upon evidence presented at the hearing which the inmate had the opportunity to refute. However, this does not apply when the inmate refuses to appear at the hearing.

At the completion of the major disciplinary committee hearing, the committee chairman is responsible for completing the committee's report including the findings, evidence, the basis for the decision, and the final disposition. In all cases, including dismissals, the inmate receives verbal notification of the committee's decision as soon as possible after the decision is rendered. The committee's decision is posted.

All final reports of the major committee which did not result in a dismissal are placed in the inmate's file and included in his Board of Pardon's progress report. In those cases which are not dismissed and the inmate has a parole date, the major disciplinary committee chairman forwards a copy of the committee's final report to the Board of Pardons. If the matter is dismissed, any documentation regarding the violation is excluded from the inmate's file and any report presented to the Board of Pardons.

The rules do not provide for an automatic review of all major disciplinary decisions. However, an inmate may obtain a review of the decision by pursuing appropriate action through the grievance procedures. The review will initially be considered by the inmate's housing officer. If the offender is not satisfied with such a decision, he may appeal to the various levels of prison administration and finally, to the Director of the Division of Corrections. After proper investigation, this detached body will make a final determination and so advise the inmate of the decision in writing.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.13
PROCEDURES FOR NON-DISCIPLINARY CHANGES OF STATUS

The Utah State Division of Corrections and the prison should immediately promulgate written rules and regulations to prescribe the procedures for determining and changing offender status, including classification, transfers, and major changes or decisions on participation in treatment, education, and work programs within the same facility.

1. The regulations should:

- a. Specify criteria for the several classifications to which offenders may be assigned and the privileges and duties of persons in each class.
- b. Specify frequency of status reviews or the nature of events that prompt such review.
- c. Be made available to offenders who may be affected by them.
- d. Provide for notice to the offender when his status is being reviewed.
- e. Provide for participation of the offender in decisions affecting his program.

2. The offender should be permitted to make his views known regarding the classification, transfer, or program decisions under consideration. The offender should have an opportunity to oppose or support proposed changes in status or to initiate a review of his status.

3. Where reviews involving substantially adverse changes in degree, type, location, or level of custody are conducted, an administrative hearing should be held, involving notice to the offender, an opportunity to be heard, and a written report by the correctional authority communicating the final outcome of the review. Where such actions, particularly transfers, must be made on an emergency basis, this procedure should be followed subsequent to the action. In the case of transfers between correctional and mental institutions, whether or not maintained by the correctional authority, such procedures should include specific procedural safeguards available for new or initial commitments to the general population of such institutions.

4. Proceedings for nondisciplinary changes of status should not be used to impose disciplinary sanctions or otherwise punish offenders for violation of rules of conduct or other misbehavior.

UTAH STATUS AND COMMENTS

At the Utah State Prison, the placement of an inmate within a particular unit of custody (minimum, medium, or maximum) is a classification function—not a disciplinary function—which is statutorily and administratively mandated. This responsibility is delegated to the prison treatment team which consists of supervising social worker (chairman), lieutenant, captain, representatives from industries and maintenance department, inmate's social service worker, inmate's correctional counselor, and the assignment officer.

The lieutenant and captain do not participate in medium security treatment assignments. The women's facility treatment team is composed of the social service worker, matron on duty, assignment officer, and psychologist.

The treatment team may change an inmate's classification, job assignment, custody and housing from one status to another for preventing destruction of property, preventing injury to persons, preventing escape, facilitating the operation of the institution, or for the treatment of an individual or group of individuals. Section 64-9-25 and *Manual* p. 13, (1975).

The procedure for an inmate's change of custody depends upon the factors used as a basis for the change. The inmate is heard before the prison disciplinary committee and receives the due process guarantees, if the custody charge is for punishment purposes. The disciplinary committee, at its discretion, can make a recommendation for change in the inmate's custody which is then reviewed by the treatment team. The treatment team then forwards its decision to the executive committee for review.

The function of the Executive Classification Committee is to review the decisions made by the various treatment teams. Decisions that affect a transfer of an inmate . . . between the three major facilities must have approval of the Executive Classification Committee before the decisions are finalized. Executive approval is required for transferring an inmate to one of the community correction centers or placing an inmate on school and/or work release. The Executive Classification Committee is made up of the

warden and deputy wardens and can veto treatment team decisions.

The Utah experience as applied to the standard indicates that legislative and administrative rules and procedures have been formulated to regulate the change of an offender's status. Classification is initially based on the board provisions of Section 64-9-25 which defines the basic grades or alternatives that are available. Thereafter, as an inmate progresses through the penal institution, he earns greater degrees of freedom and assumes more personal responsibility for his behavior.

About every thirty days, the various treatment teams conduct scheduled reviews of the status of inmates assigned to them. There is an exhaustive list of factors that prompt such a review. The regulations are given to the inmates at their orientation session and are posted in conspicuous areas of the prison. The inmate is generally provided with notice as to when his status is being reviewed. It should be noted that the aforementioned rules are abridged when there is an emergency situation. Also, the inmate has little if any input into the Executive Classification Committee review.

The offender is usually invited to participate in the treatment team deliberation. Notice and hearing of all treatment team sessions is posted but not physically served to the inmate. A written decision is made which is based on the proceedings. In the case of emergencies, the proceedings are conducted after the fact.

The transfer of an inmate between a correctional and mental institution is regulated by Section 77-48-5.

Finally, it is a practice of the correctional authorities to refrain from using non-disciplinary changes of status as a substitute for imposing disciplinary sanctions for misbehavior. However, this important procedure is not codified.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.14 GRIEVANCE PROCEDURE

The Division of Corrections and the prison should immediately develop and implement a grievance procedure. The procedure should have the following elements:

1. Each person being supervised by the correctional authority should be able to report a grievance.
2. The grievance should be transmitted without alteration, interference, or delay to the person or entity responsible for receiving and investigating grievances.
 - a. Such person or entity preferably should be independent of the correctional authority. It should not, in any case, be concerned with the day-to-day administration of the corrections function that is the subject of the grievance.
 - b. The person reporting the grievance should not be subject to any adverse action as a result of filing the report.
3. Promptly after receipt, each grievance not patently frivolous should be investigated. A written report should be prepared for the correctional authority and the complaining person. The report should set forth the findings of the investigation and the recommendations of the person or entity responsible for making the investigation.
4. The correctional authority should respond to each such report, indicating what disposition will be made of the recommendations received.
5. The following basic principles should be incorporated in the grievance design:
 - a. The mechanism must guarantee written responses to all grievances. The responses must include reasons for denials.
 - b. There must be time limits at every level of the grievance mechanism.
 - c. The basic philosophy and goal of the mechanism

should be resolution of grievances at the lowest level possible.

- d. There should be participation by inmates and staff in designing the mechanism and its operations.
- e. The mechanism must include outside independent review: (as suggested in paragraph above for Board of Corrections).
- f. A plan for training and orientation of staff and inmates should be provided prior to the procedures introduction.
- g. A plan for evaluation and monitoring of the system should be available and used on a regular basis.

UTAH STATUS AND COMMENTS

In the case of *Chapman v. Graham*, 2 Utah 2d 156, 270 p. 2d 821 (1954) the Supreme Court of Utah held that an inmate should be required to pursue an administrative remedy for resolving inmate grievances within the correctional system before he would be entitled to litigate the issue in court.

The Utah Supreme Court reaffirmed the stand taken in the *Chapman* case, in the later case of *Smith v. Turner*, 12 Utah 2d 66, 362 p. 2d 581 (1961). In *Smith*, The court rejected the inmate's petition for writ of habeas corpus and held that the court will not interfere (by means of the writ) with the management, control, or internal affairs of administrative agencies of a different department of government.

The above cases are not cited for the proposition that *all* penal wrongs must go through correctional administrative proceedings before they are ripe for judicial inquiry. Rather, the cases are mentioned to stress the importance of the administrative proceedings which are established and directed by penal officials.

The Utah State Prison is operating under codified grievance procedures. The rules provide that each inmate is allowed to report a grievance. The report may be forwarded by contacting an inmate's housing officer or through the utilization of the prison mail system.

Disciplinary action cannot be taken against any inmate for using the grievance procedures. The procedures as mandated by the *Manual*, begin with an inmate having a grievance contacting the housing officer. If dissatisfied with the officer's action, or lack of action, he should then contact the deputy warden. If the inmate is still dissatisfied after exhausting the normal channels of block officer, caseworker, chaplain, psychologist, etc., he may be referred to the warden. Such inquiry must be written and include details of the problem and what action has been taken through normal channels in an attempt to solve the matter.

The warden may then designate a staff member to investigate the complaint. A written report of findings and recommendations may be filed with the warden by the assigned staff member within ten working days.

After evaluating the report, the warden or his designee advises the inmate in writing as to what action, if any, he intends to take. Copies of the inmate's letter to the warden, the staff member's report, and the warden's response are maintained in the inmate's record.

If the inmate still feels that the grievance has not been resolved to his satisfaction, he may appeal to the director of the Division of Corrections. The letter must include a statement of the problem and a summary of the action received to date.

The director or his designee will review and investigate all such complaints, problems or grievances submitted. Following such investigations, the director makes a final determination and advises the inmate of these findings in writing.

The rules provide for a proper and rapid investigation of the complaint and a written report of the conclusions.

However, a written report need not be filed until the matter is appealed to the warden or the Board of Corrections. Since correctional personnel are involved in each level of the decision making process, decisions reached through the grievance procedure can be implemented rapidly.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.15
FREE EXPRESSION AND ASSOCIATION

The Division of Corrections and the prison should immediately develop policies and procedures to assure that a prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law. When fundamental right is infringed, the agency or prison administrator must be prepared to justify the restrictive regulation of policy by showing that the restriction is both in service of a compelling state interest, and the minimum restriction necessary to accomplish that interest.

Rights of expression and association are involved in the following contexts:

1. Exercise of free speech.
2. Exercise of religious beliefs and practices. (See Standard 12.16.)
3. Sending or receipt of mail. (See Standard 12.17.)
4. Visitations. (See Standard 12.17.)
5. Access to the public through media. (See Standard 12.17.)
6. Engaging in peaceful assemblies.
7. Belonging to and participating in organizations.
8. Preserving identity through distinguishing clothing, hairstyles, or other characteristics related to physical appearance.

Ordinarily, the following factors would not constitute sufficient justification for an interference with an offender's rights:

1. Protection of the correctional agency or its staff from criticism, whether or not justified.
2. Protection of other offenders from unpopular ideas.
3. Protection of offenders from views correctional officials deem not conducive to rehabilitation or other correctional treatment.
4. Administrative inconvenience.
5. Administrative cost except where unreasonable and disproportionate to that expended on other offenders for similar purposes.

UTAH STATUS AND COMMENTS

There is very little case law or statutory law regarding an inmate's right to free expression and association. An offender's right to exercise his religious beliefs is secured by Section 64-9-36. With the exception of some safety provisions, the code states that "no inmate of the state prison shall be denied the full exercise of his religious belief and the liberty of worshipping according to the dictates of his own conscience."

The subject of mail is discussed in Section 64-9-48. The code states: "No person, without the consent of the warden, shall bring into or carry out of the state prison any letter or writing, or any information to or from any convict." The violation of this section carries a penalty of a Class B misdemeanor.

The final Utah statutory provision that is mentioned in the body of this standard is that of visitation privileges. Section 64-9-49, authorizes attorneys on professional business, religious ministers, and various public officials "to visit the prison at pleasure." All other prison visitors are required to obtain special permission from the warden or comply with the regulations articulated by the Board of Corrections. Pursuant to Section 64-9-50, the board can establish rules for admission of visitors within the prison, and can prescribe a reasonable sum (not more than twenty-five cents) to be charged for admission.

Most of the subjects contained in this section have not been fully codified in Utah law or established by judicial precedent. However, many of the areas are covered by the regulations in the *Manual*.

There are no specific provisions in the *Manual* that deal with free speech; additionally, the "civil death" statutes have been repealed from the new Utah Criminal Code, therefore, it is uncertain as to the actual limits that surround an inmate's right of free speech.

The *Manual* reviews the subject of publications, periodicals, or circulars that are allowed to be distributed within the prison. Any publication which poses a danger to the security or discipline of the prison or threatens to increase abnormal sexual activity within the institution, or is detrimental to the general rehabilitation of any inmate is prohibited.

The topics of religion, mail, visitation, and access to media are discussed in succeeding standards.

The areas of peaceful assembly, membership and participation in organized groups will be jointly discussed. The *Manual* (60) prohibits inmates from visiting housing units other than the one to which they are assigned without a special clearance.

Inmates are permitted to engage in peaceful assemblies through the auspices of several clubs and organized groups at the prison. Twelve clubs have received institutional approval:

1. Ambassadors Gavel Club
2. Carpedium Gavel Club
3. Liahona Gavel Club
4. Hi-Liters Gavel Club
5. Rodeo Club
6. Mutual Improvement Association, Group One
7. Mutual Improvement Association, Group Two
8. Catholic Men's Club
9. Protestant Fellowship Club
10. Alcoholics Anonymous Golden Key Chapter, Group One
11. A.A. Golden Key Chapter, Group Two
12. D.A.R.E. Group (Drug Abusers Rehabilitation and Education)

The rules and regulations which specify the operational details for each group is similarly specified in the *Manual*:

Each club must have a prison employee as a sponsor who is responsible for his assigned club and approves all correspondence and invitations to guests. Organized groups will be permitted to invite no more than six civilian guests to two meetings per month. Groups should be comprised of mixed groups or all male guests. The sponsor, co-sponsor, or other prison employee must be in attendance at all meetings when outside guests are present.

Each club will be permitted to have one anniversary program per year. The dates for these anniversaries must be approved by staff. An inmate may invite three guests for an anniversary program, providing that the guests are on the inmate's approved visiting list, the inmate has attended at least 50 percent of the group's meetings during the three months prior to the program. Also, inmates released from the Orientation Tier or Close Custody are eligible if they have joined the group upon their release to the main population.

Refreshments for anniversary programs will be limited to coffee, cake, cookies, punch, and ice cream. The sponsor or co-sponsor shall be responsible for all anniversary programs, checking the refreshment orders, making certain adequate funds are available for items ordered, and securing clearances for the anniversary.

Other related organizations include a recreation and athletic program. Each inmate is encouraged to participate in recreational activities as a participant or spectator. These activities include volleyball, horseshoes, handball, basketball, softball, boxing, wrestling, and baseball. All-star teams which compete against non-inmate teams are available. Other activities which are appropriate for the entertainment and recreation for the inmates are also available upon inmate request.

Church services and religious activities provide an additional method for inmates to engage in peaceful assemblies and prison organizations.

The use of prison schools and libraries enhance the right of expression.

The prison offers a public speaking program which allows three inmates to congregate and assist one another in preparing remarks on prison life appropriate for particular outside groups. Such inmates are also requested to address prison tour groups.

The last paragraph concerns the preservation of one's identity through his physical appearance. The prison requires that sideburns on male inmates be no longer than the bottom of the earlobe or wider than one inch. Combed hair may not be over the top of the ear, down to the eyebrows, or hang over a normal shirt collar.

Inmates are issued clothing when they arrive at the institution. Depending upon their classification, they are required to wear a specific uniform which designates their facility. Clothing may not be altered from its issued form except with administrative approval.

An inmate's opportunity to exercise rights of expression and association is predicated upon his security classification. As he progresses through the institution, he earns greater degrees of freedom and assumes more personal responsibility for his behavior. An inmate's rights are limited as a result of disciplinary sanctions, security measures, or other similar serious circum-

stances. The prison uses a "clear and present danger" standard for abridging rights of expression and association.

The following factors, taken by themselves and not exercised to the extreme, would not constitute sufficient justification for interfering with an offender's rights.

1. Protection of the correctional agency or its staff from criticism, whether or not justified.
2. Protection of other offenders from unpopular ideas.
3. Protection of offenders from views correctional officials deem not conducive to rehabilitation or other correctional treatment.
4. Administrative inconvenience.
5. Administrative cost except where unreasonable and disproportionate to that expended on other offenders for similar purposes.

However, it should be noted that when two or more factors are viewed in an aggravated situation that may be a proper ground for limiting an inmate's rights.

Although inmates are provided with several opportunities to exercise free expression and association, the exercising of such rights is not actively encouraged by correctional authorities.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.16 EXERCISE OF RELIGIOUS BELIEFS AND PRACTICES

The Division of Corrections and the prison should immediately develop and implement policies and procedures that will fulfill the rights of offenders to exercise their own religious beliefs. These policies and procedures should allow and facilitate the practice of these beliefs to the maximum extent possible, with reason, consistent with the Utah Administrative Rule-Making Act

(Section 63-46-1 et. seq.), and reflect the responsibility of the correctional agency to:

1. Provide access to appropriate facilities for worship or meditation.
2. Enable offenders to adhere to the dietary laws of their faith.
3. Arrange the institution's schedule to the extent reasonably possible so that inmates may worship or meditate at the time prescribed by their faith.
4. Allow access to clergymen or spiritual advisors of all faiths represented in the institution's population.
5. Permit receipt of any religious literature and publications that can be transmitted legally through the United States mails, and which do not present a clear and present danger to the institution.
6. Allow religious medals and other symbols that are not unduly obtrusive.

The Division of Corrections and the prison should give equal status and protection to all religions, traditional or unorthodox. In determining whether practices are religiously motivated, the following factors, among others should be considered as supporting a religious foundation for the practice in question:

1. Whether there is substantial literature supporting the practice as related to religious principle.
2. Whether there is a formal, organized worship of shared belief by a recognizable and cohesive group supporting the practice.
3. Whether there is a loose and informal association of persons who share common ethical, moral, or intellectual views supporting the practice.
4. Whether the belief is deeply and sincerely held by the offender.

The following factors should not be considered as indicating a lack of religious support for the practice in question:

1. The belief is held by a small number of individuals.
2. The belief is of recent origin.
3. The belief is not based on the concept of a Supreme Being or its equivalent.
4. The belief is unpopular or controversial.

In determining whether practices are religiously motivated, the correctional agency should allow the offender to present evidence of religious foundations to the official making the determinations.

The correctional agency should not proselytize persons under its supervision or permit others to do so without the consent of the person concerned. Reasonable opportunity and access should be provided to offenders requesting information about the activities of any religion with which they may not be actively affiliated in making judgments regarding the adjustment or rehabilitation of an offender, the correctional agency may consider the attitudes and perceptions of the offender but should not:

1. Consider, in any manner prejudicial to determinations of offender release or status, whether or not such beliefs are religiously motivated.
2. Impose, as a condition of confinement, parole, probation, or release, adherence to the active practice of any religion or any religious belief.

UTAH STATUS AND COMMENTS

The principles of religious freedom are well founded in the Utah State Constitution. Such rights have been explicitly transferred to inmates through Section 64-9-36 which states that: No inmate of the state prison can be denied full exercise of his religious belief and the liberty of worshipping according to the dictates of his own conscience. However, the code stipulates that the right to worship cannot be construed to impair the discipline of the prison, or to prevent inmates from assembling in the chapel for general religious instruction approved by the board.

The prison employs one full-time LDS chaplain, one part-time Catholic chaplain, and one part-time Protestant chaplain. Such a distribution of chaplains corresponds with the ratio of religious beliefs which are found in the general inmate population. Additionally, any minister will be permitted to visit an inmate. Any religious denomination is encouraged to hold church services when there are enough inmates to warrant the holding of such services. These services are to be coordinated by the prison chaplains.

The *Manual* stipulates the basic rules and regulations regarding religious activity at the prison. The rules permit all inmates to attend religious services, except for those confined to their cells because of disciplinary action or custody classification.

The Utah State Prison has adequate worship and meditation facilities for inmates who are confined to the minimum, medium, and women's facilities. Religious needs in maximum security are satisfied by personal counselling from an appropriate chaplain.

Inmates are allowed to adhere to dietary laws of their faith unless the demands are extreme.

Church services are usually scheduled for Sunday. Additional religious meetings are also scheduled throughout the week. The institution enjoys the services of three salaried chaplains. Other ministers are allowed to visit the prison at their pleasure.

Religious publications and literature are allowed in the prison. There are, however, some important exceptions. First, books or publications of any type must come directly from the publisher, the book company, or the vendor unless special approval is obtained from the warden or his executive staff. Second, the prison warden or his staff is authorized to preclude any publication, periodical, or circular which may threaten security or discipline or increase abnormal sexual activity within the institution.

Religious medals and other symbols which are not worn on an inmate's outer garments are permitted if they are not unduly obtrusive.

Because of the relative small size of the prison, problems with unorthodox religious sects have been minimal. The applicable statutes and the *Manual* grant the full exercise of religious beliefs while in the institution. Any religious denomination is

encouraged to hold church services when there are sufficient numbers to warrant such services.

Various religious denominations cannot proselytize inmates without their consent. However, information is readily available to an inmate interested in obtaining religious literature or assistance.

An inmate's religious participation is not a factor in determining an offender's status within the prison or his release date.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.17 ACCESS TO THE PUBLIC

The prison should immediately develop and implement policies and procedures to fulfill the right of offenders to communicate with the public. Correctional regulations limiting such communications should be consistent with Standard 12.15. Questions of right of access to the public arise primarily in the context of regulations affecting mail, personal visitation, and the communications media.

MAIL. Offenders should have the right to communicate or correspond with persons or organizations and to send and receive letters, packages, books, periodicals, and any other material that does not present a clear and present danger to the institution. The following additional guidelines should apply:

1. Absent a showing of compelling governmental interest, correctional authorities should not limit the amount of mail to or from a person under supervision.

2. Correctional authorities should have the right to inspect incoming and outgoing mail, but neither incoming or outgoing mail should be censored. Cash, checks, or money orders should be removed from incoming mail and credited to the offender's accounts or returned to the sender. If contraband is discovered in either incoming or outgoing mail, it may be removed. Only illegal items and items which threaten the security, safety, and control of the institution should be considered contraband. Evidence of inmates entering into credit transactions should be restricted.

VISITATION. The need for prison discipline and security is a recognized justification for the regulation of visitation. Conditions of visitation are fundamental to inmate morale and institutional security. When the two are in conflict, the need for security is paramount. This need, however, must be supported by evidence. Visitation rights may be curbed by prison officials by instituting reasonable regulations over the privilege. Visitation rights should be curbed to the extent necessary to insure institutional security, safety, and administrative manageability. The following guidelines should apply in the establishment of prisoners rights:

1. Prison officials may be present during visits.
2. Visitation of persons in segregation may be regulated by any special precautions deemed necessary or appropriate by institutional administration.
3. Administering authority should facilitate and promote visitation of offenders by the following acts:
 - a. The providing of appropriate rooms for visits.
 - b. Establishment of hours during which visits are both conducive and appropriate to institutional operation and those wishing to visit (evenings, holidays, and weekends are appropriate visiting times).
4. The administering authority should maintain a list of those persons visiting.

MEDIA. Utah Division of Corrections authority should allow the flow of information between the media (publications such as newspapers, magazines, other reading materials, T.V., radio, etc.) and the inmate. Only a compelling state interest centering on prison security or a clear and present danger of a breach of prison discipline or some substantial interest in orderly institutional administration shall justify curtailment of the open flow of information from the media to inmates.

Representatives of the media should be allowed access to all correctional facilities consistent with security, safety, and control of the institution for reporting items of public interest consistent with the preservation of the offender's privacy.

Institutional administrators may limit access to media as described in this standard, utilizing the following general provisions:

1. Institutional officials may intercept a particular copy of a newspaper, newsletter, etc., when such interception of an article or item in question presents a compelling state interest such as the articles in question will not promote the continuation of institutional security, safety, and control.

2. Delay of access to books and magazines while an inmate is in solitary confinement may be deemed to serve state interest in the discipline of an inmate.

3. Prisoner access to allegedly obscene materials is currently an unsettled area of prison law. Supreme court rule has suggested that obscenity questions should be settled and decided on the basis of local community standards.

4. Prison officials may make reasonable regulations as to the circulation of magazines, newspapers, and books; may exercise some but not unlimited discretion over the amount of material which may be kept in a cell; and may choose the numbers of publications received by each inmate.

Access of the media to prisoners should be encouraged and allowed under a prescribed process.

UTAH STATUS AND COMMENTS

The standard has three main areas with regard to an offender's access to the public.

MAIL

The general item of inmate correspondence is discussed in 64-9-48 as follows:

No person, without the consent of the warden, shall bring into or carry out of the state prison any letter or writing, or any information to or from any convict.

A conviction for a violation of this statutory provision carries with it a class B misdemeanor penalty.

The general mail policy states that: Inmates are entitled to correspond with persons outside the institution; however, the right to correspond is not absolute and is regulated.

Although prison officials do not keep mailing lists, there are classifications of individuals with whom inmates are not permitted to correspond without approval. A file containing limited information on each of an inmate's correspondents is maintained.

While an inmate may correspond with as many persons as he wishes, he cannot correspond with any individual under 18 years of age without the consent of the warden and written consent of the individual's guardian. An exception is made for an inmate's sons, daughters, brothers, sisters, or spouse. Except with special approval from the warden, inmates may *not* correspond with inmates of any other correctional institution, individuals who have served a prison sentence, or any persons presently on probation.

Inmates may correspond on stationery of their choice; however, the prison provides prison stationery to inmates at no cost. Since inmates must furnish their own postage, they are entitled to receive postage stamps from their correspondents through the mail, or the inmate may purchase stamps at the inmate Commissary.

Money sent through the mail must be in the form of a check or money order. Any cash received in the mail must be returned to the sender. Checks and money orders will be credited to the inmate's trustee account and a receipt forwarded to the inmate.

Because of the need to screen incoming mail for unauthorized credit transactions, and possible contraband, all incoming mail of a non-legal nature is opened by the prison mail officer unless the mail is from a public official. All incoming packages are opened. Mail is not read or unreasonably delayed or censored.

Unauthorized items other than cash will be returned to the senders or donated to a local charity. All cash is returned to the sender. Unlawful contraband is referred to appropriate prison and/or law enforcement authorities. Prison authorities take necessary action to curtail unauthorized credit transactions.

All outgoing mail other than purchase orders and packages may be sealed if the sender's name is on the envelope. It will not be censored, read, or unreasonably delayed unless visual or physical examination indicates the possible presence of contra-

band, an unauthorized credit transaction, or if there is reason to suspect that the inmate is using the mail to aid in an escape plan or other illegal activity.

These regulations also designate some special types of mail and provide appropriate procedures for each type.

Legal mail is generally less restrictive. Incoming and outgoing legal correspondence is not censored, read, or delayed by prison authorities. It is not to be opened unless the mail indicates the possible presence of contraband.

The rules for legal mail also apply to "Public Official Mail."

Commercial mail of a solicitous nature tends to encourage credit relationships and is discouraged and restricted. The warden and his staff are authorized to preclude any commercial publication, periodical or circular which poses a clear and present danger to the security or discipline of the prison or threatens to increase abnormal sexual activity within the institution.

The Utah State Prison rules and regulations regarding mail satisfy this standard.

VISITATION

The State Prison title of the Utah Code contains two provisions which concern an inmate's visitation rights. Section 64-9-49 lists the persons that are afforded a statutory right to enter the prison. These persons include the governor, members of the legislature, state officers, judges of the supreme and district courts, grand jurors, prosecuting attorneys on professional business, sheriff's, members and any officers of any board authorized by law to visit the prison, and all regular officiating ministers of the gospel.

Section 64-9-50 gives the general rules which are applicable to all visitors. The board has the authority to establish rules for the admission of visitors within the prison, and may charge a maximum of twenty-five cents for admission.

General instructions with regard to visiting procedures are treated in the *Manual*. The instructions maintain that visiting is a privilege and is designed to assist the inmate in maintaining family ties. Visitors are restricted to family members and friends, except with the permission of the warden.

Visitors are subject to search at the discretion of the supervising officer. Purses, handbags, and packages are not permitted in the visiting room. Visiting lists are maintained and only those persons on the inmate's approved visiting list are permitted to visit, unless special permission is granted.

Visitors on the approved visiting list may leave gifts or money for the inmate at the registration desk, and will receive a receipt. All items are inspected before being delivered to the inmate.

Inmates housed in the Reception and Guidance Unit are allowed visits from members of the immediate family only.

Visits are supervised by a correctional officer. Male inmates in medium and maximum security are frisked before entering the visiting room and receive a "skin shakedown" after the visit. Women inmates and male inmates in minimum security are frisked before and after a visit and may receive a "skin shakedown" at the discretion of the supervising officer.

Depending upon their security classification, inmates may have from a one-hour visit per week to five prolonged visits per week with each approved visitor during regular visiting hours. Current visiting hours are:

Maximum Security Facility	
Sunday	10:00 a.m. to 2:00 p.m.
Medium Security Facility	
Sunday	8:20 a.m. to 4:30 p.m.
Wednesday	4:20 p.m. to 8:30 p.m.
Minimum Security Facility	
Saturday, Sunday, Holidays	12:30 p.m. to 8:30 p.m.
Monday, Tuesday, Wednesday	5:30 p.m. to 8:30 p.m.
Women's Facility	
Sunday	8:20 a.m. to 4:30 p.m.
Wednesday	4:20 p.m. to 8:30 p.m.

Exceptions are made for an inmate's family living out-of-state and travelling a great distance. Special permission must be obtained for visits other than during the scheduled times.

Excessive displays of affection are not tolerated. Inmates considered security risks are required to use the telephone type visiting booths for their visiting privileges.

These regulations provide visiting opportunities to assist the inmate in maintaining family ties. The circumstances of the visit are determined by the inmate's custodial classification.

MEDIA

There are no specific statutory provisions regarding an inmate's access to the media. Specific rules and regulations are contained on the *Manual*. Inmates are entitled to correspond with the news media provided correspondence is directed to the editor-in-chief of the newspaper or magazine or the executive director of the radio or television station. Such outgoing correspondence is not censored, read, or unreasonably delayed by prison authorities unless contraband is suspected or the warden and his executive staff are determined that a state of prison tension, emergency, unrest or any conditions conducive to riot are present in the institution. Under these conditions prison mail officials, at the discretion of the warden, may open, read, and forward mail to the news media.

All incoming correspondence from the news media is opened to receipt any checks or money orders sent by the media as remuneration for published articles by an inmate or to remove any contraband (including currency). Should any currency be present, it shall be promptly returned to the sender.

An inmate cannot be subjected to any prison disciplinary action for attempting to correspond with representatives of the news media unless contraband is discovered within his outgoing correspondence. Correspondence with individual reporters is prohibited.

It is the practice of the prison to allow inmates to be interviewed by members of the media only in certain situations. First, the inmates must consent to such an interview. Second, the warden must approve the specific interview that is being requested. Such a decision is made on a case-by-case basis. The warden's decision is subject to the review of the Board of Corrections.

An inmate is entitled to receive any media publication unless, the warden determines that it poses "a clear and present danger" to the security or discipline of the prison; threatens to increase abnormal sexual activity within the institution; or is detrimental to the general rehabilitation of any inmate.

Finally, inmates are allowed to show and sell their hobby-craft items and credit the proceeds to their inmate account.

METHOD OF IMPLEMENTATION

Administrative policy.

STANDARD 12.18 VIOLATION OF AN OFFENDER'S RIGHTS

The Utah State Division of Corrections should adopt policies and procedures and where applicable, should seek legislation to insure proper redress where an offender's rights as enumerated in this chapter are abridged. Correctional administrators have a responsibility to insure the protection of offender's rights. Administrative policy and procedures provide an effective means of assuring that offenders are treated properly. Administrative remedies, not requiring the intervention of a court, should include at least the following:

1. Procedures allowing an offender to seek redress where he believes his rights have been or are about to be violated. Such procedures should be consistent with Standard 12.14, "Grievance Procedures."
2. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect offenders' rights.
3. Policies and programs of distribution which:
 - a. Assure wide distribution and understanding of the rights of offenders among both offenders and correctional staff.
 - b. Provide that the intentional or persistent violation of an offender's rights is justification for removal from office or employment of any correctional worker.

Judicial remedies for violation of rights may be necessary in many instances to define the rights available; however, court intervention of enforcing rights, once defined, should not be considered as the first step in seeking redress.

UTAH STATUS AND COMMENTS

The principle administrative remedy available to inmates is the grievance procedure discussed in Standard 12.14.

The duties of the warden are codified in Section 64-9-13 which gives the warden responsibility to:

1. Supervise all the business of the prison and its security.
2. Give direction to prison staff.
3. Examine the health, conduct, and safekeeping of the prisoners.
4. Furnish appropriate employment for prisoners.
5. Supervise any manufacturing at the prison and sell or dispose of the articles manufactured for the benefit of the state.
6. Administer the land and buildings belonging to the prison.
7. Inquire into complaints made by convicts concerning their food, clothing, or treatment.
8. Administer the funds received for the labor of convicts or the sale of manufactured articles.
9. File an annual comprehensive report with the Division of Corrections and other reports deemed necessary.

Notice of the specific rights of offenders is provided by specifying prohibited conduct.

The civil death statutes which previously revoked all inmates rights was repealed with the revision of the new criminal code. Therefore, it is somewhat uncertain as to exactly what rights an inmate presently enjoys.

Employees at the Utah State Prison are hired on the basis of a

merit system. New employees are hired on a probationary status for a period of at least six months. If the employee passes his probation, he is placed on regular employee status. Any intentional or persistent violation of an offender's rights may constitute justification for removing an employee from his duties. Such a decision is within the warden's discretion. A statement of the reason for termination will be retained in the employee's file.

It is a goal of the prison administration to operate the facility with a minimum number of problems and controversy. Therefore, prison employees receive orientation and in-service training to assist them in more adequately performing their jobs. Such training would also include the importance of respecting the inmate's rights.

The basis for granting a judicial remedy for a violation of a person's rights through due process is found in the Utah Constitution. This provision doesn't authorize any new rights or remedies which don't enjoy a common law or statutory basis.

The Supreme Court and district courts have the power to issue those rights necessary to carry into effect their orders, judgments, and decrees.

The Utah State Constitution and state statutes allow relief through injunction where it is justified.

A correctional officer or employee could be criminally prosecuted for a Class B misdemeanor if his actions wrongfully violated a provision of the criminal code. There are some problems with such prosecutions. First, since the civil death statutes were repealed it is uncertain as to exactly what rights a prisoner does enjoy while in confinement. Second, there are few specific criminal laws which regulate and punish individuals who intentionally abridge an offender's rights.

METHOD OF IMPLEMENTATION

Administrative policy.



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