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REPORT TO  
UTAH STATE LEGISLATURE  
REPORT NUMBER 83-11



A PERFORMANCE AUDIT  
OF  
ADULT PROBATION AND PAROLE

December 1983

106966

Office of  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

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December 30, 1983

TO: JUDICIARY INTERIM STUDY COMMITTEE

Transmitted herewith is our report, A Performance Audit of Adult Probation and Parole, which will be discussed in the committee's upcoming meeting on January 4, 1984. This report is one of a three-part series on the Division of Corrections. A digest of the report is found on the blue pages at the front of the report. The objectives and scope of the audit are explained in the Introduction. The response from the Division of Corrections is not included in this copy of the report. The Division will provide the committee with a written response on January 4th.

We look forward to meeting with you regarding the issues addressed in this report. At that time we will be glad to answer any questions you may have regarding the information contained in the report.

Sincerely,

Wayne L. Welsh, CPA  
Acting Auditor General

WLW:tmc

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Digest Of

A PERFORMANCE AUDIT OF  
ADULT PROBATION AND PAROLE

Offenders on probation are not properly supervised. The terms of the probation contract are not adequately enforced, standard contacts with offenders are not made, and treatment referral is inconsistent. As a result, offenders may be taught that rules do not have to be obeyed, the community may not be properly protected, and opportunities to rehabilitate offenders may be missed.

The principal cause of poor supervision is system overload. Agents have been assigned more cases than they can effectively supervise according to standards. Since supervision standards have not been realistic, agents have not been accountable for their performance and, in turn, agents have not held offenders accountable for their behavior. Changes to restore accountability to the offender supervision system must be based on an acceptance of the capacity and effectiveness limitations of the system.

Both the Legislature and the Division of Corrections need to act to improve the offender supervision system. We recommend that the Legislature act to reduce system overload. The three principal options available to the Legislature are to increase funding substantially, eliminate services for some types of offenders, or direct the Division of Corrections to reduce services selectively. We recommend that the division act to demand greater accountability of offenders, agents, and division programs. To accomplish this, the division should base offender

classification upon capacity to supervise so agents are not assigned more cases than they can effectively supervise. The additional offenders which exceed AP&P's capacity to provide supervision should be placed on a nominal supervision system which tracks compliance with probation conditions but does not provide any contact with agents. This is needed so that the system is not clogged with more offenders than it can handle.

REPORT TO  
UTAH STATE LEGISLATURE  
Report No. 83-11

A PERFORMANCE AUDIT  
OF  
ADULT PROBATION AND PAROLE  
December 1983

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## I. INTRODUCTION

This year the Division of Corrections is requesting substantial increases in its operations and capital facilities budgets. Division management bases these increases on a growing prison population and the large number of offenders supervised by Adult Probation and Parole. According to division officials, the corrections system is overloaded with too many offenders and too few places to put them.

National statistics tend to support division management's contention that Utah's corrections system is overloaded. Utah has a higher proportion of its population supervised by corrections than most other states. Currently, the division supervises 737 offenders per 100,000 population. This rate is significantly higher than surrounding states such as Idaho which has only 383 offenders per 100,000 population under supervision. Most other states also have lower supervision rates such as Montana with 428 per 100,000 and New Mexico at 438. Utah's attempt to supervise more offenders than surrounding states is further reflected in the crime statistics. Our state's crime rate is 5,750 crimes committed per 100,000 population. This rate is about average; however, other states with higher crime rates do not attempt to supervise as many offenders as Utah. For example, New Mexico's crime rate is 6,201 crimes per 100,000 population, but New Mexico's supervision rate is only 438 offenders per 100,000 population. Utah's supervision rate is 737 or 68 percent higher than New Mexico.

Overcrowding within the corrections system is made worse by the fact that Utah spends less per offender than most other states. During

fiscal year 1983, the division spent \$30,176,900 to operate its programs. This amounts to an average expenditure of \$2,698 per offender under the supervision of the division. This is significantly less than the amounts spent in the eight other states we compared with Utah. For example, the next lowest state, Idaho, spends an average of \$3,397 per offender supervised. Other states like Washington spend almost twice as much per offender than does Utah. Washington averaged \$5,299 per offender under supervision. This does not mean that Utah spends a smaller proportion of tax dollars on corrections than other states. It only means that because Utah supervises more offenders than other states the corrections budget must be stretched further to support them.

Based on these statistics, the obvious solution appears to be more money for the Division of Corrections. While more money is probably needed, there are other actions that can also be taken. Our audits of the division's three major programs--Utah State Prison, Community Corrections Centers, and Adult Probation and Parole--raises a number of important policy questions that impact on the funds needed. These audits also address actions the division can take to make its programs more efficient and effective and hopefully reduce the funding increases needed.

The Adult Probation and Parole (AP&P) program within the Division of Corrections has been charged with providing investigative and supervisory services to probationers and parolees. Investigative services provide information to the courts for aiding sentencing decisions and to the Board of Pardons for aiding parole decisions.

Supervisory services provide the means to execute the probation and parole decisions made by the courts and the Board of Pardons.

Probation is "an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon prescribed conditions" [Utah Code 77-27-1(7)]. Thus, in principle probation is a contract between the state and the offender whereby the state agrees not to incarcerate and the offender agrees to abide by certain rules. This agreement allows the offender to be released into the community under the supervision of AP&P. Similarly, parole is a release from imprisonment on prescribed conditions.

#### Audit Objective and Scope

This audit was conducted in response to a request from the Judiciary Interim Study Committee. The purpose of this audit is to provide information to the Legislature that can be used to evaluate the effectiveness of the Adult Probation and Parole program. Specifically, the audit objective was to determine the effectiveness of AP&P's supervision of probationers.

As was mentioned earlier, Adult Probation and Parole has both supervisory and investigative functions. Because of time constraints, we concentrated our review on AP&P's supervision of probationers. However, based on our interviews with agents we feel our findings about probation supervision apply to parole supervision as well. We did not evaluate the effectiveness of AP&P's investigative function; however, a division study indicated that the function's efficiency was at a reasonable level.

## II. PROBATION SUPERVISION IS INADEQUATE

Offenders on probation are not adequately supervised. This may lead to continued offender disrespect for the law, inadequate community protection, and a failure to rehabilitate offenders. The division acknowledges that offenders are poorly supervised. In fact, the division director feels that offenders generally view probation as a means of escaping any sanctions or supervision. The problems in the probation system are due largely to system overload, which has resulted in neither the offenders nor the agents supervising them being accountable for their actions. We feel that restoring integrity to the probation system requires that greater accountability be demanded from all involved. This will require concrete and practical policies to either adjust resources to cover expectations or adjust expectations (services) to a level the system can effectively handle.

### Probation Supervision Functions Not Carried Out

Probation supervision consists basically of three functions: (1) enforcing the sentence (ensuring that the conditions of probation set by the court are not violated); (2) watching the offender (maintaining personal contact with the offender to help protect the community); (3) referring the offender to treatment programs. While the first function is mandated by statute, the other two have evolved to support division goals of community protection and offender rehabilitation. A survey of judges, AP&P administrators and supervisors, and line agents revealed a substantial amount of disagreement over which of the three functions is most important. (See Table I.)

TABLE I  
Opinions On the Most Important Role of Agents  
Who Supervise Offenders

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	<u>Percent Choosing Each Function As Most Important</u>		
	Judges <sup>1</sup>	Administrators & Supervisors <sup>2</sup>	Agents <sup>3</sup>
Enforce the Court Ordered Sentence	36%	47%	33%
Protect the Community By Watching The Offender	24%	29%	45%
Identify Offender Needs and Arrange For Services	33%	18%	14%
Other <sup>4</sup>	7%	6%	8%

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Questionnaire response rates: <sup>1</sup>Judges 68%  
<sup>2</sup>Administrators 74%  
<sup>3</sup>Agents 65%

<sup>4</sup>Includes opinions that two or three of the choices are equally important.

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Because all three functions are seen as important, we will discuss probation system performance in each function, the probable effects of that performance, and options for improving the situation.

Probation Conditions Not Adequately Enforced

AP&P supervision does not always hold offenders accountable for complying with probation conditions. These conditions are determined by a court judgement and are formalized in a probation agreement signed by each probationer in which he or she promises to abide by these

conditions. Probation conditions include requirements such as reporting monthly, obeying all laws, paying fines and/or restitution, serving time in jail, attending treatment programs, and performing community service. Failure to enforce probation conditions may reinforce in offenders a notion that rules do not necessarily have to be followed.

Our case file review revealed substantial noncompliance with probation conditions. In 71 percent of the open case files reviewed we found indications of probation violations which were not followed up. Of the closed case files reviewed, 28 percent contained such evidence. These figures indicate that although many of the violations are cleared up before case termination, a substantial number of offenders violate probation conditions with apparent impunity. The conditions most frequently violated without follow-up are orders to attend treatment programs, to serve jail time, and to obey all laws.

On the other hand, line agents do provide adequate follow-up for the collection of fines and restitution payments. Of the closed case files we reviewed, 93 percent of the offenders ordered to pay restitution paid the full amount prior to termination (96 percent of the money ordered was paid). AP&P personnel confirmed that restitution collection is among their highest priorities. In fact, some agents feel that so much emphasis is placed on restitution that they are mere bill collectors, unable to give proper attention to their duties as probation officers.

Standard Contacts With Offenders Not Made

Many offenders are not watched as closely as policy dictates. Although AP&P has established standards for how frequently agents should see offenders, agents are not held accountable to meet these standards. For example, policy requires that offenders who are classified maximum risks be contacted face-to-face at least once per month. However, we found instances in which maximum risk offenders were apparently not seen for months. Agents confirmed that they are not keeping a close enough watch on offenders. Some agents told us that they spend so much time processing paperwork on low-risk offenders that they do not have enough time to watch the offenders who most need watching.

Treatment Referral Frequently Not Made

Referral of offenders to treatment by agents is inconsistent. We found numerous cases where offenders with identified needs were not referred for treatment. For example, agents failed to refer for appropriate treatment half (12 out of 24) of the offenders with identified substance abuse problems when the courts neglected to include this treatment in their conditions of probation. However, we do not know if failure to refer is significant because the effectiveness of treatment programs is not known. While most judges and agents who responded to our survey feel that treatment programs are effective, some feel that treatment is not effective and others feel it is effective only if the offender is receptive to rehabilitation. Unfortunately, we could not

determine if some offenders wanted treatment but were unable to obtain it. Given these uncertainties, better information about the effectiveness of these programs is needed.

An inadequate probation system may have a variety of effects. Offenders not required to comply with probation conditions may learn that it is not necessary to obey the law. Offenders not watched according to risk may contribute to increased crime in their communities. The lack of good information about treatment program effectiveness may lead to inappropriate referrals and/or inappropriate funding for current or future programs.

#### Utah's Probation System Is Overloaded

The principal cause of poor supervision is system overload. Line agents have been expected to do more than they are capable of doing, and as a result have accomplished much less than they could. Instead of effectively supervising a limited number of offenders, AP&P has ineffectively supervised an unlimited number of offenders. The division director acknowledges that the division is now in the position of "being forced to provide less than mediocre services to almost everyone."

Comparisons with other states tend to confirm that Utah's probation system is overloaded. As Table II shows, Utah spends less per probationer than any comparison state. This is not due to an unreasonably small budget--four of the seven comparison states budget less per capita to AP&P than Utah. Instead, Utah simply has a large number of people on probation--579 per 100,000. Since Utah's crime rate

is about average, the large number of offenders on probation is not due to a greater need for services, but due to an effort to provide more services. Thus, on a per crime basis, Utah has more offenders on probation than other states. Unfortunately, AP&P's budget has not been adequate to provide these additional services.

TABLE II  
Probation Comparisons With Other States  
Fiscal Year 1982-83

STATE	AP&P Budget		Crimes Per 100,000 Pop.	Probationers Per 100,000 Pop.	Offenders Per Agent*
	Per Offender	Per Capita			
Utah	\$ 586	\$3.79	5,750	579	145
Idaho	827	2.37	4,531	254	76
Montana	1,068	3.42	5,019	273	n/a
Nevada	756	6.45	8,592	482	n/a
New Mexico	1,396	4.24	6,201	252	39
Washington	823	3.94	6,742	408	90
Iowa	n/a	n/a	4,717	372	83
Wisconsin	655	2.89	4,767	377	n/a
No. Dakota	957	2.20	2,991	204	151

\*Agent is a full-time equivalent number based on the amount of supervisory time spent.

As a result of being overloaded, Utah's offender supervision system does not operate in a controlled fashion. Offenders are not controlled by the terms of probation they promise to abide by. Line agents are not controlled by the supervision standards established by AP&P policy. Division programs are not controlled by how effective they are. We feel that to restore integrity to the system, greater

accountability must be demanded of offenders, agents, and the division. However, it is essential that changes in the system be based on a recognition that there are limits to what the state can and should do. Only by accepting capacity and effectiveness limitations can expectations be brought into line with capabilities.

Changes Are Needed to Restore Accountability to System

There are many actions the Legislature and the division could take to improve accountability in the offender supervision system. The fact that there is substantial disagreement about the relative importance of the three principal functions of offender supervision complicates an analysis of what actions should be taken. However, in our opinion changes should be based on the following principles.

Probation Conditions Should Be Enforced For All Offenders.

Corrections is the subsystem within the criminal justice system which carries out justice as determined by the court. Probation conditions form a contract between the offender and the state. Failure to enforce this contract sends the wrong message to offenders—that rules do not have to be followed. As a result the integrity and effectiveness of the entire criminal justice system may be lessened.

If the state is to enforce probation conditions, there must be sanctions for those offenders who do not comply. Every probation infraction need not result in incarceration; a variety of lesser sanctions are possible. However, the state has not yet developed a

coherent policy specifying the consequences that should follow specific probation violations or infractions.

The State Should Limit the Number of Offenders It Tries to Watch.

The state cannot afford to watch all offenders as closely as it would like. One hundred agents simply cannot provide surveillance of 10,000 offenders. Therefore the need is to properly allocate resources so the most risky offenders are watched. Probably all parolees need some surveillance as they attempt to reintegrate into society following incarceration. However, only a limited number of perhaps exclusively felony probationers can or should be watched. Sensible resource management dictates that low-risk offenders not be allowed to clog the system and take away from the time available to watch high-risk offenders.

Treatment Should Be Provided Only to the Extent That It Is Effective. If offenders can be rehabilitated, it is in the state's interest to provide the necessary treatment. However, ineffective treatment programs should not be allowed to waste tax dollars. Many of those familiar with treatment programs in Utah feel that they are generally effective and that more are needed. Yet, analyses of correctional treatment programs nationally have generally questioned their effectiveness. Some research indicates that unwanted treatment is especially unlikely to be rehabilitative. Given these uncertainties, at the present time nobody knows if more or different types of treatment programs are warranted.

Legislature Could Act

The Legislature could act to reduce system overload either directly or indirectly. The direct actions include increasing system capacity or reducing service demands. However these direct actions, while potentially solving the overload problem for the present, offer no control for the future. The indirect action, which can provide a long-term solution, is to statutorily require AP&P to control the services they provide by basing offender classification on capacity and then limiting services accordingly.

Resources Could Be Increased. One option to solve the problems with offender supervision is to increase AP&P's budget. We estimate that about a four million dollar workload budget increase would be needed to bring supervision capacity into line with service expectations. This would enable the division to reduce caseload size from an average of 145 to about 70 cases per agent. Although national standards recommend a caseload size of 35 to 50, agents and supervisors we talked to in the division indicated that current supervision standards could be met with a caseload of 70.

Services Could Be Limited by Statute. A second option is to limit the length of or totally eliminate offender supervision for certain types of offenders. For example, limiting probation to six months would reduce AP&P's workload without totally eliminating supervision of any offender now under supervision. However, other proposals advocate elimination of

all misdemeanor services. For example, Idaho has eliminated probation services for misdemeanants. In fiscal year 1983, 71 percent of all offenders entering AP&P supervision in Utah were misdemeanants; 58 percent were the less serious class B or C misdemeanants. Obviously, elimination of services for these less serious offenders would greatly reduce AP&P's workload. However, some circuit court judges argue that if misdemeanants are dealt with effectively they will never become felons. Since circuit court judges tend to view the role of supervision as treatment oriented rather than surveillance oriented, a more modest type of probation than traditionally provided by AP&P may be warranted. A type of nominal probation with limited supervision is discussed subsequently.

Legislature Could Mandate Division Action. The Legislature could address the system overload indirectly by providing authority to the division to act. The best long-term solution to the offender supervision problems may be to establish a mechanism which enables the division to manage its own workload. However, the division needs statutory authority to limit services in order to implement such a mechanism. The current system places no limit on the services courts may demand from AP&P, yet there is a limit to AP&P's ability to provide services. By establishing a mechanism to limit services, the state can control which services are provided rather than providing poor supervision without accountability as has been done in the past. The tool the division should use for this is classification; however, the division must change the way classification is used. This is discussed in the next section.

The Division Should Act

The division should act in at least two areas. The first is that the division should change the way it uses offender classification to recognize its limited capacity to provide services. By using classification as an active rather than a passive tool, AP&P can help control its workload rather than being overwhelmed by it. However, the division needs statutory authority to enable it to limit the services it provides. The second is that the division should evaluate the effectiveness of programs.

Classification Should be Based on Program Capacity. AP&P's classification system is not responsive to its limited ability to provide services. Thus, there is no limit to the number and type of cases an agent may be assigned. At the present time many agents have more cases than they can effectively deal with, resulting in poor supervision without accountability from offenders or agents. We feel it would make more sense to limit the number of cases assigned to an agent to those that can be effectively dealt with according to accepted standards. Then agents can be held accountable to meet supervision standards. This can be accomplished by basing classification on program capacity and then limiting offender admissions to supervised probation accordingly. The remaining cases could be put on a nominal probation status.

Offenders on nominal probation status would not be assigned to any agent. Therefore, agents would not be burdened with the administrative responsibilities of cases they cannot properly supervise anyway and which

take away from the time they need to properly supervise other cases. Instead, the administrative needs of cases on nominal probation could be consolidated in a central administrative program staffed by clerks rather than agents. Basically, nominal supervision would track compliance with probation conditions but would not provide the watching or treatment referral functions of supervision.

One possibility is that nominal supervision could be handled by a computer system. One circuit court judge we spoke with advocated such a system. He stated that 80-85 percent of the cases he currently refers to AP&P would be better served by such a system. According to the judge, the main reason these cases are assigned to AP&P is so the court is notified if the offender is rearrested. However, the judge suspects that some agents do not always inform the court of rearrests because they want to avoid the extra paperwork or give the offender a "break." Agents confirmed that this does sometimes happen. A computer system could remove the agents' discretion by automatically informing the court.

The critical feature of nominal probation is that it may serve as an outlet from AP&P's supervised probation to prevent the system from becoming overloaded. While a nominal probation system could be administered by AP&P, it does not have to be. For example, AP&P could refer those offenders which it does not have the capacity to supervise back to the court of jurisdiction. Regardless of how such a system is administered, some service limitation is essential so that the system can be held accountable. Until the system is held accountable for its performance, it will never be able to hold offenders accountable for theirs.

Program Evaluation Needed. Program effectiveness needs to be evaluated by the division. They acknowledge that presently there are no program evaluations available to help guide decisions. As a result, the division lacks information needed to help improve programs, and the Legislature lacks information needed to help allocate resources. The division agrees that program results audits are needed to evaluate the effectiveness of programs and have taken initial steps to address this problem.

Recommendations

1. We recommend that the Legislature act to reduce the overload in the offender supervision system. To accomplish this we recommend that the Legislature take one or more of the following actions:
  - a. Increase AP&P's offender supervision budget substantially.
  - b. Eliminate or limit the length of supervision services for at least Class B and C misdemeanants.
  - c. Provide the Division of Corrections the authority to reduce services selectively.
  
2. We recommend that the Division of Corrections act to require that: (1) offenders are held accountable to comply with conditions of probation and/or parole; (2) agents are held accountable for meeting supervision standards; and (3) programs are held accountable for their effectiveness. To accomplish this we recommend that the division take the following actions:
  - a. Base classifications upon capacity to supervise so that agents are not assigned more cases than can be effectively supervised according to established standards.
  - b. Establish a nominal supervision program to provide limited supervision of those offenders which are not assigned to an agent. The main function of nominal supervision should be to track compliance with conditions.
  - c. Assess program results. This is essential so that the state can direct limited resources to where they have the greatest effect.

AGENCY RESPONSE

The Division of Corrections will present a written response to this report during the Judiciary Interim Study Committee meeting on January 4, 1984.