

44160

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

**CORRECTIONS  
CORRECTIONAL  
LEGISLATION**

44160

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



STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY

NCJRS

GALVIN L. RAMPTON  
GOVERNOR

DEC 13 1977

Dear Citizens:

## ACQUISITIONS

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Galvin L. Rampton". Below the signature, the word "Governor" is printed in a smaller, sans-serif font.

# **CORRECTIONAL LEGISLATION**

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

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

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

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

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

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

1. To develop a comprehensive, long-range plan for strengthening and improving law enforcement and the administration of justice . . .
2. To coordinate programs and projects for state and local governments for improvement in law enforcement.
3. To apply for and accept grants from the Law Enforcement Assistance Administration . . . and other government or private agencies, and to approve expenditure . . . of such funds . . . consistent with . . . the statewide comprehensive plan.
4. To establish goals and standards for Utah's criminal-justice system, and to relate these standards to a timetable for implementation.

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## INTRODUCTION

In addition to legislative statutes, *correctional law* has three components, which are: constitutional enactment, court decisions, and administrative rules and regulations. These *laws* are the foundation on which a good correctional system is based. Good *law* will allow, although not assure, good administration.

This pamphlet addressed the legislatively enacted *correctional law*. Legislation is based on constitutional enactment and may be changed when the constitution (state or federal) is changed. Court decisions may change a law or declare it to be unconstitutional. Administrative rules and regulations further interpret the law and provide more specific guidance to those implementing it. These other areas of *correctional law* have been considered in the development of the legislative standards.

The correctional code includes statutes governing services for persons awaiting trial, sentencing, probation, community treatment programs, institutional programs, parole, and pardon. Utah, like other states, does not have a comprehensive correctional code addressing all these areas, although corrections is addressed in several sections of the Utah Code with varying degrees of specificity.

There are seven standards in this pamphlet addressing the development of a comprehensive correctional code for Utah. Standards designed to implement the suggested legislation are presented in other pamphlets.

**Standard 1.1, Unifying Correctional Legislation** calls for legislation to all correctional programs, which would allow closer coordination of interdependent programs, effective utilization of resources, and development of more effective programs across the spectrum of corrections.

**Standard 1.2, Comprehensive Correctional Legislation,** suggests that a comprehensive correctional code should be enacted by 1978. This new code should address:

1. Correctional programs from services for persons awaiting trial to parole and pardon.
2. Those for whom programs should be developed.
3. A statement of the "*public policy*" governing the correctional system.

In the past few years, there have been many court cases concerning the rights of offenders. In the 1971-72 term of the U.S. Supreme Court alone, there were eight cases decided which directly affect convicted offenders and at least two others which have implications for correctional practices. Case-by-case litigation in the courts is an inefficient way to define the rights of offenders and causes uncertainties in day-to-day operations. If a legislature were to enact a comprehensive correctional code which recognizes the new philosophy of offenders as it is now being developed in the courts, there will be no need for the costly, inefficient, and uncertain case-by-case litigation. This new philosophy of the right of convicted offenders was first and best expressed by Coffin vs. Reichard, 143 F. 2d 443 (6th Cir. 1944), which states: "(a) prisoner retains all the rights of an ordinary citizen, except those expressly or by necessary implication taken from him by law." **Standard 1.3, Code of Offender's Rights**, suggests the principles that should be followed in drafting legislation concerning the rights of convicted offenders.

As a general rule, correctional systems have developed along state lines or with state leadership. The standards in this pamphlet advocate correctional statutes passed by state legislatures, which would apply statewide. Because fast, cheap transportation is available, an offender is likely to become involved in more than one correctional system at a time; therefore, provision for the state correctional authority to cooperate with other state and local correctional authorities is necessary. **Standard 1.4, Interstate Compact Agreements** and **Standard 1.5, Intrastate Agreements**, suggest that the chief executive officer of the correctional agency enter into agreement with other state and local correctional agencies.

The last few years has brought a renewed interest in, and emphasis on, community-based programs. The earliest community-based program was a work-release program for misdemeanants in Wisconsin in 1913. Since then, a wide variety of programs have been developed on both the misdemeanor and felony levels. As a general rule, there is no specific legislative authorization for community-based programs other than work-release. **Standard 1.6, Community Based Programs**, suggests that legislation be developed to:

1. Authorize correctional agencies to develop and maintain community-based programs themselves.
2. Exempt offenders in a community-based program from the "convict-made" goods prohibition.

Parole began as the only procedure, short of pardon, to diminish the sentenced time of confinement. Since then, the development of the indeterminate sentence has increased the importance of the parole board and generally shortened sentences. With the development of a wider variety and more extensive use of community-based programs, the importance and role of the parole board is again changing.

**Standard 1.7, Parole Legislation**, suggests that legislation be passed concerning parole which:

1. Authorizes parole for all committed offenders except those convicted of a capital offense.
2. Establishes criteria and procedures for parole.

The following pages give each of the seven standards as adopted for Utah. After each standard, the current Utah status is briefly reviewed and a method to implement the legislation is suggested. However, legislation can only authorize or prohibit; it cannot implement.

All of the Utah Law that has been cited is from the Utah Code Annotated, 1953, as amended up to 1974 when these standards were reviewed. There have been changes to the law since then—some in response to standards and goals effort. Some of the methods of implementation note major changes since 1974.

### **STANDARD 1.1 UNIFYING CORRECTIONAL PROGRAMS**

Utah should enact legislation by 1978 to unify all correctional facilities and programs. The Board of Parole may be administratively part of an overall statewide correctional services agency, but it should be autonomous in its decision-making authority and separate from field services. Programs for adult, juvenile, and youthful offenders that should be within the agency include:

1. Services for persons awaiting trial.
2. Probation supervision.
3. Institutional confinement.
4. Community-based programs, whether prior to or during institutional confinement.

5. Parole and other after-care programs.
6. All programs for misdemeanants, including probation, confinement, community-based programs, and parole.

The legislation should also authorize the correctional agency to perform the following functions:

1. Planning of diverse correctional facilities.
2. Development and implementation of training programs for correctional personnel.
3. Development and implementation of an information-gathering and research system.
4. Evaluation and assessment of the effectiveness of its functions.
5. Periodic reporting to governmental officials including the legislature and the executive branch.
6. Development and implementation of correctional programs, including academic and vocational training and guidance, productive work, religious and recreational activity, counseling and psychotherapy services, organizational activity, and other such programs that will benefit offenders.
7. Contracts for the use of non-departmental and private resources in correctional programming.

This Standard should be regarded as a statement of principle applicable to most state jurisdictions. It is recognized that exceptions may exist because of local conditions or history where juvenile and adult corrections or pre-trial and post-conviction correctional services may operate effectively on a separated basis.

#### UTAH STATUS AND COMMENTS

In most states, the administration of correctional facilities and services is highly fragmented. Only two or three states have established a "unified" correctional system, while others have consolidated responsibility for most of the correctional functions in one agency at the state level. However, administrative responsibility for the nine correctional activities (juvenile detention,

juvenile probation, juvenile institutions, juvenile aftercare, misdemeanor probation, adult probation, local short-term adult institutions and jails, long-term adult institutions and parole) is divided between the state and its political sub-divisions.

In Utah, the state has assumed responsibility for parole and probation, long-term adult institutions (prison) and long-term juvenile institutions (State Industrial School). Local governments have assumed responsibility for juvenile detention and jails, police lockups, and other short-term facilities. The Juvenile Court has responsibility for juvenile probation services. This wide inter-governmental and inter-agency diversity has done little to further the successful rehabilitation of offenders as reflected in rising crime and recidivism rates. The following sections of the code address the correctional responsibilities by the various units of government:

Section 56-35-3: Creates within state government the Department of Social Services, with the following boards and divisions:  
*Boards:* (1) Health, (2) Family Services, (3) Corrections, (4) Pardons, (5) Mental Health, (6) Indian Affairs, (7) Aging, (8) Alcoholism and Drugs. *Divisions:* (1) Health, (2) Family Services, (3) Corrections, (4) Mental Health, (5) Indian Affairs, (6) Aging, (7) Alcoholism and Drugs.

### **Adult Corrections**

Section 64-9-1.1 creates within the Department of Social Services the Board of Corrections. The Board under this provision is a policy-making board for the Division of Corrections.

Section 64-9-3.1 creates within the Department of Social Services "under the administration and general supervision of the executive director of social services and under the policy direction of the board of corrections, the division of corrections." It also authorizes the Division of Corrections as the authority of the State of Utah for corrections.

Section 64-9-2 defines the powers of the Board of Corrections and enables them to "control general policies" of the State Prison, and to "establish policy for" the Adult Probation and Parole Section.

Section 77-62-20 creates the Adult Probation and Parole Section within the Division of Corrections.

Section 77-62-21 vests the management and control of the Adult Probation and Parole Section in the Division of Corrections.

Section 77-62-2 establishes the Board of Pardons within the Department of Social Services.

Section 17-22-2 gives the sheriff responsibility of the jail and its prisoners.

Section 17-22-4 directs the sheriffs to keep a county jail and defines its uses as : (1) detention of persons charged with a crime and committed for trial, (2) detention of persons committed to secure attendance as witnesses in criminal cases, (3) confinement of persons committed for contempt, or upon civil process, or by other authority of law, (4) for confinement of persons sentenced to imprisonment therein upon conviction of crime.

Section 10-8-58 authorizes cities and towns to establish, erect, and maintain city jails, houses of correction, and work houses for confinement of persons convicted of violating city ordinances.

### **Juvenile Corrections**

Sections 64-6-1 thru 17 establishes the operation of the Utah State Industrial School in Ogden under the direction of the Division of Family Services. These statutes set forth in general terms the powers and duties of the division with respect to the school, which was established for the confinement, discipline and education of the youthful offender. Concerning parole, UCA 64-6-8 states that a student may be placed outside the school, but shall remain in the legal custody and under control of the school, unless otherwise discharged.

Section 55-10-77 gives the Juvenile Court exclusive, original jurisdiction except as may otherwise be provided by law.

Section 55-10-73 establishes under the Board of Judges and under the general administration of the judge(s) of each district a director of probation to supervise the work of the probation department.

### **Juvenile Detention and Shelter Care**

Section 55-10-49.1 "County commissioners of each county shall provide or arrange for detention facilities and services in

accordance with the provisions of this act. They may choose three or more citizens with broad child-welfare interests to serve as an advisory board on detention."

Section 55-10-49.2 authorizes the Division of Family Services to pay up to 50% of the average per capita daily cost of the detention facility operation, as shown by the audited cost records for the detention facility. The remaining daily cost is paid by the county the child comes from, since counties choosing not to maintain a detention facility may contract with another county for these services.

Section 55-10-49.3: The Division of Family Services "is empowered and directed to give guidance and direction to counties in the establishment and administration of detention centers where counties qualify or desire to qualify hereunder for state financial assistance."

The Division of Family Services is also directed to initiate, encourage, and assist the formation of detention centers in counties where adequate detention facilities do not exist.

However, this act does not relieve counties from the responsibilities set forth in section 55-10-49.

Section 55-10-49.4: "State financial assistance up to fifty percent of the total net expenditure for capital improvements and operation and maintenance of detention facilities by the counties shall be paid by the state, conditioned upon:

- a. approval by the division of family services of the county areas to be served by the detention center.
- b. approval by the division of family services of a specific work program to be performed by the detention center for the fiscal year.
- c. approval by the state department of public welfare of facilities and programs providing for adequate security.

"Such approval to be determined by reasonable rules to be established by the commissioners of the state department of public welfare, which reasonable rules may vary between detention centers according to local conditions, and which shall first receive the approval and consent of the Governor.

If a county provides, or has provided by purchase or construction, or otherwise the physical plan required for detention, an equitable figure in lieu of rental may be agreed to by the public welfare department and this may be used in determining the county's costs in which the state shall share."

## METHOD OF IMPLEMENTATION

A study to review current Utah law and revise it to meet this Standard. Use ABA, NCCD, or ACA model code as a pattern. The new correctional code would be submitted to the Utah legislature for passage.

### **STANDARD 1.2 COMPREHENSIVE CORRECTIONAL LEGISLATION**

Utah, by 1979, should enact all statutes governing corrections including, but not limited to, the following:

1. Services for persons awaiting trial.
2. Sentencing criteria, alternatives and procedures.
3. Probation and other programs short of institutional confinement.
4. Institutional programs.
5. Community-based programs.
6. Parole.
7. Pardon.

The code should include statutes governing the preceding programs for:

1. Felons, misdemeanants, and delinquents.
2. Adults, juvenile, and youth offenders.
3. Male and female offenders.

## UTAH STATUS AND COMMENTS

Utah does not have a comprehensive correctional code. Correctional legislation has been enacted as the need arose and added to the Utah Code in a "helter skelter" fashion. The Utah State Constitution addresses corrections in five sections. Article VII, Section 12—Board of Pardons; Article VII, Section 13—Board of State Prison Commissioners; Article XVI, Section 3—convict labor; Article XIX, Sections 2 & 3—location and maintenance of the State Industrial School and State Prison; Article XXIV, Section

3—prisoners held before statehood will continue to be held. The Utah Code (specifics listed below) and Rules of Civil Procedure (specifics listed below) also describe Utah's correctional system.

### 1. Services for Persons Awaiting Trial

Utah has no statutory base to provide services to persons awaiting trial as described in an Attorney General Opinion, dated June 11, 1974, which states:

"The type of diversionary programs which are in effect in Utah at the present time are largely a matter of prosecutorial discretion and are not statutorily provided for. Arrangements are made between the prosecutor, the defendant and his attorney that if the defendant agrees to undergo certain treatment or do certain things, the charge against him will not be prosecuted. There is usually no formal arrangement and the sanction which the county attorney has for violation of the agreement is that the defendant may be prosecuted in the future."

"The types of programs which are presently utilized under this informal arrangement include, but are not limited to, Drug Treatment Centers, Alcoholics Anonymous, or restitution for some act which the defendant has committed. These arrangements do not require funding from the county attorney, but are programs that already exist. Unless the law is changed, it appears that the county attorneys are the only persons who effectively utilize such a program."

Pre-trial activities are specifically mentioned in Rule 16 in the Rules of Civil Procedure, which states:

"In any action the court may in its discretion, direct the attorneys for the parties to appear before it for a conference, . . . (which) controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice."

Section 17-22-6 prohibits placing persons detained prior to trial, under a criminal sentence, and under civil process in the same room.

Other than these two sections of Utah Code and the Attorney General's Opinion the law doesn't address pretrial services.

## **2. Sentencing Criteria, Alternatives and Procedures**

There is a large body of law governing the sentencing function concentrated in two main areas. The criminal code contains the following:

Section 76-1-303 - 305: Statute of Limitations

Section 76-2-201 - 205: Criminal Responsibility for Conduct of Another

Section 76-2-301 - 308: Defenses to Criminal Responsibility

Section 76-2-401 - 406: Justification Excluding Criminal Responsibility

Section 76-3-101 - 405: Sentences for Felonies, Misdemeanors, and Infractions

The remainder of the criminal code defines each crime and classifies it as a felony, misdemeanor or infraction.

The Code of Criminal Procedure (Title 77) is currently being revised and will probably be submitted to the 1978 legislature. The current Code of Criminal Procedure has three chapters that affect sentencing. Chapter 34 concerns arrest of judgment. Chapter 35, "The Judgment", describes how judgment or sentence must be pronounced, mitigating causes, and records to be kept or expunged. Chapter 36, "Execution", describes how the sentence is to be carried out.

Section 76-3-404 authorizes pre-sentence reports and, where necessary, a ninety-day diagnostic commitment to the Division of Corrections.

The Criminal Code Section 76-3-201 sets the following possible sentences or combination of sentences.

- a. payment of a fine;
- b. removal from and/or disqualification of public or private office;
- c. probation;
- d. imprisonment;
- e. death.

The court also has legal authority to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty.

Paragraphs 3, 4, 5 and 6 of the standard would all be conducted under one or more of the sentences described above. The agencies given the responsibility to provide the programs in these paragraphs are found in several places in the Utah Code as described below.

### **3. Probation and other programs short of institutional confinement**

Under Utah law, there are only two options short of institutional commitment—fines and probation. All other programs are conducted under the auspices of one of these options.

a. *Fines:* Legislation concerning the levying, payment of, disposition of, and punishment for not paying fines can be found in many places in the Utah Code. The Judicial Code in Section 78-4-23 is the most comprehensive when it specifies how fines collected for the violation of city ordinances and state laws by clerk of the city court or district court shall be distributed. Bail commissioners are also authorized to collect fines (Section 10-6-71, 17-32-2) and must give those fines to the city or county treasurer depending on the ordinance or law involved (Section 77-57-37). Excessive fines are prohibited by the Utah State Constitution Article 1, Section 9. The Juvenile Court must give any fines imposed and collected by it to the "county treasurer of the county in which they are collected." (Section 55-10-115).

b. *Probation:* Most of the law concerning probation is found in two places in the Utah Code. Section 55-10-74 authorizes the judge(s) in each Juvenile Court district to appoint a director of probation for that district. He, in turn, has the power to appoint probation officers and other persons as required. (Section 55-10-74).

The establishment of the Adult Probation and Parole Section in the Division of Corrections is found in Section 77-62-20. Further definition of duties, authority, rules, and powers are found in UCA 77-62-21-49. All adults sentenced to probation are under the authority of the Adult Probation and Parole Section. Other treatment modalities such as halfway houses, drug treatment centers, and mental health treatment, are used as a condition of probation. Incarceration at a county jail for short periods (e.g., thirty days or

weekends for a year) is also used as a condition of probation. A probation halfway house is operated by the Division of Corrections under the Adult Probation and Parole Section.

Attorney Generals' Opinion No. 74-023, dated June 11, 1974, addresses activities other than probation this way:

"It must be remembered that any conclusion that the Division of Corrections has authority to establish and administer various correctional programs other than the State Prison and supervision of probationers and parolees is based on a very broad interpretation of the phrase: 'The Division of Corrections shall be the authority of the State of Utah for corrections . . .' " (Section 67-9-3.1).

The Juvenile Court has as one of its sentencing options to "vest legal custody of the child in the State Department of Public Welfare . . . for placement in a foster family home or other facility, and not including the State Industrial School . . ." (Section 55-10-100). This allows the use of foster care and group home care when needed.

#### 4. Institutional Programs

Utah has two major, long-term institutions (the prison for adults and State Industrial School for juveniles), and many small, short-term institutions (city and county jails and juvenile detention centers).

a. *Prison*: The authority, duties and responsibilities, are detailed in Chapter 9 of Title 64 in the Utah Code and is established as part of the Division of Corrections in Section 64-9-2. There are places in the Utah Constitution which affect the Prison (i.e., Article XVI, Section 3 restricting the use of convict labor, Article I, Section 9 prohibiting cruel and unusual punishment, and Article XIX, Sections 2 & 3 concerning the establishment and location of the penal institution).

b. *State Industrial School*: Most of the law concerning the authority, duties, and responsibilities of the State Industrial School are found in Section 64-6-1 through 18. It places the school under the Division of Family Services in the Department of Social Services. The school may hold children until they are 19 (Section 64-6-12). Any person over 18 years old will be tried in an adult court and sentenced to the Prison instead of the State Industrial School. Article VII, Section 15 and Article XIX Sections 2 & 3 of the Utah Constitution refer to the State reform school. Section 53-10-100(4) (UCA) details how a child may be committed to the school.

c. *Jails:* Section 10-8-58 authorizes cities to maintain jails. The sheriffs' offices are given the responsibility for county jails (Section 17-22-2). Section 15-22-4 through 10 stipulates that correctional and rehabilitative authority is with the Division of Corrections.

d. *Detention Centers:* There are two places in the Utah Code that provide the legal base for detention centers—Section 55-11-1 through 8 and Section 55-10-49 through 49.6. Section 55-10-49 provides that "Children under the age of sixteen years . . . shall not be confined in jails." Detention facilities are the responsibility of the counties, but may receive up to 50% of their operating and capital expenses as approved by the Division of Family Services. Such approval is based on rules established by the department with consent of the Governor. (Section 55-10-49).

Section 55-10-90 specifies the conditions under which a child may be held. Section 55-10-91 states that "No child shall be held in detention or shelter longer than forty-eight hours, excluding Sundays and holidays, unless an order for continued detention or shelter has been made by the court."

### 5. Community-based Programs

There is no specific statutory authority to provide adult community-based programs. The available adult community-based programs are conducted under a broad interpretation of the phrase: "The Division of Corrections shall be the authority of the State of Utah for corrections . . ." (UCA 64-9-3.1 as described in Attorney Generals' Opinion No. 74-023). Currently, the Division of Corrections is operating three halfway houses—one in Ogden serving both probationers and parolees, two in Salt Lake City, one serving probationers and one serving parolees. Other residential programs, such as drug treatment programs, are used by the Division of Corrections contracting for services, transferring prisoners to the facility, or as a condition of probation or parole.

Section 64-6-10 authorizes the Division of Family Services to contract with any foster or group home, that can provide proper "care, training, rehabilitation, or education" to those committed to the custody of the division. These are most often used for children who have failed probation, but do not need the secure custody of the State Industrial School. (See Standard 1.6, "Community Based Programs," for further information.)

## **6. Parole**

There is no parole program from any of the short-term facilities. Detention centers are used prior to adjudication or while a child is waiting for transfer to another facility. Parole for those in jail is possible under Utah law (see below); however, this is seldom used, although "good time" is allowed in some jails.

The Board of Pardons is created within the Department of Social Services (Section 77-62-4). Its powers, duties, and responsibilities are described in Section 77-62-1 through 17. Section 77-62-9 provides instructions concerning parole. The board of pardons may place anyone imprisoned in the Utah State Prison or a county jail on parole. However, a prisoner serving a sentence for first degree murder cannot go on parole until he has served at least fifteen years in the Utah State Prison. Within six months of commitment, the board must determine when prisoners will be eligible for consideration for parole. All prisoners are to be promptly informed of the board's decision.

The supervision of parolees is under the direction of the Adult Probation and Parole Section of the Division of Corrections (Section 77-62-20, 28). The information discussed under probation also applies to parole.

The only statutes concerning parole for those in the State Industrial School is Section 64-6-8 through 13 which states that a child may be placed outside of the school, but remain in the legal custody of the school for a period up to 12 months unless otherwise discharged. A child may be returned to the school if he violates the law or conditions of placement. On this basis, the State Industrial School operates an aftercare program for its students being released. (See Standard 1.7 "Parole Legislation," for further information.)

## **7. Pardon**

Since the Board of Pardons also acts as a parole board in Utah, the statutory basis for the two functions is generally the same for both. In addition to the parole legislation, the Board of Pardons has some additional legislation concerning only the pardon function. Article VII, Section 12, in the Utah Constitution sets up a Board of Pardons and its authority, and responsibilities. Sections 77-62-1 through 17 provides the majority of such law. Sections 77-36-6-8 in the Code of Criminal Procedure further defines the Board of Pardons.

## **8. Interstate Compacts**

These are discussed under Standard 1.4, "Interstate Compact Agreements."

## **9. Offender Categories**

There is legislation concerning felons, misdemeanants, delinquents, adults, and juveniles as described in the material above. There is no legislation specifically concerning youth offenders.

Legislation concerning specific programs for male or female offenders is limited on sexual criteria except mentioning "boys and girls group homes" in Section 64-6-10. The only distinctions in the legislation concerning the Prison is Section 64-9-3 which specifies that each inmate shall have a separate cell. Section 17-22-5 concerning jails is the most specific: "... nor shall male and female prisoners, except husband and wife, be kept or put in the same room. Females shall be under the supervision of a suitable matron to be appointed by the sheriff." Sections 77-62-41, 42, and 43 deal specifically with an interstate compact for the incarceration of female felons in another state.

## **10. Public Policy**

The closest any Utah law comes to stating a "public policy" concerning corrections is Section 64-9-3.1 which states: "... The division of corrections shall be the authority for the State of Utah for corrections. . ." The only other area that describes a "public policy" is Section 55-10-91 which specifies that:

"(1) No child should be placed or kept in a detention or shelter facility pending court proceedings unless it is unsafe for the child or the public to leave him with his parents . . . a child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility and shall not be placed in detention . . ."

"(2) No child shall be held in detention or shelter longer than forty-eight hours, excluding Sundays and holidays, unless an order for continued detention or shelter has been made by the court."

"(3) No child under the age of sixteen may be confined in a jail, lockup or other place for adult detention . . ."

## WHERE UTAH DIFFERS

Utah does not have a comprehensive correctional code as suggested in this standard. However, scattered throughout the Utah Constitution and numerous areas of the Utah Code are sections concerning most of the suggested parts of a correctional code. The major sections of the current law concerning corrections are:

Section 64-9-1 through 64: Division of Corrections and Prison  
Section 77-62-1 through 17: Board of Pardons  
Section 77-62-10 through 45: Adult Probation and Parole  
Section 64-6-1 through 18: State Industrial School  
Section 55-10-49 through 49.6: Detention Centers  
Section 17-22-2, 4 through 10: County Jails  
Section 10-8-58: City Jails  
Section 76-3-101 through 405: Sentences possible  
Section 77-34-1 et seq: Arrest of Judgment  
Section 77-35-1 et seq: The Judgment  
Section 77-36-1 et seq: Execution

There is no law specifically concerning youth offenders, and very little concerning male and female offenders as a separate category. The greatest lack in Utah law is a statement of the "public policy" governing the correctional system.

## METHOD OF IMPLEMENTATION

Revised legislation is necessary to implement this standard. In order to develop such legislation, a study should be initiated. Such a study should be carefully coordinated with the Legislative Council Study begun to implement Standard 1.1, Unifying Correctional Programs, and the correctional section of the proposed procedural code revision. This coordination is necessary to eliminate gaps and duplications between the procedural and administrative parts of Utah Correctional Law.

## STANDARD 1.3 CODE OF OFFENDER RIGHTS

Each correctional agency should develop and adopt administrative policies that define the substantive rights of offenders for inclusion in their manual of procedures. Such policies should be governed by the following principles:

1. Offenders should be entitled to the same rights as free citizens, when feasible.
2. When the nature of custody requires that the rights of offenders be modified or curtailed, such modifications should be as limited as possible, and based on the class of custody rather than on the individual case.
3. The policy should incorporate the substantive rights more fully described in Chapter 12, "Rights of Offenders" under the custody of the Division of Corrections."
4. The policy should provide adequate means for enforcement of the rights so defined. It should authorize the remedies for violations of the rights of offenders listed in Standard 12.18, "Remedies for Violation of An Offender's Rights" where they do not already exist.

#### UTAH STATUS AND COMMENTS

There is no Utah law that specifically addresses a Code of Offender Rights. However, there are numerous places in the Utah Code and the Utah Constitution, which peripherally address the issue. There are a few, such as the prohibition of cruel and unusual punishment (Article I, Section 9 Utah Constitution) that directly affect the offender. The principles for such legislation as outlined in the standard are not followed. The following is a partial list of sections of the Constitution and the Utah Code that affect offender rights:

##### a. Utah Constitution

Article I is a declaration of rights, specifically Section 4 — religious liberty, Section 5 — habeas corpus, Section 7 — due process of law, Section 8 — bailable offenses, Section 9 — prohibiting excessive fines and cruel and unusual punishment, Section 10 — trial by jury, Section 11 — court process being public, Section 12 — rights of accused persons, Section 13 — prosecution, Section 14 — searches, and Section 14 — forbidding imprisonment for debt, Section 18 — prohibiting bills of attainder, ex-post facto laws and laws impairing the obligation of contracts, Section 19 — treason, Section 21 — prohibiting slavery and involuntary servitude except for a duly convicted person. Section 24 specifies that "all laws of a general nature shall have uniform operation," and Section 25 states "This enumeration of rights shall not be construed to impair or deny others retained by the people."

Article III, Section 1 reiterates religious toleration.

Article VII, Section 12 concerns the Board of Pardons and specifies that a hearing is to be held concerning its actions.

Article VII, Section 9 describes the appeal procedures from the district courts and justice courts to the Supreme Court.

Article XVI, Section 3 prohibits "(2) The contracting of convict labors; (3) the labor of convicts outside prison grounds, except in public works under the direct control of the State."

b. Utah Code

As currently amended, Section 10-8-58 authorizes city commissions to establish city jails and "make rules and regulations" for the government of the same . . . subject to such conditions as are imposed by law . . ."

Section 17-22-5 specifies a minimal classification system for separating prisoners and that females should be "under the supervision of a suitable matron." Section 17-22-6 directs the sheriff or jailer to promptly deliver a paper in a judicial proceeding to a prisoner and note the time of such delivery.

Some of the procedural requirements for the Juvenile Court are specified in Title 55, Section 10. Section 55-10-91 specifically concerns holding children in a detention or shelter facility. Section 55-10-92 prohibits holding a child in a jail unless specifically authorized by a Juvenile Court judge. Sections 55-10-101 and 103 restrict the jurisdiction of the Juvenile Court to no person over 21 years of age, except for orders of commitment to the State Training School or the State Hospital, and after two years unless there are further court hearings to extend the time period. Section 55-10-116 prohibits fingerprinting of a child without the consent of a judge and describes how court records should be kept. Section 55-10-117 and 118 provides for expungement and destruction of Juvenile Court records.

Chapter 12 of Title 55 is the Interstate Compact on Juveniles, which describes the due process safeguards for juveniles from one state held in another.

Chapter 6 of Title 64 concerns the State Industrial School. Most of the offender rights are made an administrative policy decision by Section 64-6-3.

Section 64-6-8 describes the procedures for placing a child outside the school. Revocation of that placement must be accompanied by a hearing, and an appeal procedure.

Section 64-6-13 prohibits placing a child at the State Industrial School for a term past his nineteenth birthday, and provides for discharge of a student after at least six months of residence.

Chapter 10 of Title 64 describes what must be done both procedurally and legally to authorize the sterilization of an inmate of the State Industrial School or the Prison.

The warden of the prison is charged in Section 64-9-13: "(3) To examine daily into the state of the prison, and the health, conduct and safekeeping of the prisoners, (7) To inquire into the justice of any complaint made by any of the convicts relative to their food, clothing, or treatment."

Section 64-9-35 provides that all convicts are to be employed "at hard labor" unless "confined to solitude for misconduct" or "incapable of laboring."

According to Section 64-9-36, all inmates are to be allowed to exercise their own religious beliefs.

Separate cells for all prisoners is required by Section 64-9-37. The procedure for punishment of convicts is described in Section 64-9-39.

Liquor and drugs are prohibited in the prison unless ordered by a prison physician (UCA 64-9-41). Sections 64-9-41.1 and 41.2 define drugs and stipulate penalties for illegally transporting drugs into the prison.

Aid for discharged convicts is provided in Section 64-9-58. The Board of Pardons' powers, duties, and procedures for granting, revoking, and terminating parole are described in Section 77-62-1, et seq.

The Western Interstate Corrections Compact (Section 77-63-1 et seq.) describes the procedures for transferring an inmate to another state and his release, gives a statement of his rights ("... shall be treated in a reasonable and humane manner . . ."), and outlines extradition procedures.

Right of counsel for the indigent is explained in Section 77-64-1 et seq. Section 77-64-3 specifically provides that ". . . the assigned counsel shall: . . . "represent and defend his client before and after conviction, including applications for parole, pardons, revocation hearings, and writs."

The procedures for the disposition of detainers against prisoners and the Interstate Agreement on Detainers are in Section 77-65-1 et seq.

The Criminal Code specifies possible sentences (Section 76-3-201); the severity of the sentence according to type of crime (Section 76-2-202 through 207, 301 through 303), and limitations and special provision on sentences such as concurrent or consecutive sentences (Section 76-3-401), conviction of lower categories of offenses (Section 76-3-403), presentence investigation (Section 76-3-404), and limitation on sentence when conviction on prior sentence is set aside (Section 76-3-405).

The Code of Criminal Procedure (Title 77) describes the procedure for making an appeal in Chapters 39-42, and Sections 77-57-38 - 45.

The Judicial Code (Title 78) has the following information concerning offender rights:

Section 78-4-18 authorizes city courts to hold jury trials for those offenses with a maximum fine over \$50 or imprisonment over thirty days.

Section 78-24-8 concerns the privileged communications relationships of husband and wife, attorney and client, clergyman and client, physician and client, or a public official concerning communications made to him in his official capacity where disclosure would harm the public interest.

The Rules of Civil Procedure affect the rights of the offender, as he is being tried on a first or further offense, or if he is involved as a witness in another's trial. Rule 45 (h) specifies the procedure for a witness confined in jail. Rule 65A, "Injunctions," and Rule 65B, "Extraordinary Writs," may be used by the offender to acquire or maintain his rights.

## **WHERE UTAH DIFFERS**

Utah does not meet this Standard. There are some Utah laws which address the issues involved in offender rights; but they are fragmented, scattered throughout the Utah Code, and ambiguous.

## **METHOD OF IMPLEMENTATION**

The laws concerning offender rights seem to be adequate. The correctional agencies in Utah either have or could easily develop an administrative policy manual. The concepts of this standard can be included in these administrative policy manuals.

## **STANDARD 1.4, INTERSTATE COMPACT AGREEMENTS**

Utah should immediately adopt legislation ratifying the following interstate agreements where legislative ratification is missing:

- 1. Interstate Compact for the Supervision of Parolees and Probationers.**
- 2. Interstate Compact on Corrections.**
- 3. Interstate Compact on Juveniles.**
- 4. Agreement on Detainers.**
- 5. Mentally Disordered Offender Compact.**

In addition, statutory authority should be given to the chief executive officer of the correctional agency to enter into agreements with other states and the Federal Government for cooperative correctional activities.

## **UTAH STATUS AND COMMENTS**

Utah is a party to the following interstate agreements and compacts concerning corrections:

- 1. Section 77-62-39, Interstate Compact for Supervision of Parolees and Probationers.**

2. Section 77-62-41, 42, 44, Interstate Compact on Corrections (imprisonment, subsistence, and care of female felons)
3. Section 55-12-1 through 6, Interstate Compact on Juveniles
4. Section 77-65-4, Agreement on Detainers (Detainers Against Prisoners)
5. No provision is made for compact supervision of the mentally disordered offender.

#### METHOD OF IMPLEMENTATION

Legislation: Introduce legislation authorizing compact supervision of mentally disordered offenders.

Utah is already a party to the remaining interstate compacts.

#### **STANDARD 1.5 INTRASTATE AGREEMENTS**

**Statutory authority should be given to the chief executive officer of each correctional agency to contract with other state and private agencies to provide services.**

#### UTAH STATUS AND COMMENTS

The following sections of the Utah Code provide the necessary authority for intrastate agreements:

Section 11-13-1, et. seq. UCA, The Interlocal Cooperation Act, authorizes any two or more public agencies to enter into agreements with one another for joint or cooperative action. Under this act, the correctional agencies in Utah contract with other public agencies and each other for services.

Correctional agencies are also authorized to contract and be contracted with under the following sections:

Section 77-62-30, the Division of Corrections may use the services of any expert employed by the state government or institutions for the purpose of "... investigating..."

Section 55-15b-6, the Division of Family Services is responsible for (10) Purchasing or providing services for children in need of day or group home care.

Section 55-10-71 (e) gives the Juvenile Court the authority to contract other states and the Federal Government for the care and placement of children adjudicated under this act.

Section 55-10-49.2 authorizes counties not wishing to maintain a detention facility to contract with another county for those services. Sections 55-10-49.3, 49.5, and 49.6 describe the conditions which must be met by a county to receive financial help from the state of Utah for construction and maintenance of a detention center.

The Division of Family Services is authorized to "... contract with any institution or agency organized in this State to provide for the care, training, rehabilitation, or education of any student ..." at the State Industrial School and to "... pay for such care from the funds appropriated to the school ..." .

## METHOD OF IMPLEMENTATION

Administrative action to develop such agreements will implement this standard.

## STANDARD 1.6 COMMUNITY-BASED PROGRAMS

Legislation should be enacted immediately authorizing the chief executive officer of the correctional agency to extend the limits of confinement of a committed offender so the offender can participate in a wide variety of community-based programs.

There should be a specific exemption for participants in community-based work programs from state-use and other laws restricting employment of offenders or sale of "convict-made" goods.

## UTAH STATUS AND COMMENTS

The Utah statutes in the area of community-based programs are fragmentary and scattered through several pieces of legislation concerning larger issues (Division of Corrections, Division of Family Services, Juvenile Court, and State Industrial School). Many of the community-based programs now being conducted are not specifically mentioned in Utah law.

Each point suggested by the national standard for community-based programs is addressed below:

### 1. Foster homes and group homes:

a. *Adult:* The Utah State Prison began developing a foster care program for adult women felons in 1974. In order to be sure of the legal authority for the program, the director requested an opinion asking: "(1) Is there a statute authorizing a foster care program for women inmates at the Utah State Prison? (2) Is it lawful to administratively set up such a program?"

The Attorney General answered these questions in a letter dated April 22, 1974. The following excerpts are most relevant to this standard.

"As far as can be determined, there is no statute specifically authorizing a foster care program as contemplated by the Division of Corrections and the Utah State Prison as a measure for rehabilitation . . .

"One possible alternative to the opinion expressed above is the authority of the Division of Corrections as set forth in UCA 64-9-3.1: There is created the division of corrections, which shall be within the department of social services under the administration and general supervision of the executive director of social services and under the policy direction of the Board of Corrections. *The division of corrections shall be the authority of the state of Utah for corrections,* shall assume all of the functions, powers, duties, rights and responsibilities of the present Board of Corrections, except those which are assumed by the Board of Corrections under this act and is vested with such other functions, powers, duties, rights and responsibilities as provided in this act and other law. (Emphasis added.)

"It may be possible to broadly construe the word 'corrections' to include foster care activities for inmates at the prison. Thus, the Division of Corrections is 'the authority of the State of Utah for

corrections' and would have the authority to set up such a program . . ."

"It is difficult to say what the problems would be with setting up a program such as foster care without specific statutory authorization. The best approach would seem to be draft a new statute for corrections and specifically spell out the responsibility for the different correctional programs. An alternate approach which at best could serve only as a temporary solution, would be to formulate and adopt, in accordance with the Utah Rule-Making Act, regulations providing for the prison foster care program. The authority for enacting such a regulation would be based upon an extremely broad construction of the word 'corrections' as contained in UCA 64-9-3.1."

"It could also be argued that the Division of Corrections by the nature of its function has broad discretionary powers to establish and administer rehabilitative programs, and it would be unreasonable and overly burdensome to require a statutory enactment for each individual program. In the case of foster care programs, however, it may be advisable to get specific statutory authority since the Utah legislature apparently felt it was necessary to statutorily provide for 'foster care' programs for the Division of Family Services . . ."

b. *Juvenile*: Juvenile Court is given authority to place a child in the custody of a child placement agency for placement in a residential setting other than the State Industrial School, State Hospital, or the State Training School by Section 55-10-100.

They are authorized to purchase services for children from private or other state agencies by Section 55-15b-7.

Section 55-15b-6 gives them the following duties:

(5) Promote and enforce all laws relating to mentally defective, dependent, neglected, and delinquent children unless otherwise specified by law. They must cooperate with the Juvenile Court and other child welfare agencies and make expenditure for the care and protection of these children.

(6) Provide shelter care for dependent, neglected, and delinquent children in need of temporary care.

(10) License day care and group home programs and purchase or provide these services for children who need them.

These services are defined by law in the following sections: shelter, care Section 55-10-64 (6); community based care, Section 55-15b-2 (5); foster care services, Section 55-15b-2 (13).

## 2. Pre-release Guidance Centers and Halfway Houses

a. *Adult:* The Division of Corrections operates three halfway house programs. However, the statutory authority for these programs is limited. The authorization to operate halfway houses and other community-based programs is discussed in Attorney General Opinion 74-023, dated June 11, 1974.

According to the opinion, there is no clearly delineated authority for the Division of Corrections to operate any programs other than the state prison and the Adult Probation and Parole section. However, UCA 64-9-3-1 states that the Division of Corrections is the authority of the state for corrections. Because corrections is not defined in the act, it is uncertain how much authority over correctional programs this gives the division. However, the legislature has provided appropriations for halfway houses under the Division of Corrections without specific statutory authorization, which indicates tacit legislative approval to programs outside the realm of the prison. Argument could, therefore, be made that the Division of Corrections by its very nature must have broad discretionary powers to establish and administer correctional programs, and that it would be unreasonably and overly burdensome to require a specific statutory enactment for each correctional program. However, whether this argument would justify establishment of an entirely new correctional institution without statutory authorization is questionable.

b. *Juvenile:* Although the State Industrial School has custody of all children committed to it by the Juvenile Court, the staff may "place" a child at his own home, in a foster home, or in another residential program without losing jurisdiction until the child is officially discharged (UCA 64-6-1.1). They are allowed to contract for these services by Section 64-6-10. Based on these two sections of law, the State Industrial School could develop a pre-release guidance center or halfway house. However, none are available at this time.

## 3. Work-Release Programs

The work-release programs are based on the statutory authority cited under halfway houses above. There is a written administrative policy which further described the work-release

program (Utah State Prison Manual of Procedures, p. 127; and Division of Corrections Policy No. 26, dated June, 1968). The administrative policy does not address the rate of pay or conditions of employment, but provides for the inmate to be available for overtime.

#### **4. Vocational Training in the Community**

There is no specific statutory authority for vocational training. Such a program is carried on under the authority for halfway houses in both the prison and the State Industrial School through contracts with vocational schools.

#### **5. School Release**

This program is conducted at the prison and the State Industrial School under the statutory authority for halfway houses. The prison has an additional administrative directive authorizing it. (Division of Corrections Policy No. 30, dated September 2, 1969). Section 64-9-51 (UCA) provides for a school at the prison.

#### **6. Utilization of Community Resources**

a. *Adult*: The Division of Corrections contracts with public agencies under the Interlocal Cooperation Act (Section 11-13-1 et. seq.). They also contract with other agencies for community services. The use of these contracts is based on the same statutory basis as are halfway houses.

b. *Juvenile*: In addition to the statutory authority for foster care, group homes, and halfway houses, the Division of Family Services and the State Industrial School has the authority: to contract for receiving and providing services with approval of the Department of Social Services. (Section 64-6-3)

#### **7. Furloughs**

a. *Adult*: The adult furlough program is conducted under the same statutory authority as described under halfway houses. Division of Corrections Policy No. 13 concerns funeral leave for inmates. Policy No. 26 details furloughs and weekend passes. The Prison Manual of Procedures has additional detail—funeral leave procedures, p. 53; furloughs, p. 54.

b. *Juvenile*: Short-term furloughs are handled by the State Industrial School as a short-term placement using the statutory authority cited above concerning halfway houses.

## **8. Authority to Develop Community-Based Residential Centers**

There is no authority to develop such programs other than that already cited.

## **9. Authority to Cooperate and Contract for a Wide Range of Community Sources**

There is no additional authority for contracting for services other than that already cited.

## **10. Specific Exemption for Participants in Community-Based Work Programs from State Use and Other Laws Restricting Employment of Offenders or Sale of "Convict-Made" Goods**

Article XVI, Section 3 of the Utah State Constitution prohibits "(2) Contracting of convict labor" and "(3) the labor of convicts outside prison grounds, except in public works under the direct control of the State . . ." The State Legislature further defined this prohibition in Sections 69-9-59 through 64. In these sections, probationers and parolees are specifically exempted.

## **11. Requirement for the Correctional Agency to Promulgate Rules and Regulations Concerning Revocation of Community-Based Privileges and Procedures for Revocation**

a. *Adult:* There is no Utah law that specifically suggests rules and regulations be developed concerning community-based programs, since they are not specifically authorized as described earlier. However, such rules and regulations have been developed under the authority of Section 64-9-1.1, which states that the Board of Corrections has all policy-making responsibilities for the Division of Corrections.

The Prison Manual of Procedures describes the regulations for work release, school release, and furloughs. Adult foster care regulations are still being developed. The halfway houses generally follow the Prison Manual of Procedures' regulations concerning disciplinary procedures (p. 37 through 37 (d) ) for administrative changes within the halfway house program. Probationers who may lose their probation status will be reported back to the court under the procedures for revoking probation.

b. *Juvenile:* Juvenile Court retains jurisdiction and approves all custody charges for children brought to their attention until the

child is 21 or the case is terminated. However, the court loses jurisdiction of a child committed to the State Industrial School, Training School, or the State Hospital. Transfer of a child to the Prison or any other adult correctional facility is forbidden (Section 55-10-101, 103, and 104).

## METHOD OF IMPLEMENTATION

Legislation was passed in the 1975 legislative session that implements this standard. Being more specific than this standard, the legislation itemizes suggested types of community-based programs.

## STANDARD 1.7 PAROLE LEGISLATION

Utah should enact revised parole legislation by 1979 which addresses the following:

1. The decision of whether parole should be granted or not should be made before a paroling authority which is independent of the institutional staff. The paroling authority should send the offender a written statement explaining the decisions denying parole.
2. The paroling authority should have the authority to set its own rules and regulations concerning such things as automatic consideration of parole, parole planning, and criteria for parole.
3. The only offenders ineligible for parole will be those convicted of a capital offense and sentenced to death. All other offenders in any institution in the state shall be eligible for parole or placement at any time, regardless of the particular offense, number of past convictions, or past history of parole violations.
4. The paroling authority should have the authority to set reasonable and necessary conditions of parole that contribute to the rehabilitation of the parolee.
5. A preliminary parole revocation hearing shall be held. It shall have the following characteristics:
  - a. It shall be held by a neutral and detached hearing officer.

- b. The hearing shall be conducted as promptly as convenient after the parolee's arrest.
- c. The parolee shall receive advance written notice of the preliminary revocation hearing date and the alleged violation(s).
- d. The parolee shall have the right to request counsel. However, this rather limited right should not be construed as meaning the parolee has an absolute right to counsel in every case. The right to counsel shall be at the discretion of the hearing officer.
- e. The parolee shall have the right to appear and present relevant information at the hearing (speak in his own behalf, bring letters, documents, or witnesses).
- f. The evidence against the parolee must be disclosed, and he may request the right to confront and cross-examine adverse witnesses, unless the hearing officer determines that the informant would be subjected to the risk of harm if his identity were disclosed.
- g. The hearing officer shall prepare, and the parolee is entitled to a copy of a written summary of the proceedings, facts presented, and facts relied upon to determine that probable cause exists to revoke parole.

6. On the basis of the summary of the preliminary parole revocation hearing, a parolee may, although it is not mandatory, be returned to the institution pending a final parole revocation hearing. Such a hearing shall have the following:

- a. The hearing shall be held before a neutral and detached hearing body (i.e., Board of Pardons) within a reasonable period of time after the parolee is returned to the institution.
- b. The parolee shall receive advance written notice of the final revocation hearing date and the alleged violation(s).
- c. The parolee shall have the right to counsel at the final revocation hearing.

- d. The parolee shall have the right to appear and present relevant information at the hearing (speak in his own behalf, bring letters, documents, or witnesses).
- e. The evidence against the parolee must be disclosed, and he may request the right to confront and cross-examine adverse witnesses, unless it is determined that the informant would be subject to risk or harm if his identity were disclosed.
- f. The final revocation hearing shall determine any contested, relevant facts. The decision to revoke parole or not shall be made on the basis of "substantial evidence" that a condition of parole was violated.
- g. Within 30 days of the parole revocation hearing, the parolee shall be given a written statement of the findings stating the reasons for revoking parole.

7. Parole *may* be terminated by the Board of Pardons at any time, except as provided below:

- a. Not after the parolee has successfully completed a reasonable, specific time period on parole without violation, or
- b. Not after the expiration of the maximum sentence imposed by the court.

## UTAH STATUS AND COMMENTS

Utah's laws concerning parole are not as detailed as this standard suggests. There are only two institutions in Utah that have an ongoing parole program in the traditional sense—the Utah State Prison and the State Industrial School. By law, the Board of Pardons may grant parole to those in jail, but operationally, they do not generally do so. Since the laws concerning parole for adults and juveniles are so different, they will be dealt with separately.

### 1. Adult

- a. *Granting Parole:* The Utah Board of Pardons is independent of the prison administration and has responsibility for granting both pardons and paroles (Utah Constitution, Article VII,

Section 12 and Sections 77-62-2 and 3). The board consists of three part-time members (Section 77-62-2) compensated on a daily basis (Section 77-62-5). They have an executive secretary (Section 77-62-4) who prepares material for board meetings and takes care of business between meetings. They meet at least once a month (Section 77-62-6). A certified transcript of their meetings is prepared (Section 77-62-7.2), and the inmate is promptly informed of the board's decision (Section 77-62-9).

2. *Parole Authority Rules and Regulations:* The Board of Pardons has the authority to set its own rules and regulations concerning parole with the exception of provision for "good time" for misdemeanor offenses (Sections 76-3-403 and 77-62-1 (d)), a requirement for a statement from Adult Probation and Parole Section staff, institutional staff, law enforcement officials, and the court to the board (Section 77-62-8), and mandating that the first hearing before the board be within the first six months (Section 77-62-9). Automatic periodic hearings after the first hearing, parole planning, and criteria for parole are not addressed by law.

3. *Eligibility for Parole:* Utah law does not exclude any offender from parole except those persons convicted of a capital offense and sentenced to death (i.e., first degree murder—Section 76-5-202 (2); aggravated kidnapping—Section 76-5-303 (3); aggravated assault by a prisoner serving a sentence for a first degree felony—Section 76-5-103 (2) (b)). The only other restriction on eligibility for parole is the first degree murder offender, who may not be paroled before he has served fifteen years in prison (Section 77-62-9). An offender is not excluded from parole based on his past convictions or parole violations. Although the Board of Pardons may parole those held in jail, they do not generally do so. They review all cases at the Utah State Prison, which is the only major adult institution in Utah.

With the exception of jails, Utah meets this part of the standard.

4. *Conditions of Parole:* Utah law does not suggest any specific conditions of parole, but does authorize the Board of Pardons to develop a standard list that would be used for most parolees. Although the law does not specify that conditions of parole must relate to the correctional program of the parolee, there are laws that indicate this should be so. Section 77-62-8 states that the Board of Pardons receive prior to the hearing information concerning the offender from Adult Probation and Parole, the chief executive officer of the correctional institution

(i.e., warden or jail administrator), the judge imposing sentence, the prosecuting attorney, and the law enforcement officer responsible for arrest and conviction. Section 77-62-13 allows the offender to send uncensored mail to the Board of Pardons.

5. *Preliminary Parole Revocation Hearing:* The preliminary parole revocation hearing has been mandated by case law. On December 20, 1974, the Attorney General's office provided the executive secretary of the Board of Pardons with information about the case law on this subject. The Board of Pardons then revised their procedures to meet the case law as explained in that letter. Since this part of the standard is also based on the case law as explained in that letter, Utah meets the standard in practice, although not by law.

6. *Parole Revocation Hearing:* A written order certified by the Board of Pardons' executive secretary is sufficient to return an offender to prison. At the next meeting of the board, a hearing on the parole violation will be conducted (Section 77-62-16). The board meets at least once a month (Section 77-62-6) which means the parole violation hearing is held within a reasonable time. Section 77-62-48 gives the offender the right to reasonable notice of the charges against him, council prior to hearing, confront and examine witnesses against him (within limits), and present evidence on his own behalf. Utah law does not allow the parolee to have counsel at the revocation hearing as the standard suggests. The suggested standard of "substantial evidence that a condition of parole was violated" is not stipulated in Utah law. However, in practice, this standard is followed. Although this Section 77-62-48 concerns parole revocations, it may be implied from it that similar standards would be used for non-parole violators. On this point, Utah meets the standard.

## B. Juvenile

In Utah, the status of a child released from the State Industrial School (Utah's only juvenile institution) is described as "*placement*" and the services provided to the child and his parents is called "*aftercare*" rather than parole. However, the function of aftercare is very close to adult parole. Therefore, they are described here.

Children placed in a group home or foster care by the Juvenile Court are often provided aftercare services by either the Division of Family Services or the private agency providing the group or foster care services after they have been returned to their

own home. However, these children are not considered here because once a child has been returned from such placement by a court order, it requires another court order to remove them from their parents and return them to the original placement or another such placement.

1. *Granting Parole*: The paroling authority for a juvenile is the superintendent of the State Industrial School or a committee appointed by him rather than a professional, independent board as suggested in the Standard (Section 64-6-12). Utah law does not provide for a written statement to the child explaining the decision denying placement.

2. *Parole Authority Rules and Regulations*: Utah juvenile law does not address this issue. The only piece of law that could come under this paragraph is the guarantee that there will be a hearing on placement sometime in the child's first 18 months at the school.

3. *Eligibility for Parole*: Although the Utah law concerning the minimum time a child must remain at the State Industrial School is unclear, it appears that a child is initially eligible after six month's residency (Section 64-6-13), and must receive a hearing concerning *placement* no later than eighteen months after commitment (Section 64-6-12). As a result, Utah law provides parole eligibility to all committed juvenile offenders as suggested in the Standard. Utah law goes further by saying that an initial hearing must be held within 18 months. *Placement* is based on satisfactory performance and behavior at the school, not on the offense committed or past history of parole violations as the Standard suggests.

4. *Conditions of Parole*: The only specific mention of the condition of *placement* in Utah law is Section 64-6-8, which specifies that the superintendent may set such conditions. Section 64-6-13 specifies that a child may be *discharged* on the basis of "satisfactory evidence of acceptable performance and behavior". It may be assumed that *placement* decisions would be based on much the same basis. This tends to support Utah meeting the Standard in terms of decision being based on the individual's chance to succeed rather than the offense he was committed on an encouraging parole rather than keeping the child at the school. Factors other than this are not specified as suggested in the standard.

The court is required in Section 55-10-104 to transmit the

school any information it has concerning the child at the time it commits the child to the school. Although the law does not specify recommendations to be transmitted, such recommendations could be transmitted at that time.

5. *Preliminary Parole Revocation Hearing:* Utah juvenile law does not address the preliminary parole (placement) revocation hearing.

6. *Parole Revocation:* Unless otherwise discharged, a child may be returned to the school while on *placement* by a written order of the superintendent for a "law violation or for failure to abide by the conditions of placement." (Section 64-6-1.1 (7) and 64-6-13). A child who has had his placement revoked then has the right to a hearing before the Superintendent (Section 64-6-8).

Section 64-6-8 specifies that the procedures to be followed in such a hearing is an administrative policy approved by the Board of Family Services. Utah law does not meet this part of the standard. However, the rules of procedure, that have been developed to guide proceedings concerning revocation of placement, provide some of the items suggested in the Standard. The child and his parents are advised at least five days in advance of the date of the hearing what the charges against the child are. He may be represented at the hearing by counsel if he so desires. The decision is made on the basis of fact. Placement is revoked if there is substantial evidence of a violation of a placement condition. Minutes are kept of the hearing held at the school.\*

7. *Length of parole:* A child who successfully completes placement for 12 months may be discharged from the custody of the State Industrial School (Section 64-6-12). The superintendent could *discharge* the child earlier under the provisions of Section 64-6-13. Other than these two exceptions, the child may remain in the custody of the school on parole until his nineteenth birthday.

## SUMMARY

Utah law only partially meets this Standard. There is more law concerning adult parole than juvenile parole; therefore, the adult law comes closer to meeting the standard. Parole decisions are made by a part-time professional board for adults and the Superintendent of the State Industrial School for juveniles.

The Board of Pardons must provide a written statement to the

\*Telephone interview with Claude Pratt, Superintendent of the State Industrial School, August 12, 1974.

adult offender by law. Juveniles are not given specific access to such a statement. However, minutes are kept of State Industrial School hearings. Utah law addresses some rules and regulations on parole granting, but does not provide, except by implication, for the paroling authority to set its own rules and regulations. The adult law is more detailed than the juvenile law on this issue. Both laws tend to encourage parole. The factors to be considered by the Board of Pardons or the Superintendent of the State Industrial School in making the decision of whether or not to parole the offender is not specified in Utah law. However, the law does suggest criteria for discharge of a child from the jurisdiction of the State Industrial School. All committed offenders are eligible for parole, although those committed to jail do not generally receive parole.

There are no conditions of parole specified in Utah law for either adults or juveniles. The law suggests some criteria for discharging a child on "placement." Although it is not required by law, as a general rule, both the Board of Pardons and the Superintendent of the State Industrial School set conditions of parole which are reasonably related to the offender's correctional program. These conditions are not unduly restrictive of the offender's liberty, incompatible with his constitutional rights, or based on the offense committed as the standard suggests.

The preliminary parole revocation hearing is not addressed in either adult or juvenile law, although it is conducted for adults.

A hearing to revoke parole is provided for in Utah law for both the adults and juveniles. An offender may be returned to the institution on the basis of a signed order by either the Executive Secretary of the Board of Pardons or the Superintendent of the State Industrial School. The offender is entitled to a hearing soon after. Someone other than the parole officer (i.e. Board of Pardons or Superintendent of the State Industrial School) conducts the hearing as the Standard suggests. The Standard suggests that the parole hearing have some of the due process elements of a court hearing. Although these are not specified in Utah law, they are followed in practice by an administrative policy decision.

Revocation of parole on the basis of "substantial evidence"

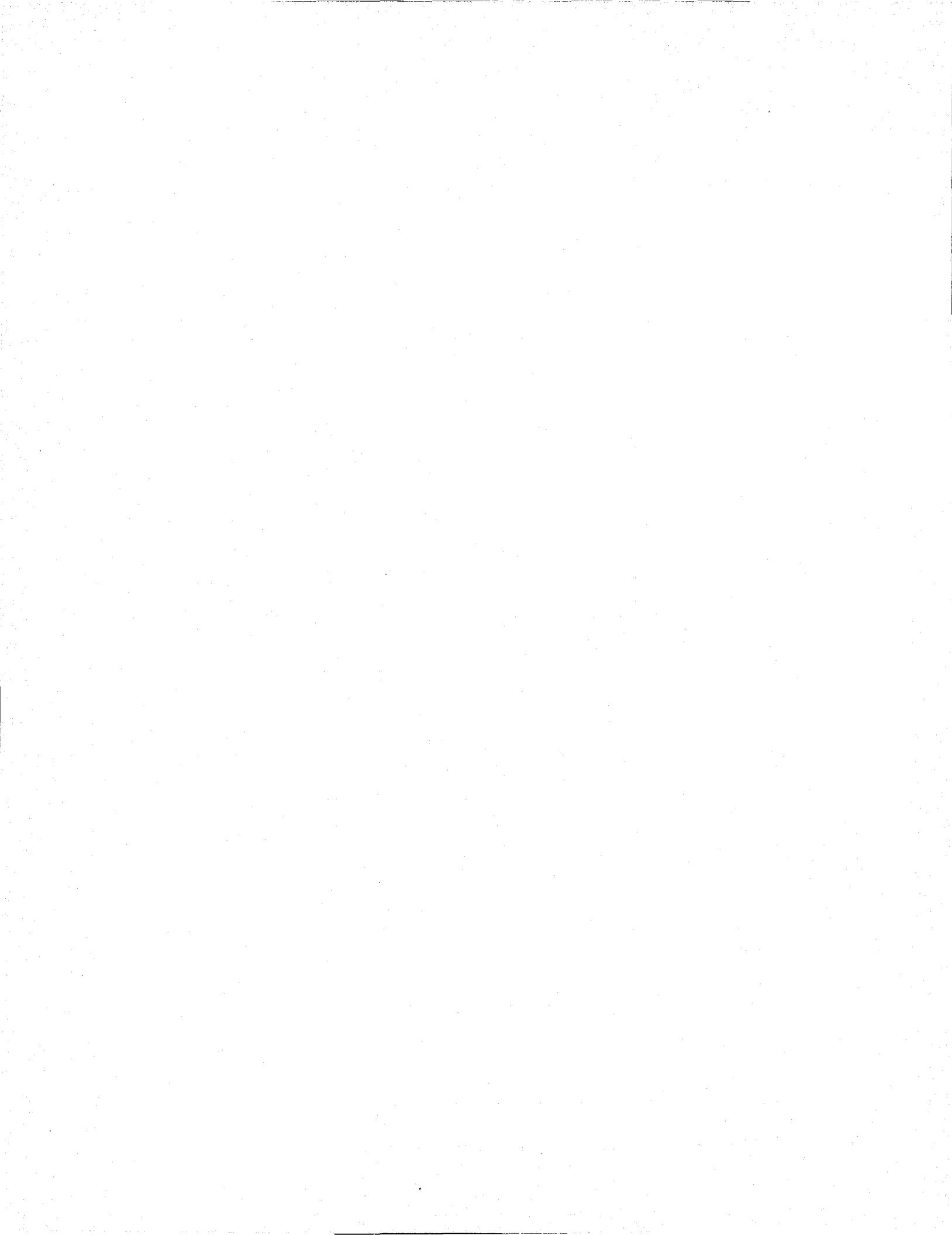
of a violation of a condition of parole is not specified in Utah law, but is used by both the adult and juvenile systems. Although it is not specified in Utah law, as suggested by the Standard, the parolee receives written notice of the hearing and the nature of the violation, a limited right to counsel, and the right to confront his accusers and present his side of the story. A written statement of the findings, reasons for the decision and the evidence relied upon is not provided for in the law, but is generally given in practice.

By law, an adult who has violated parole and been returned to the prison cannot be held longer than the maximum term. The time spent on parole is credited towards the sentence. A juvenile may be held until his nineteenth birthday, whether he has been "paroled" or not. This is close to the Standard's suggestion.

#### METHOD OF IMPLEMENTATION

Utah law, as now written, is hard to follow. This standard concerns the procedures for granting and revoking parole, and properly belongs in the Procedural Code. As it is now written, the Procedural Code also contains the administrative structure to provide parole supervision, which, in the staff's opinion, belongs elsewhere. In order to implement this standard, revised legislation is required.

There was a committee that proposed a revision of the Procedural Code; however, they left the laws concerning parole basically the same as now written. This effort should be coordinated with any effort to draft revised parole legislation.



**END**