

115324

TABLE OF CONTENTS

COMMISSION PRIORITIES

Coordinating the Utah Criminal Justice System	1
Victim Rights	1
Coordination of Criminal Justice Information Systems	2
Adult Corrections Task Force	2
Sentencing and Release Guidelines	3
Juvenile Justice Task Force	3
Grand Jury Study Task Force	4
Justice of the Peace Study	4
Constable Task Force	5

GRANT FUNDS

Juvenile Justice and Delinquency Prevention Act (JJDP)	5
Justice Assistance Act (JAA)	6
Victims of Crime Act (VOCA)	7
Anti-Drug Abuse Act of 1986	7
Drug Free Schools and Communities Act	8

CRIME IN UTAH

What is Crime?	9
How do Felonies Differ From Misdemeanors?	9
What is a "Part 1 Index Offense" as reported by the Federal Bureau of Investigation	9
Crime Rate by County	11
Comparison with the Rest of the Nation	11

POPULATION TRENDS AND PROJECTIONS

Juvenile Justice	12
Criminal Justice	13

NCJRS

CHILD SEXUAL ABUSE

JAN 30 Rec'd

How Much Child Sexual Abuse Exists?	15
Trends in Reporting in Utah	16
Law Enforcement	16
Prosecution	16
Courts	17
Corrections and Child Sex Offenders	17
Board of Pardons Concerns	18

ACQUISITIONS

(over for Appendices)

The printing of this report and the collection of much of the data included was financed by a JS2 Grant from the Bureau of Justice Statistics.

APPENDICES

- Appendix A Orientation Handbook of the Utah Commission on Criminal and Juvenile Justice (Pink Pages)
- Appendix B Criminal Justice State Budgets (Blue Pages)
- Appendix C Abstracts of Criminal Justice Legislation That Passed the 1987 Legislature (Yellow Pages)
- Appendix D Constitutional Amendment Regarding Bail Reform and Pretrial Bail Act (White Pages)
- Appendix E Judicial Policy Regarding Victims (Green Pages)
- Appendix F Executive Summary of Corrections Policy Task Force (Brown Pages)
- Appendix G Recommendations of Select Committee on Mandatory Sentencing
-

COMMISSION PRIORITIES

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

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

During 1988 the Commission emphasized: (1) Coordinating the Criminal Justice System, (2) Victims' Rights, (3) Coordinating Criminal Justice Information Systems, (4) Sentencing and Release Guidelines, (5) Adult Corrections, (6) Juvenile Justice, (7) Justice of the Peace System, (8) The Constable System in the State, and (9) Revision of Grand Jury Provisions. The Commission also

administered five federal grant programs: (a) Juvenile Justice and Delinquency Prevention (JJDP); (b) Justice Assistance Act (JAA); (c) Victims of Crime Act (VOCA), (d) the Drug Free Schools and Communities Act and (e) the Anti-Drug Abuse Act. A description of each of these areas follows.

Coordinating the Utah Criminal Justice System

The Commission met monthly to discuss items of mutual concern. Innovations and budgets were reviewed centrally (see Appendix B for Budget Recommendations) as was proposed legislation. Where proposed changes effected other agencies, the Commission encouraged those agencies to comment on the impact and provide fiscal notes. The 1988 Legislature considered approximately 104 bills with criminal justice impact and passed 91 of them (see Appendix C).

Victim Rights

The Commission felt that the victim rights task force should continue to function. It was renamed the Governor's Council on Victims. Membership consists of: Senator LeRay McAllister; Judge Scott Daniels; Representative Michael Dmitrich; Aileen Clyde (Commission Chairman); Carlie Christensen (State Court Administrator's Office); Myron March (Dept. of Corrections); Gary Webster (Board of Pardons); Robert Parrish (Attorney General's Office); Lloyd Poelman (Kirton, McConkie, and Bushnell Law Firm); Sheriff Brandt Johnson (Davis County); Barbara Thompson (Salt Lake County Social Services); Marilyn Sandberg (State Advisory Council on Child Abuse and Neglect); Cheryl Hansen (Bear River Mental Health); Annie Bates (Citizen); Dan Davis (Office of Victim Reparations) and Stephen Mecham (Commission Executive Director). Staff support was provided by Rich Oldroyd, UCCJJ.

The Task Force worked with the Constitutional Revision Commission to amend the Utah Constitution to allow offenders who pose substantial danger to be refused bail. The resulting Bill, SJR3 passed the legislature and was passed by the citizens in the November of 1988 general elections. Enabling legislation (S.B. 4, Special Session) also passed. Both bill are shown in Appendix D.

Materials are being developed for criminal justice agencies use to help victims understand their role in the criminal justice process. The Task Force also sponsored a major conference/workshop: "When the Victim is a Child" The task force and Judicial Council also developed policies and procedures to resolve common problems that victims and witnesses experience in the process. (See Appendix E).

Coordination of Criminal Justice Information Systems

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

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

Plans to develop a simplified and common access program to all major state criminal justice information systems are being rejuvenated. This will be a great boon to law enforcement officers in the field as well as those conducting presentence and other investigations.

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

The Commission established a "warrants task force" to develop policy to guide the operation of the statewide warrants system. Members are: LeRoy Griffiths, Circuit Judge (Chairman); District Court Judges Phillip Eves and Frank Noel; Brent West, Circuit Court Judge; Dan Armstrong, Justice of the Peace; Richard Townsend, Bureau of Criminal Identification; Darcy Dixon, Salt Lake County Council of Governments; Rodney Young, Delta Chief of Police; Charles Shepherd, S.L. County Sheriff's Office; Paul Vance, 5th Circuit Court Administrator; Mike Phillips, Deputy Juvenile Court Administrator; Ron Gibson, Deputy State Court Administrator; and Larry Bench, Salt Lake County Attorney's Office.

Adult Corrections Task Force

The Commission established a Task Force consisting of Chairman, LeRoy Axland, Attorney at Law; John Nielsen, Commissioner of Public Safety; Ron Stromberg, Director of Youth Corrections; Dennis Fuchs, Circuit Court Judge; David Yocum, Salt Lake County Attorney; Robert Howell, Forensic Psychologist; Gary DeLand, Exec. Director of Corrections; Vicki Palacios, Board of Pardons; David Roth, District Court Judge; Cary Peterson, State Senator; Stanley Smedley, State Representative; Bart Wolthius, Board of Corrections, and Penny Brooke, College of Nursing.

The task force studied the Adult Correctional System and concluded that the dramatic increases in prison population were much more a result of

legislative and policy changes than changes in the population or criminal activity. The task force also became concerned that mandatory sentences were resulting in substantial inequity in the sentencing of offenders and that they were serving as an anchor to increase the length of time offenders would serve in prison for non-mandatory sentence crimes. The task force favored repealing the mandatory sentencing provisions. An executive summary of the study is included as Appendix F.

Select Committee on Mandatory Sentencing

The Commission became concerned at the strong differences of opinion regarding mandatory sentences as created in H.B. 209 as passed by the 1983 Legislature. Some of the concerns were: (1) The mandatory sentences took away discretion from the courts and Board of Pardons and vested it with prosecution where there was little visibility and few guidelines; (2) A low percentage of the cases were actually prosecuted and the majority of the cases prosecuted were resolved by plea bargaining; (3) The mandatory sentences were associated with five year intervals. Policies differed from area to area in the State and gross discrepancies resulted between similar cases; (4) The mandatory sentences were driving up the prison population substantially; and (5) there was some question if the traditional prison setting was the best place to house child sex offenders.

A select committee was established chaired by Robert Parrish of the Attorney General's Office with Judge Dennis Frederick of the Third District Court, Myron March from Corrections, Paul Boyden from the Board of Pardons, Karen Knight-Eagan from the University of Utah, and Frances Palacios of the Salt Lake County Legal Defenders' Office.

The select committee was designed to include members who represented very

diverse points of view. The members were charged to share concerns from their various perspective and then to see if they could reach concensus on recommendations to overcome objections and to improve sentencing practice in the situations currently associated with the mandatory sentences. They were asked to supply their recommendations to Professor Ronald Boyce for his critique. They were also asked to respond to his critique and then submit their recommendations to the Commission on Criminal and Juvenile Justice for the October, 1988 meeting. Recommendations are included as Appendix G.

Juvenile Justice Task Force

Considerable concern was expressed about the juvenile justice system because of the tremendous increases being experienced in the school age population of Utah and because the Commission had spent little time with juvenile justice issues.

As a result, a task force was established to study the juvenile justice system. The chairman was Judge William Thorne of the 5th Circuit Court. Other members were: Les Brown, Juvenile Court Judge; John McNamara, Juvenile Court Administrator; Afton Bradshaw, House of Representatives; Ron Stromberg, Director of Youth Corrections; Ric Oddone, Deputy Salt Lake County Attorney; Andy Valdez, Attorney at Law; Harold Trussel, Principal of West High School; Glen Lambert, Director of Odyssey House; Robert Coates, Professor of Social Work; LaMar Eyre, Director of Salt Lake County Youth Services; Jean Nielsen, Director of Family Services; Sid Groll, Cache County Sheriff; David Steele, State Senator; Alene Bentley, Intermountain Power Association; Jeff Galli, Warden of Young Adult Center, and Frank Pignanelli, House of Representatives.

The task force issued recommendations regarding such items as:

(1) Controlling the use of detention; (2) Managing the juvenile justice requirements of the rapidly increasing youthful population of the state; (3) dealing with the over-representation of minority races in the juvenile justice system; (4) improving juvenile justice information systems; and (5) developing recommendations for schools to deal with juvenile justice problems through the school administration. A major report was released in November of 1988.

Grand Jury Task Force

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

The task force recommended that the responsibility for a grand jury be shifted from individual counties and the district courts to the State and the newly appointed Court of Appeals. A grand jury would be summoned by the Presiding Judge of the Court of Appeals upon good cause shown by certificate from the Attorney General, a County Attorney, or a Special Prosecutor. In addition, every two years the Presiding Judge of the Court of Appeals shall designate three judges chosen from the Court of Appeals and the District Courts who shall hear in secret all persons claiming information which would justify the calling of a grand jury. The hearings may at the discretion of the panel be held anywhere in the State.

If the panel finds good cause to empanel a grand jury, the Presiding Judge shall order the summoning of jurors. Depending on the nature and extent of the charges the jury can be drawn from the

entire State or any specific judicial district.

The expenses of the grand jury shall be paid out of the general fund of the State unless its investigation is largely confined to a single county. A contingency fund shall be established for that purpose in the budget of the Court of Appeals.

Justice of the Peace Study

The Commission, together with the Court Administrator's Office established a task force to study the Justice of the Peace system. Members include: Dr. Ted Hebert (University of Utah Political Science Dept.), Chair; Justices of the Peace James Kilby, Thad Wasden, and Geraldine Christensen; Stanton Taylor (Circuit Judge); Tom Allen (State Auditor); Representative Nolan Karras; Senator Rex Black; Douglas Bodrero (Public Safety); Jim Davis (Mayor of South Salt Lake); Bill Hyde (Salt Lake County Attorney's Office); Ed Phillips (Millard County Sheriff) and Stephen Mecham, (Commission Executive Director). The task force was provided staff support by Ron Gibson, Deputy State Court Administrator and Rich Oldroyd, UCCJJ.

The task force recommended substantial changes to the Justice of the Peace System in Utah. Among the recommendations were: (1) that candidates for Justice of the Peace be screened by a selection committee prior to appointment by a county commission or mayor; (2) that the Office of the State Court Administrator provide mandatory training and require Justices of the Peace to demonstrate competence; (3) that jurisdictions choosing to establish justice courts provide minimum levels of service to the public and minimum levels of support to the appointed judge.

Constable Task Force

At the request of the 1988 Legislature, a task force was established to study the constable system in Utah and to make recommendations for improvement.

Members are: Senator Richard Tempest (Co-chair); Representative Ted Lewis (Co-chair); Paul Morris (West Valley City Attorney); Brent Morris (Utah County Commissioner); Anthony Fernald (Utah County Constable); John Sindt (State Constables Association); JoAnne Rigby (Justice of the Peace); Weldon Nichols (Sandy Circuit Court Clerk); Lynn Davis (Circuit Court Judge); Captain Jessee Preston (Weber County Sheriff's Office); Niles Staley (Woods Cross Chief of Police); Scott Heinecke (Private Process Server); and Sue Stowers (Salt Lake County Constable). Staff to the task force was Bill Flink (Peace Officer Standards and Training); Brent Erickson and Rich Oldroyd (UCCJJ).

The task force recommended that legislation be enacted that would remove constables from popular elections and make them appointees of the county commissions. Prior to appointment, a candidate would need to qualify for Peace Officer Standards and Training certification and be carefully screened. Appointed constables would then be allowed to bid as independent contractors for process service in the various jurisdictions within the county. The county commission making the appointment would have responsibility to supervise the constables and deputies that are appointed. Peace Officers Standards and Training should develop a curriculum designed to more specifically meet the needs of constables.

The task force also recommended that private process servers be controlled and regulated.

GRANT FUNDS

Juvenile Justice and Delinquency Prevention Act (JJDP)

Utah Board of Juvenile Justice and Delinquency Prevention

Through the Juvenile Justice and Delinquency Prevention Act (JJDP), participating states receive federal formula (block) grant funds based on the number of youth under 18 years of age, to support and develop projects and activities for the prevention of juvenile delinquency; for the deinstitutionalization, diversion, care and treatment of juvenile offenders; and for the improvement of the juvenile justice/corrections system.

The JJDP Act requires the appointment by the Governor of an advisory committee or a supervisory board which is to oversee the use of all JJDP state formula funds as well as to review, comment on, and approve all individual state Juvenile Justice and Delinquency Prevention grant applications. The Board may also be given a role in monitoring the State's compliance with the mandates of the Act and review of the activities and accomplishments of funded projects.

The Utah Board of Juvenile Justice and Delinquency Prevention has been an active participant in overseeing the implementation of the JJDP act in Utah since 1978. The Board is presently composed of 22 individuals representing private agencies, governmental units and citizens who have an interest in children and who often find themselves in contact with some part of the juvenile justice/corrections system. Agencies and interests represented include the Juvenile Court, Youth Corrections, law-enforcement, Division of Family Services, private providers serving youth, youth and family service agencies, local government, private citizens, and state youth advocacy organizations.

Administrative and staff support for the Board and JJDP Program is provided by the Utah State Commission on Criminal and Juvenile Justice (UCCJJ). UCCJJ also serves as the state's pass-through agency for subgrantees to receive JJDP funds.

Utah received awards of \$409,000 for FY'87 under this Act, which brings the total received in formula grants funds since the State began participation in 1978 to \$3,690,000. The State is eligible to apply for \$376,000 of federal FY'88 funds.

During the past year, the Utah JJDP Program has worked with 21 projects across the State. The needs of Utah youth, particularly in regards to the juvenile justice system, remain great. While the JJDP Act funds cannot completely meet those needs, the funds do provide for some critically needed services and have served as a catalyst for the development of innovative approaches in serving youth and in improving the juvenile justice system.

Justice Assistance Act (JAA)

The Justice Assistance Act (JAA) was designed to assist states and local governments in carrying out programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders.

Funding from this act was authorized for three federal fiscal years (1985, 86, 87). Congress chose not to reauthorize this program for 1988, but continued some of its programs in the Anti-Drug Act. Funding for the 1985 funds expired in March of 1988 while funding for the 1986 and 1987 grants will expire September 30, 1988 and September 30, 1989 respectively.

The total funding available during FFY 1985 was \$538,000. A total of 23 awards were made. The awards ranged from \$2,700 to \$70,000 and funded projects in crime prevention, property crime, drug trafficking, victim/witness,

information systems, and court delay reduction. While all of these projects were considered successful the projects in property crime, information systems, drug trafficking, and court delay reduction were most successful. For example the two property crime programs were instrumental in recovering stolen property in excess of \$500,000. With respect to the drug trafficking program at the Salt Lake International Airport 19 individuals were sentenced to prison and a total of \$131,000 in cash in \$400,000 in illegal drugs were seized.

The information system projects enabled criminal justice agencies throughout the State to enhance and coordinate criminal justice information in such areas as warrants, criminal histories, investigative files, dispatch, and uniform crime reports. In some projects efforts were made to connect the various criminal justice agencies such as the courts, corrections, and law enforcement.

The court delay project funded in the State Court Administrator's Office covered a number of judicial issues with special emphasis placed on determining the appropriate organizational structure to most effectively administer justice. The project concluded that the State District Court should be a State operated and State funded court. The legislature enacted the required legislation in 1988.

The 1986 and 1987 JAA grant funds were reduced to \$478,000 and \$400,000 respectively. In addition to continuing programs from 1985 the Commission also provided funding to assist in the prosecution of white collar crime in the Attorney Generals Office. In 1986 a total of 24 projects were funded while a total of seven projects have been funded from the 1987 funds. Successful results from these projects will be reported in the Commission's 1989 annual report.

Victims of Crime Act (VOCA)

The Victims of Crime Act (VOCA) was designed to stimulate services for victims of crime. Funding for the act came from a surcharge on fines for federal crimes fines, not from taxes. The Utah Commission on Criminal and Juvenile Justice was identified by the Governor as the agency to administer the federal funds.

Victims of Crime Act funds first became available in Utah in 1986. During that year awards totaling \$348,000 were made to nine agencies. Non-profit agencies received \$215,739 or approximately 2/3 of the funding. During the six month period April to October 1987, 1,217 victims received 7,160 hours of professional service. VOCA funds targeted three priority areas: (1) Sexual Assault, (2) Spouse Abuse, and (3) Child Abuse. Approximately 93 percent of the victims receiving services fell into one of these groups. They received 84 percent of the total professional hours rendered.

In 1987 VOCA funding for Utah was reduced to \$278,000. Awards were made to thirteen agencies. Again, the majority of awards were made to private non-profit organizations.

In 1988 VOCA funding for Utah increased to \$302,000. Each year the Commission has requested proposals for programs to utilize the funds, evaluated the proposals, trimmed budgets, and then made awards. In 1988 proposals were received from 20 agencies totalling \$660,000. Awards were made to 13 agencies.

VOCA funds have certainly stimulated a substantial increase in both the quantity and quality of services available for victims of crime. The Commission strategy in evaluating proposals and awarding funds has attempted to encourage networking and cooperation between service providers in various geographic areas. VOCA funding

complements other efforts in substantially improving the plight of victims as they deal with the criminal justice system.

Utah also received a \$50,000 grant to pass through to Indian Reservations to improve victim services there.

The Anti-Drug Abuse Act of 1986

The Anti-Drug Abuse Act of 1986 provided Utah with \$1.5 million to use for apprehension, prosecution, adjudication, detention and rehabilitation, eradication, treatment, and major drug offender programs. The 1988 allocation is reduced to \$688,000.

Applications for the 1986 funds were received from 29 agencies totalling over \$3.0 million representing nearly all of Utah's local law enforcement agencies and most state criminal justice agencies. Twenty-one of the applications were funded, including 13 county based apprehension programs, one local prosecution program, one local asset forfeiture program, and state programs for intensive supervision of drug offenders, drug diversion, prosecutor training, rural air smuggling, crime lab enhancements, and a statewide narcotics intelligence system.

Although most programs are just getting underway, several have already made felony arrests and large asset and drug seizures. The funding allowed law enforcement agencies to increase their number of full time narcotics officers by about 40%. The increases are especially helpful to smaller jurisdictions who in the past have not conducted narcotics operations.

Local apprehension programs are primarily focused on the street level drug dealer, while state programs attempt to interdict the supply of drugs coming into Utah and to provide an infrastructure of assistance to the local effort (i.e. training, crime lab improvements, etc.).

Drug Free Schools and Communities Act of
1986 - Governor's Funds

The "Drug Free Schools & Communities Act" was enacted as part of the "Anti-Drug Abuse Act of 1986. This legislation provided additional resources to reinforce and coordinate the efforts of concerned parents, state and local officials, and community organizations to eliminate the use of drugs by the nation's youth. It provided federal funds to states for programs of drug abuse education and prevention. The majority (70%) of the funds are earmarked for use by the state educational agency and the rest (30%) for use by the governor.

Of the governor's funds, no more than 50 percent could be used for awards to local governments and non-profit agencies for local drug and alcohol abuse education/prevention programs. At least 50 percent of the governor's funds must be used for awards to local governments and non-profit agencies for innovative, community based programs for "high-risk" youth.

In March, 1987, the Governor of Utah accepted these funds and designated the Utah Commission on Criminal and Juvenile Justice (UCCJJ) to serve as the State's administrative and pass-through agency. Subgrantees would make application to UCCJJ for funding.

For federal FY'87 the Governor's share of the funds from the Act was \$426,346. By direction of a State advisory committee, \$300,000 was made available for "high-risk" programs and \$126,346 for "general population" programs.

During that first year 41 applications for "high-risk" projects were received by UCCJJ totalling \$1,793,430. After review eight projects were funded. In the "general population" area 24 applications were received with a total requested amount of \$327,647. Thirteen projects were funded.

Starting with second year funding in July of 1988, responsibility to administer the Governor's funds was transferred from the Utah Commission on Criminal and Juvenile Justice to the State Division of Substance Abuse.

CRIME IN UTAH

What is Crime?

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

How do Felonies Differ From Misdemeanors?

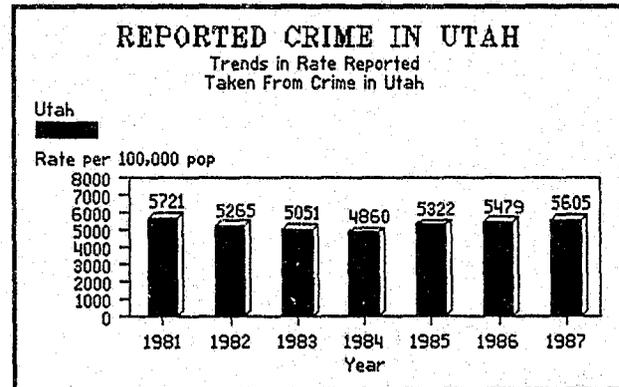
A felony is an offense for which an offender can be sentenced to more than one year in prison. A misdemeanor is an offense for which an offender can be sentenced to a year or less (normally in a county jail).

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

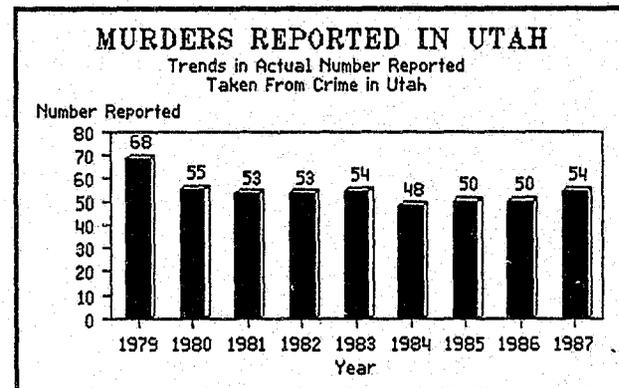
To provide nation-wide uniformity in reporting crime, standardized definitions were adopted for the following crime categories: Murder, Manslaughter, Forcible Rape, Robbery, Burglary, Larceny (Theft), Motor Vehicle Theft, and Arson. To make it possible to compare crime among jurisdictions and over time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

During the past few years, the crime rate in Utah declined and then increased slightly. The Dept. of Public Safety started publishing Crime in Utah in 1978.

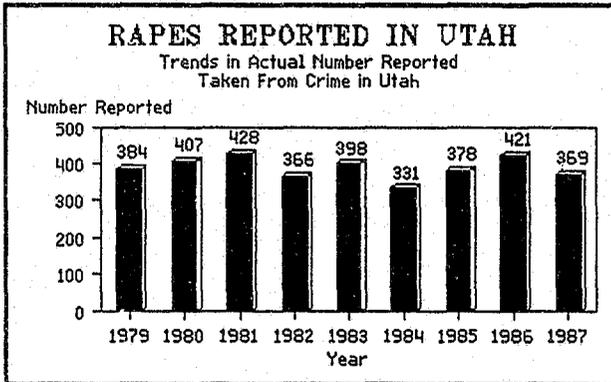
Trends are listed from 1978 to 1987 although graphs only include information from 1979 to 1987 so as not to crowd the information.



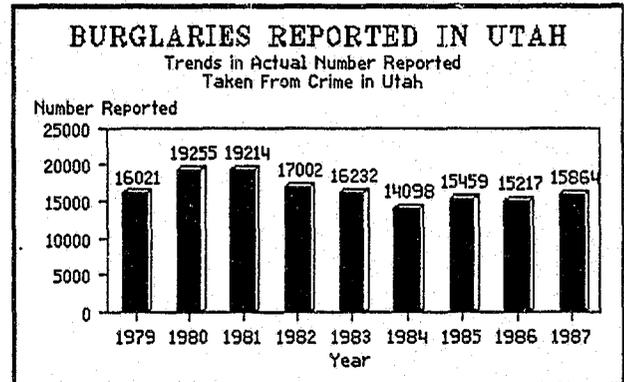
Murder is the unlawful, willful (non-negligent) killing of another person. The number of murders in Utah has varied between 48 and 55 each year since 1979 when 68 murders were reported.



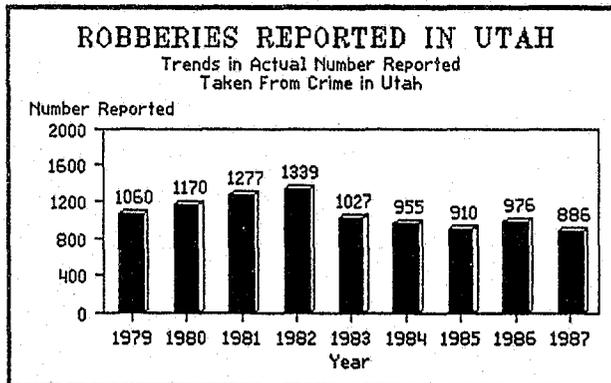
Rape is sexual intercourse with another person, not the actor's spouse, without that person's consent. The number of rapes reported in Utah has varied from a low of 293 in 1978 to a high of 428 in 1981.



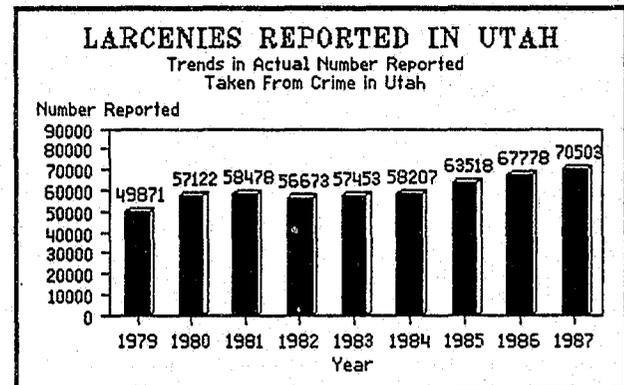
Burglary is the unlawful entry of any fixed structure, vehicle, or vessel used for overnight accommodation, industry, or business, with or without force, with the intent to commit a felony, theft or assault. The number of burglaries reported has varied from a low of 14,098 in 1984 to a high of 19,255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



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



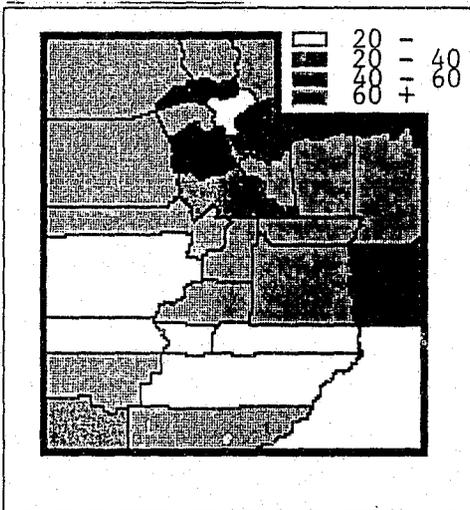
Larceny/Theft is the unauthorized control over the property of another with the intent to permanently deprive the owner of the property. Larceny/theft is by far the most frequently reported of the part 1 index offenses. The range varied from a low of 49,871 reported in 1978 to a high of 70,503 reported in 1987.



Crime Rate by County

The crime rate varies considerably by county and also varies from one part of a city to another. Generally crime is higher in urban and recreational areas. The map below portrays 1987 reported crime rates.

Crime Rate By County
Rate per 1,000 Population

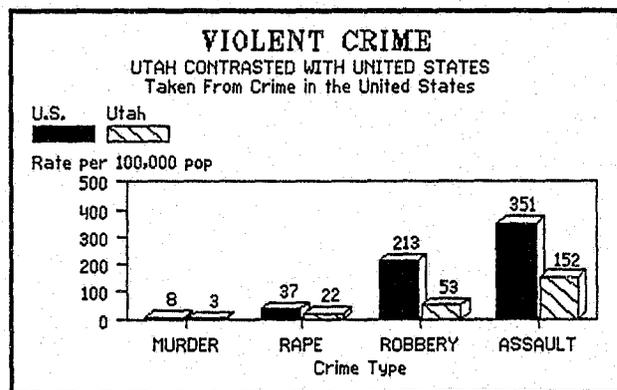


Comparison with the rest of the Nation.

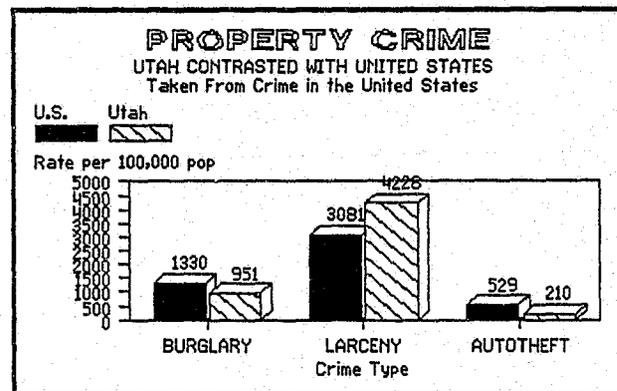
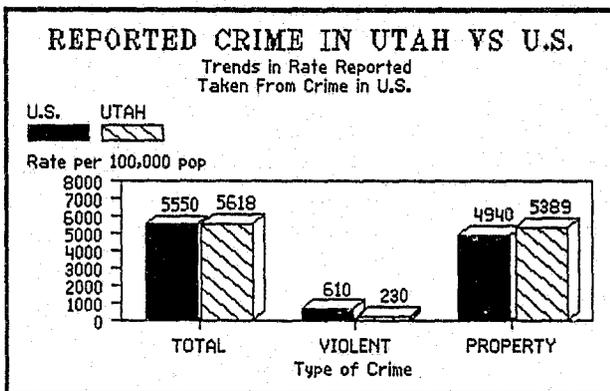
How does reported crime in Utah compare with reported crime in the United States as a whole? According to Crime in the United States:1987, Utah's overall crime rate (5,478 per 100,000 pop.) is just slightly lower than the national average (5,480 per 100,000 pop.).

Although Utah has a near average total crime rate, its violent crime rate is nearly 60 percent lower than the national average.

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



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



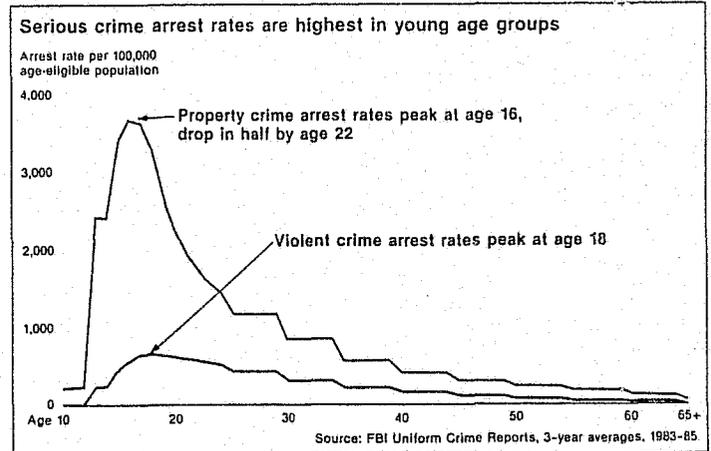
POPULATION TRENDS AND PROJECTIONS

Utah has a population of approximately 1.7 million residents. Through the 1970's and early 1980's Utah was one of the fastest growing states in the nation. It is unique among the states in that much of the increase in population resulted from a high birth rate in addition to some in-migration.

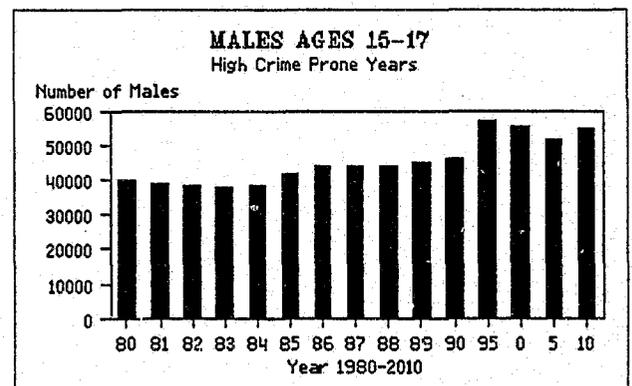
Utah has the highest birthrate in the nation. This has major consequence at this time because of a phenomenon known as the post world war two baby boom. The war delayed many marriages and separated couples. After the war there was a heavy concentration of children born in the space of about a six year period. Approximately every 20 years there is an echo of that baby boom as the baby boomers have children. Since most of the United States has a low birthrate, the echo is reduced nationally, but Utah with its high birth rate magnifies the echo. Utah currently has the lowest median age of any state (24.2 years in contrast to the national median of 30.0 years. Utah's school age population has increased approximately 30 percent since 1980.

Juvenile Justice

This growth in youthful population is significant to criminal and juvenile justice since crime is very much a phenomenon of youth. More people are arrested for both property and violent crimes at age 17 than any other age with ages 15, 16, and 18 fairly close behind. Property crime is particularly age-related, with males accounting for over 80 percent of arrests. (See the next figure)



This is of concern since the number of youth in the high crime years will continue to increase rapidly until about 1995 as shown in the next figure.



Fortunately Utah has comparatively good young people as evidenced by the low crime rates reported previously in this report.

The changing population characteristics will impact the juvenile justice system and then the criminal justice system. However, experience has demonstrated that policy changes usually have a much greater impact on the number of offenders incarcerated or supervised.

In the late 1960's there were over 400 juveniles incarcerated in the State Industrial School. Decisions to deinstitutionalize status offenders and neglect cases reduced the population

substantially in the 1970's. In the early 1980's the decision was made to only incarcerate those who posed a clear threat to the community and to provide a secure lockup facility for them. The old industrial school (Youth Development Center) was converted to an educational center and two small (30 bed) secure facilities were built. Subsequently 10 additional beds have been added. Policy changes have reduced the incarcerated juvenile population by about 80 percent even though the youthful population has increased greatly.

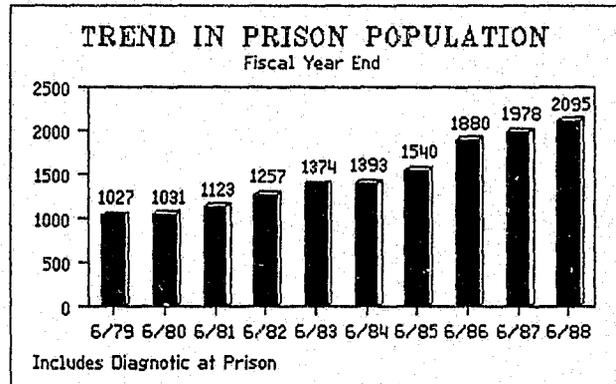
The philosophy of juvenile justice is in constant debate. Utah is recognized as a national leader in juvenile justice because of its success in reducing confinement. Still there are some who would prefer much more incarceration.

Criminal Justice

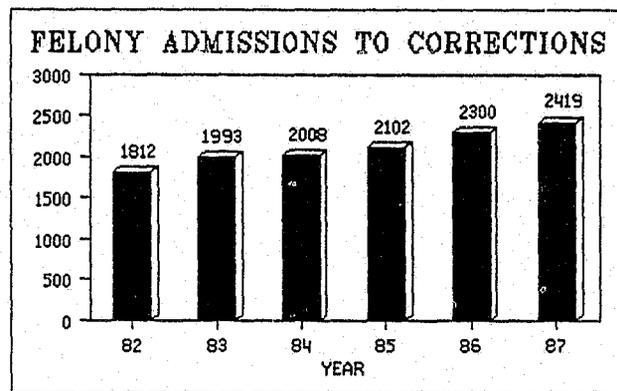
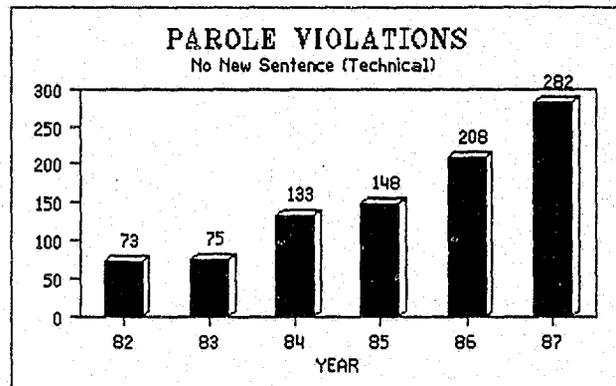
The Utah criminal justice system has had a different cycle. During the late 1970's and early 1980's there was great effort expended to create programs outside of the prison setting for adult offenders. Halfway houses were established and probation and parole resources were strengthened. Then the philosophy shifted and these resources were used more conservatively while incarceration was emphasized. The charts below show the trends in corrections.

The number of felons being sentenced to correctional supervision has shown a steady increase.

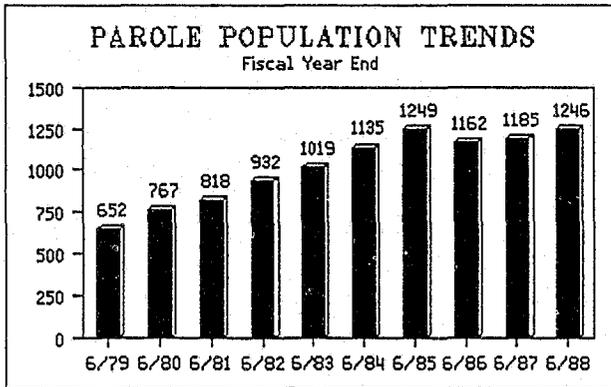
The prison population has increased dramatically.



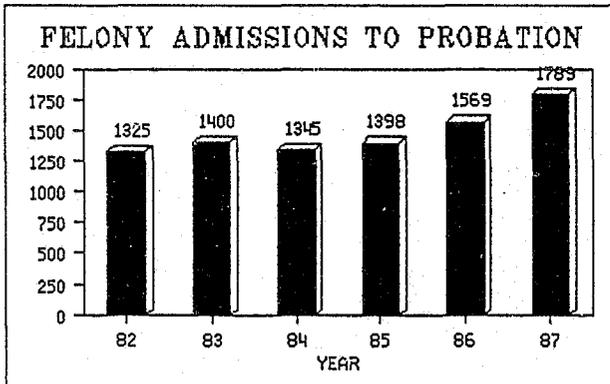
Perhaps the greatest change of all has been in enforcing the conditions of probation and particularly parole. The number of parole violations for technical reasons (no new sentence) have increased dramatically.



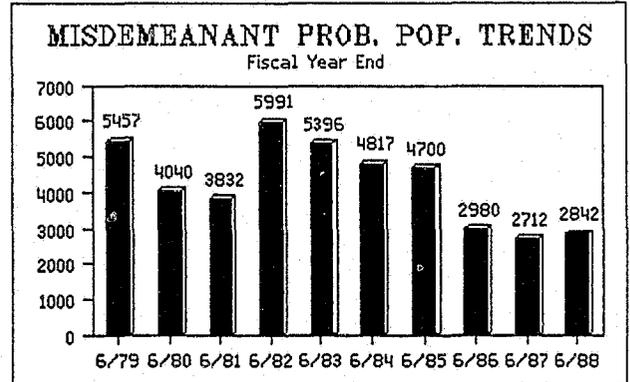
The parole population has increased, but not as rapidly as the prison population both because of the high revocation rate and because time served at the prison has increased substantially.



Felony probation has continued to increase.



Misdemeanant probation has declined as the decision was made to concentrate services on felons and those sentenced by the district courts. A major portion of the misdemeanants shown in the next chart are class A misdemeanors that were originally charged with felonies in the district courts.



In 1988 the rate of growth in the prison population slowed substantially. This may suggest that the many changes associated with the dramatic shift from community corrections to an emphasis on incarceration are starting to stabilize. Criminal justice is a volatile area and it certainly will not be long before other changes in philosophy and policy will have other major impacts on criminal justice populations.

CHILD SEXUAL ABUSE

Concern over child abuse has become a major concern. In 1974 the United States Congress passed the Child Abuse and Neglect Prevention Act. National concern regarding the seriousness of child sexual abuse was amplified in Utah in the early 1980's and the community was terrified as children were reported missing and then later found brutally murdered and sexually abused.

In 1983 the Utah legislature passed what many felt was the most progressive legislation in the nation regarding child sexual abuse. It created new definitions of crimes against children and increased the penalties associated with related crimes, it expanded the statute of limitations for prosecuting these crimes, made special provision for children to provide testimony, and enacted lengthy mandatory sentences for those convicted of offenses against children.

The following new crimes were created:

Child Kidnapping	1st Deg Mandatory
Rape of a Child	1st Deg Mandatory
Object Rape of Child	1st Deg Mandatory
Sodomy of Child	1st Deg Mandatory
Sexual Abuse-Child*	1st Deg Mandatory
Habitual Sex Offender	1st Deg Mandatory
Object Rape	1st Degree
Lewdness Involv. Child	Class A

* no longer mandatory

About the same time laws were enacted that made it a crime not to report child sexual abuse.

How Much Child Sexual Abuse Exists?

In recent years, widespread media publicity about child sexual abuse and incest has prompted researchers to investigate the actual incidence of those crimes. Table 1 displays the findings of six such studies, all based on retrospective

self-reports of childhood experiences. Although these studies are not strictly comparable due to variations in definitions and research methodology, their findings suggest that anywhere from 12 to 38 percent of all women, and from three to 15 percent of men are subjected to some form of sexual abuse in childhood. (from *When the Victim is a Child: Issues for Judges and Prosecutors*, Dept. of Justice, 1985)

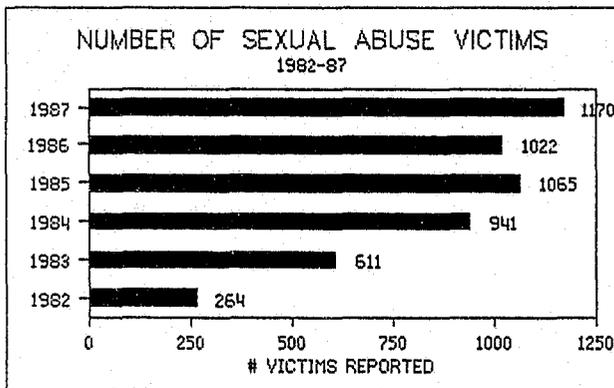
Table 1
Estimated Incidence of
Child Sexual Abuse

Kinsey (1953)	24% of Women (Preadol)
Finkelhor (1979)	19% of Women 9% of Men through age 16
Kercher (1980)	12% of Women 3% of Men as children
Finkelhor (1984)	15% of Women 5% of Men through age 16
Russell (1983)	38% of Women through age 18
Committee on Sexual Offenses Against Children & Youth, Canada (1984)	27% of Women 15% of Men before age 16

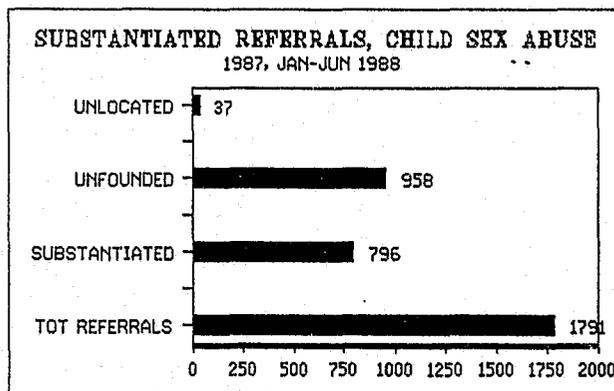
Trends in Reporting in Utah

Family Services

Concern over child abuse resulted in the establishment of a child abuse registry to be kept by the Utah Division of Family Services. The graph below shows the number of cases entered into the registry each year.



The Division of Family Services is required to investigate each report and if any evidence is found to substantiate the report, refer it to law enforcement for criminal action. As shown below, approximately 44 percent of the reports are substantiated and referred to law enforcement.



The law as it reads now makes it a crime not to report cases of child sexual abuse within 24 hours. If the crime is

reported to law enforcement, the law enforcement agency is mandated to immediately report the offense to Family Services for inclusion. Unfortunately, some cases of child sexual abuse are being reported to law enforcement and are not being included in the child abuse registry. Of those cases tried in District Court, approximately 60 percent appeared on the child abuse registry.

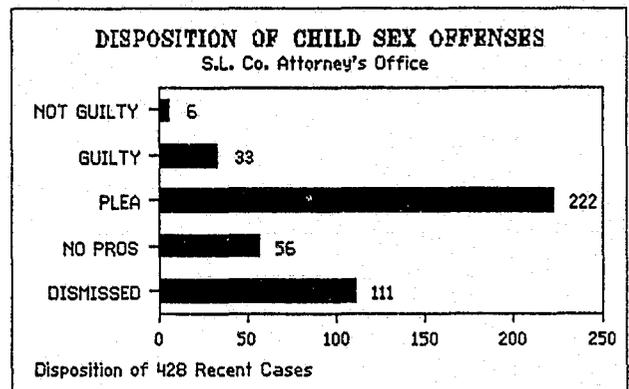
It seems likely that many police agencies and personnel are not aware of the requirement that they report to the Division of Family Services. Family Services is working with law enforcement to gradually improve the situation.

Law Enforcement

Since there are so many law enforcement agencies, no attempt was made at this time to determine how many cases of child sexual abuse were reported to them. The Department of Public Safety and Uniform Crime Reports do not currently differentiate between crimes against children and adults.

Prosecution

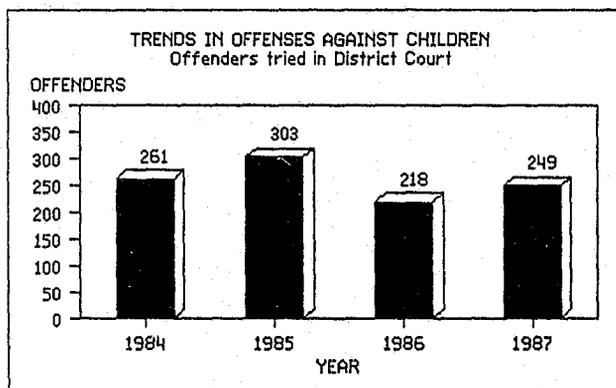
Data were examined from the Salt Lake County Attorney's records. The data reflect the difficulty of prosecuting these cases. Many cases are dismissed, not prosecuted, or plea bargained.



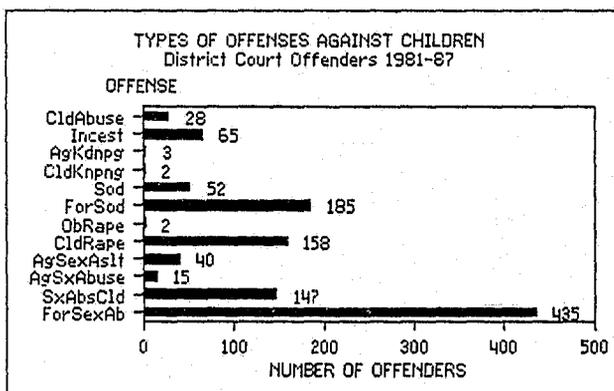
Corrections and Child Sex Offenders

Courts

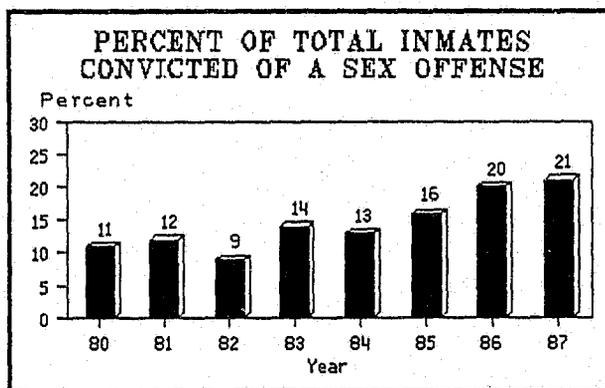
The Office of the State Court Administrator keeps records on all of the cases filed in the District Courts. The next graph shows the number of offenders charged with sexual abuses against children.



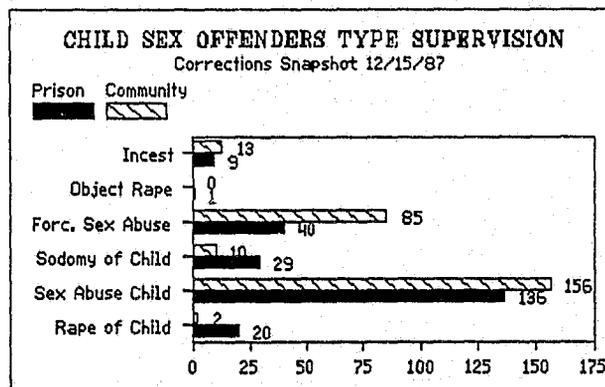
It is significant to note that most of the offenders are ultimately charged with forcible sexual abuse which does not carry a mandatory sentence. The graph below shows the number of offenders charged with each specific offense. Unfortunately, forcible sexual abuse is also a crime that is committed against adults, so it is not appropriate to assume that all of these offenses are sex crimes against children.



Corrections has experienced a dramatic increase in the number of sex offenders it supervises in recent years. These offenders have modified the characteristics of the population at the state prison. The graph below shows the increase in the percentage of inmates who are convicted of sex offenses.



In spite of the mandatory sentencing laws, not all of the offenders convicted of child sex offenses are in prison. The next graph shows a 'snapshot' of correctional supervision being provided to child sex offenders as of Aug. 1, 1987.



There are approximately 400 sex offenders who are sentenced as prison inmates. Approximately 350 are housed at the prison, 20 in residential centers, and 25 in county jails. An additional 60 sex offenders reside in community residential

centers as a condition of probation or parole.

Three community correctional centers specialize in working with sex offenders. The key factors for an offender to be placed in a Community Center is for the offender to acknowledge the offense and to be willing to work hard and participate in the therapy program of the center. It must be kept in mind that rigorous screening is conducted to select the offenders that are the best risk to participate in community programs. Caution must be exercised in generalizing the treatment results with these screened offenders to the entire population of child sex offenders under correctional supervision.

The Fremont Center in Salt Lake specializes in incest cases. The average length of stay is approximately 16 months with approximately 1 year of aftercare, although length of stay differs substantially from one offender to another. Center staff provide custody and support services while intensive therapy is provided by a private agency under contract. Each offender is required to attend group therapy, individual therapy and life skill classes. Offenders typically work in the community during the day and attend therapy and classes at night. Sixty three offenders have completed the program, 16 have been removed (most to the prison) for various reasons prior to completion, and 36 are currently in the residential program. The program has been in place for about three years. It has been very unusual for offenders involved in the program to reoffend, so staff feel the program is very effective.

The Bonneville Center, also in Salt Lake, specializes in non-incest sex offenses. Center staff provide therapy as well as custody and support services. Although the therapy and education programs are provided by state employees, the general approach is quite similar to the Fremont Center. Thirty eight offenders

have successfully completed the residential phase of the program, 25 have been removed (most to the prison) for various reasons, and 34 are currently in the center. Like the Fremont Center, few serious incidents have been reported involving the sex offenders and the rate of reoffending is extremely low.

The Correctional Center in Ogden is contracting with mental health to provide a treatment program for sex offenders housed in that center. This program is newer, but generally parallels the two described above.

There are also offenders on probation who are being treated by private therapists. This also has proven quite effective, particularly for incest offenders, if offenders are carefully screened and appropriate safeguards are in place and if the therapist is skilled.

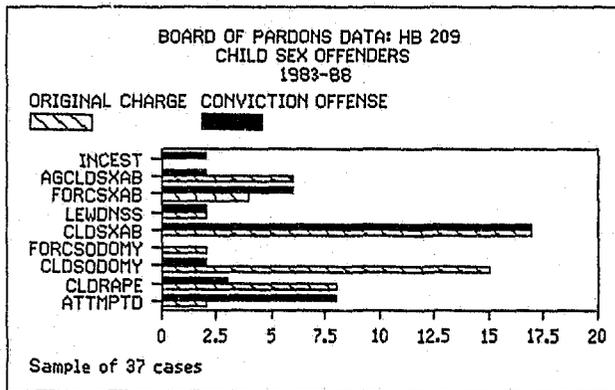
On short notice, it is difficult to accurately attribute costs to the residential community programs. The costs of building and staffing the facilities are lower than the prison. Secondary costs are also lower because the offenders are working, paying taxes, and in many instances supporting their families. Therapy costs are higher in the centers than in the prison, because the therapy is much more intense. The length of stay in the centers is approximately 15 months with a one year outpatient followup. The length of stay in the prison for these offenders is undoubtedly well over five years.

Judges seem to like the community programs. The reported effectiveness suggests that careful evaluation should be conducted and that more child sexual offenders could likely benefit from participating in such programs.

BOARD OF PARDONS

Recently the Board of Pardons started paying particular attention to cases

it heard that might have been sentenced as mandatory minimums. Since the mandatory sentencing law does not allow the Board flexibility, the Board has been concerned that substantial inequity exists because of plea bargaining and different sentencing practices across the State. The chart below shows the original charge contrasted with the conviction charge on 37 sample cases.



Functionally, the mandatory sentencing provisions of H.B. 209 have transferred discretion in sentencing from judges and the Board of Pardons to prosecutors. Both judges and the Board of Pardons have expressed concern that tremendous inequity has been introduced in individual cases by the mandatory sentences.

Other questions that need to be considered concern the length of time that is most appropriate for child sex offenders to be locked up, or even if the traditional prison lock up is the most effective and least costly sound alternative to deal with these offenders.

APPENDIX A

The Utah Commission on Criminal and Juvenile Justice Orientation Handbook 1988

Introduction

The Commission on Criminal and Juvenile Justice was created by the Utah State Legislature during its 1983 General Session. The impetus for the Commission emanated from "The Governor's Conference on Criminal Justice" held in Ogden, Utah in October 1982. In preparation for the conference, conference planners sent a questionnaire to 1,000 criminal justice professionals requesting them to identify criminal justice issues that should be addressed. Approximately 400 professionals returned the survey. Conference planners synthesized and reduced the number of issues to 31. Participants at the conference ranked the issues in order of priority. Coordination of the criminal justice system was at the top of the list by a significant margin. Pursuant to that virtual mandate, conferees drafted legislation creating the Commission on Criminal and Juvenile Justice (hereinafter referred to as "Commission"), within the governor's office. That legislation was enacted in Utah Code Annotated 63-25.

Purpose of the Commission

The principal purpose for creating the Commission was to promote coordination and broad philosophical agreement throughout the state and local criminal justice system. Conference participants recognized, however, that it was impractical and constitutionally infeasible to establish centralized administration over the entire justice system. Indeed, they agreed that some of the decentralization was healthy and provided effective checks and balances. When the legislature created the Commission, it gave no statutory authority to implement Commission decisions. That was left to the persuasive powers of Commission members.

The Commission offers a forum for criminal justice policymakers to discuss critical issues and problems. Through the Commission, the separate and independent criminal justice agencies at all levels of government become aware of the activities of the other component parts of the system.

The Commission also provides a central body to review criminal justice legislation and state agency budgets to ensure appropriate allocation of

scarce resources and establishment of proper priorities. As part of the governor's office, the Commission advises the governor on criminal and juvenile justice issues and informs the legislature, the judiciary, local government, and the general public concerning those matters. In its advisory capacity, the Commission may take positions different from that of the governor, the legislature, or the judiciary.

Finally, the Commission statute specifically requires that the Commission develop, monitor, and evaluate sentencing and release guidelines for adults and juveniles, and project demands for secure bed space.

Membership of the Commission

The Commission is comprised of policymakers across the criminal justice spectrum from the time of arrest to parole. Utah Code Annotated 63-25-2 requires the following membership:

1. The chief justice of the supreme court or a judge or justice designated by the chief justice;
2. The state court or juvenile court administrator designated by the chief justice;
3. The presiding judge of the board of juvenile court judges, or a member of the board designated by the presiding judge;
4. The executive director of the Department of Corrections;
5. The director of the Division of Youth Corrections;
6. The commissioner of the Department of Public Safety;
7. The attorney general;
8. A representative of the statewide association of prosecutors designated by the association's president;
9. The president of the chief of police association or a chief of police designated by the association's president;
10. The president of the sheriff's association or a sheriff designated by the association's president;
11. The chairman of the Board of Pardons or a member designated by the chairman;
12. Six members appointed by the governor;

- a. One attorney appointed from a list of three nominees submitted by the Utah State Bar;
- b. One state senator;
- c. One state representative;
- d. One representative of public education;
- e. One citizen representative;
- f. One representative from a public or private organization that offers or provides rehabilitative treatment to juveniles or adults convicted of crime.

Executive Committee of the Commission

Utah Code Annotated 63-25-5 requires that the Commission elect a chairperson annually. That is usually accomplished during the May meeting of the Commission by a simple majority vote of those in attendance. The chairperson is responsible for calling and conducting Commission meetings.

Commission by-laws call for the election of a vice-chairperson and an executive committee of five Commission members, including the chairperson and vice-chairperson. The executive committee meets before Commission meetings to set the meeting agenda. The executive committee is empowered to direct the activities of Commission staff and to make emergency decisions affecting the Commission. All executive committee decisions are subject to review by the entire Commission at the next regular Commission meeting.

Role of the Commission

Without statutory implementation power, the Commission has developed a twofold role to effect its recommendations. First, the Commission actively addresses certain issues that no single agency is able to resolve. These projects normally demand the concerted, cooperative effort of the members of the Commission. Examples include the Sentencing and Release Guidelines Task Force, the Governor's Council on Victims, and the Information Systems Task Force. Even greater cooperation will be necessary with respect to information systems to keep pace with developing technology and to avoid duplication of information among agencies. The Commission, or a task force

created by the Commission, frequently makes legislative recommendations based on its study to correct problems within the system. Occasionally, the Commission holds public hearings on these issues to receive input and to educate the public. The Commission selects and sets the priorities of its projects. That is normally accomplished during an annual Commission retreat. The legislature also assigns studies to the Commission to be completed for a subsequent legislative session.

Second, the Commission invites discussion at its meetings to become educated on pressing issues. Generally in these cases, there is no time for a full-blown study. The Commission addresses many issues summarily just before and during the general legislative session. If the Commission takes a position, it is expressed through the chairperson or other member of the Commission to the appropriate legislative committee, legislators, or interested parties. The Commission can opt to take no position on an issue.

The chairperson of the Commission most often acts as the Commission spokesperson. There are occasions, however, when particular issues call for the leadership of other members. Issues with high Commission priority often require the efforts of all Commission members to ensure success.

The Commission statute only requires that the Commission meet bi-monthly. Usually, a pressing agenda necessitates that the Commission meet at least once a month on the third Thursday of the month.

Role of Commission Task Forces

The Commission frequently accomplishes its duties by establishing task forces to study perplexing issues on the Commission priority list. These issues can require participation by non-Commission members and significant time to appropriately resolve them. As an appendage of the Commission, Commission members select or approve the membership of each task force. The Commission drafts a mission statement for every task force. The task forces, through Commission staff, provide periodic updates at Commission meetings. At the completion of their work, the task forces report their findings and conclusions to the Commission. The Commission votes to approve and support the proposals, but it may decide to oppose any or all task force recommendations. In the event that the Commission opposes task force

recommendations, the Commission may request the task force to reconvene on the issue, or it may abolish the task force.

Role of Commission Executive Director

The governor, with the advice and consent of the Senate, appoints the executive director of the Commission. The director directs the activities of the Commission staff pursuant to Commission directives and serves as staff to the governor principally on criminal justice issues. The Department of Public Safety, the Department of Corrections, the Division of Youth Corrections, the Board of Pardons, the Courts, and the Attorney General are all within the director's staff assignment. The director performs constituent services for the governor in each of those areas. The governor may give the director additional staff assignments. The director represents both the Commission and the governor in that post.

Role of Commission Staff

The Commission staff executes the duties of the Commission by preliminarily establishing task forces for Commission approval, staffing those task forces, and following issues to be brought before the Commission. The Research Director provides criminal and juvenile data for consideration by the Commission and its associated task forces. The Administrative Officer, who works for the Office of Planning and Budget as well as for the Commission, prepares the criminal justice portion of the governor's annual budget with the exception of the Department of Public Safety. The Commission reviews each of the individual state agency budgets and makes recommendations where necessary or appropriate. The Programmer Analyst is primarily responsible for the development of data systems that can be shared statewide by state criminal justice agencies, local law enforcement, and the courts. A staff member staffs the federal Juvenile Justice and Delinquency Prevention program. The Commission staff is also responsible for the administration of federal grant money through the Justice Assistance Act, the Victims of Crime Act, and the Anti-Drug Abuse Act. Finally, the Commission staff prepares and executes extraditions for the governor.

A P P E N D I X B

CRIMINAL JUSTICE AGENCY

BUDGETS

CORRECTIONS

Major Legislation

The 1988 legislature passed several bills which impact adult and youth corrections. House Bill 213, Criminal Execution Amendments, changes the procedures for carrying out a death sentence. In addition to requiring the defendant to select the method of execution at the time of sentencing, it gives the Department of Corrections the authority to set the time of the execution within the appointed day determined by the judge. The legislature also passed two bills which provide additional benefits to those officers killed in the line of duty.

House Bill 372, Health Insurance Coverage, allows the Division of Personnel Management to set rules governing sick leave conversion in cases of death in the line of duty.

Senate Bill 226, Benefits for Families of Peace Officers, provides life insurance or retirement benefits to families of police officers killed in the line of duty.

The legislature enacted Senate Bill 112, Confinement of Juveniles in Adult Facilities. The bill reduces the number of hours that a juvenile can be confined in an adult jail from 16 hours to 6 hours to comply with federal law.

Two bills passed relating to the Board of Pardons. Senate Bill 105, Board of Pardons Procedures, provides funding so that sex offenders can receive an independent psychological evaluation prior to release from prison. The bill carries its own appropriation of \$53,000. House Bill 142, Board of Pardons Notification, provides that the victim will be given the opportunity to speak at board hearings.

Appropriations Summary

The legislature approved a total General Fund budget of \$69,358,800 for Corrections, a 3.2 percent increase over the FY 1988 budget. The legislature appropriated \$1,004,500 more for Youth Corrections than recommended by the governor. The additional funds are for secure facilities, community programs, and treatment of the mentally ill.

The legislature approved a recommended \$2.2 million FY 1988 supplemental appropriation to Youth Corrections to offset the loss of federal medicaid funds.

The legislature provided \$463,900 less in general funding to Adult Corrections than recommended by the governor. The major differences result from the legislature budgeting less for jail reimbursement and funding the Iron County Resource Center with \$175,000 from FY 1988 funds. The legislature also reduced funding in field operations for lease agreements and contractual services and used the money to fund a pre-release facility.

CORRECTIONS
Appropriations Summary

	General Fund	Federal Funds	Dedicated Credits	Mineral Lease	Restricted and Trust Funds	Other	Total
Adult Corrections							
Actual 86-87	44,776,300	191,400	1,088,100	0	0	995,700	47,051,500
Authorized 87-88	51,533,300	0	617,000	0	0	5,300	52,155,600
Appropriated 88-89	53,062,000	0	657,400	0	0	175,000	53,894,400
Jail Reimbursement							
Actual 86-87	975,000	0	0	0	0	0	975,000
Authorized 87-88	600,000	0	0	0	0	0	600,000
Appropriated 88-89	500,000	0	0	0	0	0	500,000
Jail Contracts							
Actual 86-87	500,000	0	0	0	0	(44,900)	455,100
Authorized 87-88	0	0	0	0	0	0	0
Appropriated 88-89	0	0	0	0	0	0	0
Correctional Industries							
Actual 86-87	0	0	1,593,200	0	0	0	1,593,200
Authorized 87-88	0	0	2,697,000	0	0	0	2,697,000
Appropriated 88-89	0	0	2,957,100	0	0	0	2,957,100
Board of Pardons							
Actual 86-87	553,500	0	100	0	0	(15,900)	537,700
Authorized 87-88	654,200	0	0	0	0	0	654,200
Appropriated 88-89	720,300	0	0	0	0	0	720,300
Youth Corrections							
Actual 86-87	9,570,500	0	2,263,300	0	75,000	(33,900)	11,874,900
Authorized 87-88	14,404,400	0	168,200	0	88,000	316,300	14,976,900
Appropriated 88-89	15,076,500	94,000	215,300	0	88,000	0	15,473,800
TOTAL OPERATIONS BUDGET							
Actual 86-87	56,375,300	191,400	4,944,700	0	75,000	901,000	62,487,400
Authorized 87-88	67,191,900	0	3,482,200	0	88,000	321,600	71,083,700
Appropriated 88-89	69,358,800	94,000	3,829,800	0	88,000	175,000	73,545,600

COURTS

Major Legislation

Senate Bill 146, the District Court Act, creates a state district court system with provisions for including county district courts. First and second class counties (Davis, Weber, Utah, Salt Lake) are required to join the state district court system on January 1, 1989. All other counties have an option to enter the system. The bill also amends the court fee structure and provides for the court administrator's office to contract with local law enforcement for bailiffs and courtroom security. Equipment used by county employees in support of the court shall be transferred to the state. The state will initially be obligated to lease facilities from the county.

The legislature also enacted House Bill 209, Court Boundaries Amendments. This act creates eight judicial districts, eliminating overlapping boundaries for the Juvenile Court, Circuit Court, and District Court. In addition to providing better management of resources, the new boundaries will reduce from 26 to 9 the number of commissions needed to nominate judges.

House Bill 319 provides that salary limits for the courts be set annually in the general appropriations act. The bill also adds a member of the Utah State Bar to the Executive and Judicial Compensation Commission and requires that the commission make salary recommendations in odd-numbered years.

Appropriations Summary

The legislature approved a total General Fund budget of \$34,275,100 for the state courts, a 20.3 percent increase over the FY 1988 budget. The majority of this increase is due to the passage of the District Court Act and increases in judges' salaries. The FY 1989 General Fund appropriation level is \$4,024,100 more than recommended by the governor. The legislature appropriated \$4,009,700 to implement the District Court Act. The act was supported by the governor but not included in his budget recommendations. The legislature reduced the governor's personal services and current expense recommendations, but increased funding in the Circuit Court by \$94,000 for seven additional clerks.

COURTS Appropriations Summary

	General Fund	Uniform School Fund	Federal Funds	Dedicated Credits	Restricted and Trust Funds	Other	Total
Court Administration/ Judicial Council							
Actual 86-87	26,584,400	0	17,800	165,800	0	(8,400)	26,759,600
Authorized 87-88	27,672,700	0	0	341,400	0	0	28,014,100
Appropriated 88-89	34,275,100	0	46,000	29,300	0	0	34,350,400
Court Administration/ Juror and Witness Fees							
Actual 86-87	425,000	0	0	0	0	(500)	424,500
Authorized 87-88	815,000	0	0	0	0	0	815,000
Appropriated 88-89	0	0	0	0	0	0	0
TOTAL OPERATIONS BUDGET							
Actual 86-87	27,009,400	0	17,800	165,800	0	(8,900)	27,184,100
Authorized 87-88	28,487,700	0	0	341,400	0	0	28,829,100
Appropriated 88-89	34,275,100	0	46,000	29,300	0	0	34,350,400

PUBLIC SAFETY

Major Legislation

Senate Bill 95 allows the Driver's License Division to test an applicant's ability to read and comprehend simple english used in highway signs. The legislature also authorized the Driver's License Division to suspend the license of an individual convicted of committing an assault with a motor vehicle. House Bill 212 repeals the motor vehicle insurance verification survey program which the legislature established two years ago. Not only was the program inconvenient for many citizens, it was difficult to administer and failed to significantly reduce the number of uninsured motorists.

Senate Bill 123 formalized an agreement between the legislative committee and the department to reclassify Protective Services officers (capitol security) to special function officers. This change resulted from a study by the Auditor General. The department has two years to implement the reclassification.

The January 1988 death of a state correctional officer in Marion, Utah spawned legislation providing for an insurance policy in the amount of \$50,000 to be paid to the dependent spouse of any state law enforcement officer killed in the line of duty.

Appropriations Summary

The legislature approved a total budget of \$39,799,300 for the Department of Public Safety for FY 1989, an overall increase of 1.2 percent over the department's current year budget, and a 1.3 percent increase in state funds (General and Transportation Funds).

Major program changes include the consolidation of Medicaid Fraud, the Narcotics and Liquor Law Enforcement Bureau, and the Organized Crime and Criminal Information Bureau into a single Division of Investigative Services. The Utah Highway Patrol was authorized to increase staffing at three of its Ports of Entry. The five additional FTEs will be funded by an anticipated increase in fee collections resulting from expanded operations. Eight additional FTEs recommended by the governor were approved by the legislature to fully staff the newly consolidated Weber Communications/Dispatch Center. These FTEs will be funded by fees imposed upon local users of the dispatch service.

The legislature also approved an increase in the fee charged for motor vehicle records, from \$2 to \$3. This change is expected to generate an additional \$600,000 per year for the Transportation Fund. It is the legislature's and the governor's intent that this new money be used toward the badly needed replacement of the Driver's Records System.

Intent language in this year's appropriations act allows the Department of Public Safety to utilize some of the funds forfeited as a result of drug related seizures. Any money remaining in the account in excess of \$150,000 at the end of each fiscal year will lapse to the General Fund. The department is required to make a full, annual accounting of these expenditures to the legislature.

PUBLIC SAFETY
Appropriations Summary

	General Fund	Transportation Fund	Federal Funds	Dedicated Credits	Certificates of Participation	Other	Total
Emergency Management							
Actual 86-87	396,200	0	6,124,300	47,000	0	0	6,567,500
Authorized 87-88	376,600	0	3,474,600	62,500	0	0	3,913,700
Appropriated 88-89	312,500	0	3,583,700	0	0	0	3,896,200
Highway Patrol							
Actual 86-87	552,200	17,211,800	274,900	489,200	1,250,000	263,100	20,041,200
Authorized 87-88	561,800	16,416,600	266,200	385,300	0	296,700	17,926,600
Appropriated 88-89	506,700	16,786,500	553,300	361,100	0	0	18,207,600
Safety Promotion							
Actual 86-87	102,900	0	0	0	0	(200)	102,700
Authorized 87-88	102,100	0	0	0	0	0	102,100
Appropriated 88-89	107,100	0	0	0	0	0	107,100
POST							
Actual 86-87	0	0	0	112,900	0	921,000	1,033,900
Authorized 87-88	0	0	0	63,000	0	937,200	1,000,200
Appropriated 88-89	0	0	0	64,100	0	937,200	1,001,300
Investigative Services							
Actual 86-87	1,658,800	0	415,300	191,600	0	(19,000)	2,246,700
Authorized 87-88	1,848,000	0	484,000	63,600	0	11,300	2,406,900
Appropriated 88-89	1,819,900	0	471,400	31,300	0	0	2,322,600
Law Enforcement							
Actual 86-87	1,463,900	0	0	39,100	0	(900)	1,502,100
Authorized 87-88	1,375,200	0	0	27,200	0	0	1,402,400
Appropriated 88-89	1,527,100	0	0	29,500	0	0	1,556,600
Commissioner							
Actual 86-87	1,281,500	0	0	115,900	0	5,800	1,403,200
Authorized 87-88	1,278,700	150,500	0	60,100	0	0	1,489,300
Appropriated 88-89	1,252,400	162,400	0	78,400	0	0	1,493,200
Driver License							
Actual 86-87	226,200	5,964,100	0	9,700	0	(90,100)	6,109,900
Authorized 87-88	254,100	6,066,600	100,000	18,000	0	0	6,438,700
Appropriated 88-89	241,100	6,607,300	100,000	10,000	0	0	6,958,400
Highway Safety							
Actual 86-87	83,500	0	1,005,100	0	0	260,500	1,349,100
Authorized 87-88	82,100	0	1,182,400	0	0	0	1,264,500
Appropriated 88-89	83,400	0	1,174,800	0	0	0	1,258,200
Communications							
Actual 86-87	419,700	238,700	0	217,200	258,000	(16,900)	1,116,700
Authorized 87-88	940,300	1,626,800	0	300,300	0	0	2,867,400
Appropriated 88-89	625,000	1,456,900	0	389,500	0	0	2,471,400
Fire Marshal							
Actual 86-87	518,100	0	13,400	11,200	0	(5,900)	536,800
Authorized 87-88	475,100	0	0	40,600	0	0	515,700
Appropriated 88-89	468,600	0	0	58,100	0	0	526,700
TOTAL OPERATIONS BUDGET							
Actual 86-87	6,703,000	23,414,600	7,833,000	1,233,800	1,508,000	1,317,400	42,009,800
Authorized 87-88	7,294,000	24,260,500	5,507,200	1,020,600	0	1,245,200	39,327,500
Appropriated 88-89	6,943,800	25,013,100	5,883,200	1,022,000	0	937,200	39,799,300

ELECTED OFFICIALS

ELECTED OFFICIALS Appropriations Summary

	General Fund	Federal Funds	Dedicated Credits	Mineral Lease	Restricted and Trust Funds	Other	Total
Governor							
Actual 86-87	3,131,900	556,800	137,700	0	0	(104,700)	3,721,700
Authorized 87-88	3,092,700	692,100	182,900	0	0	9,100	3,976,800
Appropriated 88-89	3,080,200	461,800	155,500	0	0	20,000	3,717,500
Lt. Governor							
Actual 86-87	380,600	0	5,300	0	0	24,200	410,100
Authorized 87-88	304,900	0	5,000	0	0	5,600	315,500
Appropriated 88-89	438,200	0	0	0	0	25,000	463,200
Auditor							
Actual 86-87	1,755,100	0	363,800	0	0	(88,400)	2,030,500
Authorized 87-88	1,437,300	0	193,000	0	0	0	1,630,300
Appropriated 88-89	1,437,200	0	225,000	0	0	0	1,662,200
Treasurer							
Actual 86-87	389,800	0	109,000	0	186,700	(73,500)	612,000
Authorized 87-88	407,500	0	154,200	0	254,000	(20,000)	795,700
Appropriated 88-89	457,500	0	155,000	0	253,100	0	865,600
* Attorney General							
Actual 86-87	4,010,300	0	2,649,400	0	300,000	(131,000)	6,828,700
Authorized 87-88	4,344,922	427,600	2,413,000	0	330,000	94,500	7,610,022
Appropriated 88-89	4,046,000	0	2,545,800	0	330,000	0	6,921,800
* Justice Commission							
Actual 86-87	349,700	1,177,100	3,400	0	0	34,700	1,564,900
Authorized 87-88	397,000	2,152,300	0	0	0	0	2,549,300
Appropriated 88-89	395,600	2,713,000	0	0	0	0	3,108,600
* Victim Reparations							
Actual 86-87	0	0	0	0	233,300	(75,400)	157,900
Authorized 87-88	0	0	0	0	191,300	0	191,300
Appropriated 88-89	0	0	0	0	218,200	0	218,200
TOTAL OPERATIONS BUDGET							
Actual 86-87	10,017,400	1,733,900	3,268,600	0	720,000	(414,100)	15,325,800
Authorized 87-88	9,984,322	3,272,000	2,948,100	0	775,300	89,200	17,068,922
Appropriated 88-89	9,854,700	3,174,800	3,081,300	0	801,300	45,000	16,957,100

Appendix C

CRIMINAL JUSTICE LEGISLATION PASSED BY THE
1988 UTAH LEGISLATURE

JUDICIARY

H. B. 10 JUVENILE COURT AMENDMENTS - This act modifies the philosophy statement of the juvenile court. It moves away from a welfare, social service model to a public safety judicial model. This is consistent with the evolution of the juvenile court which was once under the direction of the Public Welfare Commission, but is now under the direction of the Judicial Council.

H. B. 13 FRIVOLOUS LAW SUITS - This act requires rather than allows the awarding of attorney fees to the prevailing party if the court determines that the action or defense to the action was without merit and not brought in good faith. The act also provides limited exceptions.

H. B. 13 TRIAL BY JURY IN PATERNITY ACTIONS - This act provides that either party may demand a jury trial to determine paternity. The procedure is the same as for a civil jury trial in district court and the standard of evidence is a preponderance of the evidence.

H. B. 64 RECORDING OF COURT PROCEEDINGS - This act allows the use of electronic recording devices as an alternative to court reporters in trial and administrative hearings.

H. B. 71 TRANSFER OF CASES BETWEEN COUNTIES - This act allows persons who are arrested who have misdemeanor charges filed in another jurisdiction to waive trial in the other jurisdiction and forfeit bail where they are arrested. Forfeited bail will be returned to the county with original jurisdiction.

H. B. 209 COURT BOUNDARIES AMENDMENTS - This act aligns all state court boundaries into eight judicial districts. In the past there were 7 districts, 12 circuits and 3 juvenile regions.

H. B. 250 JUVENILE COURT FEE AMENDMENTS - This act provides that the juvenile court shall impose a filing fee for any petition in an amount equal to the district court fee established for the filing of a complaint. Fees for court services referred to the juvenile court shall be the same as in the referring court.

H. B. 319 JUDICIAL SALARIES - This act provides that the salary limits for judges of courts of record shall be set annually by the Legislature in the General Appropriations Act. The salaries of judges shall be based upon the following percentages of an associate justice of the Supreme Court: Court of Appeals Judge (95%), District Court and Juvenile Court Judge (90%) and Circuit Court Judge (85%). It also adds a member of the Utah State Bar to the Judicial Compensation Commission and requires that the Commission make salary recommendations on odd numbered years.

H. B. 338 EXTENDED STATUTE OF LIMITATIONS - This act amends certain statutes of limitations regarding asbestos claims. Essentially the act keeps the door open for the state or other governmental entity to recover damages where asbestos materials have been provided.

S. B. 97 SMALL CLAIMS COURT AMENDMENT - This act clarifies jurisdictional provisions relating to small claims court. In most instances appeals of small claims will result in trial de novo in the circuit court and a record of the trial shall be maintained. Decisions in such cases may not be appealed unless the court holds a state statute or local ordinance is unconstitutional.

S. B. 146 DISTRICT COURT ACT - A comprehensive act to move the responsibility for the District Courts from the counties to the State. The fee structure is amended and provision is made for the court administrator's office to contract with local law enforcement for bailiff and court security. Counties are not required to participate in the District Court System, but may elect to participate at a later time. Equipment used by county employees in support of the court shall be transferred to the state. The state will initially lease facilities from the county.

S.B. 224 JUDICIARY PROVISIONS UPDATE - This act provides general housekeeping functions to a variety of provisions related to the judiciary.

CRIMINAL LAW AND PENALTIES

H. B. 88 VEHICULAR ASSAULT - This act requires the revocation of the drivers license of an individual who commits an assault using a motor vehicle.

H. B. 146 AGGRAVATED BURGLARY AMENDMENTS - This act provides housekeeping amendments to clarify the definition of aggravated burglary.

H. B. 148 CRIMINAL THREAT AMENDMENTS - This act provides technical amendments. The most substantive is abandoning "terroristic threat" and replacing it with "threat against life or property".

H. B. 158 ABUSE OR NEGLECT OF A DISABLED CHILD - This act defines disabled child as any person under 18 years of age who is impaired to the extent that he is unable to care for his own personal safety or provide necessities such a food, shelter, clothing, and medical care. Any caretaker (one who has assumed responsibility for such a child through contract or court order) who abuses or neglects such a child is guilty of a third degree felony.

H. B. 238 DEFINITIONS RELATING TO PROSTITUTION - This act clarifies the definition of sexual activity.

H. B. 361 UTAH MILITARY CODE AND MILITARY LAW PROVISION - This act creates a code of military justice for the national guard that includes procedures, offenses and penalties. The act also makes technical amendments.

S. B. 7 ABUSE OR DESECRATION OF A CORPSE AMENDMENTS - Increases the penalty for abusing or desecrating a dead human body to a third degree felony. The definition of abuse or desecration is made much more specific. Failure to report the finding a dead human body is a class a misdemeanor.

S. B. 42 TRAFFIC CONTROL ON SCHOOL PROPERTY - Schools may adopt ordinances for the control of vehicular traffic on their property. Authorized law enforcement officers may enforce such ordinances.

S. B. 173 REPORTING INJURY BY DEADLY WEAPON - This act makes it a class b misdemeanor for a health care provider to fail to report any wound or injury inflicted by a knife, gun, explosive, infernal device, or deadly weapon. Such report must be made immediately both by telephone and in writing to the law enforcement agency having jurisdiction where the treatment is provided.

S.B. 232 COMMUNICATIONS INTERCEPTIONS - This act amends Utah law to conform with recent changes in the federal law. It creates procedures for controlling the use of pen registers, and "trap and trace devices". It also provides for the protection of stored electronic information and creates a procedure for access to that electronic information by a governmental entity.

ALCOHOL AND DRUG RELATED

H. B. 26 CONTROLLED SUBSTANCE: AMOUNTS AND PENALTIES - Increases the penalties associated with possessing large amounts of marihuana. Those possessing more than 100 pounds are guilty of a second degree felony and those possessing more than one pound are guilty of a third degree felony.

H. B. 217 COMMITMENT OF MINORS TO DRUG AND ALCOHOL TREATMENT PROGRAMS - This act allows a parent or legal guardian to place a child in a secure drug or alcohol program without the child's consent after review by a neutral fact finder.

H. B. 291 PHARMACY PRACTICE ACT - This act makes substantive changes in requirements and procedures relating to pharmacy practice. The most notable area relates to out of state pharmacies that mail order or practice pharmacy in other ways in Utah. The act requires that they be licensed in Utah and provide certain assurances and information to the regulatory board.

S. B. 89 DRIVING WHILE INTOXICATED AMENDMENTS - This act mandates that either a blood or urine test be utilized to determine blood alcohol content where an officer has grounds to believe a person is driving while intoxicated.

S. B. 209 ILLEGAL DRUG TAX - This act provides a mechanism to attack drug trafficking by mandating that a stamp tax be paid to the State Tax Commission and the stamp be displayed on any illegal drug manufactured, transported, possessed or sold in Utah. Any dealer violating these provision is subject to a penalty of 100% of the tax in addition to the tax imposed. Such dealer is also guilty of a third degree felony and is subject to an additional fine of not more

than \$10,000. Essentially this opens the door to government to make claims against the assets of an individual found distributing illegal drugs.

S. B. 180 SOCIAL SERVICES AMENDMENTS - This act makes various substantive changes to law governing programs, services and the structure of the Department of Social Services. Most notable for criminal justice purposes is that the Department is given responsibility to receive and disburse state and federal funds for substance abuse prevention, intervention, and treatment as well as the responsibility to promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of intoxicating liquor. The bill also creates the Alcohol Training and Education Advisory Commission which has the responsibility to train persons who furnish alcoholic beverages to the public.

MOTOR VEHICLE AND DRIVERS LICENSE RELATED

H. B. 46 MOTOR VEHICLE SECURITY AMENDMENTS - This act provides clarifications and technical amendments regarding required motor vehicle financial security.

H. B. 57 DRIVER LICENSE SUSPENSION AMENDMENT - This act clarifies the time period applicable to penalties for repeated DUI offenses. For the first conviction the operators license shall be suspended for 90 days. For subsequent convictions within five years of the date of the prior violation, the operators license shall be revoked for a period of one year.

H. B. 186 EMERGENCY MEDICAL SERVICES GRANTS PROGRAM AMENDMENTS - This act allows transfer of the \$3 fee for each reportable traffic violation where a fine is imposed or bail forfeited, to the Health Department. Essentially this will simplify the funding mechanism that has been in place for several years.

H. B. 212 REPEAL OF INSURANCE SURVEY - This act repeals the very unpopular provision that allowed the Drivers License Division to revoke without hearing the drivers license of anyone who did not respond to a survey relating to their motor vehicle insurance coverage.

S. B. 188 MOTOR VEHICLE ACT REGARDING SALVAGED VEHICLES - This act clarifies and makes more specific the documentation requirements for vehicles that have been in a flood or damaged to the extent they are declared total losses if they are then salvaged.

SPECIAL INTEREST TO VICTIMS

H. B. 2 LIMITATION OF THERAPISTS' LIABILITY - This act states that a therapist has no duty to warn or take precautions to provide protection from any violent behavior of his client unless that client communicated to the therapist an actual threat of physical violence against a clearly identified or reasonably identifiable victim. In those instances the therapist has the duty to make reasonable efforts to communicate the threat to the victim and notify a law enforcement agency of the threat. This responsibility supercedes any privileged communication between the client and therapist.

H. B. 4 CHILD ABUSE INVESTIGATION AND REPORTING - This act requires that an investigation be conducted by the Division of Family Services within 30 days if an allegation of child abuse or child sexual abuse is made in a divorce or custody proceeding. It also makes it a class B misdemeanor to give, or cause to be given, false information to any person licensed to practice social work psychology, or marriage and family therapy concerning the commission of an offense, knowing that the information is false.

H. B. 47 CHILD SEXUAL ABUSE AMENDMENTS - This act clarifies the definition of sodomy on a child. It also establishes that consent has not occurred if victim is under 18 years of age and the actor was a parental figure or legal guardian or if the victim is between the ages of 14 and 18 and the actor is more than three years older than the victim. It also increases the age at which hearsay can be used from age 12 to age 14.

H. B. 87 IDENTIFICATION OF MISSING CHILDREN - Upon receiving notification from the Bureau of Criminal Identification that a child is missing, the State registrar will flag the birth certificate record of that child. If anyone requests a copy of the birth certificate, the person requesting that record will be required to supply their name, address, and phone number so that they can receive the birth certificate by mail. The Bureau of Criminal Identification will then be provided a copy of this information. In like manner schools will flag records of missing children and notify the Bureau of Criminal Identification if flagged records are requested. Schools shall require new students to provide a birth certificate or other reliable proof of identity and a certified copy of transcripts from other schools.

H. B. 142 BOARD OF PARDONS NOTIFICATION - This act requires that the Board of Pardons provide notification of all hearings to relevant victims and allow the victim to participate in the hearing. Guidelines for that participation are specified. The Board is authorized to make rules to ensure equity and to reasonably limit the length of the hearing.

H. B. 79 BAIL AMENDMENTS - This bill changes the presumption so that bail is not presumed for those who appeal criminal charges, once convicted. Individuals in such cases can only be released on bail if the appeal raises substantial questions of law or fact likely to result in reversal or modification. Otherwise the individual must present clear and convincing evidence that they do not pose a danger to the physical, psychological, financial and economic safety or well-being of any other person or the community if released. The bill also allows a broad variety of conditions to be enforced if bail is granted.

H. B. 147 THREATENING A WITNESS AMENDMENT - This act amends the offense of threatening a witness to include: "communicating to a person a threat that a reasonable person would believe to be a threat to do bodily injury to the person, because of any act performed or to be performed by the person in his capacity as a witness or informant in an official proceeding or investigation. Such a threat and several other actions constitute a third degree felony.

H. B. 177 SEXUAL OFFENSES AGAINST CHILDREN - This act modifies UCA 77-5-407 so that even touching through clothing is sufficient to constitute the relevant element for sodomy of a child, sexual abuse of a child or aggravated sexual abuse of a child.

S.J.R. 3 BAIL CONSTITUTIONAL AMENDMENT - Allows a judge to consider dangerousness in making bail release decisions. It establishes a presumption for bail prior to conviction and a presumption against bail on post-conviction appeal. (S.B. 184 Pretrial Bail Act passed both houses of the legislature, but in different forms. As a result, it did not become law.) It was passed by a latter special session and passed by the electorate in the general election.

S. B. 71 VICTIM REPARATIONS AMENDMENT - This act makes housekeeping amendments and particularly clarifies how to handle collateral sources of revenue in responding to claims.

S. B. 121 VICTIM IMPACT PANEL FOR D.U.I. - This act provides that those convicted of driving while impaired by alcohol or drugs shall be assessed at least \$50 for the purpose of providing a victim impact panel to assist such persons to gain a full understanding of the severity of their offense. A requirement of rehabilitation programs is that a panel of victims share experiences on the impact of alcohol or drug related incidents in their lives.

CORRECTIONS

H. B. 60 STATE REIMBURSEMENT OF COUNTY JAIL EXPENDITURES - This act mandates that the Commission on Criminal and Juvenile Justice conduct a study of management issues involving jails operated by local government. This study should include an analysis of the demand for bed space resulting from preconviction and postconviction bed needs of local, state, and federal government entities. It should also include a review of current jail use for inmates committed as a condition of probation or department of corrections inmates placed by contract in jails for management purposes. The legislature reduced the amount of money allocated for jail reimbursement from \$600,000 to \$500,000 with the intent that no future funds be provided.

H. B. 213 CRIMINAL EXECUTION AMENDMENTS - This act shifts responsibility for executions from the warden to the Executive Director of the Department of Corrections. It makes lethal injection the default method of execution unless the offender requests firing squad. Other technical amendments are included.

H. B. 214 PRISON PROCEDURES AMENDMENTS - This act allows the Department of Corrections to establish rules for inmates to dispose of property not authorized by the Department and makes other technical amendments.

S. B. 40 JUVENILES IN CUSTODY PROCEDURES - This act allows photographs and fingerprints to be taken of children 14 years of age or older (and younger offenses with the consent of the court) who are taken into custody for committing non-status offenses. Such photographs and fingerprints shall be filed in a

separate juvenile file and can only be disbursed to law enforcement agencies while shall destroy them if an expungement order is received.

S. B. 105 BOARD OF PARDONS PROCEDURES - This act appropriates \$53,000 to provide resources for the Board of Pardons to appoint one or more alienists who shall examine offenders who commit sexual offenses against children. The alienists shall report in writing and specifically address the question of the offender's current mental condition and attitudes as they related to any danger the offender may pose to children or others if the offender is released on parole.

S. B. 112 CONFINEMENT OF JUVENILES IN ADULT FACILITIES - Prior law provided that juveniles could be held up to 16 hours in adult facilities in low density population areas if there is sufficient sight and sound separation and other conditions were met. This act limits the length a juvenile can be held to 6 hours.

S. B. 135 PRIVATE JAIL SERVICES - Allows the governing body of a city, town, or county to contract with private contractors for management, maintenance, operation, and construction of city jails and establishes some of the conditions of such a contract.

PERSONNEL AMENDMENTS

H. B. 190 RETIREMENT FINAL AVERAGE SALARY LIMITATION - Existing law establishes the retirement benefit based on the highest five years of compensation prior to retirement. This act limits consideration, for retirement purposes, so that the percentage salary increase per year cannot exceed 10 percent plus any blanket salary increases given by the employer.

H. B. 194 PUBLIC SAFETY RETIREMENT CONTRIBUTION - This act increases Salt Lake City's public safety retirement contribution from 14.64 % of its payroll to 15.26 percent.

H. B. 205 COMMUNITY SERVICE WORKERS INSURANCE - This act allows community service workers (those sentenced to perform community service) to be covered by workman's compensation benefits, which shall be the exclusive remedy for all injuries or occupation diseases incurred while providing the service.

H. B. 372 HEALTH INSURANCE COVERAGE - This act requires the director of the Division of Personnel Management to promulgate rules to provide a continuation of health and dental insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty. The insurance coverage shall continue for a period of five years or until the surviving spouse reaches age 65. The rules shall also provide for a cashout of 25% of accumulated sick-leave.

S. B. 24 PEACE OFFICER AMENDMENTS - This act clarifies the requirement that an applicant to become a peace officer in the State must have a criminal history background check and that all convictions, including those that may have been expunged, should be considered.

S. B. 123 PROTECTIVE SERVICES AMENDMENTS - This act reduces the qualifications required for security personnel for all buildings and grounds under the jurisdiction of the Division of Facilities Construction and Management to reduce the associated costs. Within two years such security personnel shall be either special function officers under Section 77-1a-4 or security guards under Chapter 13a, title 41.

S. B. 226 BENEFITS FOR FAMILIES OF PEACE OFFICERS - This act provides a \$50,000 appropriation from the Victim Reparation Fund to the Group Insurance Division of the Utah State Retirement Office to pay a \$50,000 benefit to the beneficiary of members of the public safety retirement system employed by the state whose death was in the line of duty and occurred after January 1, 1988. The act also provides that the Group Insurance Division purchase such insurance for all peace officers employed by the State. The insurance will be paid for by the employing unit of government.

INTERIM STUDY ITEMS

The following items of interest to the criminal justice community were referred to interim legislative study in H.J.R. 42, the Master Study Resolution.

3. Alcoholic Beverage Laws - to study alcoholic beverage control laws and make recommendations for comprehensive changes needed in those laws (HB 132).

23. Pawnbrokers - to study issues relating to pawned items and pawnbrokers and especially consider changes to the law that would better control the sale of stolen goods. (HB 24)

53. Driver Education - to consider adopting uniform driver education curricula in public schools and study whether the amount of behind-the-wheel time should be increased. (HB 311)

54. Drivers' License Requirements - to consider what requirements should be required of minors who have not graduated from high school who wish to get a driver's license. (SB 152)

76. School Truancy - to study the problem, how students can be made to assume the responsibility for nonattendance, if parents can be assessed a fee to nonattendance, and possible solutions.

78. School Dropouts - to study the student dropout problem and develop a state strategy for reducing the dropout rate.

144. Alternatives to Incarceration - to study alternatives to incarceration in prisons for criminals, including consideration of the possibility of prison farms.

145. Assault and Lewdness - to study if the penalty for assault should be

increased and whether a crime of gross lewdness should be created. (SB 145)

146. Board of Pardons Hearings - to study allowing victims to attend and testify at hearings of the Board of Pardons. (HB 142)

147. Constables - to study the constable system. (SB 154)

148. Convict Labor - to develop and update guidelines for the use of convict labor, study the convict labor program, consider its impact on the local job market, review the use of money saved by employing convict labor, and study the private use of convict labor.

149. Correctional Industries Competition - to determine if the correctional industries are competing with private industry and what is the proper role of the correctional industries. (SB 74)

150. Criminal History Records - to study whether criminal history records should be released to employers. (SB 169)

151. Criminal Solicitation - to determine if the solicitation of others to commit a crime should be made an offense, and consider penalties. (SB 104)

152. Determinate Sentencing - to review minimum mandatory sentences and to determine if courts should be given discretion in imposing minimum mandatory sentences.

153. Drunken Drivers to Pay for Emergency Costs - to study whether drunken drivers convicted of causing accidents should pay an additional fine to cover the increased cost of emergency services.

154. Habitual Criminals - to study the statutes relating to habitual criminals, determine if clarification is needed, and consider the statutes in light of current caseloads. (HB 284)

155. Justice Courts - to study the current justice court system to determine needed changes. (SB 136)

156. Lien Laws - to study the lien laws of the state.

157. Minimum Mandatory Sentences for Child Sexual Abuse - to study the minimum mandatory sentences for child sexual abuse in current law, investigate the costs caused by the longer sentences under the minimum mandatory laws, and determine if they should be repealed to judges sentencing discretion.

158. Penal Colony - to study the concept of a penal colony where prisoners and their families can live together. (SR 5)

159. Prevention of Domestic Terrorism - to study whether it should be a crime to instruct other persons in the use of firearms, etc., for the purpose of furthering civil disobedience, bigotry, or the overthrow of national and local governments.

160. Prohibition against Recording Telephone Conversations Without Notice - to study whether, and how, notice that a telephone conversation is being recorded should be required on local and intrastate long distance calls.

161. Reorganization of Prosecution Entities - to consider a reorganization of the prosecution system in Utah, including the creation of prosecution districts, having district attorneys to prosecute state crimes, redefining the powers and duties of county attorneys, providing for nonpartisan election of the district and county attorneys, etc., and to study how staff and other assistance for the district attorney offices could be provided.

162. Review of Unconstitutional Fourth Amendment Enforcement Act - to determine if Subsection 77-35-12(g) should be repealed in light of the Utah Supreme Court ruling that it is unconstitutional.

163. State Laboratory Fees - to consider requiring persons convicted of offenses that involve evidence processed at the state laboratory or the state crime laboratory to pay a fee for the cost of processing evidence, in addition to any other fine or penalty assessed, and whether the fee should be used to help fund the laboratories.

164. Statute of Limitations for Incest - to consider extending the statute of limitations for civil actions relating to incest, based on the date of discovery of cause of action. (HB 138)

165. Supreme Court Jurisdiction - to study constitutional provisions relating to judicial procedures and determine how and in what measure the Legislature has the authority to amend or determine rules of judicial procedure. (HB 135)

166. To determine whether a defense of "claim of right" should be allowed in cases of theft by extortion. (SB 101)

168. Victim Reparations Fund - to study the use of Victim Reparations funds, restrictions on disbursements to victims, and how the amount being collected compares to the amount be disbursed to victims.

169. Victim's Restitution Programs - to consider whether the victim's restitution program should be placed under the jurisdiction of the Board of Pardons so all victim programs are together.

170. Visitation Rights - to study how the noncustodial parent's visitation rights can be assured, including a consideration of penalties if the custodial parent denies the other's visitation rights. (SB 114)

171. Withdrawal of Guilty Pleas - to study the provisions relating to withdrawal of guilty pleas. (SB 130)

210. Interviews Relating to Sexual Abuse - to consider whether interviews by counselors, etc., of children should be recorded where sexual abuse is or may be involved. (HB 131)

217. Sexual Abuse Laws - to study whether over-the clothing molestations should constitute a sexual abuse offense. (HB 177)
219. Spouse and Child Abuse - to review the laws relating to spouse and family abuse to determine if they need to be strengthened.
220. State Hospital - to study what populations should be served at the Utah State Hospital.
221. Training about Child Sexual Abuse - to consider what training is needed for officers working with cases of child sexual abuse.
222. Transfer of Mentally Ill Persons - to study whether Utah should join the interstate compacts that allow transfer of mentally ill persons across state lines.
223. Utah State Hospital - to study the present use of the Utah State Hospital and examine future options for use of the hospital.
232. County Jails - to study the financing and housing of state, county, and municipal prisoners in county jails.
246. Impartial Administrative Law Judges - to study whether a central panel of administrative law judges and hearing officers should be created to hear administrative matters for all departments in order to ensure fair and impartial judgments.
282. Early Retirement Penalty - to study eliminating the early retirement penalty for employees with 25 or more combined service years in the Public Employees and Public Safety Retirement Systems to reduced problems in moving staff between systems upon request and to study the costs involved.
283. Public Safety Retirement System - to study whether the Public Safety Retirement System should be made a noncontributory system.
289. Automobile Insurance - to consider whether the minimum mandatory automobile casualty insurance should be increased and study how to address the problems of the large number of uninsured motorists.
291. Disclosure of Driver License and Motor Vehicle Registration Information - to study the need to restrict the release of this information to reasons it was originally collected. (SB 233)
292. Drivers' License Laws - to review the laws regarding drivers' licenses to determine if they conform to federal law.
293. Driving Under the Influence - to consider providing that persons under 21 are guilty of DUI with a minimal blood alcohol level and to study the impoundment of license plates and vehicle registrations of repeat offenders driving on invalid licenses. (HB 159, HB 335)
295. Highway Safety - to study and formulate a comprehensive approach to improve

highway safety programs through better coordination, prioritizing programs, sharing information, and cost effective solutions to reduce liability costs.

307. Statewide Warrants File - to study if the Bureau of Criminal Identification should act as a central clearinghouse for warrant information. (HB 70)

APPENDIX D

BAIL CONSTITUTIONAL AMENDMENT

1988

SECOND SPECIAL SESSION

Enrolled Copy

S. J. R. No. 1

By Winn L. Richards

A JOINT RESOLUTION OF THE LEGISLATURE PROPOSING TO AMEND THE UTAH CONSTITUTION; RELATING TO BAIL; SUBSTITUTING THIS RESOLUTION FOR A RESOLUTION PASSED AT THE 1988 GENERAL SESSION OF THE 47TH LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

THIS RESOLUTION REPEALS AND WITHDRAWS ENROLLED COPY S.J.R. NO. 3 PASSED AT THE 1988 GENERAL SESSION OF THE 47th LEGISLATURE AND REPLACES IT WITH THIS RESOLUTION, AND PROPOSES TO CHANGE THE UTAH CONSTITUTION AS FOLLOWS:

AMENDS:

ARTICLE I, SEC. 8

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Article I, Sec. 8, Utah Constitution, to read:

Sec. 8.

(1) All [~~prisoners~~] persons charged with a crime shall be bailable [~~by sufficient sureties,~~] except [~~for~~]:

(a) persons charged with a capital [~~offenses~~] offense when [~~the proof is evident or the presumption strong or where a person is accused of the commission of~~] there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, [and-where the-proof-is-evident-or-the-presumption-strong] when there is substantial evidence to support the new felony charge; or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law.

Section 2. Enrolled copy S.J.R. No. 3 passed at the 1988 General Session of the 47th Legislature is repealed and withdrawn in its entirety from the next general election.

Section 3. The lieutenant governor is directed to submit in lieu thereof this proposed amendment to the electors of the state of Utah at the next general election in the manner provided by law.

Section 4. If approved by the electors of the state the amendment proposed by this joint resolution shall take effect on January 1, 1989.

BAIL AMENDMENT

1988

SECOND SPECIAL SESSION

Enrolled Copy

S. B. No. 4

By Winn L. Richards

AN ACT RELATING TO CRIMINAL PROCEDURE; PROVIDING CONDITIONS AND PROCEDURES FOR ADMISSION TO BAIL PRIOR TO SENTENCING; AND PROVIDING AN EFFECTIVE DATE REGARDING A RELATED CONSTITUTIONAL AMENDMENT.

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

AMENDS:

77-17-8, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980

77-20-1, AS LAST AMENDED BY CHAPTER 160, LAWS OF UTAH 1988

77-30-16, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980

77-35-7, AS LAST AMENDED BY CHAPTER 159, LAWS OF UTAH 1988

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

Section 1. Section 77-17-8, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-17-8. If at any time before verdict or judgment a mistake has been made in charging the proper offense, and it appears that there is probable cause to believe that the defendant is chargeable with another offense, the court may commit him or require him to give bail under Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also require witnesses to give bail for their appearance.

Section 2. Section 77-20-1, Utah Code Annotated 1953, as last amended by Chapter 160, Laws of Utah 1988, is amended to read:

77-20-1. (1) A person charged with or arrested for a [public] criminal offense shall be admitted to bail as a matter of right, except [~~where the proof is evident or the presumption of guilt is strong that the accused committed~~] if the person is charged with a:

(a) capital offense, when there is substantial evidence to support the charge;

(b) felony while [~~he was free~~] on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the current felony charge; or

(c) felony [~~while he was on probation or parole for a felony~~] when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail.

(2) Under Subsection (1), the accused may be [~~admitted to~~] denied bail only by a circuit or district court judge [~~or upon the circuit or district court's refusal and upon good cause shown by a judge of the Court of Appeals, or a~~]. If bail is denied, a justice of the Supreme Court[;] or a judge of the Court of Appeals may, after a hearing and finding that the interests of justice do not require detention without bail, order that the accused be admitted to bail.

Section 3. Section 77-30-16, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-30-16. Unless [~~the offense with which~~] the prisoner is [~~charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed~~] not entitled to bail under Section 77-20-1, a judge or magistrate in this state may admit the person arrested to bail by bond[~~7~~] with sufficient sureties[~~7~~] and in [~~such sum as~~] an amount he [~~deems~~] considers proper, conditioned for his appearance before him at a time specified in [~~such~~] the bond[~~7~~] and for his surrender, to be arrested upon the warrant of the governor of this state.

Section 4. Section 77-35-7, Utah Code Annotated 1953, as last amended by Chapter 159, Laws of Utah 1988, is amended to read:

77-35-7. (1) When a summons is issued in lieu of a warrant of arrest, the defendant shall appear before the court as directed in the summons.

(2) When any peace officer or other person makes an arrest with or without a warrant, the person arrested shall be taken to a magistrate under Section 77-7-19. If a magistrate is not available in the circuit or precinct, the person arrested shall be taken to the nearest available magistrate for setting of bail. If an information has not been filed, one shall be filed without delay before the magistrate having jurisdiction over the offense.

(3) (a) If a person is arrested in a county other than where the offense was committed he shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before the proper magistrate under these rules.

(b) If for any reason the person arrested cannot be promptly returned to the county[;] and [if] the charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), he may state in writing that he desires to forfeit bail, [to] waive trial in the district in which the information is pending, and [to] consent to disposition of the case in the county in which he was arrested, held, or present.

(c) Upon receipt of the defendant's statement, the clerk of the court in which the information is pending shall transmit the papers in the proceeding or copies of them to the clerk of the court for the county in which the defendant is arrested, held, or present. The prosecution shall continue in that county.

(d) Forfeited bail shall be returned to the jurisdiction that issued the warrant.

(e) If the defendant is charged with an offense other than a misdemeanor[;] for which a voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), he shall[; ~~without unnecessary delay~~] be taken without unnecessary delay before a magistrate within the county of arrest for the determination of bail under Section 77-20-1 and released on bail or [~~by other appropriate disposition~~] held without bail under Section 77-20-1.

(f) Bail shall be returned to the magistrate having jurisdiction over the offense, with the record made of the proceedings before the magistrate.

(4) The magistrate having jurisdiction over the offense charged shall, upon the defendant's first appearance before him, inform the defendant:

(a) of the charge in the information or indictment and furnish a copy to him;

(b) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(c) of his right to retain counsel or have counsel appointed by the court without expense to him if he is unable to obtain his own counsel;

(d) of his rights concerning pretrial release, including bail; and

(e) that he is not required to make any statement, and that the statements he does make may be used against him in a court of law.

(5) The magistrate shall, after providing the information under Subsection (4) and before proceeding further, allow the defendant reasonable time and opportunity to consult counsel [~~before--proceeding further~~] and shall allow him to contact any attorney by any reasonable means, without delay and without fee.

(6) If the charge against the defendant is a misdemeanor, the magistrate shall call upon the defendant to [~~plead~~] enter a plea.

(a) If the [~~defendant--enters--a~~] plea [~~of~~] is guilty, [~~he~~] the defendant shall be sentenced by the magistrate as provided by law.

(b) If the [~~defendant-enters-a~~] plea [~~of~~] is not guilty, a trial date shall be set. The date may not be extended except for good cause shown. Trial shall be held under these rules and law applicable to criminal cases.

(7) (a) If a defendant is charged with a felony, he may not be called on to [plead] enter a plea before the committing magistrate. During the initial appearance before the magistrate, the defendant shall be advised of his right to a preliminary examination. If the defendant waives his right to a preliminary examination, and the prosecuting attorney consents, the magistrate shall order the defendant bound over to answer in the district court.

(b) If the defendant does not waive a preliminary examination, the magistrate shall schedule the preliminary examination. The examination shall be held within a reasonable time, but not later than ten days if the defendant is in custody for the offense charged and not later than 30 days if he is not in custody. These time periods may be extended by the magistrate for good cause shown. A preliminary examination may not be held if the defendant is indicted.

(8) (a) A preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the defendant may testify under oath, call witnesses, and present evidence. The defendant may also cross-examine the witnesses against him.

(b) If from the evidence a magistrate finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the magistrate shall order, in writing, that the defendant be bound over to answer in the district court. The findings of

probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(c) If the magistrate does not find probable cause to believe that the crime charged has been committed or that the defendant committed it, the magistrate shall dismiss the information and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(9) At a preliminary examination, the magistrate, upon request of either party, may exclude witnesses from the courtroom and may require witnesses not to converse with each other until the preliminary examination is concluded. On the request of either party, the magistrate may order all spectators to be excluded from the courtroom.

(10) (a) If the magistrate orders the defendant bound over to the district court, the magistrate shall execute in writing a bind-over order and shall transmit to the clerk of the district court all pleadings in and records made of the proceedings before the magistrate, including exhibits, recordings, and any typewritten transcript.

~~[(a)]~~ (b) When a magistrate commits a defendant to the custody of the sheriff, the magistrate shall execute the appropriate commitment order.

~~[(b)]~~ (11) (a) When a magistrate has good cause to believe that any material witness in a case pending before him will not appear and testify

S. B. No. 4

unless bond is required, he may fix a bond[7] with or without sureties, and in a sum he considers adequate, for the appearance of the witness.

(b) If the witness fails or refuses to post the bond with the clerk of the court, the magistrate may commit him to jail until he complies or is otherwise legally discharged.

(c) If the witness does provide bond when required, he may be examined and cross-examined before the magistrate in the presence of the defendant and his testimony shall be recorded. He shall then be discharged.

(d) If the witness is unavailable or fails to appear at any subsequent hearing or trial when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal testimony of the witness.

Section 5. This act takes effect on January 1, 1989, if the BAIL CONSTITUTIONAL AMENDMENT is approved by the voters during the next general election.

APPENDIX E
DRAFT

Rule ____ - ____

VICTIMS AND WITNESSES

INTENT:

To establish procedures which ensure that victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity.

To establish procedures which ensure that child victims and child witnesses of crime are treated with consideration for their age and maturity and in a manner that is the least traumatic, intrusive or intimidating.

APPLICABILITY:

This rule shall apply to the judiciary, prosecutors, defense counsel, and law enforcement and corrections personnel in all felony cases and all misdemeanor cases where personal injury is sustained by the victim.

STATEMENT OF THE RULE:

1. At the time of the arraignment or preliminary hearing, or as soon thereafter as possible, the prosecuting agency shall provide written verification to the court that all victims and witnesses have been informed of their responsibilities during the criminal proceedings and that those proceedings have been explained to them in a manner which is understandable, given the age and maturity of the victims and witnesses.

2. At the time of the arraignment or preliminary hearing, or as soon thereafter as possible, the prosecuting agency shall provide written verification to the court that all victims and witnesses have been informed of their right to be free from threats, intimidation and harm by anyone seeking to induce the victim or witness to testify falsely, withhold testimony or information, avoid legal process, secure the dismissal of or prevent the filing of a criminal complaint, indictment or information. At that time and where facilities are available, the prosecuting agency shall provide written verification to the court that the victims and witnesses have been informed of their right to a separate waiting area.

3. The prosecuting agency shall provide written notice to all victims of the date and time of scheduled hearings, trial and sentencing and of their right to be present during those proceedings and any other public hearing unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.

4. The informational rights of victims and witnesses contained in paragraphs 1 through 3 of this rule are contingent upon their providing the prosecuting agency and court with their current telephone numbers and addresses.

5. The written verification filed with the magistrate shall be transferred with the case file to the District Court in cases which are bound over to the District Court for trial.

6. In cases where the victim or the victim's legal guardian so requests, the prosecutor shall explain to the victim that a plea agreement involves the dismissal or reduction of charges in exchange for a plea of guilty and identify the possible penalties which may be imposed by the court upon acceptance of the plea agreement. At the time of entry of the plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been contacted and an explanation of the plea bargain has been provided to the victim or the victim's legal guardian prior to the court's acceptance of the plea.

7. The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.

8. Judges should give scheduling priority to those criminal cases where the victim is a minor in an effort to minimize the emotional trauma to the victim. Scheduling priorities for cases involving minor victims are subject to the scheduling priorities for criminal cases where the defendant is in custody.

Editor's Note. For continuances in criminal cases involving minor victims, see Rule ___ - ___.

0135q/6-7

DRAFT

Rule ____ - ____

VICTIMS' RIGHTS COMMITTEE

INTENT:

To provide consistency in the establishment of the Victims' Rights Committees in accordance with Utah Code Ann. Section 77-37-5.

To establish the Commission on Criminal and Juvenile Justice as the responsible agency for the development of policies and procedures which govern the operation of the Victims' Rights Committees.

APPLICABILITY:

This rule shall apply to the judiciary and the Commission on Criminal and Juvenile Justice.

STATEMENT OF THE RULE:

1. On or before July 1st of each odd numbered year, the presiding judge of each judicial district shall appoint the chair of the Victims' Rights Committee for that judicial district.
2. The chair of the committee shall have experience in and knowledge of the criminal justice system and shall have an interest in the rights of victims and witnesses. The chair shall not be a member of the judiciary or be employed by the judicial branch of government.
3. On or before September 1st of each odd number year, the chair shall appoint the members of the Victims' Rights Committee. Members shall consist of: a county attorney, a sheriff, a corrections field services administrator, an appointed victim advocate, a municipal attorney, a municipal chief of police and other representatives as appropriate. Members shall have experience in and knowledge of the criminal justice system and shall have an interest in the rights of victims and witnesses.
4. The chair may succeed itself at the discretion of the presiding judge. The members of the committee may succeed themselves at the discretion of the chair.

5. The Committee shall act as a clearinghouse to distribute and standardize information relevant to victims of crime and the services available to them within the judicial district. It shall assume a leadership role in developing an educational program for the public as well as professionals who provide services to victims. Victims who have complaints may submit them in writing to the Committee. The Committee will note them for informational purposes and then forward them to the appropriate agency for action. Minutes of the Committee meetings shall be forwarded to the Commission on Criminal and Juvenile Justice for distribution to local Committees on a statewide basis. The Commission shall also provide minutes of the meetings of the Governor's Council on Victims to the local Committees.

0135q/8-9

APPENDIX F
CORRECTIONS TASK FORCE REPORT
Executive Summary

Introduction

Utah, along with the rest of the nation, has experienced a dramatic increase in its prison population. The state's financial commitment to Corrections has also risen significantly. The Department of Corrections' budget has increased from \$22,307,900 in 1980 to \$50,157,400 in 1986.

Today it costs the state approximately \$15,500 per inmate annually to operate the Utah State Prison. That does not include Department administrative costs, the costs of constructing new facilities, the depreciation of existing facilities, lost taxes, or welfare costs.

Secure facilities construction costs approximately \$25,000 to \$30,000 per cell currently. In 1982, there were 1,252 offenders in prison in Utah. In 1987, the population increased to 1,913. If growth in admissions continues, even at an annual rate of just 5% until 1995, the number of inmates incarcerated will increase to 3,601. The accumulated costs in 1987 dollars for the 1,668 additional inmates over that eight year period is estimated at \$55,000,000 for construction and \$104,655,994 for operation. Those trends and projections prompted the Utah Commission on Criminal and Juvenile Justice to establish the Task Force on Adult Corrections. The purpose of the task force is to identify the factors contributing to prison population growth and to make recommendations to address them.

Understanding Prison Population Growth

Simply stated, prison population is driven principally by two factors: (1) admission rates to prison, and; (2) lengths of stay in prison. If 1,000 offenders are admitted to prison each year and each inmate stays for two years, the prison capacity must be 2,000. Admitting 2,000 inmates per year to serve four year sentences would require a prison capacity of 8,000. In Utah, both prison admissions and lengths of stay have increased substantially.

Increased Prison Admissions

There are three primary ways to be admitted to prison. First, the court may sentence an offender directly to prison. Second, the court may sentence an offender to probation. If the offender violates the conditions of the probation, then he may be sentenced to prison. Third, the Board of Pardons may parole an offender. If he commits a new felony or misdemeanor, or otherwise violates the conditions of the parole, he may be returned to prison. All three principal admission categories have increased. However, those offenders who enter as the result of a new court commitment account for the largest proportion of the increase.

1. In 1982, nine parolees returned to prison for committing a new misdemeanor. In 1986, 117 parolee/misdemeanants returned to prison. That is a 1,200% increase.

2. In 1982, 20 parolees returned to prison for violating the conditions of their parole. These offenders had not been apprehended for any new crime. In 1986, 97 such parolees returned to prison for parole condition violations, a 385% increase.

3. In 1982, 167 parolees returned to prison for committing a new felony offense. In 1986, only 141 such parolees returned, a 16% decrease.

4. In 1982, there were 487 new felony admissions to prison in contrast to 731 in 1986, a 50% increase. Felony admissions include offenders sentenced directly from court, probation violators, and parolees who commit new felonies. Approximately 20% of the new court commitments are probation violations.

Why Have Prison Admissions Increased?

Unlike prison admission rates, the crime rate in Utah has remained relatively constant since 1982. Similarly, the number of people in the 18-29 age group, the high crime age group, has declined slightly. Most of the increase in admissions is the result of changed policies in the state to reflect public sentiment. For example, during the past four years the legislature has created several new crimes, increased penalties for other existing crimes, and established mandatory sentences for selected sex crimes. In addition, the judiciary and pre-sentence investigators modified the sentencing guidelines to provide for more incarceration. The Department of Corrections implemented stricter supervision standards which resulted in more parole and probation violations. Part of that change is attributable to the Utah Supreme Court case of Arguelles v. Doe. There the court held that negligent supervision of a parolee can create personal liability for a parole officer. The combined impact of these changes has been a significant increase in prison admissions.

Prison Length of Stay

During the 1970's, the average length of stay for inmates released from prison was 30 months. When prison crowding became an issue in 1983, the average length of stay dropped to 20 months. In 1987, length of stay increased to 24 months. However, that does not reflect the actual length of stay because only the offenders released are counted. Of greater consequence are those not released.

Prior to 1983, the average length of stay for first degree felons was 48 months. In 1983, the Board of Pardons decided to hold those offenders at least 60 months since the minimum statutory term was five years. Between 1985 and 1987 the Board increased the average length of stay for first degree felons to 98 months. Because those offenders are still in

prison, it is difficult to determine the impact that increase will have on prison population and the average length of stay. That trend, however, could require increasing prison bed space capacity by over 2,000 in the next decade.

The legislature has also affected lengths of stay by imposing mandatory minimum sentences of 5, 10, or 15 years for sex offenses against children. Currently, the Board of Pardons is not giving parole dates to those offenders so it is impossible to determine accurately the ultimate impact they will have on the system. It is clear, though, that mandatory sentences, and the adjustments in other sentences to maintain equity, could require increasing prison capacity by another 2,000 beds during the next ten years.

Finally, Sentencing and Release Guidelines established by the Commission on Criminal and Juvenile Justice have had a significant impact on prison lengths of stay. When the Commission was established in 1983, it was charged to develop sentencing and release guidelines to replace those adopted in 1979 by the Judiciary, the Board of Pardons and the Department of Corrections. In accord with changing sentiment, the new guidelines increased the average recommended minimum time served to 21 months, and augmented the number of offenders recommended to prison. A recent study of the actual dates given by the Board of Pardons indicates an average length of stay of 34 months (not including mandatory sentences). Currently the guidelines only address minimum lengths of stay.

Competing Factors

The trend in Utah is to incarcerate more offenders and to keep them in prison longer. Being tougher on crime and using prisons for punishment accords with Utah public opinion. Although that may be the appropriate direction to address the issue, increasing incarceration is very expensive and will impose ever increasing demands on the state budget. That will require a solid commitment from the public and the policymaker alike, especially in times of austerity.

Paradoxically, a 1987 survey showed that a majority of Utahns believe that Corrections is one area that could be cut to balance the state budget. The state cannot continue to incarcerate at the present rate with less money. Policymakers are caught between those two competing points of view.

Conclusions and Recommendations

After reviewing the facts and data, the Task Force on Adult Corrections concluded that Utah must continue to maintain the highest public safety standards. It also concluded that there are ways that the correctional system could be less expensive and, therefore, makes the following recommendation:

The legislature should amend H.B. 209 (1983 Legislative Session) mandatory sentencing provisions to return discretion to the Judiciary and the Board of Pardons. The legislature should consider alternative placement facilities for some H.B. 209 offenders. The legislature should appropriate the necessary funds for treatment and facilities recommended.

Other recommendations will be forthcoming.

APPENDIX G

SELECT COMMITTEE REPORT

ON MANDATORY MINIMUM SENTENCES

The Utah Commission on Criminal and Juvenile Justice, after receiving conflicting recommendations from two of its task forces created a select committee to resolve conflict regarding mandatory minimum sentences.

The Select Committee consisted of Chairman Rob Parrish, Assistant Utah Attorney General; Judge Dennis Frederick, 3rd District Court; Karen Knight-Eagan, U of U Law School; Paul Boyden, Utah Board of Pardons; Myron March, Dept. of Corrections; and Frances Palacios, S. L. County Legal Defenders Office.

The Select Committee was encouraged to make recommendations that would preserve mandatory sentences, but reduce disparity, better balance discretion, and solve other problems related to mandatory sentencing.

The committee met six times. It is recommending that the incest exception be broadened to include all child sex offenders who are subject to mandatory minimum sentences. At the same time the exception is narrowed to include only those who meet screening standards set by the Dept. of Corrections. The Board of Pardons would be allowed under limited circumstances to improve equity by commuting to lower mandatory levels.

The specific proposed statutory changes are enclosed. It is also recommended that the Statewide Association of Prosecutors be asked to develop charging and plea bargaining guidelines that would encourage more uniform prosecution of child sex abuse cases and that Corrections provide a psychosexual evaluation as part of the presentence investigation report on sex crimes.

Judge Frederick is asking the Board of District Court Judges for input regarding the recommendations, and it should be noted that he took no position on the recommendation concerning restoring some discretion to the Board of Pardons until that recommendation can be considered by the Board. With that exception, the Committee achieved consensus on the recommendations.

The committee noted during its discussions that its efforts were somewhat limited by the lack of reliable and complete data concerning the actual effect statewide of the implementation of mandatory minimum sentences. As a result, the recommendations of the committee are based largely upon the experience of the members, rather than on conclusions drawn from careful research of cases which were, or could have been, charged as mandatory minimum term crimes. The committee thus recommends that such an in-depth study be conducted at the direction of the Commission for the purpose of allowing future recommendations to be better informed. Such a study should include tracking cases from police reports, prosecutor's files, court files, presentence reports, and Board of Pardons' files.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
25
25
26
27

LEGISLATIVE GENERAL COUNSEL

ENCLOSURE A

Approved for Filing _____

Date _____

(EXCEPTION TO MANDATORY SENTENCING)

1989

GENERAL SESSION

By _____

Section 1. Amends Utah Code Annotated section 76-5-406.5

76-5-406.5 Circumstances required for probation or suspension of sentence for sex offense against child.

(1) In a case involving rape of a child, attempted rape of a child, aggravated sexual abuse of a child or sodomy upon a child [involving the actor's genitals and the mouth or anus of the child, where the defendant is the victim's parent, stepparent, adoptive parent, or legal guardian who has lived in the household in the role of a parent to the victim for a continuous period of time of at least one year immediately prior to the earliest offense, and the victim was more than five years of age at the time the earliest offense was alleged or proven], the court may impose an indeterminate term for a first degree felony or execution of sentence may be suspended and probation may be considered only if all of the following circumstances are found by the court to be present and the court in its discretion,

1 considering the circumstances of the offense, including the
2 nature, frequency, and duration of the conduct, and
3 considering the best interests of the public and the victim
4 finds that modification of the sentence from a mandatory
5 minimum term to an indeterminate term for a first degree
6 felony or that probation or suspension of sentence [to be]
7 is proper:

8 (a) the defendant did not use a weapon or use force,
9 violence, substantial duress or menace, or threat of harm in
10 committing the offense, or before or after the offense in an
11 attempt to frighten the child or keep the child from
12 reporting the offense;

13 (b) the defendant did not cause bodily injury to the
14 victim during or as a result of the offense and did not
15 cause the victim severe psychological harm;

16 (c) the defendant, prior to the offense, had not been
17 convicted of any public offense in Utah or elsewhere
18 involving sexual misconduct in the commission of the
19 offense;

20 (d) the defendant did not commit an offense described
21 in Part 4 of this chapter against [any other] more than one
22 victim, at the same time, or during the same course of
23 conduct, or previous or subsequent to the instant offense,
24 [except where the additional victim is within the same
25 family and the court finds unusual circumstances exist
26 justifying the granting of probation];

27

1 (e) the defendant did not use, show, or display
2 pornography or create sexually-related photographs or tape
3 recordings in the course of committing the offense;

4 (f) the defendant did not act in concert with another
5 offender during the offense or knowingly commit the offense
6 in the presence of a person other than the victim or, with
7 lewd intent to reveal the offense to another;

8 (h) the defendant admits the conduct of which he has
9 been convicted, and has been accepted for mental health
10 treatment in a [recognized family] sexual abuse treatment
11 center which [specializes in dealing with the kind of child
12 sexual abuse occurring in this case] has been approved by
13 the Department of Corrections. Such treatment must be at
14 least one year in duration and must specifically address the
15 conduct for which the defendant was convicted;

16 [j] (i) rehabilitation of the defendant through
17 treatment is probable, based upon evidence from the
18 treatment professional who has accepted the defendant for
19 treatment;

20 (j) the defendant has undergone a complete psychosexual
21 evaluation conducted by a professional approved by the
22 Department of Corrections and it is the opinion of such
23 professional, accepted by the court, that the defendant is
24 not a fixated pedophile and does not present an immediate
25 and present danger to the community if allowed to be
26 released on probation;

27

1 [l] (k) the defendant did not encourage, aid, allow, or
2 benefit from any act of prostitution or sexual act by the
3 victim with any other person, or sexual performance by the
4 victim before any other person;

5 (g) in the case of an offense committed by a parent,
6 stepparent, adoptive parent or legal guardian of the victim,
7 the defendant must, in addition to establishing the
8 foregoing conditions, establish that it is in the victim's
9 best interests that the defendant not be imprisoned, as
10 established by evidence from treatment professionals who are
11 treating the victim and who intend to treat the family as a
12 whole; or who have assessed the victim for purposes of
13 treatment as ordered by the court, for good cause shown;

14 [i] (l) if probation is to be imposed, the defendant,
15 as a condition of probation, will [maintain residency
16 outside the home] not reside in a home where children also
17 reside for at least one year beginning with the commencement
18 of treatment, and the defendant, as a condition of probation
19 will not again take up residency in [the home] such a home
20 until allowed to do so by order of the court;

21 [k] (m) a [~~jail~~] term of incarceration of at least [30]
22 90 days [is] shall be served prior to treatment, and
23 probation [is] may be imposed for up to ten years maximum.

25 (2) [In a case of sodomy upon a child involving the
25 actor's mouth and the genitals or anus of the victim, where
26 the defendant is the victim's parent, stepparent, adoptive
27 parent, or legal guardian who has lived in the household in

1 the role of a parent to the victim for a continuous period
2 of time of at least one year prior to the earliest offense,
3 execution of sentence may be suspended and probation may be
4 considered regardless of the age of the victim so long as
5 all of the circumstances enumerated in Subsections (1)(a)
6 through (1) are found by the court to exist and the court in
7 its discretion, considering the circumstances of the
8 offense, including the nature, frequency and duration of the
9 conduct, finds probation or suspension of sentence to be
10 proper] Establishment by the defendant of all the criteria
11 of this section does not mandate the granting of probation
12 or a modification of the mandatory minimum sentence that
13 would otherwise be imposed. The Court has discretion to
14 grant or deny such a request based upon a consideration of
15 the circumstances of the offense, including the nature,
16 frequency and duration of the conduct, the effects of the
17 conduct on the victim or victims involved, the best
18 interests of the public and of the victim or victims, and
19 the characteristics of the defendant, including the risk
20 that the defendant presents to the public and specifically
21 to children.

22 (3) The defendant has the burden to establish by a
23 preponderance of evidence eligibility under all of the
25 criteria of this section.

25 (4) If a defendant granted probation under this section
26 fails to cooperate or succeed in treatment or violates
27 probation to any substantial degree, the mandatory minimum

1 sentence previously imposed for the offense shall be
2 immediately executed.

3 (5) The court shall enter written finding of fact as to
4 the conditions established by the defendant which justify
5 the modification of sentence or granting of probation under
6 this section.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
25
25
26
27

1 ENCLOSURE B

2 PROPOSED ADDITION TO UCA 76-3-201

3 The addition would constitute 76-3-201 (6) (d) See attached pages to put
4 proposed legislation in context.

5 If a defendant has been sentenced and committed to the Utah State Prison
6 for a mandatory term which is of middle or maximum severity, the Board of
7 Pardons, after holding an original hearing on that commitment, may refer the
8 sentence and commitment back to the sentencing court for reconsideration. The
9 court may, within 90 days of its receipt of the referral, resentence the
10 defendant, so long as the new sentence is neither greater than the initial
11 sentence nor less than the minimum mandatory time of incarceration prescribed
12 by statute. The court may forward to the Board a written summary of its reasons
13 for resentencing or its decision not to resentence. After the receipt of a
14 response from the court or after having received no timely response, the Board
15 may hold an additional hearing and upon a finding that the severity of the
16 mandatory sentence is inequitable for the particular crime, may reduce the
17 mandatory term so long as the new term is not less than the minimum mandatory
18 time of incarceration prescribed by statute. No reduction in the mandatory term
19 by either the court or the Board shall limit the authority of the Board of
20 Pardons to keep the defendant in the custody of the Department of Corrections
21 longer than the mandatory period in the interest of justice and public safety.

PART 1

CLASSIFICATION OF OFFENSES

Section	
76-3-101.	Sentencing in accordance with chapter.
76-3-102.	Designation of offenses.
76-3-103.	Felonies classified.
76-3-104.	Misdemeanors classified.
76-3-105.	Infractions.

76-3-101. Sentencing in accordance with chapter.

(1) A person adjudged guilty of an offense under this code shall be sentenced in accordance with the provisions of this chapter.

(2) Penal laws enacted after the effective date of this code shall be classified for sentencing purposes in accordance with this chapter. 1973

76-3-102. Designation of offenses.

Offenses are designated as felonies, misdemeanors, or infractions. 1973

76-3-103. Felonies classified.

(1) Felonies are classified into four categories:

- (a) Capital felonies;
- (b) Felonies of the first degree;
- (c) Felonies of the second degree;
- (d) Felonies of the third degree.

(2) An offense designated as a felony either in this code or in another law, without specification as to punishment or category, is a felony of the third degree. 1973

76-3-104. Misdemeanors classified.

(1) Misdemeanors are classified into three categories:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors;
- (c) Class C misdemeanors.

(2) An offense designated a misdemeanor, either in this code or in another law, without specification as to punishment or category, is a class B misdemeanor. 1973

76-3-105. Infractions.

(1) Infractions are not classified.

(2) Any offense which is an infraction within this code is expressly designated and any offense defined outside this code which is not designated as a felony or misdemeanor and for which no penalty is specified is an infraction. 1973

PART 2

SENTENCING

Section	
76-3-201.	Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences.
76-3-201.1.	Nonpayment of fine or restitution as contempt — Imprisonment — Relief where default not contempt — Collection of default.
76-3-201.2.	Civil action by victim for damages.
76-3-202.	Paroled persons — Termination or discharge from sentence — Time served on parole — Discretion of board of pardons.

Section	
76-3-203.	Felony conviction — Indeterminate term of imprisonment — Increase of sentence if firearm used.
76-3-204.	Misdemeanor conviction — Term of imprisonment.
76-3-205.	Infraction conviction — Fine, forfeiture, and disqualification.
76-3-206.	Capital felony — Death or life imprisonment.
76-3-207.	Capital felony — Sentencing proceeding.
76-3-208.	Imprisonment — Custodial authorities.

76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences.

(1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of them:

- (a) to pay a fine;
- (b) to removal from or disqualification of public or private office;
- (c) to probation unless otherwise specifically provided by law;
- (d) to imprisonment; or
- (e) to death.

(2) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license, or permit removal of a person from office, cite for contempt, or impose any other civil penalty. A civil penalty may be included in a sentence.

(3) (a) (i) When a person is adjudged guilty of criminal activity which has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution up to double the amount of pecuniary damages to the victim or victims of the offense of which the defendant has pleaded guilty, is convicted, or to the victim of any other criminal conduct admitted by the defendant to the sentencing court unless the court in applying the criteria in Subsection (3)(b) finds that restitution is inappropriate. Whether the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record.

(ii) When a defendant has been extradited to this state under Chapter 30, Title 77, or has been transported at governmental expense from one county to another within the state for the purpose of resolving pending criminal charges, and is adjudged guilty of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition or transportation. In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (3)(b). If the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record. The court shall send a copy of its order of restitution to the Division of Finance.

(b) In determining whether or not to order restitution, or restitution which is complete, partial, or nominal, the court shall take into account:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(c) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow him a full hearing on the issue.

(4) As used in Subsection (3):

(a) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(b) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes, but is not limited to, the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses such as earnings and medical expenses.

(c) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including insured damages.

(d) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. "Victim" does not include any coparticipant in the defendant's criminal activities.

(5) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation, or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) The court in determining a just sentence shall be guided by sentencing rules regarding aggravation and mitigation promulgated by the Judicial Council.

(6) (a) If a defendant subject to Subsection (5) has been sentenced and committed to the Utah State Prison, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Board of Pardons, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced, so long as the new sentence is no greater than the initial sentence nor less than the mandatory time prescribed by statute. The resentencing provided for in this section shall comply with the sentencing rules of the Judicial Council to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(b) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant as part of the sentence that if the defendant is released from prison, he may be on parole for a period of ten years.

(c) If during the commission of a crime described as child kidnaping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the aggravated mandatory term in state prison. This subsection supersedes any conflicting provision of law. 1987

76-3-201.1. Nonpayment of fine or restitution as contempt — Imprisonment — Relief where default not contempt — Collection of default.

(1) When a defendant sentenced to pay a fine or to make restitution defaults in the payment of any installment, the court on motion of the prosecution, victim, or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part of it, is paid.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the fine or make the restitution from those assets. His failure to do so may be held to be contempt unless he makes the showing required in Subsection (2).

(4) The term of imprisonment for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the fine or order of restitution or the unpaid portion in whole or in part.

(6) (a) A default in the payment of a fine or costs or failure to make restitution or any installment

ENCLOSURE C

NON-LEGISLATIVE RECOMMENDATIONS

1. Problem: The tremendously disparate exercise of prosecutorial discretion in the charging and plea-bargaining processes.

Solution: We recognize that disparate dispositions in cases involving allegations of similar conduct occur as a result of differences in the quantity and quality of the admissible evidence which exists in any given case. We also recognize that dispositional differences often are directly associated with the willingness and attitude of the witnesses involved in a particular case. This is true of all criminal cases and particularly child sexual abuse cases.

However, some consistency of charging and plea-bargaining standards on a state-wide basis in the area of child abuse cases is desirable. It is difficult to justify disparate treatment of similarly situated defendants based on arbitrary factors.

Therefore, it is the recommendation of this task force that state-wide charging and plea-bargaining standards be developed for child abuse cases with tolerance for the variable evidentiary factors that exist in any given case.

The State Wide Association of Prosecutors (SWAP) appears to be the best organizational vehicle for facilitating the process of developing such standards with input and participation from all prosecutorial offices within the State of Utah.

2. Problem: We expect Judges to make the best possible sentencing decisions in child abuse cases without providing to those judges adequate information upon which to base their decisions.

Solution: Presently, the kind of information judges can expect to receive prior to sentencing an individual who has pled guilty to, or been convicted of any crime, including child abuse, is a standard pre-sentence report and a victim-impact statement. At the present time, a psycho-sexual evaluation is not part of the pre-sentence investigation report unless specifically ordered by the court. This information is considered necessary by professionals to determine whether an individual is likely to benefit from treatment or rehabilitative programs and is critical to the assessment of the degree of risk of recidivism posed by any perpetrator. To expect judges to make the best possible sentencing decisions in these cases without this type of information seems unreasonable and contrary to the public interest.

Therefore, it is the recommendation of this task force that in sexual abuse and assault cases, Department of Corrections protocol include psycho-sexual assessment conducted by a professional that the Department of Corrections has approved. If the pre-sentence recommendation is probation, the evaluation must establish that the offender is not a fixated pedophile and does not present an immediate and present danger to the community while on probation.

STAFF OF THE COMMISSION

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

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

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

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

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

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

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

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

Rolen Yoshinaga, Senior Programmer Analyst

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

John Walch, J.D.

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

Dorothy Poulsen, Administrative Secretary

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

Calene Brown and Amy Wylie, Secretaries

Serve as secretaries to the Commission and its staff.
