JUDICIAL COUNCIL MEETING

AGENDA
October 26, 2020

Meeting held through Webex

Chief Justice Matthew B. Durrant Presiding

1.	9:00 a.m.	Welcome & Approval of Minutes.....Chief Justice Matthew B. Durrant (Tab 1 - Action)
2.	9:05 a.m.	Chair's Report. .....Chief Justice Matthew B. Durrant (Information)
3.	9:10 a.m.	Administrator's Report and COVID-19 Update. .....Judge Mary T. Noonan (Information)
4.	9:20 a.m.	Reports: Management Committee.....Chief Justice Matthew B. Durrant Budget & Fiscal Management Committee .....Judge Mark May Liaison Committee.....Judge Kara Pettit Policy & Planning Committee .....Judge Derek Pullan Bar Commission ..... Rob Rice, esq. (Tab 2 - Information)
5.	9:45 a.m.	Pretrial Release and Supervision Committee Report ..... (Information) Judge George Harmond Keisa Williams
6.	10:00 a.m.	Court Commissioner Conduct Committee Report .....Keisa Williams (Information)
7.	10:15 a.m.	CJA Rules for Final Approval ..... Keisa Williams (Tab 3 - Action)
	10:30 a.m.	Break
8.	10:40 a.m.	Judicial Nominating Commission Process..... Kim Cordova (Tab 4 - Information)
9.	10:55 a.m.	Judicial Performance Evaluation Commission Report ..... Dr. Jennifer Yim (Information) Commissioner Blair Hodson
10.	11:15 a.m.	Regulatory Reform Innovation Office Update..... Lucy Ricca (Tab 5 - Information)
11.	11:30 a.m.	Board of Justice Court Judges Report ..... Judge Rick Romney (Information) Jim Peters

12.	11:40 a.m.	Approval of Interlocal Agreement Between Parowan and Iron County..... (Tab 6 - Action)	Jim Peters
13.	11:45 a.m.	Dissolution of Smithfield Justice Court..... (Tab 7 - Action)	Jim Peters
14.	11:55 a.m.	Senior Judge Certifications..... (Tab 8 - Action)	Nancy Sylvester
15.	12:05 p.m.	Commissioner Evaluations..... (Tab 9 - Information)	Nancy Sylvester
	12:10 p.m.	Lunch Break	
16.	12:25 p.m.	Oath of Office and Selection of Executive Committee - Judge Samuel Chiara..... (Information)	Chief Justice Matthew B. Durrant
17.	12:30 p.m.	Legislative Audit Reports..... (Tab 10 - Information)	Michael Drechsel
18.	12:50 p.m.	Juvenile Filings Report..... (Tab 11 - Action)	Judge Mary T. Noonan Neira Siaperas Judge Michael Leavitt
19.	1:00 p.m.	Old Business/New Business..... (Discussion)	All
20.	1:20 p.m.	Executive Session - there will be an executive session	
21.	2:05 p.m.	Adjourn	

Consent Calendar

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

1. Probation Policies 2.1 and 4.2 (Tab 12) — Tiffany Pew
2. Committee Appointment (Tab 13) — Forms Committee – Brent Johnson
3. CJA Rules 4-202.02 and 4-403 for Public Comment (Tab 14) — Keisa Williams

Tab 1

Agenda

JUDICIAL COUNCIL MEETING

Minutes
September 22, 2020
Meeting conducted through Webex
12:00 p.m. – 4:40 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:
Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Brian Cannell
Hon. Augustus Chin
Hon. David Connors
Hon. Ryan Evershed
Hon. Michelle Heward
Justice Deno Himonas
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Excused:
Hon. Paul Farr

Guests:
Hon. Dennis Fuchs, Senior Judge
Hon. Diana Hagen, Court of Appeals
Amy Hawkes, Judiciary Interim Committee

AOC Staff:
Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Kim Free
Amy Hernandez
Alisha Johnson
Brent Johnson
Tom Langhorne
Larissa Lee
Meredith Mannebach
Jim Peters
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Jeni Wood

Guests Cont.:
Hon. Christine Johnson, Fourth District Court
Kristina King, Office of Legislative Research
Hon. F. Richards Smith, Fourth Juvenile Court
Hon. Andrew Stone, Third District Court

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex.

Motion: Judge Kate Appleby moved to approve the August 21, 2020 Judicial Council meeting minutes and the August 21, 2020 Budget & Planning meeting minutes, amending the Council minutes to correct the Policy & Planning report section that the proposal was to remove the notarized section. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

On Tuesday, September 8, 2020 the Management Committee considered grant funding that is available through the Utah Bar Foundation (via Salt Lake County CARES Act money).

The courts are set to receive the following amounts under the grant:

- $32,500 for three computer kiosks and two ADA computer stations to be used in Matheson and West Jordan for parties to electronically participate in WebEx hearings;
- $47,246 for 42 multi-person listening devices for translation services in each of the district and juvenile courtrooms in Matheson and West Jordan;
- $100,000 for technology improvements for virtual court hearings due to the pandemic; and
- $26,950 additional staffing for the Self- Help Center to focus on Salt Lake County eviction-related questions.

In addition to, and separate from, that CARES Act grant funding, $17,000 is available through the Utah Bar Foundation to assist with a public outreach campaign regarding court operations during the pandemic. Prior to grant funding being received, Utah Code § 63J-7-203 and the Code of Judicial Administration Rule 3-411 require Judicial Council approval. Because this funding is time-restricted (must be spent by mid-December) and there is a current/immediate need for the funds, the Management Committee voted to submit this grant request to the entire Judicial Council for an immediate vote by email. On September 10, 2020 the Judicial Council by email, voted and approved CARES Act Funding by unanimous vote.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant looks forward to the Annual Judicial Conference.

3. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary T. Noonan said interviews for the new Office of Fairness and Accountability will be conducted next week. The 117 applicants were divided into three tiers of qualifications. The first interview panel consists of administrators and judges. Tom Langhorne (Education Department Director) announced his retirement effective January, 2021. Jessica Van Buren (Law Library Director) will be leaving the courts mid-October.

The Management Committee has been reviewing Risk Response Plans from courthouses throughout Utah. The recent COVID surge has caused concern for some counties that are operating in the Yellow phase. Local experts expect a surge of cases during the winter/flu season. Judge Noonan expressed that many courts approved to operate in the Yellow phase are slowly transitioning into the phase. Judge Noonan would like to hold a meeting with presiding judges, TCEs, COVID Response Team, and the Management Committee next week.

Judge Noonan said data from Court Services indicated a 55% increase in child welfare cases from 2019 to 2020. After further review, an error was identified in the data calculations. Once the error has been corrected, new information will be presented to the Council and the Board of Juvenile Court Judges.

The Annual Judicial Conference will be the first time the new LMS (Learning Management System) is used by the courts. The Education Department has worked hard to create an online conference using the LMS system and will be available for any questions.

4. COMMITTEE REPORTS:

Management Committee Report:
The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:
Judge Mark May said the work of the committee will be discussed later in this meeting.

Liaison Committee Report:
Michael Drechsel said interim meetings with the legislature have continued. The primary topic of discussion related to the Judiciary is the Juvenile Court Recodification Effort. The Board of Juvenile Court Judges will address this legislation as it develops. A new item being addressed is the Criminal Code Evaluation Task Force – Recodification of the Criminal Code.

Policy and Planning Committee Report:
Judge Derek Pullan noted the Policy & Planning Committee is working on the rule related to cases under advisement. The committee is working on drafting rules for the Office of Fairness and Accountability and would like to have the advice and guidance of the new Director.

Bar Commission Report:
Rob Rice reported on the State Bar's survey results plateaued with respect to minorities since the last survey in 2011. The Bar will partner with UCLI to increase the pipeline of diverse candidates in the legal profession.

5. EDUCATION COMMITTEE REPORT: (Judge Diana Hagen, Tom Langhorne, and Kim Free)

Chief Justice Durrant welcomed Judge Diana Hagen, Tom Langhorne, and Kim Free. The Education Department has

- been working to replace in-person learning through virtual means;
- training and beginning to use the new LMS and event management system;
- welcomed a new team member, Kim Zimmerman;
- been working with Westminster College to continue the Judicial Administration Certificate Program;
- completely redesigned the department's budget;
- created procedures manuals; and
- enhanced judicial mentoring efforts through CJA Rule 3-403.

Chief Justice Durrant thanked Judge Hagen, Mr. Langhorne, and Ms. Free. Council members expressed their appreciation for Mr. Langhorne. Mr. Langhorne said he has thoroughly enjoyed working for the courts and expressed his greatfulness for the Utah Judiciary.

6. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge Christine Johnson and Shane Bahr)

Chief Justice Durrant welcomed Judge Christine Johnson and Shane Bahr. Judge Johnson reported that the Board of District Court Judges has been addressing evictions, cases under advisement, and the backlog of cases. The Board may seek an amendment to the Administrative Order to allow for more remote hearings. Judge Johnson's term as Chair on the Board is complete. Judge Barry Lawrence will move into the Chair position beginning October 1. The Board will vote for a new Vice Chair. A few Board members will be transitioning off the Board.

Chief Justice Durrant thanked Judge Johnson and Mr. Bahr.

7. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge F. Richards Smith and Neira Siaperas)

Chief Justice Durrant welcomed Judge F. Richards Smith and Neira Siaperas. Judge Smith noted the Board is working on training and mentoring new judges as the juvenile courts are specialized and unique. Good mentoring is the key to success for new juvenile court judges. The Board participated in a systemwide effort to create child-welfare core principles. Judge Smith said the juvenile court has embraced the new Webex reality. The juvenile court does not have jury trials so they do not have a build up of backlog cases.

Judge Smith thanked Neira Siaperas for her work in the juvenile courts. Roughly, there have been 11,593 Webex juvenile court hearings since May, which is approximately 3,000 hearings a month. The hearings take a while longer, however, attorneys, GAL, and case workers work diligently to ensure smooth virtual hearings through education and consistent communication.

Chief Justice Durrant thanked Judge Smith and Ms. Siaperas.

8. PROBLEM-SOLVING COURT RECERTIFICATIONS: (Judge Dennis Fuchs)

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs noted the PSC's that have not met all Required and Presumed Best Practices are working to correct those issues.

Adult Drug Courts that have met all Required and Presumed Best Practices

Sanpete County, Manti – Judge Keisel
Kane County, Kanab – Judge Lee

Adult Drug Court that has met all Required but not all Presumed Best Practices

Sevier County, Richfield – Judge Bagley

Presumed Best Practices #35 requires a drug court to have more than 15 but less than 125 participants. Due to the pandemic the court suspended new entries and is slowly returning to a full participant count, with 12 participants at this time.

Family Dependency Drug Courts that have met all Required and Presumed Best Practices

Carbon County, Price – Judge Bunnell
Salt Lake County, Salt Lake City – Judge Jan
Salt Lake County, Salt Lake City – Judge Eisenman
Salt Lake County, Salt Lake City – Judge May
Salt Lake County, West Jordan – Judge Renteria

Family Dependency Drug Courts that have met all Required but not all Presumed Best Practices

Utah County, American Fork – Judge Nielsen

Presumed Best Practice #31 requires team members to be assigned for not less than two years. DCFS caseworker turnover occurs often and the courts have no control over that. Presumed Best Practice # 34 new staff hires receive formal orientation training and attend annual

continuing education workshops. Presumed Best Practice #35 requires a drug court to have more than 15 but less than 125 participants. Due to the pandemic the court limited the number of participants. This will change once the court reopens for hearings.

Adult Mental Health Courts that have met all Required and Presumed Best Practices
Cache County, Logan – Judge Fonnesbeck

Adult Mental Health Courts that have met all Required but not all Presumed Best Practices
Sevier County, Richfield – Judge Bagley
Presumed Best Practices #35 requires a drug court to have more than 15 but less than 125 participants. Due to the pandemic the court suspended new entries and is slowly returning to a full participant count, with 5 participants at this time.

Juvenile Mental Health Courts that have met all Required and Presumed Best Practices
Salt Lake County, Salt Lake City – Judge Knight

The following courts have been sent letters of non-compliance with Required and/or Presumed Best Practices. These courts are not seeking recertification at this time.
Utah County, American Fork – Judge Nielsen (Family Dependency)
Uintah County, Vernal – Judge McClellan (Adult Drug Court)
San Juan County, Monticello – Judge Torgerson (Adult Drug Court)
Utah County, Provo – Judge Eldridge (Adult Drug Court)
Utah County, Provo – Judge Taylor (Adult Drug Court)

Chief Justice Durrant thanked Judge Fuchs.

Motion: Judge Appleby moved to approve all problem-solving courts listed above including those who have met all Required but not all Presumed Best Practices, as presented. Judge Heward seconded the motion, and it passed with Judge May abstaining as to his court.

9. BOARD OF DISTRICT COURT JUDGES REQUEST FOR ORDER REQUIRING A DECLARATION CONCERNING CARES ACT: (Judge Andrew Stone and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Andrew Stone and Nancy Sylvester. The Board of District Court Judges voted to require a declaration be used in all unlawful detainer cases. The Board is seeking the Judicial Council's approval for this. The declaration will inform a district court judge whether the CARES Act applies in a particular case. If the Act applies, a district court judge would then ask whether the landlord gave proper notice to vacate, if the defendant was charged late fees or penalties for nonpayment of rent during the moratorium period, if this case was initiated prior to July 25, 2020 or if this case is still in forbearance.

Judge Pullan felt this subject fell within the authority of the Supreme Court and that any approval of a form should follow the adoption of a rule. The Council agreed and no action was taken.

Chief Justice Durrant thanked Judge Stone and Ms. Sylvester.

10. TECHNICAL INNOVATION: (Justice Deno Himonas)

Chief Justice Durrant welcomed Justice Deno Himonas. The objective of this proposed Phase I SBIR project is to demonstrate the feasibility of an AI/Machine Learning/Natural Language Processing based virtual or robotic lawyer to analyze and deliver legal services. The core team, made up of experienced lawyers and technologists, has a number of products and deployments within the legal space, specifically rule-based systems. The team is aware of the limitations.

Judge Shaughnessy said this was a worthwhile goal but was concerned about the commitment of staff. Judge Kara Pettit noted phase I didn't identify what needs would be required from staff and resources. Justice Himonas agreed to convey to the project that there would be time-limitations. Judge Pettit recommended waiting until the Director of the Office of Fairness and Accountability is hired and can address this. Justice Himonas said he can request a more detailed explanation.

Chief Justice Durrant thanked Justice Himonas.

Motion: Justice Himonas moved to convey that the Council is not inclined to approve this item at this time and that further information would be required. Judge Pettit seconded the motion, and it passed unanimously.

11. CIVIL JUSTICE DATA COMMONS INITIATIVE: (Justice Deno Himonas)

Chief Justice Durrant welcomed Justice Deno Himonas. The Civil Justice Data Commons Initiative is engaged in a project, funded by the National Science Foundation, to develop models and best practices for collecting and sharing data under appropriate privacy and security safeguards for purposes of expanding access to justice, formulating policy, and increasing the effectiveness of civil justice institutions. Council members wanted more information about the project. Mr. Rice agreed that the documentation did not provide sufficient information. Judge Connors did not want to approve giving anyone open access to all of the courts data.

Chief Justice Durrant thanked Justice Himonas.

12. REGULATORY REFORM UPDATE: (Justice Deno Himonas, Larissa Lee, and Brent Johnson)

Chief Justice Durrant welcomed Justice Deno Himonas, Larissa Lee, and Brent Johnson. Justice Himonas presented the Narrowing the Access-to-Justice Gap by Reimagining Regulation Report and Recommendations from the Utah Workgroup on Regulatory Reform. The reform is not fully staffed, there have been 10 applications to the courts. The courts hired Lucy Ricca, an independent contractor, to serve as the director. They've hired Helen Lindamood as the project manager. They are in the process of hiring a data analyst as an independent contractor.

The Management Committee and Supreme Court discussed the practical aspects of the reform office. The AOC has subject-matter experts on this matter that provide assistance. Judge Pullan recollected that everything with the reform would be funded through a grant. Judge Appleby agreed and noted the approved minutes reflected that. Justice Himonas said the minutes were incorrect and that court employees are required to support court functions. Judge Pullan

said the court can use AOC resources, but there is always a limit of resources. Judge Pullan felt the courts should be empowered to do their work and suggested at the beginning of each fiscal year the Council review anticipated budget costs to avoid any issues. Justice Himonas said he took responsibility for poor communication but never meant to suggest that the new office would not use AOC staff. Chief Justice Durrant agreed with Judge Pullan's recommendation for an annual budget review and evaluation of AOC staff time devoted to the new office. Judge Connors mentioned the British experiment report and noticed the tremendous expense in regulatory reform and felt Judge Pullan's comments were legitimate. Judge Connors questioned when this will transition to an independently funded effort.

Chief Justice Durrant thanked Justice Himonas, Ms. Lee, and Mr. Johnson.

13. BUDGET – CARRYFORWARD REQUESTS: (Judge Mark May and Karl Sweeney)

Chief Justice Durrant welcomed Judge Mark May and Karl Sweeney.

Reserve

$150,000 one-time funds (previously approved)
$231,164 carryforward
$381,163 Total

This is a request for additional one-time funds which will be available to pay for unexpected/unplanned one-time expenditures at the discretion of the Judicial Council. Funds not spent can be re-purposed at year-end 2021 for other one-time spending priorities including FY 2021 budget reductions.

#26 Utilize Existing Incentive Gift Cards

$4,175 one-time funds

The AOC Directors and TCEs would like to utilize the existing inventory of gift cards purchased in FY 2020. The cards total $13,915. The request is funding for the 30% tax impact to the recipients. The gift card values were increased to cover a large portion of the tax.

#27 IT WebEx FTR Automation Project

$150,000 one-time funds

The funding request is to enable additional functionality within Webex to automate the conversion to FTR.

#28 MyCase efiling for Pro Se Parties

$375,000 one-time funds
$80,000 ongoing funds (will begin in FY22)

The ability for pro se parties to efile information for the top 6 case types would make the courts more efficient in handling 80% of pro se filings for the FY20.

#29 Grants Coordinator Position

$91,400 one-time funds (mid-point salary with benefits)

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court levels and departments. This position will provide much needed support for employees with existing grant responsibilities, help increase grant funding in a time of widespread budget cuts and, in conjunction with the Judicial Council, identify and implement best practices with respect to grant funding and grant-funding protocols.

#31 Fix Court's Protective Order System
$50,000 one-time funds
The Court's protective order system ("CPOS") is not in compliance with federal statutes, federal regulations, state statutes, and judicial rules. The current CPOS requires programming changes that must be performed by Court Services and IT to bring it back into compliance. IT will require additional funding, however, that amount will be determined at a later date.

#32 Small Claims ODR Facilitator Training
$15,000 one-time funds
Recruitment and Training of 18 new volunteer ODR Facilitators in order to accommodate an eventual statewide rollout of the ODR Program for small claims cases.

Motion: Judge May moved to approve the Reserve, Utilize Existing Incentive Gift Cards, IT WebEx FTR Automation Project, MyCase efiling for Pro Se Parties, Fix Court's Protective Order System, Small Claims ODR Facilitator Training requests with one-time money, as presented. Justice Himonas seconded the motion; Judge Pullan requested to move the Grants Coordinator position to a separate motion.

Judge May said the one time funds request was for the Grant Coordinator position. Judge Noonan said the courts have in the past used one-time funds to continue certain positions until the legislature provides ongoing funds or the Court finds ongoing funds to support the position. Judge Shaughnessy felt there needs to be further discussion on the Grant Coordinator position and did not want to fund any position with one-time funds. Justice Himonas said the Council has been in violation of CJA Rule 3-411 requiring a grant coordinator. Karl Sweeney has been monitoring court grants; however no court personnel meet the intent of the rule. The Judiciary has approximately 13 grants.

Judge Pullan too preferred not to fund an FTE with one-time money and wondered if one-time funds would attract a qualified person knowing the position is limited. Judge Pullan suggested the courts could put a moratorium on grants until a later date. Justice Himonas also expressed concern with funding this with one-time money; however the amount of time spent by certain employees who are not experts on grant applications is too much. Chief Justice Durrant shared Justice Himonas' view about the need to have a dedicated employee for the court grants. Larissa Lee noted the anticipated salary is considered the mid-level range. Judge David Connors recommended further discussion and noted long-term there is no doubt that there is a need for a coordinator He cautioned that funding personnel with one-time funds is only useful if the Council is confident the funds will be available at some point.

Judge May noted if the Council funded the position with one-time funds this year, the Council could renew the one-time funding for the position next year, find permanent funding, or request funding from the legislature. Judge Noonan noted the rule requiring a grant coordinator has been in place for many years and that additional information could be provided at a future meeting. Ms. Lee and Ms. Anderson expressed a need for this position now. Judge Connors preferred to delay a decision rather than to object to a motion. Judge Michelle Heward clarified the concerns are about ongoing funding and not the need for the position and questioned if a motion could be made for ongoing funds. Judge May said the Council cannot vote for ongoing funds at this time. Judge Shaughnessy said he has not had an opportunity to review the rule, however, he continues to believe the position should not be funded with one-time money. Judge

Shaughnessy said the Council has worked hard to stay away from funding staff with one-time money. Judge Shaughnessy agreed with Judge Pullan that if grants are causing so many problems with Directors, then the grants should stop for now. Judge Noonan believed the staff that has been involved with most grants raised no concerns about compliance with or management of current grants. Justice Himonas said he anticipates a grant coordinator would alleviate some of the AOC support requirements. Judge Pullan would like to have the amount of resources applied to grants tracked. Chief Justice Durrant and Justice Himonas felt that was an excellent suggestion.

Motion: Judge May moved to approve the Grants Coordinator Position request, as presented. Justice Himonas seconded the motion with also seeking permanent funding. Judge May noted the Budget & Fiscal Management Committee will address permanent funding with the Council at a later date.

Motion: Judge Connors made a substitute motion to table the Grant Coordinator position decision until a subcommittee can address this. Judge Appleby seconded the motion. Judges Walton, Pettit, Shaughnessy, and Rob Rice voted yeah. Justice Himonas, Judges Chin, Cannell, Sessions, Pullan, May, Evershed, and Heward voted nay. The motion failed.

Motion: Judge Pullan moved to address this after an executive session. Justice Himonas seconded the motion, and it passed.

14. OLD BUSINESS/NEW BUSINESS

Chief Justice Durrant thanked Judge John Walton for his service on the Council. Judge Walton thanked the Council members.

Judge Cannell noted the First and Fifth Districts now share a spot on the Judicial Council. To keep the rotation in sync, this position needs to follow the rotation that Judge Cannell now holds. Therefore, Judge Cannell will finish the final year of his term (ending Sept. 2021). The First and Fifth District will then nominate a judge from the Fifth district to serve on the Council.

Cathy Dupont stated the March Utah State Bar Spring Convention will be held in St. George. As the Council normally holds their March meeting in St. George, Ms. Dupont questioned whether with the uncertainties of the pandemic and with budget cuts, if the Council would like to continue that tradition or remain local for the March, 2021 meeting. Mr. Rice said the Bar has always enjoyed having the Council at the Convention, although with the surge in COVID cases the plan to hold the Convention in St. George may change. The Council decided not to hold their March, 2021 meeting in St. George.

15. EXECUTIVE SESSION

Motion: Judge Appleby moved to go into an executive session to discuss a personnel matter and/or pending litigation. Justice Himonas seconded the motion, and it passed unanimously.

After the executive session ended, Judge Pullan noted there is only one grant that funds a position and that if the courts would like the Grants Coordinator position to be funded with a grant, it would have to be from new grants, not existing ones. Judge Noonan believed this was incorrect. Justice Himonas said some grants defray administrative costs. Judge May noted the minutes reflect an approval of a position with future funds. Judge Connors was concerned about

the process and noted a comment made by a presenter should not be considered an action item of the Council. Mr. Sweeney implied that the current fiscal year turnover savings would not be able to cover the cost of the Grants Coordinator position. Ms. Lee identified about 12 states that have grant coordinators. Judge Pettit clarified that some states' grant coordinators also have other duties. Justice Himonas said the majority of the Office of Fairness and Accountability could potentially be funded through grants. Judge Pullan again stated he is opposed to funding positions with one-time funding; however, the Council has an obligation to follow the rule.

Motion: Judge Pullan moved to accept the Grants Coordinator position with one-time money and the courts not seek additional grants until the person is hired and guards are in place. Justice Himonas seconded the motion, and the motion passed with Judges Walton, Shaughnessy, and Appleby voting nay.

Judge Pettit echoed that the Council has worked to move away from one-time funding positions and that she preferred to know additional information on what the position would entail. Judge Noonan will communicate with HR the job descriptions of other coordinators.

16. CONSENT CALENDAR ITEMS

a) Village Grant Project. Approved without comment.

b) Probation Policies. Probation Policies 4.9 and 5.7 (4.14 was removed at the Management Committee meeting). Approved without comment.

c) Rules for Public Comment. CJA Rules 3-201, 3-201.02, and 4-202.08. Approved without comment.

17. ADJOURN

The meeting adjourned.

Tab 2

Agenda

JUDICIAL COUNCIL'S

MANAGEMENT COMMITTEE

Minutes
October 13, 2020
Meeting held through Webex
12:00 p.m. – 2:30 p.m.

Chief Justice Matthew B. Durrant, Presiding

Committee Members:
Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Paul Farr
Hon. Mark May
Hon. Todd Shaughnessy

Excused:
Shane Bahr

Guests:
Brett Folkman, TCE First District Court
Travis Erickson, TCE Seventh District Court
Hon. Michael Leavitt, Fifth Juvenile Court
Chris Morgan, TCE, Sixth District Court
Hon. David Mortensen, Court of Appeals
Russ Pearson, TCE Eighth District Court

AOC Staff:
Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Lucy Beecroft
Amy Hernandez
Brent Johnson
Wayne Kidd
Larissa Lee
Daniel Meza Rincon
Zerina Ocanovic
Bart Olsen
Chris Palmer
Jim Peters
Tiffany Pew
Clayson Quigley
Neira Siaperas
Chris Talbot
Jeni Wood

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Judge Kate Appleby welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

Motion: Judge Paul Farr moved to approve the October 6, 2020 Management Committee meeting minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

On October 12, 2020 the Management Committee approved by unanimous vote through email the Risk Response Checklist for the Sanpete County Justice Court.

2. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary T. Noonan will discuss three recent audits: Court Fines and Surcharges, Information Sharing in the Justice System, and Justice Reinvestment Initiative with the EOCJ. Judge Noonan invited Judge Shaughnessy and Judge Farr to participate in the report.

3. REVIEW COVID CASES FOR COURTHOUSES WORKING IN THE YELLOW PHASE: (Jeni Wood)

Cathy Dupont presented cases per 100K, ICU Usage, and Test Positivity statistics found on the DOMO website. The Utah State Health Department advised that cases per 100K should not exceed 100. The DOMO website no longer will identify 7-day mean incidence. Ms. Dupont will amend the information as necessary.

Beaver County was approved to operate in the Yellow phase on September 8, 2020. Beaver has a 14-day mean incidence of around 4 with a 6% Test Positivity rate.

Box Elder County was approved to operate in the Yellow phase on August 19, 2020. Caleb Harrison, Bear River Health Department provided that Box Elder has continued to climb and now seen their highest incidence rate yet. Over the past two weeks, they've averaged 16.7 cases per 100K. Brett Folkman said the local health department recommended moving back to the Red phase.

Motion: Judge Mark May moved to return Box Elder County to the Red phase based on the local health departments concerns. Judge Shaughnessy seconded the motion, and it passed unanimously.

Daggett County was approved to operate in the Yellow phase on July 29, 2020. Daggett has not conducted any tests within the past seven days therefore no data was available.

Duchesne County was approved to operate in the Yellow phase on August 26, 2020. ; Duchesne's 14-day case average is 70.1 per 100K, with a 6.2% Test Positivity rate, and a 100% ICU usage.

Emery County was approved to operate in the Yellow phase on August 19, 2020. Emery's 14-day average is 149.7 per 100K with an 11.11% Test Positivity rate. Brandon Bradford, local health department provided that Emery has had three COVID-related deaths in the past 14 days, Castleview Hospital met their maximum capability to handle COVID patients and enacted transports to another hospital that was 5 hours away, today there are 12 new cases, and that Grand and Emery Counties currently have some of the highest rates of active cases in Utah. Hospitalizations lag behind cases. In other words, the surge we see now has a real possibility of leading to more hospitalizations in 5-10 days.

Motion: Judge Shaughnessy moved to return Emery County to the Red phase based on the local health departments concerns. Judge May seconded the motion, and it passed unanimously.

Iron County was approved to operate in the Yellow phase on August 26, 2020. Iron's 14-day average is 153.5 per 100K with an 8.25% Test Positivity rate and a 91% ICU usage. The committee requested to address COVID numbers at their next meeting.

Juab County was approved on September 15, 2020 to operate in the Yellow phase. Juab's 14-day average is 458 per 100K with a 16.77% Test Positivity rate.

Millard County was approved on September 9, 2020 to operate in the Yellow phase. Millard's 14-day average is 207.6 per 100K with a 6.85% Test Positivity rate.

Piute County was approved on September 1, 2020 to operate in the Yellow phase. Piute's 14-day average is 968.9 per 100K with a 33.33% Test positivity rate. Nathan Selin, local health department felt with the many precautions taking place, the courts could remain in the Yellow phase. Judge Shaughnessy and Judge Farr felt the courts are set to a different standard than organizations such as school or church.

Motion: Judge May moved to return Piute, Juab, Millard, Sanpete, and Sevier County to the Red phase based on the local health departments concerns. Judge Shaughnessy seconded the motion, and it passed unanimously.

Rich County was approved to operate in the Yellow phase on August 19, 2020. Rich's 14-day average is 40.6 per 100K with a 20% Test Positivity rate. Mr. Harrison provided that Rich County has quieted down, with just one confirmed case in the past two weeks. The health department recommended remaining in the Yellow phase.

Sanpete County was approved to operate in the Yellow phase on October 6, 2020. Sanpete's14-day average is 231.9 per 100K with an 11.88% Test Positivity rate.

Sevier County was approved to operate in the Yellow phase on September 1, 2020. Sevier's 14-day average is 231.9 per 100K with an 11.88% Test Positivity rate.

Uintah County was approved to operate in the Yellow phase on September 21, 2020. Uintah's 14-day average is 98.8 per 100K with a 9.17% Test Positivity rate. Russ Pearson said the local health department is mostly concerned with the increases in Uintah County, rather than the other counties. Mr. Pearson will report back to the committee at their next meeting.

4. REQUEST FOR THE CREATION OF A COURT SECURITY AND DOMESTIC VIOLENCE COMMITTEE: (Amy Hernandez)

For the courts, domestic violence proceedings can end with attacks on judicial officers and court staff. Over a ten year period, the Center for Court Innovation (CCI) analyzed 185 incidents of violence carried out against judicial officers and court staff. The CCI found that litigants in domestic violence proceedings were the most commonly-cited cause for these attacks. With the risk of danger to courts, the CCI recommended developing specific court security policies and procedures for domestic violence proceedings.

After discussing the CCI's recommendations with Chris Palmer, it was determined that a committee could be assembled to develop and recommend these court security policies to the Judicial Council for adoption. The committee would be composed of various stakeholders within the courts and other agencies to promote the safety of judicial officers, court staff, and court patrons. These stakeholders may include law enforcement officials, prosecutors, defense attorneys, judicial officers of all court levels, court staff members, and victim advocates. As part of the Violence Against Women Act (VAWA) grant, Amy Hernandez volunteered to serve as staff to the committee under Mr. Palmer's supervision for the purposes of this project. Additionally, any costs for the committee would be paid from the VAWA grant funding.

Judge Appleby questioned whether the risk to judicial officers and court personnel may be greater outside the courts rather than inside the courts. Chris Palmer said 83% of all judicial threats are from civil cases, mostly involving custody or divorce cases. Judge Shaughnessy

wondered if there is another committee that this subject could fall under as a subcommittee. Judge Appleby said if there was a standing committee on security, this would fall under that committee as a subcommittee. Judge Noonan recommended either creating an ad hoc committee, having Policy & Planning address this or having Brent Johnson attend a meeting for further discussion. The committee agreed to postpone this discussion until further research can be conducted on the possibility of a court security committee. This item will be removed from the Judicial Council agenda.

5. APPROVAL OF INTERLOCAL AGREEMENT BETWEEN PAROWAN AND IRON COUNTY: (Jim Peters)

Jim Peters presented a signed Interlocal Agreement between Parowan and Iron County. The agreement would allow for cited Class B Misdemeanors or lessor criminal matters related to a section of I15 are sent to Parowan City Justice Court, effective immediately. Judge Appleby noted local law enforcement has a difficult time identifying which court to send citations when issued in the area of question.

Motion: Judge Farr moved to approve adding the Interlocal Agreement between Parowan and Iron County to the Judicial Council agenda, as presented. Judge May seconded the motion, and it passed unanimously.

6. DISSOLUTION OF SMITHFIELD JUSTICE COURT: (Jim Peters)

Smithfield City intends to seek legislative approval at the next legislative session to dissolve the Smithfield City Justice Court, effective April 1, 2021. Mr. Peters presented Resolution 20-05, which explains the dissolution. Mr. Peters said there were other options identified; however, the city determined the best course of action was to dissolve. There are neighboring justice courts within a short distance. This will add cases to the district court. Mr. Peters said this has happened in the past with other district courts.

Motion: Judge Farr moved to approve adding the dissolution of Smithfield Justice Court to the Judicial Council agenda, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

7. PROBATION POLICIES 4.14, 4.9, AND 5.7: (Tiffany Pew)

Tiffany Pew presented three probation policies for amendments.

Section 2.1 Preliminary Interview

This policy was last updated May 21, 2018. The purpose of the policy is to provide direction to probation officers when conducting a preliminary interview with a minor and the parent/guardian/custodian regarding a referral to the Juvenile Court. Changes to this policy include the replacement of the pre and post adjudication Acknowledgement of Legal Rights forms with a singular form currently in use and the addition a requirement for probation officers to provide notification of the preliminary interview appointment to the designated school representative for school-based referrals.

Section 4.2 Formal and Intake Probation

This policy was last updated December 16, 2019. The purpose of the policy is to provide guidelines for supervision of minors placed on Intake Probation and Formal Probation by the Court. Updates to the policy include the removal of a reference to the old Serious Youth

Offender statute and a change requiring that a probation officer make contact with a youth and family to review the conditions of the order within three business days of a youth being placed on Intake or Formal probation.

Motion: Judge May moved to approve changes to Probation Policies 2.1 and 4.2, as presented, and to put on the Judicial Council consent calendar. Judge Shaughnessy seconded the motion, and it passed unanimously.

8. JUVENILE FILINGS REPORT: (Judge Mary T. Noonan and Neira Siaperas)

The filings reports alone do not reflect the workload of juvenile court judges or staff. The filings reports count new delinquency episode referrals, child welfare petitions, and certain other incidents in juvenile court. The workload studies include the filings reports as one of the components, but additional documents and data are gathered to account for and reflect the workload on a case.

On August 21, 2020, the annual filings reports for all court levels were presented to the Judicial Council. The annual reports are prepared by Court Services and the reports run automatically without intervention by a data analyst. The juvenile court filings report indicated a 55% increase in child welfare (CW) filings in FY20 as compared to FY19. Following the presentation, Court Services researched the cause of such a remarkable increase in CW filings. It was subsequently discovered that the CW filings report was written incorrectly when converted from the Access to the Cognos platform and had the FY19 filings hardcoded and embedded in the filings report. This resulted in the FY20 report counting both the FY19 and FY20 CW filings which produced the inaccurate report of a 55% increase in CW filings.

The Juvenile Justice Reform (HB 239) requires annual reporting of delinquency filings to the Commission on Criminal and Juvenile Justice (CCJJ). This report has traditionally been generated by the juvenile court data analyst and is separate from the annual delinquency filings report produced by Court Services. The comparison of the CCJJ and the annual delinquency filings reports indicated a discrepancy of 1,150 referrals with the FY20 annual filings report showing 14,709 delinquency referrals and the CCJJ report showing 15,859 referrals.

Juvenile Court administrators and the Court Services team reviewed the categories of filings, discrete filings, and the parameters/filters written into the child welfare, delinquency, adult violations, and domestic/probate juvenile court filings reports. Several issues were discovered, such as, inaccuracies in counting delinquency referrals and filings that have not been counted in prior reports. The analysis and actions taken thus far have been specific to the reporting of juvenile court filings which include initial referrals, petitions filed, and incidents created. The next phase of the review and revision of juvenile court data reporting processes will include the creation of reports based on dispositions.

Judge Michael Leavitt appreciated the work that went into this study. Neira Siaperas reviewed the report and felt more individuals should be involved with the reports to ensure better accuracy. Judge Shaughnessy questioned if the standard is programmed correctly. Ms. Siaperas said in the past reports this was counting filings incorrectly, however, they have identified a solution to correct this error.

Motion: Judge May moved to add the Juvenile Filings Report to the Judicial Council agenda. Judge Shaughnessy seconded the motion, and it passed unanimously.

9. REVIEW OF COURT COSTS IN SELECTED JUSTICE COURTS: (Wayne Kidd and Lucy Beecroft)

The review of Court Costs in Selected Utah Justice Courts Audits was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. Lucy Beecroft, Internal Auditor, served as the lead auditor for this review. The purpose of this review was to determine if the court costs and fees assessed are allowed by statute or policy. In addition, this provides the courts opportunity to implement remediation plans to address the recommendations to reduce risk. The audit identified some justice courts that are following procedures, as noted in the Executive Summary. This report also includes 15 recommendations addressed to the eight selected courts to strengthen controls and procedures.

Judge Shaughnessy asked what is considered a "court cost" and would it be possible to remove or clarify the "court costs" section in Coris as it seems to be used often. Wayne Kidd said the court cost code is commonly used as a miscellaneous category. Mr. Kidd explained that removing or editing the court costs section could be possible and noted several courts have started correcting their errors. Judge Shaughnessy appreciates the flexibility of the categories but may prefer changing the system to force people to correctly capture the category and noted that an alert could be created to pop up on a screen explaining what is allowed in the category each time someone selects the court cost category. Ms. Dupont recommended having Jim Peters address this with the Board of Justice Court Judges and the Education Department. Mr. Peters noted this is on the Board's agenda.

Motion: Judge Farr moved to approve the Court Costs in Selected Utah Justice Courts Audits, as amended, to follow up within sixty days to address the court cost category issue. Judge May seconded the motion, and it passed unanimously.

10. LEGISLATIVE AUDIT REPORTS: (Michael Drechsel)

Michael Drechsel said the Legislative Audit Committee will meet today to address three audits: Justice Reinvestment Initiative, Information Sharing in the Justice System, and Court Fines and Fees. Mr. Drechsel said information regarding the audits cannot be shared until after the meeting with the Legislative Audit Committee. Judge Noonan thanked Mr. Drechsel for his pivotal role with these audits. Mr. Drechsel will prepare a summary of the audits to accompany the audits.

11. IGG SUBCOMMITTEE COURT SPACE PLANNING AND RESPONSE TO BACKLOG OF JURY TRIALS: (Judge David Mortensen, Chris Talbot, and Michael Drechsel)

Judge David Mortensen stated they received notice to meet with the IGG Subcommittee, who would like the courts to review courts' space, including the square footage of judicial chambers and what innovations could reduce space, such as holding night courts. They would also like to know what the courts will do for the backlog of cases due to the pandemic.

Chris Talbot said the Manti Courthouse is struggling with only one courtroom, which is shared by both the district and juvenile court. Judge Shaughnessy didn't believe a centralized scheduling system would work because the courts are jurisdictionally bound. Regarding the

backlog of jury trials, Judge Shaughnessy felt the message is that the courts are taking the issue very seriously while ensuring the safety of all involved. Jurors are compelled to come to a courthouse once a county has been authorized to operate in the Yellow phase so the courts are studying all options. Judge Shaughnessy said due to the number of increasing backlog of cases, if Salt Lake County stays in the Red phase for a considerable amount of time, the courts may have to consider holding jury trials during the Red phase.

Judge Appleby noted because the courts color-coded phases do not match the State's phases, the differences between them should be identified. Judge Noonan noted an issue with evening/weekend trials is that there are so many outside entities involved.

12. COMMITTEE APPOINTMENT: FORMS COMMITTEE: (Brent Johnson)

Brent Johnson addressed the vacancy due to Judge James Taylor's retirement announcement. The Board of District Court Judges and the committee recommended Judge Su Chon's appointment.

Motion: Judge Farr moved to approve the appointment of Judge Su Chon to the Forms Committee, as presented, and to include this on the Judicial Council consent calendar. Judge May seconded the motion, and it passed unanimously.

13. PANDEMIC RISK RESPONSE PLAN REGULAR REPORTING: (Brent Johnson)

Mr. Johnson presented a new form "Pandemic Risk Response Plan Report for the ___ Court." The purpose of the form is to verify that courts are regularly reviewing their Risk Response Plan's to ensure continued compliance and accountability. Mr. Johnson recommended that this form be sent to the Management Committee once a month.

Motion: Judge Shaughnessy moved to approve the "Pandemic Risk Response Plan Report for the ___ Court form" and to require reporting once a month. Judge Farr seconded the motion, and it passed unanimously.

14. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant addressed the Judicial Council agenda.

Motion: Judge Farr moved to approve the Council agenda, as amended to remove the request for the creation of a new committee. Judge Shaughnessy seconded the motion, and it passed unanimously.

15. OLD BUSINESS/NEW BUSINESS: (All)

Mr. Pearson said the jury trial completed last week in the Eighth District. Judge Appleby said the committee recognizes the issues with moving a county to the Red phase during or just before the start of a jury trial. The next jury trial is scheduled for November.

16. EXECUTIVE SESSION

An executive session was held.

17. ADJOURN

The meeting adjourned.

Agenda

JUDICIAL COUNCIL'S
BUDGET & FISCAL MANAGEMENT COMMITTEE

Minutes
September 10, 2020
Meeting held through Webex
12:00 p.m. – 1:00 p.m.

Members Present:
Hon. Mark May, Chair
Hon. Augustus Chin
Hon. Kara Pettit

Excused:
Michael Drechsel

Guests:
Justice Deno Himonas, Supreme Court
Larry Webster, Second District TCE

AOC Staff Present:
Hon. Mary T. Noonan
Cathy Dupont
Shane Bahr
Amy Hernandez
Alisha Johnson
Larissa Lee
Daniel Meza Rincon
Bart Olsen
Chris Palmer
Jim Peters
Nini Rich
Neira Siaperas
Karl Sweeney
Jeni Wood

1. WELCOME AND APPROVAL OF MINUTES: (Judge Mark May)

Judge Mark May welcomed everyone to the meeting. Judge May addressed the meeting minutes.

Motion: Judge Kara Pettit moved to approve the August 13, 2020 minutes, as presented. Judge May seconded the motion, and it passed unanimously.

2. FY 2021 PERIOD 1 FINANCIALS: (Alisha Johnson)

Updated Forecast of FY 2020 Carry-forward to FY 2021

Alisha Johnson provided the FY21 fiscal year end turnover savings forecast. Ms. Johnson noted the funds returned $1.5M in one-time funds to backfill personnel were not included in the spreadsheet below.

#		Funding Type	Amount
1	Carried over Ongoing Savings (from FY 2020)	Internal Savings	44,296
2	Current Ongoing Turnover Savings (Beginning in FY 2022)	Internal Savings	(11,802)
	NET TOTAL SAVINGS		32,494
3	Ongoing Turnover Savings Pledged to Budget Cuts (retirements)		(245,300)
4	Ongoing Turnover Savings Pledged to Budget Cuts (non-retirements)		(230,148)
Forecast of Turnover Savings for FY 2021 at Fiscal Year End			$ (442,954)

3. FY 2021 CARRY-FORWARD AND ONGOING TURNOVER SAVINGS REQUESTS: (Karl Sweeney, Chris Palmer, Heidi Anderson, Larissa Lee, Peyton Smith, Amy Hernandez, and Nini Rich)

#26 Utilize Existing Incentive Gift Cards

$4,175 one-time funds

The AOC Directors and TCEs would like to utilize the existing inventory of gift cards purchased in FY 2020. The cards total $13,915. The request is funding for the 30% tax impact to the recipients. The gift card values were increased to cover a large portion of the tax.

Motion: Judge Chin moved to approve sending the Utilize Existing Incentive Gift Cards request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#27 IT WebEx FTR Automation Project

$150,000 one-time funds

The funding request is to enable additional functionality within Webex to automate the conversion to FTR.

Motion: Judge Chin moved to approve sending the IT Webex FTR Automation Project request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#28 MyCase efiling for Pro Se Parties

$375,000 one-time funds

$80,000 ongoing funds (will begin in FY22)

The ability for pro se parties to efile information for the top 6 case types would make the courts more efficient in handling 80% of pro se filings for the FY20.

Motion: Judge Chin moved to approve sending the MyCase efiling for Pro Se Parties request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#29 Grants Coordinator Position

$91,400 one-time funds (mid-point salary with benefits)

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court levels and departments. This position will provide much needed support for employees with existing grant responsibilities, help increase grant funding in a time of widespread budget cuts and, in conjunction with the Judicial Council, identify and implement best practices with respect to grant funding and grant-funding protocols. Judge Noonan said the courts have a history of the Council committing one-time funds to continue certain positions until the legislature provides ongoing funds.

Motion: Judge Chin moved to approve sending the Grants Coordinator Position request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#30 West Jordan Jury Assembly Room Furnishings

$66,700 one-time funds

Replace Jury Assembly Room chairs and tables in the West Jordan Courthouse. Judge May felt this request should be addressed closer to the end of the fiscal year as spending right now may be premature. Mr. Sweeney felt it would be fine to wait. Judge Chin confirmed there are not in-person jury trials being conducted now.

Motion: Judge Pettit moved to defer sending the West Jordan Jury Assembly Room Furnishings request to the Judicial Council, as presented. Judge Chin seconded the motion, and it passed unanimously.

#31 Fix Court's Protective Order System

$50,000 one-time funds

The Court's protective order system ("CPOS") is not in compliance with federal statutes, federal regulations, state statutes, and judicial rules. The current CPOS requires programming changes that must be performed by Court Services and IT to bring it back into compliance. Amy Hernandez stated IT will require additional funding, however, that amount will be determined at a later date.

Motion: Judge Pettit moved to approve sending the Fix Court's Protective Order System request to the Judicial Council, as presented. Judge Chin seconded the motion, and it passed unanimously.

#32 Small Claims ODR Facilitator Training

$15,000 one-time funds

Recruitment and Training of 18 new volunteer ODR Facilitators in order to accommodate an eventual statewide rollout of the ODR Program for small claims cases.

Motion: Judge Chin moved to approve sending the Small Claims ODR Facilitator Training request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

Mr. Sweeney recommended moving money not used to create a larger reserve. Judge Pettit agreed this would be a good idea. Cathy Dupont felt comfort in increasing the reserves because there is more than adequate senior judge funding, however, once jury trials begin, the courts may need additional funding for senior judge usage as the backlog of trials is large. Judge Pettit thanked Ms. Dupont for anticipating funds' usage.

Motion: Judge Pettit moved to increase the reserve with the additional $160,000. Judge Chin seconded the motion, and it passed unanimously.

3. OLD BUSINESS/NEW BUSINESS: (All)

There was no additional business discussed.

4. ADJOURN

The meeting adjourned at 12:48 p.m.

UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES

WebEx video conferencing
October 2, 2020: 12 pm to 2 pm

DRAFT

MEMBERS:	**PRESENT**	**EXCUSED**
Judge Derek Pullan, *Chair*	•	
Judge Brian Cannell	•	
Judge Augustus Chin		•
Judge David Connors	•	
Judge Michelle Heward	•	
Mr. Rob Rice	•	

GUESTS:

Paul Barron
Shane Bahr
Justice Christine Durham
Bridget Romano
Nancy Sylvester
Dr. Jennifer Yim

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed members and guests to the meeting. The committee considered the minutes from the September 4, 2020 meeting. With no changes, Judge Heward moved to approve the minutes as drafted. Mr. Rice seconded the motion. Judge Connors abstained. The motion passed with a majority vote.

(2) 3-101. Judicial Performance Standards:

Judge Pullan provided an overview of the issue. Judge Johnson was unable to join the meeting due to an evidentiary hearing.

Ms. Romano: This is an important issue both to the Board of District Court Judges (BDCJ) and to JPEC. There have been concerns in the past that a judge may, unfairly, be found not to meet a performance measure based solely on the case under advisement standard for a situation outside of the judge's control. Until recently, JPEC believed that issue had been addressed by the AOC's implementation of a tracking system notifying judges of cases under advisement timelines. Initially, JPEC was concerned with amendments to both paragraphs (2) and (6), but after meeting with the BDCJ and learning how the tracking system works, JPEC understands that paragraph (2) more clearly defines when the clock starts ticking, which is perfectly appropriate

JPEC still has concerns with paragraph (6). JPEC has a statutory responsibility to the public to objectively evaluate judicial performance and provide recommendations with respect to retention. Paragraph (6) clearly intrudes upon and supplants what would otherwise be a JPEC function. During the meeting with the BDCJ, JPEC proposed alternatives (included in the meeting materials). We recommended eliminating the "good cause" language because it is terribly subjective and difficult to apply. Judge Stone suggested that was an artifact from an early draft. JPEC also suggested that if paragraph (6) were retained, it should include specific circumstances that would qualify as reasons outside a judge's personal control. Ms. Sylvester's alternative draft reflects a couple of them, such as temporary disability or system failure. That paragraph should also include language delineating the circumstances in which the Judicial Council would exercise its discretion to report to JPEC that a judge met an objective standard that he or she otherwise did not. Another suggestion was the possibility of reciprocity, for example, if a judge self-

declared that he or she met objective criteria, but the Judicial Council was made aware of information independently that the person in fact did not meet the criteria, the Judicial Council would be able to report that information to JPEC.

Those alternatives would help, but they do not eliminate JPEC's concerns, as reflected in the letter Dr. Yim sent in late August after the BDCJ meeting. The commission feels strongly that paragraph (6) supplants JPEC's function. Judges can provide an explanation to JPEC directly regarding why they should not be held responsible for a standard that they did not objectively meet, and JPEC can exercise its function to determine whether that judge or justice should ultimately be held accountable. One idea is to amend the self-declaration form to allow a judge to articulate reasons outside of his or her control. Before JPEC fails a judge on a performance standard, or if JPEC plans to recommend that the judge not be retained, we make sure that the judge has an opportunity to meet with and provide information to JPEC sufficient to allow us to make a fair and considered determination.

Justice Durham: I think it is accurate to say that from JPEC's perspective, the Judicial Council's function is to set the standards and JPEC's function (statutorily), is to evaluate compliance based on objective data. If the Judicial Council wants to include exceptions and mitigation into the rule, then I don't think JPEC would be as concerned, but as it is, the language in the rule leaves all of the discretion to the Council and does not allow JPEC to perform its function based on objective data. In my communication with Dr. Yim, it is my understanding that this has not been an issue for judges in terms of their recommendations for retention.

Judge Pullan: I'm troubled with the idea that the Judicial Council is in some way supplanting JPEC's role, because as Justice Durham mentioned, the Judicial Council does have a role here (independent of JPEC), which is to certify whether a judge has or has not met certain standards. As I understand it, nothing requires JPEC to accept the Judicial Council's findings. Under current paragraph (6), the Council would have to make findings that JPEC would be free to accept or reject. It's strange to me that JPEC is resistant to paragraph (6), because it is actually giving JPEC more information about the certification than they would have otherwise had.

In section 78A-2-223, a trial court judge shall decide all matters submitted for final determination within two months, unless circumstances causing the delay are beyond the judge's control. The legislature recognizes this exception, but nothing in our current rule incorporates that statutory standard. I don't view incorporating a statutory standard in the rule as supplanting JPEC 's responsibility because nothing related to certification is binding on JPEC. JPEC can ultimately reach a different conclusion.

Justice Durham: It's not a question of whether the Judicial Council is supplanting JPEC. It's a question of whether the Judicial Council is performing its obligations with respect to setting the standards. Part of the problem is that the language of the rule does not fully define the standard. I think 78A-2-223 is unconstitutional. The legislature doesn't have the power to tell the judiciary what reasonable time standards are. That constitutional authority belongs with the Judicial Council. JPEC isn't worried about losing power as much as we are worried about ensuring the Council's role is clear, and that role is to set standards. With respect to the statute, the Judicial Council could incorporate the same statutory considerations into the rule, detail them, and ensure JPEC and judges know exactly what the criteria are for compliance with time standards.

Dr. Yim: I would encourage you to think for a moment as a member of the public, as someone who goes to JPEC's website and reads about judges who serve their community. I believe there is real value in having objective standards. Providing the Judicial Council with the discretion to overrule the self-declaration of a judge makes it appear that this process is something less than objective. I would encourage the Council to articulate the exceptions in the rule, so judges and the public know exactly what those standards are in advance. Those are better optics than allowing the Judicial Council to overrule and pass a judge who has failed the objective standards.

Judge Heward: Do judges make the determination themselves about when they self-disclose a situation beyond their control?

Ms. Romano: That was my suggestion with respect to potentially amending the self-declaration form, adding a section to provide objective information about a circumstance a judge feels was outside of his or her control, such as a temporary disability, pandemic, hurricane, earthquake, etc. The judge would be accurately reporting that he or she did not met the definition of the standard, but with an explanation as to why they should not be held accountable. That would allow JPEC to overcome the presumption. The Judicial Council should set the standard, but the Council should not also be applying the standard and telling JPEC whether the standard has been met.

Judge Heward: If paragraph (6) were adopted, JPEC would be getting more information than they were before and nothing prevents JPEC from making its own determination. I don't think that infringes on JPEC's responsibility.

Justice Durham: You're right that JPEC would get more information under the alternative proposal, but think about the optics. For example, the Judicial Council reviews and publishes its findings with respect to a particular judge, saying 'no this judge didn't meet the standards but we're going to excuse it and deem him or her in compliance because of the following factors,' and then JPEC disagrees, saying 'we don't think those factors arise to a sufficient level to deem this judge in compliance.' As Jennifer points out, what does the public make of that? The legislature didn't want judges judging the performance of other judges, which is why they split the functions, with the Council setting standards and JPEC enforcing those standards, or at least deeming compliance with the standards. I agree that JPEC would be getting more information and that's a factor we should keep in the mix. The more information the better and JPEC wants it, but I don't think you really want to set things up in such a way that the Council could potentially be in conflict with JPEC on evaluations.

Ms. Sylvester: This highlights the balance of power between the executive and judicial branches. I see the optics from a positive angle. If the Council thinks a judge should be certified but JPEC disagrees, that would underscore how important JPEC really is.

Dr. Yim: From a historical perspective, when a judge fails the minimum standards of performance, JPEC has always received from the judiciary the same amount of information suggested here. The commission invites and/or meets with the judge and the AOC provides written documentation. It would be great if that requirement were written into the rule, but in my view this is not an increase in information.

Judge Connors: When each judge signs his or her own self-declaration, copies are sent to the presiding judge. What am I supposed to do with them? Am I supposed to decide if what the judge wrote is truly a violation? Am I supposed to make some comment to the Judicial Council as I pass them along, or am I simply supposed to sign them with a note saying I reviewed them and send them on? Example: a brand new judge self-declared that he was non-compliant when, in fact, he was in compliance and had just made a mistake. He checked the wrong box. He had inherited something from a prior judge and hadn't had 10 minutes to think about the matter, let alone 60 days, and yet he declared himself non-compliant. And what about 50/50 compliance situations (i.e., rule suspensions due to the pandemic)? I don't see anything in the rule addressing those sorts of situations.

Justice Durham: If it's a clerical error, take the form back to the judge, explain the process, and give him a new form to fill out. I was thinking of other rules, like the education rule, that are based on clear objectives. Did you show up? Did you get enough credit hours?

Judge Pullan: The purpose of Policy and Planning is to serve as a lightning rod to identify the policy interests of stakeholders and ultimately make a recommendation to the Council. The discussion today has been fruitful and helped us better understand JPEC's concerns. Laws can be developed in two ways, by rule or case-by-case over time. If we were to try to list all of the circumstances outside a judge's control, it would be a very long list. My question is do we try to come up with a list, or do we let the standards develop case-by-case over time?

Justice Durham: Establishing a more robust definition of compliance and exceptions would help, but there are two issues. First, who should have discretion, the Council or JPEC? Second, related to the exercise of discretion is the scope of the discretion. Under the current rule, that scope is very broad. This discussion is about how to narrow the

scope and make the standards more robust. If some of the discretion belongs with the Council, what is the scope of that discretion?

Judge Pullan: I don't like the good cause language. It isn't found in the statute and I think it should be eliminated. That is a narrowing of discretion.

Mr. Bahr: If the Council determines that a judge is non-compliant, is that information published by JPEC?

Dr. Yim: JPEC is statutorily required to invite a judge to appear if the judge fails a minimum standard. The judge can decline to appear, but it is not discretionary on JPEC's part. The commission will write a narrative giving the reasons for the failure and how the judge overcame that failure. If a judge chooses not to run for retention, certain parts of the report from the Council would be redacted as that information is protected.

Mr. Bahr: One of the BDCJ's concerns was what information would be made public.

Justice Durham: I recommend that we start focusing more on the creation of a rebuttable presumption, and maybe incorporate that language somewhere in the rule.

Judge Pullan: In terms of the legitimacy of our institutions, the Judicial Council has no interest in certifying bad judges and JPEC has no interest in decertifying good judges. If JPEC starts to decertify judges for things beyond their control, JPEC's legitimacy in the eyes of the public would be diminished. The same for the Council. Judge Pullan invited Dr. Yim, Justice Durham, and Ms. Romano to Policy and Planning's November meeting to continue this discussion and work on a rule draft. Judge Johnson and Judge Lawrence from the BDCJ will also be invited.

Ms. Williams will send Judge Heward, Judge Lawrence, and Judge Cannell a copy of the WebEx recording of today's meeting. Judge Heward will discuss this issue with the Board of Juvenile Court Judges. Judge Cannell will report to the BDCJ on October 16th.

(3) Rules back from public comment:

- 3-104. Presiding judges
- 3-111. Performance evaluation of senior judges and court commissioners
- 4-202.02. Records classification
- 6-507. Court visitor
- 3-407. Accounting
- 4-609. Procedure for obtaining fingerprints and OTNs on defendants not booked in jail
- 10-1-404. Attendance and assistance of prosecutors in criminal proceedings
- 4-401.01. Electronic media coverage of court proceedings
- 4-401.02. Possession and use of portable electronic devices

Ms. Williams reviewed rules back from public comment. Two comments were received on rule 6-507, and one comment was received on 4-401.02. No comments were received on the other seven rules.

<u>Rule 6-507</u>

Ms. Sylvester reviewed the public comments on Rule 6-507. A statutory reference in paragraph (2)(C) was corrected. In regard to the requirements under (3)(B), most of the rule simply codifies what court visitors are already doing, so I don't think this creates any additional burdens. In regard to interviewing physicians, I haven't heard of any significant challenges. From what I understand, court visitors just keep trying until they get in touch.

Judge Pullan: If a physician has conducted an assessment and provided information relevant to the physical or mental condition of the defendant, that's a pretty important person that I'd like to talk to.

Judge Connors: Most of the letters from physicians are incredibly general, and some are only 1-2 lines long. It's important to have someone follow up to ensure the physician conducted a thorough assessment, rather than taking mom or dad's word for it. I'm not aware of a single case where a court visitor has gone rogue and run up a bunch of fees and expenses. I would hate to remove "will" and change to "may" and then be unsure if I'm going to get useful reports from court visitors. There are circumstances when a court visitor can't get a physician to respond or do a home visit, but they usually just indicate that in their report. I don't think this is a problem.

Judge Cannell agreed.

Mr. Bahr: It can take quite a bit of time to get a response from a physician and it has been even more challenging lately with COVID, but that's a policy issue that could be handled on the program side. Court visitors can be instructed to make a note in the report regarding their efforts to contact a physician and move on.

Rule 4-401.02:
Ms. Williams reviewed the proposed amendments and public comment on behalf of Mr. Johnson. After reviewing the public comment, Mr. Johnson recommends one minor change, adding the word "portable" to the definition of "electronic device." Mr. Johnson's original concern was that people would be able to record remote proceedings from home with a device that would not necessarily be considered "portable," but the definition of electronic portable device includes personal computers (which are not easily portable), so including "portable" probably isn't an issue.

As for the public commenter's suggestion to simplify the language, that would require an entire re-write of the rule. Because remote hearings are common practice, there is some urgency to these changes and the rule as proposed is sufficiently clear. By way of background, the original purpose of the rule was to address the increasing use of electronic devices in courtrooms. The intent of the rule was to clarify that people would be permitted to silently use items such as cell phones and laptop computers in the courtroom, but no recording would be permitted. The focus of the rule was not necessarily on recording, but permitted uses. The current proposed amendment focuses more on recording.

Mr. Rice moved to approve all of the rules under this section (as amended) for recommendation to the Council that they be approved as final with an effective date of November 1st. Judge Connors seconded the motion. The motion passed unanimously.

(4) 4-202.02. Records classification
Ms. Williams: HB 206 went into effect on October 1, 2020. Judges are now required to consider an individual's ability to pay a monetary bail amount any time a financial condition of release is ordered. The Judicial Council recently adopted a new matrix that recommends monetary bail amounts based on an individual's gross household income and number of dependents. In order to provide judges with that information at the time an initial release decision is made, law enforcement will begin asking defendants those two questions and submitting the answers to the court electronically via the probable cause system.

Rule 4-202.02 classifies affidavits of indigency as Private records, but as it is currently written, the rule would not cover the two data elements because the answers would not be submitted as part of an affidavit. The proposed amendment at line 142 would cover both affidavits of indigency and the financial data elements as Private records. Programming required to submit and capture the two data elements has not yet been completed so there isn't a rush to approve the rule amendment at this time.

With no further discussion, Judge Cannel moved to approve the rule as proposed for recommendation to the Council that it be published for comment. Mr. Rice seconded the motion. The motion passed unanimously.

(5) 4-403. Electronic and signature stamp usage
3-104. Presiding judges

Rule 3-104
Ms. Williams reviewed the proposed amendments on behalf of Mr. Johnson. The proposed amendments at lines 132-134 identify district court presiding judges (PJs) as the signing judge on all automatic expungement orders in the presiding judge's district, including those in justice courts. Judge Cannell questioned whether district court presiding judges have jurisdiction to sign expungement orders in justice court matters. After further discussion, the committee asked Ms. Williams to follow-up with Mr. Johnson regarding the committee's concerns and email members with Mr. Johnson's response. The committee will vote via email whether to approve the rule as drafted for recommendation to the Council that it be published for comment.

Judge Cannell moved to approve the proposed amendment to rule 3-104, provided Mr. Johnson determines that district court presiding judges have jurisdiction to sign orders for justice courts, and the committee votes via email to approve those amendments. However, if district court PJs lack jurisdiction, he moved that the rule be amended to make justice court PJs the signing judges for justice court cases and district court PJs the signing judge in district court cases. Judge Heward seconded the motion. The motion passed unanimously.

Rule 4-403
Ms. Williams reviewed the proposed amendments on behalf of Mr. Johnson. Following a brief discussion, Judge Connors moved to approve the rule as drafted for recommendation to the Council that it be published for comment. Judge Cannell seconded the motion. With no objections, the motion passed unanimously.

(6) 3-419. Office of Fairness and Accountability:
Ms. Williams incorporated Judge Connor's feedback from the last meeting. The AOC is currently interviewing for the director position. Judge Pullan asked Ms. Williams to hold off on additional amendments to the rule until the new director is on board and can provide input. The committee made no changes to the proposed rule.

(7) Old business/new business:

Ms. Williams reported that Bart Olsen has prepared a packet of all of the proposed amendments to Human Resource (HR) policies. Because the revisions are so extensive, Mr. Olsen is proposing that he email Policy and Planning members a memo outlining the amendments. Members would conduct a review of the policies on their own time and provide feedback to Mr. Olsen prior to the November meeting. At the November meeting, the committee would review those policies flagged by members for discussion. Judge Pullan was in favor of Mr. Olsen's proposal and requested an executive summary of the proposed changes. Ms. Williams will report back to Mr. Olsen and add the HR policy revisions to the committee's November agenda.

(8) ADJOURN:

With no further items for discussion, Judge Cannell moved to adjourn the meeting. Mr. Rice seconded the motion. With no opposition, the meeting adjourned at 2 pm. The next meeting will be on November 6, 2020 at 9 am via WebEx video conferencing.

Tab 3

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 18, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: **Management Committee / Judicial Council**

FROM: **Keisa Williams**

RE: **Rules for Final Approval**

The Judicial Council approved the following rules for public comment. During the 45-day comment period, one comment was received on Rule 4-401.02 and two comments were received on Rule 6-507. Policy and Planning reviewed the comments and made a few minor amendments. The Committee recommends the following rules to the Judicial Council for final approval with an effective date of November 1, 2020.

3-104. Presiding Judges (AMEND)

The proposed amendments at lines 167-177 define "submitted" for purposes of the cases under advisement performance standard.

3-111. Performance Evaluation of senior judges and court commissioners (AMEND)

The proposed amendments at lines 138-152 define "submitted" for purposes of the cases under advisement performance standard. The proposed amendments at lines 218-222 state that senior judges and court commissioners can overcome a presumption against certification if they can show that their failure to comply with education requirements or the Code of Judicial Conduct was beyond their personal control.

4-202.02. Records Classification (AMEND)

The proposed amendment adds stalking injunctions to the proceedings in which the name of a minor is public (line 168). This would bring the rule in line with existing court practice because minors' names are almost always listed on civil stalking injunction requests and orders, which are public documents.

6-507. Court Visitor (NEW)

This is a new rule outlining the appointment and role of court visitors and establishing a process for review of court visitor reports. The court visitor program has not been codified yet and the program doesn't have a mechanism for ensuring that judges see the visitors' reports and act on them when

appropriate. This rule seeks to resolve those issues and provide specific guidance to court visitors and the program.

There were two comments on this rule (attached). In response to the comments, Policy and Planning made a minor change to a statutory reference in paragraph (2)(C). No other changes were made.

3-407. Accounting (AMEND)
4-609. Procedure for obtaining fingerprints and OTNs on defendants not booked in jail (AMEND)
10-1-404. Attendance and assistance of prosecutors in criminal proceedings (AMEND)
The proposed amendments to all three rules are related to HB206 and the new definition of bail. Some additional minor amendments, unrelated to HB206, were made to 3-407 at the request of the Finance Department.

4-401.01. Electronic media coverage of court proceedings (AMEND)
4-401.02. Possession and use of portable electronic devices (AMEND)
Proposed amendments to Rule 4-401.01 are intended to make it clear that the rule applies to viewing proceedings by remote transmission. In other words, the media still needs permission if they want to record or take photos of the proceedings they are viewing. And the proposal would eliminate the requirement of pool coverage when there are multiple media requests. Any media who register could attend.

Proposed amendments to Rule 4-401.02 would prohibit individuals from recording or photographing remote proceedings, just as they are prohibited from doing so in a courtroom. When a person is granted access to a proceeding they would be required to comply with the rule and administrative and standing orders, including acknowledging they could be held in contempt for violations.

One comment was received on rule 4-401.02 (attached). In response to the comment, Policy and Planning retained the word “portable” in paragraph (1)(B).

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: August 10, 2020

Utah Courts

Code of Judicial Administration – Comment Period Closed September 24, 2020

CJA04-0202.02. Records Classification (AMEND). Minor's names will be public in stalking injunctions. Reflects current practice.

CJA06-0507. Court Visitor (NEW). New rule outlining the appointment and role of court visitors, and establishing a process for review of court visitor reports.

CJA03-0407. Accounting (AMEND). Clarifies that "bail" refers to "monetary bail." Amends examples of trust accounts to reflect the most common fund types.

CJA04-0609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail (AMEND). Clarifies that "bail" means release.

CJA010-01-0404. Attendance and assistance of prosecutors in criminal proceedings (AMEND). Clarifies that "bail" refers to "monetary bail."

CJA04-0401.01. Electronic media coverage of court proceedings (AMEND). Clarifies that the rule applies to viewing proceedings by remote transmission. Eliminates the requirement for pool

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

coverage. Any media who register may attend. Electronic access may be terminated for violations of the rule.

CJA04-0401.02. Possession and use of portable electronic devices (AMEND). Defines court proceedings. Prohibits individuals from recording or photographing remote proceedings.

This entry was posted in CJA010-01-0404, CJA03-0407, CJA04-0202.02, CJA04-0401.01, CJA04-0401.02, CJA04-0609, CJA06-0507.

« Rules Governing the State Bar – Comment Period Closed September 26, 2020

Supreme Court Rules of Professional Practice, Office of Professional Conduct – Comment Period Closed September 11, 2020 »

UTAH COURTS

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3 thoughts on "Code of Judicial Administration – Comment Period Closed September 24, 2020"

Tracy L. Olson
August 11, 2020 at 1:34 pm

CJA Rule 6-507 has a (5) missing in Section (2)(C) "to investigate the respondent's circumstances and well-being, including when an attorney is not appointed under 75-5-303(d);" it appears that it should be 75-5-303(5)(d).
Additionally, (3)(B) may place an undue burden on the court visitor as it mandates that the court visitor "will" do certain things, which include interviewing the physician and anyone known to have treated the respondent and meeting with the respondent in person at their place of dwelling. Some physicians can be difficult to get a hold of and interview them and all know

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0212
- CJA03-0101
- CJA03-0102
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- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0114

treating physicians who may not have treated respondent for conditions relevant to the issues before the court may be a difficult thing to ask of a volunteer. Further, several facilities are not allowing outside visitors given the current situation with Covid-19 making a meeting with respondents at their place of dwelling impracticable. It may be better changed to "may" instead of "will" or to have that the court may order those particular duties be carried out, but that they are not mandated in every case.

Jim Hunnicutt
September 7, 2020 at 3:43 pm

Rule 04-0401.02 seems to be aimed at accomplishing two different things: (1) describing how cell phones, laptops, and other electronic devices can be used inside a courthouse, and (2) prohibiting any kind of recording of court proceedings, regardless of the type of device. However, this rule includes unnecessary qualifying language muddying that second message. For instance, line 41 implies you cannot record court proceedings while "us[ing] portable electronic devices in courtrooms," and lines 58-59 imply you cannot record proceedings while "viewing court proceedings conducted by remote transmission." Lines 44 and 60 indicate that recording a court proceeding is only prohibited if done with a "portable electronic device." Several portions of this rule could be deleted and replaced with broader and simpler language such as: "Other than court clerks acting within the scope of their authority, no one may record any court proceedings whatsoever. This prohibition applies to any and all recordings, including, but not limited to, recording images, sounds, speech, and/or any other type of video or audio, and regardless of whether the recording is made inside or outside a courtroom."

The proposed amendment changes the term "portable electronic device" in the Definitions section to "electronic device," but throughout the rest of the rule, it keeps using the original term "portable electronic device."

Section (1)(B) seems outdated respecting some of the different types of devices listed. Consider adding "tablet computer," "smartphone," and "smartwatch."

Michael A Jensen
September 24, 2020 at 8:02 am

CJA Rule 6-507 is unnecessary. Currently, court visitors are routinely appointed and provide the courts with sufficient information for the court to act appropriately under the circumstances.

This new rule will unduly financially burden Respondent's estate or Respondent's family. Even if the court visitor is a volunteer, the time required by the proposed guardian and conservator will generate an expense to Respondent if such guardian or conservator is a professional. This financial burden particularly arises from Subsections (2)(2)(D) and (2)(2)(F) where the court visitor is obligated to ascertain the guardian's or conservator's plans for Respondent's residence. Also, if included, this subsection should add the word "conservator" since it is generally the conservator who deals with Respondent's residence, not the guardian.

Subsection (2)(2)(A) is the most common use of the court visitor should present no problem, although the current system provides this without this new rule.

Subsection (2)(2)(C) is too vague and may create an implied obligation on the court visitor to become an advocate for Respondent although Respondent already has an attorney of Respondent's choice or by appointment of the court. This is subsection also may empower a court visitor beyond what it is intended, thereby resulting in an adversarial situation that escalates legal fees for Respondent. Remember, as a matter of law all of the legal fees incurred become the burden of Respondent, assuming the petition to appoint is not found to be without merit. There have been numerous cases where a court visitor feels so empowered they consider themselves the person who is to "protect" Respondent, despite the fact that Respondent already has an attorney advocate. In these instances, unnecessary legal fees are incurred in resolving the court visitor's improper advocacy. In effect, the court visitor becomes an adverse third party.

Subsection (3)(3)(B)(iii) is problematic, since it is often very difficult to actually 'interview" a physician. The common practice is to have a letter or report from a physician describing Respondent's condition sufficiently to opine about the need for a guardian and/or conservator. Such letter or report is generally competent evidence for the court to approve the appointment of a guardian and/or conservator. If there is a dispute over the cognitive status of Respondent, generally the court will appoint a physician to evaluate Respondent and issue a report. There is no need for a court visitor to interview the physician.

- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
- CJA04-0410
- CJA04-0411
- CJA04-0501
- CJA04-0502
- CJA04-0503
- CJA04-0508
- CJA04-0509
- CJA04-0510
- CJA04-0510.01
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- CJA06-0601
- CJA07-0101
- CJA07-0102
- CJA07-0301
- CJA07-0302
- CJA07-0303
- CJA07-0304
- CJA07-0307
- CJA07-0308
- CJA09-0101

Rule 3-104. Presiding judges.

Intent:

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

Applicability:

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

Statement of the Rule:

(1) **Election and term of office.**

(1)(A) **Presiding judge**. The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

(1)(B) **Associate presiding judge**.

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(1)(C) **Removal**. A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

(2) **Court organization**.

(2)(A) **Court en banc**.

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing the performance of the court executive. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

(2)(A)(iv) An agenda shall be circulated among the judges in advance of the meeting with a known method on how matters may be placed on the agenda.

(2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

(2)(A)(vi) Minutes of each meeting shall be taken and preserved.

(2)(A)(vii) Other than judges and court executives, those attending the meeting shall be by court invitation only.

(2)(A)(viii) The issues on which judges should vote shall be left to the sound discretion and judgment of each court and the applicable sections of the Utah Constitution, statutes, and this Code.

(2)(B) Absence of presiding judge. When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge shall be at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

(3) **Administrative responsibilities and authority of presiding judge**.

(3)(A)(i) Generally. The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.

(3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

(3)(B) **Coordination of judicial schedules**.

(3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) **Authority to appoint senior judges**.

(3)(C)(i) The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability. Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).

(3)(C)(ii) The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.

(3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and for time and travel by senior judges.

(3)(C)(iv) If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.

(3)(D) **Court committees**. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(E) **Outside agencies and the media**.

(3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

(3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(F) **Docket management and case and judge assignments**.

(3)(F)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(F)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(F)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the State Court Administrator, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(3)(G) **Court executives**.

(3)(G)(i) The presiding judge shall review the proposed appointment of the court executive made by the State Court Administrator and must concur in the appointment before it will be effective. The presiding judge shall obtain the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.

(3)(G)(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(3)(G)(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year, also taking into account input from all judges in the district.

(3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(H) **Courtrooms and facilities**. The presiding judge shall direct the assignment of courtrooms and facilities.

(3)(I) **Recordkeeping**. Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(I)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(I)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(I)(iii) approve proposals for automation within the court in compliance with administrative rules.

(3)(J) **Budgets**. The court executive, in consultation with the presiding judge, shall oversee the development of the budget for the court. In contract sites, the court executive shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with the Utah Code.

(3)(K) **Judicial officers**. In the event that another judge or commissioner of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

(3)(K)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

(3)(K)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(K)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(K)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the problem and where the refusal or conduct is willful, continual, and the presiding judge believes the conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

(3)(L) **Cases under advisement**.

(3)(L)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" is defined as follows:

(3)(L)(i)(a) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(3)(L)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(3)(L)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

A case is no longer under advisement when the judge makes a decision on the issue that is under advisement or on the entire case.

The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are required to subsequently submit for the judge's signature a final order memorializing the decision.

(3)(L)(ii) Once a month each judge shall submit a statement on a form to be provided by the State Court Administrator notifying the presiding judge of any cases or issues held under advisement for more than two months and the reason why the case or issue continues to be held under advisement.

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Council.

(3)(M) **Board of judges**. The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(N) **Supervision and evaluation of court commissioners**. The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

(3)(O) **Magistrate availability**. The presiding judge in a district court shall consult with the justice court administrator to develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate's caseload, location, and willingness to serve.

Effective November 1, 2020

Rule 3-111. Performance evaluation of active senior judges and court commissioners.

Intent:
To establish a performance evaluation, including the criteria upon which active senior judges and court commissioners will be evaluated, the standards against which performance will be measured and the methods for fairly, accurately and reliably measuring performance.

To generate and to provide to active senior judges and court commissioners information about their performance.

To establish the procedures by which the Judicial Council will evaluate and certify senior judges and court commissioners for reappointment.

Applicability:
This rule shall apply to presiding judges, the Board of Justice Court Judges and the Judicial Council, and to the active senior judges and court commissioners of the Court of Appeals, courts of record and courts not of record.

Statement of the Rule:
(1) **Performance evaluations**.
(1)(A) **Court commissioners**.
(1)(A)(i) On forms provided by the administrative office, the presiding judge of a district or court level a court commissioner serves shall complete an evaluation of the court commissioner's performance by June 1 of each year. If a commissioner serves multiple districts or court levels, the presiding judge of each district or court level shall complete an evaluation.
(1)(A)(ii) The presiding judge shall survey judges and court personnel seeking feedback for the evaluation. During the evaluation period, the presiding judge shall review at least five of the commissioner's active cases. The review shall include courtroom observation.
(1)(A)(iii) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial Council. Copies of plans under paragraph (3)(G) and all evaluations shall also be maintained in the commissioner's personnel file in the administrative office.
(1)(B) **Active senior judges**. An active senior judge's performance shall be evaluated by attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as provided in paragraph (3)(B).

(2) **Evaluation and certification criteria**. Active senior judges and court commissioners shall be evaluated and certified upon the following criteria:
(2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
(2)(B) attentiveness to factual and legal issues before the court;
(2)(C) adherence to precedent and ability to clearly explain departures from precedent;
(2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings, including the effect of delay and increased litigation expense;

(2)(E) ability to write clear judicial opinions;
(2)(F) ability to clearly explain the legal basis for judicial opinions;
(2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or senior judge's court;
(2)(H) maintenance of decorum in the courtroom;
(2)(I) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;
(2)(J) preparation for hearings or oral argument;
(2)(K) avoidance of impropriety or the appearance of impropriety;
(2)(L) display of fairness and impartiality toward all parties;
(2)(M) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions;
(2)(N) management of workload;
(2)(O) willingness to share proportionally the workload within the court or district, or regularly accepting assignments;
(2)(P) issuance of opinions and orders without unnecessary delay; and
(2)(Q) ability and willingness to use the court's case management systems in all cases.

(3) **Standards of performance**.

(3)(A) **Survey of attorneys**.

(3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the active senior judge or court commissioner during the period for which the active senior judge or court commissioner is being evaluated. The Council shall measure satisfactory performance based on the results of the final survey conducted during a court commissioner's term of office, subject to the discretion of a court commissioner serving an abbreviated initial term not to participate in a second survey under Section (3)(A)(vi) of this rule.

(3)(A)(ii) **Survey scoring**. The survey shall be scored as follows.

(3)(A)(ii)(a) Each question of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate, or Adequate.

(3)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses. A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(3)(A)(ii)(c) A court commissioner's performance is satisfactory if:

(3)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

(3)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

(3)(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey scores are satisfactory.

(3)(A)(iii) **Survey respondents**. The Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the court commissioner during the period for which the commissioner is being evaluated.

(3)(A)(iv) **Exclusion from survey respondents**.

(3)(A)(iv)(a) A lawyer who has been appointed as a judge or court commissioner shall not be a respondent in the survey. A lawyer who is suspended or disbarred or who has resigned under discipline shall not be a respondent in the survey.

(3)(A)(iv)(b) With the approval of the Management Committee, a court commissioner may exclude an attorney from the list of respondents if the court commissioner believes the attorney will not respond objectively to the survey.

(3)(A)(v) **Number of survey respondents**. The Surveyor shall identify 180 respondents or all attorneys appearing before the court commissioner, whichever is less. All attorneys who have appeared before the active senior judge shall be sent a survey questionnaire as soon as possible after the hearing.

(3)(A)(vi) **Administration of the survey**. Court commissioners shall be the subject of a survey approximately six months prior to the expiration of their term of office. Court commissioners shall be the subject of a survey during the second year of each term of office. Newly appointed court commissioners shall be the subject of a survey during the second year of their term of office and, at their option, approximately six months prior to the expiration of their term of office.

(3)(A)(vii) **Survey report**. The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the number and percentage of respondents for each of the possible responses on each survey question and all comments, retyped and edited as necessary to redact the respondent's identity.

(3)(B) **Non-attorney surveys.**

(3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate senior judges**. The Council shall measure performance of active senior judges by a survey of all presiding judges and trial court executives, or in the justice courts, the Justice Court Administrator, of districts in which the senior judge has been assigned. The presiding judge and trial court executive will gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2).The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

(3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.** The Council shall measure performance of active appellate senior judges by a survey of the presiding judge and clerk of court of the Court of Appeals. The presiding judge and clerk of court will gather information for the survey from anonymous questionnaires completed by the other judges on each panel to which the appellate senior judge is assigned and by the appellate law clerks with whom the appellate senior judge works. The Administrative Office

of the Courts shall distribute the survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

(3)(C) **Case under advisement standard**.

(3)(C)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the senior judge or court commissioner for final determination. For purposes of this rule, "submitted to the senior judge or court commissioner" or "submission" is defined as follows:

(3)(C)(i)(a) When a matter requiring attention is placed by staff in the senior judge's or court commissioner's personal electronic queue, inbox, personal possession, or equivalent;

(3)(C)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(3)(C)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the senior judge's or court commissioner's personal electronic queue, inbox, personal possession, or equivalent.

A case is no longer under advisement when the senior judge or court commissioner makes a decision on the issue that is under advisement or on the entire case.

(3)(C)(ii)The Council shall measure satisfactory performance by the self-declaration of the senior judge or court commissioner or by reviewing the records of the court.

(3)(C)(iii) A senior judge or court commissioner in a trial court demonstrates satisfactory performance by holding:

(3)(C)(iii)(a) no more than three cases per calendar year under advisement more than two months after submission; and

(3)(C)(iii)(b) no case under advisement more than 180 days after submission.

(3)(C)(~~iii~~iv) A senior judge in the court of appeals demonstrates satisfactory performance by:

(3)(C)(~~iii~~iv)(a) circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(3)(C)(~~iii~~iv)(b) achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.

(3)(D) **Compliance with education standards**. Satisfactory performance is established if the senior judge or court commissioner annually complies with the judicial education standards of this Code, subject to the availability of in-state education programs. The Council shall measure satisfactory performance by the self-declaration of the senior judge or court commissioner or by reviewing the records of the state court administrator.

(3)(E) **Substantial compliance with Code of Judicial Conduct**. Satisfactory performance is established if the response of the senior judge or court commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the court commissioner is in substantial compliance with

the Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

(3)(F) **Physical and mental competence**. Satisfactory performance is established if the response of the senior judge or court commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(3)(G) **Performance and corrective action plans for court commissioners**.

(3)(G)(i) The presiding judge of the district a court commissioner serves shall prepare a performance plan for a new court commissioner within 30 days of the court commissioner's appointment. If a court commissioner serves multiple districts or court levels, the presiding judge of each district and court level shall prepare a performance plan. The performance plan shall communicate the expectations set forth in paragraph (2) of this rule.

(3)(G)(ii) If a presiding judge issues an overall "Needs Improvement" rating on a court commissioner's annual performance evaluation as provided in paragraph (1), that presiding judge shall prepare a corrective action plan setting forth specific ways in which the court commissioner can improve in deficient areas.

(4) **Judicial Council certification process**

(4)(A) **July Council meeting.** At its meeting in July, the Council shall begin the process of determining whether the senior judges and court commissioners whose terms of office expire that year meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

(4)(A)(i) survey scores;

(4)(A)(ii) judicial education records;

(4)(A)(iii) self-declaration forms;

(4)(A)(iv) records of formal and informal sanctions;

(4)(A)(v) performance evaluations, if the commissioner or senior judge received an overall rating of Needs Improvement; and

(4)(A)(vi) any information requested by the Council.

(4)(B) **Records delivery.** Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the senior judges and court commissioners being evaluated.

(4)(C) **July Council meeting closed session.** In a session closed in compliance with Rule 2-103, the Council shall consider the evaluation information and make a preliminary finding of whether a senior judge or court commissioner has met the performance standards.

(4)(D) **Certification presumptions.** If the Council finds the senior judge or court commissioner has met the performance standards, it is presumed the Council will certify the senior judge or court commissioner for reappointment. If the Council finds the senior judge or court commissioner did not meet the performance standards, it is presumed the Council will not certify the senior judge or court commissioner for reappointment. The Council may certify the senior judge or court commissioner or withhold decision until after meeting with the senior judge or court commissioner.

(4)(E) **Overcoming presumptions.** A presumption against certification may be overcome by a showing ~~of good cause to the contrary~~that a senior judge's or court commissioner's failure

to comply with paragraphs (3)(C) and (3)(D) were beyond the senior judge's or court commissioner's personal control. A presumption in favor of certification may be overcome by:

(4)(E)(i) reliable information showing non-compliance with a performance standard, except as otherwise provided in paragraph (4)(E); or

(4)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to demonstrate lack of substantial compliance with the Code of Judicial Conduct.

(4)(F) **August Council meeting.** At the request of the Council the senior judge or court commissioner challenging a non-certification decision shall meet with the Council in August. At the request of the Council the presiding judge shall report to the Council any meetings held with the senior judge or court commissioner, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the July meeting, the Administrative Office of the Courts shall deliver to the senior judge or court commissioner being evaluated notice of the Council's action and any records not already delivered to the senior judge or court commissioner. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the senior judge or court commissioner is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge or court commissioner prior to the August meeting.

(4)(G) **August Council meeting closed session.** At its August meeting in a session closed in accordance with Rule 2-103, the Council shall provide to the senior judge or court commissioner adequate time to present evidence and arguments in favor of certification. Any member of the Council may present evidence and arguments of which the senior judge or court commissioner has had notice opposed to certification. The burden is on the person arguing against the presumed certification. The Council may determine the order of presentation.

(4)(H) **Final certification decision.** At its August meeting in open session, the Council shall approve its final findings and certification regarding all senior judges and court commissioners whose terms of office expire that year.

(4)(I) **Communication of certification decision.** The Judicial Council shall communicate its certification decision to the senior judge or court commissioner. The Judicial Council shall communicate its certification decision for senior judges to the Supreme Court and for court commissioners to the presiding judge of the district the commissioner serves.

Effective November 1, 2020

Rule 4-202.02. Records Classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records.** Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) appellate filings, including briefs;

(2)(D) arrest warrants, but a court may restrict access before service;

(2)(E) audit reports;

(2)(F) case files;

(2)(G) committee reports after release by the Judicial Council or the court that requested the study;

(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

(2)(K) financial records;

(2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

(2)(L)(i) amount in controversy;

(2)(L)(ii) attorney name;

(2)(L)(iii) licensed paralegal practitioner name;

(2)(L)(iv) case number;

(2)(L)(v) case status;

(2)(L)(vi) civil case type or criminal violation;

(2)(L)(vii) civil judgment or criminal disposition;

(2)(L)(viii) daily calendar;
(2)(L)(ix) file date;
(2)(L)(x) party name;

(2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

(2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;

(2)(O) name, business address, business telephone number, and business email address of a lawyer or licensed paralegal practitioner appearing in a case;

(2)(P) name, business address, business telephone number, and business email address of court personnel other than judges;

(2)(Q) name, business address, and business telephone number of judges;

(2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;

(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury is discharged;

(2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

(2)(U) order or decision classifying a record as not public;

(2)(V) private record if the subject of the record has given written permission to make the record public;

(2)(W) probation progress/violation reports;

(2)(X) publications of the administrative office of the courts;

(2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

(2)(Z) record of the receipt or expenditure of public funds;

(2)(AA) record or minutes of an open meeting or hearing and the transcript of them;

(2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

(2)(CC) record of a request for a record;

(2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

(2)(EE) rules of the Supreme Court and Judicial Council;

(2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

(2)(GG) statistical data derived from public and non-public records but that disclose only public data; and

(2)(HH) notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(3) Sealed Court Records. The following court records are sealed:

(3)(A) records in the following actions:

(3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(iii) Section 76-7-304.5 – Consent required for abortions performed on minors; and

(3)(A)(iv) Section 78B-8-402 – Actions for disease testing;

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and

(3)(I) other records as ordered by the court under Rule 4-202.04.

(4) Private Court Records. The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

(4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;

(4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed;

(4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and

(4)(A)(v) cases initiated in the district court by filing an abstract of a juvenile court restitution judgment.

(4)(B) records in the following actions, except that the case history, judgments, orders, decrees, letters of appointment, and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) affidavit of indigency;

(4)(D) an affidavit supporting a motion to waive fees;

(4)(E) aggregate records other than public aggregate records under subsection (2);

(4)(F) alternative dispute resolution records;

(4)(G) applications for accommodation under the Americans with Disabilities Act;

(4)(H) jail booking sheets;

(4)(I) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(J) judgment information statement;

(4)(K) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(L) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(4)(M) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email

address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(N) medical, psychiatric, or psychological records;

(4)(O) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(O)(i) name change of a minor;

(4)(O)(ii) guardianship or conservatorship for a minor;

(4)(O)(iii) felony, misdemeanor, or infraction;

(4)(O)(iv) protective orders and stalking injunctions; and

(4)(O)(v) custody orders and decrees;

(4)(P) nonresident violator notice of noncompliance;

(4)(Q) personnel file of a current or former court personnel or applicant for employment;

(4)(R) photograph, film, or video of a crime victim;

(4)(S) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(S)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(S)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(T) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(U) record submitted for in camera review until its public availability is determined;

(4)(V) reports of investigations by Child Protective Services;

(4)(W) victim impact statements;

(4)(X) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(Y) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(Z) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and

(4)(AA) other records as ordered by the court under Rule 4-202.04.

(5) Protected Court Records. The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in

anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

(5)(B) records that are subject to the attorney client privilege;

(5)(C) bids or proposals until the deadline for submitting them has closed;

(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;

(5)(F) court security plans;

(5)(G) investigation and analysis of loss covered by the risk management fund;

(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;

(5)(I) confidential business records under Utah Code Section 63G-2-309;

(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

(5)(J)(i) interfere with an investigation;

(5)(J)(ii) interfere with a fair hearing or trial;

(5)(J)(iii) disclose the identity of a confidential source; or

(5)(J)(iv) concern the security of a court facility;

(5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;

(5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;

(5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;

(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation, or parole;

(5)(O) record the disclosure of which would jeopardize life, safety, or property;

(5)(P) strategy about collective bargaining or pending litigation;

(5)(Q) test questions and answers;

(5)(R) trade secrets as defined in Utah Code Section 13-24-2;

(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(T) presentence investigation report;

(5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and

(5)(V) other records as ordered by the court under Rule 4-202.04.

(6) Juvenile Court Social Records. The following are juvenile court social records:

(6)(A) correspondence relating to juvenile social records;

(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
(6)(C) medical, psychological, psychiatric evaluations;
(6)(D) pre-disposition and social summary reports;
(6)(E) probation agency and institutional reports or evaluations;
(6)(F) referral reports;
(6)(G) report of preliminary inquiries; and
(6)(H) treatment or service plans.

(7) Juvenile Court Legal Records. The following are juvenile court legal records:
(7)(A) accounting records;
(7)(B) discovery filed with the court;
(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
(7)(D) name of a party or minor;
(7)(E) record of a court hearing;
(7)(F) referral and offense histories
(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) Safeguarded Court Records. The following court records are safeguarded:
(8)(A) upon request, location information, contact information, and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
(8)(C) location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list;
(8)(D) location information, contact information, and identity information other than name of a prospective juror summoned to attend court;
(8)(E) the following information about a victim or witness of a crime:
(8)(E)(i) business and personal address, email address, telephone number, and similar information from which the person can be located or contacted;
(8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

Effective November 1, 2019

Rule 6-507. Court visitors.

Intent:

To set forth the appointment and role of court visitors. To establish a process for the review of court visitor reports.

Applicability:

This rule applies to court visitor reports in guardianship and conservatorship cases.

Statement of the Rule:

(1) **Definition**. A visitor is, with respect to guardianship and conservatorship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

(2) **Appointment and role of court visitor.** Upon its own initiative or motion of a party or an "interested person," as that term is defined in Utah Code section 75-1-201, the court may appoint a court visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

(2)(A) whether to waive the respondent's presence at the hearing under Section 75-5-303(5)(a);

(2)(B) to confirm a waiver of notice submitted by the respondent in a guardianship or conservatorship proceeding under Sections 75-5-309(3) or 75-5-405(1);

(2)(C) to investigate the respondent's circumstances and well-being, including when an attorney is not appointed under 75-5-303(5)(d);

(2)(D) to review annual reports from the guardian and conservator or gather additional financial information;

(2)(E) to locate guardians, conservators, and respondents;

(2)(F) to investigate the proposed guardian's future plans for the respondent's residence under Section 75-5-303(4); or

(2)(G) to conduct any other investigation or observation as directed by the court.

(3) **Motion to excuse respondent or confirm waiver of hearing**. The petitioner, the respondent, or any interested person seeking to excuse the respondent or confirm a waiver of hearing, shall file an ex parte motion at least 21 days prior to the hearing.

(3)(A) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation in accordance with paragraph (2) unless a court visitor is not required under Utah Code section 75-5-303.

(3)(B) Upon appointment to conduct an inquiry into whether to excuse the respondent from the hearing, the court visitor will:

(3)(B)(i) interview the petitioner, the proposed guardian, and the respondent;

(3)(B)(ii) visit the respondent's present dwelling or any dwelling in which the respondent will reside if the guardianship or conservatorship appointment is made;

(3)(B)(iii) interview any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition;

(3)(B)(iv) confirm a waiver of notice if submitted by the respondent; and

(3)(B)(iv) conduct any other investigation the court directs.

(4) **Other inquiries.** If the court appoints a visitor under paragraphs (2)(B) through (2)(G), the court visitor will conduct the inquiry in accordance with the court's order or appointment.

(5) **Language access.** If the court visitor does not speak or understand the respondent's, proposed guardian's, proposed conservator's, or petitioner's primary language, the court visitor must use an interpretation service approved by the Administrative Office of the Courts to communicate with the respondent, proposed guardian, proposed conservator, or petitioner.

(6) **Court visitor report.**

(6)(A) **Service of the court visitor report.** Except for court visitor appointments made under paragraph (2)(E), in accordance with Rule 5 of the Utah Rules of Civil Procedure, the court visitor program must file and serve a court visitor report upon all parties and upon any interested person who has requested the appointment of the court visitor.

(6)(B) **Request to Submit for Decision.** The court visitor program will file with each court visitor report a request to submit for decision.

(6)(C) **Report regarding waiver of respondent's presence.** In cases involving a motion to excuse the respondent from the hearing, the court visitor will file with the report a court-approved proposed order. The report, a request to submit for decision, and a proposed order will be filed five days before the hearing.

(7) **Termination of court visitor appointment.** The appointment of the court visitor terminates and the court visitor is discharged from the court visitor's duties upon the date identified in the order of appointment. The court may extend the appointment with or without a request from a party.

(8) **Court findings.**

(8)(A) **Reports regarding waiver of respondent's presence**. When a court visitor has filed a report regarding a request to waive the respondent's presence at the hearing, the court will issue findings and an order as to the waiver at least two days prior to the hearing upon which the request has been made.

(8)(B) **All other reports**. When a court visitor has filed a report involving matters other than the waiver of the respondent's presence, the court will issue findings and an order as to those matters in accordance with the timelines of Rule 3-101.

Effective November 1, 2020

Rule 3-407. Accounting.

Intent:

To establish uniform procedures for the processing, tracking, and reporting of accounts receivable and trust accounts.

Applicability:

This rule applies to the judiciary.

Statement of the Rule:

(1) Manual of procedures.

(1)(A) **Manual of Procedures.** The administrative office shall develop a manual of procedures to govern accounts receivable, accounts payable, trust accounts, the audit thereof, and the audit of administrative procedures generally. The procedures shall be in conformity with generally accepted principles of budgeting and accounting and shall, at a minimum, conform to the requirements of this Code and state law. Unless otherwise directed by the Judicial Council, the manual of procedures and amendments to it shall be approved by the majority vote of the state court administrator, the court administrators for each court of record, and the finance manager.

(1)(B) **Accounting Manual Review Committee.** There is established an accounting manual review committee responsible for making and reviewing proposals for repealing accounting policies and procedures and proposals for promulgating new and amended accounting policies and procedures. The committee shall consist of the following minimum membership:

(1)(B)(i) the director of the finance department, who shall serve as chair and shall vote only in the event of a tie;

(1)(B)(ii) four support services coordinators who will serve a three year term, and may repeat;

(1)(B)(iii) two accountants or clerks with accounting responsibilities from each of the trial courts of record who will serve a three year term, and may repeat;

(1)(B)(iv) a trial court executive who will serve a three year term;

(1)(B)(v) a clerk of court who will serve a three year term;

(1)(B)(vi) a clerk with accounting responsibilities from an appellate court who will serve a three year term, and may repeat;

(1)(B)(vii) one court services field specialist, who has an indefinite term;

(1)(B)(viii) the audit director or designee, who shall not vote; and

(1)(B)(ix) the director of the state division of finance or designee, who shall not vote.

(1)(C) **Member Appointments.** Unless designated by office, members of the committee shall be appointed by the state court administrator, or designee. The department of finance shall provide necessary support to the committee.

(1)(D) **Court Executive Review.** New and amended policies and procedures recommended by the committee shall be reviewed by the court executives prior to being submitted to the Judicial Council or to the vote of the administrators and the finance manager. The Court Executives may endorse or amend the draft policies and procedures or return the draft policies and procedures to the committee for further consideration.

(2) Revenue accounts.

(2)(A) **Deposits; transfers; withdrawals.** All courts shall deposit with a depository determined qualified by the administrative office or make deposits directly with the Utah State Treasurer or the treasurer of the appropriate local government entity. The Supreme Court, Court of Appeals, State Law Library, administrative office, district court primary locations and juvenile courts shall deposit daily, whenever practicable, but not less than once every three days. The deposit shall consist of all court collections of state money. District court contract sites and justice courts having funds due to the state or any political subdivision of the state shall, on or before the 10th day of each month, deposit all funds receipted by them in the preceding month in a qualified depository with the appropriate public treasurer. The courts shall make no withdrawals from depository accounts.

(2)(B) **Periodic revenue report.** Under the supervision of the court executive, the clerk of the court shall prepare and submit a revenue report that identifies the amount and source of the funds received during the reporting period and the state or local government entity entitled to the funds. Juvenile courts and primary locations of the district courts shall submit the report weekly to the administrative office. District court contract sites shall submit the report at least monthly, together with a check for the state portion of revenue, to the administrative office. Justice courts shall submit the report monthly, together with a check for the state revenue collected, to the Utah State Treasurer.

(2)(C) **Monthly reconciliation of bank statement.** The administrative office shall reconcile the revenue account upon receipt of the weekly revenue report from the courts and the monthly bank statements.

(3) Trust accounts.

(3)(A) **Definition.** Trust accounts are accounts established by the courts for the benefit of third parties. Examples of funds which are held in trust accounts include restitution, ~~child support~~attorney fees, and monetary bail amounts.

(3)(B) **Accounts required; duties of a fiduciary.** District court primary locations and juvenile courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the trustor or some other beneficiary. Under supervision of the court executive, the clerk of the court shall be the custodian of the account and shall have the duties of a trustee as established by law. All other courts of record and not of record may maintain a trust account in accordance with the provisions of this rule.

(3)(C) **Monthly reconciliation of bank statement.** Each court shall reconcile its ledgers upon receipt of the monthly bank statement and submit the reconciliation to the administrative office.

(3)(D) **Accounting to trustor.** The courts shall establish a method of accounting that will trace the debits and credits attributable to each trustor.

(3)(E) **Monetary Bail forfeitures; other withdrawals.** Transfers from trust accounts to a revenue account may be made upon an order of forfeiture of monetary bail or other order of the court. Other withdrawals from trust accounts shall be made upon the order of the court after a finding of entitlement.

(3)(F) **Interest bearing.** All trust accounts shall be interest bearing. The disposition of interest shall be governed by Rule 4-301.

(4) Compliance. The administrative office and the courts shall comply with state law and the manual of procedures adopted by the administrative office.

Effective November 1, ~~2018~~2020

Rule 4-609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail.

Intent:
To establish a procedure for ensuring that fingerprints are obtained from, and an Offense Tracking Number is assigned to, defendants who have not been booked into jail prior to their first court appearance.

Applicability:
This rule shall apply to all prosecutors, law enforcement personnel, jail booking personnel, and trial courts.

This rule shall only apply to offenses which are not included on the Utah Bureau of Criminal Identification's Non-Serious Offense list.

Statement of the Rule:
(1) The prosecutor shall indicate, on the face of the Information that is filed with the court, whether the defendant is appearing pursuant to a summons or a warrant of arrest, by inserting "Summons" or "Warrant" beneath the case number in the caption.

(2) The prosecutor shall cause the criminal summons form to include the following information:
- (A) the specific name of the court;
- (B) the judge's name;
- (C) the charges against the defendant;
- (D) the date the summons is issued;
- (E) a directive to the defendant to appear at the jail or other designated place for booking and release prior to appearing at court;
- (F) the address of the jail or other designated place; and
- (G) a space for booking personnel to note the date and time of booking and the Offense Tracking Number (formerly known as the CDR Number).

(3) Booking personnel shall:
- (A) complete the booking process, including fingerprinting and issuing an Offense Tracking Number;
- (B) record the date and time of booking and the Offense Tracking Number on the summons form;
- (C) return the summons form to the defendant;
- (D) instruct the defendant to take the summons form with him/her to the court at the time designated on the summons;
- (E) release the defendant ~~without bail~~ on their own recognizance unless the defendant has outstanding warrants; and
- (F) send the Offense Tracking Number to the prosecutor.

(4) Upon receipt of the Offense Tracking Number from booking personnel, the prosecutor shall forward the number immediately to the court.

(5) If the defendant appears at court and does not have the summons form with the date and time of booking and the Offense Tracking Number, court personnel shall instruct the defendant to go immediately, at the conclusion of the appearance, to the jail or other designated place for booking and release.

Effective November 1, 2020

Rule 10-1-404. Attendance and assistance of prosecutors in criminal proceedings.

Intent:
To establish the responsibility of the prosecutor's office to attend criminal proceedings and to assist the court in the management of criminal cases.

Applicability:
This rule shall apply to the Fourth District Court.

Statement of the Rule:
(1) The prosecutor's office shall assist the court with criminal cases by attending the following court proceedings:

(A) felony first appearance hearings;
(B) arraignments on informations;
(C) sentencings.

(2) The prosecutor in attendance shall be prepared to provide the court with information relevant to setting monetary bail and sentencing, including criminal history, and the factual basis for the offense charged.

(3) Unless specifically requested by the court, the prosecutor is not required to attend arraignments or sentencings for misdemeanants prosecuted on citations.

Effective: November 1, 2020

Rule 4-401.01 Electronic media coverage of court proceedings.

Intent:
To establish uniform standards and procedures for electronic media coverage of court proceedings.

To permit electronic media coverage of proceedings while protecting the right of parties to a fair trial, personal privacy and safety, the decorum and dignity of proceedings, and the fair administration of justice.

Applicability:
This rule applies to the courts of record and not of record.
This rule governs electronic media coverage of proceedings that are open to the public~~.~~, including proceedings conducted by remote transmission.

Statement of the Rule:
(1) Definitions.
(1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.
(1)(B) "Proceeding" as used in this rule means any trial, hearing, or other matter that is open to the public.
(1)(C) "Electronic media coverage" as used in this rule means recording or transmitting images or sound of a proceeding.
(1)(D) "News reporter" as used in this rule means a publisher, editor, reporter or other similar person who gathers, records, photographs, reports, or publishes information for the primary purpose of disseminating news to the public, and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.

(2) Presumption of electronic media coverage; restrictions on coverage.
(2)(A) There is a presumption that electronic media coverage by a news reporter shall be permitted in public proceedings where the predominant purpose of the electronic media coverage request is journalism or dissemination of news to the public. The judge may prohibit or restrict electronic media coverage in those cases only if the judge finds that the reasons for doing so are sufficiently compelling to outweigh the presumption.
(2)(B) When determining whether the presumption of electronic media coverage has been overcome and whether such coverage should be prohibited or restricted beyond the limitations in this rule, a judge shall consider some or all of the following factors:
(2)(B)(i) whether there is a reasonable likelihood that electronic media coverage will prejudice the right of the parties to a fair proceeding;
(2)(B)(ii) whether there is a reasonable likelihood that electronic media coverage will jeopardize the safety or well-being of any individual;

(2)(B)(iii) whether there is a reasonable likelihood that electronic media coverage will jeopardize the interests or well-being of a minor;
(2)(B)(iv) whether there is a reasonable likelihood that electronic media coverage will constitute an unwarranted invasion of personal privacy of any person;
(2)(B)(v) whether electronic media coverage will create adverse effects greater than those caused by media coverage without recording or transmitting images or sound;
(2)(B)(vi) the adequacy of the court's physical facilities for electronic media coverage;
(2)(B)(vii) the public interest in and newsworthiness of the proceeding;
(2)(B)(viii) potentially beneficial effects of allowing public observation of the proceeding through electronic media coverage; and
(2)(B)(ix) any other factor affecting the fair administration of justice.

(2)(C) If the judge prohibits or restricts electronic media coverage, the judge shall make particularized findings orally or in writing on the record. Any written order denying a request for electronic media coverage shall be made part of the case record.

(2)(D) Any reasons found sufficient to prohibit or restrict electronic media coverage shall relate to the specific circumstances of the proceeding rather than merely reflect generalized views or preferences.

(3) Duty of news reporters to obtain permission; termination or suspension of coverage.

(3)(A) Unless otherwise ordered by the court, news reporters shall file a written request for permission to provide electronic media coverage of a proceeding at least one business day before the proceeding. The request shall be filed on a form provided by the Administrative Office of the Courts. Upon a showing of good cause, the judge may grant a request on shorter notice.

(3)(B) A judge may terminate or suspend electronic media coverage at any time without prior notice if the judge finds that continued electronic media coverage is no longer appropriate based upon consideration of one or more of the factors in Paragraph (2)(B). If permission to provide electronic media coverage is terminated or suspended, the judge shall make the findings required in Paragraphs (2)(C) and (2)(D).

(4) Conduct in the courtroom; pool coverage.

(4)(A) ~~Electronic~~ If a proceeding is conducted in the courtroom, electronic media coverage is limited to one audio recorder and operator, one video camera and operator, and one still camera and operator, unless otherwise approved by the judge or designee. All requests to provide electronic media coverage shall be made to the court's public information office. The news reporter whose request is granted by the court will provide pool coverage.

(4)(B) It is the responsibility of news reporters to determine who will participate at any given time, how they will pool their coverage, and how they will share audio, video or photographic files produced by pool coverage. The pooling arrangement shall be reached before the proceedings without imposing on the judge or court staff. Neither the

judge nor court staff shall be called upon to resolve disputes concerning pool arrangements.

(4)(C) The approved news reporter shall be capable of sharing audio, video or photographic files with other news reporters in a generally accepted format. News reporters providing pool coverage shall promptly share their files with other news reporters. News reporters must be willing and able to share their files to be approved to provide coverage. (4)(D) News reporters shall designate a representative with whom the court may consult regarding pool coverage, and shall provide the court with the name and contact information for such representative.

(4)(E) Tripods may be used, but not flash or strobe lights. Normally available courtroom equipment shall be used unless the judge or a designee approves modifications, which shall be installed and maintained without court expense. Any modifications, including microphones and related wiring, shall be as unobtrusive as possible, shall be installed before the proceeding or during recess, and shall not interfere with the movement of those in the courtroom.

(4)(F) The judge may position news reporters, equipment, and operators in the courtroom. Proceedings shall not be disrupted. Equipment operators and news reporters in the courtroom shall:

(4)(~~G~~F)(i) not use equipment that produces loud or distracting sounds;

(4)(~~G~~F)(ii) not place equipment in nor remove equipment from the courtroom nor change location while court is in session;

(4)(~~G~~F)(iii) conceal any identifying business names, marks, call letters, logos or symbols;

(4)(~~G~~F)(iv) not make comments in the courtroom during the court proceedings;

(4)(~~G~~F)(v) not comment to or within the hearing of the jury or any member thereof at any time before the jury is dismissed;

(4)(~~G~~F)(vi) present a neat appearance and conduct themselves in a manner consistent with the dignity of the proceedings;

(4)(~~G~~F)(vii) not conduct interviews in the courtroom except as permitted by the judge; and

(4)(~~G~~F)(viii) comply with the orders and directives of the court.

(5) Violations. In addition to contempt and any other sanctions allowed by law, a judge may remove from or terminate electronic access to the proceeding anyone violating this rule or the court's orders and directives and terminate or suspend electronic media coverage.

(6) Limitations on electronic media coverage. Notwithstanding an authorization to conduct electronic media coverage of a proceeding, and unless expressly authorized by the judge, there shall be no:

(6)(A) electronic media coverage of a juror or prospective juror until the person is dismissed;

(6)(B) electronic media coverage of the face of a person known to be a minor;

(6)(C) electronic media coverage of an exhibit or a document that is not part of the official public record;

(6)(D) electronic media coverage of proceedings in chambers;
(6)(E) audio recording or transmission of the content of bench conferences; or
(6)(F) audio recording or transmission of the content of confidential communications between counsel and client, between clients, or between counsel.

(7) Except as provided by this rule, recording or transmitting images or sound of a proceeding without the express permission of the judge is prohibited. This rule shall not diminish the authority of the judge conferred by statute, rule, or common law to control the proceedings or areas immediately adjacent to the courtroom.

Effective November 1, 2020

Rule 4-401.02. Possession and use of portable electronic devices.

Intent:

To permit the use of portable electronic devices in courthouses and courtrooms, subject to local restrictions.

Applicability:

This rule applies to the courts of record and not of record.

Statement of the Rule:

(1) Definitions.

(1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.

(1)(B) "Portable electronic device" as used in this rule means any device that can record or transmit data, images or sounds, or access the internet, including a pager, laptop/notebook/personal computer, handheld PC, PDA, audio or video recorder, wireless device, cellular telephone, or electronic calendar.

(1)(C) "Court proceeding" means any trial, hearing or other matter, including proceedings conducted by remote transmission.

(2) Possession and use of portable electronic devices in a courthouse.

(2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge.

(2)(B) All portable electronic devices are subject to screening or inspection at the time of entry to the courthouse and at any time within the courthouse in accordance with Rule 3-414.

(2)(C) All portable electronic devices are subject to confiscation if there is reason to believe that a device is or will be used in violation of this rule. Violation of this rule or directive of the judge may be treated as contempt of court.

(2)(D) For the limited purpose of conducting a pilot project to evaluate the performance of justice court judges using courtroom observation, the Judicial Performance Evaluation Commission may record and transmit video and sound of court proceedings. These recordings and transmissions are not public, pursuant to Utah Code sections 63G-2-201(3) and 78A-12-206.

(3) Restrictions.

(3)(A) **Use of portable electronic devices in common areas.** The presiding judges may restrict the time, place, and manner of using a portable electronic device to maintain safety, decorum, and order of common areas of the courthouse, such as lobbies and corridors.

(3)(B) **Use of portable electronic devices in courtrooms.**

(3)(B)(i) A person may silently use a portable electronic device inside a courtroom.

(3)(B)(ii) A person may not use a portable electronic device to record or transmit images or sound of court proceedings, except in accordance with Rule 4-401.01 or subsection (2)(D) above.

(3)(B)(iii) A judge may further restrict use of portable electronic devices in his or her courtroom. Judges are encouraged not to impose further restrictions unless use of a portable electronic device might interfere with the administration of justice, disrupt the proceedings, pose any threat to safety or security, compromise the integrity of the proceedings, or threaten the interests of a minor.

(3)(B)(iv) During trial and juror selection, prospective, seated, and alternate jurors are prohibited from researching and discussing the case they are or will be trying. Once selected, jurors shall not use a portable electronic device while in the courtroom and shall not possess an electronic device while deliberating.

(3)(C) **Use of portable electronic devices while viewing court proceedings conducted by remote transmission.**

(3)(C)(i) A person may not use a portable electronic device to record, photograph, or transmit images or sound of court proceedings, except in accordance with rule 4-401.01 or subsection (2)(D) above. Access to court proceedings will be contingent on the person agreeing to comply with the provisions in this rule and any administrative or standing orders that supplement this rule.

(3)(C)(ii) A violation of an administrative or standing order may be treated as contempt of court.

(4) Use of portable electronic devices in court chambers. A person may not use a portable electronic device in chambers without prior approval from the judge.

(5) Instruction to witnesses. It should be anticipated that observers in the courtroom will use portable electronic devices to transmit news accounts and commentary during the proceedings. Judges should instruct counsel to instruct witnesses who have been excluded from the courtroom not to view accounts of other witnesses' testimony before giving their own testimony.

Effective November 1, 2020

Tab 4

Office of the Governor

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

August 31, 2020

Dear Judicial Nominating Commission members,

I write at the request of Governor Herbert to thank you for your tremendous service to the State of Utah and to emphasize critical aspects of the Utah judicial selection system.

Governor Herbert recognizes and appreciates the many hours of preparation involved with each judicial vacancy addressed by a judicial nominating commission. Your work is the first step, and a critical step, in the merit selection of judges, a process that focuses exclusively on qualifications for office. The Judiciary in Utah is regarded as a model for the nation and world. Your work in reviewing applications for office, interviewing applicants, and ultimately sending the most qualified applicants to the Governor is integral to the quality and success of the Utah Judiciary. Governor Herbert thanks you for your important contributions.

The foundation of the merit selection process for judges is found in the Utah Constitution, Article VIII, Section 8(4): "Selection of judges shall be based solely upon fitness for office without regard to any partisan political consideration." Utah Code 78A-10-102 makes it clear that this provision governs the actions of judicial nominating commissions, the Governor, and the Senate: "Judges for courts of record in Utah shall be nominated, appointed, and confirmed as provided in Utah Constitution Article VIII, Section 8, and this chapter."

The role of judicial nominating commissions is clear, albeit challenging: "certify to the governor a list of the [five or seven] most qualified applicants per vacancy." Utah Code § 78-10-103(3)(a). "In determining which of the applicants are the most qualified, the nominating commissions shall determine by a majority vote of the commissioners present which of the applicants best possess the ability, temperament, training, and experience that qualifies them for the office." Utah Code § 78-10-103(2). Administrative rules promulgated by the Utah Commission on Criminal and Juvenile Justice provide further guidance to judicial nominating commissions as they fulfill their critical role in the merit selection of judges.

It is imperative that all judicial nominating commission members are united in following the constitutional provisions, statutes, and administrative rules that govern the selection of judges.

Commission members will certainly have differences of opinion as to which applicants are the most qualified. That is why judicial nominating commissions comprise seven voting members who each bring unique perspectives. That diversity is an important strength. Equally important is the commitment of each judicial nominating commission member to ignore issues and opinions that are not relevant to the qualifications of a judge.

The Utah Constitution is clear that partisan political considerations are off-limits. Utah statutes and administrative rules define the evaluation criteria. Individual members of a judicial nominating commission have considerable discretion in applying the evaluation criteria and determining what emphasis to place on each criterion. Members do not have discretion to go beyond the criteria listed in statute and rule.

A few considerations have been problematic during Governor Herbert's tenure: geographic location of the applicant's residence, geographic location of the applicant's employment, so-called "ties to the community," and confirmability. I will address each of these in turn.

- The Utah Constitution requires district and juvenile court judges to reside in the judicial district for which they are selected. The Utah Constitution does not require applicants to reside in the district at the time of application; nor does any statute or rule. The location of an applicant's residence and employment are unrelated to the qualifications for judicial office.

- While "public service" is specifically identified in rule as an evaluation criterion, an applicant's ties or connections to any specific area or community is also unrelated to the qualifications for judicial office.

- Finally, confirmability is beyond the scope of a judicial nominating commission if it means anything other than the qualifications and evaluation criteria identified in statute and rule.

Judicial nominating commission members must resist any attempt by any person to influence them to consider anything beyond the qualifications and criteria identified in statute and rule. Failing to do so undermines the merit selection process that serves Utah so well.

Thank you again for your willingness to serve this great state. The Governor is grateful for your sacrifice and service. Your contributions may go unnoticed by many, but impact all.

Ronald B. Gordon, Jr.
General Counsel

Tab 5

Agenda

OFFICE OF LEGAL SERVICES INNOVATION

An Office of the Utah Supreme Court

INNOVATION OFFICE ACTIVITY REPORT

LAUNCH - OCTOBER 16, 2020

OVERALL METRICS

Total Applications Received	28
Applicants Recommended for Admission	10
Applicants Admitted to the Sandbox	10

Applicants Recommended to Deny Admission	0
Applicants Recommended to Exit the Sandbox	0

Office Status Updates:

1. Staffing
    a. Executive Director - Lucy Ricca (contractor, part time, SJI funded)
    b. Project Manager - Helen Lindamood (employee, part time, court funded)
    c. Data Analyst - Dr. James Teufel (pending contract signing, contractor, part time, SJI funded)
2. Website
    a. Pending grant modification request to increase funding for website redesign and rebuild using Utah Interactive and hosted outside of utcourts.gov.

PENDING SUBMITTED APPLICANT DETAILS

		8 - Shumway Van	16 - Efficient Attorneys	19 - Firmly LLC	21 - Arch Media	0022 - Nelson Jones	0023 - Off the Record	24 - Legal Services Link	25 - Michael Loveridge	26 - First Prof.	27 - Sudbury Consulting	28 - Pearson Butler		
Risk Level		**Low / Moderate**	**Low / Moderate**	**Low**	**Moderate**	**Moderate**	**Moderate**	**TBD**	**TBD**	**TBD**	**TBD**	**TBD**		
Total Categories		**8**	**1**	**1**	**4**	**4**	**1**	**19**	**2**	2	**2**	**14**		
		1	**1**	**1**	**1**	**1**	**2**	**1**	**1**	**1**	**1**	**4**	**Total Models**	
Accident/Injury	5	X	X					X		X		X	1	Lawyers employed / managed by nonlawyers
Adult Care	2							X				X	2	<50% nonlawyer ownership
Business	5	X		X	X	X		X				X	1	50% + nonlawyer ownership
Criminal Expungement	2							X			X		6	Fee sharing - Standard
Discrimination	2							X				X	2	Fee sharing - Extraordinary
Domestic Violence	2							X				X	0	Software provider /w lawyer involvement - doc completion
Education	1							X	X				3	Software provider w/ lawyer involvement
Employment	4	X						X			X	X	0	Software provider w/out lawyer involvement
End of Life Planning	6	X			X	X		X	X			X	1	Non-lawyer provider w/ lawyer involvement
Financial Issues	3							X		X		X	0	Nonlawyer provider w/out lawyer involvement
Healthcare	4				X	X		X				X		
Housing (Rental)	2	X						X						
Immigration	3	X						X				X		
Marriage and Family	5	X			X	X		X				X		
Military	1							X						
Native American/Tribal Issues	2							X				X		
Public Benefits	2							X				X		
Real Estate	3	X						X				X		

Traffic Citations	2						X	X						

AUTHORIZED APPLICANT DETAILS

		0002 - 1Law	3 - LawHQ	4 - Lawpal	5 - Rocket Lawyer	7 - R&R Legal Services	10 - 3B	12 - Nuttall	13 - Estate Guru	14 - FOCL Law	15 - AGS Law		
Risk Level		Moderate	Moderate	Low/ Moderate	Low/ Moderate	Low/ Moderate	Low	Moderate	Moderate	Low/ Moderate	Low		
Total Categories		16	1	4	15	9	1	5	5	1	3		
		4	3	2	2	2	2	4	6	3	1	**Total Models**	
Accident/Injury	4	X	X			X		X				9	Lawyers employed / managed by nonlawyers
Adult Care	3	X			X	X						4	<50% nonlawyer ownership
Business	5	X				X		X	X		X	3	50%+ nonlawyer ownership
Criminal Expungement	2	X			X							2	Fee sharing - Standard
Discrimination	3	X			X			X				1	Fee sharing - Extraordinary
Domestic Violence	3	X			X	X						2	Software provider /w lawyer involvement - doc completion
Education	2	X			X							2	Software provider w/ lawyer involvement
Employment	3	X			X			X				-	Software provider w/out lawyer involvement
End of Life Planning	6	X		X	X	X			X		X	1	Non-lawyer provider w/ lawyer involvement
Financial Issues	6	X		X	X	X	X		X			-	Nonlawyer provider w/out lawyer involvement
Healthcare	4	X			X	X			X				
Housing (Rental)	3	X		X	X								
Immigration	2	X			X								
Marriage and Family	6	X		X	X	X		X		X			
Military	1				X								
Native American/Tribal Issues	0												
Public Benefits	3	X			X	X							

Real Estate	4	X			X				X		X		
Traffic Citations	0												

DENIED, POSTPONED, AND WITHDRAWN APPLICANT DETAILS

		0001 - PainWorth	0006 - Fluent Worlds	0009 - Legal Different	00011 - Louis Hansen	0017 CBLP	0018 - Smith Gold	0020 - US Arbitration		
Status		Withdrawn - Unresponsive	Withdrawn - Unresponsive	Withdrawn - Not Qualified	Withdrawn	Resubmitting	Withdrawn	Withdrawn		
Total Categories		**1**	**N/A**	**3**	**3**	**7**	**13**	**4**		
		3	**1**	**N/A**	**N/A**	**5**	**3**	**4**	**Total Models**	
Accident/Injury	1	X					X		3	Lawyers employed / managed by nonlawyers
Adult Care	2						X	X	2	<50% nonlawyer ownership
Business	3			X		X	X	X	2	50%+ nonlawyer ownership
Criminal Expungement	1					X			-	Fee sharing - Standard
Discrimination	1			X					-	Fee sharing - Extraordinary
Domestic Violence	1						X		4	Software provider /w lawyer involvement - doc completion
Education	1						X		1	Software provider w/ lawyer involvement
Employment	3			X		X	X		1	Software provider w/out lawyer involvement
End of Life Planning	2				X	X			3	Non-lawyer provider w/ lawyer involvement
Financial Issues	4				X	X	X	X	1	Nonlawyer provider w/out lawyer involvement
Healthcare	2						X	X		
Housing (Rental)	-									
Immigration	1						X			

Marriage and Family	1						X			
Military	2					X	X			
Native American/Tribal Issues	1						X			
Public Benefits	-									
Real Estate	3				X	X	X			
Traffic Citations										

Tab 6

INTERLOCAL COMPACT AGREEMENT

COMES NOW **Parowan City, State of Utah**, a municipal corporation, (hereinafter "Parowan") and **Iron County, State of Utah**, (hereinafter "County") and does hereby enter into this Interlocal Compact Agreement on this 24 day of September, 2020, for the betterment and benefit of both Parowan and County .

WHEREAS, the Interlocal Cooperation Act, Section §11-13-101, *et. seq.*, Utah Code Ann. 1953 as amended, permits local governmental entities to make the most efficient use of their powers by enabling them to combine or provide joint services, and to insure the most efficient, economic and beneficial use of their economic resources are utilized for the benefit of its citizenry; and

WHEREAS, Utah Code Ann. §11-13-202, *et. seq*. provides for a public agency to provide court services under the interlocal agreement, and

WHEREAS Parowan City provides law enforcement services along the I-15 freeway, between mile posts 74 and 79, SR 271 between Parowan and Paragonah, and Highway 91; and

WHEREAS the I-15 freeway between mile posts 71 and 82 travels in and out of Parowan and Paragonah's annexed boundaries making it difficult for the police to identify in which jurisdictional boundaries a ticket should be issued; and

WHEREAS, the Parowan City Justice Court is a court already duly organized and established in accordance with the U.C.A. §78A-7-101, *et. seq.*; and

WHEREAS, government entities are permitted pursuant to U.C.A. §78A-7-102 to enter into interlocal agreements for the purpose of sharing court services; and

WHEREAS, because of the annexation boundaries of Parowan City, it would be in the best interest and convenience of County and City residents to define a boundary line for police

enforcement to have an easily identifiable boundary to determine the proper location of court proceedings and to resolve any confusion to the same by using the exits as markers; and

WHEREAS for cost efficiency and travel purposes, it would be in the best interest for the Parowan Police Department and convenience of County citizens to have court services in Parowan City where the freeway traverses through Parowan City's annexed boundaries; and

WHEREAS, said Agreement is for the mutual advantage and for the overall promotion and general welfare of both the County and Parowan City and its citizens and employees, and will provide the benefit of economy of scale and maximize utilization of both Parties resources; and

WHEREAS, Parowan and County, desire to enter into this Interlocal Compact Agreement wherein the Parowan City Justice Court shall provide court services for cited Class B Misdemeanors or lesser criminal matters as outlined in U.C.A. §78A-7-106, as amended.

NOW THEREFORE, IN CONSIDERATION of the foregoing, and of the mutual covenants, promises and conditions, contained herein, each Party agrees as follows:

1. **Court Services**. Parowan agrees to provide the following services:

A. Parowan shall continue to maintain the Parowan City Justice Court in accordance with all requirements, certifications and standards imposed by the Judicial Council, and shall prosecute all matters permitted under U.C.A. §78A-7-106, as amended, which arise on I-15 between mile posts 71 And 82 within either County or Parowan City's jurisdictional boundaries.

B. Parowan shall collect all court fees from citations issued between mile posts 71 and 82 on I-15, SR271 and Highway 91 between Parowan, Utah and Summit, Utah.

C. All court services rendered and supplied to Parowan citizens shall be rendered and supplied to people cited within mile posts 71 and 82 on I-15, SR271 and Highway 91 between Summit and Parowan, and all individuals shall be considered to have the same accessibility and rights to the Parowan Justice Court as those afforded to Parowan citizens.

D. All court services rendered and supplied to Parowan citizens shall be rendered and supplied to people cited on highway SR271 and Highway 91 between Summit and Parowan and within mile posts 71 and 82 on I-15, and all individuals shall be considered to have the same accessibility and rights to the Parowan Justice Court as those afforded to Parowan citizens.

2. **Agreement**. Parowan and County agree that this Interlocal Compact Agreement shall be deemed effective immediately upon approval by the State of Utah's Judicial Administration, and shall continue and remain in full force and effect until terminated as required by law.

3. **Miscellaneous.**

A. This Agreement shall be governed by the laws of the State of Utah and is subject to and to be construed pursuant to such laws.

B. In the event of breach or default hereunder, the prevailing party shall be entitled to recover from the other for all costs and a reasonable attorney's fee incurred in determining, protecting or enforcing their rights hereunder.

DATED this 24 September, 2020.

PAROWAN CITY:

By: _____
Its Mayor

COUNTERSIGNED & ATTESTED:

By: _____
Its City Recorder

PAROWAN CITY CORPORATE SEAL

COUNTY:

By: _____
Its: County Commissioner

COUNTERSIGNED & ATTESTED:

By: _____
Its: County Clerk

(Seal)

Tab 7

Agenda

OLSON & HOGGAN, P.C.

ATTORNEYS AT LAW

L. BRENT HOGGAN
MILES P. JENSEN
JAMES C. JENKINS
KEVIN J. FIFE*
JEFFERY B. ADAIR**
KELLY J. SMITH*
JEREMY S. RAYMOND
SETH J. TAIT*
JACOB A. WATTERSON
BRADLEY N. MUMFORD*

CHARLES P. OLSON (1916-1975)

*also licensed in Idaho
**also licensed in Nevada

130 SOUTH MAIN, SUITE 200
P.O. BOX 525
LOGAN, UTAH 84323-0525
TELEPHONE (435) 752-1551
TOLL FREE (866) 752-1551
TELEFAX (435) 752-2295

TREMONTON OFFICE:
123 EAST MAIN
P.O. BOX 115
TREMONTON, UTAH 84337-0115
TELEPHONE (435) 257-3885
TELEFAX (435) 257-0365

E-MAIL oh@oh-pc.com
www.oh-pc.com

June 24, 2020

Via Certified Mail & Email to
jamesp@utcourts.gov

Jim Peters
Justice Court Coordinator
Administrative Office of the Courts
450 South State
PO Box 140241
Salt Lake City, Utah 84114-0241

Re: NOTICE OF INTENT TO DISSOLVE JUSTICE COURT

Dear Mr. Peters:

We are acting as legal counsel for Smithfield City located in Cache County. Pursuant to Utah Code Ann. § 78A-7-123, this letter provides notice to the Utah Judicial Council that Smithfield City intends to seek legislative approval in the upcoming legislative session to dissolve the Smithfield City Justice Court. Enclosed with this letter is Resolution 20-05 adopted by the Smithfield City Council on June 10, 2020. If you require any further information regarding this notice, please contact us directly.

Sincerely,

OLSON & HOGGAN, P.C.

Seth Tait/tf

Seth J. Tait

SJT/tf
Enclosure
J:\MPJ Cities\Smithfield\Misc Justin Court Closing\Notice.JudicialCouncil.Smithfield.1.docx

RESOLUTION 20-05

A RESOLUTION AUTHORIZING THE DISSOLUTION OF THE SMITHFIELD CITY JUSTICE COURT.

WHERAS, the City of Smithfield ("City") currently has the Smithfield City Justice Court (the "Court") to serve the city's justice court needs; and

WHEREAS, the City Council has determined the Court no longer justifies its cost to the City, and

WHEREAS, the City Council has determined that it would be in the best interests of the residents of the City the Court be dissolved and that the cases be handled by the First Judicial District Court of Utah for the County of Cache which serves any areas of Cache County that do not fall within the jurisdiction of a municipal justice court; and

WHEREAS, Utah Code Annotated § 78A-7-123 sets forth the process and requirements for dissolving a municipal justice court which include, among other things, the approval of the State Legislature; and

WHEREAS, the City wishes to now dissolve the Court by following the foregoing process set forth in the Utah Code;

NOW THEREFORE, be it resolved by the City Council of Smithfield, Utah as follows:

1. The City shall take those steps required to meet all the statutory conditions necessary to dissolve the Smithfield City Justice Court pursuant to the process provided by Utah Code Annotated § 78A-7-123 and the Mayor and City Recorder are authorized and directed to prepare, sign and file with the appropriate agencies all documents necessary to dissolve the City's Justice Court; and

2. Upon the completion of all the requirements of Utah Code Annotated § 78A-7-123, including the approval of the State Legislature, the Smithfield City Justice Court shall be dissolved April 1, 2021.

3. The Resolution shall become effective immediately upon adoption.

Approved and signed this 10th day of June, 2020

SMITHFIELD CITY CORPORATION

Jeffrey H. Barnes, Mayor

ATTEST:

Justin B. Lewis, City Recorder

SMITHFIELD CITY
CITY
CACHE COUNTY, UTAH

78A-7-123 Dissolution of justice courts.

(1)

(a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.

(b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.

(c) The municipality or county shall provide notice to the Judicial Council.

(d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.

(e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.

(2)

(a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.

(b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.

(c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.

(3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.

Renumbered and Amended by Chapter 3, 2008 General Session

Tab 8

Agenda

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

To: Judicial Council
From: Nancy Sylvester
Date: October 16, 2020
Re: Certification of Senior Judges

The senior judge evaluation and appointment processes are governed by the following Utah Code of Judicial Administration rules:

- Rule 3-111: governs senior judge evaluations;
- Rule 11-201: governs the appointment of senior judges of courts of record.

None of the senior judge applicants below has complaints pending before the Utah Supreme Court or the Judicial Conduct Commission. The Justice Court Board will take up the justice court applications prior to the Council meeting and I will report their recommendations. With respect to all others, their applications and any other applicable materials are attached and certification appears to be appropriate.

A. SENIOR JUDGE APPLICANTS

The following retiring judges have applied for active senior judge status.

New Applicants

Last_Name	First_Name	Salute	Court	Geographic_Division	Retirement_Date
Taylor	James R.	Judge	District Court	Fourth Judicial District	1/1/2021
Peterson	Edwin T.	Judge	District Court	Eighth Judicial District	1/15/2021
Appleby	Mary Kate A.	Judge	Court of Appeals	State of Utah	1/1/2021

The following current senior judges have terms of office that will expire on December 31, 2020.

Active Senior Judges

Last_Name	First_Name	Salute	Court	Geographic_Division
Allphin	Michael G.	Judge	District Court	Active
Beacham	G. Rand	Judge	District Court	Active
Dawson	Glen R.	Judge	District Court	Active
Dever	L.A.	Judge	District Court	Active
Low	Gordon J.	Judge	District Court	Active
Lyon	Michael D.	Judge	District Court	Active
Oddone	Frederic M.	Judge	Juvenile Court	Active
Sainsbury	Sterling B.	Judge	Juvenile Court	Active
Stott	Gary D.	Judge	District Court	Active

Inactive Senior Judges

Last_Name	First_Name	Salute	Court	Geographic_Division
Adkins	Robert W.	Judge	District Court	Inactive
Bunnell	Lee	Judge	Justice Court	Inactive
Christean	Arthur	Judge	Juvenile Court	Inactive
Higbee	Thomas M.	Judge	Juvenile Court	Inactive
Stevens	Jack	Judge	Justice Court	Inactive

B. CERTIFICATION PROCESS

You may consider the information regarding each judge in an executive session, but your decision of whether to certify must be made at a public hearing.

If a judge meets all of the certification standards, it is presumed that the Council will certify the individual for senior judge status. If the judge fails to meet all of the standards, it is presumed you will not certify the individual. However, the Council has the discretion to overcome a presumption against certification upon a showing of good cause. Before declining to certify a senior judge, you must invite him or her to meet with you to present evidence and arguments of good cause. If you decline to certify a senior judge, the person will not be retained after the end of his or her term of office.

Any senior judge you certify will be sent to the Supreme Court for its consideration in the reappointment process.

C. PERFORMANCE STANDARDS FOR ACTIVE SENIOR JUDGES

i. Attorney Surveys of Senior Judges

A satisfactory score for an attorney survey question is achieved when the ratio of favorable responses is 70% or greater. The Judicial Council shall determine whether the senior judge's survey scores are satisfactory. *Not every senior judge applicant has an attorney survey. I've provided what was made available to me.*

ii. Cases Under Advisement

A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the senior judge for final determination. The Council shall measure satisfactory performance by the self-declaration of the senior judge or by reviewing the records of the court.

A senior judge in a trial court demonstrates satisfactory performance by holding:

- no more than three cases per calendar year under advisement more than 60 days after submission; and
- no case under advisement more than 180 days after submission.

A senior judge in the court of appeals demonstrates satisfactory performance by:

- circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and
- achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.

iii. Education

Active senior judges must comply annually with judicial education standards, which is at least 30 hours of continuing education per year. *This year has been a bit different due to the pandemic and the Education Department's changing its reporting cycle, so I asked our active senior judges to simply indicate whether or not they complied with the Education Department's requirements.*

iv. Substantial Compliance with the Code of Judicial Conduct

A senior judge's performance is satisfactory if their responses in their application or self-declaration form demonstrate substantial compliance with the Code of Judicial Conduct, and if the Council's review of formal and informal sanctions leads you to conclude they are in substantial compliance with the Code of Judicial Conduct.

Under Rules 11-201 and 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

v. Physical and Mental Competence

If the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct, the senior judge's performance is satisfactory.

vi. Survey of Presiding Judges and Court Staff.

The Council also measures the performance of active senior judges by a survey of all presiding judges and trial court executives of districts in which the senior judge has been assigned. *Those surveys are attached to the extent that they have been returned to me.*

NEW APPLICANTS

Senior Judge Application
Active Status

Qualifications for Office

I, Edwin T. Peterson, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

14) I was not removed from office or involuntarily retired on grounds other than disability.

15) I was not suspended during my final term of office or final six years in office, whichever is greater.

16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

17) I will submit relevant information as requested by the Judicial Council.

18) My date of birth is PRIVATE, and my retirement date is 01/15/2020.

19) I have not been subject to any order of discipline for conduct as a senior judge.

20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

21) During my current term there have been ____ orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

22) The address at which I can be contacted after retirement is:

PRIVATE PRIVATE

My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

24) I have held no cases under advisement more than 180 days after submission.

25) I am in substantial compliance with the Code of Judicial Conduct.

26) I am physically and mentally fit for office.

27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
45.5	44	31.25

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

N/A

28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

12 August 2020
Date

Edwin T. Peterson

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, _James R Taylor, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) If applying for a subsequent active senior judge term: During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.
_____n/a_____
_____
_____

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is_PRIVATE____, and my retirement date is _1/1/21_____.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been __0__ orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE PRIVATE

My **email address** and **phone number** are: PRIVATE PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019	2020
40	32.25	48.5	See below

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I taught a 3 hour course at Utah Valley University, "Constitutional Rights and Responsibilities CJ 4160" to law enforcement students during the Spring semester which required 3 hours of lecture weekly through the semester plus grading papers, exams and assignments. I also attended the legislative up-date by webex participation. I was unable to attend the District Judge Conference in May, as is my usual practice, because it was cancelled. I attended the Fall Conference and participated in all available sessions.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

9/28/2020
Date

/s/ James R. Taylor by Nancy J. Sylvester at the direction of Hon. James R. Taylor
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Court of Appeals Senior Judge Application Active Status

Qualifications for Office

I, _____Mary Kate Appleby_____, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) If applying for a subsequent active senior judge term: During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.
_____N/A_____
_____
_____

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is_PRIVATE_, and my retirement date is _01-01-21__.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There is is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been __0__ orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is: PRIVATE
email address and **phone number**
are:

Judicial Performance Evaluation Information I further declare as follows:

24) I have circulated not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

25) I have achieved a final average time to circulation of a principal opinion of not more than 120 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2017—30*

2018—30*

2019—30*

2020—30*

* I have met and sometimes exceeded this number for each reporting year.

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

N/A

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Date: October 15, 2020

Signature: /s/ Mary Kate Appleby

ACTIVE SENIOR JUDGES

SENIOR JUDGE FREDERIC ODDONE

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	**98.0%**	18	2	0	0	0	0	**4.90**	**4.46**
Behavior is free from bias and favoritism	**100.0%**	20	0	0	0	0	0	**5.00**	**4.39**
Avoids ex parte communications (contact with one party without the other parties present)	**94.7%**	16	1	2	0	0	1	**4.74**	**4.58**
Understands and correctly applies the rules of procedure and evidence	**97.0%**	17	3	0	0	0	0	**4.85**	**4.33**
Understands and correctly applies the substantive law	**94.0%**	15	4	1	0	0	0	**4.70**	**4.23**
Is attentive to presentations	**98.0%**	18	2	0	0	0	0	**4.90**	**4.47**
Is prepared for hearings and trials	**93.0%**	15	3	2	0	0	0	**4.65**	**4.39**
Explains the purpose of the hearing	**96.8%**	16	3	0	0	0	1	**4.84**	**4.34**
Demonstrates appropriate demeanor	**100.0%**	20	0	0	0	0	0	**5.00**	**4.25**
Maintains order in the courtroom	**100.0%**	20	0	0	0	0	0	**5.00**	**4.53**
Provides a fair and adequate opportunity to present evidence or proffers of evidence	**95.0%**	15	5	0	0	0	0	**4.75**	**4.29**
Oral and written decisions and orders are clear and well reasoned	**90.5%**	11	7	1	0	0	1	**4.53**	**4.32**
Issues recommendations without unnecessary delay	**94.4%**	14	3	1	0	0	2	**4.72**	**4.31**
Effectively uses pretrial procedures to narrow and define the issues	**93.0%**	13	7	0	0	0	0	**4.65**	**4.30**
Overall, the performance of this court commissioner is	**98.0%**	18	2	0	0	0	0	**4.90**	**4.34**
Overall Average Score:	**96.2%**	**246**	**42**	**7**	**0**	**0**	**5**	**4.81**	**4.38**

Comments:

Don't scare people people by being too stern about things starting late.

Judge Oddone is wonderful. I have learned so much from him by being in his court over the last 20 years. It is like no time has passed to have him fill in as a senior judge. I look forward to court when I know he is covering for one of our judges.

Judge Oddone does an excellent job in narrowing the issues and ruling promptly. He has a good basis of legal procedure and law. I think he does an excellent job.

Judge Oddone is a superb juvenile court judge. It was very unfortunate when he chose to retire. I have appeared before all juvenile court judges in the 3rd district, and for many years. Although I did not daily appear before Judge Oddone, I did on several occasions over the years, and I was happy to see him on the bench out in West Jordan where I regularly practice. If I had to rank all the judges for the past 15 years, Judge Oddone would be at the very top, first. Excellent rapport, temperament, abilities and skill, and knowledge. Comfortable to practice in front of him, because of this.

Judge Oddone covered several hearings when I was a parental defense. One hearing was an argument over motion and reply brief. He was very well prepared, reading all motions related to the issue and asked good questions. He was also very knowledgable about the law. The thing I loved about him the very most was his ability to explain what was happening to the client I had. He was also very respectful and caring to my client. He listened and heard her concerns and did not rule in her favor but did it in a way that was masterful and left my client with her dignity intact.

I only appeared before Judge Oddone once as he was filling in for another juvenile court judge. He was prompt, fair, reasonable, accommodating, professional, and friendly.

Judge Oddone remains one of the finest and wisest judges I have ever had the pleasure of appearing in front of. He is fair to all sides, listens to all parties and offers clear and concise decisions. He does not let the fact that he will likely never see the case again affect his preparation or his decision making. He was very prepared for each case and always rendered a decision; he did not continue any matters to be decided later by a different judge.

SENIOR JUDGE G. RAND BEACHAM

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	**88.6%**	5	0	2	0	0	0	**4.43**	**4.53**
Behavior is free from bias and favoritism	**82.9%**	5	0	0	2	0	0	**4.14**	**4.51**
Avoids ex parte communications (contact with one party without the other parties present)	**88.6%**	5	0	2	0	0	0	**4.43**	**4.62**
Understands and correctly applies the rules of procedure and evidence	**94.3%**	5	2	0	0	0	0	**4.71**	**4.35**
Understands and correctly applies the substantive law	**94.3%**	5	2	0	0	0	0	**4.71**	**4.23**
Is attentive to presentations	**94.3%**	5	2	0	0	0	0	**4.71**	**4.50**
Is prepared for hearings and trials	**88.6%**	5	0	2	0	0	0	**4.43**	**4.42**
Explains the purpose of the hearing	**82.9%**	3	2	2	0	0	0	**4.14**	**4.44**
Demonstrates appropriate demeanor	**71.4%**	3	2	0	0	2	0	**3.57**	**4.45**
Maintains order in the courtroom	**88.6%**	5	0	2	0	0	0	**4.43**	**4.61**
Provides a fair and adequate opportunity to present evidence or proffers of evidence	**82.9%**	5	0	0	2	0	0	**4.14**	**4.37**
Oral and written decisions and orders are clear and well reasoned	**94.3%**	5	2	0	0	0	0	**4.71**	**4.29**
Issues recommendations without unnecessary delay	**77.1%**	3	2	0	2	0	0	**3.86**	**4.43**
Effectively uses pretrial procedures to narrow and define the issues	**82.9%**	3	2	2	0	0	0	**4.14**	**4.37**
Overall, the performance of this court commissioner is	**82.9%**	5	0	0	2	0	0	**4.14**	**4.45**
Overall Average Score:	**86.3%**	**67**	**16**	**12**	**8**	**2**	**0**	**4.31**	**4.45**

Comments:

I think he is an excellent judge.

While on the Bench, Judge Beacham needs to exhibit the type of demeanor that he expects from everyone else that appears before his court. Unfortunately, he often can be overbearing and degrading. Behind his back, I have heard others refer to him as a tyrant. Hopefully, this will no longer be the case now that he is a senior judge.

SENIOR JUDGE GARY STOTT

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	**84.6%**	16	2	6	2	0	1	**4.23**	4.55
Behavior is free from bias and favoritism	**85.4%**	16	3	5	2	0	1	**4.27**	4.49
Avoids ex parte communications (contact with one party without the other parties present)	**91.6%**	13	4	2	0	0	8	**4.58**	4.60
Understands and correctly applies the rules of procedure and evidence	**83.2%**	13	6	3	3	0	2	**4.16**	4.43
Understands and correctly applies the substantive law	**78.3%**	12	4	3	1	3	4	**3.91**	4.34
Is attentive to presentations	**82.2%**	14	7	3	1	2	0	**4.11**	4.58
Is prepared for hearings and trials	**83.3%**	15	2	5	0	2	3	**4.17**	4.46
Explains the purpose of the hearing	**88.2%**	13	5	4	0	0	5	**4.41**	4.41
Demonstrates appropriate demeanor	**73.3%**	12	5	3	3	4	0	**3.67**	4.44
Maintains order in the courtroom	**86.4%**	14	5	6	0	0	2	**4.32**	4.63
Provides a fair and adequate opportunity to present evidence or proffers of evidence	**79.2%**	13	5	5	0	3	1	**3.96**	4.40
Oral and written decisions and orders are clear and well reasoned	**75.0%**	10	3	2	2	3	7	**3.75**	4.43
Issues recommendations without unnecessary delay	**85.6%**	11	2	4	1	0	9	**4.28**	4.37
Effectively uses pretrial procedures to narrow and define the issues	**77.3%**	7	3	3	0	2	12	**3.87**	4.41
Overall, the performance of this court commissioner is	**77.8%**	13	5	4	3	2	0	**3.89**	4.48
Overall Average Score:	**82.1%**	**192**	**61**	**58**	**18**	**21**	**55**	**4.10**	4.48

Comments:

Very professional in all aspects

Judge Stott is one of the finest Judges I have appeared before. It is always a privilege to work with him and I can honestly not think of anything he could do better.

see no areas for improvement

see no area of improvement

Apply for a full-time judgship.

I was really impressed by Judge Stott. My client's didn't get everything they wanted, but they felt that they had a fair trial and were content with the outcome, because it was explained well by Judge Stott.

He could not dismiss cases when he covers preliminary hearing last minute. Prosecutors and public defenders often have preliminary hearing in multiple court rooms at the same time. Additionally, the courts misinformed the DA's and told them another judge was covering the hearings so no one knew to go to Judge Stott. He did a roll call and started dismissing cases where the prosecutors were in the other courtroom. He was uncivil towards the attorneys when they began to enter his courtroom despite an explanation being provided.

I had an aggravated burglary case that was extremely violent and my only witness was a bit of a flake. Judge Stott tried to dismiss my case with prejudice based on the Defense's claim that the witness was not planning to return to the state. I had personally been told the exact opposite by the victim and in Judge Stott's words "barely" convinced him not to dismiss it with prejudice. This was the first setting of the preliminary hearing and wholly inconsistent with 3rd district court policy for an aggravated person offense.

Judge Stott was unnecessarily curt and rude to all parties. It was far below a pleasant experience handling a criminal calendar in front of Judge Stott.

Read the briefs, make findings of fact and conclusions of law. This judge sat in for the assigned judge on a dispositive motion hearing. He was unmoved by the law, gave no basis for his decision, upbraided counsel for inquiring into the basis for the decision.

Judge Stott could improve if he would allow the lawyers in the courtroom to call the cases when they are actually ready. For example, my experience with Judge Stott is a preliminary hearing calendar. In 3rd Dist, 2 judges hold PH calendars at the same time. Judge Stott chooses to call through the calendar alphabetically. He has issued warrants prematurely (and subsequently had to recall them), berates & embarrasses attorneys who are not present when he calls the case (they could be in the other courtroom or speaking with witnesses), & seems genuinely annoyed if an attorney tries to call a case

SENIOR JUDGE MICHAEL LYON

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	**100.0%**	6	0	0	0	0	0	**5.00**	**4.44**
Behavior is free from bias and favoritism	**93.3%**	4	2	0	0	0	0	**4.67**	**4.44**
Avoids ex parte communications (contact with one party without the other parties present)	**100.0%**	5	0	0	0	0	1	**5.00**	**4.54**
Understands and correctly applies the rules of procedure and evidence	**86.7%**	2	4	0	0	0	0	**4.33**	**4.40**
Understands and correctly applies the substantive law	**80.0%**	2	2	2	0	0	0	**4.00**	**4.33**
Is attentive to presentations	**100.0%**	6	0	0	0	0	0	**5.00**	**4.46**
Is prepared for hearings and trials	**96.7%**	5	1	0	0	0	0	**4.83**	**4.36**
Explains the purpose of the hearing	**86.7%**	2	4	0	0	0	0	**4.33**	**4.42**
Demonstrates appropriate demeanor	**96.7%**	5	1	0	0	0	0	**4.83**	**4.27**
Maintains order in the courtroom	**100.0%**	6	0	0	0	0	0	**5.00**	**4.53**
Provides a fair and adequate opportunity to present evidence or proffers of evidence	**96.7%**	5	1	0	0	0	0	**4.83**	**4.27**
Oral and written decisions and orders are clear and well reasoned	**96.7%**	5	1	0	0	0	0	**4.83**	**4.28**
Issues recommendations without unnecessary delay	**90.0%**	3	3	0	0	0	0	**4.50**	**4.34**
Effectively uses pretrial procedures to narrow and define the issues	**92.0%**	3	2	0	0	0	1	**4.60**	**4.30**
Overall, the performance of this court commissioner is	**100.0%**	6	0	0	0	0	0	**5.00**	**4.33**
Overall Average Score:	**94.4%**	**65**	**21**	**2**	**0**	**0**	**2**	**4.72**	**4.39**

Comments:

Nothing, he has ruled with me and against me and I have never had any doubt that he listened, he considered and then made the appropriate decision.

That would be difficult, because he's been a great judge. He still has a reputation for being pro-prosecution when it comes to ruling on legal issues, but perhaps that could be characterized simply as "conservative."

He is the most outstanding judge in our district. I cannot see where he could provide his performance.

SENIOR JUDGE STERLING SAINSBURY

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	**92.2%**	11	7	0	0	0	0	**4.61**	**4.50**
Behavior is free from bias and favoritism	**92.2%**	11	7	0	0	0	0	**4.61**	**4.44**
Avoids ex parte communications (contact with one party without the other parties present)	**93.3%**	10	5	0	0	0	3	**4.67**	**4.59**
Understands and correctly applies the rules of procedure and evidence	**91.8%**	10	7	0	0	0	1	**4.59**	**4.37**
Understands and correctly applies the substantive law	**88.9%**	9	8	1	0	0	0	**4.44**	**4.27**
Is attentive to presentations	**92.2%**	12	5	1	0	0	0	**4.61**	**4.51**
Is prepared for hearings and trials	**91.8%**	11	5	1	0	0	1	**4.59**	**4.40**
Explains the purpose of the hearing	**91.8%**	10	7	0	0	0	1	**4.59**	**4.38**
Demonstrates appropriate demeanor	**93.3%**	12	6	0	0	0	0	**4.67**	**4.30**
Maintains order in the courtroom	**93.3%**	12	6	0	0	0	0	**4.67**	**4.58**
Provides a fair and adequate opportunity to present evidence or proffers of evidence	**91.1%**	11	6	1	0	0	0	**4.56**	**4.31**
Oral and written decisions and orders are clear and well reasoned	**89.4%**	9	7	1	0	0	1	**4.47**	**4.33**
Issues recommendations without unnecessary delay	**91.8%**	10	7	0	0	0	1	**4.59**	**4.33**
Effectively uses pretrial procedures to narrow and define the issues	**91.7%**	7	5	0	0	0	6	**4.58**	**4.31**
Overall, the performance of this court commissioner is	**91.1%**	10	8	0	0	0	0	**4.56**	**4.39**
Overall Average Score:	**91.7%**	**155**	**96**	**5**	**0**	**0**	**14**	**4.59**	**4.41**

Comments:

Don't set trial and appoint a public defender on the same date. Public Defender should be appointed and present in court on the date trial is set so that trial is scheduled on a date that works for their schedule and they have fair opportunity to discuss due dates, etc.

I appreciate that Judge Sainsbury is always prepared when covering a court calendar and always willing to listen to the parties before issuing an order/decision. I also appreciate that although he may not be sitting on the bench everyday he keeps up to date on the legislative changes.

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, MICHAEL G ALLPHIN, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) If applying for a subsequent active senior judge term: During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below. I ACCEPTED MORE THAN TWO DAYS.

_____

_____

_____

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVATE and my retirement date is 10/16/2018.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There ☐ is xx☐ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE

My **email address** and
phone number are:

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
**	**	**

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

** "I complied with the Education Department's education hour requirements."

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

09/22/2020 MICHAEL G ALLPHIN

Date Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, G. RAND BEACHAM hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.
I completed my last assigned case with sentencing on 1-19-18. I have not been offered any other assignments since then. I hope to be able to help with the COVID backlog.

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVATE, and my retirement date is 12-14-2012

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE	PRIVATE	PRIVATE
	PRIVATE	PRIVATE
My **email address** and **phone number** are:	PRIVATE	PRIVATE
	PRIVATE	PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
30.5	I complied with the Education Department's education hour requirements.	

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

9-29-2020
Date

G. Bond Beacham
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, Glen R. Dawson, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) If applying for a subsequent active senior judge term: During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.

During the 2020 calendar year I was not offered any assignments to serve as a Senior Judge.

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVATE____, and my retirement date is January 1, 2019.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There is is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been __0__ orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE

My **email address** and
phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
30		30

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I understand the Education Department changed the education year from a calendar year to a fiscal year in 2019/2020. I complied with the Education Department's education hour requirements for the 18 month period from January 1, 2019 to June 30, 2020.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

September 14, 2020 — Date

/s/ Glen R. Dawson — Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, L. A. DEVER, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.

I offered to work and was accepted, however the assignment was cancelled before the starting time.

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVA PRIVATE and my retirement date was November 1, 2014.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been no orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE PRIVATE

Email: PRIVATE

Phone: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
30+	30+	30+

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I am under the impression, from the Self Reporting form that the hours for 2020 are hours from July 2019 to July 2020. The form I submitted on April 17, 2020, lists 36.25 for that period.

I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

October 7, 2020

Date October 7, 2020

Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, GORDON J. LOW hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below. I RETURNED TO ACTIVE SENIOR JUDGE STATUS IN MARCH OF THIS YEAR, HAVING BEEN OUT OF THE COUNTRY FOR 18 MONTHS. I HAVE NOT BEEN REQUESTED TO SERVE DURING THE INTERIM. HAD I BEEN REQUESTED, I CERTAINLY WOULD HAVE SERVED.

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
0	0	0

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I was in Vietnam teaching mediation to the Vietnamese Judiciary and Bar March-June 2018, and in Australia September 2018 through March 2020 serving as Associate Area Legal Counsel for the Church of Jesus Christ of Latter Day Saints. The 2020 Spring Bar was therefore missed as well as the 2020 District Court conference having been cancelled. Though I was able to join by phone the Senior Judges meeting, I was unable to join, via Zoom, the Annual Conference in September, but have requested the video of the same and intend on obtaining as many hours by December 31 as are required for 2020 in order to meet the standard..

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

28 September 2020

Date

Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, Michael D. Lyon, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.

No opportunities

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVATE, and my retirement date is 15 Sep 2013.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There ☐ is ☑ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE PRIVATE PRIVATE

My **email address** and **phone number** are:

PRIVATE PRIVATE PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
32	31.5	*

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I read the 2020 Legislative Synopses prepared by Michael ~~Ter~~Dreschel in April 2020, and reported it to Tom Langhorn, as directed. I am also registered for the annual conference on September 23-24, 2020. I have complied with the Education Department education hour requirements.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

17 Sep 2020
Date

Michael D. Lyon
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

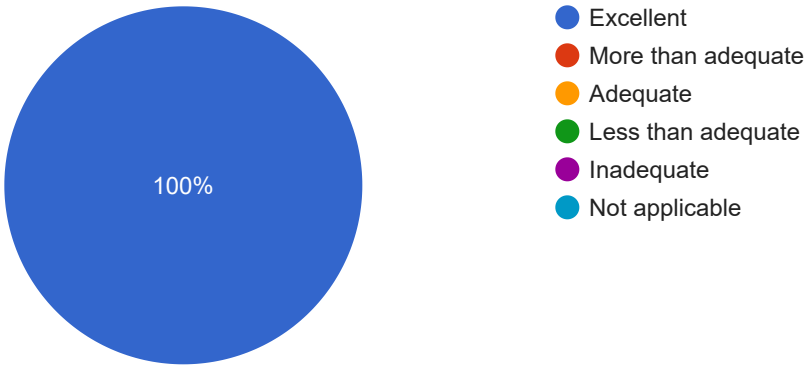
(Due by 10-12-20) 2020 TCE/PJ Questionnaire RE Senior Judge Michael D. Lyon

2 responses

Publish analytics

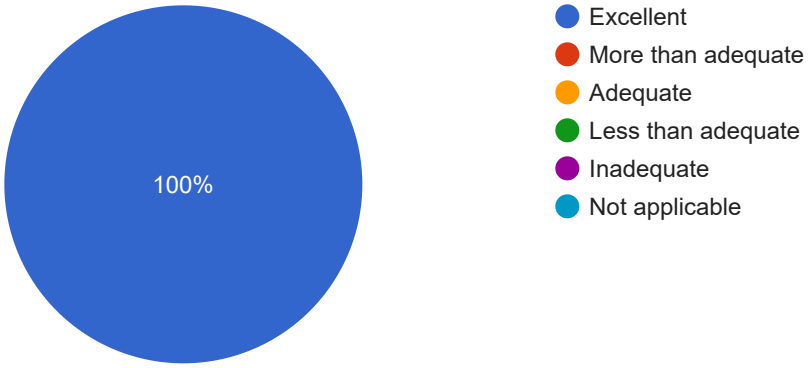
Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

2 responses



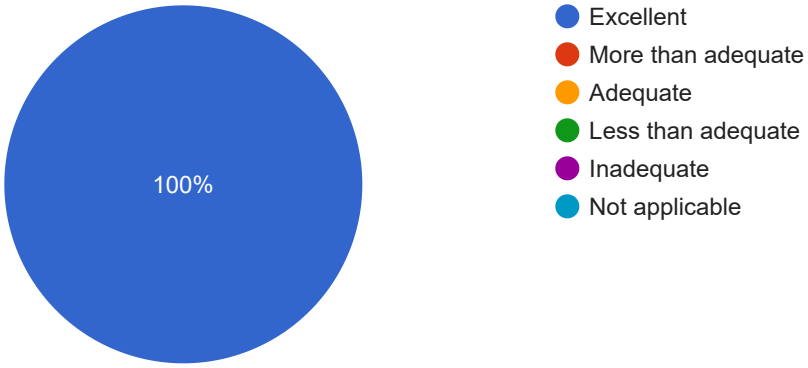
Maintains decorum in the courtroom.

2 responses



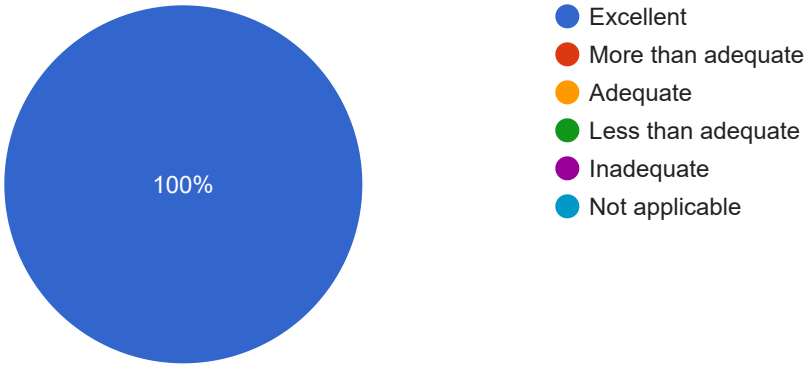
Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

2 responses



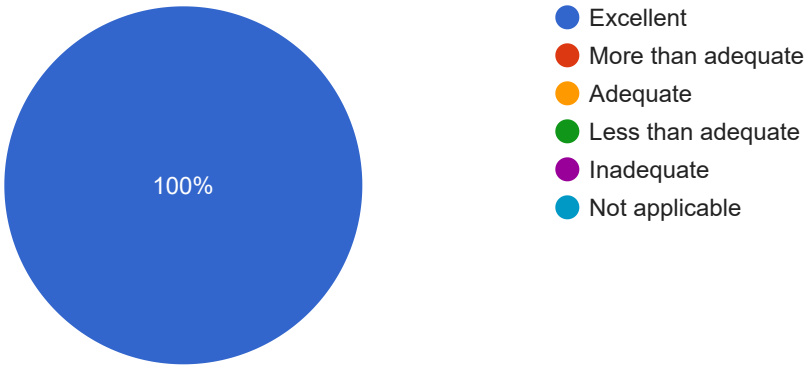
Prepares for [hearings] [oral argument].

2 responses



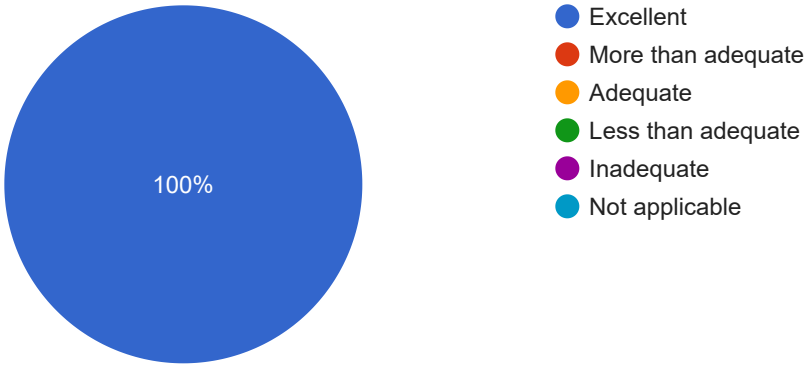
Avoids impropriety or the appearance of impropriety.

2 responses



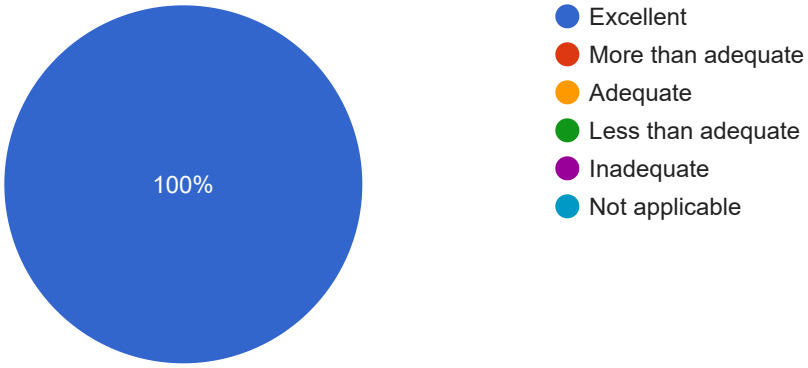
Displays fairness and impartiality toward all parties.

2 responses



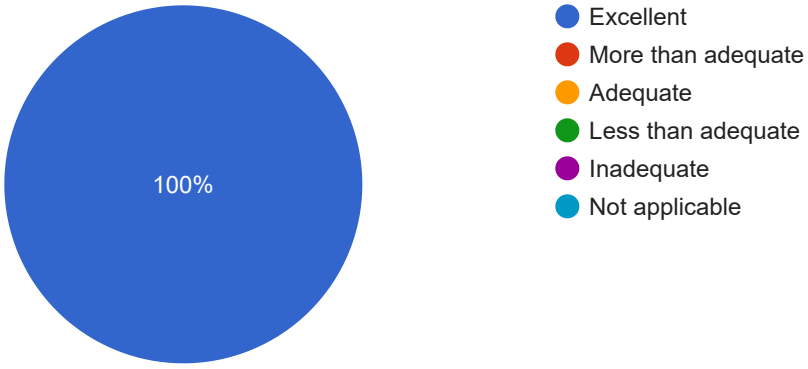
Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

2 responses



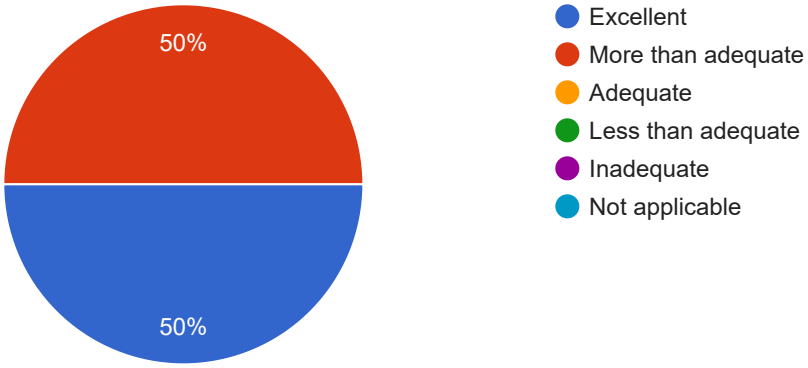
Manages workload.

2 responses



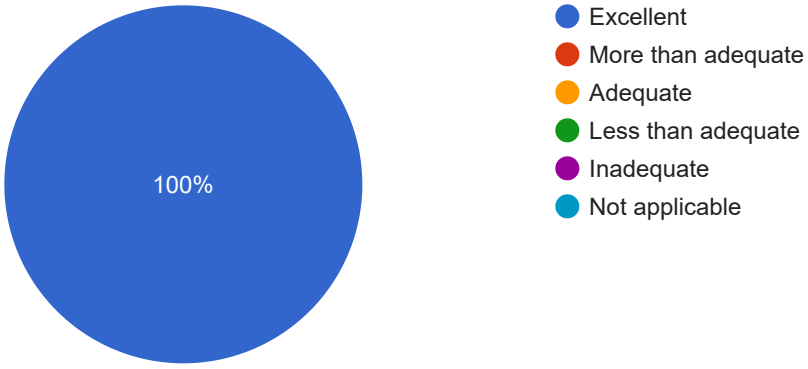
Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

2 responses



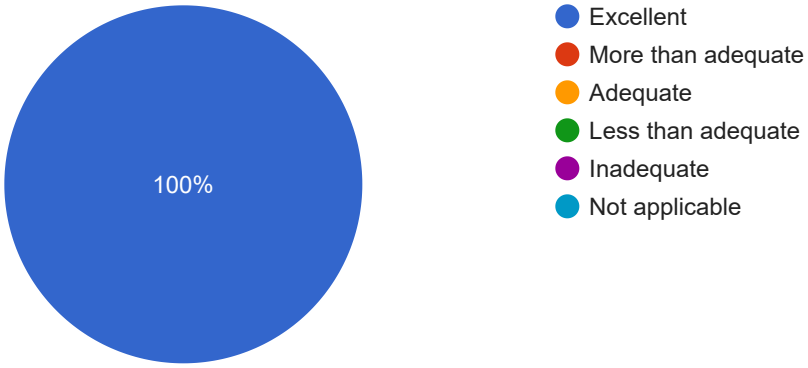
Is attentive to factual and legal issues before the court.

2 responses



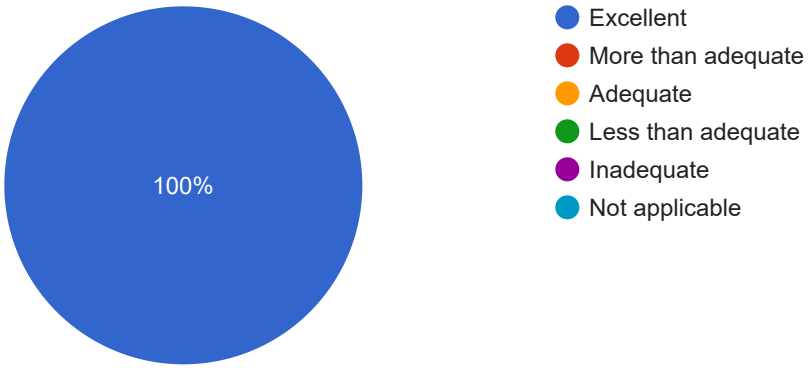
Adheres to precedent and is able to clearly explain departures from precedent.

2 responses



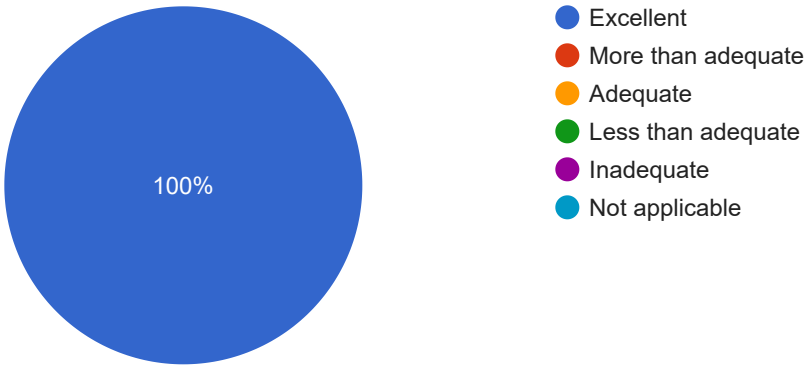
Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

2 responses



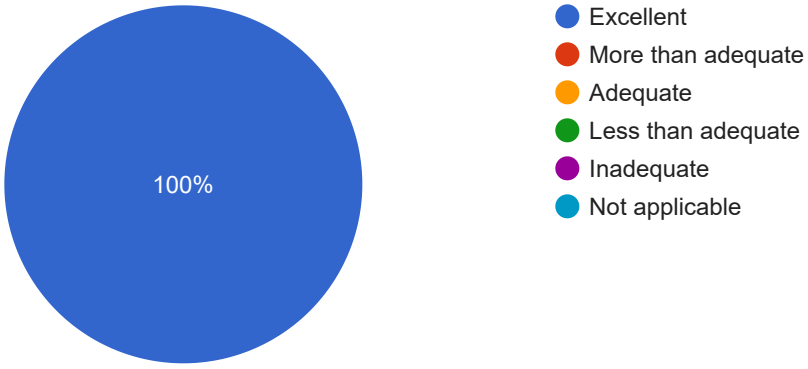
Maintains decorum in the courtroom.

2 responses



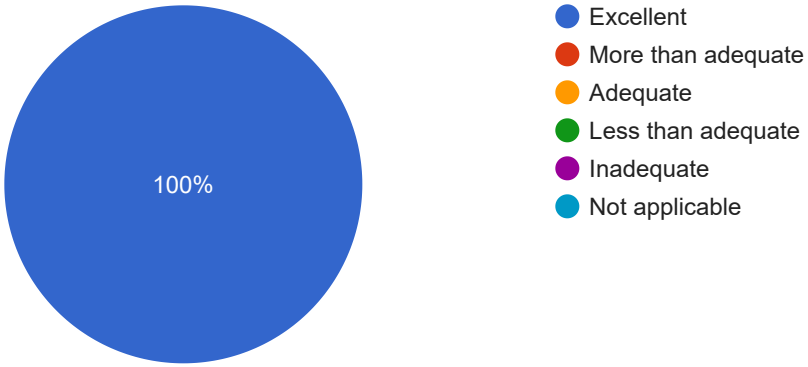
Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

2 responses



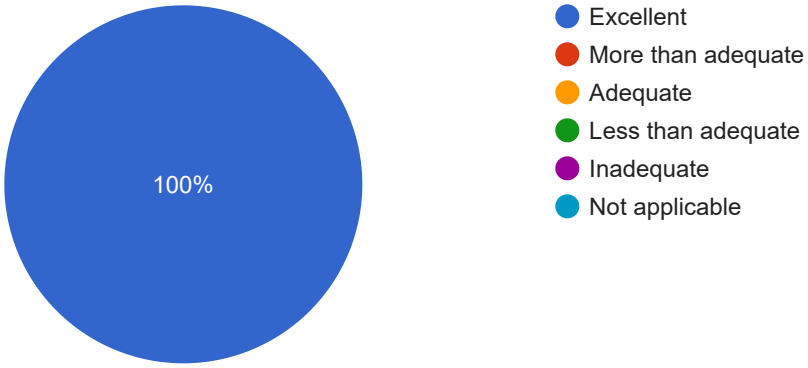
Prepares for [hearings] [oral argument].

2 responses



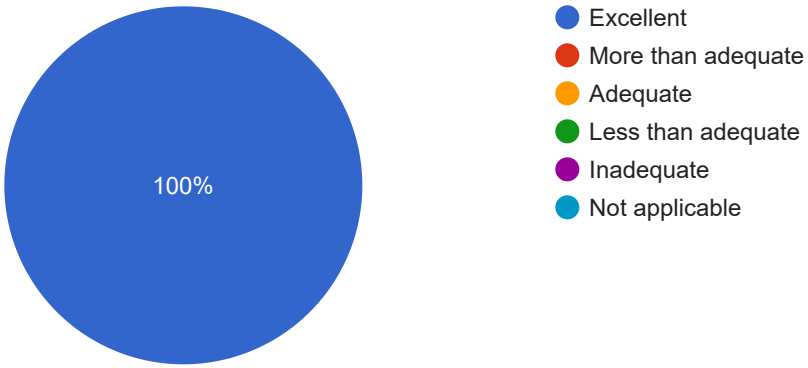
Avoids impropriety or the appearance of impropriety.

2 responses



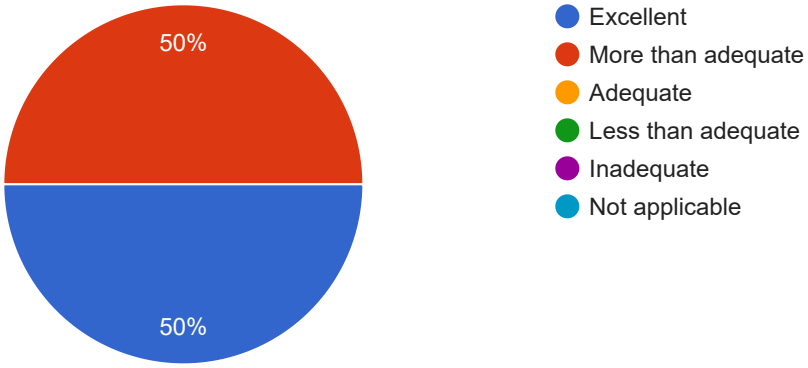
Displays fairness and impartiality toward all parties.

2 responses



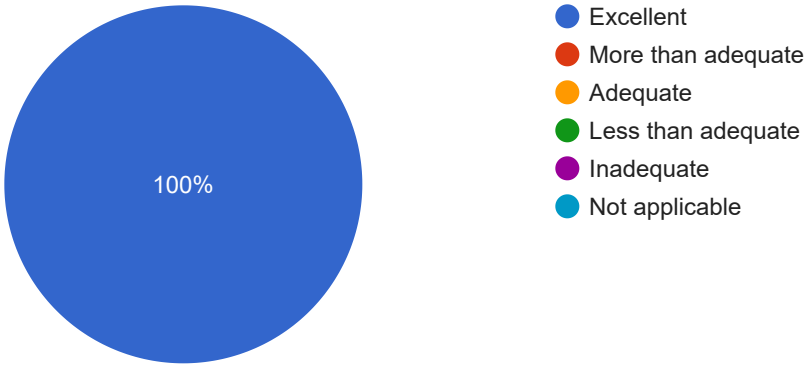
Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

2 responses



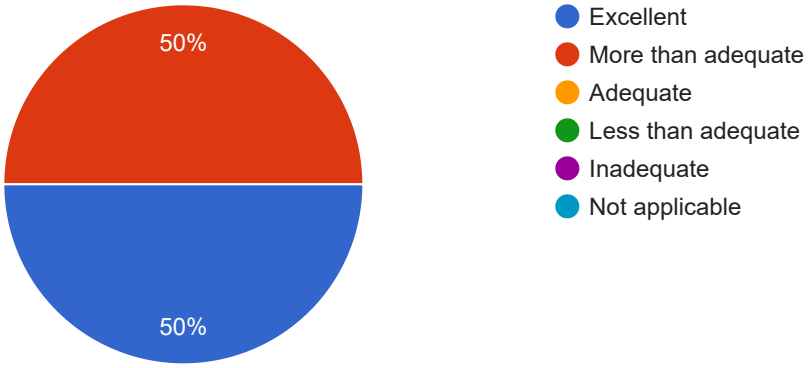
Manages workload.

2 responses



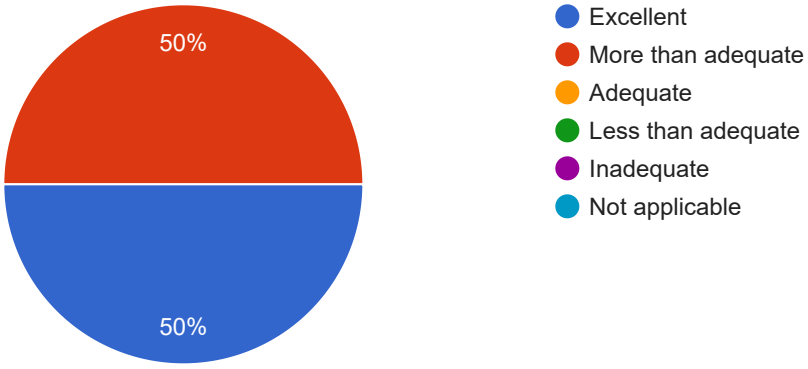
Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

2 responses



Uses the court's case management system in all cases.

2 responses



Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, Frederic M. Oddone, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.
I accepted all requests sent to me. I accepted assignments at least two days per year.

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVATE, and my retirement date is 4/16/2013.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE PRIVATE

My **email address** and **phone number** are: PRIVATE PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
30	*	*

*I have complied with the Education Department's requirements for 2019 and 2020.

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

9/21/2020
Date

/s/Frederic Oddone by Nancy Sylvester at the direction of Judge Frederic Oddone
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

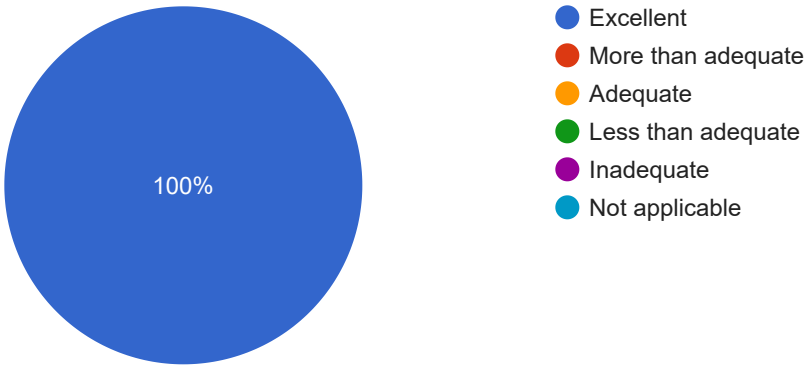
(Due by 10-12-20) 2020 TCE/PJ Questionnaire RE Senior Judge Frederic M. Oddone

2 responses

Publish analytics

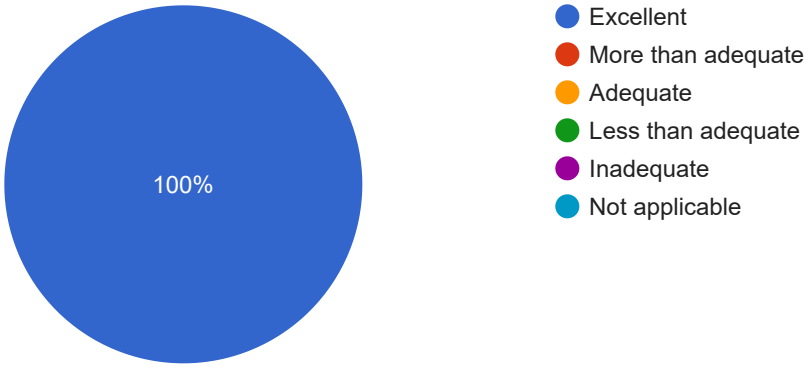
Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

2 responses



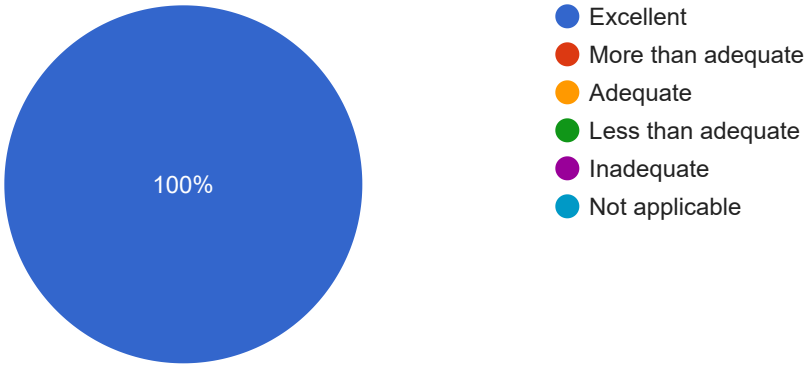
Maintains decorum in the courtroom.

2 responses



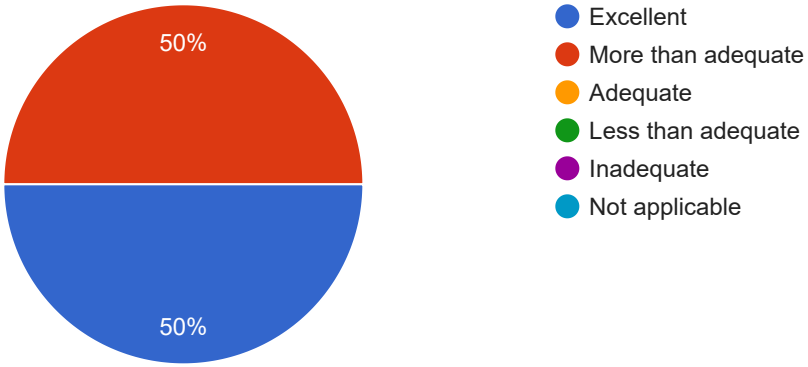
Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

2 responses



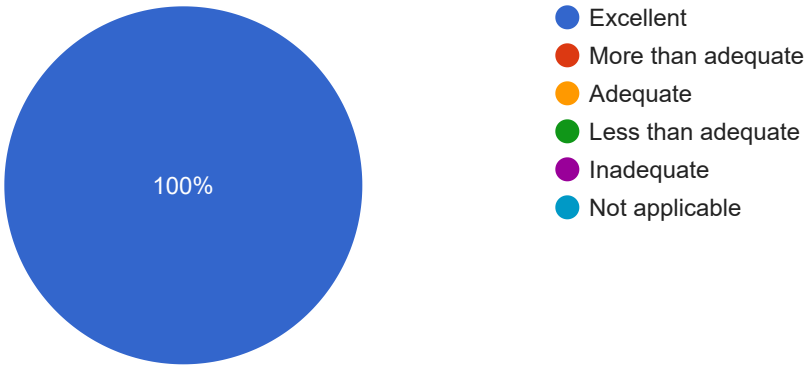
Prepares for [hearings] [oral argument].

2 responses



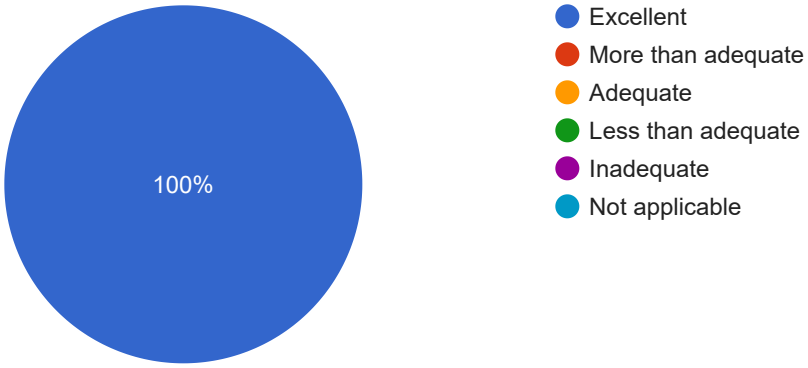
Avoids impropriety or the appearance of impropriety.

2 responses



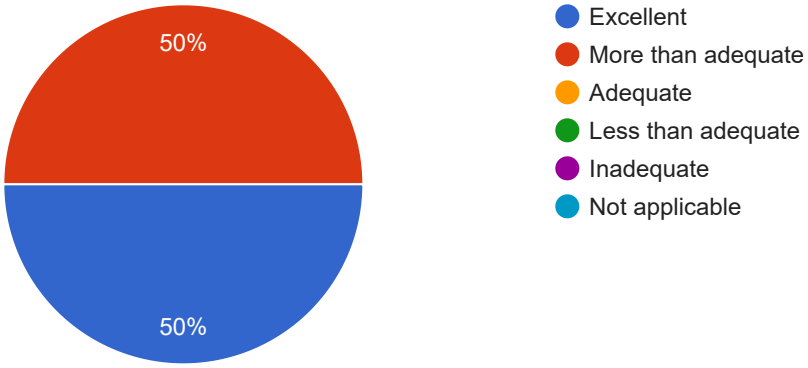
Displays fairness and impartiality toward all parties.

2 responses



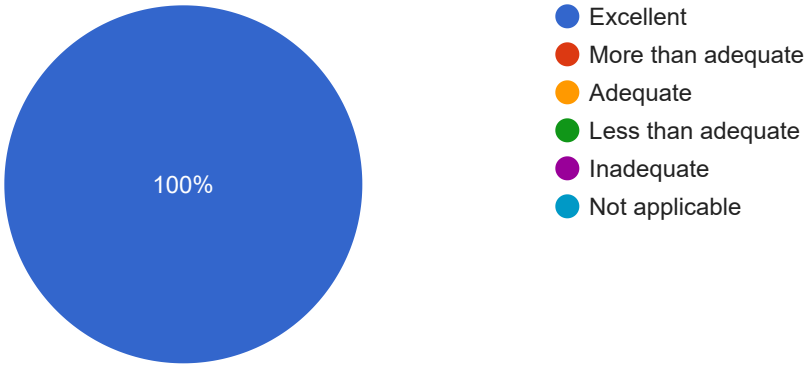
Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

2 responses



Manages workload.

2 responses



Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

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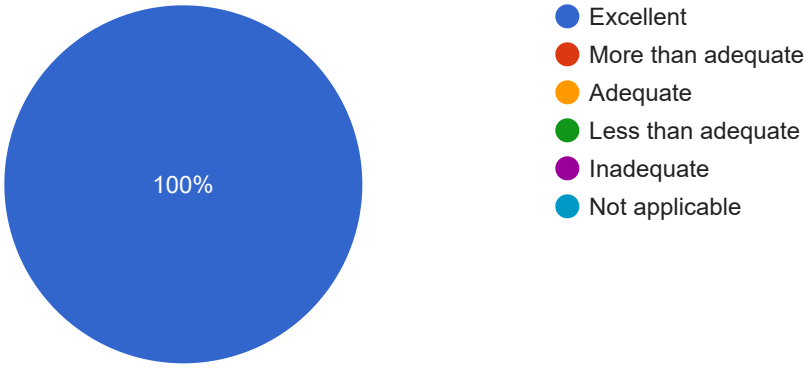
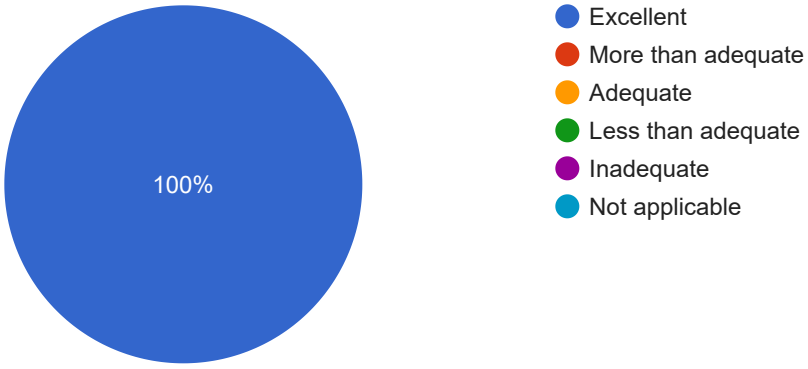


Is attentive to factual and legal issues before the court.

2 responses



Adheres to precedent and is able to clearly explain departures from precedent.

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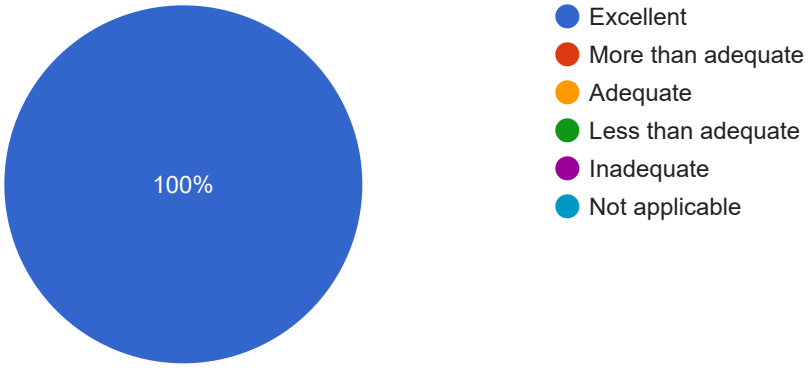

Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

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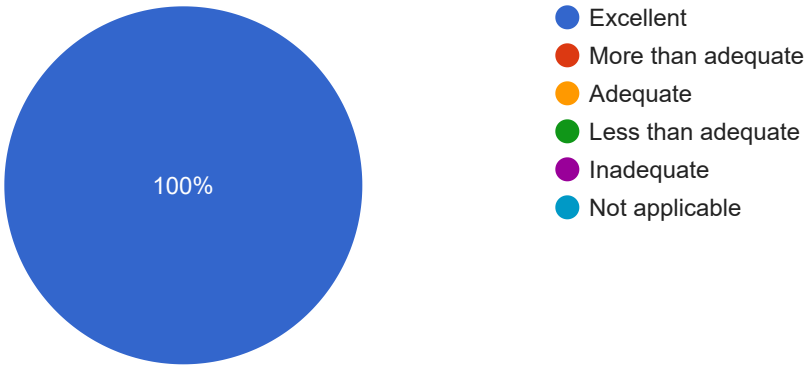
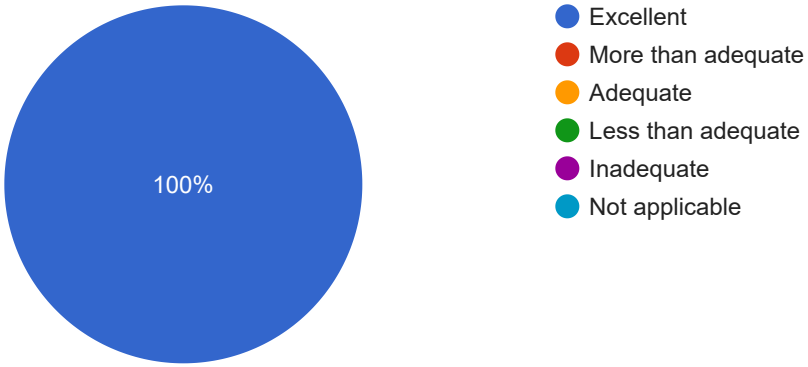


Maintains decorum in the courtroom.

2 responses



Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

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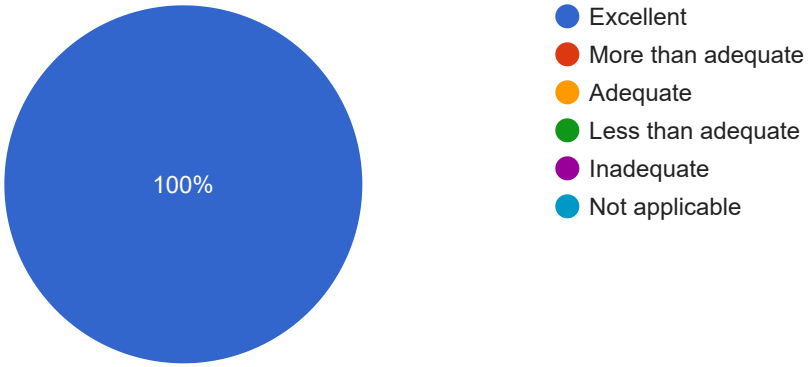
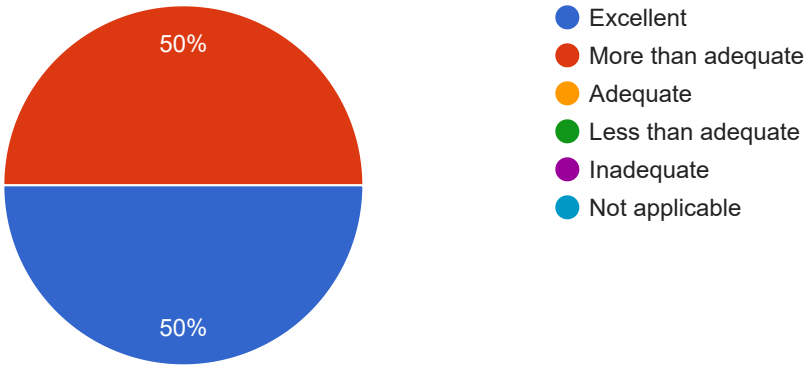


Prepares for [hearings] [oral argument].

2 responses



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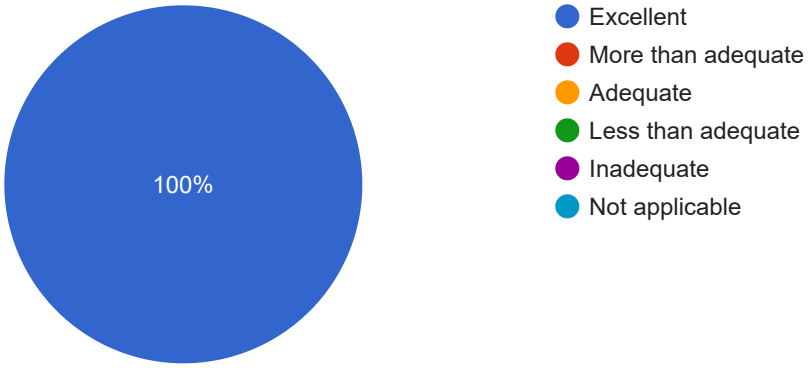
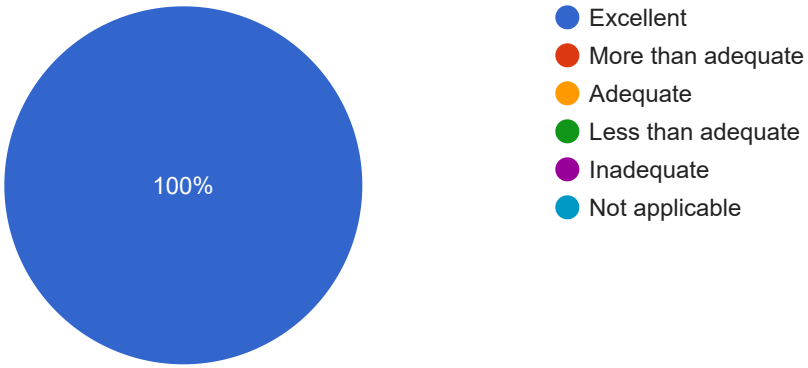


Displays fairness and impartiality toward all parties.

2 responses



Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

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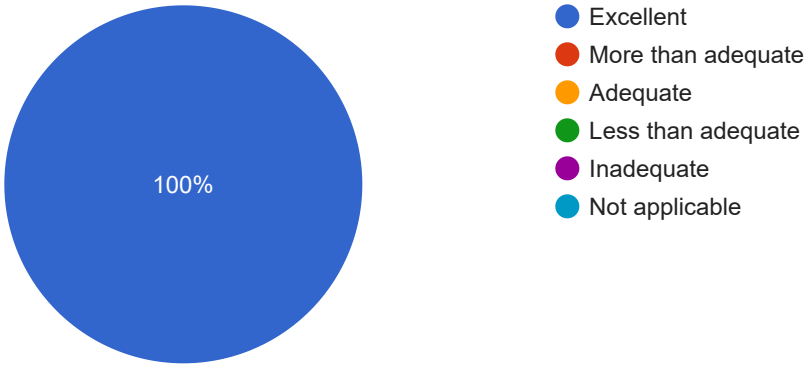
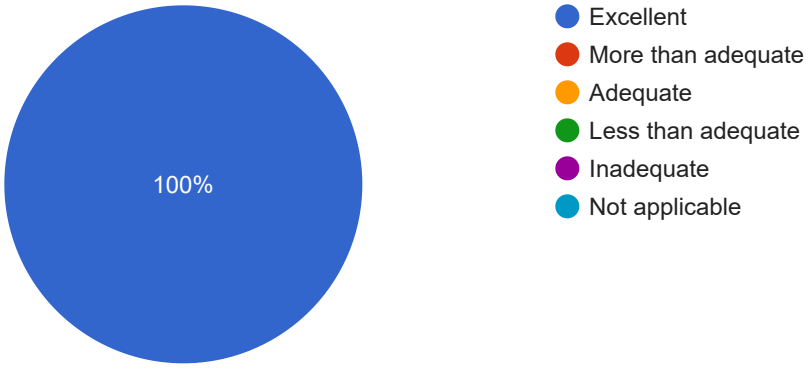


Manages workload.

2 responses



Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

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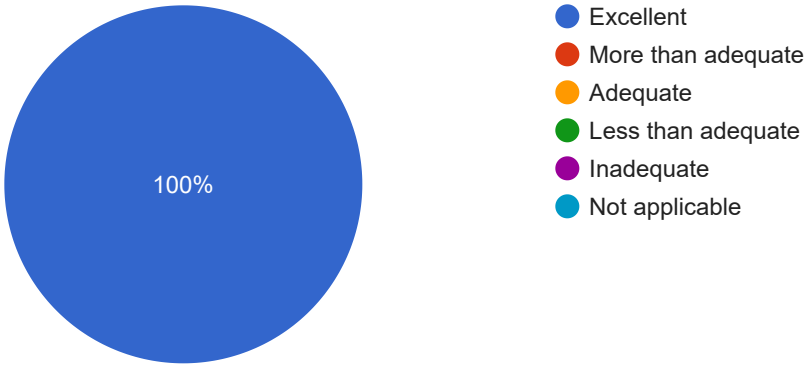
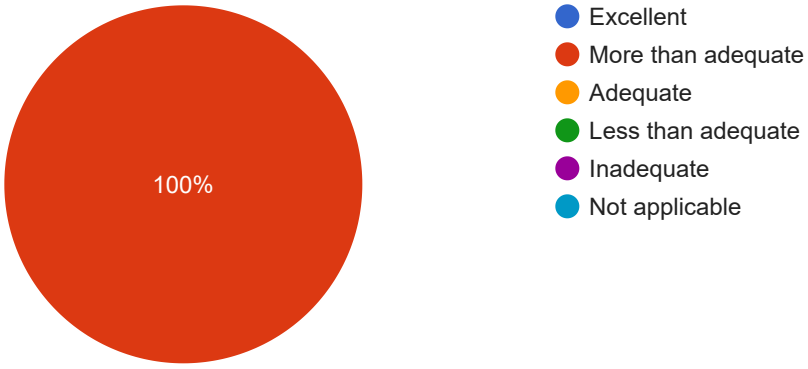


Uses the court's case management system in all cases.

2 responses



Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, Sterling Sainsbury, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.
I accepted every assignment recieved. In 2019 there were two assignments in Richfield. Previous to 2019, I don't believe I recieved more than one assigment.

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is PRIVATE and my retirement date is 12/31/2012

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There ☐ is ☑ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE PRIVATE

PRIVATE or PRIVATE

My **email address** and
phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
31		

I complied with the Education Department's education hour requirements.

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I will be attending the Juvenile Court Conference in the Spring and the Judicial Conference next week, and some CLE webinars.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Sept 16, 2020
Date

Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

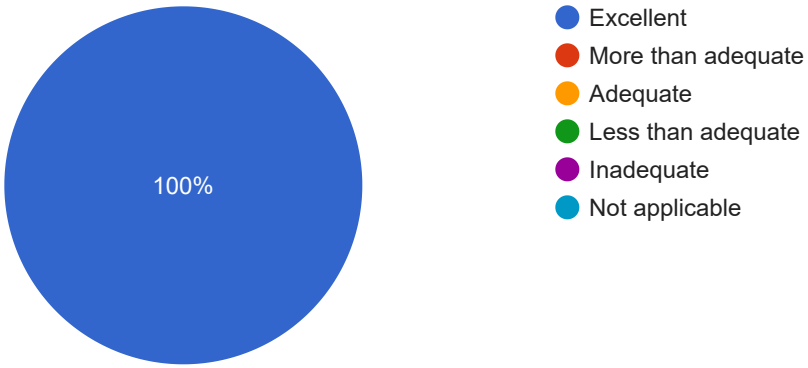
(Due by 10-12-20) 2020 TCE/PJ Questionnaire RE Senior Judge Sterling B. Sainsbury

1 response

Publish analytics

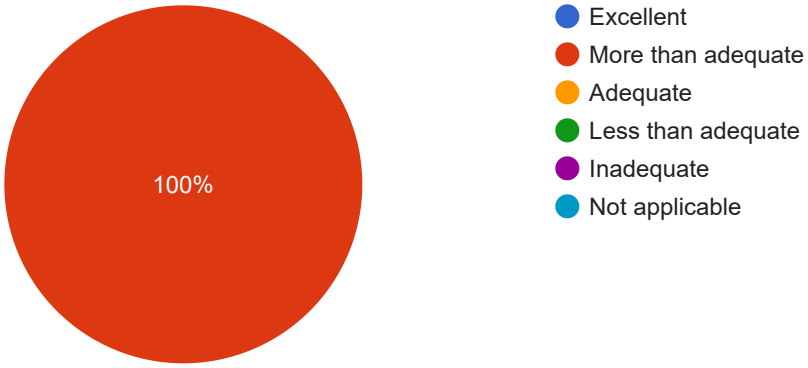
Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

1 response



Maintains decorum in the courtroom.

1 response



Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

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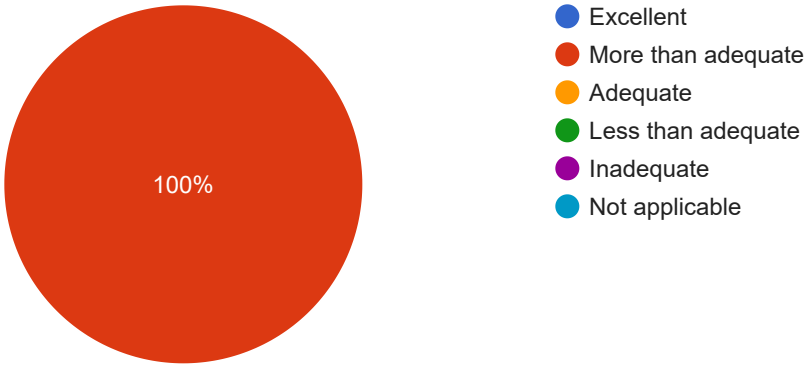

Prepares for [hearings] [oral argument].

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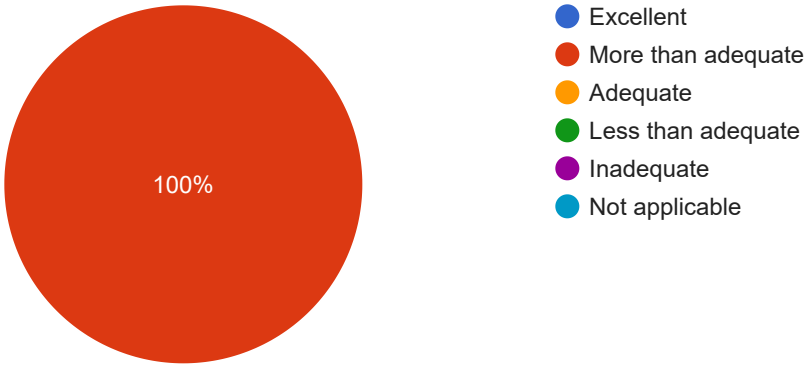
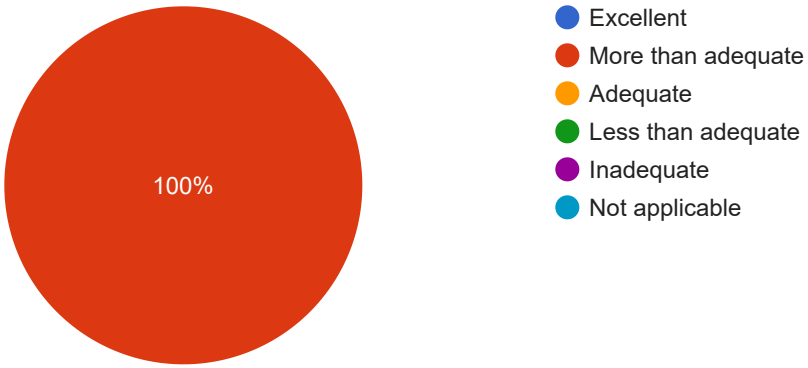


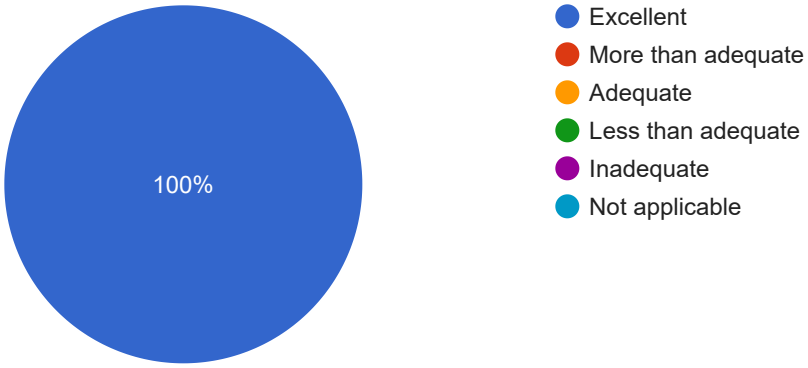
Avoids impropriety or the appearance of impropriety.

1 response



Displays fairness and impartiality toward all parties.

1 response



Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

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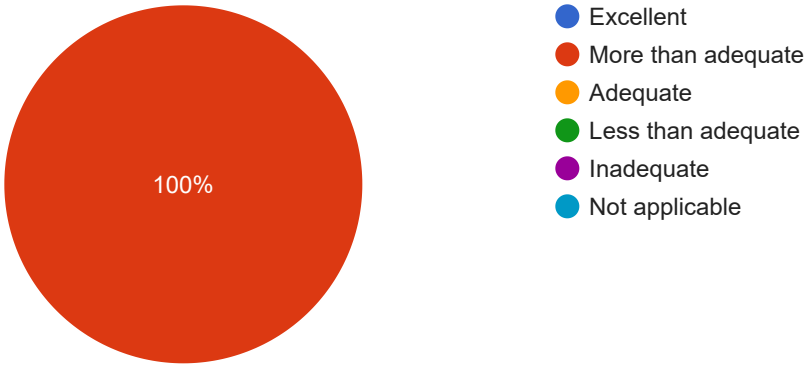
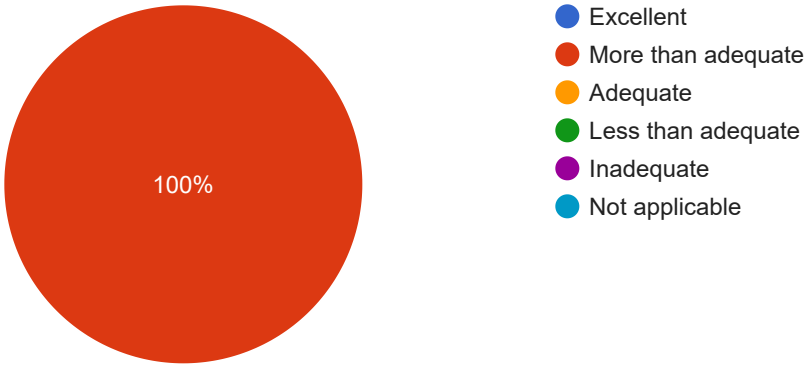


Manages workload.

1 response



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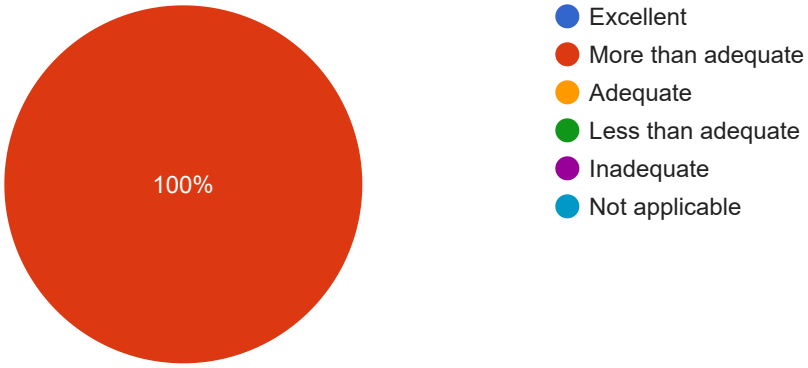

Is attentive to factual and legal issues before the court.

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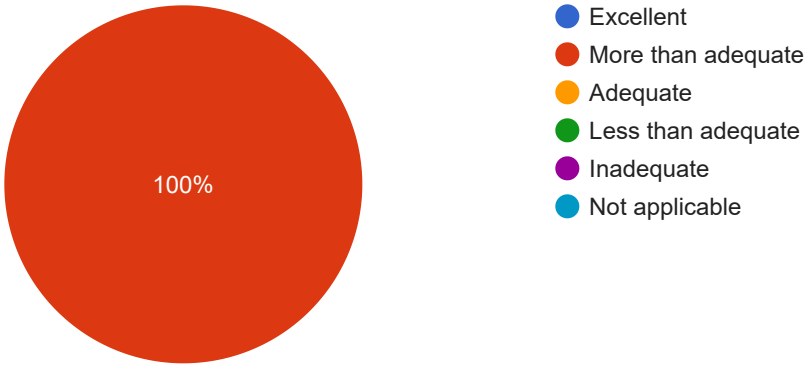

Adheres to precedent and is able to clearly explain departures from precedent.

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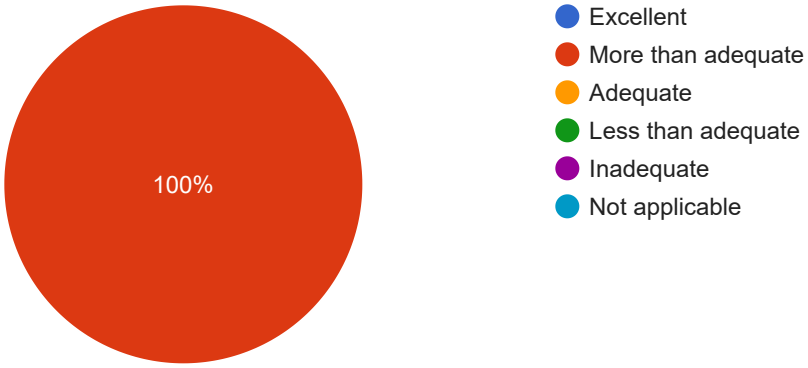
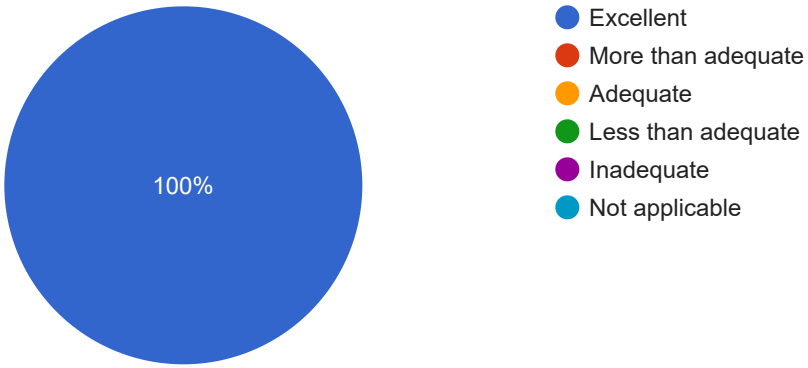


Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

1 response



Maintains decorum in the courtroom.

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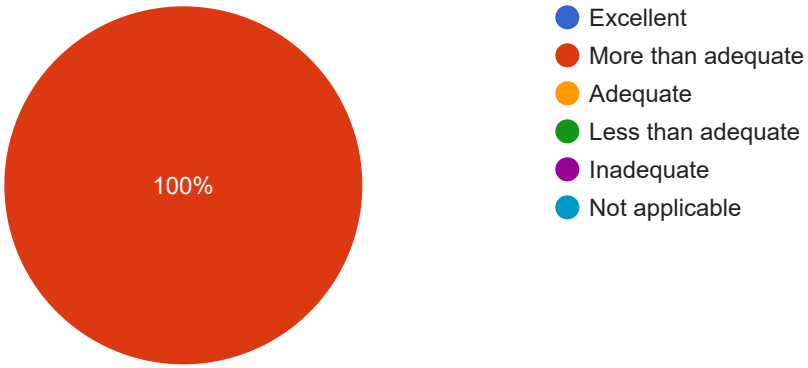

Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

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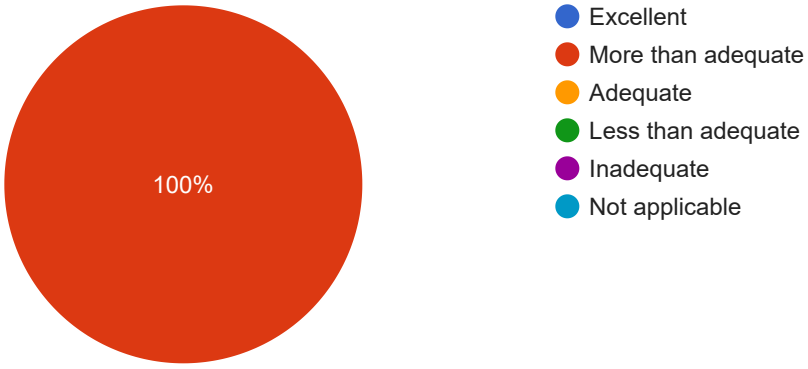

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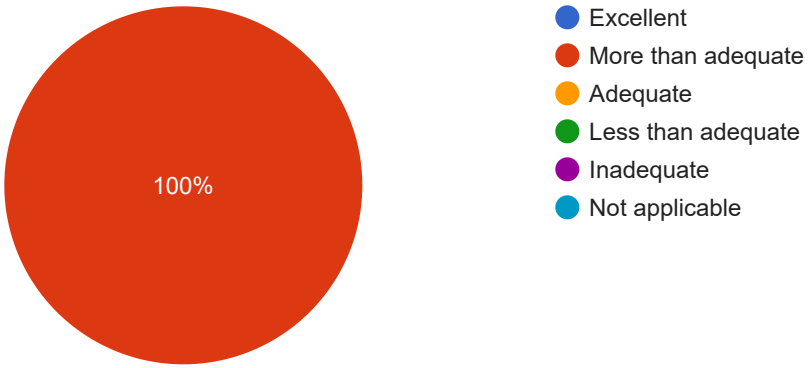

Avoids impropriety or the appearance of impropriety.

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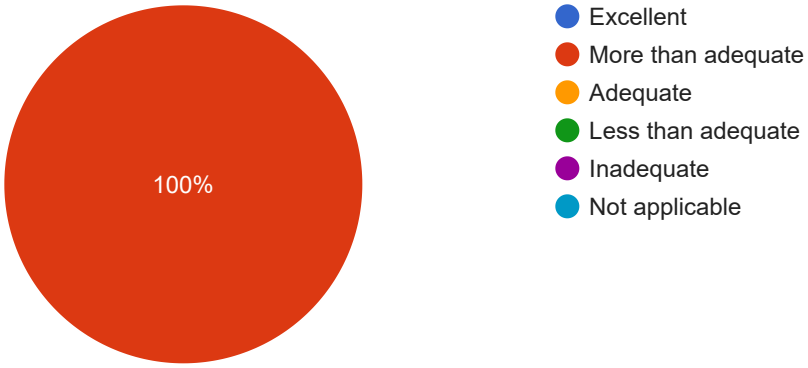

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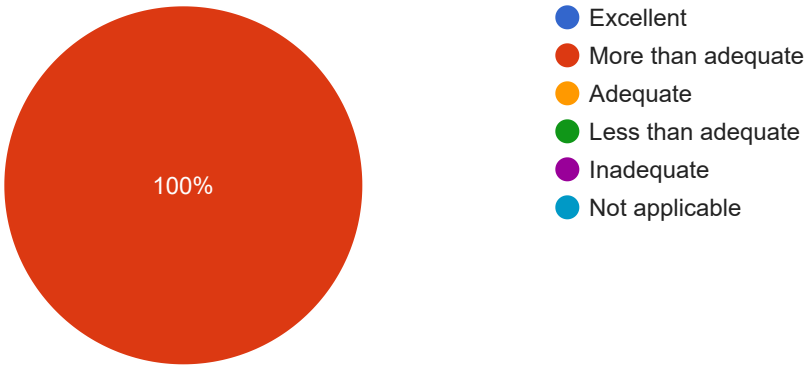

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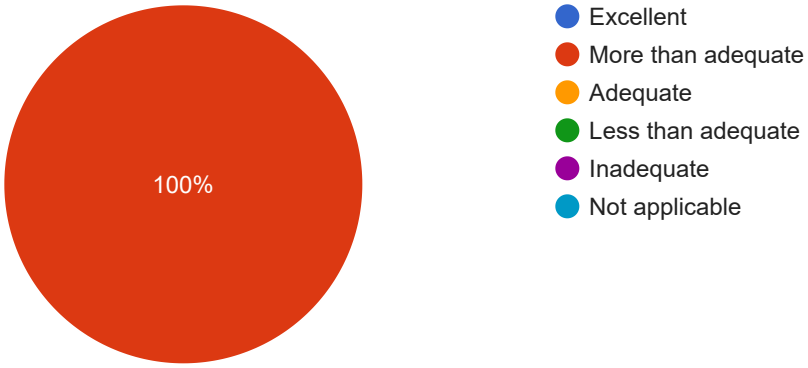
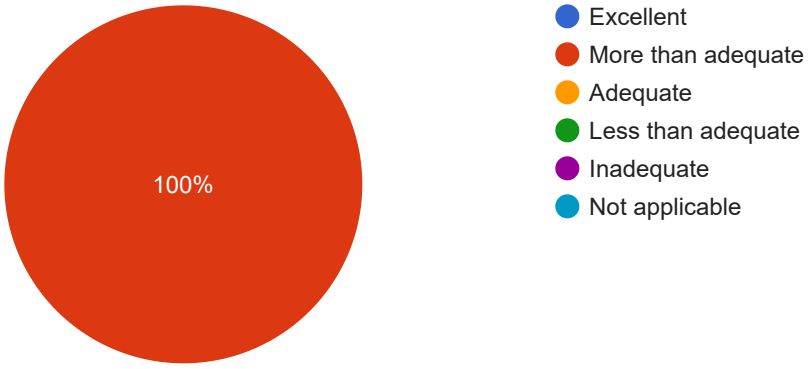


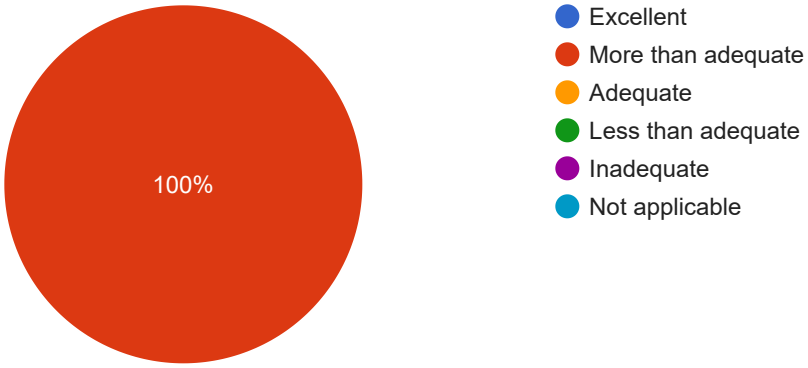
Manages workload.

1 response



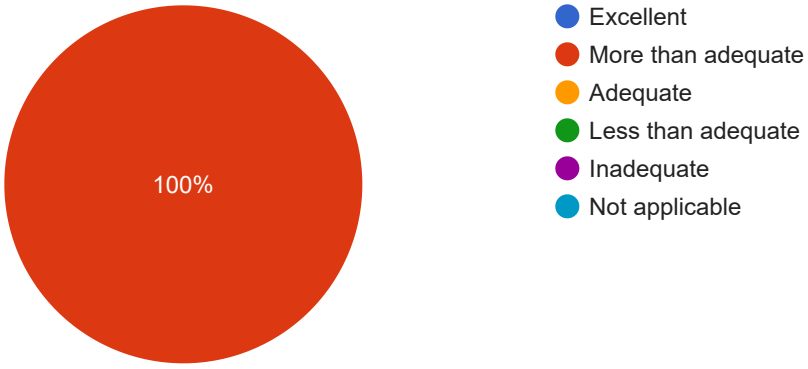
Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

1 response



Uses the court's case management system in all cases.

1 response



Senior Judge Application for District or Juvenile Court Judge
Active Status

Qualifications for Office

I, ___Gary D. Stott_____, hereby apply for the office of Active Senior Judge and declare as follows:

1) I was retained in the last election in which I stood for election.

2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.

3) I am physically and mentally able to perform the duties of judicial office.

4) I demonstrate appropriate ability and character.

5) I am admitted to the practice of law in Utah, but I do not practice law.

6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.

8) I am a current resident of Utah and available to take cases.

9) I will satisfy the education requirements of an active judge.

10) I will accept assignments at least two days per calendar year, subject to being called.

11) If applying for a subsequent active senior judge term: During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.

_____

_____

_____

12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;

14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.

15) I was not removed from office or involuntarily retired on grounds other than disability.

16) I was not suspended during my final term of office or final six years in office, whichever is greater.

17) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

18) I will submit relevant information as requested by the Judicial Council.

19) My date of birth is__PRIVATE___, and my retirement date is _ __July 2009_____.

20) I have not been subject to any order of discipline for conduct as a senior judge.

21) There ☐ is ☐ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

22) During my current term there have been ____ orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.

23) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My **email address** and **phone number** are: PRIVATE PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

24) I have held no more than three cases per calendar year under advisement more than 60 days after submission.

25) I have held no cases under advisement more than 180 days after submission.

26) I am in substantial compliance with the Code of Judicial Conduct.

27) I am physically and mentally fit for office.

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
yes	yes	yes

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

Annual Judicial Conference, Utah Bar November Conference, others as needed.

29) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

9/14/2020 — Date

GARY D STOTT – Electronically Signed. — Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

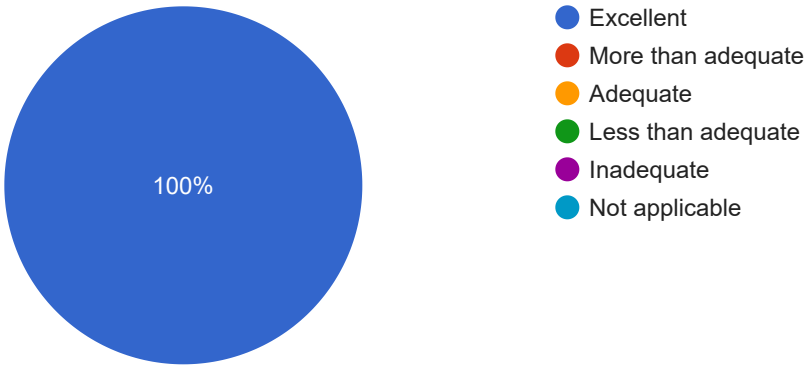
(Due by 10-12-20) 2020 TCE/PJ Questionnaire RE Senior Judge Gary D. Stott

2 responses

Publish analytics

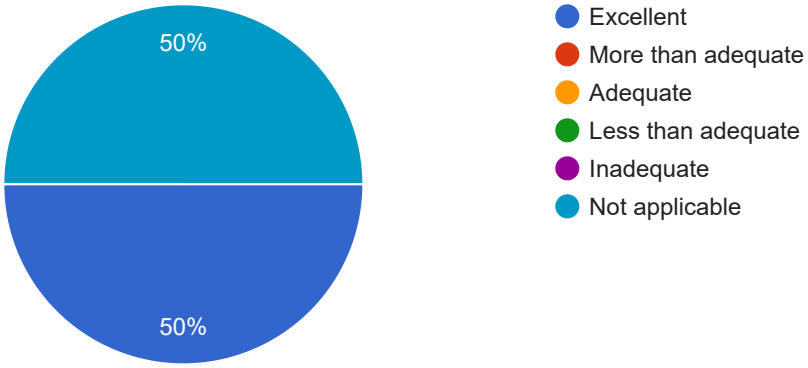
Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

2 responses



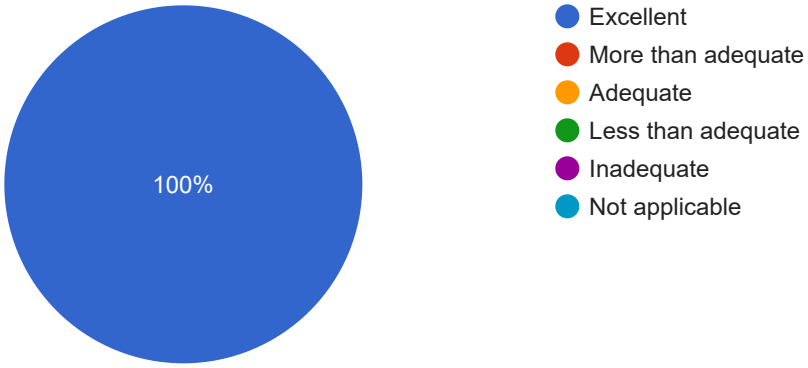
Maintains decorum in the courtroom.

2 responses



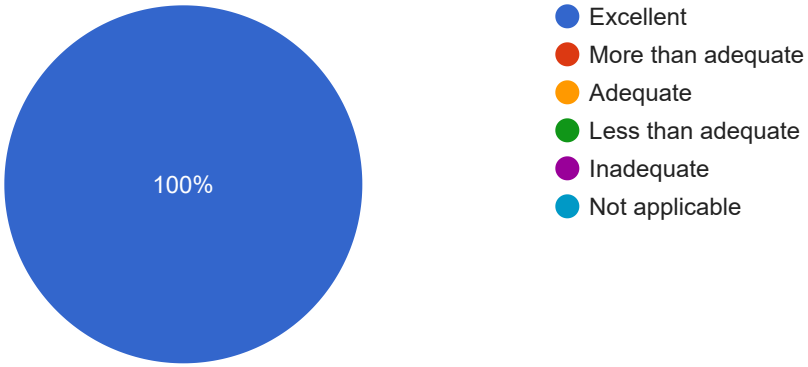
Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

2 responses



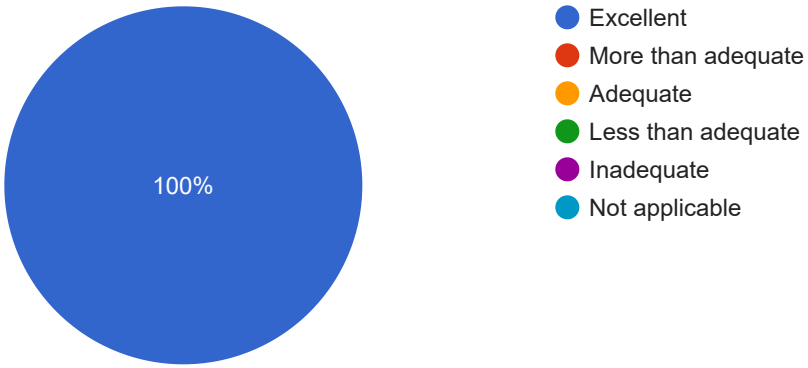
Prepares for [hearings] [oral argument].

2 responses



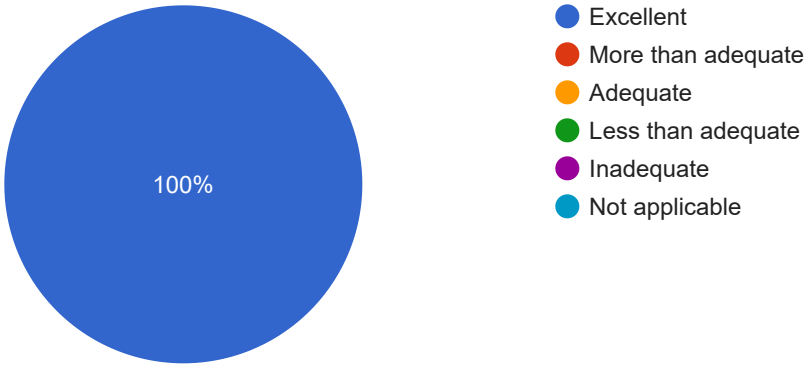
Avoids impropriety or the appearance of impropriety.

2 responses



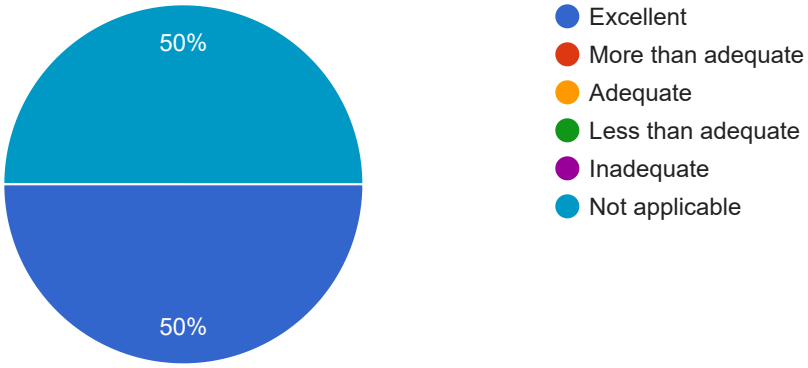
Displays fairness and impartiality toward all parties.

2 responses



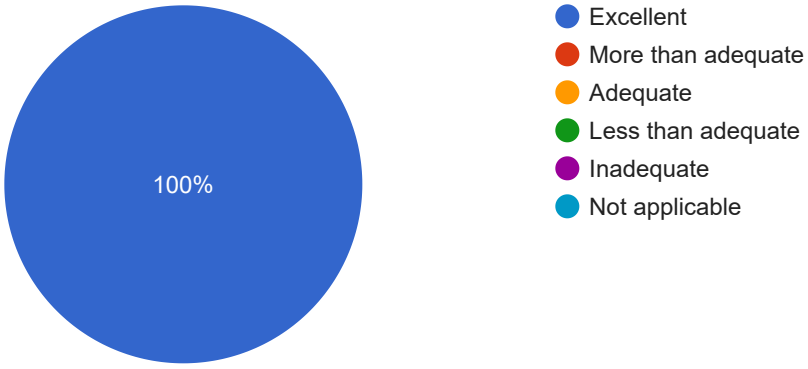
Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

2 responses



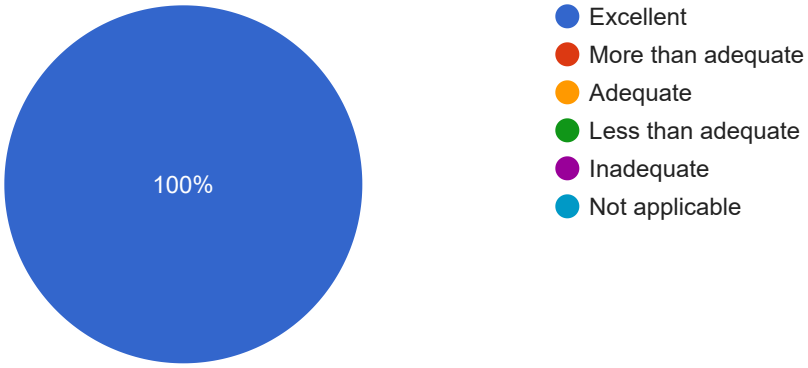
Manages workload.

2 responses



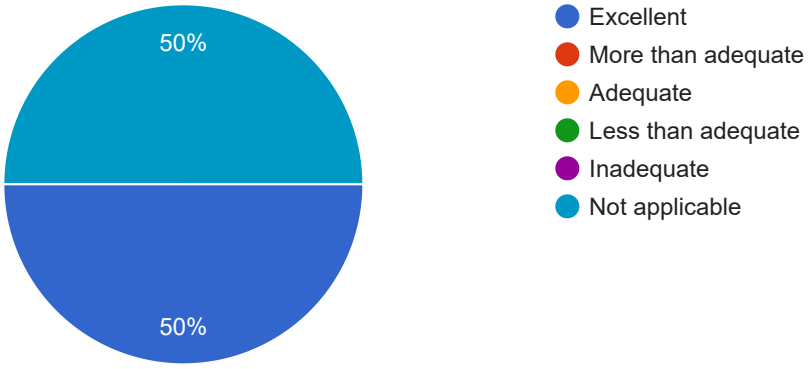
Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

2 responses



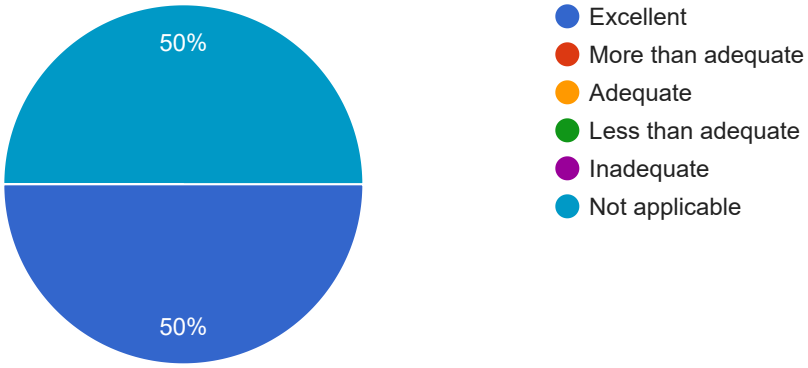
Is attentive to factual and legal issues before the court.

2 responses



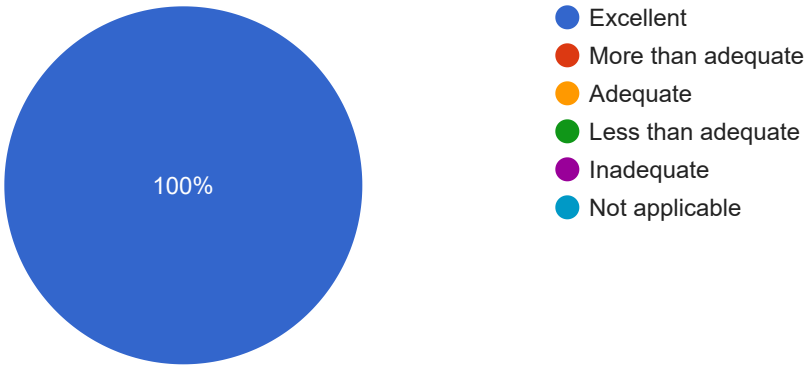
Adheres to precedent and is able to clearly explain departures from precedent.

2 responses



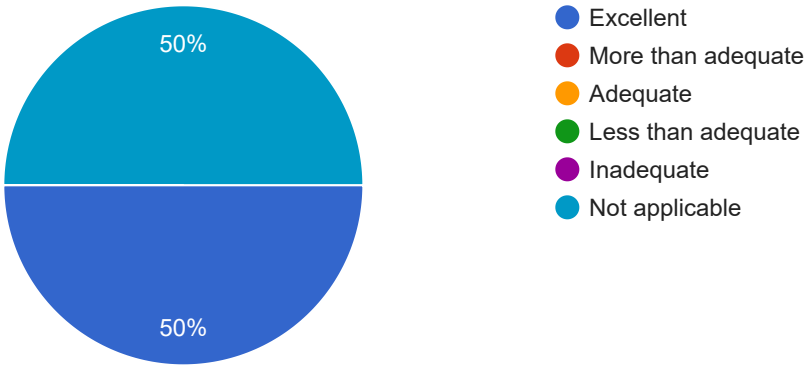
Demonstrates courtesy toward attorneys, court staff, and others in the senior judge's court.

2 responses



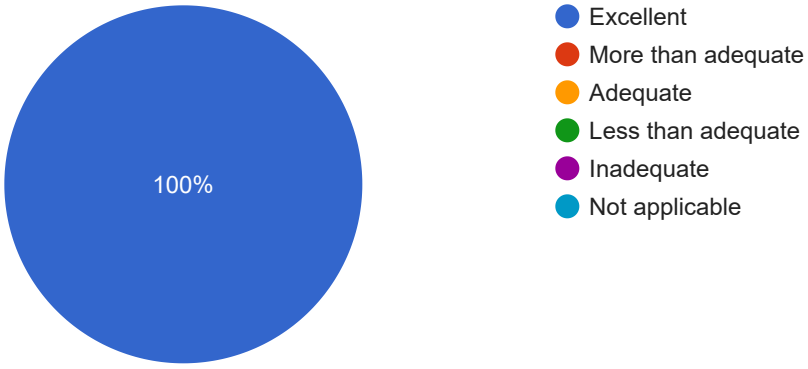
Maintains decorum in the courtroom.

2 responses



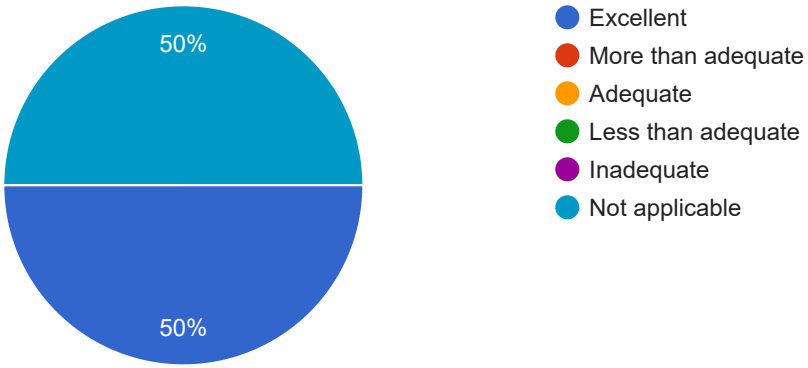
Demonstrates judicial demeanor and personal attributes that promote public trust and confidence in the judicial system.

2 responses



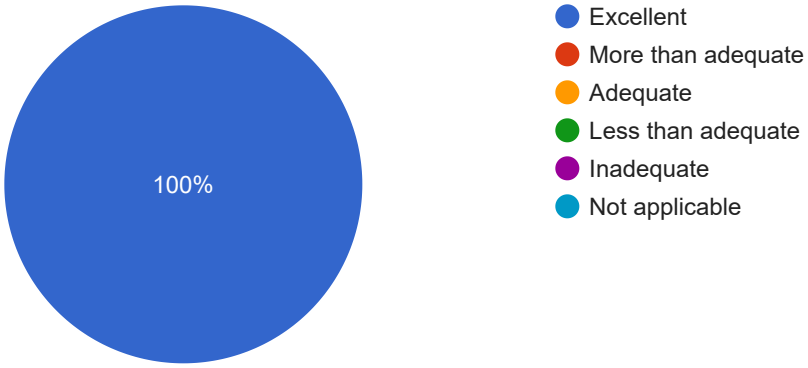
Prepares for [hearings] [oral argument].

2 responses



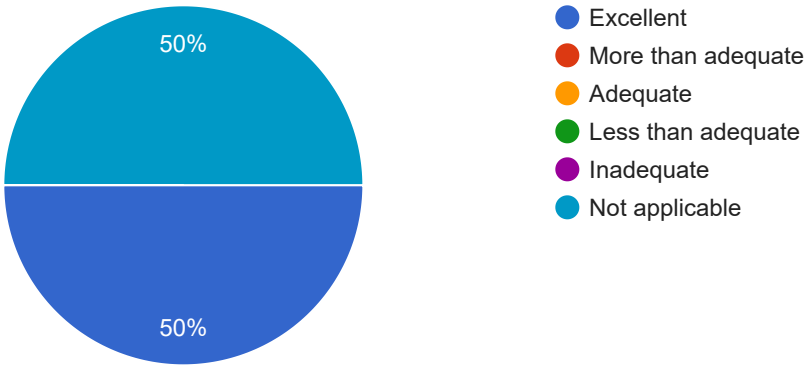
Avoids impropriety or the appearance of impropriety.

2 responses



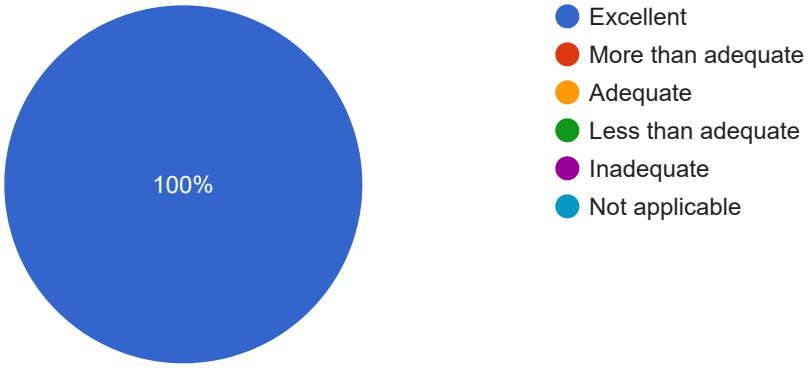
Displays fairness and impartiality toward all parties.

2 responses



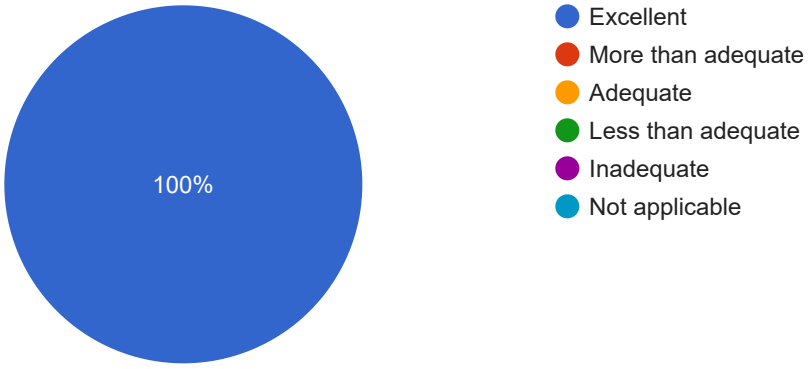
Is able to clearly communicate, including explaining the basis for written rulings, court procedures, and decisions.

2 responses



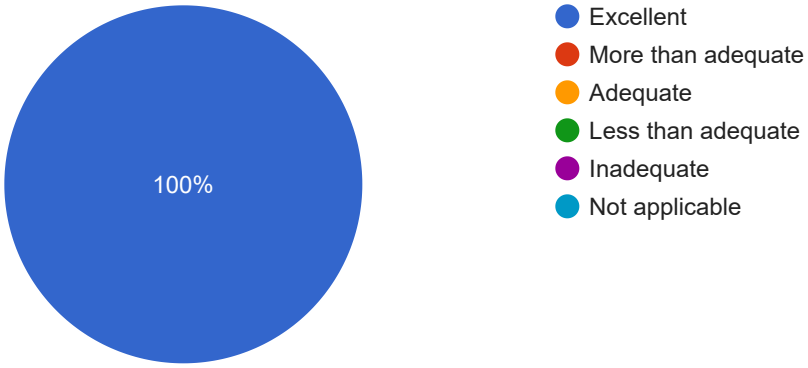
Manages workload.

2 responses



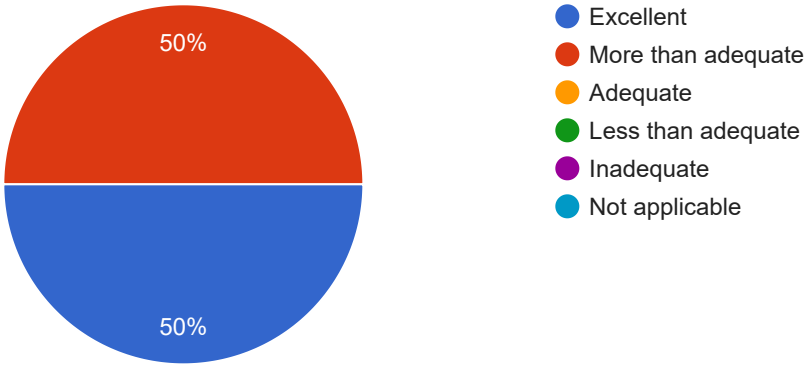
Is willing to share proportionally the workload within the court or district, or regularly accepts assignments.

2 responses



Uses the court's case management system in all cases.

2 responses



INACTIVE SENIOR JUDGES

Inactive District or Juvenile Court Senior Judge Application

Inactive Status

I, Robert W. Adkins, apply for the office of senior judge, inactive status, and declare as follows:

1) I was retained in the last election in which I stood for election.
2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
3) I am physically and mentally able to perform the duties of judicial office.
4) I demonstrate appropriate ability and character.
5) I am admitted to the practice of law in Utah, but I do not practice law.
6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
8) During my current term there have been NO orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE PRIVATE

My **email address** and **phone number** are: PRIVATE PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Sept. 18, 2020
Date

Robert W. Adkins
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for Justice Court Judge

Inactive Status

I, Lee L. Bunnell, apply for the office of senior judge, inactive status, and declare as follows:

1) I was certified by the Judicial Council for retention election or reappointment the last time the Council considered me for certification.

2) I voluntarily resigned from judicial office, was laid off pursuant to a reduction in force, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, recovered from or have accommodated that disability.

3) I demonstrate appropriate ability and character.

4) I was in office for at least five years. My separation date is 12/31/2017.

5) I comply with the restrictions on secondary employment provided by the Utah Code.

6) There ☐ is ☑ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

7) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each.

8) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE PRIVATE PRIVATE

My **email address** and **phone number** are:

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below.

10/23/2020 — Date

Lee L. Bunnell — Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Inactive District or Juvenile Court Senior Judge Application

Inactive Status

I, ARTHUR G. CHRISTEAN, apply for the office of senior judge, inactive status, and declare as follows:

1) I was retained in the last election in which I stood for election.
2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
3) I am physically and mentally able to perform the duties of judicial office.
4) I demonstrate appropriate ability and character.
5) I am admitted to the practice of law in Utah, but I do not practice law.
6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
7) There ☐ is ☑ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE PRIVATE

My **email address** and **phone number** are: PRIVATE PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Sept 22, 2020 — Date

Arthur G. Christean — Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Inactive District or Juvenile Court Senior Judge Application

Inactive Status

I, THOMAS M. HIGBEE, apply for the office of senior judge, inactive status, and declare as follows:

1) I was retained in the last election in which I stood for election.
2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
3) I am physically and mentally able to perform the duties of judicial office.
4) I demonstrate appropriate ability and character.
5) I am admitted to the practice of law in Utah, but I do not practice law.
6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
7) There ☐ is ☑ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE PRIVATE

My **email address** and **phone number** are: PRI PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

9/23/20
Date

Thomas M. Higbee
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Senior Judge Application for Justice Court Judge

Inactive Status

I, Jack L. Stevens, apply for the office of senior judge, inactive status, and declare as follows:

1) I was certified by the Judicial Council for retention election or reappointment the last time the Council considered me for certification.
2) I voluntarily resigned from judicial office, was laid off pursuant to a reduction in force, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, recovered from or have accommodated that disability.
3) I demonstrate appropriate ability and character.
4) I was in office for at least five years. My separation date is July 12, 2012.
5) I comply with the restrictions on secondary employment provided by the Utah Code.
6) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
7) During my current term there have been zero orders of discipline against me entered by the Supreme Court, and I have attached a copy of each.
8) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My **email address** and **phone number** are: PRIVATE PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below.

October 9, 2020 — Date

Jack L. Stevens — Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Email: nancyjs@utcourts.gov; Fax: 801-578-3843

Tab 9

Agenda

This item will be sent separately

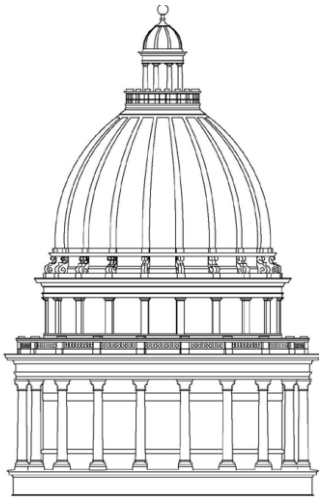
Tab 10

Agenda

REPORT TO THE

UTAH LEGISLATURE

Number 2020-10



A Performance Audit of Court Fines and Surcharges

October 2020

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

000190

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

Audit Subcommittee of the Legislative Management Committee
President J. Stuart Adams, Co–Chair • Speaker Brad R. Wilson, Co–Chair
Senator Karen Mayne • Senator Evan J. Vickers • Representative Brian S. King • Representative Francis D. Gibson

KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

October 2020

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Court Fines and Surcharges** (Report #2020-10). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade Minchey

Kade R. Minchey, CIA, CFE
Auditor General

UTAH STATE LEGISLATURE

AUDIT SUMMARY

000191

REPORT #2020-10 | OCTOBER 2020

Office of the Legislative Auditor General | Kade R. Minchey, Auditor General

PERFORMANCE AUDIT

Court Fines and Surcharges

AUDIT REQUEST

The Legislative Audit Subcommittee requested that we review the declining collection of court fines and surcharges and identify causes for these declines.

BACKGROUND

Judges order defendants to pay fines as part of sentencing for criminal convictions. In recent years, court collections of fines and related surcharges have declined.

Utah Code requires that in addition to the fine ordered, defendants pay a surcharge amount. The percentage of the surcharge depends on the violation and severity.

In most cases, judges must also order a court security surcharge, which is $53 for district and juvenile courts and $60 for justice courts.

KEY FINDINGS

- Some judges order fines below statutory minimums.
- Monitoring and reporting of sentencing will improve judicial transparency.
- We identified inconsistencies across courts for determining indigency, use of credits, and payment plans.

Judges Do Not Consistently Follow Guidelines for Imposing Fines.

The degree to which judges have discretion to determine fine amounts is a policy set by the Legislature. For example, driving under the influence violations have a statutory minimum set by the Legislature. Other violations do not have statutory minimums but guidelines established by the Sentencing Commission and the Uniform Fine Schedule. We found that some judges do not follow statue when sentencing in both district and justice courts and that average fine amounts vary by court location. Monitoring and reporting of sentencing can improve judicial transparency.

RECOMMENDATIONS

- The Judicial Council should track compliance with statutorily required minimum fines.
- The Judicial Council should monitor the suspension of fines and track and publish aggregate sentencing data.
- The Judicial Council should instruct the AOC to develop uniform processes for determining indigency and adopt standards for commmunity service credits.

Summary continues on back >>

REPORT SUMMARY

Oversight Can Improve for Indigency Determinations, Fine Credits, and Payment Plans

We found that practices in determining indigency differ by court location. Without set procedures for indigency qualifications, practice vary from verbal determination to signed affidavits. Additionally, we found inconsistencies in how credits were permitted to reduce defendant obligations. The Judicial Council should develop and adopt uniform processes and standards to improve the oversight and consistency across courts.

Practices for Ordering Court Security Surcharge Vary

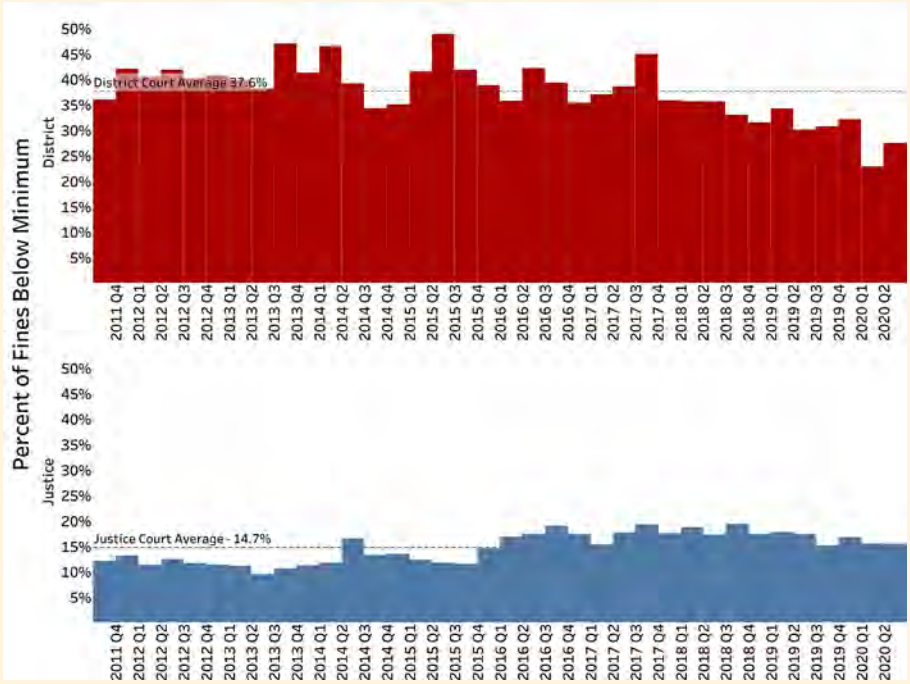
We found that some judges do not order the statutorily required court security surcharge when other fines and surcharges are not orderd. Decreases in collections of court security surcharge led to a recent $10 increase. Monitoring of court security surcharges will help ensure consistency with the Legislature's intent.

JRI Is One of Several Factors Influencing the Fluctuation of Court Fines and Surcharges

JRI was passed during the 2015 General Session and reduced penalties for first-time drug violations. We found that this bill reduced the severity of both drug offenses and traffic violations. However, we could not attribute the decline in average fines ordered to the passage of JRI. The decrease is part of a longer-term trend that started prior to JRI.

Both District and Justice Courts Order Fines Below the Statutory Minimum for DUI Violations

District courts sentence fines below the minimum for DUI violations classified as Class B misdemeanors nearly 38 percent of the time, which is more often than justice courts.



REPORT TO THE
UTAH LEGISLATURE

Report No. 2020-10

A Performance Audit of Court Fines and Surcharges

October 2020

Audit Performed By:

Audit Manager	Brian Dean, CIA, CFE
Audit Supervisor	Sarah Flanigan
Sr. Data Analyst	Tyson Cabulagan, CFE
Audit Staff	Jentrie Glines

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Chapter 1
Introduction

Judges order defendants to pay fines as part of sentencing for criminal convictions. In recent years, court collections of fines and related surcharges have declined. We reviewed trends and practices in district and justice courts to identify causes of this decline.

We reviewed trends and practices in district and justice courts to identify causes of the recent decline in court collections of fines and related surcharges.

Utah Code requires that, in addition to the fine ordered, defendants pay a criminal surcharge. The surcharge is equal to 90 percent of fines for convictions of the following:

- Felonies
- Class A misdemeanors
- Driving under the influence or reckless driving, and
- Class B misdemeanors other than moving violations in Title 41 – Motor Vehicles.

The surcharge is 35 percent for moving violations and all other criminal fines. Non-moving traffic violations are not subject to the surcharge. In most cases, judges must also order a court security surcharge of $53 for district and juvenile courts and $60 for justice courts.

The Administrative Office of the Courts (AOC) reports to the Judicial Council and oversees all nonjudicial activities of the courts. As the policy-making body for the courts, the Judicial Council has the authority to establish uniform rules for court administration. ***Utah Code*** 78A-2-107 specifies the AOC's responsibilities, including the following:

The Judicial Council is the policy-making body for the courts, and the Administrative Office of the Courts oversees all nonjudicial activities.

- assign, supervise, and direct the work of the nonjudicial officers of the courts
- implement the standards, policies, and rules established by the council
- develop uniform procedures for the management of court business

Although the AOC has responsibility for court processes, its oversight role does not infringe on judicial discretion. For example, judges

determine the amount of fines, due dates, and options for payment plans, while the AOC ensures appropriate tracking and recording of defendants' payments.

This audit was requested in response to the decline in collections of fines and surcharges. We were asked to identify the causes of this decline to assist legislators in their evaluation of future funding requests. Local entities retain all of the base fine ordered in justice courts. In district courts, fines for felonies go into the state's general fund, while fines for misdemeanors and infractions are split between the state's general fund and the local government. All of the criminal surcharge is retained by the state. Court security surcharges primarily fund court security operations, although a small portion of the court security surcharge in justice courts goes to the local government's general fund. Unlike fines and the court security surcharge, criminal surcharge collections impact only the state, not local entities. Although the direct impact of the decline to criminal surcharge-funded programs has been mitigated by recent legislation described later in this chapter, the decline of surcharge collections reduces state revenues and remains a concern.

Local entities retain 100 percent of the fine in justice courts, while all of the criminal surcharge goes to the state.

Collections of Fines and Surcharges Decreased by $8.9 Million from 2015 to 2019

We reviewed collection trends for all fines and surcharges for the last five fiscal years and found that fines and surcharges decreased by $8.9 million. We then compared these trends to the number of criminal case filings for the same period and found similar trends in justice courts, which represent 90 percent of all collections. In district courts, criminal case filings increased while collections decreased. We also identified how fines and surcharges are paid when other legal financial obligations, such as restitution, have also been ordered.

After a defendant has been sentenced, courts or other state agencies are responsible for collecting amounts owed, depending on the defendant's situation. Courts maintain collections responsibility for defendants who are not imprisoned and either not under formal supervision or are supervised by a private provider, while Adult Probation and Parole handles collections for defendants it supervises. For defendants who fail to pay on time, district courts must send

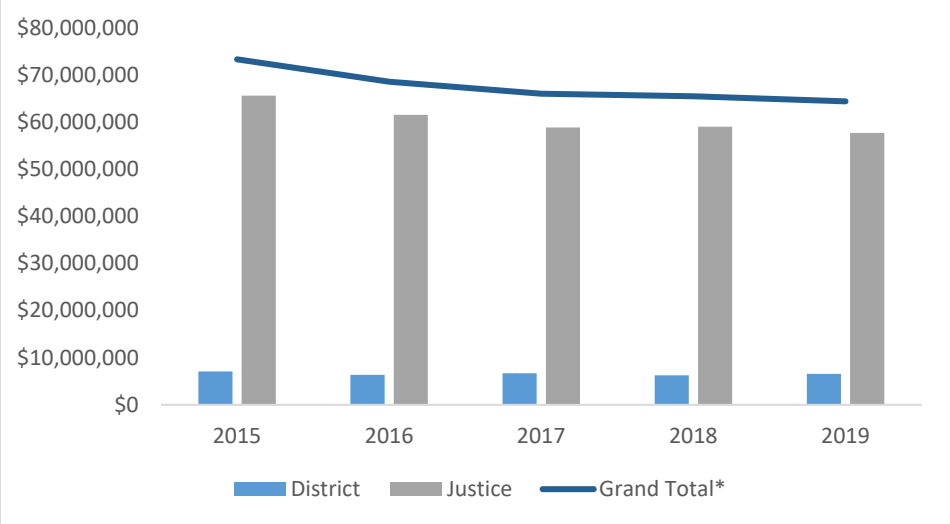
accounts to the Office of State Debt Collection (OSDC). While this report focuses on the courts' role in ordering and collecting fines and surcharges, our office recently conducted an audit of OSDC that examined how defendants' debts were handled after transfer from the courts; the report can be found at https://olag.utah.gov/olag-doc/2020-07_RPT.pdf. OSDC reported its average annual collection rate to be 11 percent. In fiscal year 2019, district courts sent $20.4 million in restitution, fines, fees, and surcharges to OSDC. Of the total sent to OSDC, $3.2 million was from fines and surcharges.

District courts sent $3.2 million in fines and surcharges to the Office of State Debt Collection in fiscal year 2019, which reported its average annual collection rate to be 11 percent.

Collections Decrease Driven Primarily by Justice Courts

Fines and surcharges ordered in justice courts comprise 90 percent of Utah's court collections. As a result, most of the decrease in collections also occurred in justice courts. Figure 1.1 shows the decline in collections over time for all courts.

Figure 1.1 Combined Total of Fines and Surcharges Collected by District, Juvenile, and Justice Courts Decreased 12 Percent. Fines and surcharges ordered by justice courts represented 90 percent of the total collected for the past five fiscal years.



Source: FINET
**Grand total includes juvenile court collections.*

As shown in Figure 1.1, justice court collections decreased $7.9 million (12 percent) from fiscal years 2015 to 2019. During the same period, district court collections decreased $480,010 (7 percent), from $7,057,593 to $6,577,584. Finally, juvenile courts decreased $515,696 (81 percent) from 2015's total of $632,943.

Justice court collections decreased $7.9 million from fiscal years 2015 through 2019.

We found that justice court criminal filings decreased by 12 percent from 2015 to 2019, which is the same percentage as the decrease in justice court collections. This equates to a decrease of 8,534 cases. This data does not include traffic cases which make up the majority of justice court filings. Additionally, not all cases result in a conviction with a fine ordered, thus the decrease in case filings does not fully explain the decline in justice court fines and surcharges, but reduced criminal cases contributed to the decline. In district courts, criminal filings increased by 8 percent while collections decreased.

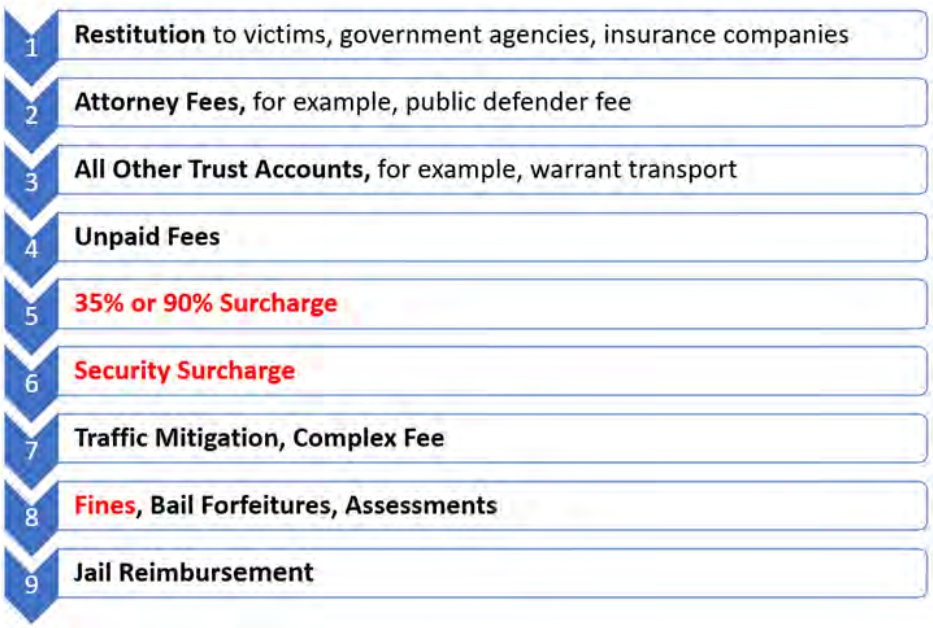
District court case filings increased by 8 percent, but district court collections decreased.

Restitution Must Be Paid in Full Before Payments Are Applied to Fines and Surcharges

When applicable, judges order defendants to pay restitution as victim compensation for losses resulting from the crime committed. Restitution has the highest priority of all legal financial obligations collected by the courts. When defendants are placed on a payment plan, the courts' accounting system automatically applies payments in order of priority. After restitution has been paid in full, payments are applied to the next priority, if applicable. Figure 1.2 shows all types of legal financial obligations in priority order.

The courts' accounting system automatically applies payments in order of priority for defendants on a payment plan.

Figure 1.2 Surcharges Rank Above Fines in Courts' Priority Order of Payments, Which Is Based on Statute. Circumstances of each case determine which elements shown here are included in a defendant's total.



Source: AOC Accounting Manual

As Figure 1.2 shows, defendants may have multiple obligations that must be paid before surcharges and fines. If a defendant has a high restitution amount and is making regular payments on a payment plan, it may be years before a payment will be applied to surcharges or fines, affecting collection rates.

When a defendant has a high restitution amount, it may be years before restitution is paid and monthly payments will be applied to surcharges or fines.

2020 Legislation Addressed Budgetary Issues for Programs Funded by Surcharge Collections

Prior to July 1, 2020, criminal surcharges went to the Criminal Surcharge Account and then were allocated by percentage to 10 accounts funding 13 programs. During the 2020 Legislative General Session, the Legislature passed House Bill (H.B.) 485, Amendments Related to Surcharge Fees. As a result, criminal surcharges now go into the general fund along with fines, while court security surcharges continue to fund the court security restricted account.

Prior to July 1, 2020, criminal surcharges went into a restricted account that funded 13 programs.

As a result of H.B. 485, the programs that previously received a set percentage of the surcharge collections now receive general fund appropriations.

The decline in collections had a direct impact on programs funded by surcharges and resulted in budgetary uncertainty from year to year as collections varied. All programs that previously received a set percentage of the surcharge collections for the year are now funded from the general fund through the regular appropriations process. Figure 1.3 shows the programs previously funded by criminal surcharges and funding appropriated for fiscal year 2021.

Figure 1.3 H.B. 485 Appropriated General Fund Money Equal to Surcharge Collections from Fiscal Year 2019 and Required Surcharges to Be Deposited into the General Fund. This bill stabilized funding for programs that had experienced a decline in recent years because of lower surcharge collections.

Program	HB 485 Appropriations (Equal to 2019 Collections)
Crime Victim Reparations Fund	$5,740,500
Peace Officers Standards and Training	$3,034,300
Emergency Medical Services Grant Program	$2,296,200
Law Enforcement State Task Force Grants	$1,360,200
Intoxicated Driver Rehabilitation	$1,230,100
Domestic Violence Services	$731,000
Utah Prosecution Council	$492,100
Law Enforcement Services Grants	$477,600
Statewide Warrants System	$250,000*
Substance Abuse Prevention – Juvenile Courts	$410,000
Substance Abuse Prevention – Student Support	$410,000
Guardian ad Litem	$287,000
Total	**$16,718,800**

**Statewide Warrant Systems indicated that less funding was needed, and thus the total for this program is $160,000 less than the $410,000 collected for the program in 2019.*

H.B. 485 redirected $16.7 million in surcharge revenue from the Criminal Surcharge Account into the general fund but has a net change of $0 for most program budgets.

As shown in Figure 1.3, redirecting surcharge revenue from the Criminal Surcharge Account into the general fund resulted in a shift of $16,718,800 in fiscal year 2021 with a net change of $0 for most programs previously funded by the criminal surcharge. While this change stabilized budgets for these programs by funding them from the general fund, the decline in surcharge collections remains a problem for state revenues overall.

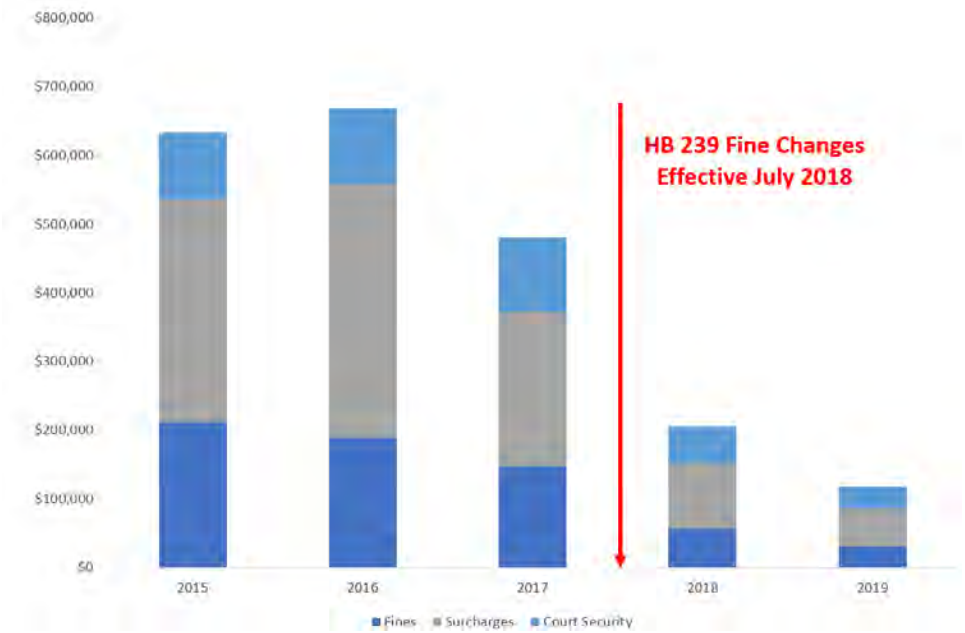
Juvenile Court Fines and Surcharges Permanently Reduced by 2017 Legislation

Juvenile courts' yearly collections averaged only $429,709 from fiscal years 2015 through 2019.

Juvenile courts, unlike adult criminal courts, are civil courts with an emphasis on restorative justice for juveniles. Juvenile courts handle a significantly smaller amount of fines and surcharges than district courts with an average yearly collection of $420,709 over the last five fiscal years (compared to district court's $6,596,056). The overall amount paid to juvenile courts in 2015 was equal to only 9 percent of the total district court collections in the same year. In 2017, H.B. 239 changed how juvenile courts ordered fines from individual violations to criminal episodes. For example, prior to the law change, if a juvenile committed three offenses, judges could order three fines. After H.B. 239, the judge could order only one fine for the case. This legislation also capped the amount per episode at $180 for juveniles under 16 and $270 for juveniles 16 and older. Court staff reported that these statutory changes substantially reduced fines. Figure 1.4 shows juvenile court fines and surcharges before and after implementation of this 2018 statutory change.

2017 legislation capped fines and surcharges ordered per criminal episode at $180 for juveniles under 16 and $270 for juveniles 16 and older, substantially reducing fines.

Figure 1.4 Juvenile Court Fines and Surcharges Decreased 81 Percent ($515,696) from Fiscal Year 2015 to Fiscal Year 2019. Shown below are the annual amounts paid in fines, surcharges, and court security surcharges to juvenile courts since 2015.



We did not find fines and surcharges in juvenile courts to be a primary concern because the total amounts handled in juvenile courts are a small portion of the state's total.

The total juvenile courts collected in fines, surcharges, and court security surcharges decreased 57 percent from fiscal year 2017 to fiscal year 2018 ($479,492 to $205,696). As shown in Figure 1.4, the decline began before the effective date of the bill. According to the AOC, judges began changing their practices regarding fines once they became aware of the upcoming change. Despite the decline, we did not find the legal financial obligations in juvenile courts to be a primary concern because the total amounts handled in juvenile courts are a small portion of the state's total court financial obligations. This audit focuses on trends and risk areas related to the decline in collections of fines and surcharges.

Audit Scope and Objectives

We reviewed practices of judges, staff, and the AOC to determine causes of the decline in fine and surcharge collections.

We were asked to evaluate factors such as judges' behavior, traffic tickets, and the Justice Reinvestment Initiative that contributed to the decline of fine and surcharge collections. We reviewed practices of judges, staff, and the AOC for district, justice, and juvenile courts to determine causes of the decline. Our review of the impact of traffic violations on overall collections will be released in a later report. This report addresses other causes of the decline:

- Chapter II evaluates the impact of judges' sentencing practices on the total amount of fines and surcharges ordered.
- Chapter III examines inconsistent practices among courts that contributed to the decline.
- Chapter IV evaluates the sentencing practices for the court security surcharge as well as implementation of an increase to this surcharge.
- Chapter V evaluates the effect of the Justice Reinvestment Initiative on fines and surcharges.

Chapter II
Judicial Practices Drive Fines and Surcharges Down and Lead to Inconsistent Sentencing

To evaluate the role of judges in decreasing fine and surcharge collections, we reviewed sentencing for driving under the influence (DUI) and some drug offenses. We found that some judges ordered fines below the statutory minimum for DUI offenses and that fines varied by location for drug offenses. Some judges also suspended fines, which drove the effective fine amount down. Suspension of fines contradicts Sentencing Commission guidelines and resulted in inconsistent sentences for defendants. Finally, oversight of judges' sentencing practices is minimal and should be improved.

We reviewed sentencing for some DUI and drug offenses to evaluate the role of judges in the recent declines in fines and surcharges.

We recommend the Judicial Council monitor compliance with statutorily required minimum fines as well as the impact of fine suspensions. We also recommend the Judicial Council consider tracking sentencing data and making it public.

Judges Do Not Consistently Follow Guidelines for Imposing Fines Even When Statutorily Required

The degree to which judges have discretion to determine fine amounts is a policy set by the Legislature. For DUIs, the Legislature set a required fine amount in statute. For other violations, there are not fines set by the Legislature in statute, but there are guidelines established by the Sentencing Commission as well as the Uniform Fine Schedule set by the Judicial Council to "…eliminate unwarranted disparity." We found the following:

The Legislature sets policy regarding the amount of discretion judges have in determining fines, and this discretion varies by the type of offense.

- Some judges did not follow statute when sentencing defendants in both district and justice courts.
- The average fine varied by court location for offenses with a recommended fine amount in the Uniform Fine Schedule. As a result, defendants in some areas of Utah were sentenced to higher fines than defendants in other locations for the same crime.

It is for the Legislature to decide if policy should change regarding the discretion judges have in setting fines. In this report, we provide our findings as they relate to compliance with required and recommended fines. Based on our findings of significant discrepancies in fines imposed, we recommend better tracking, monitoring, and reporting of judicially imposed fines.

Some Judges Routinely Failed to Order the Minimum Statutorily Required Fines for DUI Cases

Unlike other offenses we reviewed, DUI offenses have a statutorily required minimum fine amount.

Statute for DUI offenses requires judges to order a minimum fine amount. Other offenses have recommended fines in the Uniform Fine Schedule but no statutory requirement to order a particular fine amount. For DUI offenses, judges have discretion to order fines above the statutory minimum but cannot order fines below this amount without violating statute. Figure 2.1 shows requirements by severity levels for DUI convictions.

Figure 2.1 Minimum Fine and Surcharge Amounts Required by Statute for DUI Offenses. ***Utah Code*** 41-61-505 states that the court shall order the fine amounts shown here, and the 90 percent surcharge and court security surcharge* are also applied.

**The court security surcharge shown here was in effect during the years we reviewed and increased July 1, 2020.*

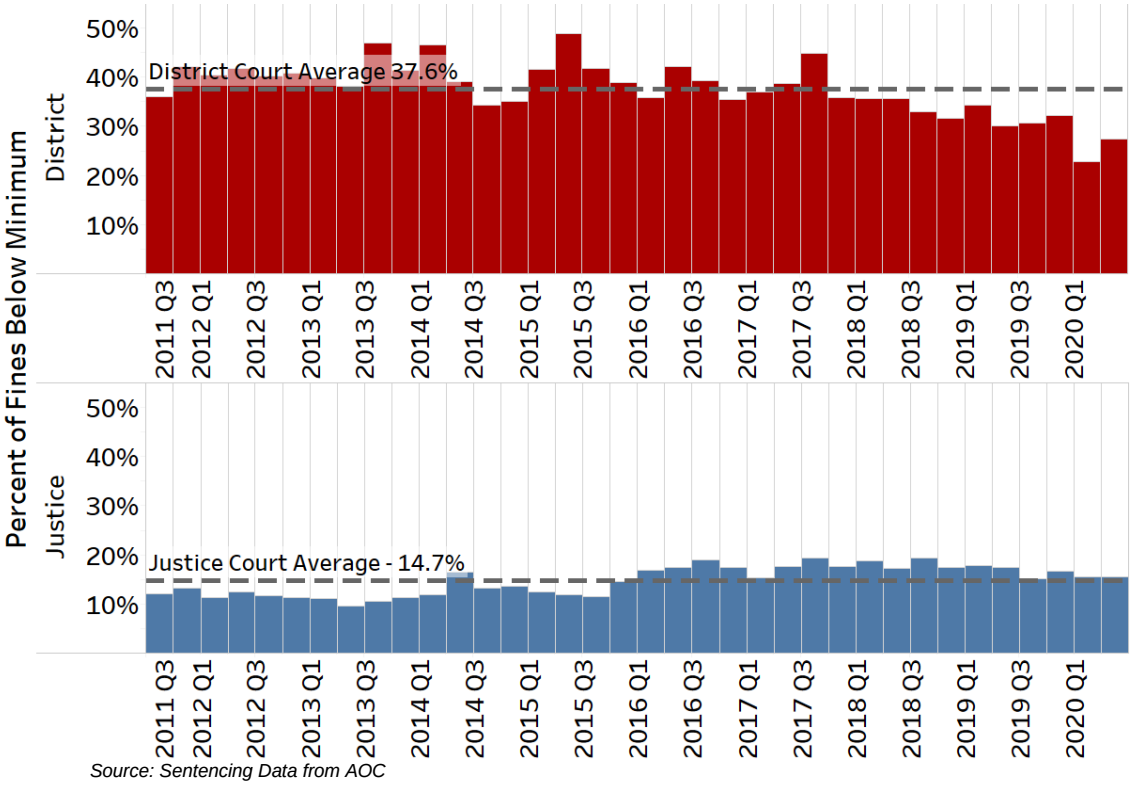
Statute requires fine increases for subsequent violations within 10 years.

First and second offenses may be either Class A or Class B misdemeanors. The fine amount increases for subsequent violations within a 10-year period.

We reviewed eight years of sentencing data for DUI offenses for all justice and district courts to determine if judges ordered fines according to statute. Our analysis in this report focused on aggregate comparisons to review trends and allowed for comparison between court locations. We did not control for individual factors such as multiple offenses in a case or a prior conviction for the same offense. We acknowledge there are factors that could explain differences between individual cases, but this analysis looked at aggregated fines and surcharges. Figure 2.2 shows the percentage of Class B misdemeanor DUI offenses that did not meet the minimum for both district and justice courts.

We reviewed eight years of aggregated sentencing data for DUI offenses to evaluate if fines meet the statutory minimum but did not control for all possible variables that affect individual cases.

Figure 2.2 Both District Courts and Justice Courts Sentence Fines Below the Statutory Minimum for DUI Violations Classified as Class B Misdemeanors. District courts averaged 38 percent of DUI violations with fines sentenced below the statutory minimum from 2012 through 2020, complying with statute 62 percent of the time. Justice courts averaged 15 percent of violations below the minimum, complying with statute for 85 percent of DUIs.



Source: Sentencing Data from AOC
Note: Amounts in this figure are what was sentenced. Often these amounts are reduced through suspending portions of the sentenced amount.

As shown in Figure 2.2, district judges failed to sentence statutorily required minimum fines in 37.6 percent (3,380) of 8,984 class B

Despite complying in a higher *percentage* of cases than district courts, justice courts had more than double the number of Class B misdemeanor cases that were out of compliance.

misdemeanor DUI cases from fiscal years 2012 through 2020. Justice court judges complied with statute in a higher percentage of cases than district court judges. However, justice courts had 53,198 DUI cases from 2012 through 2020. Of those, 14.7 percent (7,800 cases) had fines below the statutory minimum, more than double the number of noncompliant Class B cases identified in district courts. It is important to note that Figure 2.2 is based on sentenced fines and does not include suspended fine amounts. Actual ordered fines are often lower than what is sentenced, which is addressed later in this chapter.

Over eight years, the difference between the amount ordered and statutory minimum equals $4.8 million.

Over the eight years we reviewed, the difference between the amount ordered and the statutory minimum for DUI Class B misdemeanors equaled approximately $1.4 million for district courts and $3.4 million for justice courts. This amount does not represent a loss of $4.8 million in state revenue because the amount sentenced does not equal the amount collected for various reasons. For example, defendants may pay part of their fines through community service or credits for treatment. These options are described in Chapter III. While the exact amount lost cannot be determined because of these variables, judges' failure to comply with statute contributes to the reduction in total fines and surcharges collected by the state.

Fines for Violations Without Statutorily Required Minimums Varied Among Court Locations

Other offenses we reviewed do not have a statutory minimum, but the Uniform Fine Schedule recommends a fine amount.

While DUI offenses have a mandatory minimum fine, other offenses' fine amounts are recommended in the Uniform Fine Schedule. We found the average fine ordered varied significantly from one court location to another and from the Uniform Fine Schedule. Figure 2.3 shows variations for three violations for fiscal years 2015 through 2019.

Figure 2.3 Averages by Court Location Show Defendants Were Sentenced to Thousands of Dollars More than Defendants in Other Locations for the Same Violation. For Class A misdemeanor violations of possession of a controlled substance, some courts sentenced an average fine of over $4,000 while other courts sentenced less than $500 on average. (Note: each dot represents a court location.)

Note – This figure shows averages based on sentenced amounts. These amounts are often reduced through suspending portions of the sentenced amount.

The averages shown in Figure 2.3 indicate that a defendant's fine will be determined more by the court where the case is heard than by the Uniform Fine Schedule. For Class A misdemeanor convictions, the average fine sentenced in one district court was $5,429 for 126 cases while another district court averaged only $62 for 20 cases. Additionally, judges sentenced no fine in 14,122 (30 percent) offenses shown in Figure 2.3. Figure 2.3 was based on sentenced amounts; once suspended amounts were included, the variation across courts decreased. However, the variation across court location is concerning because defendants can still be held accountable for the sentenced amount. As stated earlier in the report we acknowledge that judges consider many factors that can affect the individual sentence imposed; however, our analysis focused on aggregate comparisons to identify differences at the court level.

A defendant's fine will be determined more by the court location where the case is heard than by the Uniform Fine Schedule.

Based on the variations shown here, the Uniform Fine Schedule has not been an effective tool for minimizing disparities, highlighting a policy question of whether guidelines for fines should be strengthened to ensure equity.

Practice of Suspending Fines Has Resulted in Inconsistent Sentences for Defendants

When judges suspend fines, the suspended amount can be reinstated if the defendant does not meet probation terms.

When some judges order defendants to pay a fine at sentencing, they often immediately suspend a portion of the fine. The suspended amount can be reinstated if the defendant does not meet probation terms. We identified concerns with this practice that may interest policy makers to review current practices and decide whether they are comfortable with the status quo, or choose to change current practices:

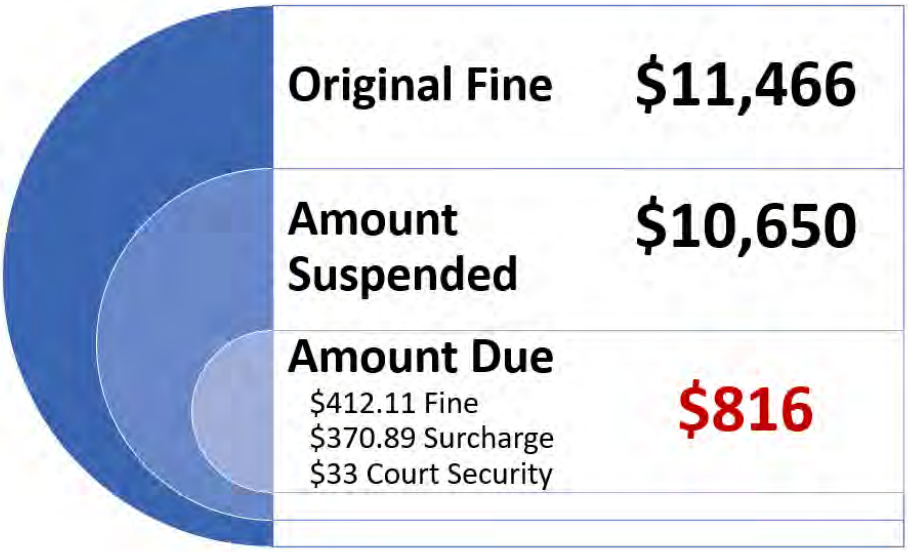
- In some cases, judges ordered significant amounts before suspension.
- Sentencing Commission Guidelines recommend against suspending fines.
- Suspension of fines resulted in defendants paying higher amounts for misdemeanors than felonies because of different approaches between justice and district courts.

Some Judges Ordered Fines but Immediately Suspended All or a Portion of the Fine

The 35 percent or 90 percent criminal surcharge was based on the amount after suspension.

We found that during sentencing hearings, some judges routinely ordered the fine amount but immediately reduced the fine by suspending a portion of it or, in some cases, suspending the entire amount. The 35 or 90 percent surcharge was then based on the effective fine amount after the suspension. Figure 2.4 shows an example of this practice.

Figure 2.4 Example of Suspended Fine for Class A Misdemeanor Violation of Possession or Use of a Controlled Substance. In this case, the judge suspended 93 percent of the fine. The recommended fine amount for this offense was $1,943.



Source: Case summary from court case search via Xchange web application

From fiscal year 2013 through fiscal year 2019, we found over 600 cases in which the original amount of the fine was at least $10,000 higher than the final amount due after suspension, as in the case shown in Figure 2.4.

We found over 600 cases in which the amount suspended was $10,000 or higher.

Suspensions also occur in DUI cases, further reducing fines ordered from the amount required by statute. In 17.7 percent of Class B misdemeanor DUI cases heard in district courts, judges issued no fine or suspended the fine completely. These defendants did not pay any fine or surcharge as part of their sentence, in violation of ***Utah Code*** 41-6a-505(5) which states that the mandatory fines imposed for DUI violations may not be suspended.

In 17.7 percent of Class B misdemeanor DUI cases heard in district courts, judges ordered no fine or suspended the fine completely despite the statutory minimum.

Suspension of Fines Contradicts Sentencing Commission Guidelines

While we found that suspension of fines is widespread, this practice does not align with Sentencing Commission Guidelines. Since 2015, these guidelines have stated the following:

> The Commission does not recommend the imposition of any suspended amount of fine, as violations should be addressed with behavior modification sanctions as identified in Structured Decision-Making Tool 5, not financial ones.

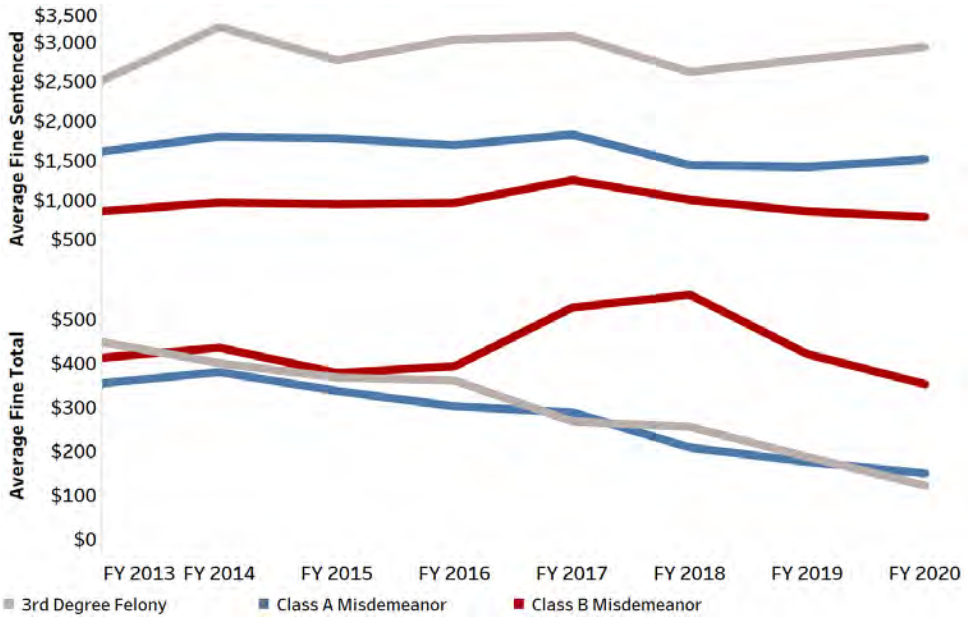
Sentencing Commission Guidelines recommend sanctions such as ordering a curfew or electronic monitoring instead of imposing a suspended amount of fine.

Structured Decision-Making Tool 5 includes sanctions that a probation or parole officer can impose, such as requiring a change in residence, restricting travel, or ordering a curfew. Courts can impose higher-level sanctions such as ordering one to three days of jail or electronic monitoring. Despite this guidance, our review of courts data showed judges have continued suspending fines, leading to inconsistent sentences.

Fines for Misdemeanors Are Higher than Fines for Felonies Due to Suspension

We compared the original fine ordered to the remaining fine after suspension for possession convictions. In addition to disparities by location shown in Figure 2.3, we found disparities by severity level of offense. Defendants convicted of misdemeanor possession offenses were ordered to pay more than those convicted of third-degree felonies. Figure 2.5 shows the average fine sentenced and the average total fine ordered after suspensions for both district and justice court from fiscal years 2013 through 2019.

Figure 2.5 Suspension of Fines for Possession Charges Resulted in Higher Effective Fines for Defendants Guilty of Class B Misdemeanors than Class A Misdemeanors and Third-Degree Felonies. The average fine sentenced for Class B misdemeanors (red line in top graph) was the lowest of the three levels of severity while the average fine actually ordered after suspension was for Class B misdemeanors (red line in bottom graph), which was $203 higher than Class A misdemeanors (blue line in bottom graph) in fiscal year 2020.



Source: Auditor Analysis of Sentencing data from AOC

For all severity levels, the average fine after suspension was below $600.

As shown in Figure 2.5, suspension of fines results in inconsistent sentences for defendants, as more severe offenses should generally result in higher fines. Justice courts suspended fines to a lesser degree than district courts. Class A misdemeanors and all felonies are heard only in district courts, while Class B misdemeanors are handled in both district and justice courts. Class B misdemeanors are the most severe offenses heard in justice courts. Since Class A misdemeanors and felonies are heard only in district courts, this difference in practice between types of courts contributes to the trend shown in Figure 2.5.

District courts suspend fines to a greater degree than justice courts.

While we acknowledge the differences between district and justice courts, our review focused on the impact of suspended fines for the court system as a whole. We did not control for other possible components of sentences, such as jail time or community service, due to limitations in the data available. However, we believe ongoing monitoring of this issue can provide useful information to the Judicial

Council, and thus we recommend the Judicial Council monitor suspension of fines and provide additional guidance to judges as needed.

Data Monitoring and Transparency Are Needed

The Administrative Office of the Courts does not report data aggregated by judge.

While the Uniform Fine Schedule and Sentencing Commission Guidelines offer guidance to judges, we found the AOC and the Judicial Council do not monitor how actual sentencing practices differ from guidance. The AOC provides data internally and externally that includes sentencing information. However, the AOC does not report data aggregated by judge. As a result, we looked for reporting on aggregated sentencing data that does not identify individual judges.

The United States Sentencing Commission publishes sentencing statistics that do not identify individual judges, but allow for comparison between locations.

The United States Sentencing Commission publishes federal sentencing statistics annually. These reports include tables showing sentences imposed relative to the guideline range by type of crime as well as by district and circuit. This approach does not identify individual judges. In addition to the total number of cases that are outside the guideline range, tables show the reasons for variances reported by judges. These statistics enable comparison of sentencing between locations and to the overall national trend.

The approach used by the United States Sentencing Commission provides valuable information and increased transparency without identifying judges. We believe the Judicial Council should consider analyzing sentencing trends and providing aggregated information (for example, aggregated for all courts within a district) publicly to ensure transparency in the judicial system.

Recommendations

1. We recommend that the Judicial Council track judges' compliance with ordering statutorily required minimum fines.

2. We recommend that the Judicial Council monitor suspension of fines and develop guidance for judges as needed.

3. We recommend that the Judicial Council consider tracking aggregated sentencing data and sharing it publicly to increase transparency.

Chapter III
Oversight Can Improve for Indigency Determinations, Fine Credits, and Payment Plans

Our review of district and justice courts identified inconsistencies in processes that influence the amount defendants pay. We found that standardization for determining indigency is needed in both justice and district courts. Judges often ordered lower fines for defendants who qualified as indigent, increasing the need for standard processes that ensure consistency. Community service and other credits also need uniform processes in order to ensure equitable treatment for defendants throughout the state. Finally, availability of payment plans depends on the individual court and should be reviewed. We looked at surrounding states and found some states have a more streamlined process and statutory guidelines for indigency, community service, and payment plans. Overall, we found the Judicial Council should improve oversight for indigency determinations, credits towards fines, and payment plans to ensure equal treatment of defendants.

We identified inconsistencies in processes that influence the amount defendants pay.

The Judicial Council should improve oversight for indigency determination, credits toward fines, and payment plans.

Judicial Council Should Implement Consistent Processes for Determining Indigency

If found indigent, a defendant has the option to be represented by a public defender for crimes with a possible jail sentence. Although statute specifies criteria for indigency, processes for determining indigency differ by court. Inconsistency creates disparities for defendants applying for a public defender. We found that judges are assessing lower fines for those that have been classified as indigent. In fiscal year 2019, we found that indigent defendants were ordered to pay $230 lower on average for DUI violations and $150 lower on average for possession charges. Another concern is a varying appointment rate, where those who may qualify in one court would be denied indigent benefits in another court. The Utah Indigent Defense Commission reported that more than 80 percent of adult criminal defendants are indigent; this, coupled with varying appointment rates, demonstrates the need for improved uniform processes. Defendants self-report information when applying for a public defender. Due to lack of resources, courts do not validate information submitted when

Indigent defendants pay less in court fines than other defendants, but varying appointment rates indicate those who may qualify in some areas would be denied indigent benefits in another court.

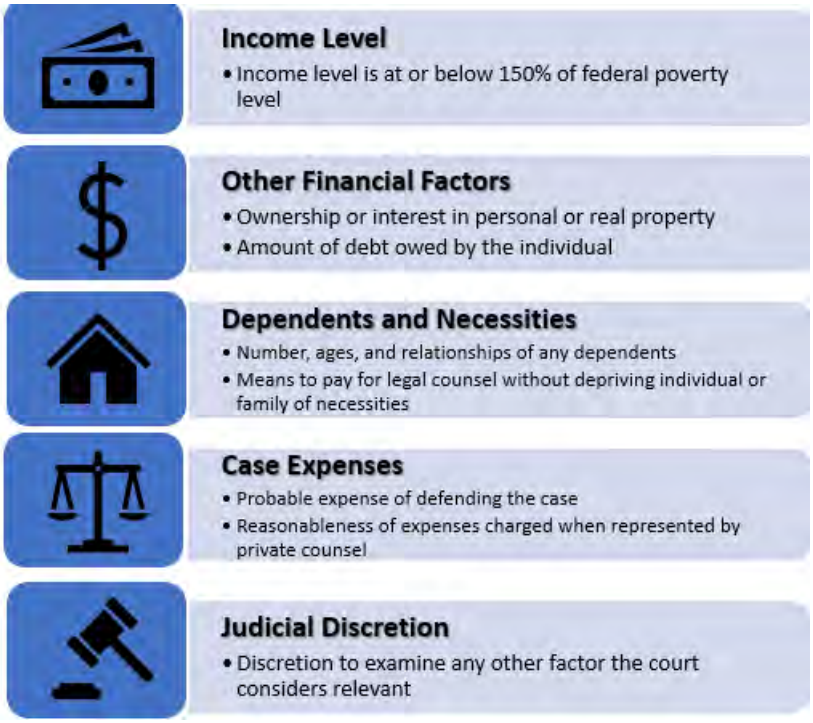
applying for indigency. Overall, the processes of reporting and validating information when applying for indigency qualification could be strengthened.

Indigency Criteria Is Set in Statute But Determination Processes Differ

Courts decide if a defendant qualifies for a public defender based on statutory criteria.

Utah Code lists several factors for a court to consider when determining indigency. Based on these factors, courts decide whether a defendant qualifies for a public defender in cases that could result in jail or prison sentences. Figure 3.1 summarizes ***Utah Code*** 78B-22-202.

Figure 3.1 Statutory Factors Considered when Determining Indigency. Defendants may qualify based on income level alone.



We found that the form used to determine indigency is not consistent across courts, and some forms in court records were incomplete.

Although factors for determining indigency are outlined in statute, practices differ by court. Without set procedures for indigency qualifications, practices vary from verbal determination between judge and defendant to an affidavit completed either at home or at the court. The form used for the affidavit is not consistent across courts. In addition to the lack of standardized forms, we found incomplete forms in court records that still resulted in a defendant qualifying for a public

defender. Examples can be found in Appendix A. Other inconsistencies were found in the process of indigency determination.

- In one court, the method for determining indigency can be a verbal question and answer between defendant and judge or an affidavit completed by defendant at the initial hearing. This court focuses on the federal poverty guidelines.

- One justice court uses a form to be completed by the defendant at home and later notarized. Alternatively, the defendant's financial information is reported in court under oath.

- One justice court's website specifies that the form will be available at the defendant's hearing upon request.

A Judicial Council report from 2015 recommended standardization of indigency determination processes.

A report issued in 2015 by the Judicial Council Study Committee recommended steps "…to see that accurate and effective procedures, forms, and colloquies[1] are developed to be used uniformly statewide in all courts to ensure these rights are appropriately implemented." The report specified that these steps should include "…attention to the processes and forms used to determine whether defendants are indigent." Despite the report's suggestion, practices have not been standardized.

Some other states have processes in place to streamline the indigency qualification process:

Colorado and Washington have standard forms for indigency determinations.

- Colorado has a procedure and uniform forms for determining indigency. In addition, if requested, a defendant will provide three months of bank statements and pay stubs, or other comparable proof of income status.

- Washington has a uniform form for reporting indigency. Courts are not required to independently investigate the income or assets given on the report. However, some jurisdictions routinely require verification or documentation, though methods in courts vary. For example, a defendant may be required to provide financial information by providing proof of public assistance, pay stubs for defendant, tax returns, bank statements, and monthly bills.

[1] Formal question and answer with the judge

- New Mexico indigency determination is based on net income and assets. Applications are processed by the Law Offices of the Public Defender where a client service agent assists in the application.

We recommend the Judicial Council develop uniform processes to address the inconsistent practices for determining indigency.

Due to Lack of Resources, Courts Do Not Validate Self-Reported Information

While there are legal consequences in Utah for misreporting information used to determine indigency, none of the courts we interviewed routinely validate this information.

Information used to determine indigency is self-reported by the defendant. Financial and other personal information given to the court is usually stated under oath or given in a written affidavit. Both methods have legal consequences if an individual reports incorrect information. None of the courts we spoke with routinely validate information due to high volume of cases and staffing limitations.

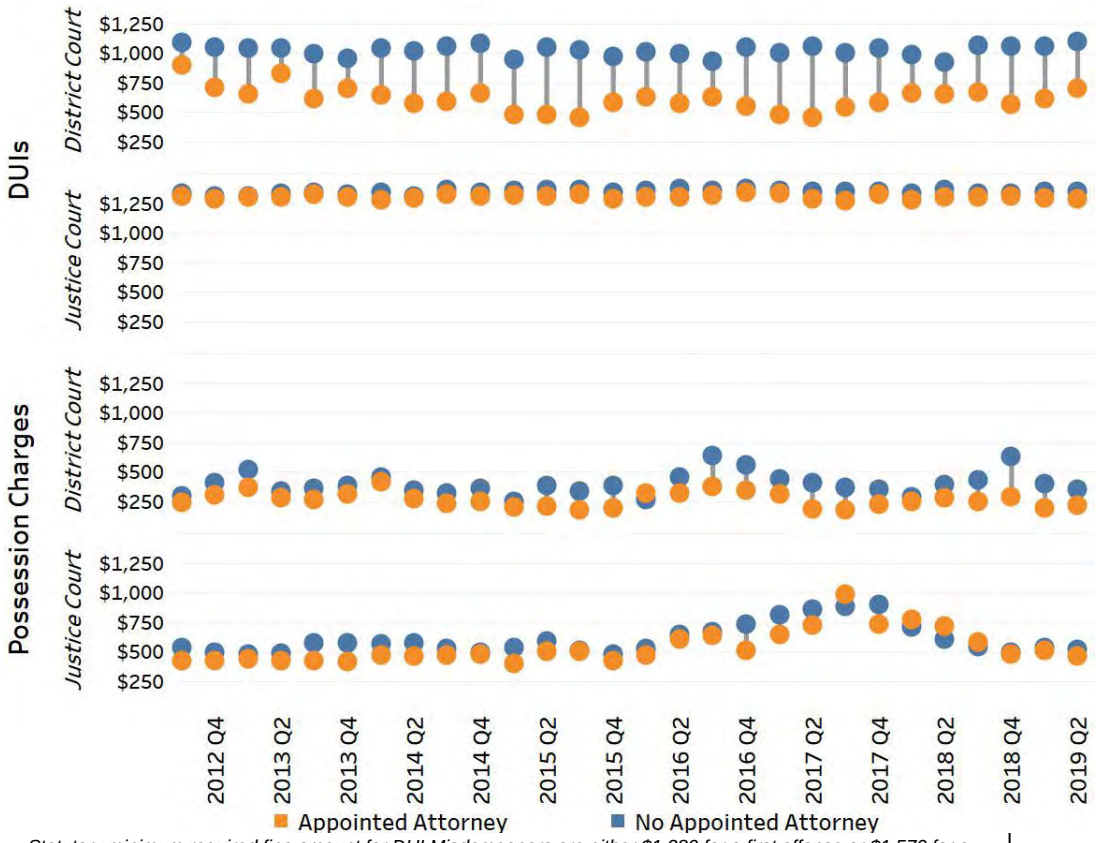
Some larger jurisdictions in Washington fund positions to validate reported information, but we did not find this to be feasible in Utah.

The state of Washington has a similar but slightly more uniform process when compared to Utah's indigency qualification process. Washington statute states verification of information used to report indigency is not required, but information is subject to verification. The Washington State Office of Public Defense reported varying levels of verification for indigency applications, with larger jurisdictions funding staff positions to validate reported information. We did not find a validating process to be feasible in Utah due to a lack of court resources needed to implement such a process.

Judges Order Lower Fines for Defendants Who Qualify for a Public Defender

We found that judges order lower fines for defendants who have been classified as indigent and therefore qualify for a court-appointed public defender. Figure 3.2 shows the difference in total amounts ordered for defendants with and without public defenders for Class B misdemeanor Driving Under the Influence (DUI) offenses and possession or use of a controlled substance charges.

Figure 3.2 Average Total Fine Ordered Shows Defendants without Appointed Attorneys Are Generally Ordered to Pay Higher Fines than Those with Appointed Attorneys. Despite statutory guidelines, judges routinely order lower fines for defendants who were found indigent and have a court-appointed defender. On average, indigent defendants were ordered fines 53.1 percent lower in district courts and 2.5 percent lower in justice courts.



Statutory minimum required fine amount for DUI Misdemeanors are either $1,380 for a first offense or $1,570 for a second offense. The suggested fine amount for possession or use of a controlled substance is $680.

As described in Chapter II, ***Utah Code*** sets minimum fines for DUI offenses. Statute does not state that DUI fines can be lowered based on ability to pay. Despite these statutory guidelines, judges routinely order lower fines for defendants who were found indigent and have a court-appointed public defender, as shown in Figure 3.2. Indigent defendants consistently receive lower fines for possession or use of a controlled substance, which has a recommended fine amount of $680.

Statute does not state that DUI fines can be lowered based on ability to pay, but judges routinely order lower fines on DUIs for defendants who have a court-appointed public defender.

Lack of a uniform process may prevent defendants who should qualify from receiving indigency benefits.

One concern is that lack of a uniform process is leaving those who should qualify for indigency without qualification, and therefore without the indigency benefits. Lack of uniform processes may contribute to varying indigency appointment rates throughout the state. Ten district courts in Utah have less than an 80 percent appointment rate with two courts as low as 30 to 40 percent. City Justice Court appointment rates appear random, ranging from 0 to 100 percent.

The 2020 Uniform Fine Schedule includes consideration of a defendant's ability to pay when ordering fines.

Utah Code 77-32a-108 requires a consideration of ability to pay for a defendant's defense costs, but not imposed fines. However, the 2020 Uniform Fine Schedule extends guidelines on considering ability to pay to include fines. The schedule states, "The defendant's ability to pay should be considered in determining whether or not to impose a fine….". This directive aligns with courts' practices shown in Figure 3.2 and further establishes the need for consistent indigency determinations to ensure equity for defendants.

Standardization Is Needed for Community Service and Other Credits that Reduce Defendants' Debts

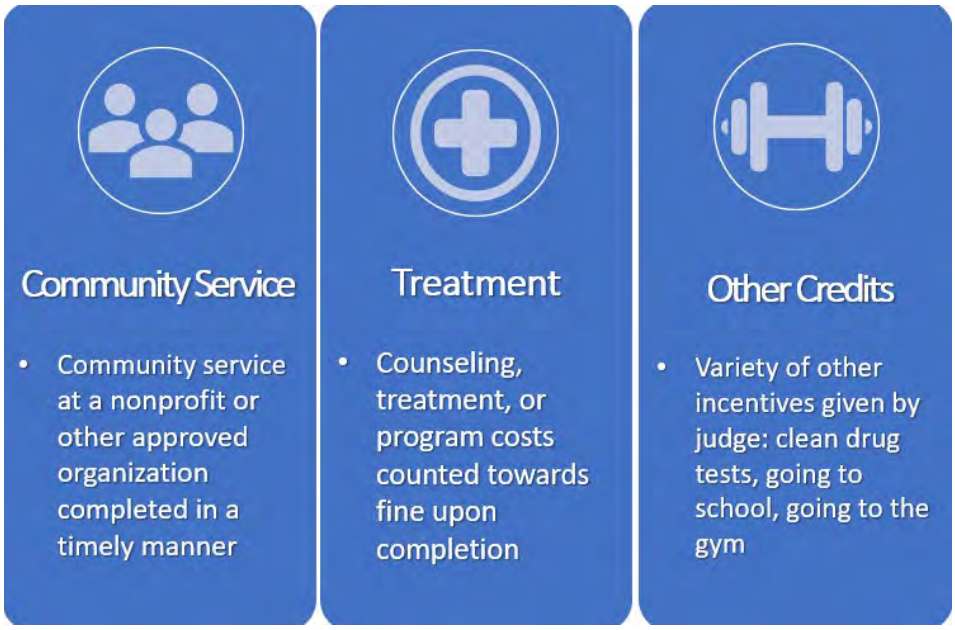
Defendants can pay down their debts through community service and other credits, but oversight is lacking.

In some cases, defendants can pay down their debts through credits if permitted by the judge. While surveying community service and other credits, we found varying credits allowed by judges and different amounts of credits offered. Judges use the fine schedule to assist in sentencing, but we found the fine schedule to be inconsistent with statute on credit and community service topics. However, legislation regarding community service requires that the option should be considered on some offenses. Overall, we found a lack of oversight and consequently credit disparities for defendants.

Availability of Credits and Community Service Varies by Court

The Sentencing Commission encourages courts to allow defendants credits or offsets against ordered fines for completing counseling and achieving other goals. Community service, treatments, completed conditions of probation, and other incentives are used as credits towards fine amounts. These credits are left to the discretion of the judge on a case by case basis. Figure 3.3 summarizes the types of credits given towards fine amounts that we found from reviewing cases.

Figure 3.3 Credits Used Toward Fines. We found a variety of credits given in lieu of legal financial obligations. While these credits are allowed, our concern is the inconsistency with credits given. For example, one judge allowed exercise at a gym towards credit, and others allowed a variety of completed treatments to count towards fines.



Courts commonly use community service as a tool to reduce defendants' financial obligations. If the offense is a Class B or C misdemeanor or an infraction, a court must consider community service in lieu of a fine when a defendant is sentenced to pay a fine according to ***Utah Code*** 76-3-301.7. Treatments and other credits offered do not have statutory guidelines to follow when allowing credit. Consequently, we found practices for ordering or accepting credit to be inconsistent.

Courts must consider community service in lieu of a fine for lower-level offenses, but there are no statutory guidelines for treatments and other credits given.

Some surrounding states have statutory guidelines for giving credit. For example, Colorado has guidelines and limits in its criminal code for credits given to defendants, most of which deal with time credit for jail or prison sentences.

Our review of community service guidelines and credits given found that defendants had varying accessibility to community service and other credits. Some courts reviewed had greater restrictions for when community service can be fulfilled than others. For example:

Some courts have greater restrictions regarding when community service can be fulfilled than others, resulting in inconsistent accessibility.

- One court offered credit only for full eight-hour days starting at 8 a.m. on Mondays and Wednesdays.
- Another court allowed community service only when completed through private probation. Probation is not a possible penalty for infractions, making community service inaccessible to many defendants convicted of offenses with the lowest severity.
- Some courts used community action partnerships to fulfill community service at approved non-profit and public agencies. These programs charged a fee of one dollar for every hour, with a cap at $50.

Other courts were more flexible, providing a list of acceptable organizations for service. In 2018, the Legislature passed House Bill 248, a bill requiring community service to be considered in lieu of a fine for infractions and Class B and C misdemeanors. This bill was expected to result in greater uniformity in how community service was made available. We recommend that the Judicial Council implement uniform standards for community service and other credits to further ensure more consistent opportunities for defendants in the state.

House Bill 248, passed during the 2018 general session, was expected to result in greater uniformity in how community service is made available.

Statute Determines How Community Service Is Credited Toward Fines, But Other Credits Are Unclear

Utah Code 76-3-301 states that credit shall be given to timely completed community service "at the rate of $10 per hour." However, the 2020 fine schedule directs credit be given at "…a rate of not less than $10 per hour." Other oversight for community service is limited and has led to disparity for defendants fulfilling community service credit toward their fine. Most courts interviewed follow the $10 an hour rate set in statute. However, we found different per hour rates given for community service. For example, in one court a $100 credit is given for an eight-hour day, which is a rate of $12.50 per hour. The process for verifying community service performed is outlined in ***Utah Code*** and is followed by all courts interviewed.

One court credited community service at $12.50 per hour, which does not align with the $10 per hour rate set by statute.

We found disparities in other credits accepted by courts. Treatments, therapies, and other incentive credits are not outlined in statute. Lack of oversight for these credits contribute to unequal treatment for defendants depending on the location and judge.

- One case stated, "The court will accept defendant receiving credit towards community service hours for half of the hours owed each week for every hour he is in school and/or working out at the gym."
- One district court and one justice court allowed credit toward or in lieu of fines for donations to non-profit organizations.
- One court offered dollar for dollar credit for charitable donations in lieu of fines, fees, and community service during Covid-19 phase red.

Two courts allowed credit towards or in lieu of fine for donations made to non-profit organizations.

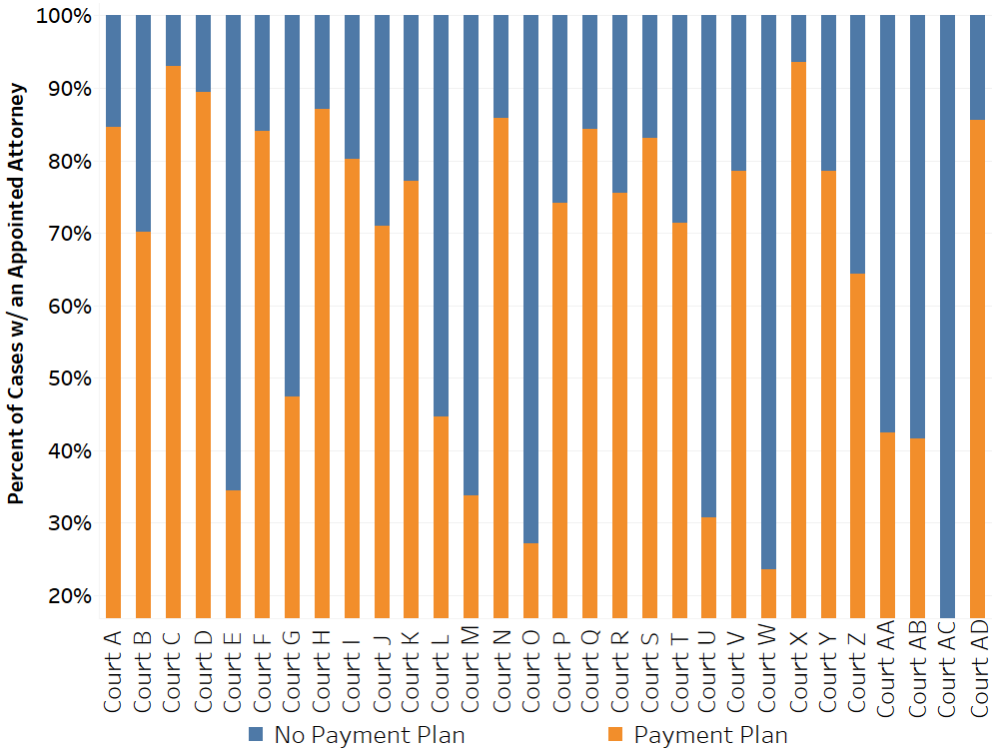
Without community service and other credit guidelines, defendants are treated differently, depending on the court location and judge. Overall, we found a need for uniform standards for credits, including community service, to provide equitable treatment for defendants. We recommend that the Judicial Council develop uniform standards and monitoring processes to ensure adherence to these standards.

Judicial Council Should Review Availability of Payment Plans in All Courts

Judges decide whether a payment plan is an appropriate option for a defendant. Courts we spoke with indicated a range from always offering defendants a payment plan option to rarely allowing payment plans for fines. However, the Administrative Office of the Courts reported most courts will accept a partial payment toward a fine if a formal payment plan is not initially offered. Payment plans assist courts in keeping track of defendants for court proceedings and payments towards legal financial obligations. Without payment plans, overall state revenue could decrease due to a reduction in defendant payments. Figure 3.4 shows the percentage of DUI cases by court in which defendants with a public defender were placed on a payment plan.

Payment plans assist courts in keeping track of defendants for court proceedings and promote collection efforts.

Figure 3.4 Percentage of Cases with Payment Plans for DUI Cases with Appointed Attorney. Without uniform processes, defendants on payment plans varied greatly from court to court in the state. For example, this figure shows that Court X had over 94 percent of cases on payment plans while Court AC had zero percent of cases on payment plans from fiscal years 2015 through 2019.



This figure includes 30 courts with the most DUI cases in the state from fiscal year 2015 through fiscal year 2019.

Ten courts in Utah rarely or never had a defendant on a payment plan in the data we reviewed.

As shown in Figure 3.4, the percentage of cases with payment plans varies from court to court. The figure shows the percentage of cases in which a payment plan was established but not necessarily cases in which payment plans were offered. In total, 10 courts in the state rarely or never had a defendant on a payment plan for DUI cases with an appointed attorney. Court AC did not have any defendants on a payment plan for DUI cases from fiscal year 2015 through fiscal year 2019. However, when we spoke with Court AC they reported that they are currently offering payment plans to defendants.

Utah does not have statutory guidelines for payment plans. Some neighboring states have payment plans mentioned in their state codes as an option for indigent defendants.

- In Arizona, the court, a probation officer, or a staff member may grant permission for payment to be made in specified installments within a specified period.

- In New Mexico, a defendant may be allowed to pay fines, fees, or costs in installments under the discretion of the court.

- In Colorado, a defendant would be directed to work with a collections investigator if they were unable to pay the fines, fees, and restitution on the day they were ordered. This investigator would review the defendant's financial information, set up the shortest possible time frame for payment, and manage the tracking of such accounts.

While Utah does not have statutory guidelines for payment plans, some surrounding states do.

The fine schedule states that payment plans should be considered when evaluating a defendant's ability to pay in the decision of imposing a fine. However, courts are not statutorily required to offer payment plans. Courts we spoke with expressed that payment plans facilitate keeping track of defendants, which helps the court with collections. When defendants have a due date months or years after sentencing with no payment plan and fail to pay, courts may not have updated contact information. Overall, court collection potential may be less without payment plans, impacting the general fund. To align with the Uniform Fine Schedule and assist with collections, we recommend that the Judicial Council track utilization of payment plans for defendants to assess whether individual courts make payment plans available.

Recommendations

1. We recommend that the Judicial Council develop and implement uniform processes for determining indigency.

2. We recommend that the Judicial Council adopt uniform standards for community service and other credits and monitor courts to ensure adherence to these standards.

3. We recommend the Judicial Council track the utilization of payment plans for defendants.

Chapter IV
Judicial Practices Contributed to the Decline in Court Security Surcharge Collections, Leading to a $10 Increase

The court security surcharge is a statutorily required fee that funds security for district, juvenile, and justice courts. The courts have not consistently assessed this required fee, leading to a decline in revenue for security and prompting a surcharge increase in the 2020 Legislative General Session.

Before a change in statute that took effect on July 1, 2020, court security surcharges were $43 for district and juvenile courts and $50 for justice courts. Unlike the 90 percent and 35 percent criminal surcharges, the court security surcharge is a statutorily required flat fee that is not dependent on the base fine amount. It is assessed for each violation, meaning that a defendant may have to pay more than one court security surcharge. For example, prior to July 1, 2020, a defendant convicted in district court for possession of a controlled substance and use or possession of drug paraphernalia should have been required to pay a total court security surcharge of $86 ($43 for each violation).

The court security surcharge is a flat fee assessed for each violation.

Although statute requires the court security surcharge to be assessed on all criminal convictions with few exceptions, we found that some judges do not order defendants to pay it when other fines and surcharges are not ordered. This practice contributed to a recent decline in collections of the court security surcharge. To address this decline, during the 2020 Legislative General Session, the Legislature passed House Bill (H.B.) 485, Amendments Related to Surcharge Fees. This bill increased the court security surcharge by $10. As of July 1, 2020, the court security surcharge is $53 in district and juvenile courts and $60 in justice courts. We recommend that the Judicial Council monitor judges' compliance with ordering the court security surcharge

During the 2020 Legislative General Session, H.B. 485 increased the court security surcharge to $53 in district and juvenile courts and $60 in justice courts.

Despite Statutory Requirement, Practices for Ordering Court Security Surcharge Vary

We found that some judges did not order the statutorily required court security surcharge when other fines and surcharges were not ordered. The recommended fine amount on the Uniform Fine Schedule includes the fine, criminal surcharge, and court security surcharge. Typically, judges do not separately order the court security surcharge. Instead, they order defendants to pay a total amount and then the courts' case management system, CORIS, automatically divides the total fine into its components (fine, criminal surcharge, and court security surcharge).

Statute requires both district and justice courts to impose the court security surcharge.

Utah Code 78A-7-122 requires justice courts to impose the court security surcharge "…on all convictions for offenses listed in the uniform bail schedule adopted by the Judicial Council and moving traffic violations." In district courts, the court security surcharge is statutorily required to be assessed on all criminal judgments except for non-moving traffic violations and community service. Despite this requirement, we found some judges do not order the court security surcharge.

Conversations with court personnel and analysis of sentencing data identified a key difference regarding practices for ordering the court security surcharge.

Some courts correctly ordered the statutorily required court security surcharge even when fines and criminal surcharges were not ordered.

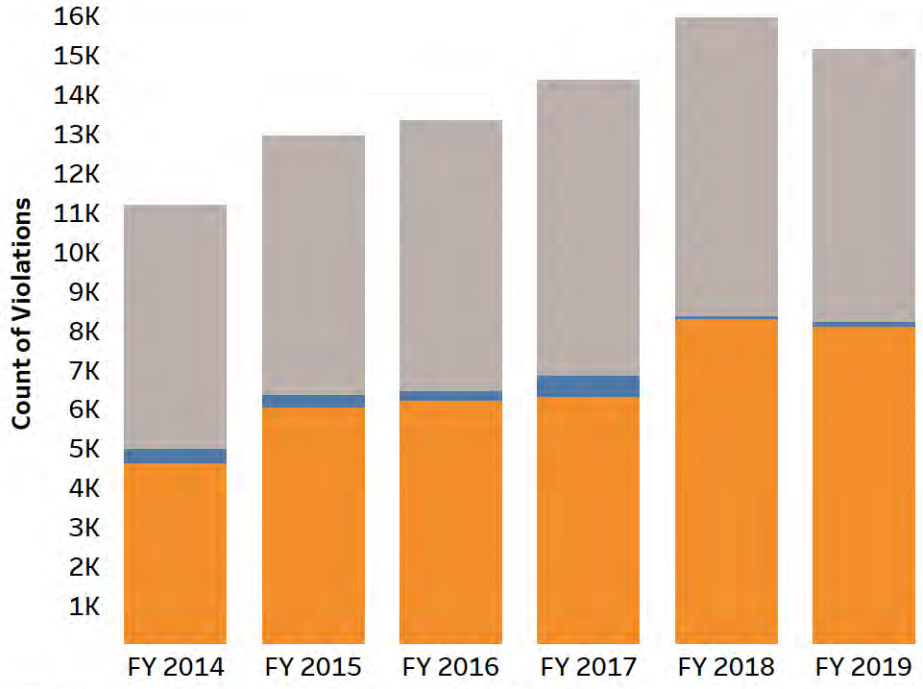
Some courts reported all judges correctly ordered the court security surcharge even if they did not order any other fines. For example, on a violation with a recommended total fine of $680 that included the criminal surcharge and court security surcharge, some judges ordered a total amount due of only $43.

Other courts reported judges did not order the court security surcharge when other fines were not ordered, meaning the total amount due for the defendant was $0.

Our analysis of sentencing data and review of individual cases supported what the courts described. We found some judges suspended all fines except the court security surcharge. Sentencing data and individual cases also showed that often district court judges did not order the statutorily required court security surcharge when other fines and surcharges were not ordered. Figure 4.1 shows a summary of our review of court security surcharges for fiscal years 2014 through 2019.

Sentencing and case reviews show some judges suspended all fines except the court security surcharge, but often district court judges did not order the court security surcharge.

Figure 4.1 Sample of Sentencing Data for Fiscal Years 2014 through 2019 Showed Court Security Surcharge Was Not Ordered for 53 Percent of Criminal Judgments in Fiscal Year 2019. In these judgments, no fines or surcharges were ordered. One district court failed to order the court security surcharge for 92 percent of violations in fiscal year 2019.



Source – Auditor analysis of sentencing data provided by the AOC

As shown in Figure 4.1, more than 4,000 violations for each year of sentencing data we reviewed had no court security surcharge ordered; the number of these cases increased from fiscal year 2014 to 2019. This trend indicates judges have been complying with the statutory requirement to order the court security surcharge less often than in the past. The impact of cases with a total amount due of $0 is also addressed in Chapter V.

This trend indicates judges have been complying with the statutory requirement to order the court security surcharge less often than in the past.

Impact to Court Security Funding from Decreased Collections Led to Recent $10 Increase

The Legislature passed H.B. 485, Amendments Related to Surcharge Fees during the 2020 Legislative General Session, which included a $10 increase to court security surcharges. Recent declines in funding available for court security helped prompt the increases from $43 to $53 in district and juvenile courts and the corresponding increase from $50 to $60 in justice courts.

- All $53 of the current court security surcharge for a conviction in district or juvenile court goes to the restricted Court Security Account.

- In justice courts, $34.40 of the $60 current court security surcharge goes to the Court Security Account.

The surcharge goes into a restricted account that provides the main source of state funding for court security.

The Court Security Account is the main source of state funding for court security operations. The account supplements county sheriff resources for security purposes.

The Legislature appropriated $500,000 of general fund money in fiscal years 2019 and 2020 to offset a portion of the decline.

Payments from the Court Security Account totaled $8.4 million in fiscal year 2017. However, in fiscal year 2018, the total dropped to $7.5 million. As a result, in fiscal years 2019 and 2020, the Legislature appropriated $500,000 of state general funds to supplement court security funding. Even with this supplement, 2019 totals were lower than in 2017. During the 2020 Legislative General Session, H.B. 485 increased the court security surcharge by $10 to address the need for additional court security funding and ensure the surcharge serves as a user fee. This increase took effect July 1, 2020, but it is unclear if the increase will adequately address the need for court security funding because some judges do not order the surcharge as required by statute.

It is unclear whether the $10 increase will address the need for court security funding because some judges do not order the surcharge.

In Chapter II, we recommend the Judicial Council monitor judges' compliance with statutory requirements and track sentencing data. We believe these steps will improve compliance with the court security surcharge as well. To ensure the court security surcharge operates as a user fee consistent with the Legislature's intent, we recommend the Judicial Council monitor judges' compliance with ordering the court security surcharge as required by statute.

Recommendation

1. We recommend that the Judicial Council monitor judges' compliance with ordering the court security surcharge as required by statute.

Chapter V
JRI Legislation Is One of Several Factors Influencing the Fluctuation of Court Fines and Surcharges

During the 2015 Legislative General Session, the Legislature passed House Bill (H.B.) 348, Criminal Justice Programs and Amendments. This bill was based on the proposals from the Justice Reinvestment Initiative (JRI), which was created by the Commission on Criminal and Juvenile Justice to "…identify the factors underlying the increase in Utah's rising prison population." This legislation reduced penalties on drug violations for first-time offenders. Our office has completed a full audit of JRI to determine whether Utah is meeting the objectives of reducing the penalties for low-level drug offenses and providing more treatment. The audit found that Utah has succeeded in reducing the state's inmate population but has not fully implemented the remaining goals of JRI. The JRI audit is available on our website at olag.utah.gov.

Audit 2020-08 reviews whether JRI in Utah is meeting its objectives. This chapter evaluates the impact of JRI on fines and surcharges.

We were asked to evaluate the impact of JRI on fines and surcharges and found the impact was difficult to determine due to other contributing factors. First, the legislation reduced severity of both drug offenses and traffic violations, but the recommended fine amounts listed in the Uniform Fine Schedule stayed the same. We then compared actual fines for drug violations ordered prior to the passage of H.B. 348 to fines ordered after the legislation took effect and found a decrease. This decrease is part of a longer-term trend that cannot be attributed directly to JRI. For example, courts experienced turnover with judges during the same time, leading to different sentencing practices, such as ordering community service more frequently. Because we could not identify a direct causal link between the decline in fines and JRI, we do not recommend action by the Judicial Council, but include this chapter to answer questions posed by policy makers.

Because we could not identify a direct causal link between fines and JRI, we do not recommend action by the Judicial Council.

JRI Lowered Severity Level of Violations, but Recommended Fine Amounts Did Not Change

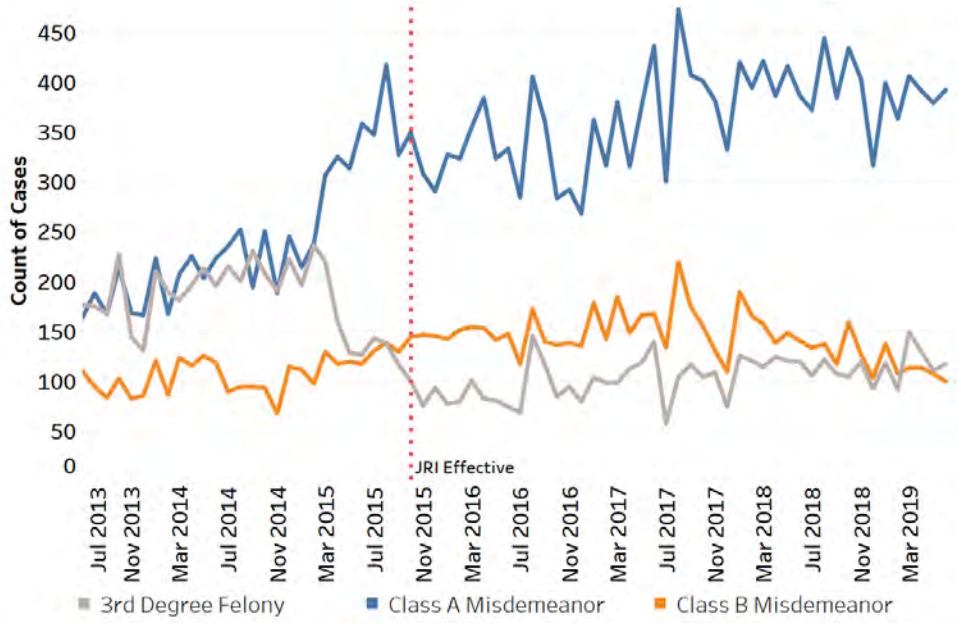
H.B. 348 reduced severity levels for drug and traffic violations, but recommended fine amounts did not change.

We compared the Uniform Fine Schedule prior to the passage of H.B. 348 (the JRI bill, which passed during the 2015 General Session of the Legislature) and after the bill's effective date. We found that while the bill lowered severity levels for drug violations and traffic violations, the recommended fine amounts did not change. Our review found that, as intended, the number of felonies for possession of a controlled substance decreased while Class A misdemeanors increased.

JRI Legislation Reduced Severity of Drug Violations and Traffic Violations

H.B. 348 reduced the severity of drug violations for first-time offenders effective October 1, 2015. Some offenses were reduced from third degree felonies to Class A misdemeanors, while others were lowered from Class A misdemeanors to Class B misdemeanors. Figure 5.1 shows the impact of this change on drug violations.

Figure 5.1 Data Shows a Decrease in the Number of Third-Degree Felonies for Possession Violations with a Corresponding Increase in Class A Misdemeanors. The shift began immediately after the passage of H.B. 348 during the 2015 Legislative General Session, although this portion of the bill did not formally take effect until October 1, 2015.



As shown in Figure 5.1, the shift to a higher number of cases classified as misdemeanors shows that H.B. 348's changes to severity levels had an immediate effect. The number of third-degree felony cases dropped from 236 in February 2015 to 75 in November 2015.

The number of third-degree felony cases dropped from 220 in February 2015 to 75 in November 2015.

In addition to severity level changes for drug violations, JRI reduced many criminal traffic violations from Class C misdemeanors to infractions. This change was intended to "…focus jail resources on higher-level offenders and relieve undue burdens on localities" and was also expected to reduce justice court criminal caseloads. Because sentencing for infractions cannot include jail or prison time, the right to counsel does not apply, simplifying the process to resolve these traffic cases.

Uniform Fine Schedule Did Not Lower Recommended Fine Amounts for Violations Included in JRI

We compared the Uniform Fine Schedule prior to and after the effective date for H.B. 348 to determine if recommended fines changed for drug and traffic violations due to the bill and found that the recommended fine amounts stayed the same. Prior to the passage of the bill, drug violations affected by H.B. 348 were listed with a default severity of a Class B misdemeanor in the Uniform Fine Schedule, which did not change. For example, violations of ***Utah Code*** 58-37-8(2)(A)(I): Possession of a Controlled Substance was listed in both the 2014 and 2015 Uniform Fine Schedule as a Class B misdemeanor with a recommended fine of $680. Statute specifies the severity of a possession violation based on the type and amount of controlled substance used. For first-time offenders,

The default severity of drug violations affected by H.B. 348 remained a Class B misdemeanor even after the passage of the bill.

- 100 pounds or more of marijuana results in a second-degree felony.
- Schedule I or II substances such as heroin, cocaine, and oxycodone result in a Class A misdemeanor.
- All other controlled substances, including marijuana, result in a Class B misdemeanor.

Possession offenses are listed as enhanceable in the Uniform Fine Schedule, meaning the punishment for subsequent convictions of the same violation could be more severe. For example, a third conviction for possession of marijuana is a Class A misdemeanor instead of a

Class B misdemeanor. The Uniform Fine Schedule listed the lowest severity level possible as the default in both 2014 and 2015 and did not specify a recommended fine amount when the violation was enhanced to a higher severity. Thus, no change to the Uniform Fine Schedule for drug violations was directly caused by H.B. 348; as a result, we could not determine if the bill had an effect on fines and surcharges for these violations.

Only 3 of 262 traffic violations included in H.B. 348 had reduced fine amounts after the bill's implementation.

Only 3 of 262 traffic violations included in the bill had reduced fine amounts after implementation. All three are violations regarding insurance and registration. Statute sets a minimum fine for each of these violations, and while H.B. 348 reduced severity from a Class B misdemeanor to a Class C misdemeanor, the bill did not change the statutory minimum fine. Reduced amounts in the Uniform Fine Schedule for the two insurance violations and one registration violation were not a result of H.B. 348.

Severity levels for traffic violations were lowered to remove the possibility of incarceration, not to reduce fines.

The intent of severity level changes to traffic violations was to remove the possibility of incarceration, not to reduce fines. Changes to traffic violations due to JRI did not contribute to lower collections of fines and surcharges. Reasons for reduced fines and surcharges for traffic violations will be addressed in a separate report.

Decreased Fines After JRI Passed Are Part of a Broader Trend

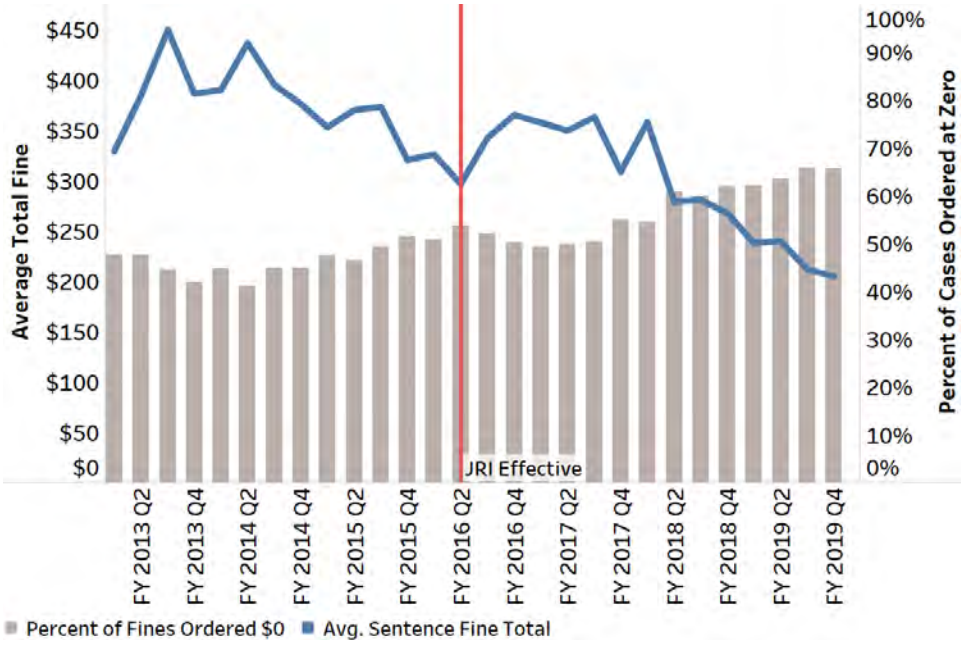
We analyzed the fines and surcharges ordered for possession of a controlled substance violations to understand the impact of H.B. 384. A downward trend from fiscal year 2014 to 2019 resulted in a 44 percent decrease in the average amount ordered. However, not all of this decrease can be attributed to the statutory changes that took effect in fiscal year 2016. The percentage of cases with no fine ordered began increasing in fiscal year 2017 and is not a direct result of H.B. 384. We found that cases with no fine were attributable to judicial practices as described in Chapter II. Additionally, court personnel reported mixed impacts from JRI. Court personnel also reported that turnover among judges contributed to the decrease, as new judges did not typically order fines as frequently as judges they replaced.

Average Fines Sentenced for Drug Violations Decreased 44 Percent from Fiscal Years 2014 to 2019

The average amount of fines ordered for possession of a controlled substance decreased from $398 in fiscal year 2014 to $224 in fiscal year 2019. While the average fine ordered for drug violations has decreased since JRI took effect, this downward trend began one year before and continued through fiscal year 2019, suggesting the legislation enacting JRI was not the sole cause of the decline. Figure 5.2 shows the average fine ordered after suspensions for possession of a controlled substance.

The decrease in average fines ordered began one year before JRI took effect and continued through fiscal year 2019.

Figure 5.2 Decrease in Average Fines Driven by Cases with No Fine Ordered. The average fine for possession of a controlled substance decreased 14.2 percent in the first quarter after H.B. 384 passed but rose again in the first quarter after JRI took effect.



As shown in Figure 5.2, one of the largest percentage changes in the average total fine (blue line) occurred between the third and fourth quarters of fiscal year 2015. H.B. 348 passed during the third quarter of fiscal year 2015, but the portions of the bill related to drug violations did not take effect until the beginning of the second quarter in fiscal year 2016. The average fine shown in Figure 5.2 then rose until the percentage of cases with no fine ordered began increasing. While it appears JRI legislation may have played a role in reuducing

One of the largest percentage changes from quarter to quarter in average fines occurred prior to the effective date of H.B. 348.

fines ordered, it does not explain the longer-term trend or why the percentage of cases with no fines began increasing more than a year after implementation.

District and Justice Court Personnel Suggest Other Causes Contributed to Decline and Impact of JRI Is Unclear

We spoke with court personnel in six districts and six justice courts in both rural and urban areas about the causes of the decline in fines and surcharges. Five justice courts reported no change from JRI overall, while the sixth stated JRI may have potentially led to fewer drug cases. Responses from district courts regarding JRI's impact varied as listed below:

- In one district, court personnel reported that with the focus on rehabilitation due to JRI, judges do not want to "pile on" and focus only on restitution.
- Court personnel in another district reported that fines are no longer a condition of probation with the new focus on treatment and community service.
- Another district court reported that JRI immediately reduced the amount of fines ordered.
- One district reported that Adult Probation and Parole no longer recommends fines and attributed this to JRI.
- Two district courts reported no noticeable change that could be directly attributed to JRI.

Court personnel reported that turnover among judges during recent years was a contributing factor to decreased fines.

Court personnel in two courts reported that turnover among judges during recent years was a contributing factor to decreased fines and surcharges. New judges in these districts reportedly ordered lower fines than prior judges. One district reported that for one of their court locations, six judges have joined the bench since 2015, and none of these new judges ordered fines. One of the seven judges at this location ordered only the court security surcharge. As discussed in Chapter II, differences among judges contribute to inconsistencies, and we also found issues with the court security surcharge as addressed in Chapter IV.

While community service is still ordered in only a small number of cases, these orders increased starting in 2016. H.B. 348 did not

address community service, thus the increase in community service hours ordered is not a direct result of JRI. As discussed in Chapter III, credits can be given toward a fine when a defendant opts to do community service hours in lieu of some or all of the fine amount. This type of community service does not affect what is ordered by the judge, since it is an option for defendants after the judge imposes a sentence.

JRI contributed to the shift towards focusing on treatment and rehabilitation, but the legislation enacting JRI was not the sole driver of this shift. Our review focused on changes directly attributable to H.B. 348, and we did not identify a measurable change in fines and surcharges resulting from the bill. Our recommendations to address other causes of the decline are found in Chapters II, III, and IV. We do not recommend any action by the Judicial Council specific to JRI.

Our review focused on changes directly attributable to H.B. 348. We did not identify a measurable change in fines and surcharges resulting from the bill.

Appendix A:
Examples of Incomplete Indigency Forms

Example 1

FILED
AUG 05 2014
4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

[redacted]
Defendant's Name

[redacted]
Defendant's Street Address

[redacted]
City, State and Zip

[redacted]
Telephone

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. [redacted] Defendant	AFFIDAVIT OF INDIGENCY Case No. [redacted] Judge [redacted]

Defendant provides the following information required by Utah Code Section 77-32-202.

DEFENDANT'S FINANCIAL INFORMATION

Fill out the following table completely

Defendant's Employer's Name and Address:	Salary Weekly ( ) / Bi-Weekly ( )	Yearly Income:
Social Security Number: [redacted]		
Spouse's Employer's Name and Address: DIVORCED	Salary Weekly ( ) / Bi-Weekly ( )	
Social Security Number:		

LIST OF DEFENDANT'S DEBTS:

To whom owed:	Amount:	To whom owed:	Amount:

LIST OF DEFENDANT'S MONTHLY EXPENSES:

Expense	Amount	Expense	Amount	Other (please list)	Amount
Food		Gas			
Clothing		Water			
Transportation		Sewer			
Rent		Car Payments			
Electricity		Medical Payments			
House Mortgage					

LIST OF DEFENDANT'S DEPENDANTS:

Name	Age	Relationship	Name	Age	Relationship
[redacted]	5	son			

Alimony Received	N/A
Child Support Received	
Income in the past 12 months from any other non-government source including business; professional or other self-employment; rent payments, interest of dividends; pensions; annuities, or life insurance payments; gifts or inheritance.	

Income from government financial support including Social Security benefits; AFDC; worker's compensation; veteran's non-educational benefits; housing; food; or other living allowances paid to members of the military; clergy; and others	
TOTAL HOUSEHOLD INCOME	

If Defendant is currently not employed:

Date and state of last employment

Salary/wages per month when last employed

OTHER ASSETS:

Amounts in cash of any bank account, including savings and checking	
Amounts owing to Defendant including accounts receivable	

List of home, land or other real property and vehicles or other personal property owned in whole or in part by Defendant, its location and it approximate value. Include any real or personal property which Defendant has transferred to a third party since the date of the offense alleged in the Information.

Property	Location	Value
Home		
Car(s)		

STATE OF UTAH)
)ss
COUNTY OF UTAH)

Being sworn, I state that I, [redacted], am the defendant, that I have read this affidavit and the statements in it are true and correct to the best of my knowledge; and that due to my poverty, I am unable to bear the expenses of hiring an attorney to defend myself in this proceeding.

[redacted]
Signature of Defendant

ORDER ON AFFIDAVIT OF INDIGENCY
(to be filled out by the Judge)

The court hereby incorporates the facts set out in the defendant's Affidavit of Indigency, with any modifications indicated verbally on the court record or written below, and finds as follows:

✓ The defendant is indigent.

_____ The defendant is not indigent.

IT IS HEREBY ORDERED:

_____ Under Utah Code 77-32-202, the Provo City Public Defender's Office is appointed to represent the defendant in this matter.

_____ Under Utah Code 77-32-202©, the defendant has a continuing duty to inform the court of any material changes or change in circumstances that may affect his/her eligibility for appointed defense counsel.

Notice: Under Utah Code 77-32a-1 et seq., the defendant may be required to pay for part or all of the attorney's fees and other costs incurred at the City's expense.

✓ Under Utah Code 77-32-202, the defendant is not entitled to appointed defense counsel in this matter.[1]

Dated this 5 day of Aug, 2014

BY THE COURT

[redacted]

District Court Judge

ORIGINAL IF IN RED INK
STATE OF UTAH
FOURTH DIST. COURT • UTAH COUNTY

[2] The option marked on this form indicates the defendant was not appointed defense counsel. However, we reviewed additional documents from this case and found a public defender was actually appointed on this date.

Example 2

AFFIDAVIT OF INDIGENCY

Court Case No: [redacted]

Full Name (Please print) [redacted]	Date of Birth [redacted]	Age 34	Sex Male
Address [redacted] Apt	City Sandy	Zip Code [redacted]	
Phone number (W & H) [redacted]			

EMPLOYMENT

Employer NA		Phone number	
Address	Suite	City	Zip Code
Length of time with present employer	Job Title/description		
Monthly Income $		or Weekly income $	or Hourly income $
Spouse's Employer			
Spouse's Monthly Income $		or Weekly income $	or Hourly income $

OTHER INCOME

Source	Amount	Source	Amount
	$		$
	$		$

ASSETS

Please circle One Home Apartment	Please circle One Buy Rent	Monthly Payment $	Equity $
Vehicle(s):	Make	Model	Year
#1			
#2			
	Present Value(s)	Amount(s) Owed	Lien Holder (s)
#1			
#2			
Other Assets			

CASH

Source	Amount	Source	Amount
	$		$
	$		$

DEBTS AND OTHER OBLIGATIONS

Debt	Amount	Debt	Amount
	$		$
	$		$
	$		$

ATTORNEY FEES

List anyone assisting you with attorney fees:

DEPENDENTS

Name	Relationship	Age	Name	Relationship	Age

STATE OF UTAH)
)ss.
COUNTY OF CACHE)

Being sworn, I state that I, [redacted] am the Defendant, that I have read this Affidavit and the Statements in it are true and correct to the best of my knowledge, and that due to my poverty I am unable to bear the expense of hiring an attorney to defend myself in this proceeding. I further understand that the information in this affidavit will be disclosed to the Court.

[redacted]
(Signature of Defendant)

To be filled out by Court

X Under Utah Code Title 77, Chapter 32, [redacted] *IS* appointed to represent Defendant in the above referenced case.

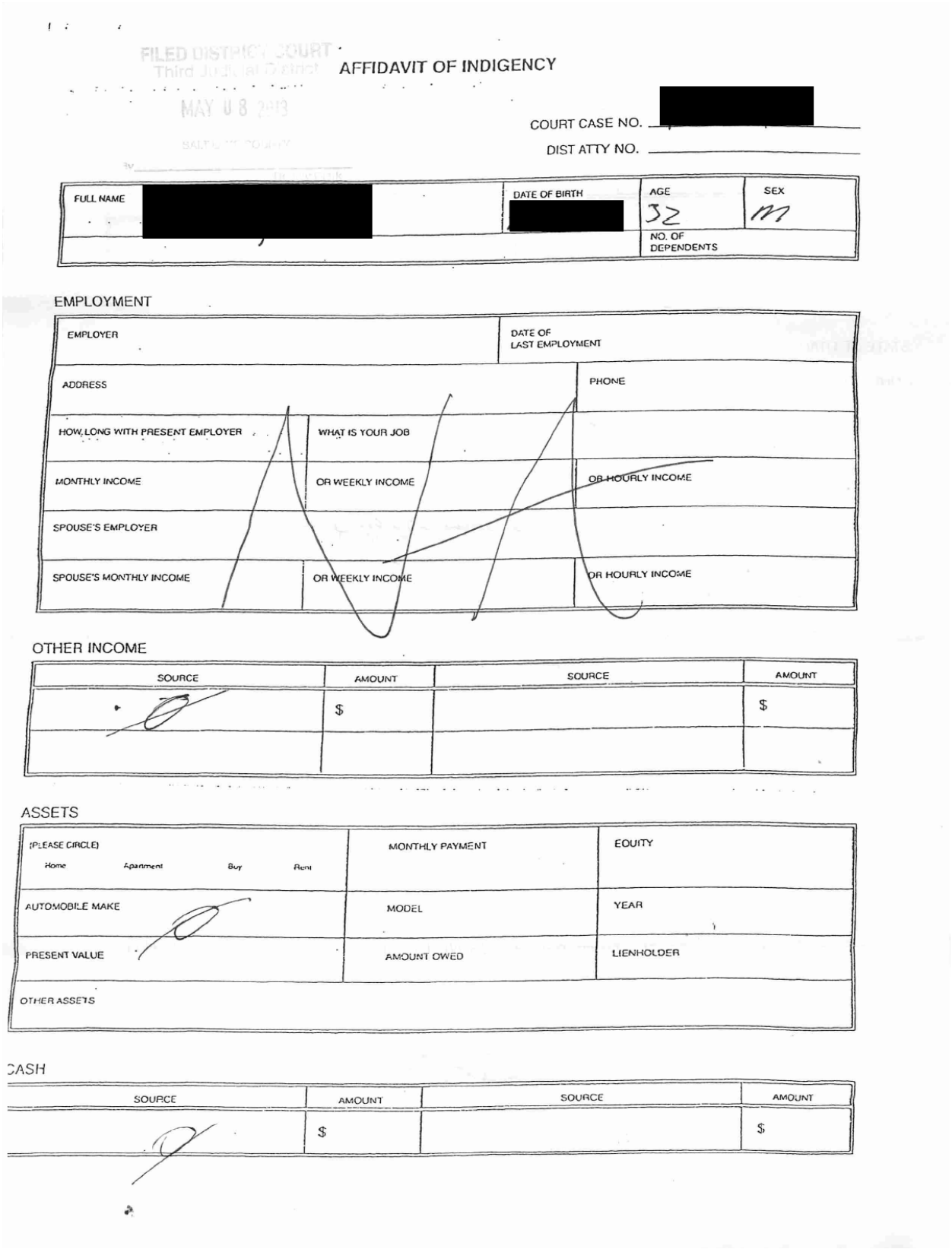
_____ Under Utah Code Title 77, Chapter 32, Defendant *IS NOT* entitled to appointed defense counsel in the above referenced case.

DATED 2/13/18

[redacted]
District Court Judge

STATE OF UTAH FIRST DISTRICT COURT CACHE COUNTY

Example 3



FILED DISTRICT COURT
Third Judicial District
MAY 08 2013
SALT LAKE COUNTY
By _____ Deputy Clerk

AFFIDAVIT OF INDIGENCY

COURT CASE NO. [redacted]

DIST ATTY NO. _____

FULL NAME [redacted]	DATE OF BIRTH [redacted]	AGE 32	SEX M
		NO. OF DEPENDENTS	

EMPLOYMENT

EMPLOYER		DATE OF LAST EMPLOYMENT
ADDRESS		PHONE
HOW LONG WITH PRESENT EMPLOYER	WHAT IS YOUR JOB	
MONTHLY INCOME	OR WEEKLY INCOME	OR HOURLY INCOME
SPOUSE'S EMPLOYER		
SPOUSE'S MONTHLY INCOME	OR WEEKLY INCOME	OR HOURLY INCOME

OTHER INCOME

SOURCE	AMOUNT	SOURCE	AMOUNT
0	$		$

ASSETS

(PLEASE CIRCLE) Home Apartment Buy Rent	MONTHLY PAYMENT	EQUITY
AUTOMOBILE MAKE 0	MODEL	YEAR
PRESENT VALUE	AMOUNT OWED	LIENHOLDER
OTHER ASSETS		

CASH

SOURCE	AMOUNT	SOURCE	AMOUNT
0	$		$

DEBTS AND OTHER INVOLUNTARY OBLIGATIONS

DEBT	AMOUNT	DEBT	AMOUNT
	$		$

WILL ANYONE ASSIST YOU IN PAYING ATTORNEY FEES?	WHO?

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

Being sworn, I state that I, [redacted], am the Defendant; that I have read this Affidavit and the statements in it are true and correct to the best of my knowledge; and that due to my poverty I am unable to bear the expense of hiring an attorney to defend myself in this proceeding. I further understand that the information contained in this affidavit will be disclosed to the Court.

[redacted]
(Signature of Defendant)

Subscribed and sworn before me on _____

_____
NOTARY PUBLIC
My Commission Expires:

IT IS HEREBY ORDERED:

X Under Utah Code Title 77, Chapter 32, the Legal Defender's Association *IS* appointed to represent Defendant in the above referenced case

_____ Under Utah Code Title 77, Chapter 32, Defendant *IS NOT* entitled to appointed defense counsel in the above referenced case.

DATED 5-8-13

[redacted]
DISTRICT COURT JUDGE

By _____
STAMP USED AT DIRECTION OF JUDGE

STATE OF UTAH

Agency Response

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

HON. MARY T. NOONAN, State Court Administrator
Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114
Phone: (801) 578-3800
mnoonan@utcourts.gov

October 5, 2020

MR. KADE R. MINCHEY, Auditor General
315 House Building
P.O. Box 145315
Salt Lake City, Utah 84114-5315
Via email to:
Kade Minchey (kminchey@le.utah.gov)
Brian Dean (bdean@le.utah.gov)
Sarah Flanigan (sflanigan@le.utah.gov)

Re: Response to final exposure draft of "A Performance Audit of Courts Fines and Surcharges" (report no. 2020-10, dated September 28, 2020)

Dear Mr. Minchey,

Thank you for the opportunity to respond to the final exposure draft of "A Performance Audit of Courts Fines and Surcharges" (report no. 2020-10, dated September 28, 2020). We appreciated our interactions with your team as this audit was conducted. As has always been our experience, your office was professionally focused on preparing a high-quality report that succinctly identifies issues and recommendations for action.

In FY2020, the district courts of the state handled over 41,000 criminal cases and over 15,000 traffic cases. In that same time, the justice courts handled over 63,000 criminal cases, as well as over 300,000 traffic cases. As a starting proposition, we want to assure the legislature that as a judge grapples with the appropriate sentence in each case, they do so with a desire to pronounce a just sentence, taking into account the requirements of the law, the unique circumstances of the individual, and the facts of the case. We are proud of the work of the judiciary and of our efforts to collectively provide a fair system.

As with all systems that attend to such a high volume of work, there are areas in need of improvement. We find significant value in the audit report as it clearly identifies some of those areas. The issues and recommendations in the report are well-presented and understandable. Please know that the report and recommendations will be presented to the Judicial Council at the first available opportunity on October 26, 2020. We fully anticipate further

careful consideration will result in an action plan designed to expeditiously address the recommendations. The Administrative Office of the Courts will work at the direction of the Judicial Council to implement necessary changes.

Best,

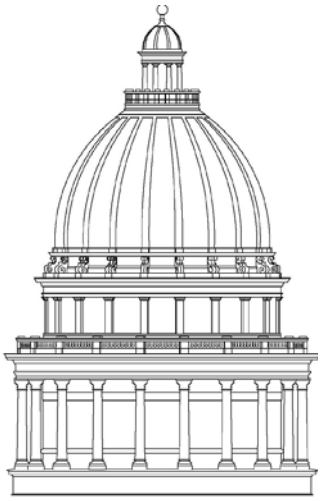
Judge Mary T. Noonan
State Court Administrator

Agenda

REPORT TO THE

UTAH LEGISLATURE

Number 2020-09



A Performance Audit of Information Sharing in the Criminal Justice System

October 2020

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

000255

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

Audit Subcommittee of the Legislative Management Committee
President J. Stuart Adams, Co–Chair • Speaker Brad R. Wilson, Co–Chair
Senator Karen Mayne • Senator Evan J. Vickers • Representative Brian S. King • Representative Francis D. Gibson

KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

October 13, 2020

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Information Sharing in the Criminal Justice System** (Report #2020-09). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade Minchey

Kade R. Minchey, CIA, CFE
Auditor General

UTAH STATE LEGISLATURE

AUDIT SUMMARY

000256

REPORT #2020-09 | OCTOBER 2020

Office of the Legislative Auditor General | Kade R. Minchey, Auditor General

PERFORMANCE AUDIT

Information Sharing in the Criminal Justice System

AUDIT REQUEST

Concerns about state warrants not being entered into the National Crime Information Center database prompted the Legislative Audit Subcommittee to request a comprehensive audit on data sharing and coordination between criminal justice stakeholders.

BACKGROUND

Timely, accurate, and complete information is critical to the overall success of the criminal justice system. Because the criminal justice system is made up of a variety of organizations that span all three branches at every level of government, information can become siloed and is not always easily and reliably accessed by those who need it. When information is not shared between criminal justice agencies, operational effectiveness suffers, policies lack precision, and accountability weakens.

KEY FINDINGS

- Judges, police officers, the Commission on Criminal and Juvenile Justice (CCJJ), Legislators, local mental health authorities, and others in the criminal justice system frequently do not have timely or reliable access to credible information.
- Information is often "siloed" in agency databases, making it difficult to share.
- When information sharing improves, so does the efficiency and effectiveness of the system. We believe the creation of an Information Sharing Environment can facilitate information sharing.

  When considering these findings, **privacy concerns are important and must be taken seriously. The need for communication, efficiency, and public safety must be balanced with privacy and security considerations.**

RECOMMENDATIONS

- The Legislature should consider creating an Information Sharing Environment (ISE) in legislation, including key elements such as:
  - Comprehensive privacy policy
  - Statewide data dictionary
  - Data as a public good
  - ISE board
- If the Legislature chooses to form an ISE Board, this Board should be tasked with overseeing the development and maintenance of the ISE, including key elements such as:
  - A gap analysis
  - ISE standards
  - A long-term plan
  - A technology committee

Summary continues on back >>

REPORT SUMMARY

Front Line Criminal Justice Personnel Are Not Always Receiving Needed Information

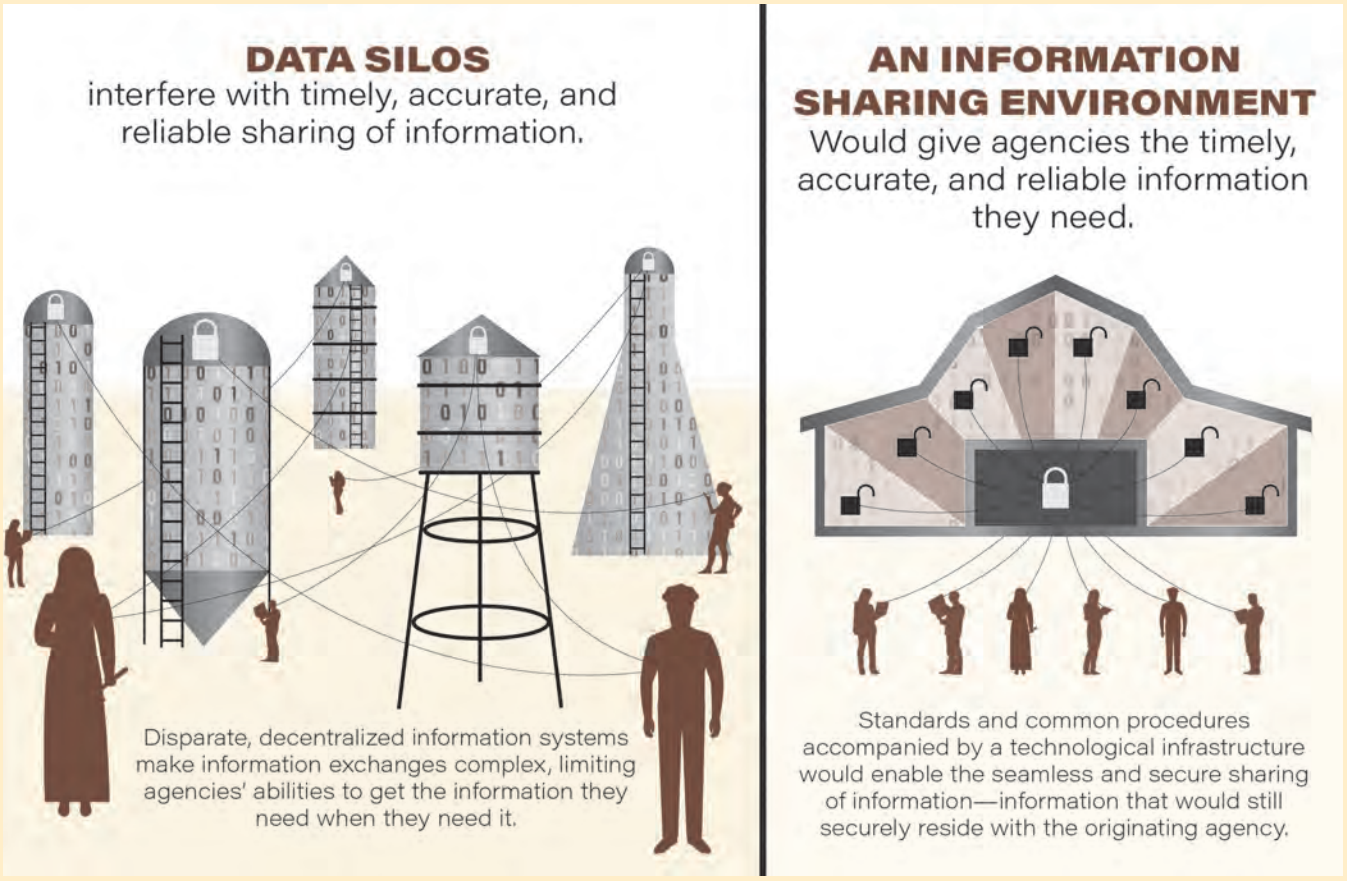
Without timely, accurate, and complete data, decision-makers cannot make informed decisions.

- Judges may have difficulty making pretrial release determinations that are well suited to the offender's risk level, which in turn may put the public at risk.
- Prosecutors may be unable to file charges with the courts.
- Police officers may not know if a suspect has been previously engaged by other officers.

Policymakers and Administrators Are Not Getting All the Data They Need

In the same vein, the Legislature, CCJJ, Utah Department of Corrections (UDC), Utah Courts, local health authorities, and others need credible information to drive policies and programs. For example, in 2015, the Legislature passed a reform initiative in criminal justice known as the Justice Reinvestment Initiative (JRI). However, due to poor quality or incomplete information, the real impacts have been largely unknown. Our companion report, entitled ***A Performance Audit of the Justice Reinvestment Initiative,*** 2020-08, examined the 2015 JRI reform in detail. However, JRI is an ongoing reform effort and requires more straightforward access to relevant data if subsequent assessments and revisions are to be made.

This is only one notable example of several that we provide in the report of a greater need for information sharing across Utah's criminal justice system. We believe legislative guidance is needed to overcome the information sharing barriers.



REPORT TO THE
UTAH LEGISLATURE

Report No. 2020-09

A Performance Audit of Information Sharing in the Criminal Justice System

October 2020

Audit Performed By:

Audit Manager	Darin Underwood
Audit Supervisor	James Behunin
Audit Staff	Brent Packer
	August Lehman
	Zackery King

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Chapter I
Introduction

To be effective, criminal justice stakeholders need access to timely, accurate, and reliable information. However, legislators have been concerned by reports that information that is crucial to decision making is not getting to those who need it. Even legislators themselves report that they are not always receiving the information they need to make important policy decisions. For this reason, the Legislature asked the Auditor General to evaluate information sharing within Utah's criminal justice system.

Communication Issues Underscore Larger Information Sharing Problem

Prior to this audit, the US Marshall who is involved in apprehending individuals with warrants informed the Legislature that Utah was reporting an extremely low number of its warrants to the national database. In response, legislators asked that we investigate this matter. Our findings are reported in the first section. In addition, legislators expressed concerns regarding the coordination of criminal justice organizations. This included things like access to accurate information and how Utah is doing with connecting separate databases. Though we began by investigating the problems associated with non-reporting of warrants, we quickly came across several other accounts of inadequate information sharing. As we looked into these other areas, it became apparent that there is, in fact, a larger information sharing problem across Utah's criminal justice system.

Failure to Report Warrants Was Concerning to Legislators

The Bureau of Justice Statistics reported that in 2016, Utah held a total of nearly 194,000 warrants in its state database, 19,000 of which were felony warrants. Yet only 1,600 of the state warrants were reported to the National Crime Information Center (NCIC).[1] This means less than 1 percent of active state warrants were also active in the national database. By August of 2019, the number of state warrants active in the NCIC database had only grown slightly, to

In 2016, Utah reported less than one percent of its state warrants to the national database.

[1] Not all misdemeanors need to be reported to NCIC.

1,700. The gravity of this underreporting is that the vast majority of individuals wanted on felony and severe misdemeanor offenses in the State of Utah could evade the consequences of their behavior by simply crossing state lines. Not only did this limit Utah's ability to enact justice through the exercise of its extradition powers, it exposed citizens throughout the country to dangerous individuals.

For example, one individual with a violent criminal history record was wanted in Utah for Sexual Abuse of a Child. Utah did not report the warrant to NCIC. Criminal justice agencies performed 39 separate searches for the individual in the NCIC wanted persons file and received no hits. The individual eventually was arrested in the State of Colorado for three counts of child abuse, two counts of kidnapping, and two counts of assault. Had Utah reported the warrant to NCIC with an assigned extradition status, the offender could have been apprehended before committing these subsequent offenses.

The Bureau of Criminal Identification reports all felony warrants are now uploaded to the national database.

In the 2019 General Session, a bill was passed requiring the Bureau of Criminal Identification (BCI) to submit the records of all violent felonies to NCIC. We met with BCI on several occasions throughout the audit to follow up on their progress toward implementation. BCI reports that as of the second week of April 2020, all felony warrants began to be uploaded to NCIC, including non-violent offenses. Due to FBI record requirements, the criminal justice agency that created the record is considered the holder of the record and is responsible for ensuring its accuracy. This includes determining the extradition status of the warrant. BCI provided documentation of training materials they currently use to ensure law enforcement agencies are appropriately performing their duties related to record ownership. BCI further reports it has now taken on the role of quality control, auditing entries and notifying law enforcement of missing information.

While we are pleased to note the progress made in submitting warrants to the national database as reported by BCI, this issue was just one of several concerns regarding information sharing that legislators were interested in. The following section notes some additional concerns that led to this audit.

Poor Communication Results in Undesirable Outcomes

Apart from the warrant issue, this audit was requested in response to numerous concerns of non-existent or ineffective communication

between criminal justice agencies in Utah. Policymakers have also been concerned by the challenge they face in making policy without adequate data from the criminal justice system. The following are a few examples:

Jurisdictional Boundaries Prevent the Apprehension of a Drunk Driver. One legislator reports trying to contact police while following a drunk driver in his community. After contacting his local dispatch center, he then followed the drunk driver into one jurisdiction and then into another. Each time he crossed a jurisdictional boundary, he was handed off to another dispatcher who asked the legislator to repeat his description of the suspected drunk driver.

Lawmakers Are Unable to Evaluate the Impacts of Policy Reform. In a companion report entitled *A Performance Audit of the Justice Reinvestment Initiative*, 2020-08, we look at the impact JRI had on local jails. The main reason legislators requested an audit of the Justice Reinvestment Initiative (JRI) was that they could not obtain reliable information regarding the impacts of that reform legislation.

Legislators have struggled to obtain reliable and complete information to assess the impact of the Justice Reinvestment Initiative (JRI).

Disparate Databases Make Coordination of Public Safety Entities Challenging. Legislators expressed concerns of coordination efforts being disjointed among the diverse criminal justice agencies. A suspected cause of this was accurate information not being shared regularly due to the many databases that do not communicate with each other.

Improved Information Sharing Can Enhance Public Safety, Policies, and Accountability

When information is not shared between criminal justice agencies, operational effectiveness suffers, policies lack precision, and accountability weakens. Communities and officers are better protected when criminal justice partners share information with one another. Policies are most effective and agile when policymakers and administrators have timely access to complete and reliable data. When law enforcement officers, judges, and treatment providers use data to coordinate their efforts, offenders can be held more accountable and are more likely to experience better outcomes.

Public Safety Can Be Strengthened Through Information Sharing

There have been numerous reports in Utah of the public being put at risk because of information sharing issues.

There have been several reports in Utah and in other states of law enforcement officers and the public being put at risk because critical information was not communicated in a timely manner to those who needed it. For example, a convicted rapist and murderer was released from a county jail prematurely last year due to a lapse in inter-agency communication. In addition, tragedies have occurred in recent well-publicized criminal cases in Utah. Among other concerns, poor information sharing was cited as a contributing factor.

One final example is the risk presented by fugitives who flee prosecution after either being charged or convicted of a crime. In fact, three of the last five police officers killed in Utah were by fugitives. Locating fugitives requires inter-agency coordination so that all known information is available to the officers that are in pursuit. It is imperative that our efforts are coordinated to ensure risk is minimized to law enforcement and the public.

Outside of Utah, we identified incidents that might not have ended as tragically as they did if key information had been shared among law enforcement agencies. For example, a Connecticut police officer responding to a domestic disturbance call, received information from the spouse that no guns were in the house. Upon entering the house, the officer was shot and killed with an assault rifle. However, it was later discovered that other Connecticut law enforcement agencies had information that the offender did in fact have a history of violence, including incidents involving a firearm. The Executive Director of Connecticut's Information Sharing System said:

> If the information had been shared…[the officer] would have known the gun was in the house and that the offender had a history of violence and of gun related issues. That wasn't known to the officer.

Although not all cases end in tragedy, they could prevent law enforcement from performing their jobs effectively. However, it is not only law enforcement that is affected by the lack of information sharing. As described in the following section, the lack of timely and reliable information may prevent lawmakers from enacting effective and efficient policies.

Targeted Policies Can Be Achieved Through Access to Complete and Accurate Data

Policymakers and administrators need data to form effective policies. Complex issues, like the administration of justice, are very difficult to work through with only part of the picture. When data is not available, policy choices may be influenced by anecdotal stories that do not reflect the prevailing condition. Lawmakers are expected to develop policies which address complex issues such as racial justice, mental illness, and misuse of prescriptive drugs. To ensure those policies are effective, lawmakers will need to have access to better and more timely data.

When data is not available, policy choices may be influenced by anecdotal stories that do not reflect the prevailing condition.

Here is an example to illustrate the point: Florida uses aggregate data to assess proposed bills for their impact. The Director of Florida's Criminal Justice Information System said:

> When a senator or representative proposes a bill, [the office does] a bill analysis and looks at the impact of the proposed legislation…[They consider] who and how many will be affected by the bill…They'll even tweak the wording to increase impact.

What we are saying is complete and real time data is essential to achieve the best policy outcomes. Targeted policies can be achieved through access to complete and accurate data. The Utah Legislature and other policymaking bodies would benefit from increased availability to accurate information so that they may perform this type of analysis, including weighing the potential impact of their policies.

Data Can Enable State and Local Officials to Act Strategically

Data regarding crime patterns and county jail populations can also be used to help criminal justice officials act strategically as they search for ways to reduce crime. For example, in the previously mentioned audit report on JRI, we describe the problems associated with chronic offenders and the outsized impact that a small population has on the criminal justice system. That report suggests an effective use of offender data would enable policing agencies, prosecutors, and judges to first identify chronic offenders and then to address those conditions that led to their criminal behavior.

But the problem with chronic offenders is just one example of how data can be used to address a current trend in criminal behavior. The area of focus may change from year to year as new crime trends appear in the data. One year it may be drug distribution, the next it may be gang activity. Furthermore, some regions of the state may face different types of crime than other areas of the state. These are just a few of the reasons why criminal justice partners at the state and local levels need data to craft an effective response to crime in their areas.

Audit Scope and Objectives

The Audit Subcommittee approved two audits requests made to the Legislative Auditor General related to criminal justice information sharing. The first request focused on the impact the Justice Reinvestment Initiative (JRI) has had on county jails, the prison, treatment providers, probation providers and other parts of the criminal justice system. The second request was regarding concerns of inadequate information sharing between Utah's public safety entities and the underreporting of state warrants to the national database.

Our companion report, entitled *A Performance Audit of the Justice Reinvestment Initiative*, 2020-08, examined the 2015 JRI reform in detail. In that report, we note considerable need for timely access to complete and reliable data to assess the impact of that legislation on Utah's criminal justice system. Our initial work on that audit confirmed the reports of inadequate information sharing across Utah's criminal justice system. In fact, it exposed the fragmented condition of inter-agency communication in the State of Utah. As a result, this report describes the information sharing issues we uncovered and provides a set of recommendations to address the concerns.

Chapter II examines the current condition of inter-agency communication across Utah's criminal justice system and explores the underlying causes of the weaknesses we uncovered.

Chapter III makes recommendations for improving information sharing using criteria from the federal government, national non-profits, other states, as well as state and local stakeholders.

Chapter II
Data Silos Inhibit Sharing of Crucial Criminal Justice Information

Utah does not have a unified criminal justice information system. Criminal justice is largely decentralized with federal, state, and local jurisdictions each participating in various aspects of the criminal justice system. This is a long-standing practice that this audit accepts. While the administration of criminal justice is decentralized, the information systems of criminal justice do not have to be. Because Utah does not have a unified approach to sharing criminal justice information, crucial information may not always be available to law enforcement officers, judges, prosecutors, and policymakers who need it to make critical decisions. As a result, public safety can be put at risk, policies are less effective, and accountability is weakened.

While the administration of criminal justice is decentralized, the information systems of criminal justice do not have to be.

Experts in information science use the term "data silos" to describe the condition in which information systems from related organizations cannot communicate with one another. As a result, information held by one agency cannot be easily sent to the individuals in other agencies who need it. This chapter outlines the current challenges of information sharing in Utah's siloed criminal justice system and the impact it has. We recommend in the next chapter (Chapter III) steps the Legislature should consider taking to correct this problem. We believe that because of the legitimate obstacles that exist to sharing information in the system, clear legislative guidance is needed to overcome these organizational barriers. The principal recommendation is that the Legislature consider enacting legislation for the development of an Information Sharing Environment. However, before we delve into the solution, we explore the problem in greater detail here in this chapter.

Data silos refer to the condition in which information systems from related organizations cannot communicate with one another.

Separate and Independent Criminal Justice Organizations Make Information Sharing Difficult

The data silo problem is largely the unintended consequence of decentralization. Decentralization, or the separation of powers, is foundational to our democracy. However, information, in modern times, can largely be decoupled from our decentralized system. In short, we recognize parts of the criminal justice system are rooted in

strong local control, but information can be shared. The following elaborates on what we observed in Utah's criminal justice system.

Distinct Justice Organizations Make Information Sharing Complex

Decentralization not only refers to separate branches of government, but also the federal, state, and local subdivisions. Generally, each department or agency has its own goals and objectives. Data systems are almost always created independently of one another and, consequently, reflect the decentralization that exists more generally in the system. This independence also makes it difficult to share information needed by the entire criminal justice system.

Organizations from all three branches and at every level of government play a part in criminal justice.

Many Independent Agencies Play a Role in Utah's Criminal Justice. The large number of criminal justice entities in Utah only compounds the problem of ensuring information reaches those who need it. Each agency has developed an information system that meets their unique needs but are not necessarily designed to be shared with other entities. Some of the agencies that make up Utah's criminal justice system include:

- 130 (+/-) local law enforcement agencies
- 24 county jails
- 29 county prosecutor offices
- Public and private defense counsel
- Courts
- Department of Corrections
- Board of Pardons and Parole
- Department of Public Safety
- Public and private probation and parole agencies
- Commission on Criminal and Juvenile Justice

This list does not include the nearly 200 public and private treatment providers that are treating those involved with the justice system. Most of these providers also operate and maintain their own separate data systems. The result is a fragmented approach to managing information within the criminal justice system. We use Figure 2.1 to describe the many separate "silos" or repositories where information is held within Utah's criminal justice system.

Figure 2.1 Data Is Siloed Within Individual Agencies. Cross-agency communication is fragmented within Utah's criminal justice system.

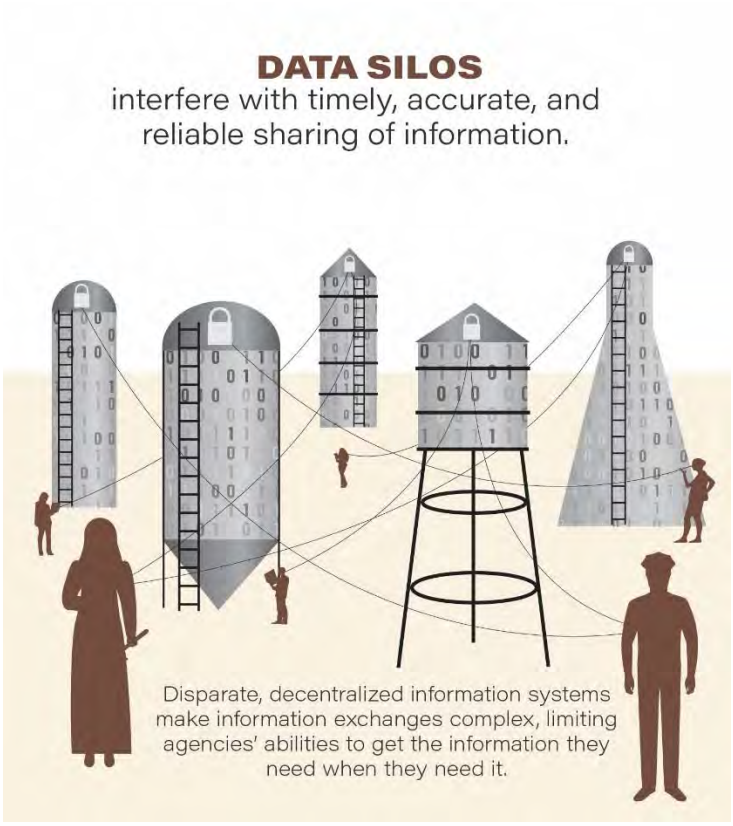


Figure 2.1 describes the "silo" effect which occurs when an organization or system operates independent management information systems in which data does not flow freely from one unit to another.

Data silos exist throughout Utah's criminal justice system, making it difficult to get information in the hands of those who need it.

Organizations Design Their Management Information Systems to Meet Their Own Needs, Not the Needs of the Larger System. During our audit of JRI, we learned first-hand the challenge of matching information from different agency systems. We found it extremely difficult to match county jail data with court data and BCI records because some county jails do not record the inmate's State Identification (SID) number in their booking records. During the booking process, a SID is identified when the inmate has his or her fingerprints taken. We asked the individual who runs the jail IT at one county jail why they did not record the SID in each inmate's booking record. His response was that they do not record that information because they have no use for it.

If each county had recorded the SID for each of their inmates, it would have made it much easier for us to obtain the data we needed to answer legislators' questions regarding the impact of JRI on county jails.

We have concluded that if each county had recorded the SID for each of their inmates, it would have made it much easier for us to

obtain the data we needed to answer legislators' questions regarding the impact of JRI on county jails. However, because the county jails, the state prison system, the courts, and county attorney offices operate separate management information systems, which are often designed to meet their own needs, rather than the needs of other agencies, we have a *system* of criminal justice agencies that cannot easily share data. Although agencies serve similar client populations, they cannot easily match their offender data to that of other agencies.

Upgrades to Utah's Criminal Justice Information System were estimated to save law enforcement 1.5 million hours statewide.

Utah's Criminal Justice Information System (UCJIS)[2] Demonstrates the Enormous Value of Sharing Data. A 2010 Government to Government Report reviewed the impact of information sharing enhancements made to UCJIS in 2007. They found that through expanded functionality and integration, UCJIS was able to save law enforcement an estimated 1.5 million man-hours per year, which is the equivalent of hiring roughly 721 new officers. They also found that it provided better and more comprehensive information for investigations and improved response times. The UCJIS information sharing upgrades demonstrate the tremendous value information sharing has in the criminal justice system.

The net positive effect of this endeavor is significant and commendable. However, the UCJIS project does not extend to the entire criminal justice system, though notable efforts to expand its impact have been made. Despite the progress made through UCJIS, data still largely remains siloed throughout Utah's criminal justice system. Our recommendations in the next chapter (Chapter III) describe steps Utah can take to advance information sharing across the entire criminal justice system.

Legal and Privacy Concerns Dissuade Information Sharing

Sharing data may expose organizations to liability if not done in accordance with legal and privacy rules.

Agencies feel more control and less liability when they retain and manage their own data. This is understandable. In contrast, sharing data exposes an agency to potential lawsuits if it does not conform to legal and privacy standards. For this reason, it appears many agencies and their staff find it easier and safer to avoid sharing their data.

[2] UCJIS is a portal, not a database. It allows authorized individuals to access certain databases in the criminal justice system, but does not store the data.

The Health Insurance Portability and Accountability Act (HIPAA) and Title 42 of The Code of Federal Regulations (CFR), Part 2, are two legal and privacy resources cited by stakeholders as a reason for withholding data. However, according to a report produced by the Bureau of Justice Assistance,[3]

> HIPAA and 42 CFR Part 2 rarely explicitly *prohibit* the exchange of information. Rather, they generally provide guidance about the conditions under which information can be shared.

We spoke with the Director of Florida's Criminal Justice Information System, who informed us that Florida built a Criminal Justice Network (CJNET). CJNET has secure email, secure websites, secure data transfers, and secure connectivity across the entire state for all criminal justice partners. He also described a tracking number that gets assigned to each individual and is carried through the system to allow for offender tracking. Other states report that they operate similar systems. These examples are evidence that legal and privacy concerns are not prohibitive when it comes to sharing information with criminal justice partners.

Other states have worked through legal and privacy concerns to effectively share information with one another.

Privacy Concerns Are Important and Must Be Taken Seriously. Balancing the need for privacy and security with communication, efficiency, and public safety is vital. We found that some other states appear to have struck a balance. We recommend policymakers balance these needs and look for ways to improve our criminal justice system and improve the safety of our communities.

Organizational Structures Sometimes Discourage Staff from Sharing Information

Organizational boundaries can lead to organizational politics. For example, data serves different purposes to different organizations. We received reports from agency staff describing data sharing conflicts with their criminal justice partner agencies. Furthermore, increased transparency necessarily leads to increased scrutiny. According to one national report,

[3]https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG_CJMH_Info_Sharing.pdf

> …this scrutiny also makes many agencies apprehensive about releasing data because of the potential public response...

In short, as data sharing increases, agencies lose some control over how they are perceived. However, this is not a valid reason for not sharing data.

Another area that may discourage sharing information is concern for how agencies will share the cost of joint information sharing arrangements. For example, some file formats used for storing data are cumbersome to other agencies. Portable Document Formats (PDF) may be acceptable to the organization collecting the information, but this may not be true of a different department that needs to aggregate the information for analyses. These problems are compounded when new software is needed, or technical expertise must be sought out to enable the organization to meet the new demands.

Front Line Personnel, Administrators, and Policymakers Not Getting All Needed Information

As mentioned in Chapter I, having accurate and timely information is critical to an effective criminal justice system. Those on the front lines need real-time data to inform their daily decisions. Policymakers and administrators need aggregate data to craft and evaluate policies. While the effect is difficult to measure, other states have been able to enhance public safety at a reduced cost through improved information sharing. We believe the poor flow of information is hindering Utah's criminal justice system from achieving its goals to reduce crime and help offenders become more productive members of society. Though the state made an attempt to build an integrated information system in 2016, we believe there was a lack of broad representation and accountability, and the system was never completed.

Front Line Criminal Justice Personnel Are Not Always Receiving Needed Information

Criminal justice personnel need access to timely information to make informed decisions.

Criminal justice personnel need access to information to make informed decisions. Without timely, accurate, and complete data, decision-makers must rely on inference to fill in the gaps. Just to name

a few that we encountered during the audit, these situations exist without good information:

- judges may have difficulty making pretrial release determinations that are well suited to the offender's risk level, which in turn may put the public at risk
- criminal history records may be missing felony convictions, which may lead to convicted felons obtaining jobs working with vulnerable populations
- offenders may be granted too much or too little credit for time served by the Board of Pardons and Parole
- prosecutors may be unable to file charges with the courts
- police officers may not know if a suspect has been previously engaged by other officers.

Judges Do Not Receive the Public Safety Assessment in 30 Percent of Cases. The Public Safety Assessment (PSA) is an important tool used to assist judges in making pretrial release decisions. The assessment identifies the defendants' likelihood to appear in court and their risk for reoffense. However, an assessment cannot be generated unless the jails submit a State Identification (SID) number to the courts. The Administrative Office of the Courts provided documentation showing that as of September 2020, judges are not receiving the assessment due to a missing SID number for 1 out of every 6 of the defendants who appear before them. The PSA is also limited because other states' data are not feeding into the system correctly. Between these two data sharing issues, the courts report that, on average, judges do not receive the PSA 30 percent of the time.

The Public Safety Assessment assists judges in rendering pretrial decisions through determining risk. However, judges do not receive the PSA about 30 percent of the time.

Our concern is that the PSA provides valuable information regarding an inmate's risk level. If judges do not receive this information, it may hinder their ability to render decisions that reflect the defendant's risk level. It increases the possibility that a high-risk offender may be released to the community putting public safety at risk. It also increases the possibility that a low-risk offender be held in custody unnecessarily.

Other states have found that when risk is used to make pretrial release decisions, public safety is enhanced at a lower cost. For example, Kentucky discovered that by implementing the PSA, crime rates dropped 15 percent while the number of defendants released pretrial had increased. New Jersey reported a 6,000 person reduction

Accurately assessing risk has been shown to reduce crime and cost.

in incarceration from 2012 to 2018 while maintaining approximately the same court appearance and crime rates.

Bureau of Criminal Identification (BCI) Is Not Getting Data Needed to Connect Felony Charges to an Offender's Criminal History. According to BCI, over 37,000 felony convictions have not been attached to the person who committed the crime. In addition, BCI reports that as of February 2020, Utah's criminal history database was missing the penalties for over 300,000 distinct court cases. One reason given for the missing records is the challenge in matching offender information in different agency databases. Occasionally, offender names, State Identification (SID) numbers or other identifying information is recorded differently in separate agency systems.[4]

37,000 felony convictions are not in Utah's Criminal History database due to information sharing issues.

This causes some vulnerabilities in the system. A felony is a serious offense, with loss of rights attached to conviction. One service provided by BCI is to maintain a record of each offenders' criminal history. Maintaining a complete criminal history is important because external agencies rely on this information to ensure safety and improve decision-making.

Incomplete records expose the public to heightened risk.

The Board of Pardons and Parole (BOPP) May Not Always Receive Information About Credit for Time Served. The BOPP reports that, in some instances, it struggles to determine the amount of times an offender has already served in jail prior to a conviction due to inconsistencies in how the data is reported. Normally, the BOPP applies the amount of time already served in jail to the offender's sentence when calculating expiration and guideline dates. When credit for time served is not available or is incorrectly reported by the jails, there is a risk that the BOPP may issue a release decision without this information being considered. If the credit for time served is overestimated, offenders may be released prior to the completion of their sentence. In contrast, if an offender's time already served is not reported, the offender may be incarcerated for a longer period of time than allowed by their sentence. In either case, the BOPP's inability to account for the time served could represent a miscarriage of justice. The BOPP reports that their staff currently spend a great deal of time searching available records to make sure that the timed served is

[4] It is worth noting that there were reportedly over one million records previously missing from the database, showing that conditions have improved.

reported as accurately as possible. Even so, they report that occasionally they discover that the information is incomplete or inaccurate.

Prosecutors Are Not Always Receiving the Evidence They Need from Law Enforcement to File a Charge. Prosecutors rely on probable cause statements and additional evidence that may have been collected at the scene of the crime or during an investigation to make charging decisions. If prosecutors are not provided with all the evidence, they cannot proceed with the case, and the charges are then dropped.

We met with Salt Lake County Prosecutors who told us if they don't receive the information they need from law enforcement, they have no mechanism for digitally submitting a request for the missing or inaccurate information. Instead, they print out a report and put it in their filing room, where law enforcement must physically retrieve it. The law enforcement agency then must resubmit a new probable cause statement with the missing information. SLCO Prosecutors report that in about 15 percent of cases, they do not receive the necessary information from law enforcement to file with the court. We believe the cumbersome nature of sharing information back and forth at least partially accounts for this number. When charges are not filed due to missing information, suspected criminals may be released without a trial, and public safety is put at risk.

About 15 percent of the time, SLCO Prosecutors report they do not receive the information necessary from law enforcement to file charges.

Police Officers May Not Know if a Suspect Has Been Previously Engaged by Other Officers. At times, officers need to know what previous interaction an individual has had with other police departments to establish burden of proof for arrest. For example, if an officer attends to a domestic violence call, but lacks sufficient evidence to arrest, this information would not be available through UCJIS to police departments outside that jurisdiction. However, if that same individual were stopped in a different county for a separate offense, the officer may need to know of prior contact with law enforcement, to establish burden of proof. This highlights the importance of data being timely, as a report detailing this information after-the-fact would be too late. This means offenders may slip through the cracks due to records held in various record management systems.

Policymakers and Administrators Are Not Getting All the Data They Need for Programs and Analysis

Policymakers and administrators need complete and accurate information from which to craft new policies, rather than anecdotes and one-off events. We found the Utah Legislature, Judicial Council, and other key players in the criminal justice system do not always receive the information they need when they need it to craft effective policy. We believe timely, accurate, and reliable data from each of the relevant organizations would provide policymakers with a broader lens through which they could view the criminal justice system. Not only does this help enact policy in accordance with the most current information, it allows policymakers to assess those policies and modify them on an ongoing basis.

The Utah Legislature is unable to fully assess the impact JRI has had on Utah's criminal justice system.

The Utah State Legislature Lacks Information to Adequately Evaluate Criminal Justice Reform. In a companion audit report examining the Justice Reinvestment Initiative (JRI), we describe some of the challenges we faced as we tried to gather specific information requested by the Legislature. When it was first proposed in 2014, JRI was intended to lead towards a more data-driven, results oriented criminal justice system. However, as we tried to assess the impact of JRI on recidivism and on incarceration rates, we found it extremely difficult to provide legislators with the information they needed to assess the effects of the initiative. After several months of processing data, the audit team was only able to identify the inmate populations for seven county jails.

The Utah Courts recommended in 2016 that a uniform, statewide data system be developed.

The Judicial Council Has Not Received the Data It Needs to Monitor the Effectiveness of Pretrial Release. In 2015, the Utah Courts released a report on pretrial release practices in the state. In the report, the committee concluded that the Judicial Council did not have the data it needed to perform its oversight role. To address this concern, the report recommended that "Uniform, statewide data collection and retention systems should be established, improved, or modified."

The Judicial Council, the policymaking body for the Judicial Branch, enlists committees to study issues and advise them regarding reform opportunities. In 2015, one such committee was asked to "[conduct] a thorough assessment of existing pretrial release practices used in Utah's courts." At the conclusion of their study, the committee reported that, among other issues, "…there is a lack of meaningful,

reliable data" in the area of pretrial release. Specifically, they reported that basic data points could not be tracked, including the number of inmates remaining in custody while awaiting trial, the percentage of inmate populations that are pretrial, and the time pretrial detainees are in custody.

Local Officials Lack Treatment Data Needed to Hold Offenders Accountable and Monitor the Effectiveness of Their Interventions. Local officials told us that they currently lack information describing which programs and practices are effective at reducing recidivism and which are not. We found that information regarding treatment for drug abuse and mental illness is often not being shared with the law enforcement agencies and court personnel who need it. Each treatment provider collects and maintains its own substance abuse and mental health treatment records. Understandably, because treatment data contains protected information, providers may be reluctant to share important data points with criminal justice partners. Secure systems should be reviewed and considered, as discussed in Chapter III.

Local criminal justice officials told us they currently lack information describing which programs and practices are effective at reducing recidivism.

For example, judges and AP&P officers need reliable indicators such as "program attendance" and "treatment outcomes" to guide their decisions. These are frequently not available to judges or Adult Probation and Parole officers, despite attendance and successful completion of treatment sometimes being conditions of their probation or parole. Without this information, judges and AP&P officers cannot determine whether an offender has followed through with the court or BOPP order. The result is weakened accountability for justice-involved individuals in treatment.

Conversely, treatment providers do not have access to some indicators they need to evaluate their programs. We found that valuable measures such as "probation/parole violations" and "return to incarceration" are often not available to treatment providers. Our audit team performed a survey of treatment providers throughout the State of Utah. We found that many administrators are lacking recidivism data in their practice. If this outcome data is not adequately tracked and measured, the state may risk allocating funds to treatment programs that are ineffective. We make a recommendation in the following chapter to develop an Information Sharing Environment. This would assist judges, AP&P officers, and providers considerably in obtaining these and other critical indicators.

Treatment providers do not have access to some indicators they need to evaluate their programs.

The Commission on Criminal and Juvenile Justice (CCJJ) Lacks the Data it Needs to Entirely Fulfill its Statutory Mission. CCJJ's duties include, to "study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs..." The reports produced by CCJJ drive policy decisions across the entire criminal justice system. They perform crime analysis, minority impact studies, juvenile detention research, drug and alcohol revisions, and sex offender treatment program assessments, among others.

In 2013, CCJJ partnered with Pew Trusts to develop a strategy for the legislative reform effort that resulted in the 2015 Justice Reinvestment Initiative. However, the Director of Research and Data for CCJJ stated that certain data points have been omitted from their studies because of untimely or unreliable data. Furthermore, in speaking about their attempt to evaluate the ongoing JRI efforts, the director said, "We can't get a full picture." Specifically, local data must be sought out by CCJJ on a quarterly basis, and sometimes, the data is never submitted to them. With a better infrastructure to share information, CCJJ could query the information they need, or even have it automated, instead of having to rely on other agencies to submit the data they need for their research activities.

CCJJ told us they can't get a full picture of the impact of JRI.

The Sentencing Commission Is Missing Data Needed to Continually Assess and Advance Evidence-Based Practices. The Sentencing Commission has put forward policies and programs to be used by policymakers, administrators, and the front-line workers of Utah's criminal justice system. The Commission advises the Legislature, the Governor, and the Judicial Council regarding sentencing and release policy for the State of Utah. They also produce sentencing guidelines considered by judges as they render sentencing decisions. The Commission developed the Response Incentive Matrix (RIM), a series of graduated sanctions and incentives for offenders, to be used by probation and parole officers. In short, the policies and programs produced by The Sentencing Commission impact nearly everyone in Utah's criminal justice system. To ensure they are advancing the most current, evidence-based policies and programs, they need access to reliable and complete data.

The 2020 Sentencing Guidelines state:

> …research has demonstrated empirically that theoretically sound, well-designed programs implemented with fidelity can appreciably reduce recidivism.

However, the Director of the Sentencing Commission reports that much of the county and some state data has not been consistently available to inform these programs. As a result, it is difficult to assess the effectiveness of the policies and programs currently being used. Similarly, revisions and modifications to these programs are limited by insufficient data.

Much of the county data and some state data is not available to the Utah Sentencing Commission.

Local Officials and Administrators Are Not Getting the Information They Need to Act Strategically. Local elected officials and administrators need to think strategically about how to address issues such as gang violence, racial equality, expungement, or other matters involving crime and justice. To allocate resources to those programs that are most effective, timely and reliable data is needed. To do otherwise is to risk making resource allocation decisions based on anecdotal evidence that may not represent the actual condition.

To think and act strategically, state and local officials are becoming increasingly aware of their need to obtain better data. We recommend in our companion JRI report that Criminal Justice Coordinating Councils (CJCCs)—local cohorts of criminal justice partners—be created throughout the state and that they use data to make strategic plans. As part of our audit of JRI, we developed an online dashboard for demonstration purposes. The dashboard (available here) contains key measures of activity in the courts and in Utah's county jails. It is the result of extensive work collecting, cleaning, and joining datasets. When presented with this information, local officials recognized that the information could be a valuable tool for evaluating the effectiveness of their programs and strategic initiatives. They also expressed an interest in receiving the data on a regular basis. While the benefits of making decisions based on accurate and timely data are obvious, it is unreasonable to expect each county to repeat the process of gathering and analyzing data from various agency sources as we did during our audit of JRI.

Our data dashboards from the JRI audit contain key data and measures of activity in the courts and county jails.

For our criminal justice dashboard click here.

Improved Data Coordination Can Improve Monitoring of Agency and Individual Discretion. Utah's Sentencing Guidelines are intended to maintain judicial and parole board discretion. This

professional discretion is important, but also presents a control weakness in the system.

As agencies apply statutes and policies in unique ways, disparities in treatment of offenders may arise. To understand if disparities are concerning or problematic to the goals of criminal justice, more systemwide data is needed to be available and monitored. For example, CCJJ found in 2017 that changes to sentencing guidelines may have resulted in "regional differences" where inmates with similar crimes and history incarceration length varied by geographical location. Much of the data presented in our companion report, *A Performance Audit of the Justice Reinvestment Initiative*, 2020-08, describes how data can be used to identify different practices used by local officials. For example, Appendix G in that report describes the different practices in how sentences are issued for the same offense.

When discretion is unmonitored, it is very difficult to determine the causes of disparate treatment.

Obstacles During Previous Data Integration Project Highlights the Need for Legislative Guidance

During the years following the Legislature's approval of the Justice Reinvestment Initiative (JRI), the state tried but was unsuccessful in its attempt to create a more integrated criminal justice information system. We could not identify all the reasons why, but we suspect that the obstacles to integration previously described in this chapter played a role. Perhaps the main lesson to be learned from that initial effort is that without clear guidance from the Legislature, the obstacles to data sharing may be too difficult to overcome.

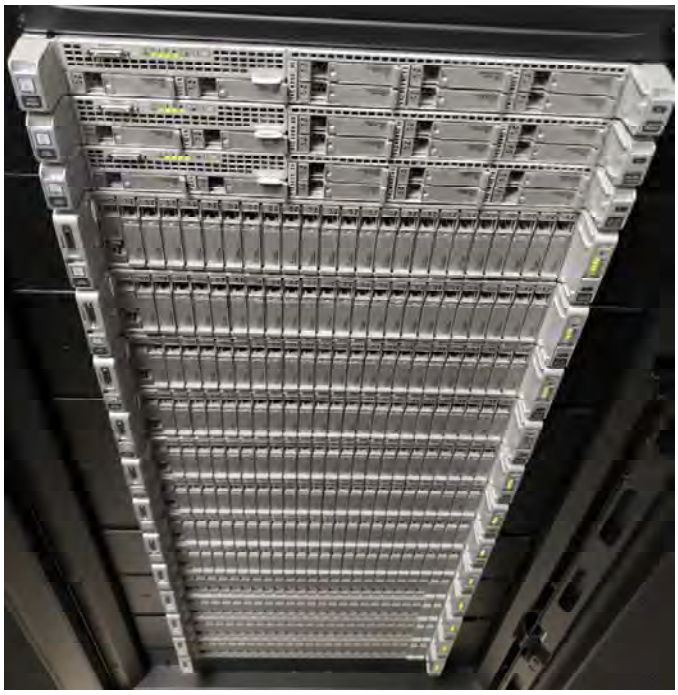
Without clear guidance from the Legislature, the obstacles to data sharing may be too difficult to overcome.

In 2016, the Utah State Legislature appropriated $2.0 million one-time money to the Department of Technology Services to develop "an integrated data system" for vulnerable populations, including individuals undergoing rehabilitation through the criminal justice system. According to the documents we were able to review, a significant amount of work and expense went into the project. Yet prior to completion, the project was halted and remaining funds were transferred to the Governor's Office of Management and Budget.

The reason for suspending the integrated data system project and transferring the remaining funds is unclear.[5] What is clear, is that nearly $1.1 million from the project were spent on products and services for an integrated data system that was never completed. For example, included in the $1.1 million was $224,000 for a server that was never used and still sits idle in the State Office Building. Another $293,000 was spent on software and a hosting service. The server is shown in Figure 2.2.

$1.1 million was spent on a data integration project, but the project was never completed.

Figure 2.2 Server Purchased for Integrated Data System Project. The hardware was never utilized.



We believe the main problem with the state's attempt to create an integrated information system was a lack of broad representation and accountability. Because broad authority was missing, it became too difficult to overcome the organizational obstacles that exist. In the next chapter, we describe steps the Legislature should consider if they decide to prioritize information sharing in criminal justice.

The main problem with the integrated data project was a lack of broad representation and accountability.

[5] The remaining funds from the integrated data system project are currently being used by the Governor's Office of Management and Budget for Blueprint Solution, a case management platform that integrates case plans between agencies accessed by vulnerable populations.

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Chapter III
Legislative Guidance Needed to Overcome Barriers to Data Sharing

As described in Chapter II, the need for a more interconnected criminal justice system exists in Utah. If the Legislature so desires, we believe it should consider enacting legislation requiring a shared data environment. This chapter lists some of the provisions that might be included in such legislation. Among other items, that legislation could lead to the creation of a board comprised of representatives from each stakeholder group in Utah's criminal justice system. That board would be responsible for planning and development, setting standards, and measuring performance in Utah's information sharing environment. We believe that the Legislature's guidance in this matter would enable the state to achieve the data-driven, results oriented criminal justice system that was promised as part of the JRI reforms of 2015.

The Legislature Should Consider Providing Direction on Information Sharing

The Utah Legislature should consider creating in the criminal justice system what is described in government and industry as an Information Sharing Environment, or ISE[6]. Simply put, the ISE is a conceptual framework composed of the policies, procedures, and technologies that link disparate databases together in a seamless and secure way. In 2016, the Legislature had the intention of connecting state and local criminal justice databases, as evidenced by the data integration project described in Chapter II. If the Legislature continues to make inter-agency information sharing a priority, development of an ISE is a method other states and the federal government have found beneficial. Figure 3.1 illustrates broadly the way an ISE is intended to function.

An Information Sharing Environment (ISE) is composed of policies, procedures, and technologies that link sets of data.

[6] Information Sharing Environments originated as a response to the 9/11 terrorist attacks. While originally centered around collecting and sharing terrorist-related information, some states have used the ISE framework to share information across their entire criminal justice system. This is how we use the term Information Sharing Environment throughout this report.

Figure 3.1 An Information Sharing Environment Provides Secure Access to Relevant Data. The policies and procedures governing access to data would be decided upon by the agencies who have or have need for the data.

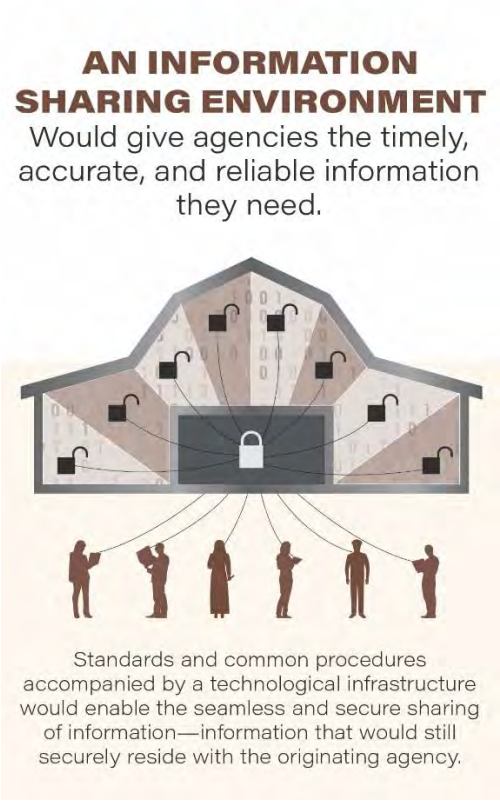


Figure 3.1 describes our recommended solution to the "silo" effect, which is to develop a set of policies, procedures, and technologies to connect the disparate databases in a secure and seamless way.

The ISE is a method that other states and the federal government have used to securely share criminal justice information.

The following are some of the features that the Legislature might include in legislation creating an ISE.

The Legislature Should Consider Overseeing the Development of a Comprehensive Privacy Policy

Trust is an integral component of the success of the system.

At the heart of information sharing is security. Several of the organizations we worked with expressed concerns about maintaining the confidentiality and protection of data. Safeguarding individual privacy is an essential responsibility of justice agencies that collect and share personally identifiable information. It isn't until the security of the system is assured that agencies feel comfortable sharing their data. As mentioned previously, safeguarding data also means preventing unauthorized access and use. Chapter II describes some of the liability that agencies assume by sharing their data. In fact, some agencies may choose to avoid sharing their data under any circumstance to reduce

that liability. Trust, then, becomes an integral component of the success of the system. Agencies must trust one another that their data, once shared, will be appropriately secured and used in compliance with relevant laws and regulation.

According to the Global Justice Information Sharing Initiative, a Federal Advisory Committee for the Department of Justice, "Without this trust, information sharing initiatives will not thrive and are ultimately doomed to public condemnation and civil liability." A comprehensive privacy policy is one way to establish this trust. It ensures criminal justice data is shared in accordance with all relevant federal, state, and local laws, thereby instilling the trust needed to confidently share information.

Privacy refers to the fair collection and use of personally identifiable information. Privacy policies convey appropriate collection of and allowable uses for information, and provide accountability for misuse. The federal government strongly encourages states to take a leadership role in the development of a comprehensive privacy policy. The Global Justice Information Sharing Initiative offers tools and resources to help state and local jurisdictions develop and implement robust privacy policies. The Legislature could oversee the creation of a comprehensive, statewide privacy policy.

The federal government strongly encourages states to take a leadership role in the development of a comprehensive privacy policy.

Consider Establishing Government Data as a Public Asset

Once a secure environment for sharing data has been established, efforts to improve the quality and usefulness of the data can follow. If the Legislature decides to create an ISE, they should consider establishing in statute the foundation for criminal justice information being an asset and a public good. Critical operational and financial decisions are made using criminal justice data. The accounting field broadly recognizes that information residing in an organization's data system is an intangible asset that has tangible value. Similarly, legislators should establish an expectation among agencies that criminal justice data must be valued, protected, and used according to an accepted set of rules. During our audit of JRI[7], we found many instances in which data was not accurate, was incomplete, or was not maintained in a format that could be easily used. Recognizing government data as a strategic asset will increase each agency's

Recognizing government data as a strategic asset can improve effectiveness while reducing costs.

[7] *A Performance Audit of the Justice Reinvestment Initiative*, 2020-08

operational efficiencies, reduce costs, improve services, support mission needs, safeguard personal information, and increase public access.

Consider Requiring the Creation Of a Statewide Data Dictionary

In the same way that accounting principles govern the reporting of financial information, we recommend that criminal justice data be standardized.

Managing data as an asset encourages valuing it as such. Consequently, we recommend that criminal justice data be standardized according to an agreed upon set of rules for its creation and use. This can be accomplished, in part, by creating a statewide data dictionary that identifies common definitions and formats for key reporting activities. During our audit of JRI, we found that counties were not consistent in their use of certain terms such as "arrest date," "intake date," "booking," and "violent." By requiring agencies to apply the definition included in the data dictionary, terms and measures should be used more consistently across the criminal justice system.

Consider Having CCJJ Audit Local Information Systems

Data collection and reporting must conform to state data standards.

In addition to setting data standards, steps should also be taken to verify that data collection and reporting methods comply with the state's data standards and definitions and that relevant data is not missing. One way this can be accomplished is through an audit function. The Commission on Criminal and Juvenile Justice (CCJJ) already has the statutory responsibility for "annually performing audits of criminal history record information maintained *by state* criminal justice agencies to assess their accuracy, completeness, and adherence to standards[8]" (emphasis added). However, the language "state criminal justice agencies" appears to preclude CCJJ from validating data prepared by local agencies. We believe the data generated by all agencies within the criminal justice system, both state and local, must comply with the statewide data standards.

Consider Creating an ISE Board

If the Legislature decides to pursue the development of an ISE, we recommend the Legislature form a governing board to oversee its development and maintenance. The Board should be comprised of the chief executives or their empowered appointees from all major justice

[8] See 63M-7-204 for statutory language

and justice-affiliated organizations. Some of the specific tasks that could be delegated to the board are listed in the final section, including the need to develop a long-term plan, data standards, and performance measures[9].

We recommend the Legislature form a governing board to oversee the ISE development and maintenance.

An ISE Board Is Needed to Provide Planning, Oversight, and Accountability of the ISE Project

Our audit research shows that many steps are needed to achieve the Information Sharing Environment.[10] After speaking with national experts, other state leaders, Utah criminal justice department heads, and reviewing the literature, we found that the following eight steps are likely the most critical to achieving the ISE. If the Legislature chooses to enact legislation to create an ISE and ISE Board, we recommend that the ISE Board take some or all of the following eight steps:

1. Complete a gap analysis.
2. Prepare a long-term plan for completing the ISE project.
3. Adopt or develop standards for information sharing.
4. Form a technology committee.
5. Design the ISE to be able to grow and change over time.
6. Include treatment data in the ISE in accordance with all applicable laws and regulations.
7. Develop systemwide measures of performance.
8. Utilize staff support from CCJJ.

These steps are only preliminary and do not constitute the full scope of the board's role. Once the board convenes, a governance structure should be established. The board should have the discretion to expand or modify these steps as they see fit.

[9] A criminal justice information governing body is recommended in our companion report, *A Performance Audit of the Justice Reinvestment Initiative*, 2020-08. The ISE Board should be the same as this governing body.

[10] The Integrated Justice Information Systems (IJIS) Institute partnered with The Standards Coordinating Council (SCC) to produce the Information Sharing and Safeguarding (IS&S) Playbook. This resource can be found on SCC's website: http://www.standardscoordination.org/iss-playbook

The ISE Board Should Consider Completing a Gap Analysis

A gap analysis can help the board identify existing capabilities and gaps in Utah's information sharing needs.

The ISE must meet the needs of a variety of stakeholders who use the data differently. The board needs to know the current condition of Utah's criminal justice information systems and the informational needs of agencies to make prudent decisions about which information systems are included, how they are included, and when they are included. Completing a gap analysis can help answer these questions and set the stage for creating a long-term plan. Another reason the gap analysis is important is because we encountered some criminal justice information sharing projects in Utah similar to the ISE, but on a smaller scale. These projects should be considered to avoid duplication of efforts and to leverage the work that has already taken place.

Not All Data Elements Need to Be Included in the ISE. Because certain data points will only be relevant internally to the organization that collects the data, the ISE Board should establish which data points are needed by external organizations. Data that is not needed by any outside organization should not be included in the ISE. This reduces the likelihood that protected information is shared unnecessarily and streamlines the data points that are of value.

The ISE Board Should Prepare a Plan for Completing the ISE Project

We recognize that developing an ISE may require several years to complete. Consequently, we recommend that a long-term plan be prepared and a timeline established for achieving specific milestones described in the plan. The Board Chair should report to the legislature at regular intervals regarding the progress made towards completing the plan. One of the board's first tasks should be the development of a statewide data dictionary for both state and local organizations. This will ensure that the process of meaningful data collection and reporting begins immediately.

The Board Could Develop Standards for Information Sharing

Standards can lower overall acquisition costs by leveraging economies of scale at the different levels of government.

Standards are the at the core of information sharing. They provide a common approach to sharing information across the diverse array of organizations within the criminal justice system. Standards can lower overall acquisition costs by leveraging economies of scale at the different levels of government. They assist in defining business processes and provide a common framework, platform, and language

to exchange information. They should also address system controls for maintaining security and privacy in accordance with all applicable laws and regulations. The Global Information Sharing Initiative mentioned earlier in this report has produced a "standards package" that can be adopted or modified.[11]

One example of a technology standard that can be adopted is the National Information Exchange Model, or NIEM. NIEM connects different terms that mean the same thing. For example, one organization may use the term "Last Name" and a separate organization may use the term "Surname" when collecting data on a person. Both refer to the same thing but use different terms. NIEM allows agencies to retain their current internal vocabulary, minimizing burden. The issue of multiple terms describing the same thing is the inverse of the data dictionary problem. This is an example of the type of standards that need to be agreed upon.

The Board Should Form a Technology Committee

The ISE Board likely will not have the capability to address the many technical aspects of creating an ISE. With this in mind, the board should form a committee comprised of technical experts to determine the best way to structure and manage data systemwide. That committee should be expected to design a system whereby data analyses can be completed efficiently, operational data such as county inmate rolls, arrests, etc. are transmitted in real-time, and that the information regarding a single offender from all agencies can be gathered in a single report. One way to track the activity of individuals who are involved in the criminal justice system is to develop a common identifier that can be used by all justice and justice-affiliated organizations. These are examples of the type of issues that the ISE Board would hand off to a technology committee.

The ISE should allow for efficient analyses and transmission of real-time data.

The Technology Committee Should Ensure the ISE Is Able to Grow and Evolve Over Time. Informational needs are likely to change with time. An efficient mechanism for accommodating these changes and incorporating additional systems is critical. For example, there is national momentum toward integration of state data with federal data. Preempting collaborations of this sort and building in capacity for simplified expansion maximizes the longevity of the

Building capacity for growth into the ISE framework maximizes the longevity and utility of the system.

[11] https://it.ojp.gov/GSP

investment. Justice-affiliated organizations within the state may also wish to integrate their databases as time goes on. An additional advantage to this approach includes the ability to start the ISE with only a few databases. The technology committee should rely on the ISE Board to determine the prioritization of data sources. This is a more measured and manageable approach and allows costs to be distributed across several years. Another advantage is new data elements not captured in the original system can be added at the request of a policymaker or administrator. Early collaboration with prospective partners is a practical approach that ensures cost-effective investments that yield a positive return.

The Board Must Strive to Include Treatment Data in the ISE to the Extent Permissible by Law and Regulation

Of particular importance is that the ISE Board work toward the linking of criminal justice data with information from treatment providers and other social service databases. We understand the sensitive nature of this information and the absolute need for it to be protected and used on a limited and as needed basis. At the same time, the Bureau of Justice Assistance reports that "…health information is essential to provide adequate assessment and treatment" to individuals. At the program level, it assists in the identification of target populations for interventions, evaluating program effectiveness, and determining whether programs are cost-efficient.

Health information is essential to provide assessments and treatment.

The need for treatment data in the criminal justice system is further supported by the Utah Substance Abuse Advisory (USAAV) Council's recommendation in the 2014 CCJJ JRI report, that "strong linkages" be promoted between the treatment, justice, and support services system and that a "comprehensive and coordinated approach" be used. The federal government has developed guidance to help jurisdictions understand how they can share data within the framework of the Health Insurance Portability and Accountability Act (HIPAA),[12] as well as 42 CFR Part 2.[13] We recommend this area be studied as to how treatment data can be safely incorporated.

[12]https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-for-law-enforcement-purposes/index.html

[13]https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG_CJMH_Info_Sharing.pdf

The ISE Would Enable the Board to Develop Systemwide Measures of Performance

The Legislature and CCJJ have identified specific goals that are to be achieved by the criminal justice system. For example, two of the goals of JRI are to reduce recidivism and reserve prison and jail beds for violent offenders. To monitor the state's progress towards achieving those goals, the ISE Board needs to develop a standardized method for measuring recidivism and the composition of the inmates in the state prison and county jails.

Systemwide measures would allow policymakers to monitor statewide progress.

The Board Could Rely on Staff Support from CCJJ

The Commission on Criminal and Juvenile Justice (CCJJ) is statutorily charged to "provide a mechanism for coordinating the functions of the various branches and levels of government concerned with criminal and juvenile justice." Furthermore, their duties include to "promote the development of criminal and juvenile justice information systems." For these reasons, we believe CCJJ is uniquely positioned within the state to support the ISE Board and its activities. We did not determine what expenses may be incurred as a result of this involvement, though we acknowledge that some expense will likely be necessary. The Legislature should look to CCJJ to determine what additional costs, if any, may be imposed on their agency due to added responsibilities.

A Data-Driven and Results-Oriented Criminal Justice System Would be Beneficial for Utah

By creating an Information Sharing Environment, the Legislature could see the benefits of a data-driven, results-oriented criminal justice system for which it has asked for many years. The ISE should allow policymakers to ask for analyses and research to help them answer key questions and make evidence-based policies using their findings. It can get decision-makers the information they need when they need it. The ISE should also allow for increased oversight and accountability. Ultimately, the ISE should enable Utah's criminal justice system to be more efficient and effective at administering justice and protecting the public.

The ISE should enable Utah's criminal justice system to be more efficient and effective at administering justice and protecting the public.

The Information Sharing Environment Can Enhance Research

One example of a research benefit the ISE can afford is frequent and economical Randomized Control Trials (RCT). RCTs are the gold standard of research. This empowers agencies to answer systemwide questions and develop evidence-based policies and programs. Consequently, interventions are targeted and specific, and each agency can perform its role in the broader context of the system.

The Sentencing Commission, for example, has made the commitment to use a data-driven, evidence-based approach to sentencing. The ISE can provide the commission with additional tools needed to accomplish this task. Similarly, improved data should enable state agencies to identify recidivism rates for mental health treatment programs and other types of interventions. Utah policymakers can know what strategies are effective at reducing crime.

The ISE can advance research and policymaking in the criminal justice system.

Delaware is an example of a state which has improved its research capabilities as a result of integrating its criminal justice data. The Delaware Criminal Justice Coordinating Councils (CJCC) and the Statistical Analysis Center (SAC) have performed a variety of studies on topics ranging from recidivism, habitual offenders, drug law revisions, sentencing and detention, major crimes tracking, race and incarceration, and juvenile arrest and release patterns, among others. We believe that Delaware could not have performed that type of research and analysis if it had not integrated its criminal justice data.

Deidentified, Aggregate Data Can Be Made Public. In 2013, The President signed an executive order "making open and machine-readable the new default for government information." The order stated, "Openness in government strengthens our democracy, promotes the delivery of efficient and effective services to the public, and contributes to economic growth." In addition, making aggregate data outward facing engenders public trust in government.

Open data invites wider analysis from a broader range of individuals. Evidence of this comes from Florida. Because of the quality of their data, The Bureau of Justice Statistics (BJS), universities, and other states use Florida's criminal justice data to study criminal justice. This state-specific analysis comes at no cost to the state.

Though we acknowledge there are limitations to what data can accomplish, we believe an ISE can advance research and policymaking in the criminal justice system. We recommend that CCJJ make systemwide, aggregate and deidentified data outward facing in an interactive way.

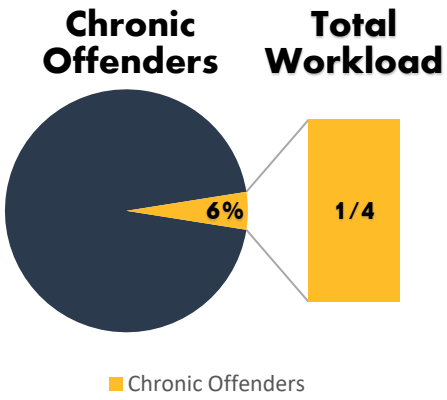
Local Officials Can Use Data to Act Strategically

The ISE will give local officials a powerful tool to act strategically.

Improved data can also help state and local officials respond more strategically to some of the specific challenges they face. For example, some jurisdictions face a problem of repeat offenders who create a large burden on state and local resources. Yet despite the large amount of resources devoted to this population, they are often provided in fragmented ways that do not lead to stabilization or improved outcomes for individuals. Sharing data can ensure continuity across service domains, resulting in better outcomes for individuals and lower costs for the state.

We performed an audit test to determine the toll that chronic offenders have on the criminal justice system. We found that the top 6 percent of justice-involved individuals accounted for nearly one-fourth of the total drug possession and drug paraphernalia cases processed by the courts, as shown in Figure 3.2.

Figure 3.2 Chronic Offenders Use a Significantly Disproportionate Amount of Court Resources. The top six percent of court users account for nearly one-quarter of the workload involving drug possession and drug paraphernalia cases.



We further found that the top 10 utilizers of the Third District Court, on average, had 90 arresting drug charges, 67 different total arresting incidents, nearly 39 separate court cases, and eight of the ten chronic offenders received substance use disorder services within the

past 6 years. While we did not quantify the fiscal impact of these individuals, we found a county that did complete a fiscal impact study. Miami-Dade, Florida found that 97 high utilizers accounted for $13.7 million across all services received over four years.

It is essential that chronic offenders be treated in a way that promotes their rehabilitation and exit from the criminal justice system. This is simply one example of the many issues that could be better addressed using data. We believe the ISE will give local officials a powerful tool to act strategically as a system.

Decision-Makers Can Access Credible Information When They Need It

Not only can timely, accurate, and complete information improve policymaking, it can improve decision-making. One stakeholder commented that having access to credible information produces the greatest opportunity to affect positive change in the individual. This requires that criminal justice personnel have real-time or near real-time data at the individual level to inform their choices.

Increased Transparency Can Inform and Improve Criminal Justice Discretionary Decisions

Law enforcement officers, prosecutors, the judiciary, and others are required as part of their jobs to use their professional discretion in how they handle offenders who have been arrested and as they are processed through the criminal justice system. It is important to note that the concept of professional discretion does not run counter to the functions of the criminal justice system. In fact, one of the duties of the Utah Sentencing Commission is to "enhance the discretion of sentencing judges." In our opinion, this means that currently state policy supports professional discretion. To assist those who are required to use their professional discretion, we should provide them with accurate and reliable data. The ISE can provide the critical information needed to guide their judgment. It further grants policymakers the ability to examine the way professional discretion is used to ensure it is promoting system objectives.

The ISE can provide critical information to decision-makers to guide their judgment.

The following seven key decision points shown in Figure 3.3 were identified by the MacArthur Foundation, a national nonprofit. They describe steps in the process of arresting and prosecuting offenders in which professional discretion is required.

Figure 3.3 Professional Discretion is Used During Seven Key Steps in the Process of Administering Justice. These decisions heavily rely on the judgment of criminal justice personnel.

Source: Auditor interpreted content produced by the MacArthur Foundation to develop this figure.

The ISE can enhance accountability for how professional discretion is used.

Because professional discretion impacts every facet of the criminal justice system, review is appropriate. To ensure that discretion is not misused, either intentionally or unintentionally, data can be explored to identify any potential unwarranted disparities in the system. We believe greater access to data and increased transparency through the ISE can enhance how professional discretion is used.

We understand the creation of an Information Sharing Environment is an important and critical decision and that many sensitive and critical areas need to be analyzed and carefully weighed. We believe the Legislature is the best body equipped to weigh this important matter. If the Legislature decides to proceed with the consideration of an ISE in the state, the information provided in this chapter can help inform their deliberations.

Recommendations

1. We recommend the Legislature consider creating an Information Sharing Environment (ISE) by enacting legislation, which includes some or all of the following features:

a. Enact legislation requiring the establishment of a comprehensive privacy policy.

b. Establish in statute data as a government asset and public good.

c. Enact legislation requiring the creation of a statewide data dictionary.

d. Expand legislation requiring CCJJ to audit local information systems.

e. Enact legislation to form an ISE Board, which would be the same board as the criminal justice information governing body recommended in our companion report, *A Performance Audit of the Justice Reinvestment Initiative*, 2020-08.

2. If the Legislature chooses to follow Recommendations #1 above, we recommend that the Information Sharing Environment Board take some or all of the following eight steps:

   a. Complete a gap analysis.

   b. Prepare a long-term plan for completing the ISE project.

   c. Adopt or develop standards for information sharing.

   d. Form a technology committee.

   e. Design the ISE to be able to grow and change over time.

   f. Include treatment data in the ISE in accordance with all applicable laws and regulations.

   g. Develop systemwide measures of performance.

   h. Utilize staff support from CCJJ.

Agency Responses

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OFFICE OF THE SHERIFF

835 East 300 North, Suite 200
Richfield, Utah 84701

Phone (435) 896-2600
Fax (435) 896-6081

SHERIFF NATHAN J. CURTIS

10-5-2020

Office of the Legislative Auditor General

To whom it may concern,

I want to formally thank the legislative auditors for this report and their effort to give clear assessments of the current situation in this matter. I feel they have taken a careful and measured approach to their fact finding and evaluation of the contents found in this audit.

As a deputy I was sometimes given very little information, or no information, while responding to a call. It was difficult at best to know exactly what I was responding to and there were times I would have changed my response had I had access to better and more reliable information. Information is without a doubt a valuable commodity, and in the criminal justice world, good information can be the difference between life and death.

Many Sheriff's Offices have years of information in the records management system. This was a repository for them to store reports of years gone by. Over the years these records systems have grown in usefulness and have become a tool to store information important to the agencies who use them. As this audit report shows, there is so much information stored right now it is difficult to know where to start and how to interpret all of the data without a local liaison to help make sense of it all. Agencies do share their data, but they do not just give access to anyone who wants it to protect privacy, to comply with legal obligations, and to maintain integrity of their records.

This audit is correct in the description of the data silos. There was an entity in Utah who was able to merge disparate data silos, but unforeseen circumstances have derailed their potential. There are other ideas out there, and all should be explored, but should also be explored with caution. Agencies have invested more money than they care to maintain their product and because of this will expect to maintain control over the use of and distribution of their information and work product. Other agencies have no system due to the cost of a commercial product and have done the best they can.

I want to commend the auditors for their work ethic and their integrity in seeking out the answers to the questions they had. They used multiple sources and were able to validate their results.

Sincerely,

Sheriff Nathan J. Curtis

Sevier County Sheriff

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State of Utah
Commission on Criminal and Juvenile Justice

Gary R. Herbert
Governor
Spencer J. Cox
Lieutenant Governor

Kim Cordova
Executive Director

Utah State Capitol Complex, Senate Building, Suite 330 • Salt Lake City, Utah 84114
801-538-1031 • Fax: 801-538-1024 • www.justice.utah.gov

October 05, 2020

Office of the Legislative Auditor General

I write on behalf of the Commission on Criminal and Juvenile Justice (CCJJ) in response to the audit performed on the Justice Reinvestment Initiative (JRI) and data sharing in the criminal justice system.

The report on data sharing in the criminal justice system clearly identifies the challenges CCJJ has encountered over the last several years. While some state and local agencies partner well and collaborate on data sharing in order to complete projects and reports, others can be more challenging. CCJJ does, however, present the information given in the most comprehensible and useful manner. Nevertheless, the result is one dimensional and is not as comprehensive as it needs to be in order to give policy makers all the information needed to make decisions. The recommendations given in the report are very similar to ideas this agency has been working on as a solution and path forward. Consequently, CCJJ is in full agreement and supports the recommendations.

The report on JRI also clearly identifies the challenges encountered with the implementation of JRI's policy goals. Particularly, the report recognizes all of the agencies that were part of the creation of the policy recommendations and highlights the collaboration and communication needed for its success in implementation. The criminal justice system is not one system but rather an ecosystem of various state and local partners reliant and interwoven with each other. Each agency requires support and resources from the others to be successful. Local collaboration is an essential component that creates success for the larger whole, however, there needs to be clear directives on who is responsible for what and to whom for oversight and accountability.

As noted in the report, there are specific holes in terms of data collection that need to be addressed in order to give a full and accurate picture of the criminal justice system. In order to fulfill any reporting recommendations, CCJJ must rely on agencies to give information. As such, CCJJ requests that a reporting recommendation of any kind require agencies to give the data specifically and a deadline to ensure compliance. Otherwise, CCJJ agrees with and supports the recommendations.

Sincerely,

Kim Cordova
Executive Director for the Commission
on Criminal and Juvenile Justice

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Utah Department of Corrections
Executive Office

MIKE HADDON
Executive Director

October 5, 2020

Kade R. Minchey, Auditor General
Office of the Legislative Auditor General
315 House Building
P.O. Box 145315
Salt Lake City, Utah 84114-5315

Dear Mr. Minchey,

This letter contains the Utah Department of Corrections' (Department) response to the Office of the Legislative Auditor General regarding Audit Report Number 2020-09, "***A Performance Audit of Information Sharing in the Criminal Justice System***." I would like to commend you and your staff for their vision and insight on the critical issues explored in this audit.

The Department strongly believes data and information sharing is essential for several reasons. These reasons are effectively explored within this audit, and the recommendations contained within the audit will move Utah forward in important ways. Our Department has a long history of sharing data and information with other stakeholders because we understand the value in seeing and understanding a broader picture. We are committed to continuing to share our data as an Information Sharing Environment (ISE) is developed.

Work in the criminal justice system does not occur in a vacuum. Apart from the typical criminal justice stakeholders such as the Courts, Law Enforcement, the Board of Pardons and Parole, Prosecution, Defense, etc., the individuals we work with also need support services from stakeholders typically outside of the criminal justice system, such as access to medical care, employment assistance, housing assistance, transportation assistance, and mental health services. Only by sharing information and data can a more thorough and complete picture be developed to create understanding and collaboration among multiple entities that may be working with a single individual or family unit.

Further, creating an ISE will provide a robust and interconnected pool of data that can be used to help understand what programs and services are most effective. Additionally, it will assist in understanding where gaps or deficits in services exist. It will help all of those involved better understand if individuals are receiving the right services, in the right amount, and at the right time. Our Department believes this level of collaboration and understanding is fundamental to achieve better outcomes for people, and truly assist those individuals our Department serves to

14717 South Minuteman Drive, Draper, UT 84020 • telephone (801) 545-5513 • facsimile (801) 523-7523

successfully exit the criminal justice system and move on to live productive lives. The impacts would be both immediate and generational.

The Department's response to this audit will be somewhat unconventional, in that we are not responding to specific recommendations. Rather, we are responding to the recommendations in whole. As already noted, most generally, our Department has a history of sharing information, and we are fully supportive of expanding data sharing and collaboration.

In terms of general observations, the Department would encourage the development and maintenance of an ISE through the Utah Commission on Criminal and Juvenile Justice (CCJJ). CCJJ, for decades, has served as a forum for collaboration among Utah's criminal and juvenile justice stakeholders. Our preference would be to not create a new and separate group as a steward responsible for the recommendations within this audit. It is likely that the same justice leaders would be involved in both efforts and may find it redundant to create two separate groups with mirrored membership. Further, if a new group were created, it would require an additional layer of collaboration between that new group and CCJJ. The Department believes CCJJ is already composed of a broad representation of federal, state, local, and non-profit organizations needed for an information sharing initiative.

Giving oversight of an ISE to CCJJ is a recommendation in the Office of the Legislative Auditor General companion audit number 2020-08, *A Performance Audit of the Justice Reinvestment Initiative*. The Department supports the recommendations, outlined below, included in *Chapter 3 Criminal Justice System Lacks the Accountability Called for by JRI, in this companion audit include the following recommendations:*

1. *We recommend that the Legislature consider forming a criminal justice information governing body comprised of representatives from each of the major agency groups within the criminal justice system and* ***that this body receive oversight and be accountable to the Commission on Criminal and Juvenile Justice****. (emphasis added)*

2. *We recommend that the Legislature consider empowering the criminal justice information governing body with the authority to set data standards and to prepare a plan for an integrated criminal justice information system.*

3. *We recommend that the Legislature require the criminal justice information governing body to submit its plan and periodically report to a legislative committee on the progress made towards implementing that plan.*

Additionally, the Department agrees with the recommendation that the Utah Legislature take an active role in the development of an ISE. Their authority and ability to establish frameworks within statute can assist in moving a project of this scope forward. As noted in the recommendations, foundational to the development of an ISE is a comprehensive privacy policy, a clear delineation that data is an asset, and the need for a data dictionary that outlines individual data elements and their meanings.

Although a gap analysis is included in the recommendations of this audit, the development of an ISE will require a process for determining specific data elements that would be useful to share within the ISE. As an example, our Department's primary records management system, O-Track, contains thousands of data elements. It is likely that most of those data elements would not be needed or helpful for collaboration purposes. At the same time, there are many data elements in O-Track that likely would prove to be incredibly useful in a shared environment. Although our Department would be willing to share nearly all data contained in O-Track, it would likely overwhelm an ISE and make it challenging for users outside of the Department to wade through so much data in order to find those data elements most relevant. We anticipate this may be similar in other entities' records management systems. As this work gets underway, the Department believes it essential that CCJJ assists in the process of identifying those data elements, across multiple information systems, that will prove most informative for efficient day-to-day operations, as well as evaluating justice system outcomes.

The Department stands ready to support and engage in the creation of an information system that shares data and information relevant to the efficient and effective delivery of services to those justice-involved individuals in Utah. We again express appreciation for the work and the vision of the Office of the Legislative Auditor on this important matter.

Sincerely,

Mike Haddon, Executive Director
Utah Department of Corrections

14717 South Minuteman Drive, Draper, UT 84020 • telephone (801) 545-5513 • facsimile (801) 523-7523

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES
ANN SILVERBERG WILLIAMSON
Executive Director

Division of Substance Abuse and Mental Health
DOUG THOMAS
Director

October 5, 2020

Department of Human Services
Division of Substance Abuse and Mental Health
Response to Recommendations

DRAFT RESPONSE: A Performance Audit of Information Sharing in the Criminal Justice System (Report #2020-09)

Thank you for the opportunity to respond to the audit titled: *A Performance Audit of Information Sharing in the Criminal Justice System (Report #2020-09).* The Department of Human Services Division of Substance Abuse and Mental Health (DSAMH) concurs with the recommendations in this report and appreciates the thoughtful work of the Legislative Auditors. DSAMH looks forward to working collaboratively to implement the recommendations made in this report. The DSAMH is committed to the efficient and effective use of taxpayer funds and values the insight this report provides on areas needing improvement.

As the audit indicates, treatment records contain sensitive information about a person's health and history. Sharing these records too broadly may have negative consequences for participants. Yet, effective treatment for many involved in the criminal justice system requires treatment providers to regularly communicate with Adult Probation and Parole, Law Enforcement, Courts, other social service providers and families. DSAMH will work diligently with the Legislature and other stakeholders to ensure that these competing interests are appropriately balanced and state and federal law around information sharing is followed.

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Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

HON. MARY T. NOONAN, State Court Administrator
Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114
Phone: (801) 578-3800
mnoonan@utcourts.gov

October 5, 2020

MR. KADE R. MINCHEY, Auditor General
315 House Building
P.O. Box 145315
Salt Lake City, Utah 84114-5315
Via email to:
Kade Minchey (kminchey@le.utah.gov)
Darin Underwood (dunderwood@le.utah.gov)
Jim Behunin (jbehunin@le.utah.gov)

Re: Response to final exposure draft of "A Performance Audit of Information Sharing in the Criminal Justice System" (report no. 2020-09, dated September 25, 2020)

Dear Mr. Minchey,

Thank you for the opportunity to respond to the final exposure draft of "A Performance Audit of Information Sharing in the Criminal Justice System" (report no. 2020-09, dated September 25, 2020). We believe the information contained within the report is a valuable addition to the work your office conducted regarding the Justice Reinvestment Initiative (no. 2020-08). If the legislature adopts the recommendations in the report, the judicial branch is prepared to participate as a member of the Information Sharing Environment Board / criminal justice information governing body. The judiciary already shares a significant amount of data with other criminal justice partners including CCJJ, the Department of Corrections, the Department of Public Safety, and local law enforcement entities. While we are proud of the efforts we have made to share important criminal justice data, there is always more that can be done.

Best,

Judge Mary T. Noonan
State Court Administrator

The mission of the Utah judiciary is to provide an open, fair, efficient, and independent system for the advancement of justice under the law.

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Department of Public Safety

JESS L. ANDERSON
Commissioner

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

October 1, 2020

Kade R. Minchey
Auditor General
315 House Building
Utah State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Minchey:

Thank you for the opportunity to review and respond to performance audit number 2020-09, "A Performance Audit of Information Sharing in the Criminal Justice System." The Department of Public Safety (DPS) appreciates the thoroughness of the audit in identifying areas of improvement and agrees with the recommendations outlined in the report.

As the oversight agency for the Utah Criminal Justice Information System (UCJIS), DPS is supportive of any effort to improve the sharing of information across agencies and jurisdictions. As the report states, stakeholders rely on this information and related data to make policy and program decisions that impact public safety. The sharing of information across agencies is also critical for law enforcement to make immediate decisions that can affect both public and officer safety. To improve the sharing of information across the criminal justice system, the report references legislation related to the national warrant database, which is the type of reform that is necessary.

The Department will continue to coordinate with other agencies when sharing information across systems. More specifically, DPS will be actively engaged in collaborating with stakeholder groups when considering and implementing the recommendations.

I appreciate you and your team's efforts to compile the information provided in the audit report and look forward to working to improve data sharing within the criminal justice system.

Sincerely,

Jess L. Anderson
Commissioner

4501 South 2700 West, Box 141775, Salt Lake City, Utah 84114-1775
Telephone (801) 965-4461

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STATE OF UTAH
BOARD OF PARDONS AND PAROLE

October 6, 2020

Kade R. Minchey, Legislative Auditor General
Office of the Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Michey:

The Board of Pardons and Parole (Board) is grateful to the Legislative Auditor General's Office and its many staff who contributed to this review. The review identifies many of the challenges that Utah's criminal justice system experience in effectively sharing valuable information. As each agency or organization works diligently toward their respective goals, creating effective and efficient strategies to share data with necessary stakeholders is critical to ensuring public safety. The Board is committed to our continued efforts toward the implementation of an electronic records management system. The Board is confident this project will contribute to enhanced data sharing that promotes public safety and increased transparency. The Board supports the findings and resulting recommendations that will benefit the people of the state of Utah by creating an improved and integrated criminal justice information system.

The Board is a committed partner in this process to provide the best possible service to the people of the state of Utah. As one of the many agencies involved in Utah's criminal justice system, the Board appreciates the review and recommendations clearly designed to improve processes and enhance outcomes.

Sincerely,

Carrie L. Cochran
Board Chair

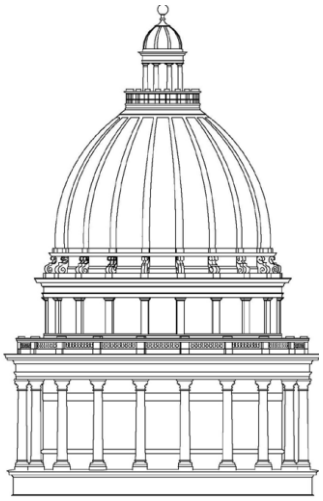
448 East 6400 South, Suite 300, Murray, Utah 84107
Telephone: (801) 261-6464 Facsimile: (801) 261-6481 www.bop.utah.gov bopinfo@utah.gov

Agenda

REPORT TO THE

UTAH LEGISLATURE

Number 2020-08



A Performance Audit of the Justice Reinvestment Initiative

October 2020

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

000315

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

Audit Subcommittee of the Legislative Management Committee
President J. Stuart Adams, Co–Chair • Speaker Brad R. Wilson, Co–Chair
Senator Karen Mayne • Senator Evan J. Vickers • Representative Brian S. King • Representative Francis D. Gibson

KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

October 13, 2020

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Justice Reinvestment Initiative** (Report #2020-08). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade Minchey

Kade R. Minchey, CIA, CFE
Auditor General

UTAH STATE LEGISLATURE

AUDIT SUMMARY

000316

REPORT #2020-08 | OCTOBER 2020

Office of the Legislative Auditor General | Kade R. Minchey, Auditor General

PERFORMANCE AUDIT

The Justice Reinvestment Initiative

AUDIT REQUEST

The Legislative Audit Subcommittee requested that we evaluate the effects of Utah's Justice Reinvestment Initiative (JRI) on the distribution of prison and jail inmates statewide. To this end, we were asked to gather and report five years of county inmate statistics. We were also asked to evalute the extent to which each of the features of JRI had been implemented.

BACKGROUND

The goal of JRI was to lower the cost of the state's prison system by moving low-level, non-violent offenders out of prison and into community supervision. A portion of the savings from lower prison costs were to be reinvested in drug treatment and mental health services. It included the following policy recommendations:

- focus prison beds on serious and violent offenders,
- ensure oversight and accountability.
- support local corrections systems,
- improve and expand reentry and treatment services, and
- strengthen probation and parole supervision,

KEY FINDINGS

The Justice Reinvestment Initiative Has Not Been Fully Implemented

JRI Policy Recommendations	Status
• Focus Prison Beds on Serious and Violent Offenders	Completed
• Ensure Oversight and Accountability	Not Implemented
• Support Local Corrections System	Not Implemented
• Improve and Expand Reentry/Treatment Services	Partly Implemented
• Strengthen Probation and Parole Supervision	Partly Implemented

RECOMMENDATIONS

To Improve Accountability the Legislature should:

- ✓ Consider creating a criminal justice information governing body to guide the creation of an integrated criminal justice information system.
- ✓ Require the DSAMH and CCJJ to collect the data needed to track recidivism rates.

To Support Local Corrections Systems the Legislature should:

- ✓ Consider creating local criminal justice coordinating councils.

To Improve the Quality of Offender Treatment Services and Community Supervision:

- ✓ DSAMH should help treatment providers improve their quality of treatment and performance outcomes.
- ✓ AP&P can enhance the use of evidence-based practices.

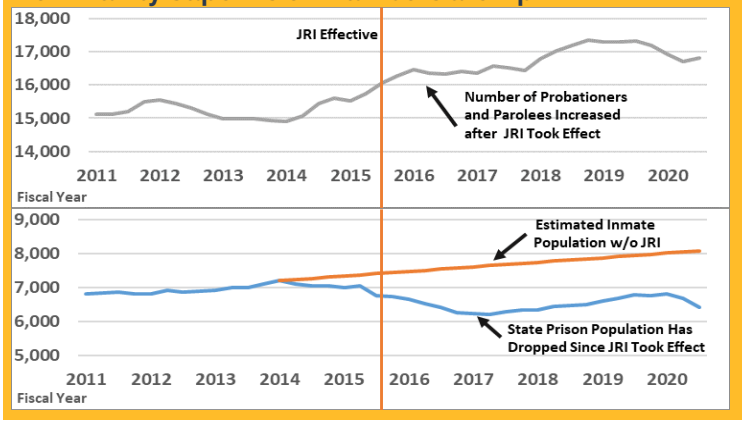
Summary continues on back >>

REPORT SUMMARY

Utah Has Achieved Its Goal to Reduce the Prison Population (see Chapter II)

One goal of JRI was to reduce the prison population by focusing prison beds on serious and violent offenders. The figure below shows this goal has been achieved.

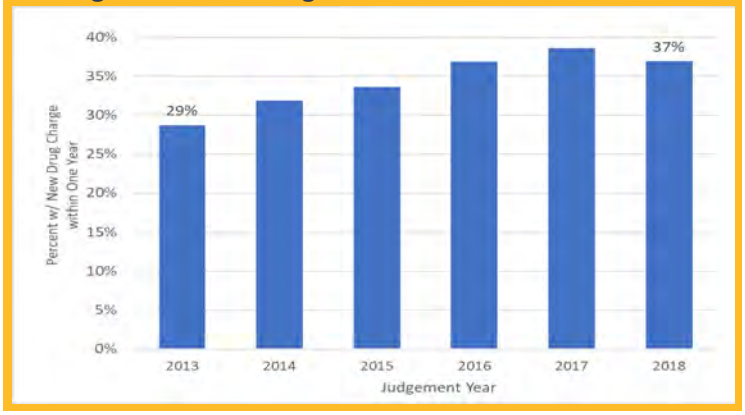
Prison Numbers are Down, While Community Supervision Numbers are Up



Utah Has Not Achieved Its Goal to Reduce Recidivism (See Chapter II)

A major group targeted by Utah's JRI reforms was low-level, non-violent drug offenders. Since JRI took effect, recidivism rates for this group has increased.

Recidivism Rates have Increased Among Low-Level Drug Offenders



The Criminal Justice System Lacks the Accountability Called for by JRI (See Chapter III)

JRI was expected to produce a data-driven, results-oriented criminal justice system and this has not been achieved. Utah still lacks the performance data for individual offender treatment programs required by the JRI legislation.

Stronger Local Oversight is Needed (See Chapter IV)

Each region of Utah faces a unique set of challenges as they try to address crime in their communities. What works for one county in addressing criminal justice issues, may not be effective for another county. By creating local Criminal Justice Coordinating Councils, Utah can provide the help local officials need to address local criminal justice needs.

Offender Treatment Availability and Quality Fall Short of JRI Goal (See Chapter V)

Offender treatment services are not always available when needed. However, demand for treatment services is difficult to identify because all offenders needing treatment are not tracked. In addition, the effectiveness of current treatment is not monitored.

JRI Success Could Improve with Better Offender Supervision (See Chapter VI)

With greater numbers of offenders in community supervision, the increased workload for AP&P agents could be impacting the success of JRI's goal to reduce recidivism. Additionally, a lack of pre-trial and probation services also hinders successful implementation of JRI reforms.

REPORT TO THE
UTAH LEGISLATURE

Report No. 2020-08

A Performance Audit of the Justice Reinvestment Initiative

October 2020

Audit Performed By:

Audit Manager	Darin Underwood
Audit Supervisor	James Behunin
Audit Staff	August Lehman
	Zackery King
	Brent Packer

Table of Contents

Agency Responses

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Chapter I
Introduction

In 2014, the State of Utah launched a major criminal justice reform effort called the Justice Reinvestment Initiative (JRI). The initiative aimed to lower the cost of the state correctional system by moving low-level, non-violent offenders out of prison and into community supervision. A portion of the reduced prison costs was to be reinvested in programs and treatments proven to help offenders avoid new crimes. In 2019, the Office of the Legislative Auditor General was asked to evaluate the impact of JRI on Utah's county jails specifically, and on the criminal justice system in general. This report summarizes the results of that review.

The Legislature requested an evaluation of the Justice Reinvestment Initiative and its impact on Utah's criminal justice system, specifically, on the number of offenders in the state prison and county jails.

Another goal of this audit was to provide a comprehensive set of data elements to enable a reader to query, search, and manipulate the data to further explore, question, and illuminate critical and necessary criminal justice questions. This audit was only able to partially achieve that objective. As will be described in Chapter III, Utah has a serious and concerning gap in criminal justice data and coordination that prevented the full achievement of our audit objectives. This audit and a companion report, *A Performance Audit of Information Sharing within Utah's Criminal Justice System*, identify steps to establish Utah as a leader in criminal justice and transfer Utah's system into the data-driven, results-oriented system initially conceived in JRI.

To provide the reader with as much data as possible to support the conclusions and findings of the report to the best extent possible, we built a criminal justice information dashboard that can be viewed here.

For our criminal justice dashboard click here.

The data on that dashboard and in this report was gathered from multiple agencies, including the Administrative Office of the Courts, the Commission on Criminal and Juvenile Justice, the Department of Corrections and county sheriff offices. To provide the most accurate results possible and to present data within an acceptable level of audit risk, the audit team compared data provided by one agency to that provided by another for the same offender. When data problems were uncovered, adjustments and corrections to the data were made when possible. Agency data deemed unreliable was not used. However, because in some instances the data we obtained had not before been connected and holistically analyzed, we understand and expect that

further analysis will produce additional insights and questions that the audit team did not have time to consider. The objective of this report is to provide information that can be used as a starting point for a broad discussion of the success of the criminal justice system in achieving the goals of JRI. To that end we hope the data provided in this report will be considered a starting point for further and more in-depth analysis.

JRI's Goal Was to Reduce Recidivism While Controlling Prison Costs

Reducing costs of the state prison and recidivism rates were goals that motivated reform of the criminal justice system through the Justice Reinvestment Initiative.

In 2014, when the state's correctional system was experiencing large year-to-year cost increases, Utah's Governor focused executive branch resources toward finding a new approach to criminal justice. After months of research and study, Utah's Commission on Criminal and Juvenile Justice (CCJJ) presented its *Justice Reinvestment Report* in November 2014.[1] The main goals presented in the report included reducing prison costs and focusing on actions that would reduce recidivism. During the ensuing 2015 Legislative General Session, the Legislature adopted House Bill (H.B.) 348 that put most of the proposed reforms into effect.

Growing Prison Costs and High Recidivism Rates Led to Call for Reform

JRI was introduced at a time when policy makers were concerned by the growing cost of the state prison system. Lawmakers had been told that during the 10 years leading up to 2014, when JRI was introduced, the state's prison population had grown by 18 percent or six times the national average. If that trend continued, the state would need to house an additional 2,700 inmates by the year 2034 with an added cost of $542 million. It should be noted that Chapter II of this report shows that the prison population has decreased since 2014.

Policymakers were also concerned that Utah taxpayers were receiving little benefit from their investment in the state's correctional system. CCJJ reported that 46 percent of state inmates returned to

[1] CCJJ Justice Reinvestment Report: November 2014 The report says that reducing recidivism is a goal but targeting low-level drug offenders is a major objective of the report.

prison within three years of release and concluded that some offenders were caught in a "revolving door" in and out of the system.

These conditions led Governor Herbert to recommend that Utah take a new approach to criminal justice, one that focused less on incarceration and more on addressing offenders' underlying criminal behavior. During his 2014 State of the State Address, Governor Herbert said:

> There has been a great deal of discussion about relocating the state prison. This is a discussion worth having, but it must be done in the larger context of reforming our criminal justice system as a whole.
>
> I have asked for a full review of our current system to develop a plan to reduce recidivism, maximize offenders' success in becoming law-abiding citizens, and provide judges with the tools they need to accomplish these goals. The prison gates through which people re-enter society must be a permanent exit, and not just a revolving door.

Policy makers were concerned that Utah taxpayers were not receiving adequate benefit for their investment in the state's correctional system. Governor Herbert called for a new approach to criminal justice in Utah.

In response to the Governor's call for reform, CCJJ was asked to "develop a package of data-driven policy recommendations that will reduce recidivism and safely control the growth in the state prison population."

Chapter II provides evidence that recidivism has increased since JRI took effect, suggesting the revolving door to the criminal justice system has become worse since the 2015 passage of JRI legislation. Chapter III raises concern that the promised data-driven criminal justice system was never achieved. Utah policy makers still do not know what programs and services are the most effective at reducing recidivism.

CCJJ Issued Utah's Reform Plan in November 2014

Shortly before the 2015 Legislative General Session, CCJJ introduced a package of policy reforms aimed at reducing recidivism, controlling prison costs, and holding offenders accountable. The proposed reforms were the result of a collaborative effort involving all stakeholders in Utah's criminal justice system. The plan included the following policy recommendations:

CCJJ produced its Justice Reinvestment Report in 2014, which recommended five policy themes to be enacted to reform Utah's criminal justice system.

- Focus prison beds on serious and violent offenders
- Strengthen probation and parole supervision
- Improve and expand reentry and treatment services
- Support local corrections systems
- Ensure oversight and accountability

Chapter II described the current progress made towards completing steps with greater detail provided in Appendix A.

The Legislature passed House Bill 348 in its 2015 General Session, which is known as Utah's Justice Reinvestment Initiative.

JRI Legislation Passed in 2015 Legislative Session

During its 2015 Legislative General Session, the Legislature approved House Bill (H.B.) 348, "Criminal Justice Programs and Amendments." This bill was also known as Utah's Justice Reinvestment Initiative (JRI). CCJJ's analysis of the legislation included the assumption that the proposed Medicaid expansion would be used, in part, to fund the treatment of offender populations targeted by JRI.

JRI in Utah Began with House Bill 348. A main purpose of the bill was to remove low-level, non-violent offenders from the state prison and local jails. Statutory changes to penalties associated with drug-related violations and numerous traffic violations were a major focus. For example, the bill changed the penalty for certain drug-related offenses from a felony to a misdemeanor and eliminated a prison sentence for other offenses. Many traffic violations were reduced in severity to class C misdemeanors or infractions. Adult sentencing and release guidelines were also changed.

After House Bill 348 in 2015, additional legislation has been passed in subsequent legislative general sessions that have impacted JRI reforms of Utah's criminal justice system.

Other key areas of the criminal justice system that received attention in H.B. 348 were community supervision, treatment, county incentive grants, oversight and accountability, and jail reimbursement.

Other Legislation Addressed Issues Related to JRI. During the special session in 2015 and in later years, the Legislature approved additional bills affecting elements of JRI goals, including:

- House Concurrent Resolution (H.C.R.) 101, "Concurrent Resolution Approving Site for New State Correctional Facilities," 2015 First Special Session.
- Senate Bill (S.B.) 1003, "Criminal Law Amendments," 2015 First Special Session.

- S.B. 187, "Reclassification of Misdemeanors," 2016 Legislative General Session
- H.B. 3004, "Criminal Justice Reinvestment Amendments," 2016 Third Special Session.
- H.B. 157, "Justice Reinvestment Amendments," 2018 Legislative General Session
- H.B. 291, "Sentencing Commission Length of Supervision," 2018 Legislative General Session
- H.B. 238, "Crime Enhancement Amendments," 2020 Legislative General Session

CCJJ Recommended Medicaid Expansion in 2015; Incremental Changes to Medicaid Came a Few Years Later. Among other recommendations made in CCJJ's *Justice Reinvestment Report* was the adoption of the Governor's Healthy Utah Plan, which was the full expansion of Medicaid in Utah. Medicaid funds were relied upon in CCJJ's JRI analysis to provide treatment and services to the JRI population. While Medicaid expansion was a topic of debate during the 2015 Legislative General Session, no changes were made to it at that time. However, legislation passed in subsequent legislative sessions made changes to Medicaid that have impacted the federal dollars available to eligible offenders for treatment services. The following bills and initiatives made changes to the Medicaid program starting with the 2016 Legislative General Session.

Medicaid expansion was not passed in the 2015 General Session, but the Legislature has expanded Medicaid in subsequent legislative general sessions.

- H.B. 437, "Health Care Revisions," 2016 Legislative General Session
- H.B. 472, "Medicaid Expansion Revisions," 2018 Legislative General Session
- Utah Proposition 3, "Medicaid Expansion Initiative," 2018
- S.B. 96, "Medicaid Expansion Adjustments," 2019 Legislative General Session
- H.B. 460, "Medicaid Eligibility Amendments," 2019 Legislative General Session

Data Issues and Lack of Implementation Have Challenged JRI

Evaluating the impact of JRI on Utah's county jail populations was another audit objective. As will be discussed in Chapter III, we found that even though the county sheriffs were supportive and willing to provide information, obtaining the inmate data we needed proved difficult. The audit team found that inmate records at most county jails were not in an easily accessed format. Further, inconsistent reporting practices made it difficult for us to first compile the data and to then interpret it.

Inadequate data complicated any analysis of JRI's impact on prison and jail populations.

We also examined the progress made in implementing each of five broad reforms associated with JRI. As will be detailed in Chapter II, the only feature of JRI that has been implemented was to reduce the state prison population by prioritizing the use of prison beds for serious and violent offenders. While JRI has succeeded in reducing pressure on the state's prison system, the other goals associated with the legislation relate to managing low-level, non-violent offenders in a community setting. Because these aspects of JRI were not implemented, the burden has been shifted from the prison system to other areas of the criminal justice system.

Lack of Data Made it Difficult to Assess Impact of JRI on County Jails

While JRI has helped reduce Utah's prison population, county sheriffs have expressed concern that the reforms have also led to an increase in their county jail populations. The increase, they said, was caused by changes to the sentencing guidelines which reduced the penalties for many non-violent offenses. For example, before JRI, drug possession was a felony charge which often led to a prison sentence. According to some sheriffs, reducing the penalty to a misdemeanor charge led to more jail sentences for those offenders who previously would have been sent to prison. In effect, they said, JRI led to a shift of state inmates to county jails.

To verify the sheriffs' concerns, legislators had previously asked the county jails to provide them with data on inmate populations and the type of criminal offenses for each inmate being held. However, when the county jails were unable to provide that information, legislators asked the Legislative Auditor General to gather the data as part of an audit of JRI. In response, the audit team placed special emphasis on

the effect of JRI on drug possession cases generally, and their impact on the county jails specifically.

Concerns Exist Over the Lack of Funding for Treatment Programs

One Legislator expressed concern for the apparent lack of funding for treatment programs and observed that JRI had produced a large reduction in the cost of the state's prison system, but his committee had not seen much, if any, increased funding for offender treatment programs. He asked that the audit team determine whether the savings from JRI had actually been reinvested.

Concern over lack of funding for treatment programs also motivated this audit. Treatment and supervision recommendations are found in Chapters five and six of this report.

JRI Lacks Sufficient Data and Implementation

During the initial survey phase of the audit, the audit team found evidence suggesting that many features of JRI had not been fully implemented. Although the prison population was down, the Division of Adult Probation and Parole appeared to struggle with increased workload. Although additional funding had been provided for treatment programs, we found evidence that the funding was insufficient for the need. Finally, the county sheriffs we interviewed reported that the "revolving door" problem with chronic offenders being repeatedly arrested had become worse, not better, since JRI took effect. We prepared an audit plan to address these concerns and this report describes the evidence confirming these problems.

Audit Scope and Objectives

To address the above concerns, the Auditor General directed his staff to evaluate the implementation of JRI, the extent to which each of the features of JRI had been implemented, and its success in limiting the growth in prison costs and reducing recidivism. Auditors were also specifically asked to examine the impact of the law on county jail populations.

Chapter II provides a broad overview of the implementation of JRI and its effect on the state prison population and on recidivism. The chapter also describes the impact on county jail populations. Each remaining chapter describes the results of our review of the implementation of four major features of JRI with these specific scope areas:

Chapter II
Utah Has Not Fully Implemented JRI

Utah has not achieved all the goals of the Justice Reinvestment Initiative (JRI) because the initiative was not fully implemented. Although Utah made changes to its sentencing guidelines, which led to a drop in the state's prison population, features of JRI designed to provide strong alternatives to incarceration were not implemented.

We are optimistic that Utah can still accomplish its ambitious goal of creating a criminal justice system that focuses less on incarceration and more on helping offenders overcome their addictions and mental health problems so they can become law-abiding citizens. JRI was also expected to create a data-driven criminal justice system that is fully accountable for results. However, accomplishing these objectives will require implementing all the features of JRI.

JRI was not only designed to reduce the growth in Utah's prison population but also aimed to help offenders overcome their drug addiction and mental health issues.

This chapter describes the effects of not fully implementing JRI, which includes a growing rate of re-offense among low-level drug offenders. Each of the chapters which follow describes a feature of JRI that was not fully implemented. They include:

- Improved accountability (Chapter III)
- Support Local Corrections Systems (Chapter IV)
- Expanded and improved treatment services (Chapter V)
- Strengthened probation and parole (Chapter VI).

Utah Has Implemented Only One of Five Policy Recommendations Associated with JRI

When JRI was proposed in 2014, one of the Legislature's primary goals was to control the growth in the state's prison population. JRI accomplished this goal by making several changes to the sentencing guidelines and to the prison rules that led to more offenders receiving community supervision rather than prison time. However, as shown in Figure 2.1, less progress has been made towards implementing four other features of JRI that were not fully implemented.

Figure 2.1 Utah Has Not Implemented All Features of JRI.

JRI Policy Recommendations	Status
• Focus Prison Beds on Serious and Violent Offenders	Completed
• Ensure Oversight and Accountability	Not Implemented
• Support Local Corrections System	Not Implemented
• Improve and Expand Reentry/Treatment Services	Partly Implemented
• Strengthen Probation and Parole Supervision	Partly Implemented

Source: Policy Recommendations are listed Justice Reinvestment Report, (2014) CCJJ.

To provide an effective alternative to incarceration, the state intended to strengthen its probation and treatment programs so offenders might be supervised in their own communities.

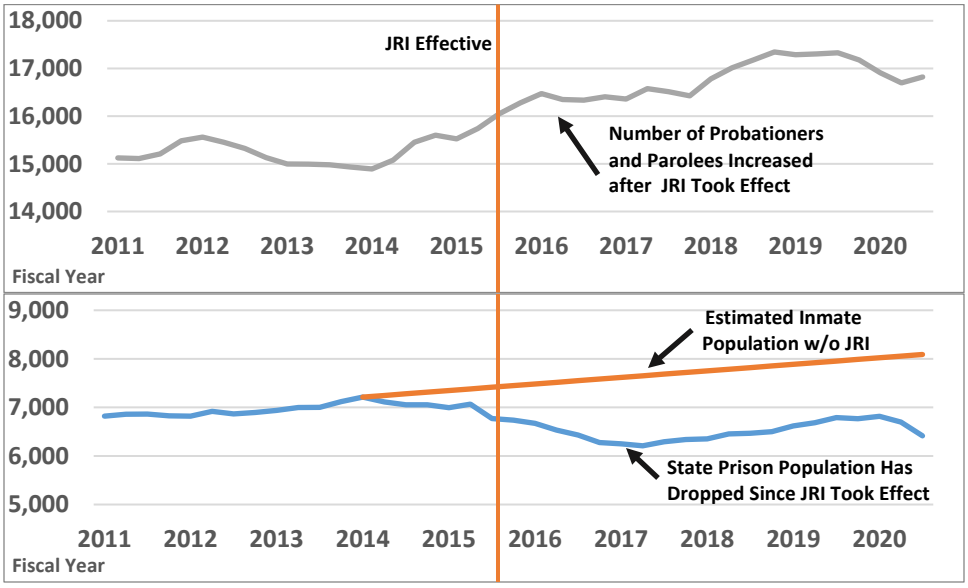
Commission on Criminal and Juvenile Justice (CCJJ) introduced the Justice Reinvestment Initiative as a reform package consisting of five major policy recommendations. Figure 2.1 shows only the first of the five was implemented.

The balance of this chapter describes the effects of reducing the state inmate population without fully implementing the other components of the reform initiative

JRI Has Succeeded in Reducing the State's Prison Population

Data supplied by the Utah Department of Corrections and CCJJ shows that Utah has reduced the number of offenders being sent to state prison and has increased the number supervised by the Division of Adult Probation and Parole (AP&P). See Figure 2.2.

Figure 2.2 A Drop in Utah's Inmate Population Has Shifted the Burden Away from the Prison System to AP&P. The data show the impact of Utah's new sentencing guidelines that were adopted as directed by the JRI legislation.



Source: Utah Department of Corrections, Commission on Criminal and Juvenile Justice

The reduced penalties for low level drug crimes is one reason the state prison population has declined in recent years.

Figure 2.2 shows that the decline in the state's prison population began in 2014, just as the concept of JRI was first proposed. The decline in the number of inmates continued through 2017. There appear to be many contributing factors behind the decline. One reason was the reduction in penalties for several categories of drug offense. For example, before the sentencing guidelines were changed, the recommended penalty for the possession of a controlled substance was a third-degree felony. After JRI took effect, that penalty was reduced to a class A misdemeanor for the first and second offenses. Unlike felony offenses, misdemeanor offenses rarely lead to a prison sentence.

JRI also reduced the prison population by allowing some high-risk offenders, under certain conditions, to receive an early release and be placed under community supervision. For example, a prison inmate who demonstrates good behavior can receive an early release for earned time credit. In addition, JRI also placed limits on the amount of time inmates could be returned to jail after violating the terms of their probation or parole. These and other changes brought about by JRI reflect Utah's new emphasis on providing treatment and community supervision to most offenders while reserving prison beds for the most serious and violent offenders.

To Achieve All the Goals of JRI, Utah Must Implement all the Proposed Reforms

JRI's three goals: (1) reduce recidivism, (2) control prison costs, and (3) increase offender accountability.

CCJJ presented JRI as a package of reforms that included three goals: (1) reduced recidivism, (2) control prison costs, and (3) increased offender accountability. By changing the sentencing guidelines and thereby reducing the number of offenders sent to state prison, the state has made progress towards achieving the second goal of controlling prison costs. However, it has not achieved its first goal to reduce recidivism. In fact, recidivism has increased since JRI took effect.

The rate of recidivism is a basic measure of performance for the criminal justice system. This chapter provides information on recidivism rates before and after JRI. We have also created a separate online data dashboard which provides more detail on recidivism rates by location. We believe a similar data dashboard should be created and regularly updated so legislators and the public can monitor the state's progress as it implements all the features of JRI and thereby reduce the rate of recidivism.

Utah Has Not Achieved Its Goal to Reduce Recidivism

The rise in recidivism rates may be due to the growing number of drug offenders under community supervision who have a greater opportunity to reoffend.

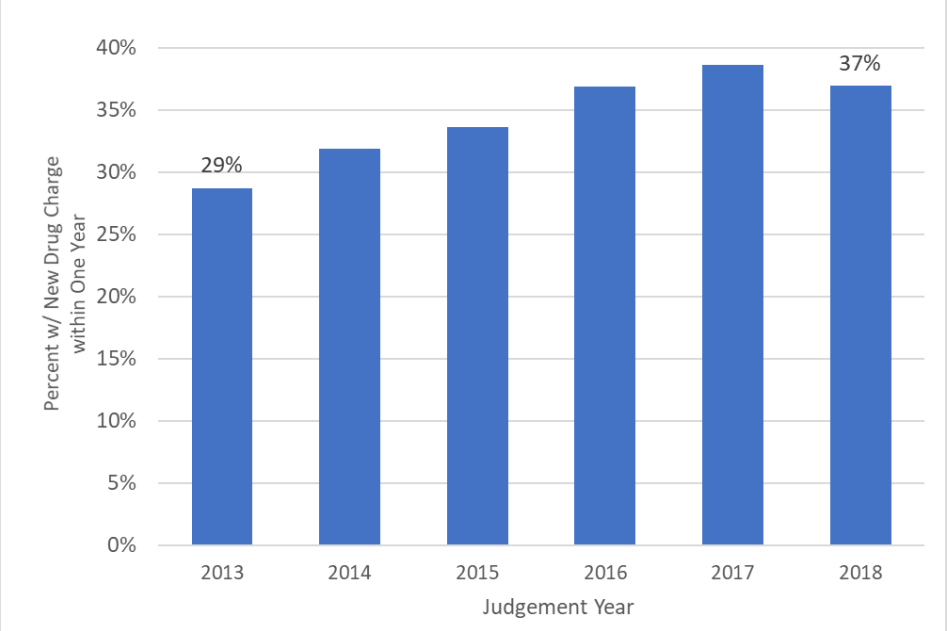
Although JRI was supposed to reduce the rate at which people commit new crimes, recidivism has increased since the law took effect. The high re-offense rate among chronic drug offenders is a special concern raised by some of Utah's county sheriffs. The sheriffs contend the reduced penalties for drug use has created a disincentive for offenders to stop using drugs and seek treatment. We believe the growth in recidivism may reflect the greater number of drug offenders who are no longer being incarcerated, who are not receiving adequate community-based supervision and treatment, and who now have a greater opportunity to reoffend. In our view, if Utah is to achieve its goal to reduce recidivism, the state will need to fully implement JRI. That means providing effective community supervision and treatment, which are discussed further in Chapters V and VI of this report.

Rate of Re-offense Increased After JRI Took Effect

One measure of success for the criminal justice system is the extent to which offenders commit new crimes. In fact, several sections of House Bill (H.B.) 348 refer to the goal to reduce recidivism. However, instead of reducing recidivism, the rate of re-offense has increased among the non-violent drug offenders targeted by the legislation. Figure 2.3 shows the statewide rate of re-offense for those convicted on drug possession and drug paraphernalia charges since 2013.

Recidivism is a basic measure of the effectiveness of the criminal justice system.

Figure 2.3 Recidivism Has Increased Since JRI Took Effect. The rate at which offenders convicted of drug possession or drug paraphernalia commit a new drug crime within one year has increased from 29 percent in 2013 to 37 percent in 2018.



Source: Recidivism Study by the Legislative Auditor General.

We focused our recidivism study on low-level drug offenders because that was one of the major offender groups targeted by JRI. Figure 2.3 shows that in 2013 (two years before JRI took effect), 29 percent of those convicted of drug possession were charged with another drug charge within a year. The rate of re-offense has risen steadily since that time. By 2018, 37 percent of offenders had been charged for a new drug crime within a year. Figure 2.3 shows the statewide data. Recidivism rates by court district and county can be found in Appendix B and at our online dashboard.

For more information see our criminal justice dashboard here.

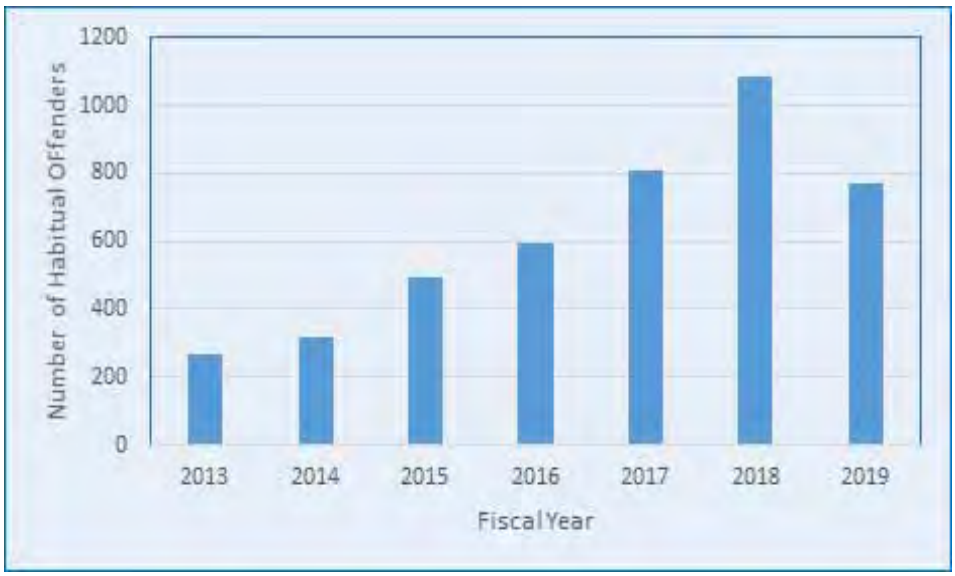
Number of Chronic Offenders Grew After JRI Was Implemented

The growth in chronic drug offenders suggests many are still caught in a "revolving door" in and out of the criminal justice system.

Another sign that JRI has not addressed the problem of recidivism is the growing number of chronic offenders in Utah. We recognize there are different ways to define chronic offenders. As explained in Chapter I, one of our objectives in providing the data and analysis in this report is to begin a conversation about how to solve criminal justice issues. To that end, in the analysis below we define chronic offenders as those who have been arrested four or more times for drug possession in a single year. This group, which numbered 3,720 individuals during our seven-year study period, deserves special attention. Because of their frequent arrests, court hearings, and jail sentences, these individuals place an oversized burden on Utah's criminal justice system. In fact, we found that chronic offenders were responsible for roughly 21,000 court case filings during our study period. This population commits many crimes that affect the community as well. For example, those 21,000 drug-related case filings also included 798 person crimes and 7,456 property crimes. Figure 2.4 shows the number of chronic offenders increased after JRI was implemented.

We found chronic drug offenders impose a disproportionate burden on the criminal justice system and on the community.

Figure 2.4 The Number of Chronic Drug Offenders Has Nearly Tripled. Since JRI was implemented, the number of chronic offenders (those with four or more drug possession arrests in year) has increased 286 percent from 270 in 2013 to 770 in 2019.



Source: LAG analysis of court records obtained from the Administrative Office of the Courts.

Figure 2.4 shows a growing number of chronic offenders peaked in 2018 but then declined in 2019. The drop in chronic cases in 2019 mirrors the overall drop in drug possession cases filed in court that year. See Appendix C for the breakdown by county of drug possession cases that involve chronic drug offenders.

Small Population of Chronic Offenders is having a Disproportionately Large Impact on County Jails. We found that chronic offenders not only place an added burden on Utah's courts but they also impact the county jails. The following information was gleaned from a study of the Salt Lake County jail population that was separate from the recidivism study described above which was based on data obtained from the courts. It shows that a relatively small population of frequent offenders are responsible for a disproportionate number of jail stays.

The data suggests Utah's criminal justice system has not yet developed an effective response for offenders who suffer from serious drug addiction.

- About 21 percent of inmates with drug-related charges have 4 or more jail commitments from 2013 through 2019
- The 21 percent account for 56 percent of all jail commitments for drug-related offenders
- Of the 21 percent, 83 inmates had between 20 and 35 jail commitments or 1,928 commitments in 7 years.

This data provides additional evidence that the criminal justice system works well for the majority of drug offenders who are arrested once or twice and never reoffend. However, it suggests the criminal justice system and the reforms enacted by JRI have not been effective in dealing with those offenders who suffer from serious drug addiction. It is this relatively small population of offenders who have the greatest impact on the courts, the jails, and our communities.

The criminal justice system works well for the majority of drug offenders who are arrested once or twice and never reoffend.

Case Studies Lend Support to Claims that JRI Has Not Stopped the Revolving Door for Some Offenders

Our review of actual offender cases lends additional support to our concern that a small number of offenders are having a large impact on Utah's criminal justice system. They appear to be caught in a cyclical pattern, moving in and out of the criminal justice system while suffering few consequences for the minor crimes they commit and their continued use of illegal drugs. This information, combined with the recidivism data in the previous sections, describes the effect of not

implementing those features of JRI designed to help offenders overcome their drug addiction while under community supervision.

In our opinion, the rise in recidivism rates and the growing number of chronic offenders does not suggest that JRI has been a failure. Prison and jail is still viewed as a poor option for non-violent drug offenders. However, the data does suggest that Utah's partial implementation of its JRI reforms has not produced the intended results, including a reduction in the rate of re-offense. In fact, several county sheriffs expressed concern that reducing the penalties for drug-related crime has actually created a disincentive for offenders to seek treatment for their addiction. Our review of recidivism rates and case histories of chronic offenders lends support to those claims.

Partial implementation of JRI has contributed to an increased rate of re-offense.

One Chronic Offender Had Criminal Charges Filed on 80 Occasions. To better understand offenders' interaction with the criminal justice system, we reviewed criminal records for about a dozen chronic offenders. With the number of repeated crimes committed in multiple jurisdictions, we concluded that Utah's criminal justice system has not developed an effective response to low-level offenders addicted to drugs.

During a seven-year period, one individual had charges filed against him on 80 separate occasions and served 33 different jail sentences.

Among the cases we examined, one 31-year old male had been arrested with charges filed against him on 80 separate occasions during a seven-year period. He was booked in the Salt Lake County Jail on 33 separate occasions for a total of 816 days. See Appendix D for a complete list of the offender's charges and commitments to jail. Figure 2.5 summarizes the 80 court filings by court location.

Figure 2.5 One Offender Had 80 Charges Filed Against Him in 13 Different Courts in 7 Years. This case exemplifies the type of chronic offender targeted by JRI. For whatever reason, the reforms made to the criminal justice system have not succeeded in curbing the offender's frequent criminal behavior.

Court Location**	2013	2014	2015	2016	2017	2018	2019	Grand Total
Draper JC			1					1
Midvale JC				2	3			5
Murray JC			5	4	1			10
SLC DC		1	2	3	1	4		11
SLC JC			2					2
SL Co JC	1		2		2			5
So Jordan JC				1				1
So Salt Lk JC				1	1	3	1	6
Taylorsville JC	2	2	1	6	1	1		13
Tooele DC	1							1
W Jordan DC		1	3	4	3	1		12
W Jordan JC			1	5	2		1	9
W Valley Cy JC						3	1	4
Grand Total	4	4	17	26	14	12	3	80

**Source: Courts*
***JC = Justice Court; DC = District Court*

According to Figure 2.5, 13 different courts administered cases for this offender. Court data shows that 45 percent of the offender's arrests included drug-related charges. Other charges included interference with arresting officer, shoplifting, criminal trespass, disorderly conduct, and burglary.

The person described in Figure 2.5 is the precise type of offender that JRI was intended to help. Clearly, no one benefits from having this person locked up in state prison. That is the very reason why the sentencing guidelines were changed to allow low-level offenders to be placed on probation and receive treatment for those behaviors contributing to their criminal behavior. As this example shows, and as described further in Chapters V and VI, Utah has not yet developed the capability of providing the level of supervision and treatment necessary to curb frequent, low-level criminal behavior. The intent of JRI was for probation officers to apply a swift, certain, and proportional response to offenders who violate the terms of their probation and for judges to revoke probation and send them to jail for limited stays if they continue to offend.

Probation officers are supposed to apply a swift, certain, and proportional response to those who violate the terms of their probation. Judges should revoke probation if they continue to reoffend.

Law Enforcement Officials Report that JRI Discourages Offenders from Seeking Treatment. Some of the county sheriffs and county prosecutors we interviewed said that JRI has created a disincentive for drug offenders to seek treatment. Several county sheriffs explained that before JRI, many charged with illegal drug possession would accept the opportunity to participate in drug court as an alternative to going to prison. Now that drug possession has been reduced to a misdemeanor offense, several county sheriffs told us that many offenders would rather spend less time in jail and get out sooner than spending the time participating in drug court. In effect, the sheriffs told us that JRI has taken the "teeth" out of the law and offenders are no longer motivated to seek treatment for their drug addiction.

County sheriffs told us that JRI has taken the "teeth" out of the law. Offenders are no longer motivated to seek treatment for their drug addiction.

County prosecutors also report that JRI has changed defendants' motivation to seek drug treatment. They explained that when they negotiate a plea bargain on a drug possession case, the drug court is no longer viewed as an attractive alternative because defendants are no longer at risk of receiving a lengthy prison term.

Reducing Recidivism Will Require Full JRI Implementation And Combined Efforts of Multiple Support Groups

In summary, the growth in the rate of recidivism is a concern. Recidivism was identified as a basic measure of success when the Legislature adopted JRI reforms but the numbers have become worse, not better, since that time. One cause for the growing rate of recidivism is that Utah has not implemented all the reforms associated with the JRI. Changes were made to the sentencing guidelines, which put more non-violent drug offenders on probation before the state was fully prepared to manage and treat that population in a community setting. Therefore, one of the first steps to reduce recidivism must be to implement all the features of JRI described at the beginning of this chapter.

Changes were made to the sentencing guidelines before the state was prepared to manage the growing number of drug offenders that required community supervision.

We recognize that the underlying causes for the growing rate of recidivism are complex, especially among chronic drug offenders. This population faces social, medical, and economic challenges that make it extremely difficult for offenders to return to a normal, productive life. Furthermore, what may have compounded the problem is that many offenders were placed on community supervision at the same time the state was experiencing an upsurge in opioid use. What this means is

that successful implementation of JRI will require more than simply improving the state's probation and treatment programs. It will require the joint efforts of many different community groups and human services agencies, as well as those involved in the criminal justice system.

Utah's chronic drug offenders face many social, medical and economic challenges that make rehabilitation difficult.

To guide that community effort, in Chapter III we recommend that providing better crime data is needed so community leaders can know the conditions they face and whether their efforts are producing results. And, in Chapter IV, we recommend the creation of local councils comprised of representatives of different criminal justice agencies as well as other interest groups, to prepare strategies that combine their different resources to develop a unified crime reduction plan. We recommend the Legislature require CCJJ to report at least annually on the progress made towards implementing the features of JRI as well as on efforts to prepare local crime reduction plans.

In addition to recidivism, we examined one additional effect of JRI which is described in the following section. It relates to the impact of JRI on the number of inmates in county jails. We found evidence suggesting that the change in sentencing guidelines has not led to an increase in the number of inmates sentenced to county jails.

Number on Probation Has Increased but County Jail Populations Have Remained the Same

Since JRI took effect, the population of Utah's county jails have increased at the same rate as the state's general population.

We did not find a connection between the changes made to Utah's sentencing guidelines and the number of inmates in Utah's county jails. Statewide, the number of inmates held in county jails increased only slightly after sentencing guidelines were changed. In addition, the number of low-level drug offenders in Utah's county jails has declined since JRI took effect. Furthermore, the likelihood of a low-level drug offender being sentenced to county jail has not changed since JRI took effect.

It is important to recognize that Utah's criminal justice system is complex and that there are too many factors involved to identify a direct link between a change in the law and the number incarcerated in county jails. To provide additional depth to our analysis, we supplemented our county jail data with a study of the sentencing data provided by the Administrative Office of the Courts. We found the

court data, in some respects, supports the conclusions we reached based on the jail data. As discussed in Chapter 1, our intent is to offer this information as a starting point for what hopefully will be an ongoing discussion regarding the effects of JRI. As Utah makes further progress towards becoming a truly data-driven criminal justice system, we anticipate additional data sources will be made available which provide further clarity.

There are too many factors at play to draw a direct link between JRI and the number incarcerated in county jails. We found it more insightful to examine local level jail data.

We also caution against using statewide data alone to make broad conclusions about the effects of JRI. Based on our analysis of the local data, it appears that day to day decisions made by local judges, county prosecutors and county sheriffs may have had a greater effect on inmate populations than do state level policies. For this reason, we provide local level data in the appendices and on our online dashboard.

For more county data click here.

In Chapter IV, we recommend that local coordinating councils rely on this information to craft a local strategy for achieving the goals of JRI in their own communities.

County Jail Populations have Changed Little Since JRI Took Effect

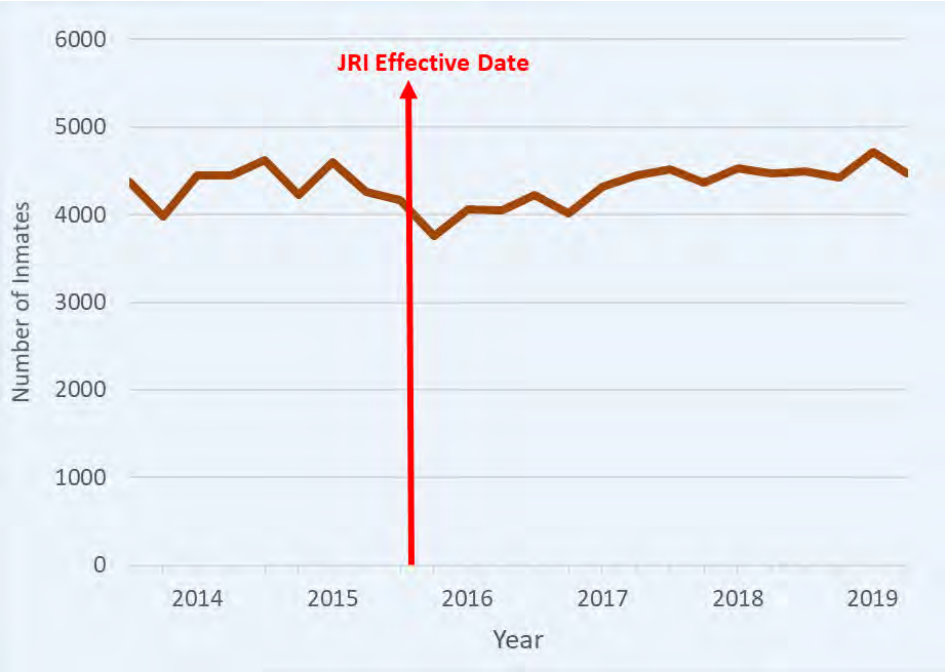
We found, statewide, the number of local offenders incarcerated in Utah's county jails has changed little since JRI took effect. In addition, the number jailed for the possession of illegal drugs declined just as it did in the state prison system. Perhaps what is most interesting about the local inmate data is the differences we see from county to county. Some counties have seen brief periods of increases in their county jail populations, while others have seen steady declines in their jail populations. These local differences seem to reflect the local approach to criminal justice and the decisions made by local judges, prosecutors, and law enforcement.

Some counties have seen increases in their county jail populations, while others have seen decreases.

County Jail Populations Changed Little Since JRI took Effect. Figures 2.6 and 2.7 summarize the results of our study of the jail populations in seven county jails for which we were able to process the booking information. Those seven jails are in counties that represent 83 percent of the state population. Figure 2.6 shows that the number of inmates held in county jails has increased slightly during the past few years. The data includes local inmates who are being held while waiting for their cases to be adjudicated as well as those serving a jail

sentence. State and federal inmates held in county jails are not included.

Figure 2.6 The County Jail Populations Have Increased Slightly Since JRI Took Effect.



Source: Inmate data provided to LAG by 7 counties which collectively represent 83 percent of the state population. They include Davis, Salt Lake, Sevier, Utah, Wasatch, Washington and Weber Counties.

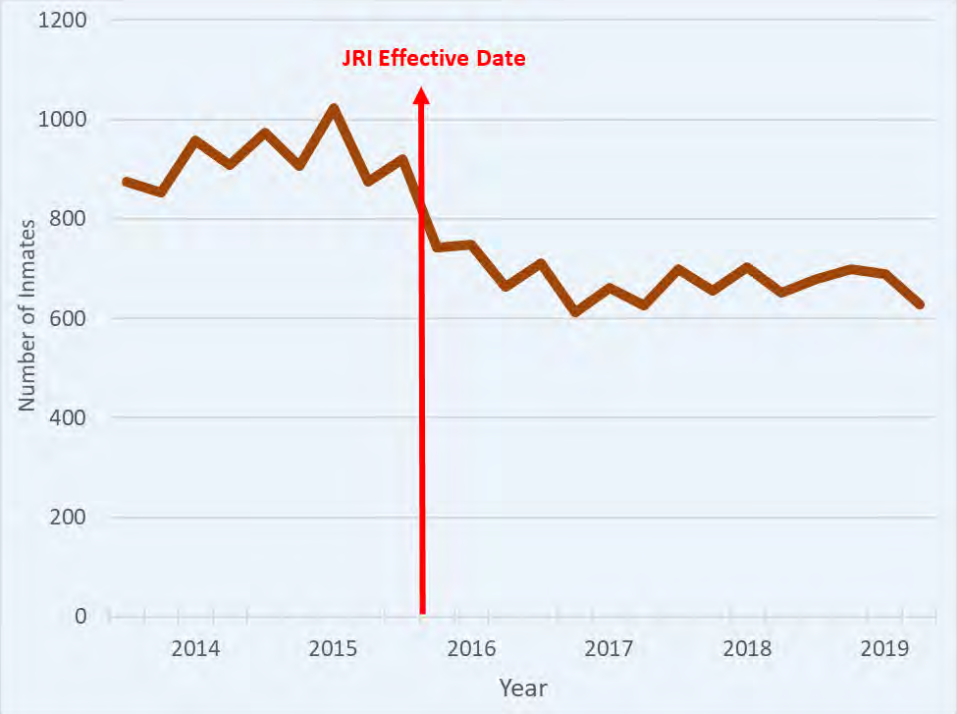
See Appendix E for inmate counts for individual county jails.

We were unable to detect any long-term effect from JRI on the total population of county jails. There was a brief decline in inmate numbers during third quarter of 2015 when JRI took effect. However, during the years of our study, the rate of growth in the combined county inmate population has been no greater than that of the state population. For the type and count of local inmates in each of the individual county jails in our study, see Appendix E and our online dashboard.

For more county data click here.

The Number of Low-Level Drug Offenders in County Jail Has Declined Since JRI Took Effect. We also identified the number of county inmates whose most serious offense was possession or use of a controlled substance. That is a common offense that was affected by the changes to the state sentencing guidelines. Figure 2.7 shows the number of county inmates held for a low-level drug offense has declined since JRI took effect. The data excludes Weber County which did not report the offense type prior to 2016.

Figure 2.7 The Number of County Inmates held for Low Level Drug Offenses has Declined. Since JRI took effect, Utah's county jails have held fewer inmates whose most serious offense was drug possession or drug paraphernalia. This trend appears to reflect Utah's effort to increase its reliance on community supervision and treatment rather than incarceration.



Source: Inmate data provided to LAG by 6 counties which collectively represent 74 percent of the state population. These counties include Davis, Salt Lake, Sevier, Utah, Wasatch, and Washington County.

See Appendix E for local inmate totals for individual county jails.

The data in Figure 2.7 shows the number of inmates held in county jails for drug possession and drug paraphernalia charges. Both Figures 2.6 and 2.7 include only inmates arrested by local agencies and excludes those held through a contract with other counties, the state prison, or a federal agency. The data shows a decline in the number of inmates held in county jails for possession of illegal drugs and paraphernalia. Some of the decline can be attributed to shorter jail stays. Conditions vary from county to county. Some counties have seen a larger decline in the numbers jailed for the possession of illegal drugs, while others have not. See Appendix E for a summary of the information we obtained from individual county jails and at our online dashboard for the complete data set.

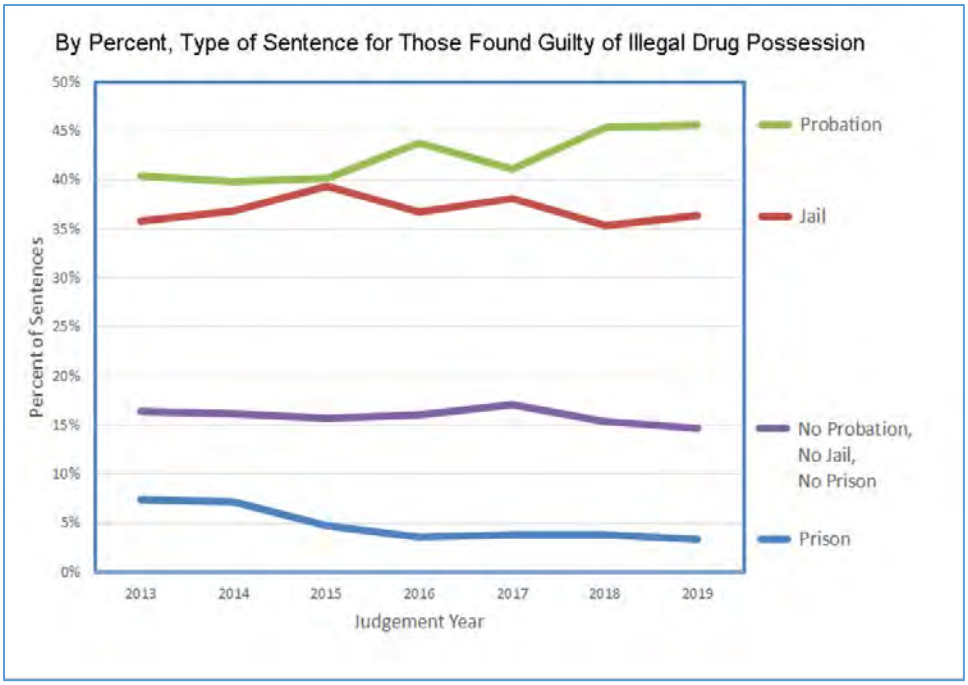
For more county data click here.

Changes to Sentencing Guidelines Have Not Affected the Likelihood Drug Offenders Will Be Sent to County Jail

We also used sentencing data provided by the Administrative Office of the Courts to supplement our analysis of the inmate populations in Utah's county jails. In some ways, the court data supports our conclusion that the changes in the sentencing guidelines have not led to a shift in the state prison population to the county jails. The same court data also raises additional questions that we cannot answer. Since JRI took effect, the percent of non-violent drug offenders sentenced to county jails has remained about the same. What we cannot explain is why the number of low-level drug offenders sentenced to a jail term has remained fairly steady even though the number actually housed in county jails has declined. This is one example of what we refer to in Chapter 1 when we say, "we understand and expect that further analysis will produce further insights and questions . . ."

Sentencing Data Shows the Percent Receiving a Jail Term has Remained Fairly Steady. Figure 2.8 describes our analysis of how court sentencing practices have changed since JRI took effect. It shows that individuals found guilty of illegal drug possession were more likely to be sentenced directly to probation since JRI and are less likely to receive a prison sentence. However, the percent receiving jail sentences has remained about the same.

Figure 2.8 Instead of Prison, More Low-level Drug Offenders Are Being Sentenced to Probation. Since JRI took effect, the likelihood of a drug possession charge resulting in prison time has gone down, the percent receiving jail sentences has stayed the same, and the percent sentenced to probation has increased.



Source: OLAG Analysis of Sentencing Data Provided by the Administrative Office of the Courts.

To see the sentencing rates at the county level, see Appendix F.

The data in Figure 2.8 show that the changes made to Utah's sentencing guidelines have reduced the rate at which drug offenders are sent to prison. Instead, the courts are more likely to sentence an offender directly to probation. The percent receiving a jail sentence has changed little since JRI took effect. It should be noted that 60 percent of those receiving a jail sentence are placed on probation after their release. Furthermore, we did observed some differences from county to county which can be observed in the charts in Appendix F and in our online dashboard.

For more county jail data click here.

County Jail Populations Largely Reflect The Local Approach to Criminal Justice

While many factors can affect the number held in a county jail, the greatest influence appears to be the local approach to law enforcement. That is, it is the day-to-day decisions made by judges, prosecutors, and local law enforcement that dictate more than any other factor how many offenders are held in Utah's county jails. At the same time, however, we need to recognize that the state's focus on less incarceration and more community supervision may have led some local officials to take a different approach to crime in general. The following list cites examples of how jail populations are influenced by local decisions.

The greatest influence on county jail populations appears to be the decisions made by local judges, prosecutors, and other local law enforcement officials.

- We found large differences in the way different courts and judges respond to low-level drug offenses. For example, court records show a large disparity in the average jail sentence issued by different courts and judges to individuals with the same offense. See Appendix G.
- During 2016 and 2017, Salt Lake County's jail population experienced a decline after the county sheriff stopped incarcerating anyone with only a misdemeanor offense.
- In 2017, the Sevier County jail experienced an increase in the number arrested for drug offenses after the county's new drug task force stepped up local efforts to combat drug use.
- Some judges told us they believe jail time is mandatory for a third drug possession offense while others say they never require jail time if drug possession is the only charge.

The examples above show how jail populations can be affected by local decisionmakers. While the changes to the sentencing guidelines did not directly affect the numbers sentenced to jail, it appears some local officials may have altered their general approach to criminal justice based on the statutory changes brought about by JRI. As a result, some counties saw periods of growth in the number of jail inmates, while other counties saw periods of decline. These differences can be observed in the charts included in Appendix E and online dashboard.

For more county jail data click here.

Recommendation

1. We recommend that the Law Enforcement and Criminal Justice Interim Committee require that the Commission on Criminal and Juvenile Justice report to them annually on the progress made toward implementing each goal of the Justice Reinvestment Initiative and on the progress made towards developing local crime reduction plans.

Chapter III
Criminal Justice System Lacks the Accountability Called for by JRI

One of the goals of the Justice Reinvestment Initiative (JRI) was to develop a data-driven, results-oriented approach to criminal justice. Judges would be provided with data showing which treatment programs would be the most effective at helping offenders avoid committing new crimes. Legislators were to receive data demonstrating the effectiveness of its policy to reinvest resources in treatment and supervision rather than incarceration. Unfortunately, the promised performance data was never produced. As a result, Utah still does not know which of the many treatment programs and intervention strategies are the most effective at reducing recidivism.

If the Legislature still wishes to create a data-driven, results oriented criminal justice system, we recommend the Legislature consider creating a criminal justice information governing body. The Legislature would give that group responsibility to create statewide data reporting standards, identify measures of performance, gather performance data and make it available to the public online.

A criminal justice information governing body could enhance Utah's ability to develop a data-driven, results oriented criminal justice system. We recommend that the Legislature consider creating one.

Goal of a Data-Driven Criminal Justice System Has Not Been Achieved

The objective of JRI was not only to reduce prison costs but also to reinvest those savings in programs and services shown to reduce recidivism. To measure the progress made in both areas, all those who play a role in Utah's criminal justice system, including private treatment providers, need to rethink their approach to data, accountability, and reporting. Each organization must hold itself accountable for producing measurable results in the lives of those who in some way become involved in the criminal justice system.

JRI Was Expected to Produce Data-Driven, Results-Oriented Criminal Justice System

When it was first proposed, one appealing aspect of JRI was that it included a commitment to create a criminal justice system that is accountable for results. "Data-driven" and "evidence-based" were

terms used to describe the new emphasis on performance and accountability. Agencies would produce hard data demonstrating whether the state's reinvestment in community-based programs and services had helped offenders avoid committing new crimes.

Performance Standards Would Measure the Effectiveness of Individual Treatment Programs. When JRI was proposed in 2015, there was little evidence that investing in mental health and drug treatment programs would produce the desired results. CCJJ warned that treatment programs in general had not been "assessed for quality or effectiveness." In response, the Governor, legislative leaders, and other state officials called on CCJJ to "…develop a package of data-driven policy recommendations that will reduce recidivism and safely control the growth in the state prison population." To ensure that Utah's reinvested funds would go to programs that work, CCJJ recommended "…establishing performance goals and measuring outcomes for reentry programming through a partnership between the Department of Corrections and the Division of Substance Abuse and Mental Health."

The original vision of JRI was to have a partnership between criminal justice and social services systems, working towards common goals and outcomes.

In response to CCJJ's recommendations, the Legislature approved House Bill 348, which required that

> …the Division of Substance Abuse and Mental Health, working with the courts and the Department of Corrections, establish performance goals and outcome measurements for treatment programs, including recidivism, …and make this information available to the public.

CCJJ Also Proposed Measures of the Systemwide Impact of JRI. In addition to holding treatment programs accountable for results, CCJJ recognized the need to monitor system-wide success in achieving the goals of JRI. CCJJ said:

> In order to track implementation of the criminal justice reforms recommended, …and to assess their ongoing impacts on public safety, recidivism rates, and the prison and community supervision populations, the state must commit to collection, analysis, and public reporting of all relevant data and information.

In effect, CCJJ was saying that by producing performance data for the state as a whole and for individual programs, and by making that data available to the public, there would be little doubt whether the state's reinvestment in offender treatment had produced the intended results.

Utah Still Lacks Performance Data for Individual Offender Treatment Programs

We found that Utah's criminal justice system still does not know which mental health and drug treatment programs are effective at reducing recidivism. The Division of Substance Abuse and Mental Health has not met the requirements of H.B. 348 to develop "…outcome measurements for treatment programs, including recidivism." In response, we set out to develop these measures ourselves. Although we were able to prepare recidivism data by county and court location (reported in Chapter II), we were unable to identify recidivism for individual treatment programs.

Recidivism data required by JRI legislation in 2015 was not available for this audit and is not being produced.

Criminal Justice System Is Not Reporting the Recidivism Data Required by H.B. 348. The performance reports issued by both the Division of Substance Abuse and Mental Health and the Commission on Criminal and Juvenile Justice (CCJJ) lack information regarding recidivism for individual treatment programs. It appears neither agency has met the requirements of H.B. 348 to monitor and report that information.

The Division of Substance Abuse and Mental Health issues an annual scorecard describing outcome measures for the state's regional Mental Health Authorities. See Appendix H for the fiscal year 2019 report. The report does describe a "decreased criminal justice involvement" during the time clients were enrolled in drug treatment programs. However, the report does not include recidivism data at the program level, which might help policymakers and judges know which programs and strategies offer lasting effectiveness.

CCJJ also prepares a document describing the key performance measures of Utah's criminal justice system. See Appendix I for the latest report. This document includes information submitted by the Division of Substance Abuse and Mental Health as well as other agencies involved in criminal justice. While the report includes measures of agency activity, it offers few measures of performance.

Recidivism is the key performance indicator required by H.B. 348 but is not reported either at the statewide or program level.

State and Local Agencies Were Unable to Provide Basic Program-Level Performance Data. Because state agencies were unable to provide recidivism data, we tried to gather the information ourselves. We asked the Administrative Office of the Courts, the Department of Corrections, the Division of Substance Abuse and Mental Health and Commission on Criminal and Juvenile Justice, as well as several local agencies, to help us answer the following questions:

The criminal justice system and treatment programs are not being held accountable for reducing recidivism as required by the 2015 General Session's House Bill 348.

1. Which drug offenders have received a court order to obtain mental health services or drug treatment?
2. If the offender obtained treatment, what treatment was provided and what was the name of the provider?
3. How many offenders who completed a treatment program committed new crimes?

For reasons explained below, none of the state and local agencies we contacted could provide the information needed to answer the above questions. What this means is that the criminal justice system in general, and treatment programs specifically, are not being held accountable for reducing recidivism as required by H.B. 348.

Creating More Accountable Criminal Justice System Will Require Changes to Agency Data Systems

In order to attain an accountable criminal justice system, one obstacle that needs to be addressed is the inability to link data systems.

There are obstacles that must be overcome before Utah can create a truly accountable criminal justice system. One obstacle is the inability of agency information systems to link client data. Agencies need to start using a common identifier so client information in one information system can be linked to that of another. Next, we found that agencies are not gathering the basic client information they need to track recidivism. Finally, we found agencies, especially the county jails, are not defining the terms they use in a consistent fashion and we also found many errors in the data. These problems raise concerns about the reliability of the information systems used by some agencies.

A Common Identifier Must Be Developed to Link Data from Different Agency Systems. We cannot overstate the difficultly we had working with data from multiple agencies which do not share a

common code for identifying clients and offenders they serve. It is common for agencies to maintain records of client names. Most agencies also record birth dates and social security numbers. However, we found this personal identifying information is not sufficiently accurate or complete to be used to link data systems. The lack of a common client identifier or code made it extremely challenging for us to do studies of recidivism and of some of the impacts of JRI on Utah's criminal justice system.

Analysis of recidivism for JRI-related programs is very difficult without a common identifying data point across data-sets.

For example, we tried to use information from the Department of Corrections to fill in the gaps in the data we received from the county jails. Many agencies in the criminal justice system identify offenders using the State Identification Number which is identified when an offender is arrested and fingerprinted. Even though most of the jail management systems used in Utah have a place to enter the SID, we found only three of the state's 24 county jails record the SID when an offender is booked in jail. Because most county jails and the state prison do not use the SID or some other identifier for inmates, we tried to link the datasets using names, birth dates and social security numbers. However, due to the inconsistent recording of names and the occasional missing birth dates and social security numbers, we were unable to complete our study for many counties. Occasionally, we found it helpful when counties would enter the court case number in the booking record. However, most county booking records do not include the court case number.

We faced a similar challenge when we tried to identify the rate of recidivism among those receiving treatment for substance abuse. That study required that we match records obtained from the Division of Substance Abuse and Mental Health with the client's court records. Again, we found it difficult to match the division's client information datasets with the court records. The two datasets do not use a common client identification number which means we had to rely on matching names, birth dates and social security numbers which are not always accurate or available. The Division expressed a willingness to have their programmers try to match names, birth dates, etc. for the different data sources. However, due to concerns about the accuracy and completeness of the results, we chose not to pursue that option.

The underlying problem is that each agency's management information system was designed only to serve that agency's unique needs, not to share data within a larger system. The term "data silos" is

sometimes used to describe the condition in which the units of a larger organization operate data systems that operate independently of one another. Increasingly, business, industry and government entities are recognizing the benefits of integrating their disparate data systems. The first step towards linking the data systems in Utah's criminal justice system is to create and use a common identifier that can be used by all agencies that play a role in Utah's criminal justice system.

Even with a common identifier to match datasets, the current condition of criminal justice data in Utah is incomplete and insufficient for data-analysis of the system as a whole.

The data silo problem appears to be one reason agencies have found it difficult to track recidivism. H.B. 348 requires DSAMH to track recidivism for those individuals under a court order to receive drug use and mental health treatment. However, to do that analysis, the division needs information from the courts regarding which offenders have a court order to receive treatment. But providing access to court data is only the first step. The offender information maintained by the courts needs to be linked to the client information in the mental health system. To overcome this data silo problem and to link data systems, the DSAMH, the courts and other agencies in the criminal justice system need to use a common client identifier.

Offender Data is Not Complete. Even if the data systems were linked together it would make little difference if the data was incomplete. We found that the data used by some agencies is not sufficiently complete to perform the type of analysis that has been requested by the legislature, including studies of recidivism.

For example, the courts may place the offender on probation and require that the offender obtain treatment for a drug addiction problem. The offender's probation officer should maintain a record of the offender's compliance with this requirement as well as the results of any drug tests done during the time on probation. However, when we requested the information, the Division of Adult Probation and Parole responded that their records were incomplete. As a result, we were unable to identify which probationers had been required to obtain treatment, whether they complied with the requirement and whether, after completing the treatment, they avoided committing a new offense.

Similarly, we found that client data maintained by the Division of Substance Abuse and Mental Health is incomplete because it only includes clients served by publicly funded treatment providers. Although the division has been directed by statute to perform

recidivism studies of all providers, they have not complied with this requirement because they believe they have no authority to require private treatment providers to submit the information the division needs to track recidivism.

Agencies Must Exercise their Statutory Authority and Work Together to Gather Recidivism Data. We disagree that DSAMH does not have authority to require data from private treatment providers. DSAMH has statutory authority to oversee all substance abuse and mental health providers who serve those required either by a court order or by the Board of Pardons to receive treatment. That oversight authority allows the division to require providers to submit the client information they need to track recidivism. See Appendix J for the legal analysis on which our conclusions are based. However, we must acknowledge that some providers may be reluctant to release their client information to the division. To address those concerns, some clarification in statute may be helpful. For example, legislators may want to clearly state in statute that treatment providers who serve justice involved clients have a responsibility to submit the identifying information for those clients to the division.

DSAMH should require all treatment providers to submit the client information needed to track recidivism.

Clearly, DSAMH needs to comply with the statutory requirement that they gather the data necessary to calculate recidivism rates among treatment providers. However, matching client data with the court's offense data may require assistance from other agencies more directly connected to the criminal justice system. We recommend DSAMH work with CCJJ to develop a method for calculating recidivism rates by matching client data submitted by treatment providers with the court filing information maintained by the courts.

Management Information Systems Used by Most County Jails Are Inadequate. The poor condition of county jail data is perhaps one of the greatest obstacles to developing a data-driven criminal Justice system. As reported in Chapter II, we were asked to identify the number of inmates incarcerated in each county jail during the past five years, and the type of offenses for which inmates are incarcerated. However, we found it extremely difficult to gather this information. In fact, due the problems we faced with the county jail data, this report was delayed by several months. Figure 3.1 lists some of the problems we found with the data provided by the county jails:

Data systems used by most county jails are not capable of producing necessary data for program analysis of the criminal justice system or JRI-related programs.

Figure 3.1 Data Problems Made It Difficult to Compile County Inmate Numbers.

- No State Identification Number (SID) or other identifier is used which might enable linking the jail data to other criminal justice data systems.
- Some booking records omit important information such as the charging offense, the severity of the offense or the release date.
- Booking records contain inconsistent data describing the offense type. For example, the offense recorded at booking may be described as "Possession of a Controlled Substance" but also references a section of statute for an entirely different offense.
- Those arrested and booked on a warrant show no information regarding the offender's original, underlying offense.
- The codes counties use to describe offense category or offense severity are not consistently applied.
- Booking reports may record an offender's booking dates with no matching release date or a release date with no matching booking date.

Source: Auditor observations of data submitted by county jails.

Due to the problems listed above, we concluded that most county jails will need to improve their jail management systems before their data can be used as part of a larger data-driven, results-oriented criminal justice system. The poor condition of the data made it difficult for us conduct the type of analysis we were asked to perform.

Data We Were Able to Gather Has Significant Value to Utah's Entire Criminal Justice System

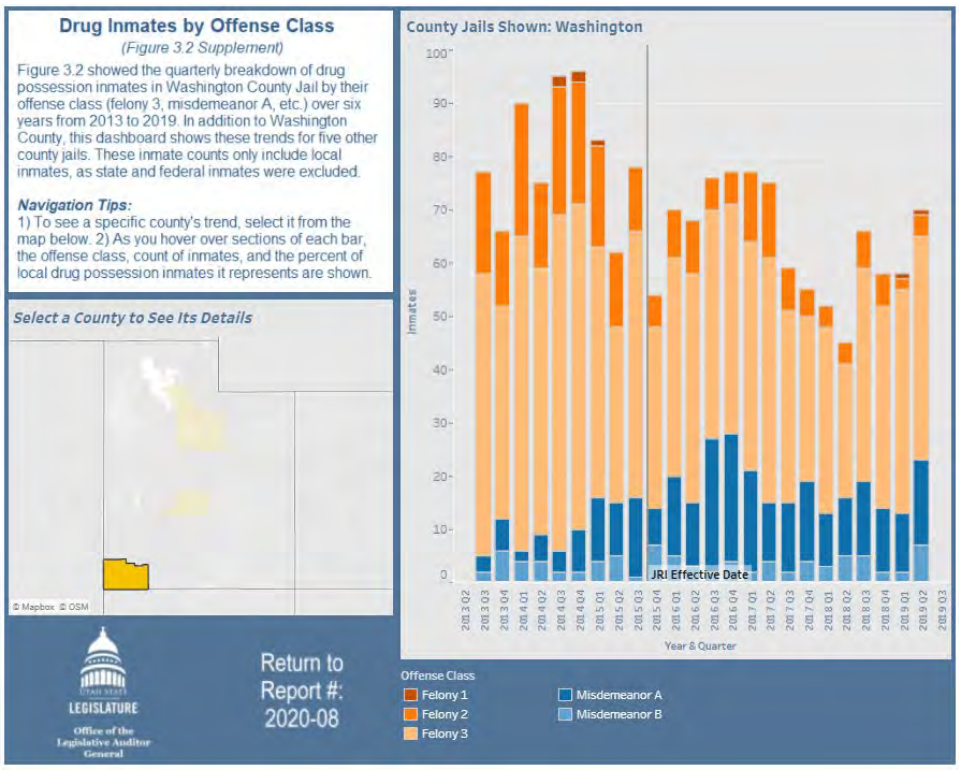
Despite data issues, much of the data we gathered from the court system and the county jails is valuable for policymakers. The data we were able to gather provides some insight into the effect of JRI on county jail populations. In addition, by posting this information on an online dashboard, we hope to demonstrate how the use of technology can enable legislators, local officials and the public to ask questions, access the data online, and find answers on their own. The results of our study of county inmate populations is summarized in Appendix E of this report with detailed information provided on a web-based dashboard here.

For more information see our criminal justice dashboard here.

For example, legislators, judges, county sheriffs, and even the general public should be able to find out what type of offenders are being housed in each county jail. We recommend that an online dashboard be developed identifying the number of offenders held for each type of offense and the severity of the offense. Figure 3.2

describes how that information might appear. It describes, during a six-year period, the quarterly count of inmates held for drug possession in the Washington County Jail by the severity or "class" of the offense.

Figure 3.2 The Number of Offenders held for Drug Possession Only in Washington County Jail by Offense Class. The number of inmates held for drug possession has declined since JRI took effect, with far fewer felony arrests (shown in shades of orange). However, there has been an increase in offenders jailed for a misdemeanor level offense (shown in blue).



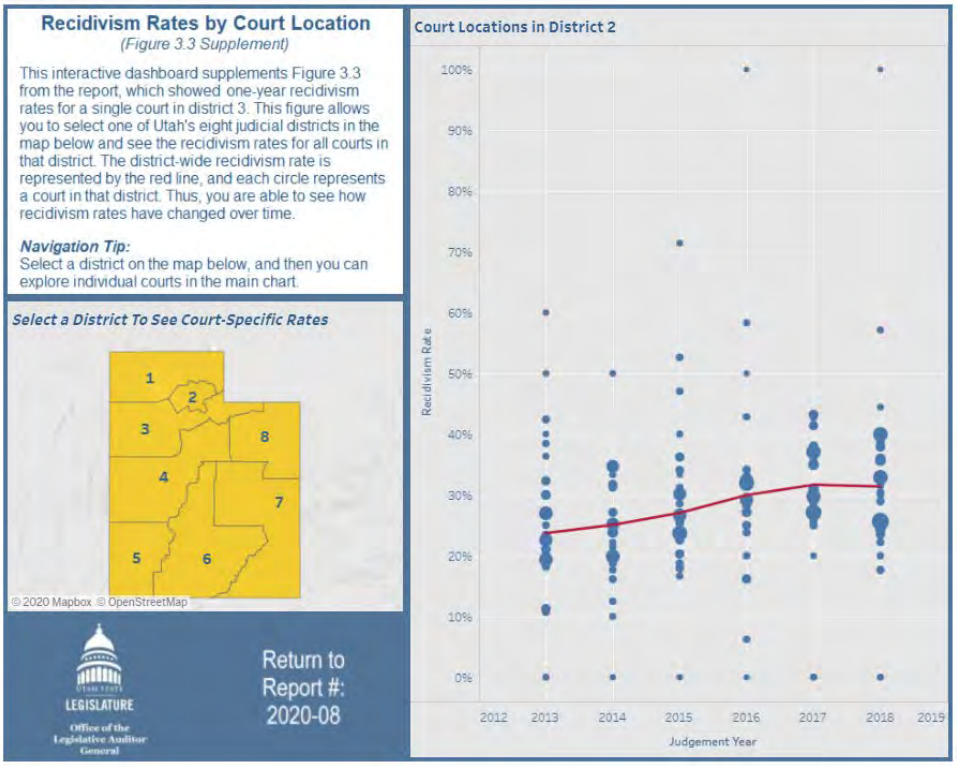
For more county jail data see our criminal justice dashboard here.

Figure 3.2 shows that the number of offenders held in the Washington County jail for drug possession has declined since 2014. The figure also shows that the portion of offenders held on misdemeanor drug charges (shown in blue) has increased since JRI took effect. We believe that providing this information on an online dashboard would be useful to both local law enforcement officials and policy makers. It would enable them to monitor the impacts of their policies, such as JRI, on the county jails. Another chart they might find useful is shown in Figure 3.3 below. It compares the recidivism rate for drug offenders by court location. The data could be used by legislators, other public officials, and the general public to identify

Having data available can improve transparency and decision making in the criminal justice system in Utah.

those communities where the re-offense rate has improved and where it has become worse.

Figure 3.3 Re-offense Rates May Differ from One Court Location to Another. The figure presents a screenshot of our online dashboard showing the rate of re-offense over time by court location. The dashboard enables the viewer to compare the historic recidivism rates of a single court location (shown in blue dots) to the district average (shown as a red line).



For re-offense rates by court district go here.

We believe the information described in the above figures should be reported on an ongoing basis all communities in Utah. To demonstrate the usefulness of this data, we have created an online dashboard which makes it possible for a legislator or member of the public to find answers to their questions about criminal justice in their communities. Our information, which is available on our online dashboard (here), provides the data for the latest six years available. We recommend that the state provide this information on a regular, ongoing basis. Doing so would help policy makers and the public determine whether policies such as JRI are having a positive or negative effect on the state's inmate populations. We believe the use of such a dashboard could be an important feature of a data-driven, results-oriented approach to criminal justice.

Create an Integrated Criminal Justice Information System

The idea of developing a data-driven, results-oriented criminal justice system was an important feature of JRI in 2014 and is still a valid concept today. In a companion audit report titled *A Performance Audit of Information Sharing in the Criminal Justice System* (#2020-09), we conclude that "…the poor flow of information is hindering Utah's criminal justice system from achieving its goals to reduce crime and help offenders become more productive members of society." Specifically, the report concluded that policy makers have not been getting the information they need to evaluate the effectiveness of their polices. Similarly, front line operators in Utah's criminal justice system, including judges, prosecutors, and law enforcement officers, are not getting information they need to fulfill their responsibilities. Finally, the public is also asking for greater accountability from law enforcement regarding its actions, particularly regarding matters of race.

Currently, key decision makers in the criminal justice system do not get information that is essential to carrying out their duties in a timely manner.

If the Legislature still wants to create a data-driven criminal justice system, there are several steps they should take. The first step would be to form a criminal justice information governing body. Because its members currently represent each of the stakeholder groups, CCJJ would be the natural choice to oversee the information governing body. Second, the governing body should be given authority to set data standards and prepare a plan for an integrated criminal justice information system. For example, each agency and service provider would need to use a common client identifier to link its data to that of other information systems and would need to use common definitions for the information recorded in their information systems. Third, the Legislature should require that the governing body submit its plan and periodically report on the progress made towards implementing that plan. To create an integrated system will require the cooperation of all the different agencies within Utah's criminal justice system.

Recommendations

1. We recommend that the Legislature consider forming a criminal justice information governing body comprised of representatives from each of the major agency groups within the criminal justice system and that this body receive oversight and be accountable to the Commission on Criminal and Juvenile Justice.

2. We recommend that the Legislature consider empowering the criminal justice information governing body with the authority to set data standards and to prepare a plan for an integrated criminal justice information system.

3. We recommend that the Legislature require the criminal justice information governing body to submit its plan and periodically report to a legislative committee on the progress made towards implementing that plan.

4. We recommend that the Division of Adult Probation and Parole, the Division of Substance Abuse and Mental Health, the Administrative Office of the Courts and the Board of Pardons and Parole work together to identify and share information regarding which offenders have received a court order to obtain mental health services and substance abuse services to identify whether those services have been provided.

5. We recommend that the Division of Substance Abuse and Mental Health gather the data needed to track recidivism by requiring all public and private service providers to submit the names of clients under a court order to receive services, the programs in which they were enrolled, and the date upon which the treatment was completed.

6. We recommend the Division of Substance Abuse and Mental Health work with the Commission on Criminal and Juvenile Justice to develop a method for calculating recidivism rates by matching client data submitted by treatment providers with the court filing information maintained by the courts.

7. We recommend the Legislature consider requiring all treatment providers who serve criminal justice involved clients to submit the client data needed to track recidivism to the Division of Substance Abuse and Mental Health.

Chapter IV
Legislature Should Consider Creating Criminal Justice Coordinating Councils to Fully Implement JRI

Greater local oversight was one of the founding goals of JRI and is essential if JRI is to be fully implemented. But, "support local corrections systems" is one of the features of JRI that has not yet been implemented. As a remedy, we recommend that the Legislature do two things. First, they should consider creating local Criminal Justice Coordinating Councils (CJCCs) to facilitate the planning, coordination, and accountability of criminal justice efforts at the county or regional levels. Second, the Legislature should consider directing any JRI-related funding to CJCCs in the form of grants.

Local oversight of criminal justice activities is vital, as each county and region in Utah faces a different set of challenges. In correlation, each Utah county and region also has a unique set of resources to respond to its challenges. Perhaps this is why CCJJ stated in its 2014 JRI Policy Recommendations that "counties and judicial districts are often best suited to identify the correctional programming, treatment, and services that would go farthest to reduce recidivism."

We recommend the Legislature consider requiring CJCCs in statute to facilitate planning, coordination, and accountability of criminal justice and enhance JRI implementation.

Since JRI was adopted, several Utah counties have formed coordinating councils for criminal justice. Three of these councils in Davis, Salt Lake and Washington Counties have developed programs aimed at specific criminal justice needs in their communities. Several other states also rely on local CJCCs to guide their criminal justice efforts. These states offer a blueprint for how Utah might do likewise.

Achieving Greater Local Oversight is Needed to Implement the Goals of JRI

One challenge of implementing a statewide policy initiative like JRI is that each region of the state faces a distinct set of circumstances. Therefore, as originally envisioned, the successful implementation of JRI will require each region to develop its own strategy for addressing crime. To act strategically, local leaders will need to work together, consider the key performance data described in the prior chapter,

identify local needs, and then develop strategies to address those needs.

Each Region of Utah Faces a Unique Set of Challenges as they try to Address Crime in their Communities

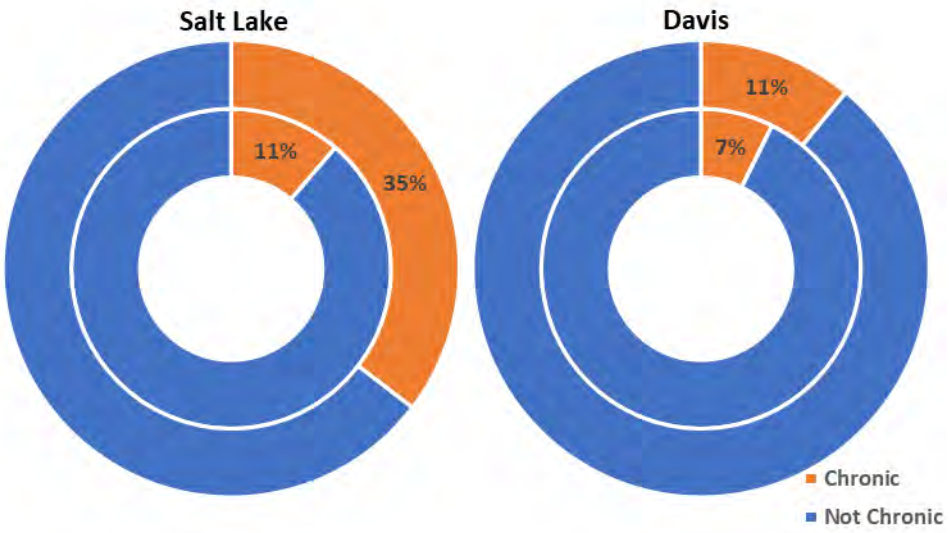
Each county and region faces unique challenges to criminal justice issues, requiring a locally driven approach that targets each county's specific needs.

Our analysis of chronic offenders in Chapter II underscores the impact that a specific population of offenders can have on the criminal justice system. However, it also demonstrates the need for locally developed strategies to reduce recidivism. For example, we found the number of chronic offenders varies significantly from county to county. Because of the unique challenges each county faces, the response to criminal behavior must be different as well. Consequently, a statewide, one-size-fits-all approach will not likely succeed in achieving the goals of JRI. Instead, a better role for state agencies may be to help local communities develop and execute their own JRI plans.

Chronic Offenders Present Great Challenges, In Some Counties More than Others. Figure 4.1 compares drug-related court case filings in Salt Lake County to those in Davis County. The inner circle of each chart shows chronic offenders (shown in orange) as a percent of all drug-related offenders. The outer circle shows chronic offender case filings as a percent of all drug-related case filings.

Figure 4.1. Salt Lake/Davis Counties Face Different Challenges with Chronic Offenders. A chronic offender has 7 or more case filings between 2013 and 2019, or 4 plus case filings in any year.

Chronic offenders impact each county, but at different degrees. Consequently, a one-size-fits-all approach may fall short in addressing chronic offender challenges from county to county.



Source: Courts

Figure 4.1 shows that criminal justice stakeholders in Salt Lake and Davis Counties are dealing with distinct offender populations. In Salt Lake County, 11 percent of all drug-related offenders between 2013 and 2019 are chronic. That population is responsible for 35 percent of all drug-related case filings in the courts. In contrast, 7 percent of Davis County offenders are chronic and are responsible for only 11 percent of all drug-related case filings. It may reflect differences in criminal justice approaches. The data suggests that by focusing on chronic offenders, Salt Lake County could greatly reduce drug-related case filings in its courts. In contrast, Davis county would not see the same level of benefit from a similar strategy.

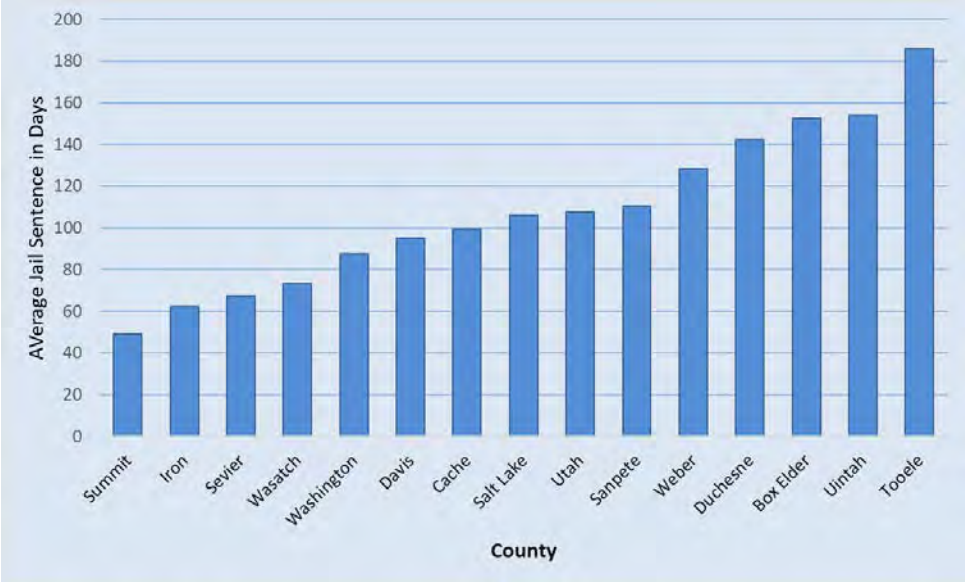
Current Response to Criminal Activity Varies by Region and by Judge in Utah

In addition to the differences in the type of criminal activity we found in each community, the data also show many differences in how local officials respond to low-level drug offenses in their communities. For example, depending on the location, we found differences in the length of jail sentences issued, the judgement issued and in the type of offenders held in jail. As shown in the example above with Salt Lake and Davis counties, some of the differences can be explained by differences in offender populations. However, some of the differences seem to be explained by the approach to criminal justice taken by individual judges, county prosecutors, and county sheriffs. Although we recognize the value in allowing local officials to make their own decisions, we believe they might make better decisions, which are consistent with the shared goals of the community, if they were required to participate as members of a local CJCC.

Not only do counties differ in the type of criminal activity experienced, but they differ in how they respond to criminal activity as well.

The Sentencing Data Show that Judges in Different Regions of Utah Respond Differently to Illegal Drug Use. We recognize the value of judicial discretion but understanding the differences in judicial decisions is also important. So, using four years of sentencing data, we identified the average jail term for each person sentenced on misdemeanor A drug possession charge. The results of that study, shown in Figure 4.2 below, and in Appendix G, reveal large differences in the length of the average jail sentences from one district court to another, from one judge to another and from one county to another.

Figure 4.2. Average Jail Sentences Vary Significantly from County to County. The data show the average number of days offenders have been sentenced to the county jail for Misdemeanor A drug possession charges. It shows the sentencing practices vary significantly from one county to another.



Source: OLAG Analysis of Sentencing Data provided by the Administrative office of the Courts. Shown are the average jail sentence minus days stayed. The Figure only shows those counties with 40 or more sentences issued on Misdemeanor A Drug Possession Charges from 2016 through 2019.

See Appendix G for a summary of our study of sentencing practices. For the full details see our online dashboard here.

Figure 4.2 shows the broad differences in the approach taken by judges in different parts of the state. In Tooele County the average sentence for a MA drug possession charge is roughly six months. In contrast, most sentenced on the same offense in Summit County receive a jail term of 49 days or less. See Appendix G and our online dashboard to see the differences in the average jail sentence by county, court location and judge.

For more information see our criminal justice dashboard here.

Other Differences Found in How Local Officials Handle Drug Possession Cases. The differences we found in the length of jail terms described above, is just one example of the differences we observed in how local officials respond to drug possession charges. We also found differences in the judgements issued for drug possession cases. We obtained sentencing data from the courts which show that some judges rarely issue a guilty verdict on drug possession charges while other judges almost always issue a guilty verdict. See Appendix K.

Similarly, the inmate data we received from county jails showed large differences in the number incarcerated for a misdemeanor drug possession charge. Some county jails have a large number of drug offenders with misdemeanor level charges or convictions. Other county jails have relatively few with only a misdemeanor drug possession charge. See Appendix K for details. We have also created an online dashboard (here) which provides additional detail regarding how different courts and county jails handle drug possession cases.

See Appendix K for a summary of our study of judgement type and the rate of incarceration by offense severity

The different practices we observe from county to county reveals there is somewhat of a local flavor to how criminal justice is administered in Utah. It shows that local judges, prosecutors and county sheriffs have developed their own response to the use of illegal drugs in their communities. The differences in how communities respond to drug offenses may also reflect the differences in which types of treatment programs are available in each region of the state. However, what is most important is that local community leaders agree on the approach taken. As the following section suggests, many communities in Utah do not have a unified criminal justice approach.

For mor information see our criminal justice dashboard here.

Local Coordination of Criminal Justice Is Mixed in Utah and Needs Improvement

Recognizing the importance of having a unified local response to crime, we set out to assess the level of coordination and cooperation among local criminal justice stakeholders throughout the state. We found that only a few counties have what we would describe as a high level of cooperation and coordination among local criminal justice stakeholders. This is concerning because a coordinated and cooperative approach to criminal justice at the local level is imperative to implementing all that was intended with the passage of JRI. On the whole, Utah lacks a formally structured process for coordinating criminal justice at the local level and the result is a lack of coordination and cooperation in a number of counties.

Utah lacks a formally structured process for coordination of criminal justice at the local level.

The Level of Coordination Varies from County to County. Through interviews, surveys, and our review of relevant documents, we found evidence that criminal justice stakeholders in several Utah counties are communicating and coordinating with each other. Successful coordination has led to new programs in response to JRI reforms. Successes we documented are mostly in Utah's more populous counties like Salt Lake, Utah, Davis, Washington, and Weber. However, even in counties where a high level of coordination

was reported, we found evidence suggesting that the level of coordination was not as high as reported.

In many counties, data and information sharing between local stakeholders is lacking.

In a survey we conducted of local behavioral authorities and private providers, some indicated that coordination with criminal justice stakeholders was the same or had become worse since JRI took effect. Several county sheriffs told us that there is no coordination with their local mental health authority or other treatment providers and that the funding for drug offenders was not reaching the populations they served. We therefore conclude that in some counties, the level of cooperation and coordination is not at the level anticipated by JRI.

Furthermore, even in counties where coordination is successful, we are concerned that their current success is based largely on the strength of the personal relationships between county sheriffs, judges, and other local officials. Without a formal, unifying structure, we fear that past successes may fade away as new individuals are elected or are appointed to key positions. To provide stronger coordination in communities where it does not exist, and to preserve the cooperative efforts where it does, the Legislature could consider creating local decision-making bodies called Criminal Justice Coordinating Councils.

Improved Coordination and Communication At The Local Level Needed to Achieve JRI Goals

Criminal Justice Coordinating Councils are used in other states to coordinate criminal justice efforts at the local level.

To overcome the lack of coordination between criminal justice stakeholders in some Utah communities, and to achieve the goals of JRI, the Legislature could consider local Criminal Justice Coordinating Councils, or CJCCs. CJCCs facilitate a cooperative approach to criminal justice where crime and criminal justice intersect—in local communities. In our research to understand how other states address the lack of coordination and communication at the local level, the National Conference of State Legislatures (NCSL) and CCJJ provided us a list of other states where CJCCs are currently used. These states provide examples of how Utah might approach implementing a similar policy.

Insufficient Coordination at Local Level Creates Communication Gap, Inhibits JRI Implementation

In its 2015 JRI legislation, the Legislature recognized the need to support local criminal justice efforts. However, we believe more can be

done to provide the level of local support that was envisioned by that legislation. Instead of funding directed to locally developed programs to reduce recidivism, most of the funding was given to state-level entities attempting to administer state-sponsored programs for all Utah communities. Additionally, the grants were not performance based. Some other states have provided this local support by creating local CJCCs, which facilitate local planning, oversee the use of funds for crime reduction programs, and monitor the effectiveness of local supervision and treatment.

Provisions in the JRI Legislation Recognized the Need to Fund Local Solutions but Was Not Implemented. One way that JRI was intended to "support local corrections systems" was through a county performance-incentive grant program. Utah's 2015 JRI legislation requires a state grant program aimed at reducing recidivism. The bill states that CCJJ shall:

> (17) establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated.

A performance incentive grant program to support local corrections systems, as envisioned with JRI, has not been implemented.

This feature of JRI has not been implemented. We found that some financial support has been offered through state appropriations and Medicaid. However, the funding has not been consistent with what was proposed in 2015. That is, it was rarely directed to locally developed programs to reduce recidivism. For example, CCJJ attempted to implement a state-sponsored screening program through county jails. However, difficulties in administering it led to its funding being dropped in June 2019.

Funding was not Performance Based. Another example of a JRI-related grant program that was not performance based are treatment appropriations made to the Department of Substance Abuse and Mental Health. That agency administers and distributes this funding to local behavioral health authorities. While some success has been reported, as described in Chapter V, we were unable to track treatment performance or outcomes for offender groups that were targeted with the funding. Recidivism data was not available for individual treatment programs. Multiple sheriffs commented to us that even though the state has appropriated this JRI money through the

State sponsored programs associated with JRI have had limited success so far.

local behavioral health authorities, they were not involved in the decisions for its use and didn't know how it had been spent.

The above examples show recent state sponsored programs associated with JRI that have had limited success. One reason, we believe, is that JRI funding has not been used as originally envisioned. The U.S. Department of Justice and several other states have shown a formula for ensuring funds are used for programs that work, centers on forming local CJCCs, requiring local planning and program development, providing grants to support local crime reduction programs, and then holding CJCCs accountable for results. As we show with the example of a CJCC in Oregon, this is achievable, and cooperation can improve among agencies.

CJCCs Connect Local Stakeholders to Individual Offenders and Community Criminal Justice Needs

CJCCs facilitate coordination and cooperation of criminal justice stakeholders.

The U.S. Department of Justice has suggested that forming local CJCCs can be an effective means of implementing the goals of JRI. Several other states have created these local entities and offer a blueprint for how Utah may do the same.

CJCCs Coordinate Criminal Justice and Help Facilitate Better Communication Among Stakeholders at All Levels. In order to improve communication and coordination among separate criminal justice entities, the U.S. Department of Justice and the National Institute of Corrections recommends the development of CJCCs for local jurisdictions. A local CJCC should include representatives from all functional components of the justice system, including representation from city, county and state levels of government operating within a county or defined region and may even be established by an intergovernmental agreement.

Benefits that CJCCs bring to a county criminal justice system are:

- better understanding of crime and criminal justice problems,
- greater cooperation among criminal justice providers,
- clearer objectives and priorities,
- more effective resource allocation,
- better quality criminal justice programs,
- eliminate duplication, and filling service gaps.

DOJ guidance stresses comprehensive planning and improving systemwide coordination. In place of a centralized statewide approach, DOJ guidance "honors the independence of elected and appointed officials from the different branches and levels of government." To take a systemic approach to addressing criminal justice issues, the Justice Management Institute found that a formalized CJCC should be authorized by statute and have authority to direct policy and administer and implement it. Additionally, official CJCCs can facilitate collaboration with treatment providers to accomplish the goals of JRI. Utah's Commission on Criminal and Juvenile Justice (CCJJ) is a state level organization, that in form and function, is a CJCC. CCJJ's structure is what CJCCs at the local level could look to, as well as similar councils used in the other states.

CJCCs can enhance collaboration between treatment providers and criminal justice stakeholders.

CJCCs in Other States Provide a Blueprint For How Utah Might Form Similar Councils

Given that one stated JRI goal, to "support local corrections systems", has not been implemented we recommend that the Legislature consider requiring CJCCs in statute, direct state support to local CJCCs, and that funding for treatment be used on priorities identified by CJCCs. With authorized CJCCs, an official entity is in place to stabilize state and federal resources, and to provide accountability for use of funding received. CCJJ leadership agrees and from our discussions, sees CCJJ as an important support for local agencies to establish CJCCs successfully.

We recommend the Legislature consider requiring CJCCs in statute to enhance implementation of JRI across the state.

We found two approaches to CJCCs used by other states that the Utah legislature should consider. First, some states require the creation of CJCCs in statute and provide them with financial support through performance-based grants. Second, other states do not require CJCCs in statute, but encourage their formation and participation by requiring them to be grantees for state and federal grants. These states leave the administration and fiscal support for CJCCs to local government.

Some States Require CJCCs in Statute, Provide Funding. In some states, CJCCs are required by statute. For example, in 1995 the Oregon Legislature approved legislation mandating criminal justice coordination councils for each of its counties. Similarly, New Mexico's 2019 legislation, predicated on a 2016 New Mexico Supreme Court Order, requires judicial districts to organize CJCCs. Both states fund

Some other states require CJCCs in statute and provide state resources to administer JRI programs.

CJCCs through performance incentive grants, which are awarded through state-level agencies.

Oregon has a well-established system where more than $30 million in Justice Reinvestment Grant money is distributed by a grant review committee, comprised of local and state-level criminal justice stakeholders. The grant review committee is supported by a state-level agency similar to Utah's CCJJ. The agency provides the committee with administrative and staff support, manages the grant application process, and monitors the performance of programs funded by the grants.

Some states provide standards for CJCCs and require them to be grantees for state and federal resources.

The coordinating council in Oregon's largest county is an example of what can be achieved with state resources, combined with buy-in at the local level. Multnomah County's coordinating council provides data-driven, evidence-based research and analysis. For example, in its initial 2015 data analysis of a JRI program in the county, it found the program decreased the rate of prison usage, increased the rate of local jail usage, and increased community stays for program participants which reduced their time in prison. MCJRP participants were found to have similar recidivism rates (32 percent) to comparable offenders (34 percent) and that when they do commit crimes they are non-violent crimes. Started as a pilot program, MCJRP is running now and continues to provide up-to-date analysis and research for JRI and criminal justice efforts.

New Mexico's system is in its infant stages and currently has limited resources. Conceptually, state resources are distributed through state agencies that are deemed "grant agencies." Grant agencies distribute state resources to CJCCs through performance incentive grants. New Mexico also has an agency that is equivalent to Utah's CCJJ which manages the process of accepting and awarding grants and monitors performance.

Utah's 2015 JRI legislation requires support for local corrections systems through a performance driven grant process. Oregon and New Mexico are examples of how the State of Utah might implement that requirement. A crucial piece lacking in most Utah communities is an accountable entity that provides strategic guidance for local criminal justice issues and accountability for funding received by local stakeholders. This is one reason we believe the Legislature should consider requiring CJCCs in statute. CCJJ leadership expressed the

opinion that to implement CJCCs effectively will require financial resources, similar to the appropriation CCJJ received in the 2020 Sixth Special Session. Our research into Oregon and New Mexico also shows that when state resources are provided, greater strides in implementing JRI goals can be made.

Some States Encourage CJCCs Through Funding and Advisory Functions. Instead of a statutory requirement for CJCCs, in Pennsylvania and Wisconsin a state-level organization oversees the grant process and distribution of funds to local CJCCs. A key in both states is that CJCCs are required to be grantees through which local criminal justice programs receive funding. Wisconsin has a state-level CJCC and a bureau in the Attorney General's office provides staff and administrative support to it. More closely aligned with Utah's structure, Pennsylvania has taken it a step further by creating a department within its CCJJ-equivalent that is focused specifically on promoting, advising, and aiding the creation and operation of CJCCs.

Utah's current approach resembles the model used by Wisconsin and Pennsylvania. Utah does not have a statutory requirement for CJCCs. Instead, CCJJ, a state-level entity, is the granting agency for many federal criminal justice grants, and it oversees the distribution of those funds. However, there is no requirement that a CJCC be the grantee for local entities to receive grant awards. As a result, counties like Salt Lake and Washington that currently have CJCC-like organizations, also interface regularly with CCJJ and benefit from their strong communication ties by receiving grant awards. Intuitively, the creation of CJCCs in other Utah communities could help local governments better qualify for available grant funding from federal, state, and other organizations.

The creation of CJCCs in other Utah communities could help local governments better qualify for available grant funding from federal, state, and other organizations.

We recommend the Legislature consider requiring CJCCs in statute. If this is not desired, we recommend that the Legislature consider requiring CJCCs to be the grantees of state and federal grants, like in Wisconsin and Pennsylvania, which provides incentive for local stakeholders to actively participate in achieving JRI goals.

Furthermore, as a central facilitator of criminal justice and JRI policy at the state level, CCJJ is well positioned to fill the advisory and support roles, that exist in other states' criminal justice offices, to local CJCCs. Coupled with its role as a granting agency for the state, one role might be to provide minimum standards, based upon best

practices from other states, by which CJCCs should operate. Additionally, an option the Legislature could consider is to create a grant review committee that includes a wide swath of local government and state-level membership, as in Oregon. CCJJ has the technical and professional staff to consult with and provide administrative support to the committee, and to provide training and ongoing aide to CJCCs. In these ways, the Legislature can provide for oversight of state resources that are distributed to local CJCCs.

Recommendations

1. We recommend the Legislature consider requiring the creation of local Criminal Justice Coordinating Councils and consider requiring the Commission on Criminal and Juvenile Justice to identify minimum standards for their operation.

2. We recommend that in conjunction with its consideration of CJCCs, that the Legislature consider requiring CJCCs to be the grantees of state resources when grant money is distributed by CCJJ for JRI purposes and other crime reduction and recidivism measures.

Chapter V
Offender Treatment Availability and Quality Fall Short of JRI Goal

As one of the many changes the Justice Reinvestment Initiative (JRI) made, Utah policy makers adopted an entirely new response to nonviolent, low-level drug offenders. Instead of incarceration, offenders would receive treatment for any mental health and drug addiction issues that were contributing to their criminal behavior. Since 2015, when JRI took effect, funding for treatment services has increased and many offenders have received additional drug addiction and mental health services. However, we found both the availability and the quality of the drug addiction and mental health treatment are still inadequate. It is also unclear whether the state's recent Medicaid expansion will improve the availability of treatment services.

Instead of incarceration, offenders were to receive treatment for any mental health and drug addiction issues that were contributing to their criminal behavior.

Concerns about the availability and quality of treatment options and their impact on recidivism were raised when JRI was first proposed. To this end, House Bill (H.B.) 348 required CCJJ to "…study and report on programs initiated by state and local agencies to address recidivism, …and resources required to meet goals for providing treatment as an alternative to incarceration."

If reducing recidivism by providing treatment in a community setting is the goal, the availability and quality of that treatment must be a primary concern. This chapter concludes that current treatment services available to low-level drug offenders are still lacking treatment options in some areas and the quality of treatment needs to improve to meet the expectations of H.B. 348.

If reducing recidivism by providing treatment in a community setting is the goal, the availability and quality of that treatment must be a primary concern.

Offender Treatment Services Are Not Always Available

Employees on the front lines of the criminal justice system, who work with offenders, report that the availability of treatment services remains inadequate. We reached the same conclusion through an independent survey of probation officers, our own discussions with

county sheriffs and district court judges, and our survey of treatment providers described in this chapter. In recent years, the Legislature approved additional funding for treatment services, which led to an increase in the number of offenders receiving treatment. However, until we have better data regarding which offenders were required to seek treatment and how many completed their treatment programs, we will be unable to measure the adequacy of funds available for treatment.

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AP&P Agents, Sheriffs, Judges, and Providers Indicate Additional Treatment Options Are Still Needed

A 2019 PEW survey of Utah's Adult Probation and Parole (AP&P) agents showed that AP&P's clients have difficulty obtaining the substance abuse and mental health treatment they need. In survey responses, 28 percent of agents reported that clients needing treatment were able to access substance use disorder treatment "sometimes" or "rarely." Furthermore, substance use disorders are often compounded by co-occurring mental health disorders. Thus, it is even more concerning that, in this same survey, 47 percent of agents reported that clients were able to access mental health treatment only "sometimes" or "rarely."

Six county sheriffs we interviewed echoed concerns about the need for more treatment options, especially mental health treatment. One county sheriff described his county jail as "[the] mental health facility for the county" because low-level offenders were simply incarcerated there because mental health facilities had no beds available. We also talked with nine district court judges who expressed concerns about the lack of options to treat offenders. One judge put it succinctly by saying "we are not meeting the treatment needs of the individuals".

One judge put it succinctly by saying "we are not meeting the treatment needs of the individuals."

In our own independent survey, we sampled over 40 treatment providers concerning treatment needs and found the top three services needed were housing, in-jail treatment, and aftercare services. This survey and discussions with sheriffs and judges revealed that treatment and other service needs vary by county. The reported lack of residential treatment facilities in some rural communities may explain why a jail sentence is often the only option for some offenders.

It remains to be seen if the new funds made available by the 2019 Medicaid expansion will be sufficient to cover treatment needs going forward.

It remains to be seen if the new funds made available by the 2019 Medicaid expansion will be sufficient to cover the treatment needs going forward. It is also unknown how many offenders use their

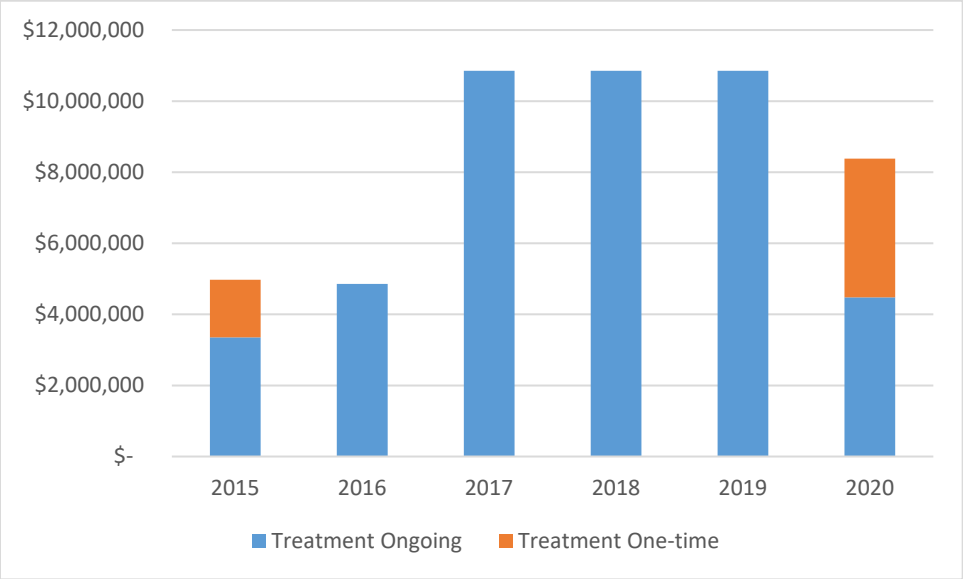
private health plans to obtain treatment from private health care providers. However, treatment options like mental health services and different types of drug programs are still needed, especially in rural areas. Since the availability of treatment programs and other services vary from county to county, we recommend they be addressed locally. Chapter IV suggests that such matters be taken up by local Criminal Justice Coordinating Councils, who are the most capable of assessing local needs. We also recommend that state funding for treatment be used to address the priorities set by the local coordinating councils.

Since the availability of treatment programs and other services needed vary from county to county, we recommend they be addressed locally.

JRI Funding for Treatment Was Slow in Coming

Treatment funding for JRI was originally intended to come from Healthy Utah but was not passed in the 2015 Legislative session. Beginning in fiscal year 2015, the Legislature appropriated $5 million for JRI criminal justice treatment programs. The funding for treatment services were appropriated to help cover increased treatment costs attributable to JRI. Medicaid expansion in 2019 is also expected to further help provide treatment funding. Figure 5.1 shows how Legislative funding for JRI treatment jumped to nearly $11 million by 2017.

Figure 5.1 Legislative Funding for JRI Treatment Jumped from Around $5 Million to Nearly $11 Million in Fiscal Year 2017. Six million dollars in additional funding continued in fiscal year 2018 and 2019, then was dropped and replaced in fiscal 2020 with Medicaid expansion funds.



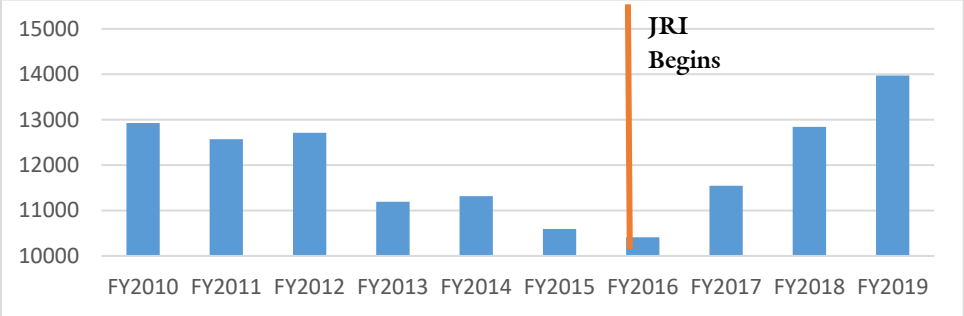
Source: Legislative Fiscal Analyst

In 2017, the Legislature provided an additional $6 million in ongoing funds. That additional $6 million in treatment funding for JRI was eventually eliminated in FY 2020 when Medicaid became the primary source of funding for offender treatment programs. We recognize that treatment needs are important, as demonstrated by nearly all those we interviewed identified it as such. It is still too early to know the impact of additional Medicaid funding for treatment needs.

Number of Offenders Receiving Treatment Has Increased

The number of offenders in public drug treatment programs has increased by nearly a third since October 2015 when JRI took effect. The Division of Substance Abuse and Mental Health (DSAMH or division) tracks the yearly total number of those receiving substance disorder treatment with public funds at each local substance abuse authority. Near the start of JRI, the number in treatment was at the lowest with just over 10,000 justice-involved persons in public substance use treatment programs. As Figure 5.2 shows, the number of offenders in treatment increased 32 percent with the help of the additional JRI treatment funding.

Figure 5.2 DSAMH Reports the Number of Offenders in Public Substance Abuse Treatment Is Increasing. Nearly 3,400 more offenders received treatment in fiscal year 2019 than in fiscal year 2016.



Source: This is un-audited data from DSAMH

An additional 3,400 offenders are receiving substance use disorder treatment since JRI began.

Much of JRI became effective on October 1, 2015 (the second quarter of fiscal year 2016). In fiscal year 2015, just over 10,500 offenders received publicly funded treatment. That number increased to just under 14,000 by fiscal year 2019 with the help of the increased funding for public treatment programs. Thus, an additional 3,400

offenders were receiving substance use disorder treatment since JRI began.

The $11 million in additional JRI funding for treatment appropriated by the Legislature in fiscal years 2017 to 2019 is a small part of overall funding for court-ordered drug addiction and mental health services. Offenders can also receive treatment services through private providers paid for by the offender, private insurance, or Medicaid. Unfortunately, as explained next, DSAMH does not track the number of offenders receiving treatment in the private sector. However, since the number of certified providers has been increasing, the division believes the number receiving private sector treatment is also increasing. In this case, the total receiving substance abuse treatment most likely increased more than 32 percent. Though more offenders are receiving treatment, surveys and discussions with criminal justice stakeholders show that there is still a need for additional treatment service options.

Offenders can also receive treatment services through private providers paid for by the offender, private insurance or Medicaid.

Demand for Treatment Services Will Be Difficult to Identify Until All Offenders Needing Treatment Are Tracked

The total number of offenders receiving treatment for their substance abuse is unknown because those receiving treatment from private providers are not tracked. DSAMH tracks treatment data for those receiving publicly funded substance abuse treatment through local substance abuse authorities. The division does not collect treatment data from private entities because they do not believe they have legal authority to collect protected health information from private providers.

The division does not collect treatment data from private entities because they do not believe they have legal authority to collect protected health information from private providers.

We believe that DSAMH, as part of its authority to certify treatment providers, has also been authorized to collect treatment outcome data from private providers. H.B. 348, which implemented JRI, requires the division to certify private providers to treat individuals involved in the criminal justice system. When an offender is ordered by a court to have substance use treatment, the offender has the option of seeking treatment by a local public substance abuse authority or with a certified private sector provider. As of September 2019, the division had certified 193 private substance abuse treatment providers. An annual review of certified private providers is conducted by the Division of Licensing, but DSAMH does not currently collect treatment data from these private providers.

H.B. 348 required that private providers also meet standards for treating offenders and required the division to establish performance goals and outcome measures for all treatment programs. ***Utah Code*** 62A-15-103(i)(iii) also requires "…that all public and private treatment programs meet the standards…" and further required the division to:

> "…establish performance goals and outcome measures for **all** treatment programs…" and to "…collect data to track and determine whether the goals and measurements are being attained and make this information available to the public." ***Utah Code*** 62A-15-103(l)(i) and (ii). (emphasis added)

To determine if goals and measurements were being attained, such as recidivism, by all treatment programs, public and private, the division would need to collect outcome data for offenders from certified private providers.

Until we account for the number of offenders who have enrolled and successfully completed a private treatment program, we cannot accurately assess the availability of treatment services or the effectiveness of these treatment programs in reducing recidivism

The need to obtain data from private treatment providers is part of a larger problem discussed in Chapter III that relates to the goal of developing a more of a data-driven, results-oriented criminal justice system. Until we account for the number of offenders who have enrolled and successfully completed a private treatment program, we cannot accurately assess the availability of treatment services or the effectiveness of these treatment programs in reducing recidivism. In Chapter III of this report, we make several recommendations to address the need for data in order to track treatment and recidivism.

Drug Treatment Effectiveness in Doubt

Even if funding for additional treatment is provided, if that treatment is not effective, it would do little to promote achieving JRI's goal of reducing recidivism.

In addition to looking at the availability of treatment services, we also looked at the quality of services. Even if funding for additional treatment were provided, if that treatment is ineffective, it would do little to promote achieving JRI's goal of reducing recidivism. An outside review, as well as our own surveys, casts some doubt on the effectiveness of Utah's substance use disorder treatment programs. We concluded the following:

- Criminogenic treatment[2] is not yet adequately addressed
- Program performance measures are not consistently tracked
- Fidelity monitoring of programs is lacking

Baseline Review of Substance Abuse Treatment Providers Gave Low Scores in Quality Assurance

A 2017 evaluation by the Utah Criminal Justice Center (UCJC) of 13 public treatment providers concluded that, overall, the treatment services provided by the group were ineffective. The UCJC was contracted in 2015 and 2016 by CCJJ to evaluate substance use disorder treatment providers' adherence to evidence-based practices.[3] The report concluded that low scores in the quality assurance domain largely contributed to the overall capability being within the "needs improvement" range. The report stated that "all of the programs [reviewed] would benefit from strengthened internal quality assurance processes." Improving the quality of treatment by more closely adhering to evidence-based practices should improve treatment outcomes and improve the public's confidence in treatment efficacy.

UCJC concluded that low scores in the quality assurance domain largely contributed to the overall capacity being in the "needs improvement" range.

As of this report the division has again contracted with UCJC to conduct another evaluation of treatment programs. In the meantime, we conducted surveys to evaluate whether these areas were still a concern in 2020. One survey was sent to substance use disorder treatment providers and another to their clinicians. Our surveys reveal that quality concerns still exist in the three areas mentioned above.

Treatment Programs Are Not Addressing Personal Issues Leading to Criminal Behavior

Our survey and UCJC's report reveal that there is still room for significant progress in improving the frequency and quality of treatment for offenders when it comes to addressing their criminal behavior. Our survey was not designed to be statistically representative, but rather designed to obtain qualitative data to determine if previously identified concerns were being addressed. Only half of the clinicians we surveyed said they were consistently addressing criminal behavior through criminogenic treatment with

Only half the clinicians we surveyed said they were consistently addressing criminal behavior through criminogenic treatment with offenders.

[2] Criminogenic treatment addresses an offender's traits, problems, and issues that contribute to criminal behavior.

[3] Evidence-based practices focuses on approaches demonstrated by empirical research to be effective.

offenders. Criminogenic treatment addresses an offender's traits, problems, and issues that contribute to their criminal behavior. These traits include antisocial attitudes, peer relationships, personality, and history. Criminogenic treatment is now required by JRI as part of treatment for all offenders seeking substance use disorder treatment.

Criminogenic treatment addresses an offender's traits, problems, and issues that contribute to their criminal behavior.

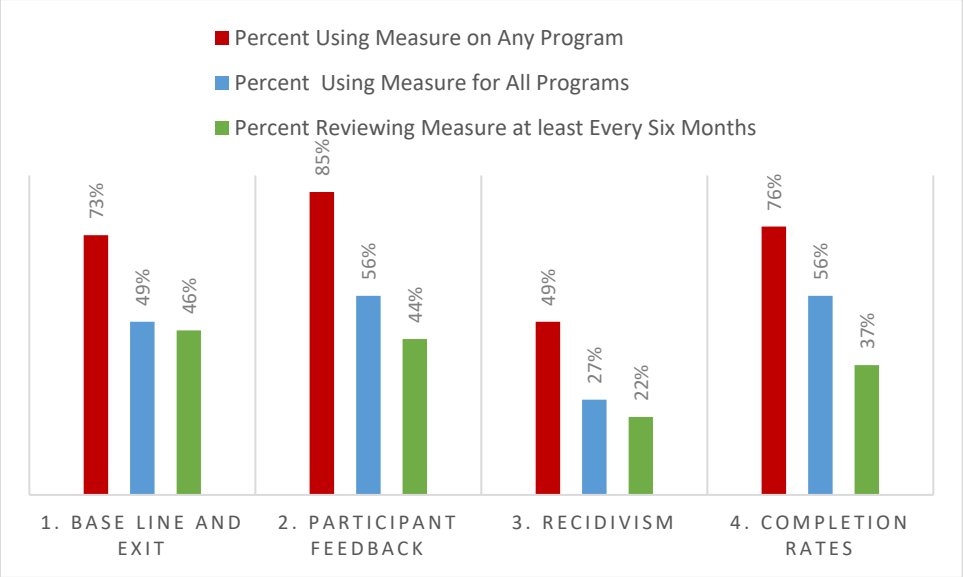
The 2017 UCJC report found that providers were ineffective at individualizing criminogenic treatment and having clients practice new prosocial behaviors through role-playing and simulations. In our survey, 43 percent of clinicians reported always individualizing treatment and only 17 percent reported always having clients rehearse prosocial behaviors. Further details of our survey results can be found in Appendix L. We recommend that DSAMH continue to assess the frequency and quality of criminogenic treatment and focus training on needed areas.

Program Performance Measures Not Consistently Tracked

Our survey showed that providers were not consistently tracking performance across all programs frequently enough. Measuring performance is essential to maintain the quality of treatment programs. The UCJC report identified four performance measures that were not tracked adequately by surveyed providers. Figure 5.3 shows the results of our survey of executive directors and clinical directors who were asked whether they used each of the four performance measures (explained in the figure footnote) and their frequency of use.

Measuring performance is essential to maintaining quality of treatment programs.

Figure 5.3 Providers Did Not Regularly Track All Four Recommended Performance Measures for All Programs. As the green bars show, less than half of providers surveyed reviewed the measures at least every six months.



Source: Auditor Survey.

Measure 1: Base Line and Exit: the targeted behavior is measured at the beginning and end of treatment
Measure 2: Participant Feedback: participants give their evaluation of the treatment
Measure 3: Recidivism: Subsequent criminal behavior is tracked to verify if treatment reduces crime
Measure 4: Completion rates: The percent of participants completing treatment

The blue bars on the graph show that about half use each measure to evaluate all their basic organizational treatment units.

The bars on the chart show the percent of 40 respondents who said they separately tracked each measure (base line and exit, participant feedback, recidivism, and completion rates), whether they used the measure to track all programs, and how frequently the measures were reviewed. Except for recidivism, which was discussed in Chapter III, the red bars show that over 70 percent of respondents reported tracking the change from base line to exit, participant feedback, and completion rates on at least one program.

For further understanding of how they used the measures, we asked if they were using the measures to evaluate their organizations' performance across **all** basic organizational treatment units such as programs, levels of care, and facilities. The blue bars on the graph show that about half used each measure to evaluate all their basic organizational treatment units. Our separate survey of clinicians supported this result with just half the clinicians reporting that they always assessed the targeted behavior at baseline and exit. The green bars in the graph show that even fewer providers were reviewing the measures on a timely basis or at least every six months.

Another concern is that nearly a third of surveyed providers said they evaluated all their programs collectively. One provider we talked with depended on the yearly Treatment Episode Data sent to DSAMH as their performance measure tracking system. This data is used to summarize a provider's outcomes as a whole and is not sufficient to determine the effectiveness of individual programs. We recommend that DSAMH monitor the use of performance measures by local authority management to ensure that measures adequately represent programs, levels of care and/or facilities and are reviewed by management frequently enough to effect needed changes.

Our discussions with public providers reveal that they have made attempts to track recidivism but access to the data has been difficult to obtain.

Recidivism Is Difficult for Providers to Track with the Current System. Our discussions with public providers revealed that they have made attempts to track recidivism but access to the data has been difficult. Private providers would also not have the ability to track recidivism. In our survey, we did not define whether providers looked at recidivism during or after treatment, so some may be tracking recidivism during treatment. However, the division had doubts that providers can track recidivism data, and if they did, it would be very inconsistent. Recently, CCJJ has been working with DSAMH, the Department of Corrections, and the Utah Association of Counties to address this issue. We were told that getting access to all sources of recidivism data and having additional personnel to track the data were addressed in bills recently passed during the 2020 Legislative General Session. In Chapter III of this report we discuss the need to track recidivism and make recommendations to facilitate the collection of data needed to track recidivism.

Fidelity Monitoring of Treatment Programs Lacking

Results of our third survey area indicated that most providers were not verifying whether their treatment programs were being implemented as designed.

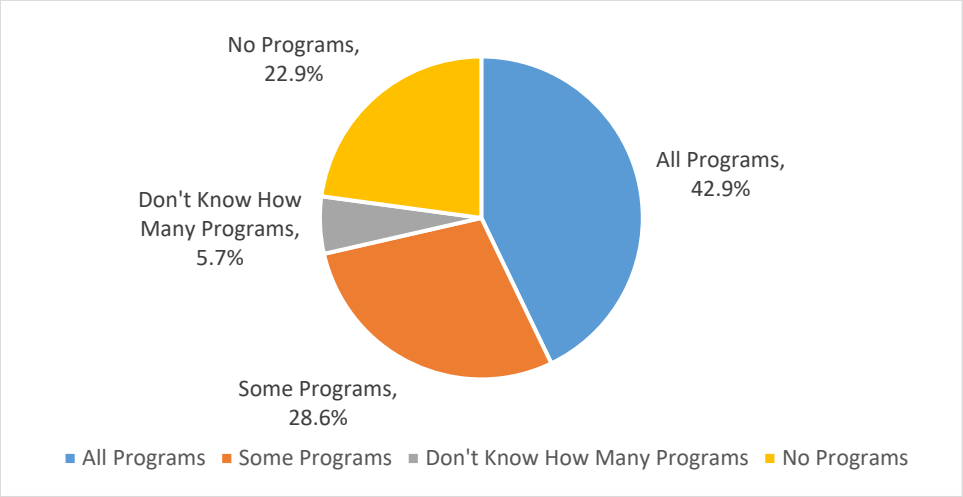
Results of our third survey area indicated that most providers were not verifying whether their treatment programs were being implemented as designed. If a treatment program or approach to therapy was administered incorrectly, it would not likely produce the desired results. Fidelity monitoring verifies that treatment programs are carried out as designed.

In our survey results, less than half of providers reported conducting fidelity monitoring on all evidence-based programs[4] they operated. This result was not surprising after discussions with providers and regulators revealed that fidelity monitoring was not conducted consistently on all programs. Evidence-based programs require that practitioners undergo specialized training and sometimes certification as well as adhere to standards of quality and assurance for that particular program. Maintaining the training and quality of a program as designed can be difficult because of changes in staff and leadership, program drift, and other obstacles. Fidelity monitoring must be conducted to give an objective appraisal of treatment interventions to determine whether they are continually executed appropriately as designed by the research.

Fidelity monitoring must be conducted to give an objective appraisal of treatment interventions to determine whether they are being executed appropriately as designed by the research.

Figure 5.4 shows that, while more than three fourths of providers surveyed did have some form of monitoring (see blue, orange, and grey slices), many did not monitor the performance of all their evidence-based programming (EBP).

Figure 5.4 The Percent of Providers Reporting They Conducted Fidelity Monitoring of Their Programs. Many of those that conducted fidelity monitoring did not use it on all their evidence-based programs as shown by the orange slice.



Source: Auditor Generated

As shown by the blue slice, only 43 percent of providers surveyed conduct fidelity monitoring on all programs.

[4] Evidence-based programs are those interventions that are supported by documentation that it has been effectively implemented in the past multiple times, in a manner attentive to scientific standards of evidence and with results that show a consistent pattern of credible and positive effects.

Just under one quarter of surveyed providers reported that they did not conduct fidelity monitoring, as shown by the yellow slice. However, even for those that did conduct some fidelity monitoring, not all were monitoring all their EBPs, as shown by the orange slice. Only 43 percent (blue slice) reported they conduct fidelity monitoring on all their EBPs. We recommend that DSAMH encourage and evaluate the use of fidelity monitoring by providers on all their evidence-based programs.

Just under one quarter of providers surveyed report that they did not conduct fidelity monitoring.

More Resources May Be Needed to Track and Evaluate Treatment Performance. Conducting fidelity monitoring requires qualified personnel to observe treatment delivery and conduct file reviews. Smaller organizations may have fewer resources to conduct fidelity monitoring while larger organization may have to devote full-time positions to properly monitor program fidelity. The collection and analysis of performance measures also uses resources and funding has been a concern in implementing monitoring. For providers and DSAMH to expand their quality assurance monitoring, resources may have to be taken from current treatment funds unless additional funding sources can be found.

Smaller organizations typically have fewer resources to conduct fidelity monitoring while larger organization may have to devote full-time positions to properly monitor the fidelity of their programs.

Considering Recent Treatment Quality Reviews, DSAMH Should Update Its Treatment Standards and Certification Process. A goal of JRI was to ensure treatment quality by establishing statewide standards and a certification process for community-based providers. ***Utah Code*** 62A-15-103(2)(i) states that the division shall "…establish by rule…minimum standards and requirements for the provision of substance use disorder and mental health…."

DSAMH does have treatment standards and created a certification process for private providers after JRI was enacted. Criminogenic treatment, certifying private providers, and tracking recidivism are relatively new programs and processes required by JRI. The large changes in treatment oversight required by JRI necessitate more collaboration and a quicker response to standards development. We recommend that DSAMH collaborate with the Department of Corrections and the Utah Substance Use and Mental Health Advisory Council to update their standards and certification process to ensure treatment quality is more in line with current evidence-based practices.

Recommendations

One of the original goals of JRI was to increase the availability and quality of treatment. The recommendations in this chapter focus on improving the quality of treatment so that JRI will have a greater impact in reducing recidivism.

1. We recommend that DSAMH continue to assess the frequency and quality of criminogenic treatment and focus training on needed areas.

2. We recommend that DSAMH monitor the use of performance measures by local authority management to ensure that measures adequately represent programs, levels of care and/or facilities and are reviewed by management frequently enough to effect needed changes.

3. We recommend that DSAMH encourage and evaluate the use of fidelity monitoring by providers on all evidence-based programs.

4. We recommend that DSAMH collaborate with the Department of Corrections and the Utah Substance Abuse and Mental Health Advisory Council to update its standards and certification process to ensure treatment quality is in line with current evidence-based practices.

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Chapter VI
JRI Success Could Improve with Better Offender Supervision

One goal of the Justice Reinvestment Initiative (JRI) was to reduce recidivism by evidence-based supervision and offender treatment in the community rather than by prison sentences. Chapter V presented our concerns with the quality and availability of treatment offered to offenders suffering from mental illness or drug addiction. This chapter raises concerns about the state's ability to supervise offenders in the community. We found that Adult Probation and Parole (AP&P) agents are having difficulties in applying the new graduated sanctions. Heavy agent workloads may be contributing this by limiting agents' time in applying evidence-based practices to reduce recidivism. Recent increases in Legislative funding for AP&P should help reduce agent workloads. We are also concerned about the lack of accountability for offenders sentenced to court probation and ordered to receive treatment.

We found that Adult Probation and Parole (AP&P) agents are having difficulties in applying the new graduated sanctions.

AP&P Can Better Implement Its New Approach to Community Supervision

JRI required the development of a graduated sanctions and incentives which became the Response and Incentive Matrix (RIM) that constituted a new approach to community supervision. This predefined set of incentives and sanctions allows agents to provide a swift, certain, and proportional response to offender violations and was created using evidence-based practices. Evidence-based practices are those approaches that research has demonstrated to be effective. In the past, AP&P has had difficulty implementing evidence-based practices as explained in our 2013 audit report of AP&P. Since that audit, we have seen evidence that AP&P has made significant progress in implementing other evidence-based practices. However, the more time-intensive RIM combined with higher workloads and the overall challenges of implementing evidence-based practices in large organizations may contribute to agents' low confidence in RIM's usefulness.

The Response Incentive Matrix (RIM) is a predefined set of incentives and sanctions that allow agents to provide a swift, certain, and proportional response to offender violations.

Implementing Evidence-Based Community Supervision Is Difficult for Many Organizations

The research community has recognized the challenges in implementing evidence-based practices in larger community settings.

There are evidence-based practices (EBP) for community-based supervision. However, the science of applying such practices in large community supervision settings is still maturing, such that many have difficulty effectively implementing these practices. The research community has recognized the challenges in implementing evidence-based practices in larger community settings. One Justice Research and Policy article summarized the problem this way:

> The transition to an evidence-based practices model represents nothing short of cultural change for most organizations….community supervision officers must become proficient in the use of cognitive-behavioral strategies, motivational interviewing, offender assessment, and case planning and must learn how to fully engage in a process of evidence-based decision making.

Because EBPs require such large skill set changes, the struggle to implement evidence-based practices reliably is a challenge faced by adult community supervision programs. Our 2013 report on AP&P reported that agents have also struggled with implementing evidence-based programs with fidelity. Though agents report they are now more consistently applying many previously introduced evidence-based practices, they continue to struggle with fully implementing the RIM.

Agents Struggle to Fully Apply the RIM

As will be explained later in this chapter, heavy workloads make the time-intensive Response Incentive Matrix (RIM) difficult to apply. In addition, its perceived ineffectiveness for high-risk offenders may be limiting its broad use. One goal of JRI was to create a system of graduated sanctions and incentives to ensure that responses to supervision violations were "swift, certain, and proportional". These graduated sanctions, developed as the RIM, are based on evidence-based practices that have been shown to reduce recidivism. The RIM forms the support for using sanctions and rewards to manage client behavior.

With larger caseloads, an agent may adhere to the RIM less closely. For example, a technical violation of parole may be the failure to submit to a drug test. Depending on the risk level of the offender (high, moderate, or low), the offender could be placed on home restriction for 72 hours or have up to a 60-day curfew. Verifying that these sanctions are occurring uses agents' time, and with larger workloads, less follow through may occur.

With larger caseloads, an agent may adhere to the RIM less closely.

Agents are less confident that RIM is effective for high-risk offenders. According to the PEW survey of Utah agents, 72 percent consider RIM "somewhat" effective, or only "a little" effective. Our own interviews revealed similar agent opinions, with many agents expressing concern that the new RIM sanctions were not effective for much of the higher-risk population they deal with. As one agent put it, hardened criminals were not bothered by sanctions like a few days in jail.

Agents are less confident that the RIM is effective for high-risk offenders.

Heavy workloads may contribute to these concerns by limiting the amount of time agents have to fully apply RIM sanctions and rewards, conduct motivational interviewing, and even search for offenders who have absconded. On the other hand, the RIM may have to be adjusted in the future to make it more effective as new evidence of what works improves. We recommend that Utah Department of Corrections continue to require the use of current evidence-based practices among agents and continue to monitor the quality of instituted evidence-based practices.

In Response to Our 2013 Audit Report, AP&P Management Monitored Agents' Use of Evidence-Based Practices. The PEW Research Center's 2019 survey of AP&P agents evaluated agent use of evidence-based practices. The survey revealed that risk and needs assessments were widely used by agents, with 95 percent of current caseloads reported to have received a risk and needs assessment. Behavioral health assessments were also regularly used, with 76 percent of current caseloads having received a substance abuse assessment and 58 percent having received a mental health assessment. Case action plans were also widely used by agents, with 89 percent of caseloads reported to have a completed case action plan. Though clients should be involved in their case plan development, roughly half of agents reported that clients were "somewhat" or just "a little" involved in case plan creation. Management reports holding regular training on the application of evidence-based practices and monitors

their use and effectiveness, such as using a private contractor to evaluate agent motivational interviewing skills.

Increase in AP&P Workloads Have Challenged Agents' Ability to Apply Evidence-Based Supervision

JRI required the application of additional evidence-based approaches to supervision to reduce recidivism. However, probation officers' workloads have increased due to the higher percentage of high-risk offenders on their caseloads. As a result, probation officers have had difficulty balancing the increased workload while applying the new graduated sanctions approach to supervision. Recent budget increases should allow AP&P to alleviate some of the workload. AP&P needs to verify that agents adhere to the additional evidence-based practices required by JRI.

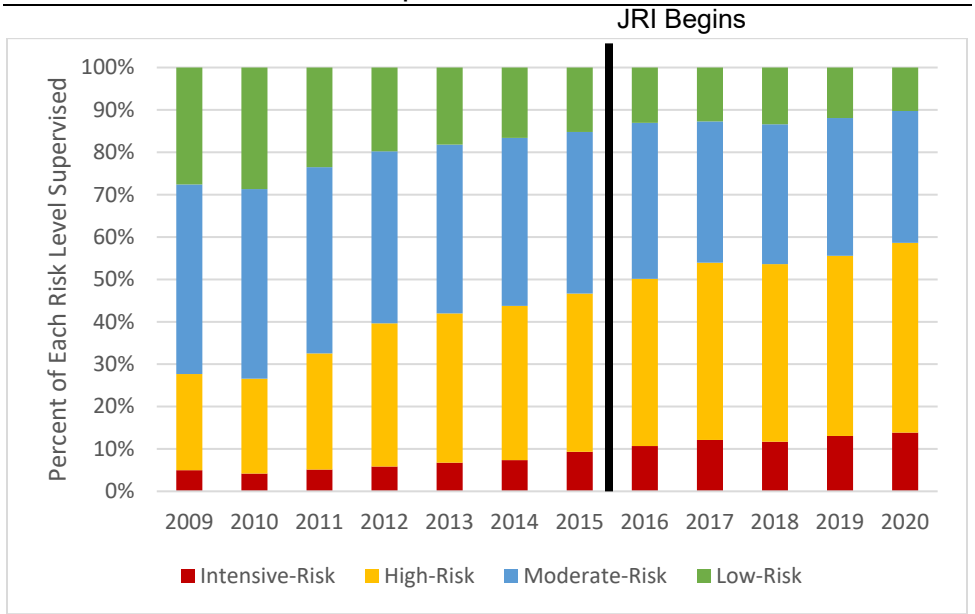
AP&P Has Struggled Balancing Increased Agent Workloads and Implementing New Graduated Sanctions

AP&P agents are now required to manage more high-risk offenders than they did before JRI took effect.

Although the number of cases managed by each agent has not changed significantly since 2014, AP&P agents are now required to manage more high-risk offenders than they did before JRI took effect. High-risk offenders require closer supervision than do other probationers, thereby adding to the agents' workload. Heavy workloads leave less time to apply evidence-based practices.

The diversion of inmates from prison sentences to community-based treatment increased the number of those on intensive supervision. To relieve the workload on agents, AP&P began reducing the number of low-risk offenders who received their services. Figure 6.1 shows that the proportion of intensive and higher-risk offenders (red and yellow bars) has increased since JRI began in October 2015.

Figure 6.1 Caseload Intensity Has Increased for AP&P Agents. Agents now have a higher percentage of intensive and high-risk offenders[5] in their caseloads. The mix of intensive and high-risk offenders has increased 15 percent since 2014.



Source: Unaudited Department of Corrections Data

Figure 6.1 depicts agent caseloads by risk levels of supervised offenders. Those classified in the intensive-risk category require the most supervision time. Thus, the red bars show that the proportion of intensive offenders began to rapidly increase after JRI began, now occupying 14 percent of caseloads. At the same time, the percentage of low-risk offenders (in green) decreased.

Offenders classified in the intensive-risk category require the most supervision time.

Increase in Offenders Requiring Intensive Supervision Places Higher Demand on Probation Officers' Time. AP&P standards of supervision require only one face-to-face office or field visit every 180 days with a low-risk offender, or one monthly office visit and a field visit every other month for a moderate-risk offender. In contrast, an office visit is required every month and a field visit once a month for high-risk offenders. Those classified as an intensive risk require two office contacts per month and two field contacts per month. As Figure 6.2 shows, the number of office visits and field contacts increases

[5] Risk levels are assessed using tools like the LS/RNR that look at criminal history, education/employment, family/marital, leisure/recreation, companions, alcohol/drug problems, procriminal attitude/orientation and antisocial pattern.

dramatically with higher-risk offenders on the caseload even when the total number supervised remains the same.

Figure 6.2 Agent Workloads Are Affected by the Number of Higher Risk Offenders Supervised. A higher-risk workload means more office visits and field contacts for agents.

		Number of Supervised at Each Risk Level					
	# Supervised	Low	Moderate	High	Intensive	# office visits/month	# field contacts/month
Low-Risk Workload	60	30	20	10		35	50
High-Risk Workload	60		10	30	20	80	150

Source: Auditor Generated

As workloads increase, agents have less time to conduct motivational interviewing or properly apply graduated sanctions and incentives.

As the figure shows, two agents with caseloads of 60 offenders each can have very different overall workloads. If one agent had a low-risk workload consisting of 30 low, 20 moderate, and 10 high-risk offenders, the agent would be required to conduct 35 office visits and 50 field contacts each month. Another agent with the same caseload but with higher risk offenders consisting of 10 moderate, 30 high, and 20 intensive offenders, would be required to conduct 80 office visits and 150 field contacts each month. Field contacts require the presence of two agents for safety. An increase in the number of higher risk supervisees quickly increases an agent's workload. As workloads increase, agents have less time to conduct motivational interviewing or properly apply graduated sanctions and incentives.

Our interviews with agents revealed that when workloads increased, agents tended to focus on public safety and were less inclined to follow the graduated sanctions matrix, which is more time consuming.

Increased Workload Has Further Frustrated the Implementation of Some Evidence-Based Practices

As evidenced in our 2013 audit of AP&P the division has struggled to implement evidence-based practices in the past. Currently, increased workloads appear to further frustrate the implementation of some evidence-based practices. A 2019 PEW Research Center survey examined the use of evidence-based practices by Utah AP&P agents. The report concluded that agent workload affected supervision quality. Our interviews with agents revealed

similar concerns that when workloads increased, agents tended to focus on public safety and were less inclined to follow the graduated sanctions matrix, which is more time consuming. One agent frankly admitted that he was so busy with his large caseload that he focused on public safety and did not follow the graduated sanctions as required.

The PEW researchers also asked agents if their caseload size enabled them to supervise clients in a way that promoted successful supervision completion. Over 75 percent of agents said that their caseload was such that they were able to successfully supervise clients only "somewhat," "a little," or "not at all." Agents also identified heavy caseloads as their greatest challenge. With two thirds of agents having been with AP&P for five years or less, agent turnover also contributes to the workload problem. As agents leave, others must take up larger caseloads. If AP&P could decrease workloads, agents would have more time to properly apply graduated incentives and sanctions and give community supervision a better chance of success. This would be consistent with the goals of JRI.

Agents identified heavy caseloads as their greatest challenge.

2020 Session Increased AP&P Funding But Impact Needs to Be Evaluated

During the 2020 Legislative General Session, legislators recognized the need to provide additional funding for AP&P officers, increasing ongoing AP&P funding by $5.6 million. However, because of the COVID-19-induced recession, a Legislative Special Session eventually increased funding by $3 million. The division informed us that these funds would be used to fund an additional 12 AP&P agents, 12 case workers, 2 AP&P supervisors, 2 therapist supervisors, and 2 support staff. Before this funding increase, average caseloads had been at 58 to 64 cases per agent for the past 6 years. As of July 2020, the average caseload had dropped to 55. As Figure 6.3 shows, compared to other western states, Utah's average per-agent caseload put Utah at the higher end of what some western states consider to be their upper limit.

Figure 6.3 Utah Caseloads Compared to Western States with Agent Caseload Limits. Recognizing that caseload size affects effectiveness, some states limit the number of cases per agent.

State	States That Limit the Number of Offenders per Agent
UT	Current average caseload 55 offenders
AZ	No more than 65 on average, for two-person intensive no more than 25
CO	No official policy for caseload limits. Unofficial limit of 50 high risk or 25 very high risk.
ID	Not to exceed an average of 50 offenders
NM	Maximum case load of 40 offenders
NV	No maximum case load

Source: NCSL

Arizona and Colorado have a 25-person limit for high risk offenders.

The additional agent resources should increase the number of field agents with active caseloads by 5.2 percent and decrease workloads. However, to reduce recidivism, caseload reductions must also be accompanied by agents' use of evidence-based practices to be effective. We believe that the heavy workload certainly limited agents' ability to closely adhere to evidence-based practices. Unfortunately, full acceptance and use of evidence-based practices by community supervision personnel has been an issue with many community supervision organizations.

Lack of Pretrial and Probation Services for Many Offenders May Hinder JRI Reforms

As mentioned in Chapter III, JRI was intended to lead to a more data-driven approach to criminal justice in which agencies, programs, and individuals would be held accountable for results. We found there is little accountability for offenders who are sentenced to unsupervised court probation. For example, 25 percent of those on unsupervised probation are ordered to receive substance abuse assessments and treatment. However, there is no way to verify that the offender obtained the required treatment. Also, research has shown that the use of evidence-based practices such as assessments and targeted interventions, can reduce recidivism. The application of these evidence-based practices earlier during pretrial has great potential. However, many counties lack pretrial and probation services that can

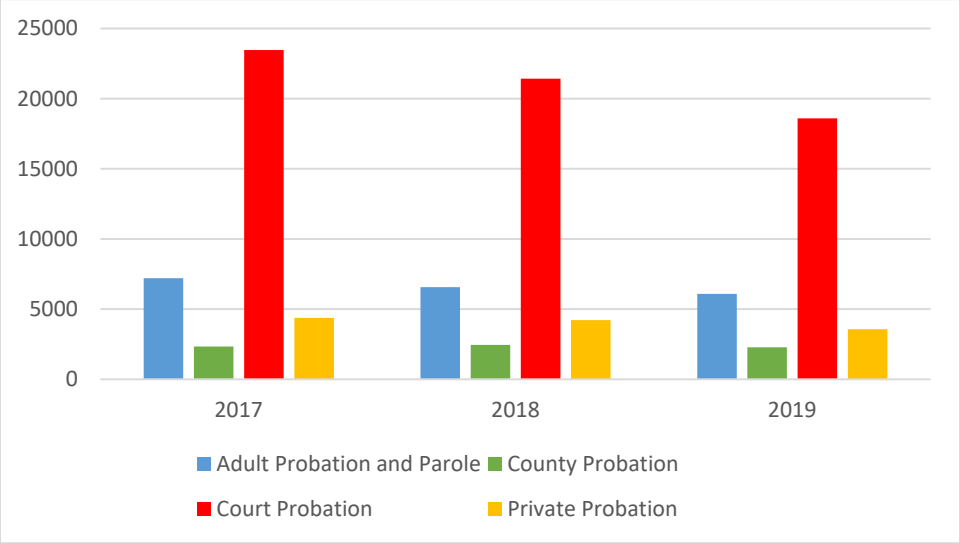
be used to help offenders avoid committing new offenses before their court date.

Impacts of Probation on Offenders Is Not Evaluated

We are concerned that there are offenders placed on unsupervised court probation and ordered for treatment whose treatment outcomes are not evaluated. Unlike AP&P, which tracks several outcomes for those they supervise, offenders on good behavior probation are not tracked to assure outcome or completion of treatment requirements. Figure 6.3 shows that the majority of those placed on probation are placed on unsupervised court or good behavior probation. Many of these individuals are first-time offenders or low-risk individuals.

We are concerned that there are offenders placed on unsupervised court probation and ordered for treatment, whose treatment outcomes are not evaluated.

Figure 6.4 Court-Ordered Probation by Category Shows Court Probation, Also Known as Good Behavior Probation, Is by Far the Most Common Probation. Those offenders on court probation are not tracked to determine if treatment outcomes were achieved.



Source: Auditor summary of Utah Court data

The red bars represent the largest number of probationers who are on court probation or good behavior probation and are unsupervised.

The green bars represent the number of offenders on county probation, most of which are with Salt Lake County Probation Services because few counties have probation departments. The yellow bars show the number of probationers with private probation and the blue bars represent the number of probationers with AP&P. The red bars represent the largest number of probationers who are on court probation or good behavior probation and are unsupervised. In 2019, those on court probation represented 61 percent of all those on probation that year.

We were not able to tell from court records if individuals required to complete substance abuse treatment completed it. Twenty-five percent of those placed on court probation are typically required by the courts to get substance abuse assessment and treatment. Most placed on court probation should be low-risk individuals, and evidence shows that treatment services for low-risk individuals should be kept to a minimum. However, from 2017 to 2019, there were 17,161 individuals placed on court probation and ordered to be assessed and, if needed, complete substance abuse treatment. Some county probation officers and Sheriffs we spoke with expressed concern over these unsupervised individuals who may need treatment and services. By tracking the outcomes of low-risk individuals, we may be able to prevent further recidivism and involvement with the criminal justice system with the use of targeted treatment and services.

We are not able to tell from court records if individuals required to completed substance abuse treatment completed it.

Between 2017 to 2019 there were 17,161 individuals placed on court probation and ordered to be assessed and, if needed, complete substance abuse treatment.

JRI has placed emphasis on treatment in the community and a data-driven criminal justice system, but the outcomes of a large portion of those on probation and ordered to receive treatment are simply not tracked. The Division of Substance Abuse and Mental Health is also tasked with tracking treatment outcomes. However, for privacy concerns, as explained in Chapters III and V, the division has not tracked the treatment for many individuals receiving treatment in the private sector. We recommend that the courts coordinate with the Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health to track in the least impactful way the treatment outcomes of those on court probation who are required to receive treatment.

County Pretrial Services Needs Further Review

Many counties lack pretrial and other services that could help reduce recidivism early on. Judges have expressed to us the need for pretrial services and sheriffs have expressed the need for supervision services in their communities. Only a few counties report having county probation services and only a few offer pretrial services. Pretrial services can include court-ordered assessments, treatment services, diversion programs, and other services that offenders need to comply with soon after arrest. With JRI's emphasis on community supervision and treatment, it would make sense to review county pretrial and probation services so that services and treatment can be given early to limit future offending. Courts at the federal level, as well as some other states, have begun applying evidence-based practices in pretrial

With JRI's emphasis on community supervision and treatment, it would make sense to review county pretrial and probation services so that services and treatment can be provided early on to limit future offending.

services. As part of their JRI efforts, nine states invested in pretrial services, assessments, and diversion programs.

In Utah, we have identified three counties that have implemented some type of pretrial services. Davis County has recently opened a receiving center where officers can bring individuals that meet certain criteria immediately upon arrest. These individuals can avoid prosecution by agreeing to enter and complete treatment. Salt Lake County has had pretrial services for some time. Part of these services include contacting offenders about their court hearings, making sure they have time off work, childcare, and transportation so they can attend court hearings. Washington County does pretrial assessments of offenders so they can get offenders into treatment soon after arrest. The full impact of many of these services still needs to be determined but assessment and targeting of offender needs are evidence-based practices.

As mentioned in Chapter III, JRI was promised to be data-driven so all programs created to address criminal justice concerns should be evaluated to determine their outcomes and effectiveness in reducing recidivism. The types and amounts of pretrial and probation services a county needs should be determined by local Criminal Justice Coordinating Councils (CJCCs). In Chapter IV, we recommended the formation of CJCCs in counties and regions throughout Utah. CCJJ should assist local CJCCs in evaluating the need for pretrial and probation services and support counties in the funding, implementation, and evaluation of these services.

The types and amounts of pretrial and probation services a county needs should be determined by local Criminal Justice Coordinating Councils (CJCCs).

Recommendations

1. We recommend that Utah Department of Corrections continue to require the use of current evidence-based practices among agents and continue to monitor the quality of instituted evidence-based practices.

2. We recommend that the courts coordinate with the Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health to track, in the least impactful way, the treatment outcomes of those on court probation who are required to receive treatment.

3. We recommend that the Commission on Criminal and Juvenile Justice, in concert with local Criminal Justice Coordinating Councils, study county needs for pretrial and probation services and support the counties in the funding, implementation, and evaluation of these services.

Appendices

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Appendix A

Justice Reinvestment Report Summary

November 2014

For the Full Report go to:

https://justice.utah.gov/Documents/CCJJ/Justice%20Reinvestment%20Initiative/Justice%20Reinvestment%20Report%202014.pdf

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Cost of doing nothing: $542 million

Utah's prison population has grown by 18 percent since 2004. Without action, the state will need to house an additional 2,700 inmates - a 37 percent growth in the prison population - by 2034.

Utah taxpayers currently spend $270 million annually on corrections. The relocation of the state prison at Draper is projected to cost more than $1 billion, with half this cost tied to inmate growth alone.

For all this spending, taxpayers have not been getting a strong public safety return. Almost half (46%) of Utah's inmates who are released from state prisons return within three years.

The challenges facing Utah

In April 2014, at the charge of the Governor, Chief Justice, Attorney General, and legislative leaders, the Utah Commission on Criminal and Juvenile Justice (CCJJ) began a seven month policy development process, beginning with a comprehensive review of the state's sentencing and corrections data. CCJJ found:

- **Utah's prison population has grown 18 percent since 2004** – six times faster than the national average during the same period.
- **A significant number of Utah's prison admissions are for nonviolent offenses –** Sixty-two percent of offenders sent directly to prison from court in 2013 were sentenced for nonviolent crimes.
- **Offenders on probation and parole supervision are failing at higher rates than they did 10 years ago –** Revocation from supervision—being sent back to prison for a violation of probation or parole—accounted for 46 percent of Utah's prison population in January 2014.
- **Despite research demonstrating the diminishing public safety returns of longer prison sentences, prisoners are spending 18 percent longer in prison than they did 10 years ago** – This growth in time served has occurred across all offense types, including nonviolent offenses.

Policy options in the Commission's report

The Commission recommended a comprehensive policy package that reduces recidivism, controls prison costs, and holds offenders accountable. CCJJ recommends:

- **Focusing prison beds on serious and violent offenders** by revising the sentencing guidelines for some low-level offenders and the criminal history scoring system in order to avoid double counting and to limit factors to those most relevant to the risk of re-offense; revising penalties for drug offenders in order to target chronic felony offenders and drug dealers who sell to minors; establishing graduated revocation caps for technical probation and parole violators; and establishing a standard system of earned time credits for inmates who participate in certain programming.
- **Strengthening probation and parole supervision** by implementing a graduated sanctions and incentives matrix to ensure responses are swift, certain, and proportional; and allowing offenders to earn time off their supervision sentences for engaging in behavior that reduces their risk of committing another crime.
- **Improving and expanding reentry and treatment services** by increasing the availability of mental health and substance abuse treatment services across the state; ensuring quality by establishing statewide standards and certification processes for community-based providers; and implementing transition planning and reentry services for offenders returning to their communities.
- **Supporting local corrections systems** by reclassifying lower-level moving vehicle misdemeanors to focus jail resources on high-level offenders; establishing evidence-based jail treatment standards; increasing services for crime victims; and establishing a performance incentive grant program to provide funding for counties working to reduce recidivism and expand alternatives to prison.
- **Ensuring oversight and accountability** by training criminal justice decision makers on evidence-based practices; and requiring data collection and reporting of key performance measures.

The policy options will NOT:

- decriminalize or legalize the possession, sale, or trafficking of any controlled substance.
- require the resentencing of any offender.

What is the expected impact of these policy options?

Together, the 18 policy recommendations in the Commission's report will avert nearly all of the anticipated growth in prison population and will save taxpayers $542 million dollars over the next 20 years. The CCJJ recommends reinvesting in practices that reduce recidivism and support crime victims.

Only partially implementing the Commission's policy options will mean that the prison population and correctional costs continue to grow. This will leave policy makers with the difficult choice of raising taxes or cutting funding to other key priority areas.

How will these recommendations impact localities?

The CCJJ identified the following policy options and reinvestment priorities to improve public safety and criminal justice systems at the local level:

- **Expand treatment services** to increase community substance abuse and mental health treatment capacity for offenders to meet demand for services statewide.
- **Increase resources to reduce recidivism** by creating a grant program for counties to create locally-determined programs and practices that reduce recidivism and expand alternatives to prison.
- **Invest in victim services** to expand the number of victim advocates and services in rural and remote areas of the state.

Background on the Utah Commission for Criminal and Juvenile Justice

From April to November 2014, the Utah Commission on Criminal and Juvenile Justice (CCJJ) conducted a rigorous review of Utah's sentencing and corrections data, evaluated current policies and programs across the state, explored best practices from other states, and engaged in policy discussions. This diverse group of criminal justice stakeholders included representatives from corrections, law enforcement, victim advocacy, the legislature, judiciary, the prosecutorial and defense bars, and community based practitioners.

In his 2014 State of the State address, Governor Herbert called for a "full review of our current system to develop a plan to reduce recidivism, maximize offenders' success in becoming law-abiding citizens, and provide judges with the tools they need to accomplish these goals." Governor Herbert, Chief Justice Matthew Durrant, Senate President Wayne Niederhauser, House Speaker Becky Lockhart, and Attorney General Sean Reyes tasked the Utah Commission on Criminal and Juvenile Justice (CCJJ) with "develop[ing] a package of data-driven policy recommendations that will reduce recidivism and safely control the growth in the state prison population."

The CCJJ held six public hearings across the state and two roundtables of victims, survivors, and victim advocates to identify key priority areas for reform. The Commission submitted a report of its findings and policy options to the Governor and Legislature for consideration and action in the 2015 session.

Appendix B

Recidivism Rates by Judicial District, Court Location and County

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One Year Recidivism Rates by Judicial Court District and Court Location

For the three years before and after JRI took effect, the percent of individuals who are convicted on drug possession only or possession of drug paraphernalia charges and who have new charges filed within one year of the judgement date for the first charge. The recidivism rate reflects the success the community has made towards curbing low-level illegal drug use.

Court Location	Before JRI 2013 – 2015	After JRI 2016 – 2018
District 1	**22%**	**30%**
Brigham City District	20%	25%
Logan District	25%	38%
Randolph District	0%	13%
District 1 Justice Courts	20%	24%
District 2	**25%**	**31%**
Bountiful District	20%	33%
Farmington District	25%	32%
Layton District	26%	33%
Morgan District	30%	21%
Ogden District	21%	28%
District 2 Justice Courts	28%	32%
District 3	**39%**	**46%**
Salt Lake City District	40%	45%
Silver Summit District	11%	16%
Tooele District	19%	40%
West Jordan District	32%	43%
District 3 Justice Courts	40%	47%
District 4	**33%**	**39%**
American Fork District	37%	46%
Fillmore District	25%	25%
Heber City District	24%	36%
Nephi District	24%	29%
Provo District	35%	42%
Spanish Fork District	36%	41%
District 4 Justice Courts	31%	36%
District 5	**24%**	**28%**
Beaver District	16%	31%
Cedar City District	13%	34%
St. George District	31%	37%
District 5 Justice Courts	19%	21%
District 6	**17%**	**26%**
Junction District	50%	67%
Kanab District	13%	14%
Loa District	14%	45%
Manti District	**25%**	30%

Court Location	Before JRI 2013 – 2015	After JRI 2016 – 2018
Panguitch District	6%	13%
Richfield District	23%	34%
District 6 Justice Courts	11%	19%
District 7	**22%**	**28%**
Castle Dale District	9%	24%
Moab District	17%	32%
Monticello District	5%	12%
Price District	43%	47%
District 7 Justice Courts	18%	27%
District 8	**29%**	**35%**
Duchesne District	37%	41%
Roosevelt District	35%	40%
Vernal District	31%	38%
District 8 Justice Courts	22%	28%
Statewide	**32%**	**38%**

Note: The data show recidivism rates by the court locations in which the charges were originally filed and adjudicated. The re-offense may have occurred in the same or another court district.

One Year Recidivism Rates by County

The figure describes the percent of individuals who received a guilty judgement on a drug possession only or possession of drug paraphernalia charge and who are then rearrested within one year of the judgement date of the initial arrest. Data is summarized by the year of the initial judgement date.

Year	Before JRI 2013 – 2015	After JRI 2016 – 2018
Beaver	13%	14%
Box Elder	18%	25%
Cache	24%	33%
Carbon	39%	39%
Daggett	0%	33%
Davis	25%	31%
Duchesne	34%	36%
Emery	7%	15%
Garfield	10%	23%
Grand	12%	23%
Iron	12%	23%
Juab	14%	22%
Kane	10%	12%
Millard	25%	18%
Morgan	23%	12%
Piute	29%	57%
Rich	44%	0%
Salt Lake	41%	47%
San Juan	9%	11%
Sanpete	24%	26%
Sevier	17%	28%
Summit	13%	16%
Tooele	21%	38%
Uintah	26%	34%
Utah	34%	40%
Wasatch	25%	26%
Washington	29%	31%
Wayne	15%	46%
Weber	26%	31%
Statewide	32%	38%

Note: The data show recidivism rates by the county in which the charges were originally filed and adjudicated. The re-offense may have occurred in the same or another county in Utah.

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Appendix C

Number and Percent of Chronic Offenders By County

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Number of Chronic Drug Offenders By County

This table show the number of court filings involving a chronic drug offender according to the county where the charges were filed. A chronic drug offender is someone charged with possession of illegal drugs or drug paraphernalia four or more times in a single year.

County	2013	2014	2015	2016	2017	2018	2019
Beaver	0	0	0	0	0	0	6
Box Elder	1	4	4	11	6	19	16
Cache	3	9	19	24	38	67	6
Carbon	31	0	11	39	18	62	55
Daggett	0	0	0	0	0	0	0
Davis	53	48	56	96	107	146	103
Duchesne	8	14	28	29	22	55	11
Emery	0	0	4	3	0	0	2
Garfield	0	0	0	0	0	1	0
Grand	0	0	0	0	3	5	6
Iron	9	3	8	24	11	58	36
Juab	3	7	2	8	10	16	16
Kane	0	0	3	5	3	2	0
Millard	3	0	1	1	0	0	8
Morgan	2	0	0	1	0	3	0
Piute	0	0	0	0	0	0	0
Rich	0	0	0	0	0	0	0
Salt Lake	690	941	1792	1758	2603	3751	2507
San Juan	0	1	1	0	2	4	3
Sanpete	0	6	1	3	12	3	4
Sevier	1	0	7	5	20	17	15
Summit	4	7	10	2	13	15	4
Tooele	9	2	14	34	44	59	58
Uintah	20	11	61	47	85	100	79
Utah	273	253	267	558	783	827	532
Wasatch	2	1	15	18	10	30	15
Washington	57	73	33	130	150	161	97
Wayne	0	3	0	0	2	0	0
Weber	41	33	35	69	77	113	147
Grand Total	1210	1416	2372	2865	4019	5514	3726

Chronic Drug Offenders as a Percent of All Individuals Charged with Possession of Illegal Drugs By County

The figure shows the percent of court filings by county which involve a chronic drug offender. A chronic drug offender is someone charged with possession of illegal drugs or drug paraphernalia four or more times in a single year.

County	2013	2014	2015	2016	2017	2018	2019
Beaver	0%	0%	0%	0%	0%	0%	7%
Box Elder	1%	2%	2%	4%	2%	6%	6%
Cache	1%	2%	4%	4%	4%	8%	1%
Carbon	11%	0%	3%	9%	4%	12%	13%
Daggett	0%	0%	0%		0%		0%
Davis	3%	3%	3%	5%	5%	7%	6%
Duchesne	3%	5%	9%	8%	5%	15%	5%
Emery	0%	0%	6%	3%	0%	0%	4%
Garfield	0%	0%	0%	0%	0%	2%	0%
Grand	0%	0%	0%	0%	2%	3%	3%
Iron	3%	1%	1%	5%	2%	11%	9%
Juab	2%	5%	1%	4%	4%	9%	10%
Kane	0%	0%	3%	5%	3%	3%	0%
Millard	3%	0%	1%	1%	0%	0%	4%
Morgan	3%	0%	0%	4%	0%	5%	0%
Piute	0%	0%	0%	0%	0%	0%	0%
Rich	0%	0%	0%	0%	0%	0%	0%
Salt Lake	9%	11%	17%	16%	21%	27%	21%
San Juan	0%	1%	1%	0%	1%	2%	1%
Sanpete	0%	5%	1%	2%	6%	2%	3%
Sevier	0%	0%	2%	1%	4%	6%	5%
Summit	1%	2%	2%	1%	3%	5%	1%
Tooele	2%	1%	4%	6%	7%	10%	12%
Uintah	5%	2%	10%	8%	14%	14%	11%
Utah	8%	7%	7%	13%	15%	15%	12%
Wasatch	1%	0%	5%	5%	3%	7%	6%
Washington	5%	6%	2%	7%	7%	9%	6%
Wayne	0%	27%	0%	0%	12%	0%	0%
Weber	2%	2%	2%	3%	4%	5%	6%

Appendix D

Chronic Offender Example – Figure 2.5 Detail

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Appendix D.1. Chronic Offender Detail. This figure provides greater detail for Figure 2.5. It shows the types of charges associated with the offender's different drug related cases, their severity, and final judgement for the charges. It excludes offenses for non-drug-related cases.

Location	Offense Description	Severity	Judgement
Draper JC	THEFT	MB	Guilty Plea
	BAIL-JUMPING	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/prej
	DISORDERLY CONDUCT	INF	Dism. w/prej
	INTOXICATION	MC	Guilty Plea
Midvale JC	CRIMINAL TRESPASS	MB	Guilty
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty
	FAIL TO APPEAR ON CITATION	MB	Guilty
Murray JC	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/o prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty Plea
	INTOXICATION	MC	Dism. w/o prej
	INTOXICATION	MC	Dism. w/prej
	CRIMINAL TRESPASS	MB	Guilty
	CRIMINAL TRESPASS	MB	Dism. w/prej
	INTERFERENCE WITH ARRESTING OFFICER	MB	Guilty
	RETAIL THEFT (SHOPLIFTING)	MB	Dism. w/o prej
SLC DC	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	F2	Guilty
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	F3	Guilty
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	F3	Plea in Abeyance
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	F3	Transferred
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	MA	Guilty
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	MA	Transferred
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Transferred
	OBTAIN/ASSIST OBTAINING AN IDENTIFYING DOCUMENT OF ANOTHER	MA	Dism. w/o prej
	CRIMINAL TRESPASS KNOWING UNLAWFUL PERSON/UNMANNED AIRCRAFT	MB	Dism. w/prej
	PUBLIC URINATION	MC	Transferred
	DRIVE ON REVOCATION	MC	Dism. w/o prej
	OBSTRUCTING JUSTICE	F3	Guilty
	DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS	MB	Guilty
	CRIMINAL TRESPASS ENTER / REMAIN-PERSON OR UNMANNED AIRCRAFT	MB	Dism. w/prej
	FALSE PERSONAL INFO W/INTENT TO BE ANOTHER ACTUAL PERSON	MA	Dism. w/o prej
	RETAIL THEFT (SHOPLIFTING)	MB	Transferred
	UNLAW ACQUISITION/POSSESS/TRANSFER-CARD	F3	Dism. w/o prej
	BURGLARY	F2	Guilty
	INTERFERENCE WITH ARRESTING OFFICER	MB	Dism. w/prej
	INTOXICATION	MC	Transferred
SLC JC	RETAIL THEFT (SHOPLIFTING)	MB	Guilty
	THEFT OF SERVICES	MB	Dism. w/prej
	CRIMINAL TRESPASS	MB	Guilty
SLCO JC	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty Plea
	CRIMINAL TRESPASS KNOWING UNLAWFUL PERSON/UNMANNED AIRCRAFT	MB	Guilty Plea
South Jord. JC	RETAIL THEFT (SHOPLIFTING)	MB	Guilty Plea
	FAIL TO STOP AT COMMAND OF LAW ENFORCEME	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty Plea
	FAILURE TO APPEAR	MB	Dism. w/prej
	INTOXICATION	MC	Dism. w/prej

Location	Offense Description	Severity	Judgement
South SL JC	CRIMINAL TRESPASS	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty
	INTOXICATION	MC	Dism. w/prej
Taylorsville JC	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Set Aside
	INTERFERENCE WITH ARRESTING OFFICER	MB	Dism. w/prej
	INTERFERENCE WITH ARRESTING OFFICER	MB	Set Aside
	INTOXICATION	MC	Dism. w/prej
	FAILURE TO DISCLOSE IDENTITY	MB	Dism. w/prej
	RETAIL THEFT (SHOPLIFTING)	MB	Guilty
Tooele DC	JOYRIDING/UNAUTH CONTROL FOR EXTENDED TIME	F3	Guilty
West Jord. DC	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/o prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Transferred
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	F3	Guilty
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	F3	Transferred
	POSSESSION OR USE OF A CONTROLLED SUBSTANCE	MA	Guilty
	INTERFERENCE WITH ARRESTING OFFICER	MB	Dism. w/prej
	INTERFERENCE WITH ARRESTING OFFICER	MB	Guilty
	INTERFERENCE WITH ARRESTING OFFICER	MB	Transferred
	RETAIL THEFT (SHOPLIFTING)	MB	Dism. w/prej
	RETAIL THEFT (SHOPLIFTING)	MB	Guilty
	INTOXICATION	MC	Dism. w/prej
	PUBLIC URINATION	MC	Dism. w/prej
	FAIL TO STOP AT COMMAND OF LAW ENFORCEME	MA	Guilty
	CRIMINAL TRESPASS ENTER/REMAIN-PERSON OR UNMANNED AIRCRAFT	MB	Transferred
West Jord. JC	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/o prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Dism. w/prej
	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty Plea
	CRIMINAL TRESPASS ENTER/REMAIN-PERSON OR UNMANNED AIRCRAFT	MB	Guilty Plea
	INTERFERENCE WITH ARRESTING OFFICER	MB	Guilty Plea
West VC JC	USE OR POSSESSION OF DRUG PARAPHERNALIA	MB	Guilty

Source: Auditor Generated from Courts Data

Appendix D.2. One Offender Had 33 Jail Commitments During a Seven Year Period. Length of stay data is provided in terms of days served, the equivalent number of months for total days served, average days served per commitment, as well as the minimum and maximum number of days served for a single commitment within each year.

Year	# of Commits	Days Served	Month Equivalent	Avg Days/ Commit	Min Days	Max Days
2013	1	25	1	25	25	25
2015	3	35	1	12	0	35
2016	13	343	11	26	0	202
2017	7	92	3	13	0	86
2018	8	206	7	26	0	92
2019**	1	115	4	115	115	115
Tot.	**33**	**816**	**2 years 3 months**	**25**	**0**	**202**

Source: Auditor-generated study of Salt lake County jail inmate populations
**2019 only includes data up to August and is not a complete year of data

To illustrate, total time served for all 33 commitments is a little more than two years for this offender. In 2015 he/she had three jail commitments and served a total of 35 days, which is the equivalent of about one month. The average number of days served per commitment was 12. However, the lowest number of days served for one of these commitments was less than one day, shown by a 0 in the Min Days column. The largest number of days spent during one of these commitments was 35. Taken together, we can infer that at least two of the commitments lasted less than one day, but one lasted for almost 35 days. The data confirms this. Two lasted for about six and four hours respectively, and one just under 35 days.

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Appendix E

County Jail Inmate Populations Before and After JRI

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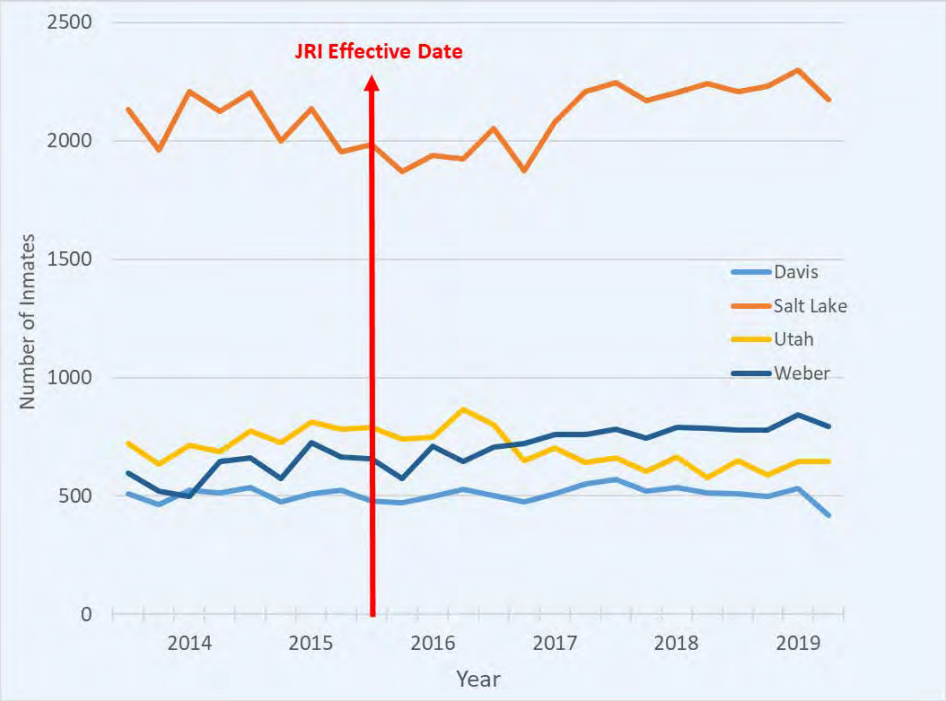
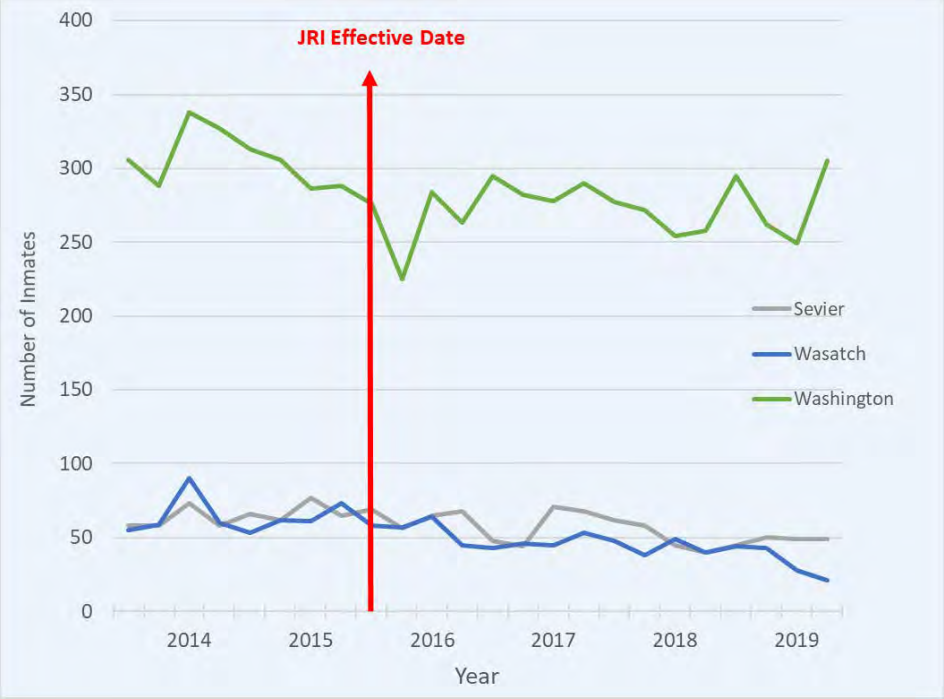
Local County Jail Inmate Populations Before and After JRI

Local Inmates Only – State, Federal and other County Inmates are Excluded

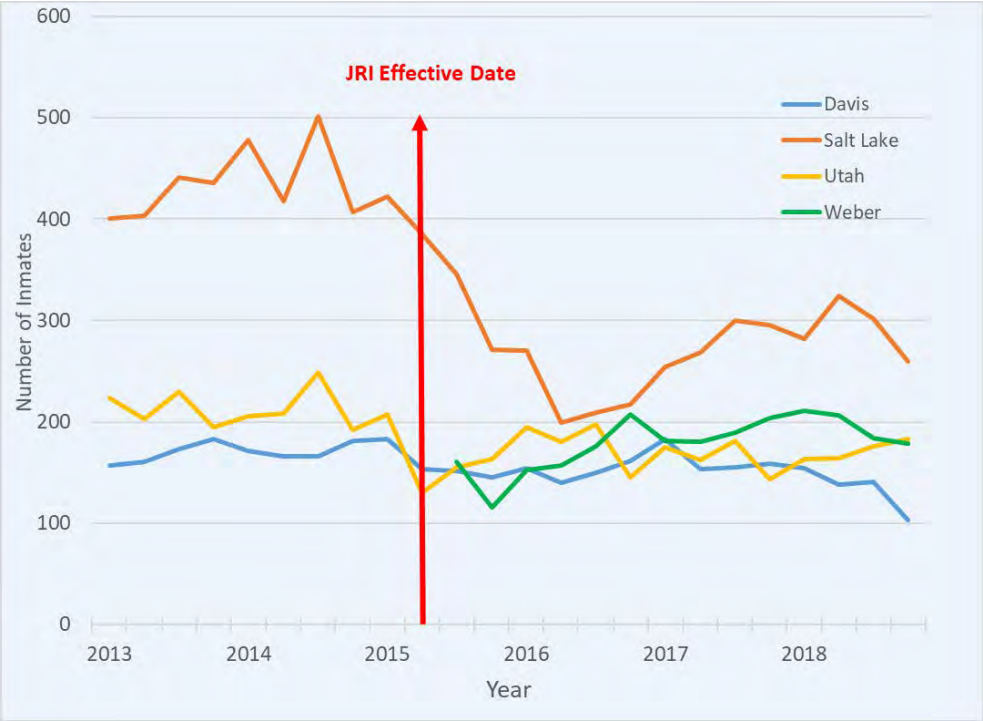


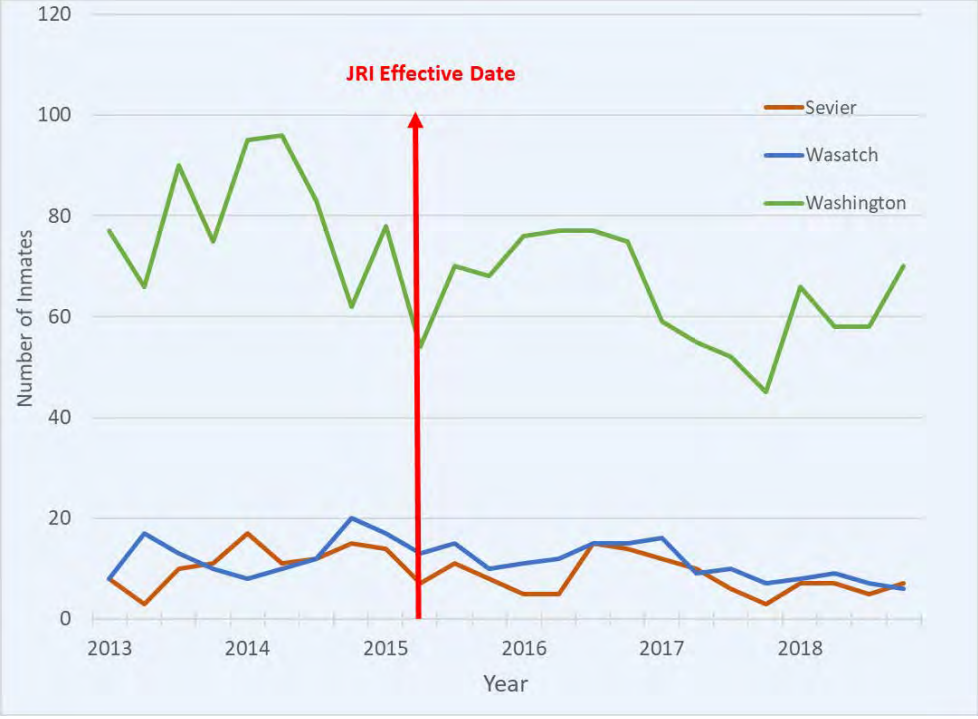


Since JRI took effect, some counties have seen rising inmate populations, while others have seen a decline in the number held in the county jail. The data excludes state prison inmates held in the county jail or inmates held in behalf of federal agencies.

Local Inmates Incarcerated in County Jail
For Possession of Illegal Drugs or Drug Paraphernalia

Local Inmates Only – No State, Federal and other County Inmates are included





The above charts show the changes over time in the number of low-level drug offenders incarcerated in various county jails. The data excludes state prison inmates held in the county jail or inmates held in behalf of federal agencies.

Appendix F

Type of Sentence Issued to Those Found Guilty of Possession of a Controlled Substance

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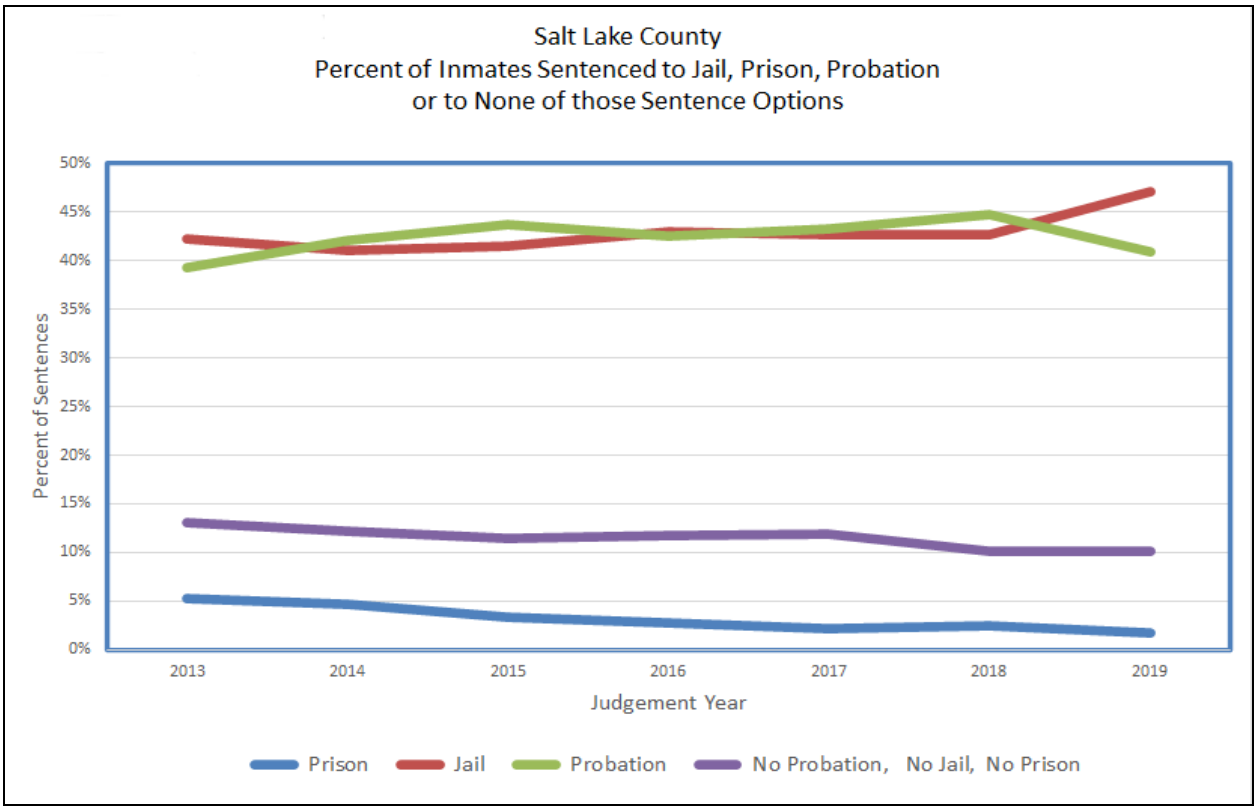
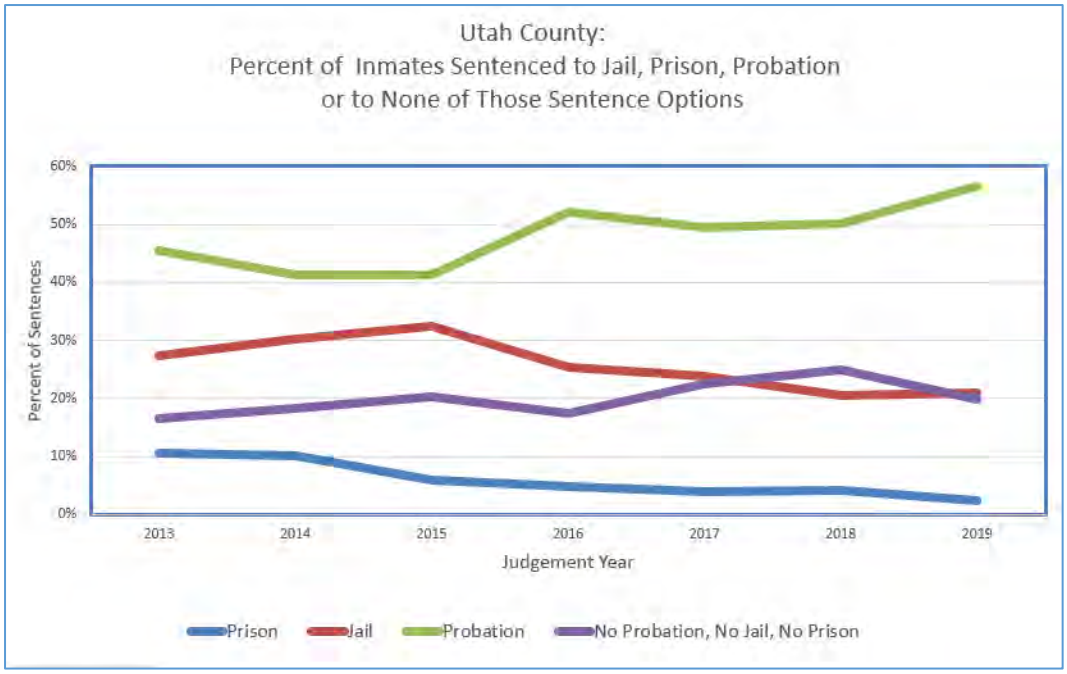
Type of Sentence Issued to Those Found Guilty of Possession of a Controlled Substance

Data shown describes the differences observed in how courts in different counties respond to illegal drug possession. Each chart shows the percent of offenders sentenced to probation, county jail, the state prison or who received no probation, jail or prison sentence at all. Of those sentenced to jail, 60 percent are placed on probation after their release. Of those sentenced to probation, 93 percent also had a suspended jail or prison sentence. Those with no jail, prison or probation typically had stayed sentence and were issued a fine. The data shown is for the five largest counties in Utah. For information for other counties, as well as by district court, court location and judge, see olag.utah.gov/olag-web/.

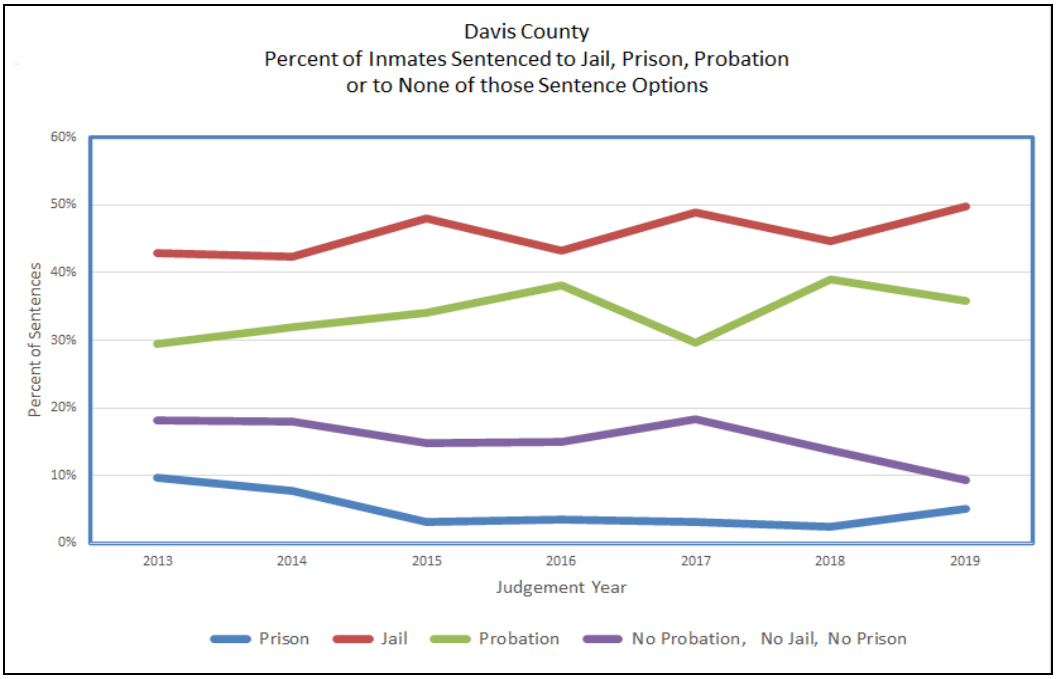


The figure shows that sentences issued to those found guilty of illegal drug possession in Salt Lake County have not changed much over the years. Offenders face an equal likelihood of receiving a jail sentence as a sentence to probation.

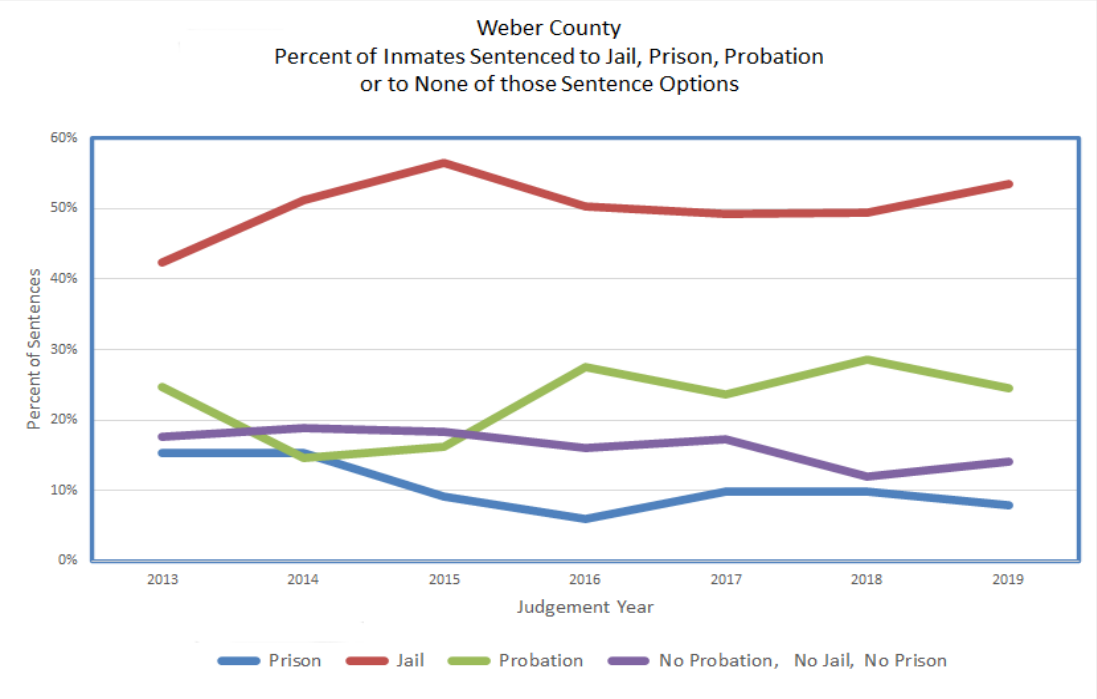
Source: The sentencing data shown was provided by the Administrative Office of the Courts. The data shown includes all cases filed in Utah courts from FY 2013 to FY 2019 in which drug possession was the most serious offense. The data for FY 2013 does not include cases filed in 2012 and adjudicated in 2013.



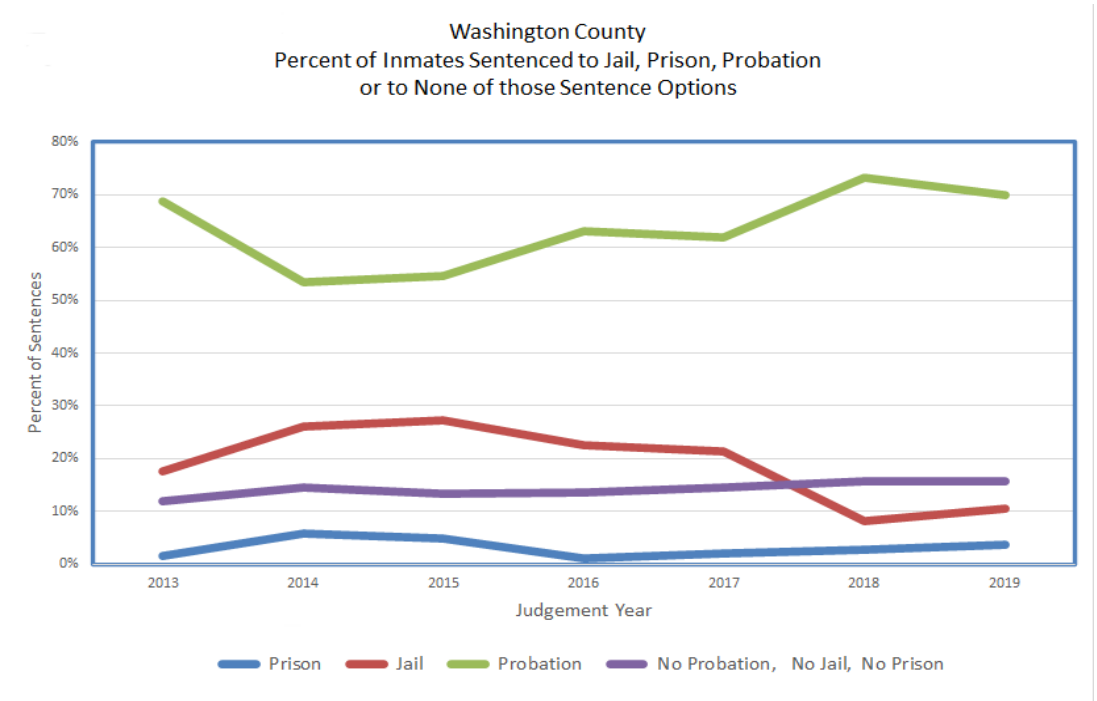
In Utah County, those found guilty of illegal drug possession are less likely to receive a jail sentence (red line) or a prison sentence (blue line) than in past years. Instead, more are sentenced to probation (green line).



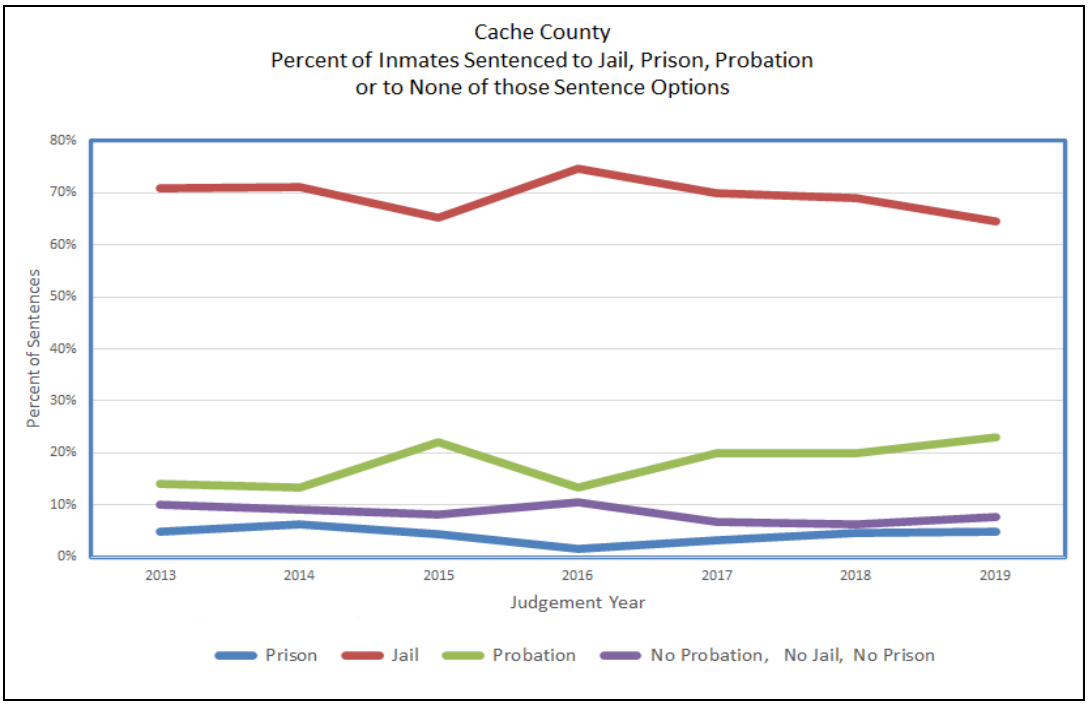
In Davis County, those found guilty of illegal drug possession are more likely to receive a jail sentence (red line) than probation (green line).



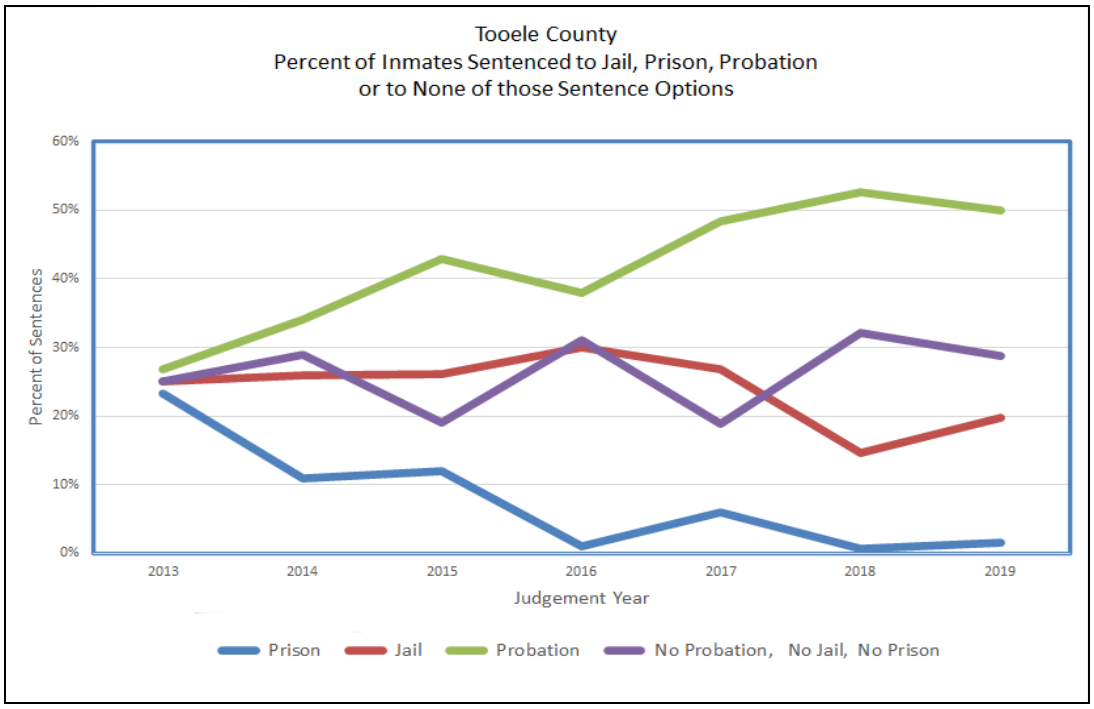
In Weber county, most found guilty of illegal drug possession are sentenced to jail (red line). Offenders are less likely than in other counties to receive a sentence to probation.



In contrast to Weber County, in Washington County few found guilty of illegal drug possession are sentenced to the county jail (red line) or to prison (blue line). Most are sentenced to probation.



In Cache County, most found guilty of illegal drug possession are sentenced to jail (red line). Offenders are less likely than in other counties to receive a sentence to probation.



In Tooele County, most found guilty of illegal drug possession are sentenced to probation (green line). The likelihood of a jail or prison sentence has declined in recent years.

Appendix G

Average Jail Sentence in Days

MA Drug Possession Charges Fiscal Years 2016 to 2019
By Selected Court Location and Judge

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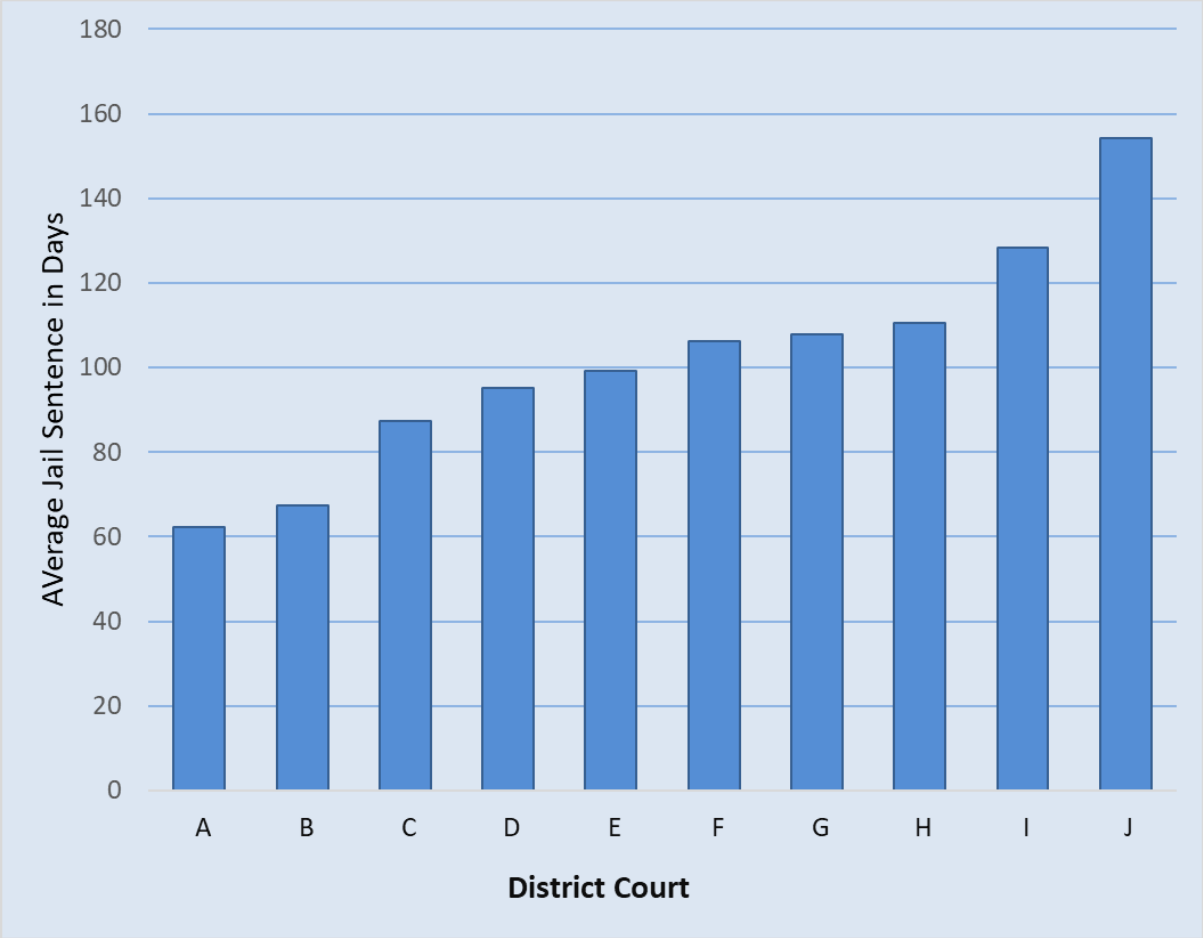
Average Jail Sentence for those Convicted on a Misdemeanor A Possession and Use of Illegal Drugs Charge

The sentencing data shows a large disparity in the average sentence issued at both the district court level and individual judges. The data shown is the average number of days sentenced for all those sentenced to jail on Misdemeanor A charges for Possession and Use of an Illegal Substance, 58-37-8(2)(A)(I) from 1/2016 to 3/20. Only districts and judges with more than 100 cases are shown. To avoid identifying the judges involved, judge names and some location names are not identified.



Source: Sentencing data provided by the Administrative Office of the Courts

Court Location	Judge	Average Jail Sentence in Days
Court A		
	Judge A	62
Court B		
	Judge T	69
Court C		
	Judge AF	102
Court D		
	Judge AH	78
	Judge AI	86
	Judge AJ	139
Court E		
	Judge B	76
	Judge C	83
	Judge D	84
	Judge E	105
	Judge F	106
Court F		
	Judge G	73
	Judge H	87
	Judge I	137
Court G		
	Judge U	82
	Judge V	84
	Judge W	95
	Judge X	109
	Judge Y	116
	Judge Z	121
	Judge AA	124
	Judge AB	133
	Judge AC	138
	Judge AD	146
	Judge AE	151
Court H		
	Judge Q	66
	Judge R	83
	Judge S	104
Court I		
	Judge J	108
	Judge K	111
	Judge L	126
	Judge M	132
	Judge N	133
	Judge O	139
	Judge P	171
Court J		
	Judge AG	143

County	Average of Jail Sentence in Days	Number of Cases
County J	51	48
Iron	66	192
Sevier	70	212
County I	72	7
County D	79	9
Wasatch	89	64
Washington	89	283
Grand	95	2
County A	95	23
Davis	98	804
Cache	101	531
Sanpete	110	87
County F	110	8
Salt Lake	112	2,925
Utah	113	676
Weber	130	1,064
Duchesne	139	73
County H	149	11
County B	153	77
Uintah	160	196
County G	163	13
County K	171	5
County E	183	16
Tooele	201	60
Carbon	324	46
County C	365	2

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Appendix H

Utah Substance Abuse Treatment Outcome Measures for All Clients

A Report by the
Division of Substance Abuse and Mental Health

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Process Measures

	Initial Admissions		Number of Clients Served		Percent of Admissions in Outpatient/IOP/ Residential/Detox		Number of Completed Treatment Episodes, excluding Detox		Median Days in Treatment		Percent of clients retained in treatment 90 or more days		Percent Completing Treatment Episode Successfully	
LSAA	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019
Bear River	602	680	972	1,111	85/15/0/0	88/12/0/0	530	606	117	94	60.2%	52.6%	50.9%	59.2%
Central Utah	353	384	521	574	97/2/1/0	88/11/0/1	323	376	141	121	69.7%	64.6%	70.6%	73.4%
Davis County	1,136	1,295	1,548	1,784	75/19/6/0	78/19/3/0	1,007	954	90	135.5	50.0%	61.1%	59.1%	54.9%
Four Corners	217	306	557	584	61/37/2/0	64/35/0/1	234	258	273.5	238.5	86.8%	85.3%	39.3%	39.9%
Northeastern	22	326	684	650	99/0/1/0	99/0/1/0	190	184	92.5	129.5	51.6%	60.9%	26.3%	31.0%
Salt Lake County	5,136	5,891	7,497	8,013	30/17/17/36	25/14/18/43	3,345	3,739	92	93	54.9%	58.9%	48.1%	45.6%
San Juan County	12	41	82	62	100/0/0/0	100/0/0/0	24	25	403	105	83.3%	56.0%	37.5%	36.0%
Southwest Center	336	402	596	624	53/28/19/0	48/28/24/0	334	307	239.5	220	73.1%	72.0%	47.9%	44.6%
Summit County	110	107	288	269	76/24/0/0	61/37/2/0	128	81	156	142	72.7%	64.2%	60.9%	51.9%
Tooele County	236	256	464	549	55/44/1/0	64/35/1/0	163	240	132	155.5	62.6%	67.9%	25.2%	37.1%
Utah County	755	809	1,229	1,135	33/27/21/18	33/27/25/15	301	706	155	119	72.4%	60.8%	39.9%	46.3%
Wasatch County	204	164	277	260	81/17/2/0	80/16/4/0	171	165	64	77	39.8%	46.7%	63.7%	62.4%
Weber Human Services	1,059	1,112	1,757	1,695	73/22/5/0	72/19/10/0	1,118	1,133	134	126	61.8%	59.8%	41.2%	40.5%
State Average/Total	10,048	11,569	16,224	16,950	44/19/14/23	40/16/15/29	7,868	8,774	104	112	58.8%	59.6%	48.6%	47.8%
State Urban Average/Total	7,995	8,975	11,878	12,423	38/19/15/27	34/16/16/34	5,771	6,532	94	104	56.3%	63.4%	48.3%	46.2%
State Rural Average/Total	2,086	2,663	4,428	4,667	76/19/4/0	76/19/5/0	2,097	2,242	142	132	65.4%	60.6%	49.5%	52.4%
National Average/Benchmark														
Male	6,346	7,280	9,908	10,396	42/17/13/27	38/15/14/33	4,924	5,414	97	102	58.0%	59.3%	50.9%	49.3%
Female	3,702	4,289	6,316	6,554	48/23/14/14	44/20/15/20	2,944	3,360	120	129	60.0%	62.6%	44.8%	45.3%
Adolescents	605	622	1,002	902	72/20/8/0	77/15/8/0	653	563	103	106	56.4%	56.0%	42.4%	44.9%
DORA	545	549	852	852	54/27/13/6	53/28/14/5	422	501	168	167	58.4%	68.1%	51.4%	54.7%
Drug Court	1,151	1,235	2,246	2,220	41/31/24/4	36/30/28/6	920	1,120	247	261	71.2%	79.5%	47.1%	58.1%
Justice Involved	8,006	9,504	12,842	13,973	45/22/14/19	41/19/16/24	6,650	7,572	105	115	60.3%	62.3%	50.5%	50.2%
Heroin & Other Opiates Primary	3,134	3,506	4,898	5,321	39/20/17/23	40/17/18/25	2,164	2,423	93	125	55.4%	62.6%	40.2%	42.1%

Outcome Measures

	Increased Alcohol Abstinence - Percent increase in those reporting alcohol abstinence from admission to discharge		Increased Drug Abstinence - Percent increase in those reporting other drug abstinence from admission to discharge		Increase in Stable Housing - Percent increase in non-homeless clients admission to discharge		Increased Employment - Percent increase in those employed full/part time or student from admit to discharge		Decreased Criminal Justice Involvement - Percent decrease in number of clients arrested prior to admission vs. prior to discharge		Social Support Recovery - Percent increase in those using social recovery support		Tobacco Use Percent decrease in number of clients reporting tobacco use from admission to discharge	
LSAA	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019	FY2018	FY2019
Bear River	98.6%	85.8%	258.8%	251.5%	0.2%	0.2%	17.2%	18.4%	54.9%	58.2%	384.6%	114.8%	0.2%	8.5%
Central Utah	47.7%	31.1%	179.1%	121.6%	1.0%	2.0%	14.4%	11.0%	65.7%	68.2%	13.4%	42.3%	1.0%	1.3%
Davis County	25.3%	24.0%	157.0%	177.9%	0.3%	1.2%	15.8%	23.3%	59.1%	78.4%	21.9%	17.0%	-33.0%	-7.6%
Four Corners	31.8%	19.6%	121.6%	178.4%	3.6%	3.3%	36.1%	71.4%	59.3%	61.5%	57.7%	30.8%	-9.6%	7.8%
Northeastern	50.7%	40.6%	149.8%	148.0%	1.7%	4.0%	43.5%	38.2%	54.1%	59.0%	-54.8%	-48.6%	1.6%	-0.5%
Salt Lake County	15.2%	14.8%	92.1%	90.4%	12.8%	20.5%	26.4%	44.8%	53.2%	52.5%	66.5%	66.5%	12.8%	7.5%
San Juan County	63.8%	114.3%	56.8%	80.0%	0.0%	4.2%	16.6%	17.6%	60.0%	83.3%	-14.2%	294.7%	-13.3%	0.0%
Southwest Center	70.7%	88.0%	163.2%	459.8%	4.3%	4.4%	25.1%	27.7%	29.9%	35.2%	24.1%	29.1%	0.3%	-2.2%
Summit County	40.7%	36.2%	25.0%	27.7%	*	0.0%	-1.1%	5.0%	6.0%	0.0%	73.9%	100.0%	8.9%	-3.2%
Tooele County	11.8%	8.4%	58.2%	47.2%	0.0%	-0.4%	4.4%	0.0%	9.8%	11.3%	-12.2%	46.5%	8.7%	3.8%
Utah County	1.1%	4.6%	44.4%	55.6%	0.3%	5.6%	35.6%	37.1%	65.0%	55.2%	23.3%	5.9%	13.7%	6.1%
Wasatch County	40.0%	53.1%	151.2%	128.1%	0.6%	*	11.3%	9.6%	45.3%	56.7%	28.5%	19.8%	-6.7%	4.2%
Weber Human Services	56.3%	45.6%	375.4%	348.5%	3.7%	1.9%	29.4%	29.5%	62.8%	54.8%	5.5%	6.7%	-0.3%	-0.6%
State Average/Total	28.8%	24.5%	129.7%	123.6%	5.9%	9.1%	23.1%	30.6%	55.9%	61.1%	38.2%	37.7%	3.8%	4.2%
State Urban Average/Total	22.0%	18.8%	121.5%	113.9%	7.8%	12.1%	25.4%	36.6%	57.0%	62.4%	45.1%	39.9%	5.2%	4.3%
State Rural Average/Total	54.6%	47.1%	154.9%	154.9%	1.4%	1.7%	18.7%	20.3%	52.6%	57.7%	26.2%	29.8%	0.2%	4.0%
National Average/Benchmark	10.8%	10.5%	17.3%	19.7%	3.4%	2.8%	13.0%	14.5%	30.1%	35.7%	44.1%	36.4%		
Male	31.9%	28.0%	125.3%	115.8%	7.1%	10.2%	21.2%	27.5%	54.5%	61.8%	53.3%	41.4%	5.3%	5.1%
Female	23.9%	19.8%	139.0%	137.5%	4.2%	7.3%	27.0%	38.2%	58.1%	60.3%	21.7%	31.7%	1.0%	2.7%
Adolescents	26.2%	24.3%	178.5%	212.9%	-1.1%	-0.9%	0.1%	-3.0%	68.6%	59.9%	51.7%	5.3%	3.2%	-0.2%
DORA	30.7%	25.0%	168.1%	167.6%	1.5%	3.3%	17.8%	19.1%	71.1%	73.1%	64.1%	30.7%	-10.6%	-7.9%
Drug Court	26.1%	20.3%	205.7%	147.1%	6.3%	10.3%	71.0%	107.5%	68.9%	64.1%	39.2%	48.0%	4.3%	2.8%
Justice Involved	29.5%	24.9%	133.4%	125.0%	6.1%	9.5%	22.5%	31.9%	56.8%	62.9%	43.6%	39.1%	5.7%	4.8%

Heroin & Other Opiates Primary	**6.6%**	**4.9%**	**253.9%**	**184.1%**	**8.5%**	**13.1%**	**50.0%**	**69.8%**	**57.5%**	**55.1%**	**30.5%**	**34.3%**	**1.4%**	**3.0%**

Note: Outcomes exclude detox discharges
Salt Lake, Davis, Weber (Mogan is included in Weber County), and Utah Counties are reported as Urban. All other counties are reported as rural.

Green = 90% or greater of the National Average or meets/exceeds division standards.
Yellow = Greater than or equal to 75% to less than 90% of the National Average.
Red = Less than 75% of the National Average or not meeting division standards.

*** No one homeless at admission so no opportunity for change.**
**** No one reported at discharge.**
^ Unknown count too high (above 50%)
Decreased Use and Completing Modality Successfully are not national measures and are not scored.

State Total for Clients Served is an unduplicated client count across all modalitites and is not a sum of the clients served for the providers listed.
Final Discharges are reported by treatment episode.

Initial Admissions are the number of unduplicated non-transfer admissions to a treatment modality that occurred within the fiscal year. Clients served are an unduplicated count of clients served during the fiscal year. Due to a change in reporting procedures, The numbers on this chart may not be the same as reported in previous years.

Justice Involved includes DORA, Arrests, Compelled for Treatment, probation & parole, justice referrals and Drug Court

Calculations for SA Outcomes:

All outcomes are percent increase or decrease. Specific percentages are calculated as follows using FY final discharges, excluding detox-only clients. Percents at admission and discharge are calculated by dividing the number of clients reporting the outcome divided by the total number of discharged clients with valid, non-missing, data for that measure:

Abstinence (Percent Increase):
(Percent abstinent at discharge ***minus*** percent abstinent at admission) ***divided by*** percent abstinent at admission

Stable Housing (Percent Increase):
(Percent not homeless at discharge ***minus*** percent not homeless at admission) ***divided by*** percent not homeless at admission.

Employment/School (Percent Increase):
(Percent employed/student at discharge ***minus*** percent employed/student at admission) ***divided by*** percent employed/student at admission.

Criminal Justice (Percent Decrease):
(Percent arrested at 30-days prior to admission ***minus*** percent arrested 30-days prior to discharge) ***divided by*** percent arrested 30-days prior to admission.

Length of Stay:
Median length of stay calculated from admission date to date of last contact for those discharged in the fiscal year

Appendix I

Key JRI Quarterly Performance Measures Master Quarterly List

A Report by the Commission on Criminal and Juvenile Justice

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Key JRI Quarterly Performance Measures - Master Quarterly List (FY2017-20)

Source	Measure	FY2017 Q1	Q2	Q3	Q4	AvgQ	Annual	FY2018 Q1	Q2	Q3	Q4	AvgQ	Annual	FY2019 Q1	Q2	Q3	Q4	AvgQ	Annual	FY2020 Q1	Q2	Q3	Q4	AvgQ	Annual	Base AvgQ	JRI AvgQ	%ΔBase*	Trend
DOC-DIO	**Prison Population (End of Quarter Snapshot)**	6,250	6,209	6,294	6,339	6,273.0		6,353	6,455	6,466	6,501	6,443.8		6,619	6,686	6,789	6,767	6,715.3		6,816	6,698	6,413		4,981.8		6,933.0	6,464.5	-6.8%	
	% Nonviolent	33.2%	31.8%	31.9%	32.2%	32.3%		32.0%	32.7%	33.2%	33.7%	32.9%		34.7%	35.0%	35.1%	34.3%	34.8%		34.2%	33.6%	32.7%		25.1%		40.3%	33.7%	-16.3%	
	% Drug Possession Only	2.7%	2.3%	2.1%	2.1%	2.3%		2.1%	2.2%	2.5%	2.3%	2.3%		2.3%	2.0%	2.2%	2.0%	2.1%		2.0%	1.9%	1.8%		1.4%		4.7%	2.5%	-47.3%	
	Prison Population (Average Daily Population)	6,258	6,244	6,214	6,322	6,259.5	6,260	6,352	6,375	6,465	6,476	6,417.0	6,417	6,584	6,638	6,713	6,783	6,679.5	6,679					0.0		4,833.4	6,452.1	33.5%	
			87.2%																			89%							
	Estimated Growth in Prison Population w/o JRI																												
DOC-DIO	**Prison Admissions**	895	808	995	979	919.3	3,677	952	942	947	948	947.3	3,789	948	903	1,019	1,039	977.3	3,909	1,059	936	976		742.8	2,971	764.6	905.9	18.5%	
	New Court Commitments (NCC)	195	182	198	197	193.0	772	168	196	191	201	189.0	756	171	183	190	213	189.3	757	184	171	168		130.8	523	238.4	187.7	-21.2%	
	From Parole	494	420	546	519	494.8	1,979	506	485	481	460	483.0	1,932	528	499	566	569	540.5	2,162	634	538	596		442.0	1,768	323.7	485.9	50.1%	
	% Parole ADP	13.2%	11.1%	14.2%	13.6%	13.1%	52.2%	13.1%	12.2%	12.0%	11.1%	12.1%	48.3%	12.9%	12.1%	13.7%	13.6%	13.1%	52.3%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	42.8%	13.5%	12.4%	-7.7%	
	From Probation	205	204	251	263	230.8	923	278	261	274	287	275.0	1,100	249	220	261	255	246.3	985	241	227	212		170.0	680	200.8	231.2	15.1%	
	%Probation ADP	1.6%	1.6%	2.0%	2.1%	1.8%	7.3%	2.2%	2.0%	2.1%	2.2%	2.1%	8.4%	1.9%	1.7%	2.0%	1.9%	1.9%	7.5%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	5.2%	2.4%	1.8%	-25.4%	
	NCC Only - Most Serious Offense:																												
	All Drug Offenses	27	17	36	39	29.8	119	30	24	31	34	39.7	119	27	27	23	26	25.8	103	22	27	14	0	15.8	63	52.9	28.3	-46.6%	
	Drug Possession Only (DPO)	6	6	6	8	6.5	26	8	7	6	7	7.0	28	9	3	7	3	5.5	22	5	7	6		4.5	18	23.8	6.0	-74.8%	
	Other Drug	21	11	30	31	23.3	93	22	17	25	27	22.8	91	18	24	16	23	20.3	81	17	20	8		11.3	45	29.1	22.3	-23.4%	
	Property	40	44	41	29	38.5	154	31	45	41	38	38.8	155	34	38	33	29	33.5	134	36	30	25		22.8	91	63.7	37.5	-41.2%	
	Nonviolent	93	80	97	89	89.8	359	86	91	89	100	91.5	366	85	88	80	81	83.5	334	84	77	58		54.8	219	144.4	87.5	-39.4%	
	Violent	101	102	101	108	103.0	412	82	105	102	101	97.5	390	86	95	110	132	105.8	423	100	94	110		76.0	304	93.8	100.1	6.7%	
	%Nonviolent	47.7%	44.0%	49.0%	45.2%	46.5%	46.5%	51.2%	46.4%	46.6%	49.8%	48.4%	48.4%	49.7%	48.1%	42.1%	38.0%	44.1%	44.1%	45.7%	45.0%	34.5%	#DIV/0!	41.9%	41.9%				
DOC-DIO	**% CAP Initiated w/in 120 Days of Admission**	98.7%	98.1%	98.9%	98.3%	98.5%	98.5%	98.4%	98.1%	97.1%	98.2%	98.0%	98.0%													95.3%	98.1%	2.9%	
DOC/BOPP	**Earned Time Credits (Prison)**																												
	Total Offenders Receiving Mandatory Time Cuts	112	157	145	155	142.3	569	126	137	95	131	122.3	489	105	103	139	160	126.8	507	137	162			74.8	299		147.4		
	Mandatory Credit (Total Days)	12,605	16,850	15,322	16,277	15,263.5	61,054	11,102	12,096	7,139	11,050	10,346.8	41,387	9,814	8,071	12,131	13,192	10,802.0	43,208	11,666	12,746			6,103.0	24,412		14,403.3		
	Mandatory Credit (Mean Days)	112.5	107.3	105.7	105.0	107.3	107.3	88.1	88.3	75.1	84.4	84.6	84.6	93.5	78.4	87.3	82.5	85.2	85.2	85.2	78.7	#DIV/0!	#DIV/0!	81.6	81.6		97.7		
	Total Offenders Receiving Discretionary Time Cuts	90	62	58	56	66.5	266	37	39	38	43	39.3	157	27	39	24	46	34.0	136	23	32			13.8	55		48.3		
	Discretionary Credit (Total Days)	13,880	5,009	4,454	4,087	6,857.5	27,430	2,169	2,698	4,004	5,407	3,569.5	14,278	3,700	3,263	2,512	3,956	3,357.8	13,431	1,994	3,997			1,497.8	5,991		4,575.3		
	Discretionary Credit (Mean Days)	154.2	80.8	76.8	73.0	103.1	103.1	58.6	69.2	105.4	125.7	90.9	90.9	137.0	83.7	104.7	86.0	98.8	98.8	86.7	124.9	#DIV/0!	#DIV/0!	108.9	108.9		94.8		
	Offenders Receiving Forfeitures	1	4	1	4	2.5	10	5	6	2	2	3.8	15	5	2	7	3	4.3	17	5	4			2.3	9		3.4		
	Total Incarceration Days Cut Less Forfeitures	26,359	21,481	19,762	19,923	21,881.3	87,525	12,767	14,292	10,954	16,205	13,554.5	54,218	12,968	11,271	13,985	16,286	13,627.5	54,510	13,401	16,358			7,439.8	29,759	16,980.3	18,611.5	9.6%	
DOC-DIO	**Prison Releases**	897	848	910	938	898.3	3,593	936	840	938	911	906.3	3,625	840	828	923	1,068	914.8	3,659	999	1,051	1,264		828.5	3,314	787.2	900.5	14.4%	
	Released to Parole	668	672	719	758	704.3	2,817	777	674	761	767	744.8	2,979	677	677	785	889	757.0	3,028	844	870	1,068		695.5	2,782	498.8	708.7	42.1%	
	Discharged/Expired (No Parole)	222	170	185	170	186.8	747	157	155	172	136	155.0	620	154	145	132	172	150.8	603	145	173	192		127.5	510	280.3	184.6	-34.1%	
	Net (Admissions - Releases)	-2	-40	85	41	21.0	84	16	102	9	37	41.0	164	108	75	96	-29	62.5	250	60	-115	-288	0	-85.8	-343	-22.5	5.4	-124.0%	
DOC-AP&P	**Supervison Population (End of Quarter Snapshot)**	16,358	16,578	16,512	16,426	16,468.5		16,782	17,013	17,179	17,346	17,080.0		17,288	17,304	17,328	17,177	17,274.3		16,909	16,699	16,822		12,607.5		15,564.9	16,825.5	8.1%	
	% High/Intensive Risk	52.3%	52.8%	53.1%	53.7%	53.0%		53.2%	52.8%	53.3%	53.9%	53.3%		53.9%	55.0%	55.1%	55.5%	54.9%		56.4%	58.1%	59.3%		43.5%		41.3%	52.9%	28.2%	
	Probation	12,634	12,748	12,755	12,632	12,692.3		12,868	13,054	13,136	13,209	13,066.8		13,220	13,249	13,226	12,962	13,164.3		12,644	12,435	12,326		9,351.3		12,178.4	12,924.5	6.1%	
	% Low Risk	12.1%	12.4%	12.3%	12.0%	12.2%		12.3%	12.6%	12.3%	11.8%	12.3%		11.9%	11.1%	11.2%	10.6%	11.2%		9.9%	9.3%	8.9%		7.0%		20.0%	12.1%	-39.4%	
	Felony	9,378	9,277	9,208	8,984	9,211.8		8,962	8,956	8,812	8,836	8,891.5		8,780	8,776	8,676	8,460	8,673.0		8,274	8,139	8,112		6,131.3		9,289.9	9,068.1	-2.4%	
	Class A	2,534	2,736	2,829	2,911	2,752.5		3,146	3,301	3,464	3,507	3,354.5		3,538	3,545	3,602	3,575	3,565.0		3,433	3,316	3,233		2,495.5		2,188.3	3,055.3	39.6%	
	Parole	3,724	3,830	3,757	3,794	3,776.3		3,914	3,959	4,043	4,137	4,013.3		4,068	4,055	4,102	4,215	4,110.0		4,265	4,264	4,496		3,256.3		3,386.5	3,900.9	15.2%	
	Supervision Population (Average Daily Population)	16,385	16,507	16,631	16,501	16,506.0	16,506	16,631	17,002	17,132	17,318	17,020.8	17,021	17,311	17,332	17,413	17,287	17,335.8	17,336					0.0	17,336	10,786.8	16,844.4	56.2%	
	Probation	12,650	12,720	12,796	12,697	12,715.8	12,716	12,757	13,022	13,110	13,192	13,020.3	13,020	13,215	13,223	13,283	13,088	13,202.3	13,202					0.0	13,202	8,380.8	12,933.7	54.3%	
	Parole	3,735	3,787	3,835	3,804	3,790.3	3,790	3,874	3,980	4,022	4,126	4,000.5	4,001	4,096	4,109	4,130	4,199	4,133.5	4,134					0.0	4,134	2,406.1	3,910.7	62.5%	
DOC-AP&P	**AP&P Agent Average Caseload**	62.1	59.8	60.8	61.4	61.0	61.0	62.1	61.4	60.2	62.1	61.5	61.5													60.2	61.4	2.0%	
DOC-AP&P	**Supervison Starts**	2,163	2,174	2,416	2,487	2,310.0	9,240	2,544	2,411	2,583	2,590	2,532.0	10,128	2,336	2,438	2,633	2,651	2,514.5	10,058	2,613	2,469	2,680		1,940.5	7,762	2,102.4	2,386.7	13.5%	
	Probation	1,447	1,453	1,649	1,660	1,552.3	6,209	1,696	1,677	1,764	1,773	1,727.5	6,910	1,607	1,698	1,778	1,681	1,691.0	6,764	1,703	1,563	1,562		1,207.0	4,828	1,534.8	1,619.1	5.5%	
	Felony	850	799	934	885	867.0	3,468	871	873	879	956	894.8	3,579	864	891	936	892	895.8	3,583	917	841	899		664.3	2,657	1,031.9	888.1	-13.9%	
	Class A	471	544	612	651	569.5	2,278	685	657	727	665	683.5	2,734	593	645	677	654	642.3	2,569	604	534	507		411.3	1,645	397.8	597.0	50.1%	
	Parole	716	721	767	827	757.8	3,031	848	734	819	817	804.5	3,218	729	740	855	970	823.5	3,294	910	906	1,118		733.5	2,934	567.6	767.6	35.2%	
DOC-AP&P	**% CAP Initiated w/in 90 Days of Prob/Par Start**	64.9%	64.6%	69.6%	71.8%	67.8%	67.8%	73.8%	73.6%	76.7%	72.5%	74.2%	74.2%													42.9%	68.6%	59.7%	
DOC-AP&P	**Successful Supervision Discharges**																												
	Probation	793	646	875	911	806.3	3,225	675	722	862	913	793.0	3,172	932	933	1,085	1,177	1,031.8	4,127	1,262	1,102	1,106		867.5	3,470	869.8	887.2	2.0%	
	Rate	55.6%	50.7%	55.5%	52.4%	53.6%	53.6%	48.1%	50.0%	53.3%	55.3%	51.7%	51.9%	58.7%	60.5%	61.4%	62.0%	60.7%	60.8%	64.0%	65.3%	68.3%		49.4%		54.3%	57.0%	5.0%	
	Parole	146	130	209	178	165.8	663	153	142	172	191	164.5	658	209	188	160	197	188.5	754	204	236	197		159.3	637	155.9	170.4	9.3%	
	Rate	22.3%	22.8%	26.6%	25.2%	24.4%	24.4%	23.0%	22.2%	25.7%	29.0%	25.0%	25.0%	28.2%	26.8%	21.9%	25.5%	25.6%	25.6%	24.2%	30.2%	24.7%		19.8%		27.7%	25.5%	-7.9%	
DOC-AP&P	**Supervision Matrix Incentives & Sanctions (RIM)**																												
	Total Offenders with Incentives and/or Sanctions						10,833																						
	Total Offenders Receiving >= 1 Incentive						3,674																						
	Total Incentives Awarded		4,270	6,440	4,353		15,063	3,688	2,927	3,889	6,326	4,207.5	16,830	5,994	5,781	5,391	5,125	5,572.8	22,291	5,108	4,410	5,905		3,855.8	15,423				
	Mean Incentives/Offender Receiving						4.10																						
	Offenders Receiving Incentive-No Sanction						1,624																						
	Total Offenders Receiving >= 1 Sanction						9,209																						
	Total Sanction Responses		4,484	11,226	10,615		26,325	9,668	11,593	10,539	9,503	10,325.8	41,303	9,793	9,665	9,115	8,249	9,205.5	36,822	7,597	6,679	6,791		5,266.8	21,067				
	Mean Sanctions/Offender Receiving						2.86																						
	Offenders Receiving Sanction-No Incentive						7,159																						
	Offenders Receiving Mix of Incentives AND Sanctions						2,050																						
	Early Termination Incentives Granted		93	239	166		498	161	163	187	197	177.0	708																
	Jail Sanctions Imposed (1-3 Days)		99	178	229		506	161	223	231	241	214.0	856																
DOC-AP&P	**Board Warrants Issued for Parole Violations**	518	388	554	507	491.8	1,967	571	561	518	543	548.3	2,193	581	589	570	601	585.3	2,341					0.0	0	378.1	497.2	31.5%	
	% of parole population (ADP)	13.9%	10.2%	14.4%	13.3%	13.0%	51.9%	14.7%	14.1%	12.9%	13.2%	13.7%	54.8%	14.2%	14.3%	13.8%	14.3%	14.2%	56.6%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	0.0%	15.7%	12.7%	-19.1%	
	Average Offenders on Fugitive Status (Probation/Parole)	1,815	1,945	1,943	1,893	1,899	1,899	1,874	1,957	2,006	1,952	1,947	1,947													1,300.7	2,290.4	76.1%	
	% of overall supervised population	11.1%	11.8%	11.7%	11.5%	11.5%	11.5%	11.3%	11.5%	11.7%	11.3%	11.4%	11.5%													8.3%	11.2%	34.8%	
						JRI2						JRI3						JRI4						JRI5		B	JRI		

Key JRI Quarterly Performance Measures - Master Quarterly List (FY2017-20)

Source	Measure		FY2017 Q1	Q2	Q3	Q4	AvgQ	Annual	FY2018 Q1#	Q2	Q3	Q4	AvgQ	Annual	FY2019 Q1	Q2	Q3	Q4	AvgQ	Annual	FY2020 Q1	Q2	Q3	Q4	AvgQ	Annual	Base AvgQ	JRI AvgQ	%ΔBase*	Trend
Courts	Case Filings	Total Non-Traffic	28,132	25,940	26,567	28,132	27,192.8	108,771	30,327	26,862	27,331	28,181	28,175.3	112,701	28,321	24,590	24,895	27,408	26,303.5	105,214	28,031	25,200	25,166		19,599.3	78,397	18,997.2	26,892.2	41.6%	
		District Court	10,154	9,488	10,507	10,498	10,161.8	40,647	10,487	10,101	11,142	10,538	10,567.0	42,268	10,566	9,792	10,139	10,462	10,239.8	40,959	10,617	9,814	9,940		7,592.8	30,371	6,363.0	10,174.2	59.9%	
		Justice Court	18,683	16,452	16,060	17,634	17,207.3	68,829	19,840	16,761	16,189	17,643	17,608.3	70,433	17,755	14,798	14,756	16,946	16,063.8	64,255	17,414	15,386	15,226		12,006.5	48,026	12,634.2	16,757.2	32.6%	
		Total Felony Cases																			5,505	5,310	5,225							
		%Non-Traffic																			19.6%	21.1%	20.8%	#DIV/0!						
		Overall Drug	7,960	8,015	9,119	9,326	8,605.0	34,420	9,850	9,405	10,112	9,634	9,750.3	39,001	9,328	8,000	8,089	8,323	8,435.0	33,740	8,126	7,724	7,842		5,923.0	23,692	4,531.5	8,566.4	89.0%	
		%Non-Traffic	28.3%	30.9%	34.3%	33.2%	31.6%	31.6%	32.5%	35.0%	37.0%	34.2%	34.6%	34.6%	32.9%	32.5%	32.5%	30.4%	32.1%	32.1%	29.0%	30.7%	31.2%	#DIV/0!	30.2%	30.2%	23.9%	31.9%	33.5%	
		Drug-Free Zone	68	58	90	84	75.0	300	81	39	81	55	64.0	256	61	81	44	46	58.0	232	47	23	27		24.3	97	782.3	61.5	-92.1%	
		Drug Possession Only^	5,088	5,239	5,945	6,193	5,616.3	22,465	6,322	6,236	6,852	6,388	6,449.5	25,798	6,260	5,488	5,479	5,735	5,740.5	22,962	5,548	5,367	5,504		4,104.8	16,419	2,942.2	5,712.0	94.1%	
		Felony	722	699	817	861	774.8	3,099	830	829	981	942	895.5	3,582	936	849	911	958	913.5	3,654	981	894	884		689.8	2,759	1,250.0	831.8	-33.5%	
		%Felony	14.2%	13.3%	13.7%	13.9%	13.8%	13.8%	13.1%	13.3%	14.3%	14.7%	13.9%	13.9%	15.0%	15.5%	16.6%	16.7%	15.9%	15.9%	17.7%	16.7%	16.1%	#DIV/0!	16.8%	16.8%	42.5%	14.6%	-65.7%	
		MA	1,792	1,784	1,934	2,063	1,893.3	7,573	2,165	1,980	2,387	2,119	2,162.8	8,651	2,192	1,787	1,973	2,014	1,991.5	7,966	1,970	1,695	1,766		1,357.8	5,431	277.7	1,949.7	602.1%	
		%MA	35.2%	34.1%	32.5%	33.3%	33.7%	33.7%	34.2%	31.8%	34.8%	33.2%	33.5%	33.5%	35.0%	32.6%	36.0%	35.1%	34.7%	34.7%	35.5%	31.6%	32.1%	#DIV/0!	33.1%	33.1%	9.4%	34.1%	261.6%	
		MB	2,546	2,736	3,176	3,262	2,930.0	11,720	3,312	3,422	3,471	3,312	3,379.3	13,517	3,122	2,848	2,590	2,759	2,829.8	11,319	2,590	2,773	2,851		2,053.5	8,214	1,405.4	2,918.4	107.7%	
		%MB	50.0%	52.2%	53.4%	52.7%	52.2%	52.2%	52.4%	54.9%	50.7%	51.8%	52.4%	52.4%	49.9%	51.9%	47.3%	48.1%	49.3%	49.3%	46.7%	51.7%	51.8%	#DIV/0!	50.0%	50.0%	47.8%	51.1%	7.0%	
		Drug Paraphernalia^	2,066	2,090	2,395	2,371	2,230.5	8,922	2,853	2,388	2,406	2,436	2,520.8	10,083	2,429	1,952	1,938	1,955	2,068.5	8,274	2,003	1,747	1,737		1,371.8	5,487	1,615.2	2,143.4	32.7%	
		Drug Possession w/Intent^	489	440	496	466	472.8	1,891	420	520	566	540	511.5	2,046	421	401	434	429	421.3	1,685	395	443	431		317.3	1,269	284.8	464.2	63.0%	
		Drug Distribution/Manufacturing^	312	238	280	294	281.0	1,124	249	251	280	263	260.8	1,043	213	156	229	196	198.5	794	173	158	166		124.3	497	182.5	240.7	31.8%	
		Person/Sex	5,096	4,524	4,531	4,675	4,706.5	18,826	5,237	4,463	4,635	4,865	4,800.0	19,200	5,023	4,691	4,716	5,086	4,879.0	19,516	5,429	4,890	4,840		3,789.8	15,159	3,134.4	4,804.9	53.3%	
		Felony	1,312	1,153	1,279	1,282	1,256.5	5,026	1,319	1,241	1,296	1,348	1,301.0	5,204	1,398	1,373	1,462	1,474	1,426.8	5,707	1,685	1,539	1,448		1,168.0	4,672	678.7	1,341.1	97.6%	
		Property	6,889	6,804	7,034	7,068	6,948.8	27,795	7,151	6,883	7,083	6,648	6,941.3	27,765	6,748	6,395	6,732	6,636	6,627.8	26,511	6,390	6,307	6,307		4,751.0	19,004	4,589.2	6,778.9	47.7%	
		Felony	2,210	2,080	2,494	2,147	2,232.8	8,931	2,032	1,989	2,259	1,940	2,055.0	8,220	1,945	1,896	1,897	1,854	1,898.0	7,592	1,790	1,862	1,822		1,368.5	5,474	1,378.5	2,024.7	46.9%	
		Traffic-General	89,479	79,632	90,664	96,148	88,980.8	355,923	92,095	88,545	94,784	91,638	91,765.5	367,062	86,775	83,061	93,108	97,687	90,157.8	360,631	97,810	90,109	85,836		68,438.8	273,755	69,842.5	90,287.2	29.3%	
		MB	2,111	1,851	2,029	2,081	2,018.0	8,072	2,104	2,011	1,792	1,718	1,906.3	7,625	1,691	1,493	1,699	1,902	1,696.3	6,785	2,152	2,022	1,972		1,536.5	6,146	6,980.6	1,940.7	-72.2%	
		MC	13,902	12,959	14,390	14,295	13,886.5	55,546	13,952	13,620	14,621	13,383	13,894.0	55,576	13,520	12,445	13,068	12,589	12,905.5	51,622	12,531	11,890	11,532		8,988.3	35,953	55,635.5	18,896.9	-66.0%	
		IN	73,230	64,627	73,988	79,536	72,845.3	291,381	75,821	72,694	78,099	76,304	75,729.5	302,918	71,303	68,880	78,078	82,977	75,309.5	301,238	82,913	75,979	72,068		57,740.0	230,960	7,059.9	69,217.3	880.4%	
DPS-BCI	Arresting Incidents	Total	24,110	22,899	24,475	22,891	23,593.8	94,375	25,692	20,400	21,701	21,618	22,352.8	89,411	23,092	20,360	20,757	22,235	21,611.0	86,444	23,739	21,431			11,292.5	45,170	16,592.8	22,798.3	37.4%	
		Rate (per 100,000 pop)						3,093.0						2,882.5						2,734.6										
		Felony	5,899	5,684	6,317	6,682	6,145.5	24,582	6,715	5,599	5,805	5,886	6,001.3	24,005	6,002	5,226	5,349	5,681	5,564.5	22,258	5,912	5,366			2,819.5	11,278	4,371.8	5,807.1	32.8%	
		Drug	7,634	7,376	8,589	8,749	8,087.0	32,348	10,256	8,457	9,052	8,851	9,154.0	36,616	9,135	7,674	7,778	8,203	8,197.5	32,790	8,582	7,785			4,091.8	16,367	4,708.6	8,369.2	77.7%	
		Rate						1,060.2						1,180.5						1,037.3										
		Felony	1,758	1,617	1,776	1,899	1,762.5	7,050	1,922	1,623	1,687	1,689	1,730.3	6,921	1,676	1,313	1,302	1,486	1,444.3	5,777	1,483	1,399			720.5	2,882	1,977.6	1,670.9	-15.5%	
		Property	6,754	6,655	6,853	7,013	6,818.8	27,275	7,914	6,222	6,445	6,393	6,743.5	26,974	6,892	6,122	6,310	6,612	6,484.0	25,936	6,745	6,289			3,258.5	13,034	5,226.0	6,847.5	31.0%	
		Rate						893.9						869.6						820.5										
		Felony	2,241	2,272	2,580	2,878	2,492.8	9,971	2,794	2,219	2,281	2,245	2,384.8	9,539	2,189	1,981	1,981	2,053	2,051.0	8,204	2,066	1,954			1,005.0	4,020	1,494.8	2,261.2	51.3%	
		Person/Sex	4,546	3,925	3,986	4,188	4,161.3	16,645	4,833	3,875	3,995	4,232	4,233.8	16,935	4,521	3,971	4,114	4,483	4,272.3	17,089	4,851	4,332			2,295.8	9,183	2,903.3	4,199.5	44.6%	
		Rate						545.5						546.0						540.6										
		Felony	1,380	1,242	1,268	1,369	1,314.8	5,259	1,410	1,250	1,262	1,346	1,317.0	5,268	1,406	1,250	1,380	1,450	1,371.5	5,486	1,599	1,392			747.8	2,991	722.2	1,299.2	79.9%	
		Drug-Related Citations	5,126	5,588	6,646	6,708	6,017.0	24,068	10,030	7,866	7,164	6,792	7,963.0	31,852	8,586	5,706	5,513	5,796	6,400.3	25,601	5,751	5,594			2,836.3	11,345	2,615.2	6,468.1	147.3%	
		Rate						788.8						1,026.9						809.9										
DSAMH	Admissions																													
		Justice-Involved SA Total	2,801	2,735	2,640	3,352	2,882.0	11,528	3,025	2,956			3,638.0	14,552													2,411.6	3,013.5	25.0%	
		Justice-Involved MH Total																												
		Drug Court	501	480	567	533	520.3	2,081	582	455			669.5	2,678					567.5	2,270							472.4	557.7	18.1%	
	Clients Served																													
		Justice-Involved SA Total	5,032	5,456	6,213	6,880		11,546	6,658	7,611				12,842																
		Justice-Involved MH Total						8,806	1,687	1,565																				
		Drug Court	873	985	1,192	1,391		2,032	1,327	1,503				2,299																
	Successful Completion of Treatment Episode (%)																													
		Justice-Involved SA Total					47.3%	47.3%					46.7%	46.7%																
		Drug Court					46.9%	46.9%					42.1%	42.1%																
	Number of Certified Treatment Sites (N)																													
		Public (cumulative)						38																						
		Private (cumulative)						115																						
		Justice-Involved Served by Certified Providers																												
		% of Justice-Involved Total																												
Counties/DOC	County Jail Reimbursement Days (COP)		94,142	95,269	91,584	95,099	94,023.5	376,094	86,722	82,972	76,388	76,949	80,757.8	323,031													104,755.1	96,915.1	-7.5%	
	County Jail MA Days (Non-Reimbursed)																													
	County Jail Contracting (Average Daily Pop)		1,593	1,590	1,561	1,496	1,560.2	1,560																			1,602.7	1,582.4	-1.3%	
CCJJ/Counties	County Jail Offender Screening (CPIP)																													
		Total Completed Screens	9,005	8,179	9,009	9,604	8,949.3	35,797	11,179	9,860	9,974		15,506.5	31,013														9,155.8		
		%Low Risk (LSIR-SV)	34.1%	33.1%	33.1%	33.8%	33.5%	33.5%	30.2%	32.6%	32.4%		31.7%															32.9%		
		%Mod Risk (LSIR-SV)	49.6%	48.9%	48.1%	47.2%	48.5%	48.5%	49.0%	48.1%	49.3%		48.8%															48.7%		
		%High Risk (LSIR-SV)	16.4%	18.0%	18.7%	19.0%	18.0%	18.0%	20.8%	19.3%	18.3%		19.5%															18.4%		
		%Substance Use Referrral (TCUD)	46.8%	49.1%	50.2%	50.5%	49.2%	49.2%	54.2%	51.9%	52.4%		52.8%															51.6%		
		%Psych Assessment Referrral (CMHS)	39.0%	41.4%	39.2%	40.2%	40.0%	40.0%	41.2%	39.5%	38.3%		39.6%															40.1%		
							JRI2						JRI3						JRI4						JRI5		B	JRI		

*Comparisons b *Comparisons between JRI and baseline use the quarterly average (AvgQ). Exceptions to this include measures where only annual numbers are available (e.g., arrest rates). Additionally, the AvgQ for FY16 only includes the JRI quarters (Q2-4).

**Numbers are **Numbers are not available prior to JRI implementation (new data/program)

Operation Rio # Operation Rio Grande in Salt Lake City started in August 2017 and accounts for much of the significant increase in arrests and case filings in Q1 of FY2018 (highlighted in red font), as well as increased jail screenings (including more high risk offenders and substance use/mental health issues)

^ For the drug crime categories, the numbers displayed reflect the number of cases where the given category was the highest drug charge in the case. The drug categories are ranked by severity, from highest to lowest (Distribution = 1; Possession w/Intent = 2; Possession Only = 3; Paraphernalia = 4). For example, if a case had both possession and parapher

Appendix J

Letter Related to the Collection of Data Related to Recidivism

Office of Legislative Research and General Counsel

September 1, 2020

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OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

John Q. Cannon, Director
John L. Fellows, General Counsel

September 1, 2020

Legislative Auditor General
C/O Jim Behunin
State Capitol Complex
House Building, W315
Salt Lake City, UT 84114

RE: Collection of Data Related to Recidivism by the Division of Substance Abuse and Mental Health

Dear Mr. Behunin,

On August 17, 2020, you asked our office to determine whether the Division of Substance Abuse and Mental Health ("DSAMH") within the Department of Human Services has authority under the Utah Code and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) to collect data related to recidivism from private mental health and substance abuse treatment providers working with individuals involved in the criminal justice system. The following provides a response to your question based on the applicable law.

1. **Collection and Disclosure of Data Related to Recidivism under State and Federal Statutes and Regulations**

a. DSAMH's Responsibilities under Utah Code

DSAMH's general responsibilities as a state agency are described in Utah Code § 62A-15-103. In addition to other general duties and oversight functions, DSAMH is required under Utah Code § 62A-15-103(2) to: (1) contract with "public and private entities for…services for individuals involved in the criminal justice system" and establish administrative rules regarding the contracts; (2) establish "minimum standards…for the provision of substance abuse and mental health treatment to an individual who is incarcerated or who is required to participate in treatment by a court or the Board of Pardons and Parole;" (3) require "public and private treatment programs to meet" the minimum standards before receiving public funds allocated to DSAMH, the Department of Corrections ("DOC"), or the Commission on Criminal and Juvenile Justice ("CCJJ"); (4) establish "performance goals and outcome measurements" for the treatment providers that are subject to the minimum standards that include "recidivism data and data regarding cost savings associated with recidivism reduction, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections;" (5) collect data to track whether the performance goals and outcome measurements are being met; (6) establish requirements by administrative rule based on the minimum standards for "certification of licensed public and private providers…who provide substance use disorder and mental health treatment to an individual involved in the criminal justice system;" and (7) require a "public or

Utah State Capitol Complex | W210 House Building | P.O. Box 145210 | Salt Lake City, Utah 84114 - 5210
Office: (801) 538-1032 | Fax: (801) 538-1712

private provider of treatment" to obtain certification to qualify for funds allocated to DSAMH, DOC, or CCJJ.[1]

In sum, under Utah Code § 62A-15-103(2), it appears DSAMH is required to set minimum standards that a public or private substance abuse or mental health treatment provider must meet when working with an incarcerated individual or an individual ordered to participate in treatment by a court or the Board of Pardons and Parole, and based on those minimum standards, is required to create a certification process for treatment providers working with an individual involved in the criminal justice system. In monitoring whether a treatment provider meets the performance goals related to recidivism for the minimum standards, DSAMH is required to "collect data" from the treatment providers.

b. HIPAA Regulations

As part of the data collection and oversight functions described in Utah Code § 62A-15-103(2), it is possible DSAMH would be required to request private patient information from treatment providers who are subject to HIPAA. Generally, HIPAA prohibits a covered entity from sharing an individual's protected health information.[2] Under HIPAA, "protected health information" is defined as "individually identifiable health information" that is transmitted or maintained electronically or in any other form[3] and "covered entity" is defined as a health plan, a health care clearinghouse, or a health care provider.[4]

A covered entity that is prohibited from sharing protected health information under HIPAA may be able to share the information if an exception under HIPAA applies. Specifically, under 45 C.F.R. § 164.512(d), a covered entity may disclose protected health information to:

> "[A] health oversight agency for oversight activities authorized by law, including audits…licensure…or other activities necessary for appropriate oversight of…[e]ntities subject to government regulatory programs for which health information is necessary for determining compliance with program standards…."

"Health oversight agency," as used in the above exception, is defined under 45 C.F.R. § 164.501 as:

> "[A]n agency or authority of…a State…that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance…."

DSAMH appears to fall under the definition of "health oversight agency" because it is a state agency that has authority to oversee compliance with the minimum standards, performance goals, and certification process applicable to treatment providers working with individuals

[1] While each of these requirements are found in Utah Code § 62A-15-103, there may be room for reorganization and clarification of the section for easier readability.
[2] *See generally* HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA), P.L. No. 104-191, 110 Stat. 1938 (1996).
[3] 45 C.F.R. § 160.103.
[4] *Id.*

involved in the criminal justice system.[5] It follows that HIPAA would likely not prohibit a private treatment provider that is a covered entity from sharing recidivism-related data with DSAMH that includes protected health information; collection of the recidivism-related data is "authorized by law" under Utah Code § 62A-15-103(2) and 45 C.F.R. § 164.512(d) contemplates data sharing for a state agency's oversight of entities that are subject to government regulatory programs like DSAMH's certification process and minimum standard requirements.

c. Substance Abuse Confidentiality Regulations

Although your question did not request this information, it is important to note that in addition to HIPAA, disclosure of health information relating to an individual's substance use disorder may be subject to additional confidentiality requirements under 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2 ("Part 2"). Generally, Part 2 prohibits disclosure of information, including "patient identifying information,"[6] that would identify an individual as having or having had a substance use disorder.[7] To be a "program" subject to the requirements described in Part 2 ("Part 2 Program"), an individual or entity must hold itself out as providing and provide "substance use disorder diagnosis, treatment, or referral for treatment" and be federally assisted.[8]

Some exceptions apply to the protection against disclosure of patient identifying information under Part 2, including an exception allowing a Part 2 Program to disclose the information for purposes of audits or evaluations by a state or local governmental agency.[9] Under 42 C.F.R. § 2.53(g), patient identifying information may be disclosed to "state, or local government agencies…in the course of conducting audits or evaluations mandated by statute or regulation, if those audits or evaluations cannot be carried out using deidentified information."[10]

[5] *Supra* Para. 1.a. Note, DSAMH, dubbed under Utah Code § 62A-15-103(1) as the "substance abuse authority and mental health authority for this state," may also qualify as a "health oversight agency" by virtue of its authority to monitor and oversee provision of substance abuse and mental health treatment in the state, arguably an element of the "health care system." There does not appear to be a definition of "health care system" as the term is used in the definition of "health oversight agency."

[6] "Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient…can be determined with reasonable accuracy either directly or by reference to other information." 42 C.F.R. § 2.11.

[7] 42 C.F.R. § 2.12.

[8] *Id.* A program is "federally assisted" if it is "carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States…or…is supported by funds provided by any department or agency of the United States by being: (i) [a] recipient of federal financial assistance in any form…; or (ii) conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program." 42 C.F.R. §§ 2.11, 2.12.

[9] 42 C.F.R. § 2.53(c). Audits and evaluations include, but are not limited to, activities by a state or local government agency to: (1) "[i]dentify actions the agency…can make, such as changes to its policies or procedures, to improve care and outcomes for patients with SUDs who are treated by part 2 programs;" (2) "[e]nsure that resources are managed effectively to care for patients;" or (3) "[d]etermine the need for adjustments to payment policies to enhance care or coverage for patients with SUD." *Id.*

[10] *See also* 42 C.F.R. § 2.53(a) (stating that patient identifying information may be disclosed for review on the premises of a Part 2 Program or other lawful holder to an individual or entity who agrees in writing to not redisclose the information and performs an audit or evaluation on behalf of a state or local government agency "that provides financial assistance to a part 2 program or other lawful holder, or is authorized to regulate the activities of the part 2 program or other lawful holder."); 42 C.F.R. § 2.53(b) (stating that an individual or entity may download, remove, or forward patient identifying information from the premises of a Part 2 Program or other lawful holder, if the individual or entity agrees in writing to maintain and destroy the information in accordance with Part 2 and comply with other Part 2 limitations on disclosure, and performs the audit or evaluation on behalf of a state or local government agency "that provides financial assistance to the part 2 program or other lawful holder, or is authorized by law to regulate the activities of the part 2 program or other lawful holder.").

While DSAMH may be required under Utah Code § 62A-15-103 to request recidivism-related data that is classified as patient identifying information from a Part 2 Program to determine compliance with the minimum standards and performance outcomes described above in Paragraph 1.a, it appears that the exception under 42 C.F.R. § 2.53(g) would likely not prohibit the Part 2 Program from disclosing the information so long as the data could not be collected through deidentified information because the functions of DSAMH in collecting the data fall within the scope of an "audit or evaluation" of the program.

2. **Conclusion**

Utah Code § 62A-15-103 requires DSAMH to collect data from private treatment providers who work with certain individuals involved in the criminal justice system when determining whether performance goals related to recidivism have been met and it is unlikely that HIPAA or other federal confidentiality regulations relating to substance use disorder patients would prevent private treatment providers from providing the data.

Ericka A. Evans
Associate General Counsel
Office of Legislative Research and General Counsel

Appendix K

Local Difference Observed in The Response to Drug Possession Only Charges

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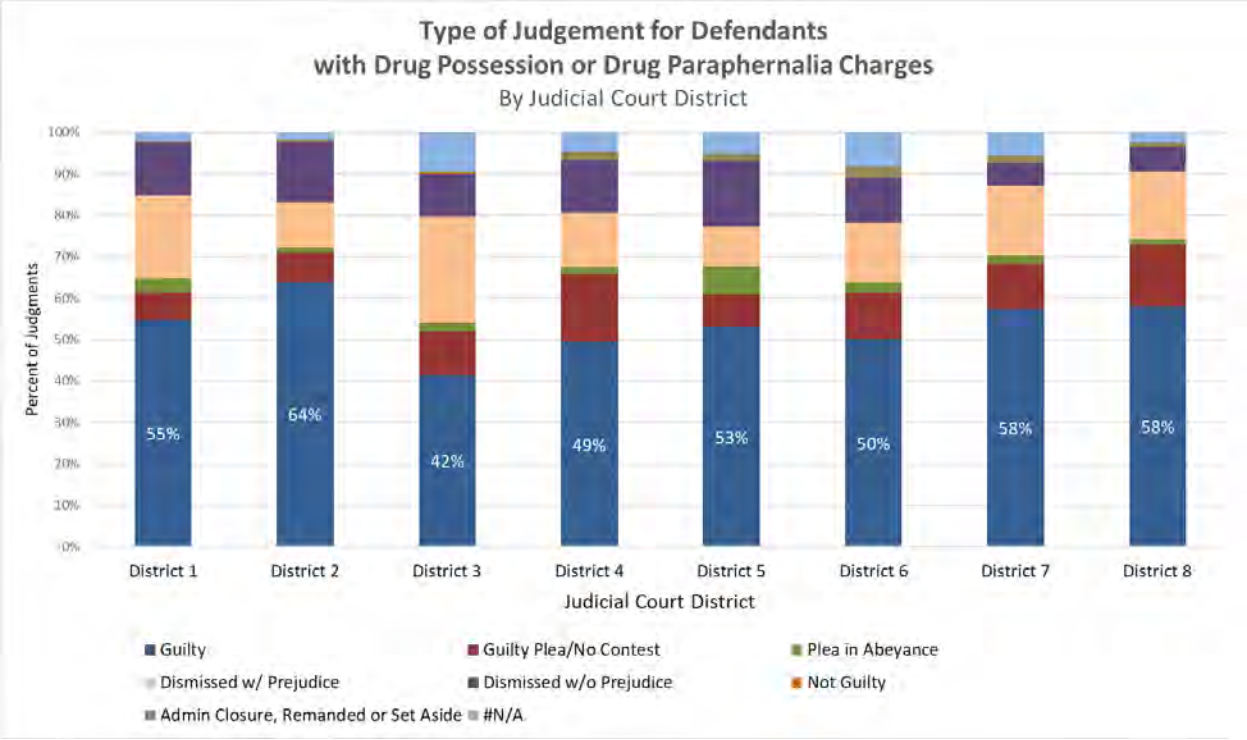
Differences in the Judgements Issued for Drug Possession Cases by Court District and Judge

Court records were used to identify the type of judgement issued for each case in which drug possession or drug paraphernalia charge was the most serious offense in a court filing. The following figure shows differences among judicial court districts. The dark blue portion of each bar shows the percent of all cases in which a guilty judgement was issued.

Differences Observed in how Local Court Districts Respond to Drug Possession Only Cases:

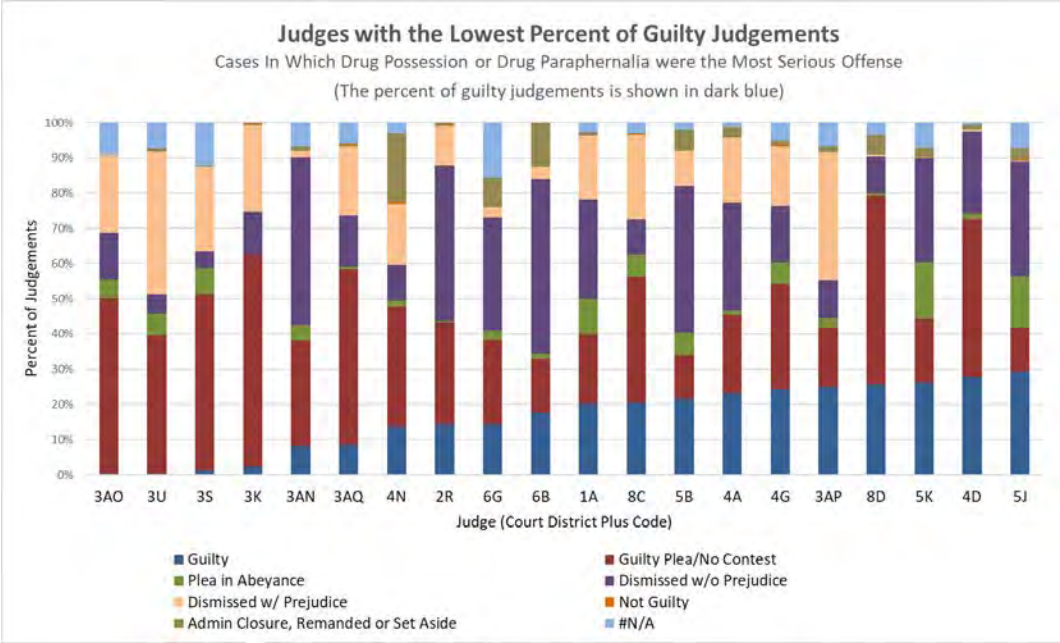
The following chart summarizes our study of 73,000 cases filed during fiscal years 2016, 2017 and 2018 in which possession or use of a controlled substance or drug paraphernalia were the most serious offense. The chart highlights the differences in the approach taken towards cases involving possession and use of controlled substances and drug paraphernalia. In District 2, the court issues a guilty verdict in 64 percent of the cases. In contrast, District 3 issues guilty verdicts in 42 percent of its cases.



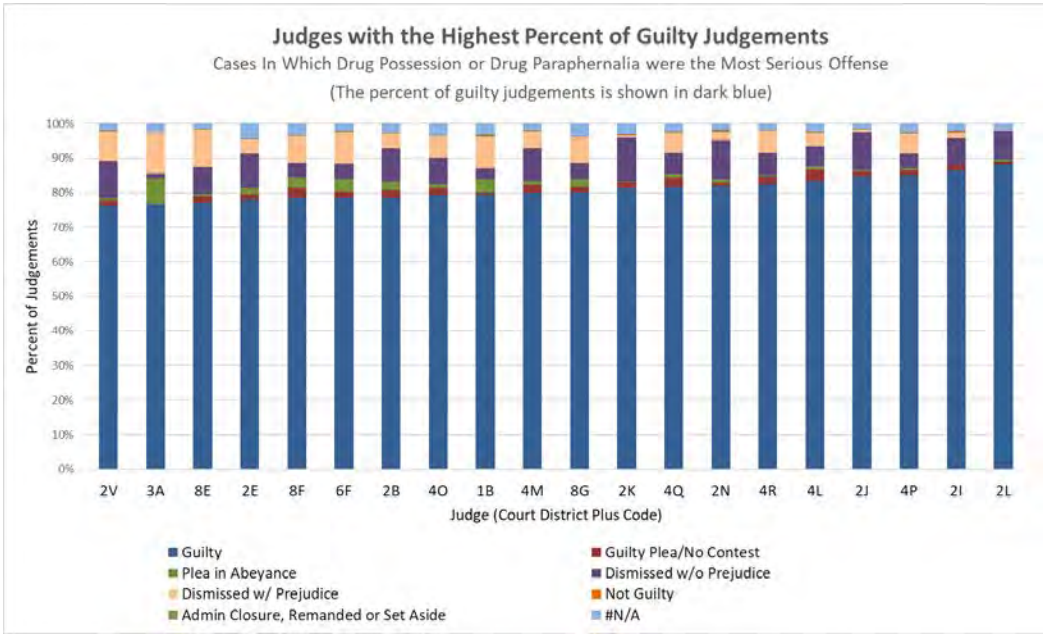
Source: OLAG Study of court sentencing data provided by the Administrative Office of the Courts.

Differences Observed in how Local Judges Respond to Drug Possession Only Cases:

The figures below compare the judgments issued by the 20 judges with the lowest percent of guilty judgements to the 20 judges with the highest percentage of guilty judgements.



Source: OLAG Study of 150,000 court cases involving drug possession only and drug paraphernalia cases, FY 2013 through FY 2019.

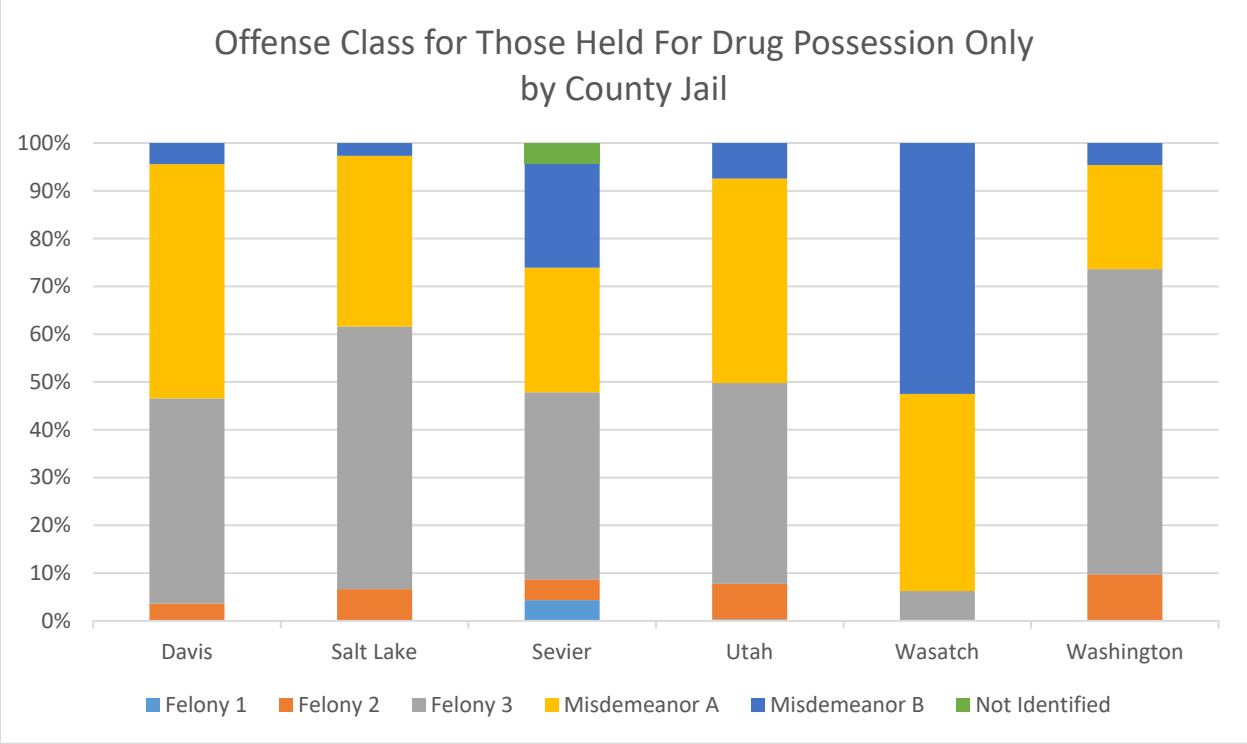


Source: OLAG Study of 150,000 court cases involving drug possession only and drug paraphernalia cases, FY 2013 through FY 2019.

In addition to the disparity in the percent of guilty judgements, the two charts on the prior page reveal large differences in the percent of cases in which a guilty plea or plea of no contest is issued by the court. This information could be of use to policy makers, judges, and other state and local officials as they examine the effects of the judiciary's different approaches to drug crimes.

Differences Observed in the Offense Level of County Jail Inmates Held for Drug Possession Only

The data shown in the following chart include those inmates held during four quarterly snapshot study periods from the year 2018. The data show that of 94 percent of inmates held for drug possession in the Wasatch County Jail were Misdemeanor A and B offenders. In contrast, roughly 75 percent of offenders in Washington County Jail were held on Felony charges. The differences we see in the makeup of the different county jail populations reflect the local differences we see in the approach taken towards criminal justice.



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Appendix L

OLAG Survey of Substance Abuse and Mental Health Treatment Providers

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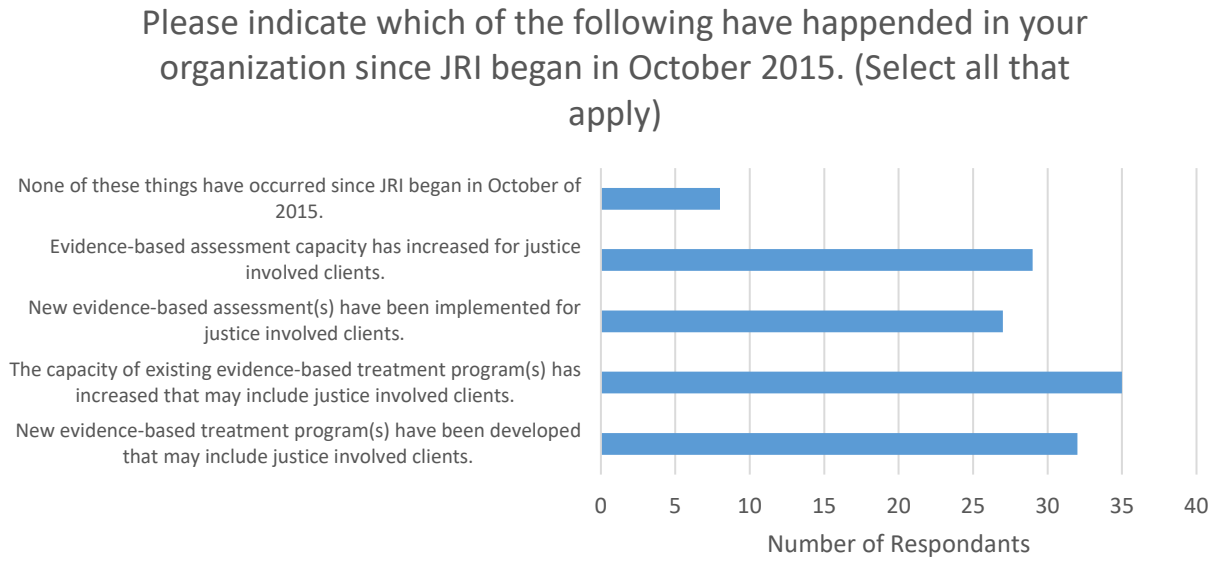
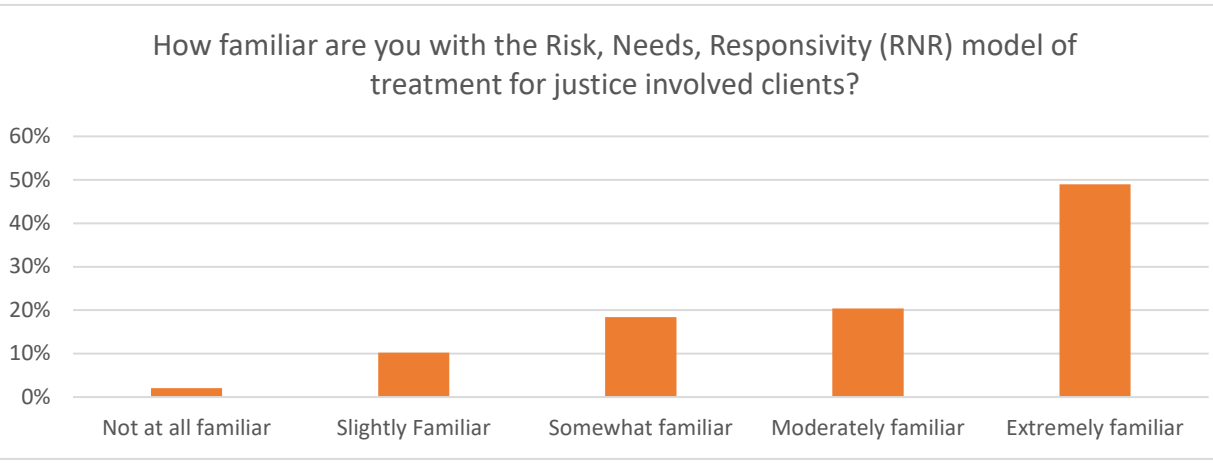
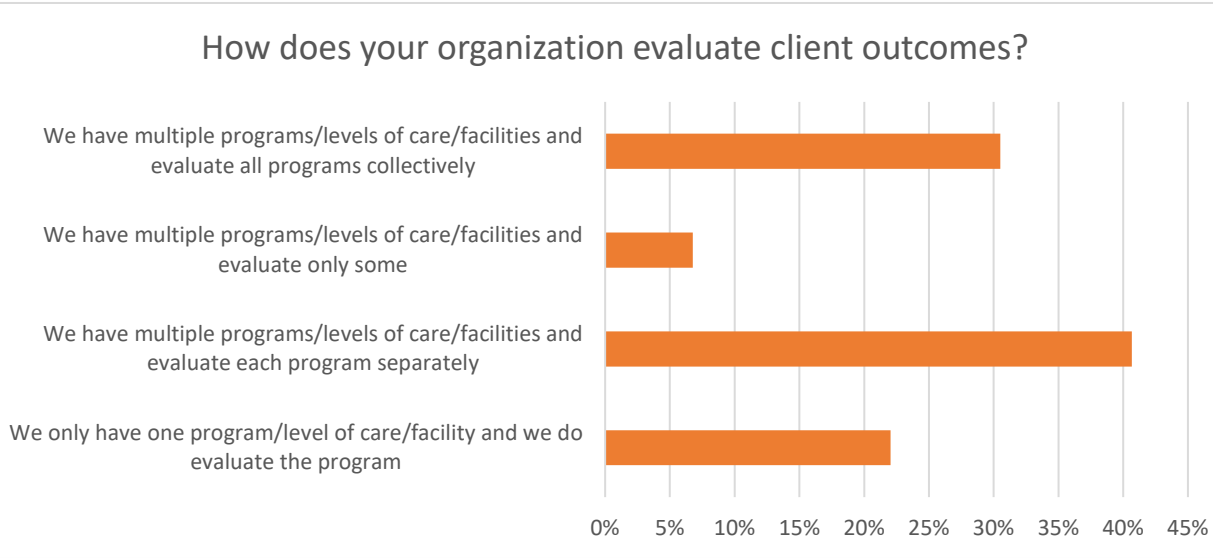
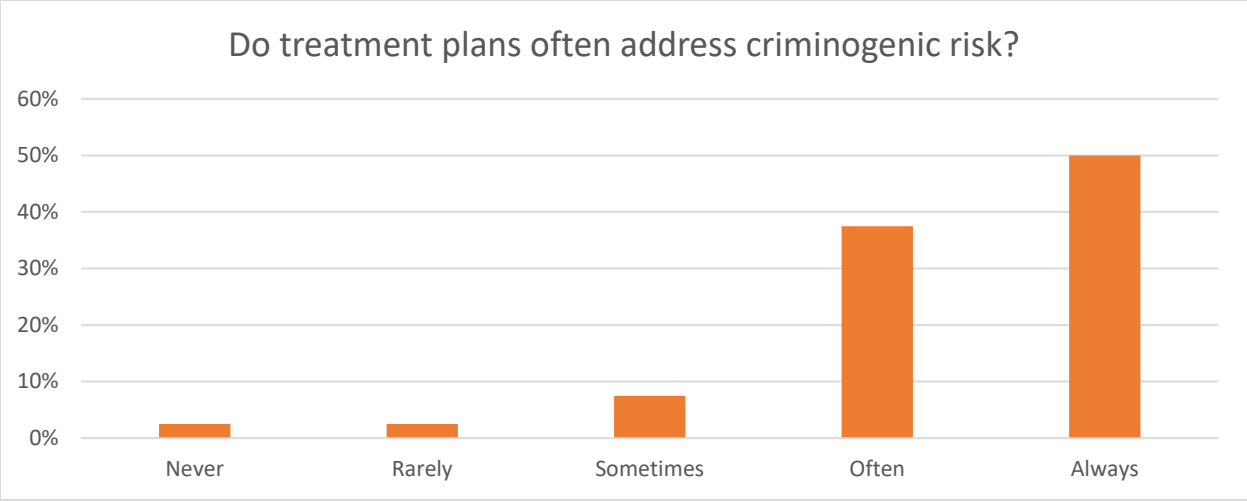
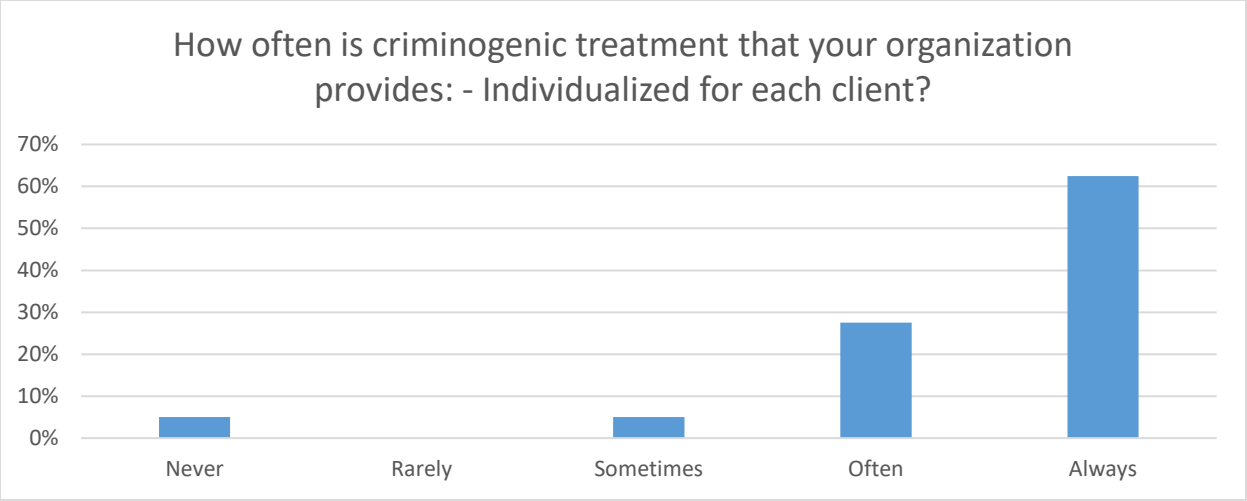
Provider Survey

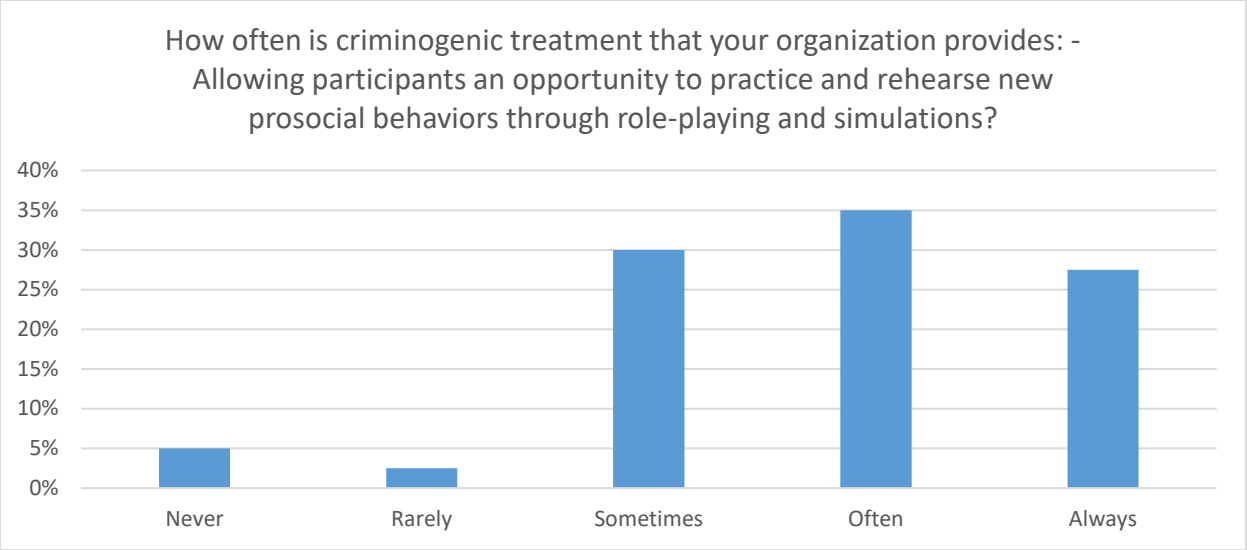


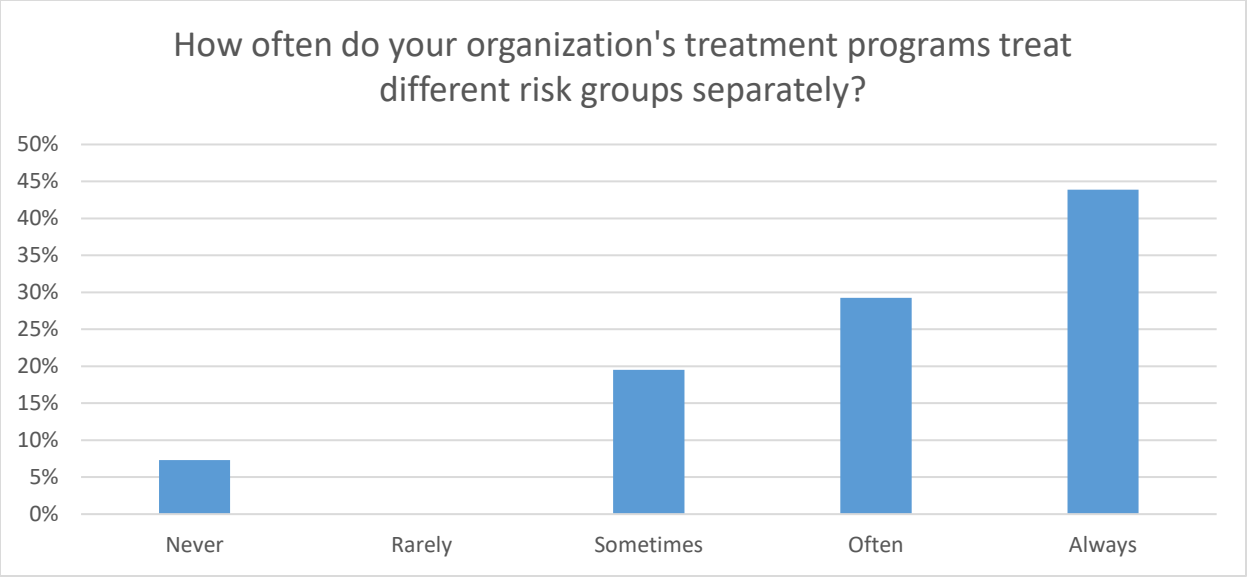


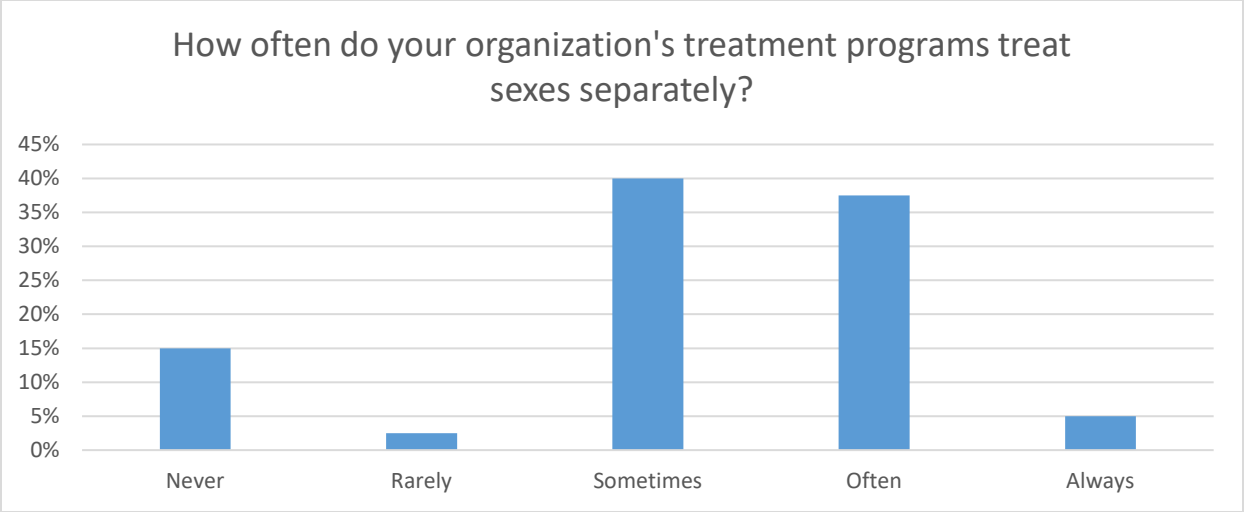



Do treatment plans often address criminogenic risk?
60%
50%
40%
30%
20%
10%
0%
Never
Rarely
Sometimes
Often
Always

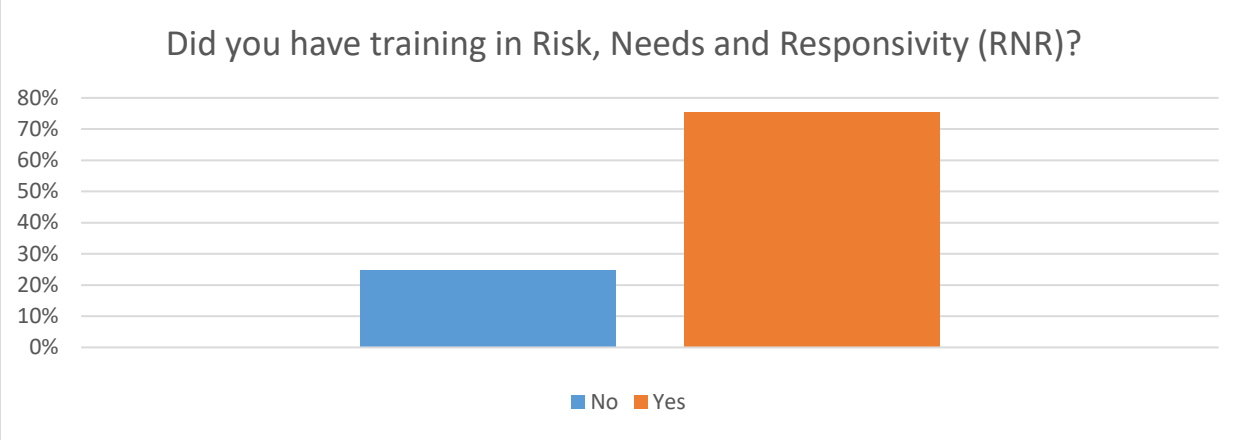

How often is criminogenic treatment that your organization provides: - Individualized for each client?
70%
60%
50%
40%
30%
20%
10%
0%
Never
Rarely
Sometimes
Often
Always

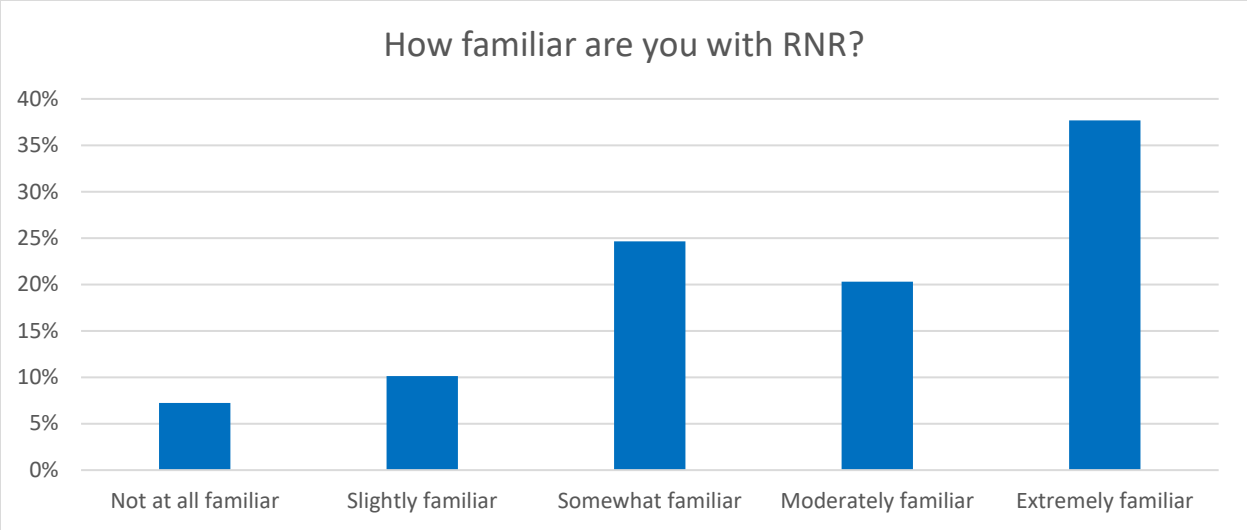

How often is criminogenic treatment that your organization provides: - Allowing participants an opportunity to practice and rehearse new prosocial behaviors through role-playing and simulations?
40%
35%
30%
25%
20%
15%
10%
5%
0%
Never
Rarely
Sometimes
Often
Always

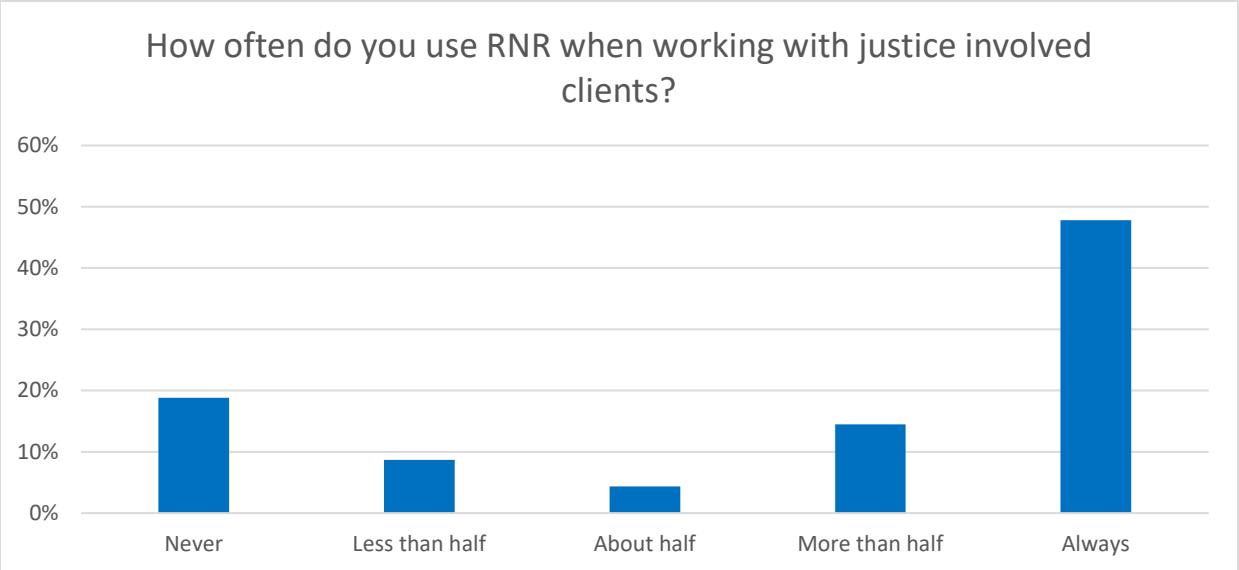

How often do your organization's treatment programs treat different risk groups separately?
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Never
Rarely
Sometimes
Often
Always

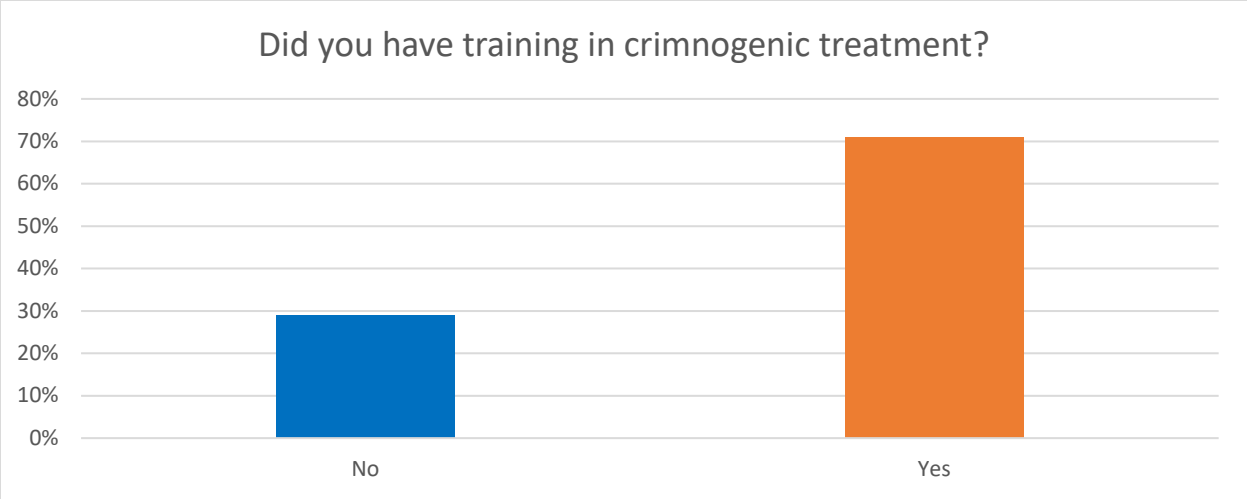

How often do your organization's treatment programs treat sexes separately?
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Never
Rarely
Sometimes
Often
Always

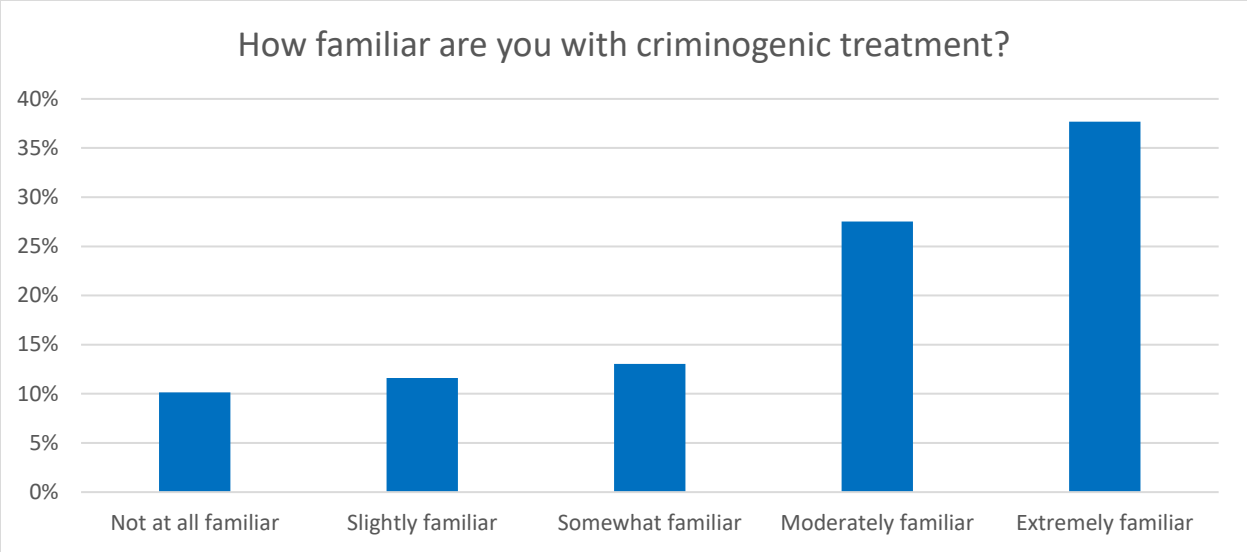
Clinician Survey

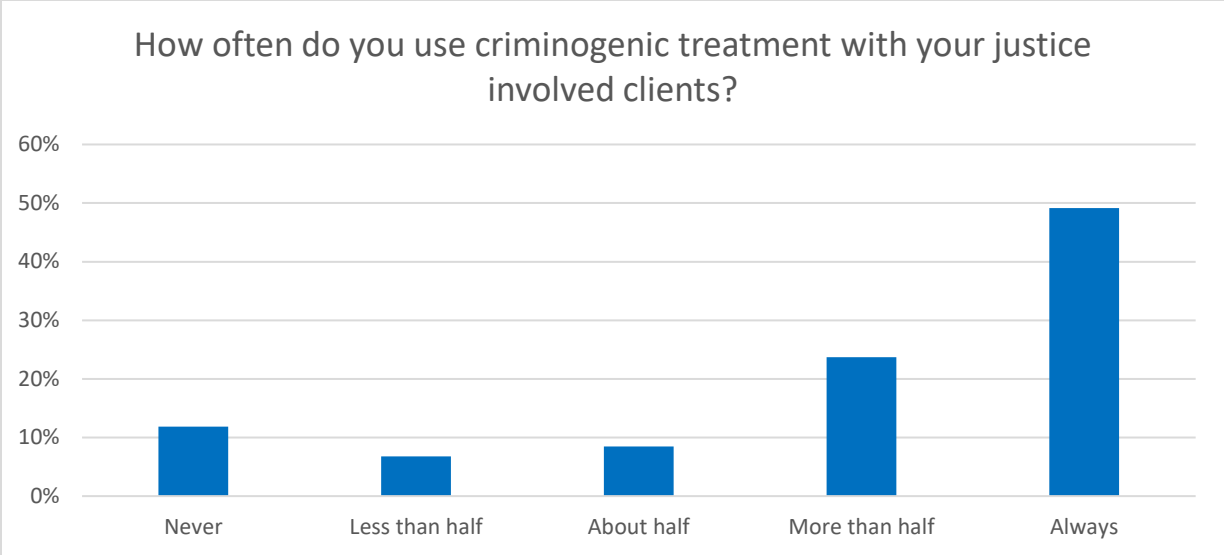


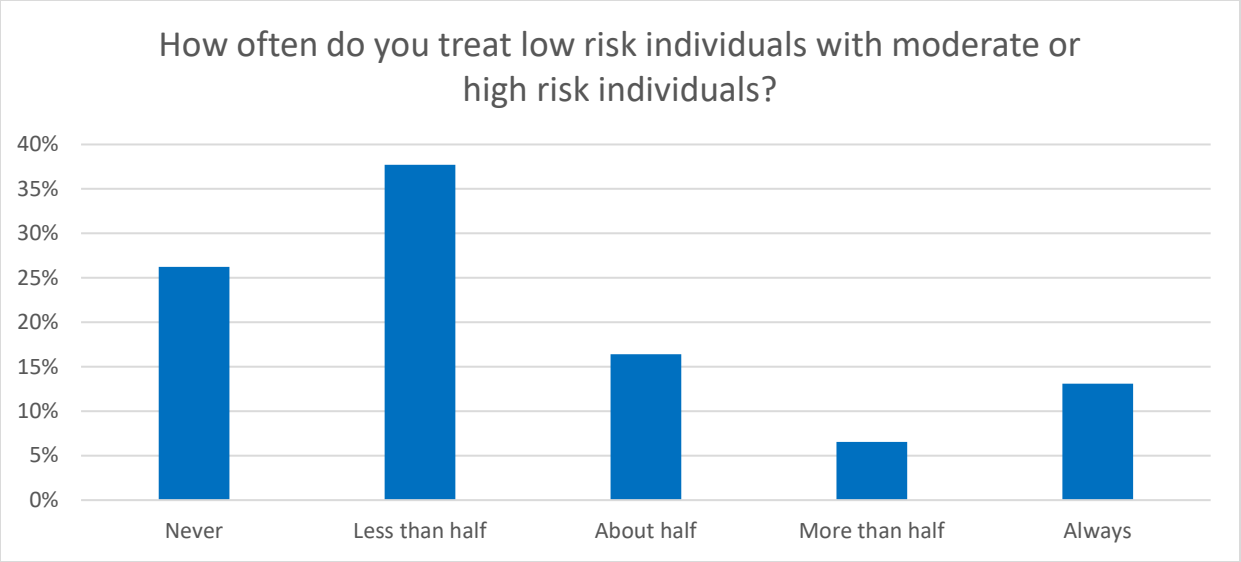


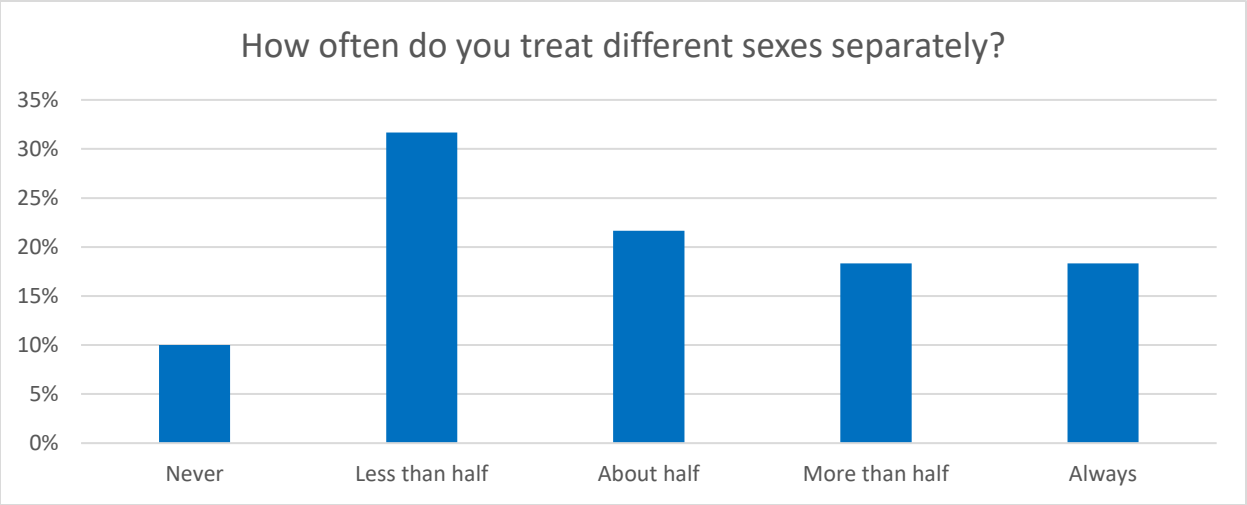


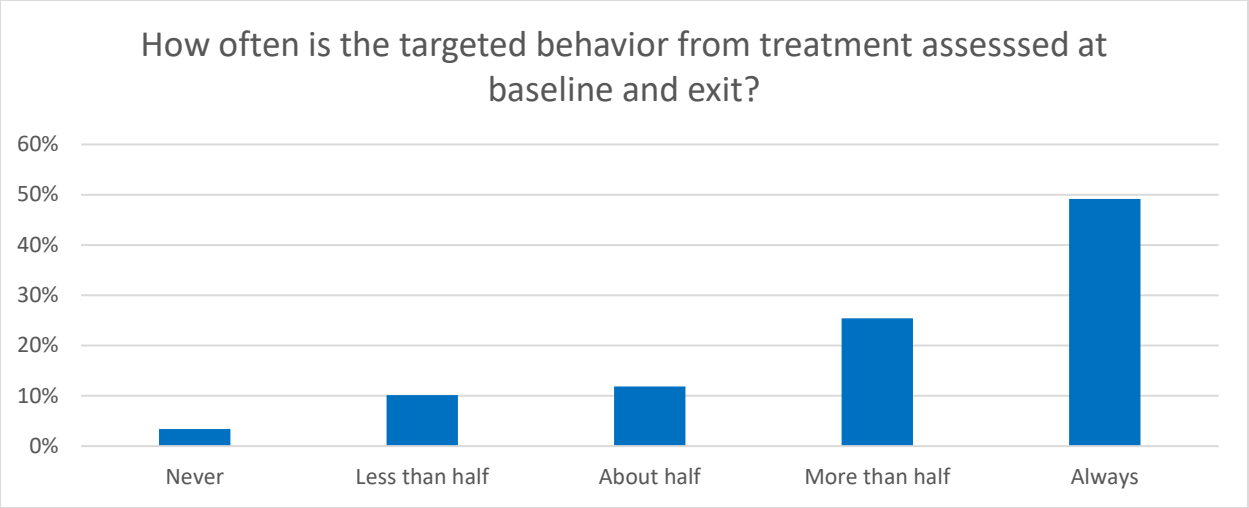

Did you have training in crimnogenic treatment?
80%
70%
60%
50%
40%
30%
20%
10%
0%
No
Yes

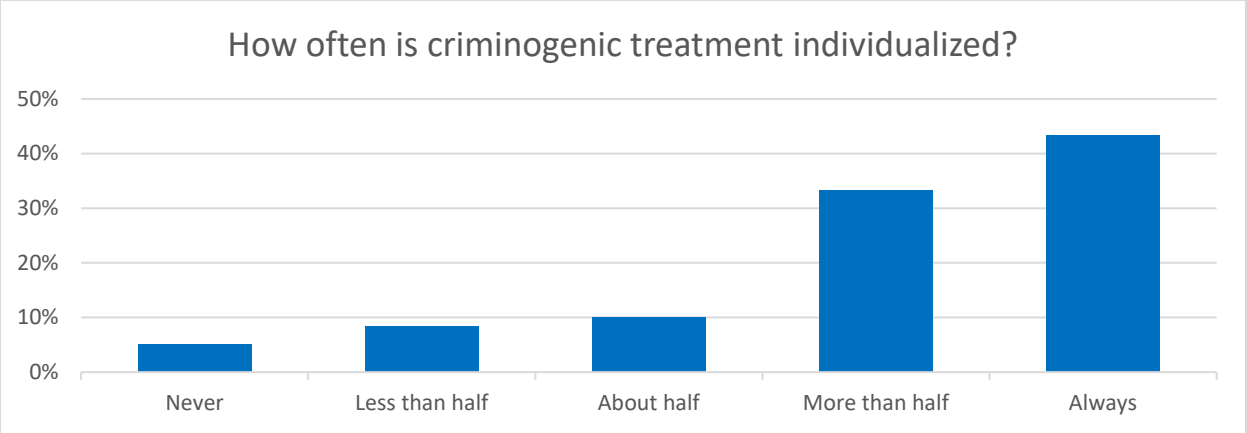

How familiar are you with criminogenic treatment?
40%
35%
30%
25%
20%
15%
10%
5%
0%
Not at all familiar
Slightly familiar
Somewhat familiar
Moderately familiar
Extremely familiar

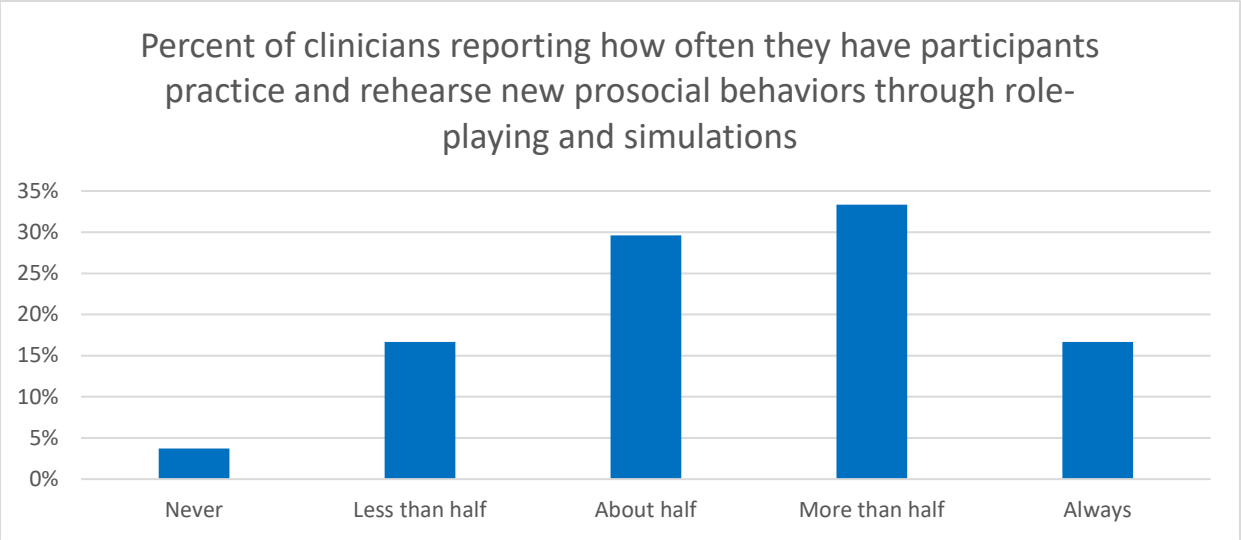

How often do you use criminogenic treatment with your justice involved clients?
60%
50%
40%
30%
20%
10%
0%
Never
Less than half
About half
More than half
Always

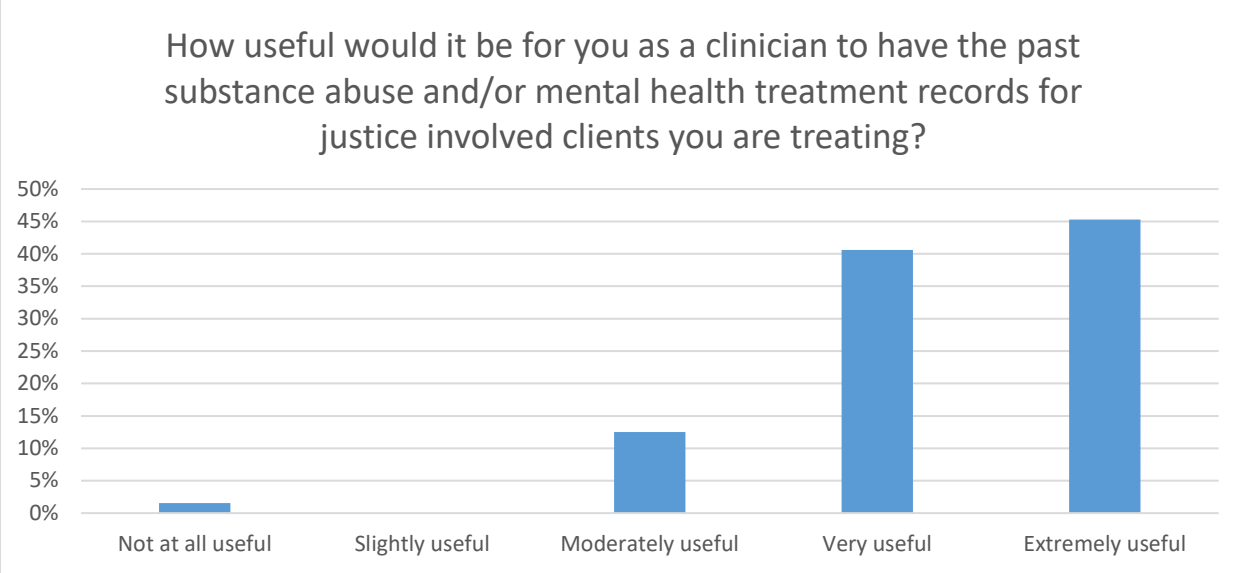

How often do you treat low risk individuals with moderate or high risk individuals?
40%
35%
30%
25%
20%
15%
10%
5%
0%
Never
Less than half
About half
More than half
Always

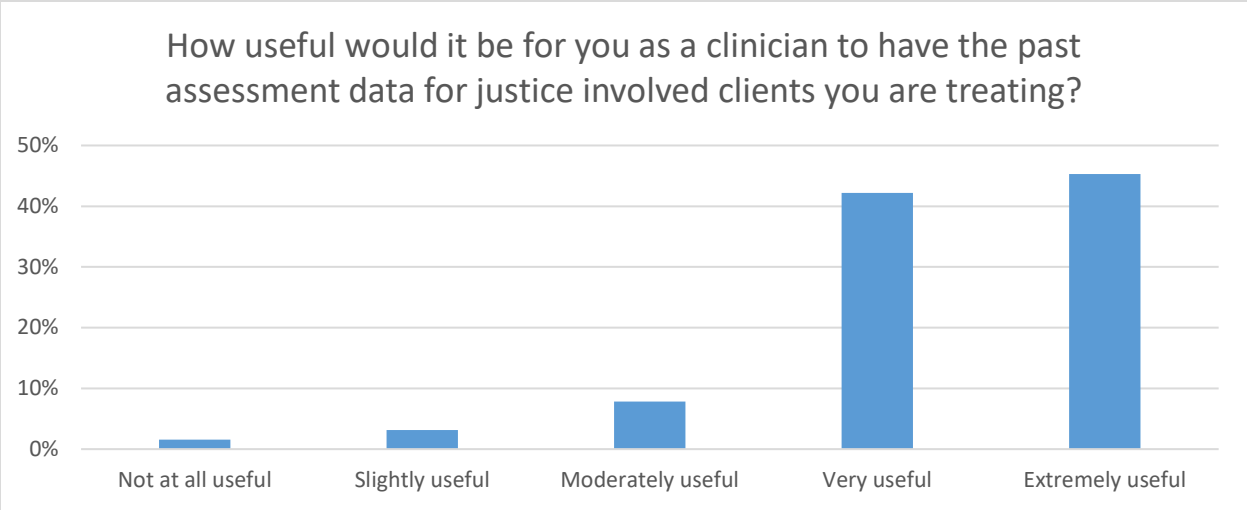

How often do you treat different sexes separately?
35%
30%
25%
20%
15%
10%
5%
0%
Never
Less than half
About half
More than half
Always

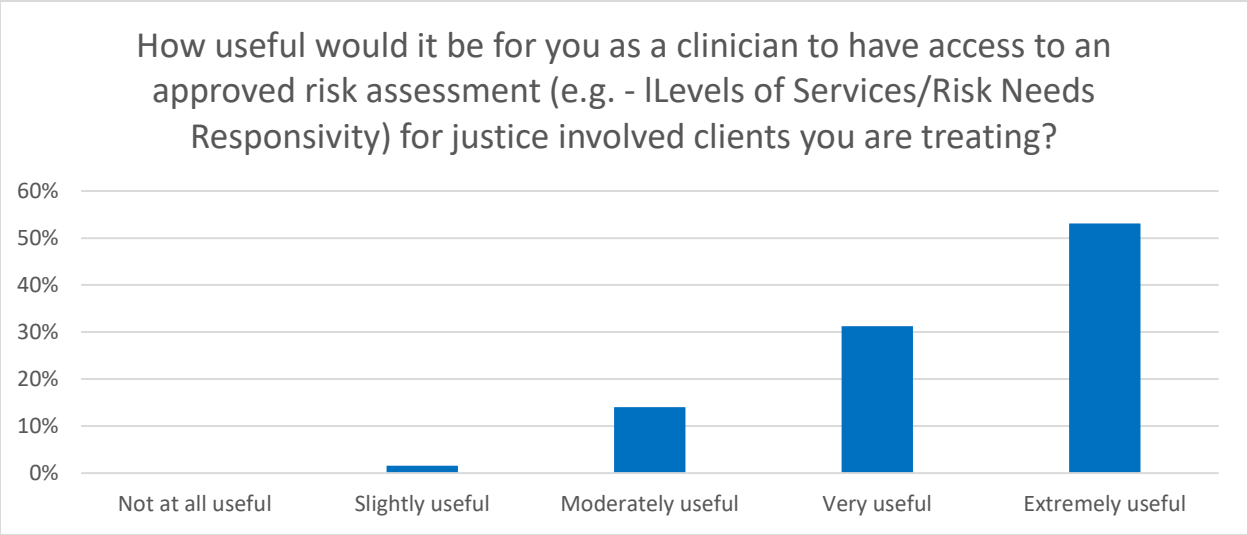

How often is the targeted behavior from treatment assesssed at baseline and exit?
60%
50%
40%
30%
20%
10%
0%
Never
Less than half
About half
More than half
Always

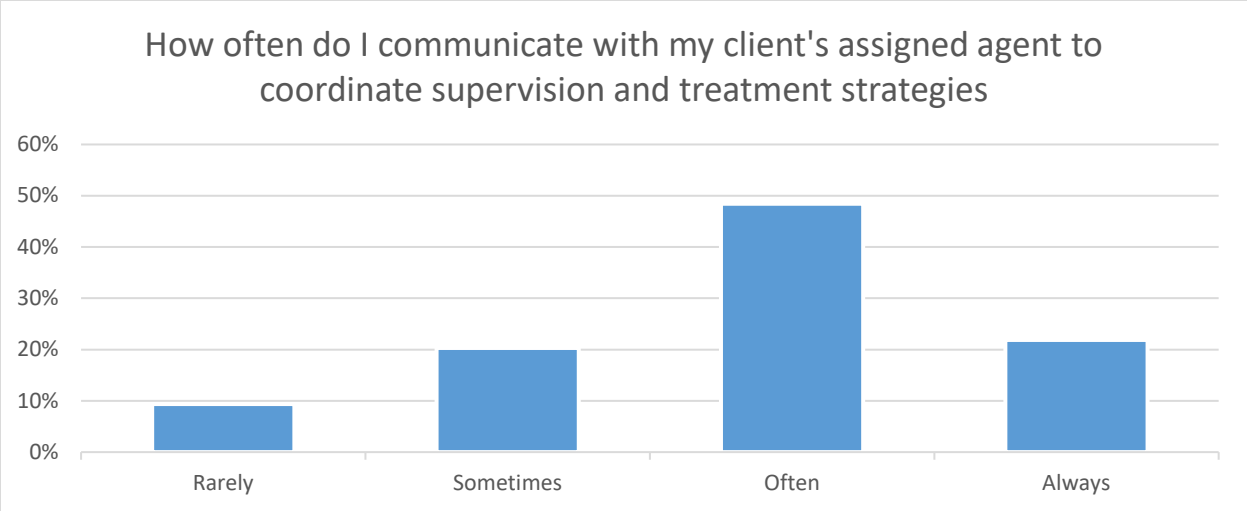

How often is criminogenic treatment individualized?
50%
40%
30%
20%
10%
0%
Never
Less than half
About half
More than half
Always

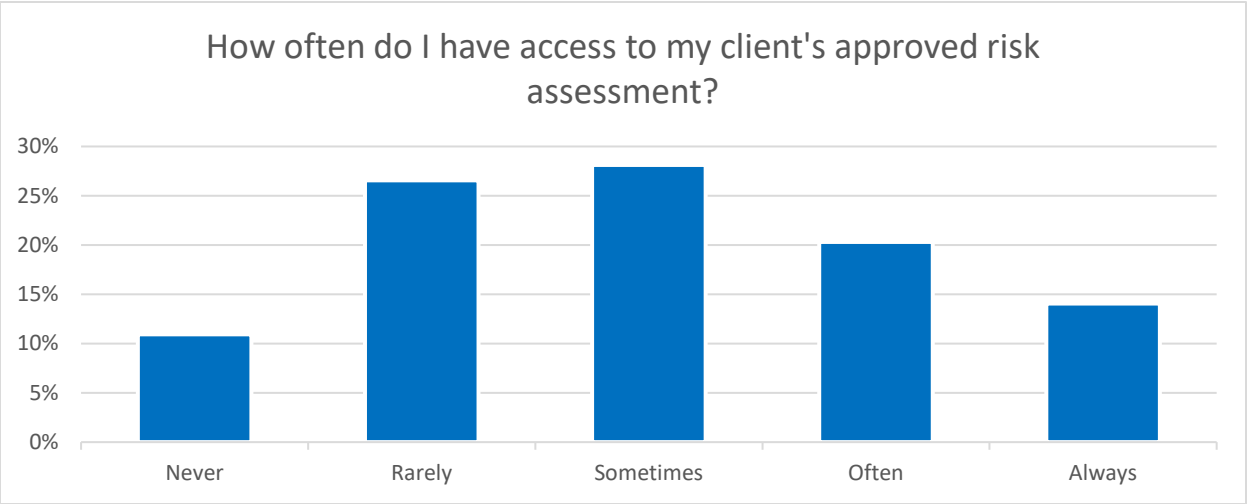

Percent of clinicians reporting how often they have participants practice and rehearse new prosocial behaviors through role-playing and simulations
35%
30%
25%
20%
15%
10%
5%
0%
Never
Less than half
About half
More than half
Always


How useful would it be for you as a clinician to have the past substance abuse and/or mental health treatment records for justice involved clients you are treating?
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Not at all useful
Slightly useful
Moderately useful
Very useful
Extremely useful


How useful would it be for you as a clinician to have the past assessment data for justice involved clients you are treating?
50%
40%
30%
20%
10%
0%
Not at all useful
Slightly useful
Moderately useful
Very useful
Extremely useful


How useful would it be for you as a clinician to have access to an approved risk assessment (e.g. - lLevels of Services/Risk Needs Responsivity) for justice involved clients you are treating?
60%
50%
40%
30%
20%
10%
0%
Not at all useful
Slightly useful
Moderately useful
Very useful
Extremely useful


How often do I communicate with my client's assigned agent to coordinate supervision and treatment strategies
60%
50%
40%
30%
20%
10%
0%
Rarely
Sometimes
Often
Always


How often do I have access to my client's approved risk assessment?
30%
25%
20%
15%
10%
5%
0%
Never
Rarely
Sometimes
Often
Always

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Agency Responses

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OFFICE OF THE SHERIFF

835 East 300 North, Suite 200
Richfield, Utah 84701

Phone (435) 896-2600
Fax (435) 896-6081

SHERIFF NATHAN J. CURTIS

10-5-2020

Office of the Legislative Auditor General

To whom it may concern,

I want to formally thank the legislative auditors for this report and their effort to give clear assessments of the current situation in this matter. I feel they have taken a careful and measured approach to their fact finding and evaluation of the contents found in this audit.

As a sheriff, I find it important to make decisions based on quantified and credible data. Data, trends, and facts drive decisions and processes to implement decisions. Contained in this report is data showing the results of laws passed and their effects. Some of the effects of the Justice Reinvestment initiative were expected and showed promise. However, there were unexpected results. The unexpected results show where we fell short of the goals, where we were overconfident, where we were shortsighted, and where we need to step up if we truly want to make a difference.

This audit revealed we did not slow the flow into the criminal justice system; rather we passed it down the line. To make effectual change we must take the time to evaluate what we really want to do, how to get there, and then be willing to back it with real support. This will take time and money, and a lot of both to do it right.

Again, I thank those in the legislative auditor's office for their time and commitment to put this audit together and taking the time to ask questions.

Sincerely,

Sheriff Nathan J. Curtis

Sevier County Sheriff

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State of Utah
Commission on Criminal and Juvenile Justice

Gary R. Herbert
Governor
Spencer J. Cox
Lieutenant Governor

Kim Cordova
Executive Director

Utah State Capitol Complex, Senate Building, Suite 330 • Salt Lake City, Utah 84114
801-538-1031 • Fax: 801-538-1024 • www.justice.utah.gov

October 05, 2020

Office of the Legislative Auditor General

I write on behalf of the Commission on Criminal and Juvenile Justice (CCJJ) in response to the audit performed on the Justice Reinvestment Initiative (JRI) and data sharing in the criminal justice system.

The report on data sharing in the criminal justice system clearly identifies the challenges CCJJ has encountered over the last several years. While some state and local agencies partner well and collaborate on data sharing in order to complete projects and reports, others can be more challenging. CCJJ does, however, present the information given in the most comprehensible and useful manner. Nevertheless, the result is one dimensional and is not as comprehensive as it needs to be in order to give policy makers all the information needed to make decisions. The recommendations given in the report are very similar to ideas this agency has been working on as a solution and path forward. Consequently, CCJJ is in full agreement and supports the recommendations.

The report on JRI also clearly identifies the challenges encountered with the implementation of JRI's policy goals. Particularly, the report recognizes all of the agencies that were part of the creation of the policy recommendations and highlights the collaboration and communication needed for its success in implementation. The criminal justice system is not one system but rather an ecosystem of various state and local partners reliant and interwoven with each other. Each agency requires support and resources from the others to be successful. Local collaboration is an essential component that creates success for the larger whole, however, there needs to be clear directives on who is responsible for what and to whom for oversight and accountability.

As noted in the report, there are specific holes in terms of data collection that need to be addressed in order to give a full and accurate picture of the criminal justice system. In order to fulfill any reporting recommendations, CCJJ must rely on agencies to give information. As such, CCJJ requests that a reporting recommendation of any kind require agencies to give the data specifically and a deadline to ensure compliance. Otherwise, CCJJ agrees with and supports the recommendations.

Sincerely,

Kim Cordova
Executive Director for the Commission
on Criminal and Juvenile Justice

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Utah Department of Corrections
Executive Office

MIKE HADDON
Executive Director

October 5, 2020

Kade R. Minchey, Auditor General
Office of the Legislative Auditor General
315 House Building
P.O. Box 145315
Salt Lake City, Utah 84114-5315

Dear Mr. Minchey,

The Utah Department of Corrections (Department) is pleased to respond to the Office of the Legislative Auditor General regarding Audit Report Number 2020-08, "***A Performance Audit of the Justice Reinvestment Initiative***." I would like to begin by thanking you and your staff for their professionalism and tremendous work on this important audit. It was a pleasure to work with your office, and we sincerely appreciate the time and effort that was clearly invested in this work.

The Department was intimately involved in the Justice Reinvestment Initiative (JRI) from its inception, and we remain strong advocates of the work and approach to this fundamental shift in Utah's criminal justice system. The discussion and recommendations contained within the audit are on target, and we are convinced that implementing the recommendations will strengthen and improve upon the work that has already begun.

Within this response, the Department will discuss recommendations that specifically apply to our operations and, more generally, our involvement as one of many criminal justice stakeholders. It is our intent to discuss steps we are already taking in responding to the audit's recommendations, as well as thoughts relating to how we can assist to more effectively address more general recommendations made within the audit.

Prior to reviewing specific recommendations from the audit, the Department would like to provide some context, from our experience, in terms of the development and the implementation of JRI. We would further like to discuss the historic status Utah is in today and the importance of taking positive action now to sustain what our Department and state is experiencing.

JRI developed as a collaboration of criminal justice stakeholders through the Commission on Criminal and Juvenile Justice (CCJJ), with the assistance of the Pew Charitable Trust who reviewed Utah-specific data to develop evidence-based approaches to criminal justice decisions and operations. The work culminated in the passage of legislation during the 2015 General

14717 South Minuteman Drive, Draper, UT 84020 • telephone (801) 545-5513 • facsimile (801) 523-7523

Legislative Session, which implemented many significant adjustments to Utah's criminal justice system, to include many operations of our Department. Our Department actively engaged with CCJJ and Pew in the development of the recommendations, and then actively engaged in implementing those recommendations that applied to our operations. From a high-level perspective, JRI focused on many systemic changes, based on research, to improve the operation and outcomes of Utah's criminal justice system. A by-product of JRI was an intentional and thoughtful decrease in Utah's prison population, which is discussed in this audit.

Structural changes in Utah's justice system did, indeed, lead to historic prison population reductions. On October 1, 2013, Utah experienced its highest prison population at 7,221 incarcerated individuals. The prison population had fairly regularly increased, year to year, over the course of several decades. JRI began implementation in 2015, and by January 11, 2017, Utah's prison population had decreased from its highest point of 7,221 incarcerated individuals to a population of 6,132 (a decrease of 1,089 incarcerated individuals). The reduction experienced was both historic and intentional.

However, after this initial decrease in incarcerated individuals, Utah's prison system began to experience growth. This was anticipated, but the velocity of the increase was not anticipated. By April 16, 2019, the incarcerated population had reached 6,840 -- an increase of 708 (from 6,132 on January 11, 2017) -- within approximately two and a half years. This audit effectively describes many areas of JRI that were not fully implemented, or not implemented at all, which likely contributed to this rapid prison population increase. As discussed within the audit, most of those coming into the prison system during this period were individuals who had violated conditions of probation or parole supervision, rather than an increase in new prison commitments. It is apparent that interventions to help individuals succeed while on probation or parole either were not implemented, not effective, or not available.

Today, Utah is once more in a historic situation. The state's prison population is currently around 5,700 incarcerated individuals. This is not only lower than Utah's previous high, but it is also below the lowest incarcerated population experienced after implementation of JRI.

The current status of Utah's prison population is one of many reasons why this audit is so timely, and why it is critical for Utah to follow the recommendations outlined within the audit itself. Our Department's concern is that without adjustments, many of which are outlined within this audit, Utah will once again experience rapid growth in its prison population, at a time when other interventions might effectively interrupt criminal behavior and assist in moving individuals out of the criminal justice system.

The following are responses to specific recommendations contained in this audit, including our Department's perspectives related to some recommendations that may not appear to include our operations.

Chapter 2: Utah Has Not Fully Implemented JRI

1. We recommend that the Law Enforcement and Criminal Justice Interim Committee require that the Commission on Crime and Juvenile Justice report to them annually on the progress made toward implementing each goal of the Justice Reinvestment Initiative and on the progress made towards developing local crime reduction plans.

This chapter in the audit, as well as this recommendation, focuses on key elements of JRI that either have not been implemented or have only been partially implemented. Many of the JRI recommendations either directly or indirectly involved our Department, and work on implementation began as soon as the 2015 Legislative Session adjourned. This was a collaborative effort, and much was accomplished according to the timelines outlined in new statutory language.

The Department could have better anticipated some of the collateral consequences of JRI's implementation. Perhaps the most obvious potential impact would be felt by our Division of Adult Probation and Parole (AP&P). With incarcerated individuals released from prison to parole supervision at an increasing pace, and with offenders diverted from prison for community-based services including probation supervision, the volume of individuals AP&P supervises in the community was bound to increase. Although the increase was not as dramatic as anticipated, the risk level of those being supervised increased more than anticipated. Over the past several years, that has led to significant workload increases for our AP&P staff because higher risk individuals require more in office and in home visits than lower risk individuals.

Since JRI's implementation, the Department, with support from the Governor and Legislature, has taken several proactive steps to attempt to mitigate this impact. The Department received 20 AP&P agents in 2015 - ten (10) to establish a transition/re-entry team and ten (10) to support treatment resource center case management. This initial funding also added 12 support staff, 15 therapists, and two therapist supervisors to community supervision. During 2016, we received 15 field agents and two support staff.

To address a steadily increasing presentence investigation workload, the Department received funding for 22 civilian investigators during the 2019 session (later adding two civilian supervisors through internal adjustments). The creation of these positions allowed us to shift several agents from presentence report writing to community supervision. During the 2020 General Legislative Session, partial funding was allocated to further strengthen community case management, including 12 agents, 12 case workers, four supervisors, and two support staff. While these resources are tremendous steps towards improving community corrections, the higher risk population continues to present workload challenges.

Additional steps taken by the Department to address workload increases include revision of the presentence investigation report format and eligibility criteria, and a significant reduction of the number of low-risk individuals under supervision.

Finally, the audit points to a specific case study of one offender that had 80 criminal charges filed against him within a seven-year period. Situations such as this call for more and better information sharing among state and local criminal justice agencies. However, apart from criminal justice stakeholders, the justice-involved individuals we collectively work with also need support services from stakeholders typically outside of the criminal justice system, such as access to medical care, employment assistance, housing assistance, transportation assistance, and mental health services. This specific case study, and others like it, could shed light on underlying issues such as mental illness or substance use disorder - or possibly both. It could shed light on accountability concerns in terms of justice professionals not knowing about behavior that may have occurred across agencies with different jurisdictions. It is essential as we work to change lives and protect the community that we actively and broadly consider cases such as this in order to target our efforts on the underlying causes of the behavior, rather than what might be the symptoms of multiple or chronic engagements with the criminal justice system.

Chapter 3: Criminal Justice System Lacks the Accountability Called for by JRI

4. We recommend that the Division of Adult Probation and Parole and the Division of Substance Abuse and Mental Health, the Administrative Office of the Courts and the Board of Pardons and Parole work together to identify and share information regarding which offenders have received a court order to obtain mental health services and substance abuse services to identify whether those services have been provided.

The Department supports this recommendation. We are prepared to work with the other stakeholders identified in this recommendation to develop a method for tracking these offenders. We currently have data sharing agreements with many agencies outside of our Department and will collaborate to create additional agreements where needed.

The Department's data related to individuals under supervision does include specific supervision conditions, where appropriate, to obtain mental health or substance use treatment. We recognize that obtaining accurate data on treatment completion outcomes in the community remains a challenge. Probationers and parolees may receive treatment from private providers, county programs, or Department resource centers (Treatment Resource Centers and Community Correctional Centers). The Department is committed to accurately track treatment outcomes of individuals participating in our own programs and is supportive of active partnerships with the Division of Substance Abuse and Mental Health (DSAMH), county providers, and private providers to obtain timely and accurate outcome information.

We believe this would be a good trial project for the Information Sharing Environment (ISE) discussed in this audit, as well as in the companion audit related to information sharing in the justice system. Creating such an environment will take time both for technology development and policy development for governance. For agencies as large as the Department, providing funding for dedicated staff to focus on submitting and receiving data from the ISE would likely accelerate its development and operation. In the interim, the Department will work with DSAMH, the Courts, and the Board of Pardons and Parole to create a mechanism for tracking court orders for substance use disorder treatment and mental health treatment. This

tracking will need to identify the individual in order to follow progress and completion of the recommended treatment.

Chapter 4: Legislature Should Consider Criminal Justice Coordinating Councils (CJCC) to Fully Implement JRI

Though the Department is a state agency and this recommendation calls for local Criminal Justice Coordinating Councils (CJCCs), our responsibility is statewide and often involves close partnerships with local entities. This is especially true with AP&P and its community supervision responsibilities. AP&P supervises individuals across the state and regularly collaborates with local government as case management occurs and needed services are accessed. A few counties in Utah have been operating organizations similar to the recommended CJCCs, and our Department regularly participates in and serves as members of these councils. This is a strong model, and the Department stands ready to participate in and collaborate as additional local councils are created.

Chapter 5: Offender Treatment Availability and Quality Fall Short of JRI Goal

One of the original goals of JRI was to increase the availability and quality of treatment. The recommendations in this chapter focus on improving the quality of treatment so that JRI will have a greater impact in reducing recidivism.

4. We recommend that DSAMH collaborate with the Department of Corrections and the Utah Substance Abuse and Mental Health Advisory Council to update its standards and certification process to ensure treatment quality is in line with current evidence-based practices.

The Department supports this recommendation. We recognize the importance of not only using evidence-based treatment programs but also monitoring these programs for fidelity. We have engaged in preliminary discussions with other criminal justice agencies to better monitor program fidelity. Specifically, the Programming Division in the Department is developing enhanced standards for monitoring jail-based programs, as well as empowering an internal audit function that is responsible for monitoring institutional and community programs.

Chapter 6: JRI Success Could Improve with Better Offender Supervision

1. We recommend that Utah Department of Corrections continue to require the use of current evidence-based practices among agents and continue to monitor the quality of instituted evidence-based practices.

The Department fully supports this recommendation. We have made significant progress toward adoption of evidence-based practices, with a foundation started 20 years ago through the adoption of risk and need assessments (LSI-r 2000 and later the LS/RNR 2015), motivational interviewing (2006), and case action plans (2008). The Department has instituted cognitive-behavioral programs for individuals under correctional supervision, adopted a response and

incentive matrix as established by the Utah Sentencing Commission, and expanded reentry transition services for inmates to build ongoing support as they enter the community. We are also committed to measuring and evaluating relevant practices to adopt effective correctional principles. Our Department will continue to seek and adopt quality control and fidelity measures to support implementation of evidence-based practices, including collaboration with CCJJ and the Sentencing Commission on standards, guidelines, and critical outcome measures.

As noted previously, the Department, with the assistance of the Governor's Office and the Legislature, has taken several proactive steps to help address the increased workload of AP&P that is primarily due to the increased proportion of higher risk individuals being supervised. Additionally, we are committed to maintaining the use of validated risk assessments, motivational interviewing techniques, core correctional practices, and associated intervention tools. These are focused on ensuring individuals receive the right services, at the right time, and in the right amount (dosage). They also focus on incentives for positive behavior and active participation and ownership in the case action plan development by those being supervised.

The Department is also committed to ongoing fidelity monitoring, especially through a structured quality assurance and coaching program for staff responsible for conducting assessments. Similar processes are in place to assist in motivational interviewing skills. It is essential that the Department continue these efforts. Though much of the structure is in place for quality assurance and coaching, there is always room for improvement.

Once again, the Department wishes to express its appreciation for the work and recommendations included in this important audit. Similarly, we express our appreciation for all of the partners, both at the state and local level, who we work with on a daily basis. Implementing the recommendations of this audit collaboratively will lead to better outcomes for those justice-involved individuals within Utah.

Sincerely,

Mike Haddon, Executive Director
Utah Department of Corrections

14717 South Minuteman Drive, Draper, UT 84020 • telephone (801) 545-5513 • facsimile (801) 523-7523

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES
ANN SILVERBERG WILLIAMSON
Executive Director

Division of Substance Abuse and Mental Health
DOUG THOMAS
Director

October 5, 2020

Department of Human Services
Division of Substance Abuse and Mental Health
Response to Recommendations

DRAFT RESPONSE: A Performance Audit of the Justice Reinvestment Initiative (Report#2020-08).

Thank you for the opportunity to respond to the audit titled: *A Performance Audit of the Justice Reinvestment Initiative (Report#2020-08).* The Department of Human Services Division of Substance Abuse and Mental Health (DHS-DSAMH) concurs with the recommendations in this report. Our response describes the actions the DHS-DSAMH plans to take to implement the recommendations.

DSAMH appreciates the thoughtful work of the Legislative Auditors and looks forward to working collaboratively to implement the recommendations made in this report. The DSAMH is committed to the efficient and effective use of taxpayer funds and values the insight this report provides on areas needing improvement.

Chapter III Criminal Justice System Lacks the Accountability Called for by JRI

Recommendation 5*:* We recommend that the Division of Substance Abuse and Mental Health gather the data needed to track recidivism by requiring all public and private service providers to submit the names of clients under a court order to receive services, the programs in which they were enrolled, and the date upon which the treatment was completed.

Department Response: We concur with this recommendation.

DSAMH currently gathers sufficient data from providers who receive funds from DSAMH to match treatment records with criminal history records. DSAMH will begin working on the development of a limited data set that could be submitted by all private programs certified to provide treatment services to individuals involved in the justice system. DSAMH will work with the Attorney General's Office to explore feasibility of collecting data from providers. Recidivism rates for substance use disorders and mental health conditions will be compared with rates of relapse for other chronic relapsing diseases to compare treatment interventions and outcomes.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

Recommendation 6*: We recommend the Division of Substance Abuse and Mental Health work with the Commission on Criminal and Juvenile Justice to develop a method for calculating recidivism rates by matching client data submitted by treatment providers with the case filing information maintained by the courts.*

Department Response: We concur with this recommendation.

DSAMH has discussed this finding with CCJJ and has begun work to implement this recommendation.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

Recommendation 7: *We recommend the Legislature consider requiring all treatment providers who serve criminal justice involved clients to submit the client data needed to track recidivism to the Division of Substance Abuse and Mental Health.*

Department Response: We concur with this recommendation.

DSAMH believes that legislation would help clarify what data should be submitted to DSAMH. One issue that needs to be resolved is the definition of "justice-involved." Some individuals have a court order. Other individuals may have an arrest but no specific court order to participate in treatment. Providers will need clarity about whose data is required to be submitted to DSAMH. It will also be important to clarify which providers are required to submit data. Is it limited to providers who receive any public funds (funds provided through DSAMH, Medicaid, County Local Authorities, Correctional programs inside and outside of incarceration), or does it include all providers, examples may include, primary care physicians treating mental or substance use disorders with medications or people using their private health insurance.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

Chapter V Offender Treatment Availability and Quality Fall Short of JRI Goal

Recommendation 1: *We recommend that DSAMH continue to assess the frequency and quality of criminogenic treatment and focus training on needed areas.*
Department Response: We concur with this recommendation.

DSAMH is in the process of developing a new online training that will be mandatory for all certified providers. This training has been developed with materials and input created by the University of Utah Criminal Justice Center. The training focuses on the principles of risk, need and responsivity which is the current model endorsed by Corrections. Completion of this training will be mandatory.

DSAMH has also contracted with University of Utah Criminal Justice Center to once again complete an evaluation of all local authority treatment programs using the Correctional Programs Checklist which is the gold-standard for overall program evaluation.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

Recommendation 2: *We recommend that DSAMH monitor the use of performance measures by local authority management to ensure that measures adequately represent programs, levels of care and/or facilities and are reviewed by management frequently enough to effect needed changes.*

Department Response: We concur with this recommendation.

DSAMH regularly evaluates performance measures with local authorities through both monthly meetings and annual site visits. This item will be an agenda item for discussion in an upcoming monthly meeting with the local authorities and will be regularly reviewed to ensure that measures adequately represent programs and levels of care.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

Recommendation 3: *We recommend that DSAMH encourage and evaluate the use of fidelity monitoring by providers on all evidence-based programs.*

Department Response: We concur with this recommendation.

DSAMH will work with the Local Authorities to find the best way to add annual evaluation on the use of fidelity monitoring of evidenced based programs to the Local Authority monitoring visits and required annual Area Plan.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

Recommendation 4: *We recommend that DSAMH collaborate with the Department of Corrections and the Utah Substance Abuse and Mental Health Advisory Council to update its standards and certification process to ensure treatment quality is in line with current evidence-based practices.*

Department Response: We concur with this recommendation.

DSAMH will begin work to update the standards and certification requirements with USAAV and other stakeholders. Utah Administrative Rule R523-4 outlines the current standards and certification process.

Contact: Brent Kelsey, Assistant Director 801-540-5242

Implementation Date: July 1, 2021

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Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

HON. MARY T. NOONAN, State Court Administrator
Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114
Phone: (801) 578-3800
mnoonan@utcourts.gov

October 5, 2020

MR. KADE R. MINCHEY, Auditor General
315 House Building
P.O. Box 145315
Salt Lake City, Utah 84114-5315
Via email to:
Kade Minchey (kminchey@le.utah.gov)
Darin Underwood (dunderwood@le.utah.gov)
Jim Behunin (jbehunin@le.utah.gov)

Re: Response to final exposure draft of "A Performance Audit of the the Justice Reinvestment Initiative" (report no. 2020-08, dated September 25, 2020)

Dear Mr. Minchey,

Thank you for the opportunity to respond to the final exposure draft of "A Performance Audit of the the Justice Reinvestment Initiative" (report no. 2020-08, dated September 25, 2020). As always, your team was professional and a pleasure to interact with throughout the audit process.

We have eagerly anticipated the insight and perspective provided by this audit report. As expected, the report highlights many issues that deserve our collective attention. The report specifically contains a number of recommendations that are directed toward or that potentially involve the judiciary. To the extent these recommendations are adopted by the legislature, we wish to take this opportunity to state publicly that the Administrative Office of the Courts:

- stands ready to particpate as an active member of the recommended "criminal justice information governing body" (Report, pp. 25, 35; Chapter III – Recommendations 1, 2, and 3);
- welcomes the opportunity to participate as members of local criminal justice coordinating councils (Report, p. 39; Chapter IV – Recommendations 1 and 2);

- is committed to identifying and using a common client identifier in order to assist in linking various data sets (Report, pp. 28-30, 35);
- will fully cooperate in the effort to develop a method for calculating recidivism rates (Report, p. 31);
- will work with DSAMH, AP&P, and BOPP to devise a method for tracking whether ordered treatment services have been provided (Report, p. 36; Chapter III – Recommendations 4 and 6);
- will coordinate with CCJJ and DSAMH to track, in the least impactful way, the treatment outcomes of those on court probation who are required to receive treatment (Report, p. 71; Chapter VI – Recommendation 2); and
- supports the recommendation to study the need for pretrial and probation services throughout the state (Report, pp. 70 and 72).

We understand that a signficant portion of the information used in the audit was derived from court data. We agree with the statements in the audit that the data in the report is "a starting point for further and more in-depth analysis" with an expectation that "further analysis will produce additional insights and questions" (Report, p. 2).

We note that complex aggregate data often presents reporting challenges. The sentencing data in the report is a good example of the challenges posed by such data (see Appendix F, Appendix G, and Appendix K). Sentencing is a multi-facted and complex process that often includes a combination of multiple cases per individual (each with multiple offenses of varying degree), incarceration in prison or jail, credit for time served, restitution, treatment, fines and other financial penalties, community service, probation in differing levels of supervision and duration, and more. Some of these conditions may be ordered, but not imposed (i.e., suspended) at sentencing, but then ultimately be imposed later if the person is found to have violated the terms of probation. And this entire process is heavily influenced by any number of factors, including: the individual's risk, needs, history, and financial circumstances; the individual's future conduct; the resources available in a particular community; local approaches to law enforcement, prosecution, and defense; and judicial discretion applied to the unique facts and circumstances of each case. While it is a challenge to provide understandable aggregate data on all of these details, we believe it is not insurmountable.

We appreciate the careful efforts you made in attempting to extract meaningful conclusions from court sentencing data. We remain concerned that because the aggregate court data is difficult to parse, it cannot, in its present form, tell the entire story. In reviewing the data, we find ourselves in the same position as you, where the aggregate sentencing data does not readily lend itself to clear interpretation and reporting. In part, these challenges are rooted in the gradual and organic shift from paper-based case files to electronic data sets. As noted in "A Performance Audit of Information Sharing in the Criminal Justice System" (report no. 2020-09), "[e]ach agency has developed an information system that meets their unique needs but are not necessarily designed to be shared with other entities." For courts, the form of records has primarily been designed to accurately detail the events of a particular case. Over time, the need to share and analyze court data has increased in importance. We recognize that need.

We wanted to report on one positive development that has transpired since this audit process commenced. This positive development serves as an example of how incremental improvements can be made with concerted effort and collaboration around a unified purpose. The report notes that "[e]ven though most of the jail management systems used in Utah have a place to enter the [State Identification Number or SID], we found only three of the state's 24 county jails record the SID when an offender is booked in jail" (Report, p. 29). Our most recent data shows that the courts are now receiving SID data from each of the 24 county jails. For warrantless arrests, we receive this information approximately 70%-75% of the time. This is the result of combined significant effort by court staff and law enforcement officials in each county, for which we are grateful. This SID data makes it possible for the court to provide more relevant information to judges as they make important pretrial decisions. It also permits a judge to see a unified list of each case involving that individual, which improves the courts ability to coordinate appropriate judicial case responses that promote public safety, enhance judicial economy, and minimize unnecessary negative system impacts on the individual. Increased use of the SID also increases our ability

to understand and report on recidivism—"a key performance indicator of H.B. 348" (Report, p.28)—into the future.

Thank you again for the opportunity to respond to the audit report. We reaffirm our commitment to continued collaboration with all of our criminal justice system partners in this important effort.

Best,

Judge Mary T. Noonan
State Court Administrator

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of Public Safety

JESS L. ANDERSON
Commissioner

October 1, 2020

Kade R. Minchey
Auditor General
315 House Building
Utah State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Minchey:

Thank you for the opportunity to review and respond to performance audit number 2020-08, "A Performance Audit of the Justice Reinvestment Initiative." The Department of Public Safety (DPS) agrees with the recommendations and appreciates the investment in time and resources committed to completing this report.

As stated in the report, the goal of the Justice Reinvestment Initiative (JRI) was to reduce recidivism while controlling prison costs. DPS advocates for programs that reduce recidivism and continues to support this initiative. We believe the recommendations outline a strategy that can help the program achieve this goal by strengthening accountability, oversight, treatment services, and the probation and parole system. Furthermore, when implementing the recommendations, DPS is committed to continuing our coordination and collaboration with other stakeholder groups.

That being said, the audit report focused mainly on those convicted of drug possession, which represented a small portion of the state's prison population. The report shows the number of habitual drug offenders has doubled since 2013 (Figure 2.4). Additionally, the number of intensive-risk and high-risk parolees being managed by AP&P agents has continued to increase (Figure 6.1). DPS would support further examination of the potential impacts of these trends on public safety.

I appreciate you and your team's efforts to compile the information and data as part of the audit, which allowed for a thorough review of JRI. More importantly, the report provides guidance to stakeholders about what critical steps need to be taken to ensure this valuable program is effective and uses state resources efficiently.

Sincerely,

Jess L. Anderson
Commissioner

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STATE OF UTAH
BOARD OF PARDONS AND PAROLE

October 6, 2020

Kade R. Minchey, Legislative Auditor General
Office of the Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Michey:

The Board of Pardons and Parole (Board) appreciates the professionalism of the Legislative Auditor General staff and their concerted effort to understand the complexities involved in the Justice Reinvestment Initiative (JRI). The Board acknowledges the time and effort devoted to obtain the information necessary to complete this comprehensive review. The Justice Reinvestment Initiative implemented several years ago was an initial step in an ongoing process of continued improvement. The Legislative Auditor General are making current recommendations that identify needed improvement and will ultimately enhance successful outcomes throughout Utah's criminal justice system.

With regard to the review's findings related to needed collaboration and communication, the Board is committed to continued involvement and ongoing enhancement in our working relationships with our criminal justice partners to implement effectively the direction and recommendations of the legislature. Our agency supports and maintains our commitment to accountability, transparency, collaboration, and process improvement.

The Board will continue to implement strategies that utilize evidence-based practices and research in our decision-making process. Using these approaches, the Board will continue to work closely and diligently with our partners to make decisions using alternatives to incarceration that do not compromise public safety. The Board will also continue its work to implement an electronic records management system that will increase the ease in data tracking and measuring and monitoring agency performance.

448 East 6400 South, Suite 300, Murray, Utah 84107
Telephone: (801) 261-6464 Facsimile: (801) 261-6481 www.bop.utah.gov bopinfo@utah.gov

The Board continues to monitor and implement earned time cuts for incarcerated individuals who successfully complete approved evidence-based programs and demonstrate needed risk reduction. The Board has worked with the Department of Corrections to identify appropriate programs that are evidence-based and qualify for these mandated time cuts. Completion of these effective and targeted treatment programs will aid in rehabilitative efforts and promote success for individuals when they return to their communities.

The Board will continue to be good stewards with the taxpayer money in accomplishing our agency goals to provide fair and balanced release, supervision, and clemency decisions that address community safety, victim needs, offender accountability, risk reduction, and reintegration.

Thank you for your time and efforts committed to improvement with this review. The Board appreciates and supports the recommendations outlined in this review and our agency looks forward to the work and collaboration ahead. The resulting recommendations will undoubtedly benefit all stakeholders involved in the Utah criminal justice system.

Sincerely,

Carrie L. Cochran
Board Chair

448 East 6400 South, Suite 300, Murray, Utah 84107
Telephone: (801) 261-6464 Facsimile: (801) 261-6481 www.bop.utah.gov bopinfo@utah.gov

Tab 11

Agenda

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 7, 2020

Hon. Mary T. Noonan
Interim State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: Judge Mary T. Noonan
Cathy Dupont

FROM: Neira Siaperas

RE: Juvenile Court Filings Reports

Introduction

This Memorandum details the comprehensive review of the juvenile court filings reports as well as the actions taken to revise the reports and correct the inaccuracies. The modifications to the reports are summarized in Appendix A and the revised juvenile court filings data for fiscal year (FY) 2020 is included in Appendix B.

It should be noted that the filings reports alone do not reflect the workload of juvenile court judges or staff. The filings reports count new delinquency episode referrals, child welfare petitions, and certain other incidents in juvenile court. The workload studies include the filings reports as one of the components, but additional documents and data are gathered to account for and reflect the workload on a case.

Background

On August 21, 2020, the annual filings reports for all court levels were presented to the Judicial Council. The annual reports are prepared by Court Services and the reports run automatically without intervention by a data analyst. The juvenile court filings report indicated a 55% increase in child welfare (CW) filings in FY20 as compared to FY19. Following the presentation, Court Services researched the cause of such a remarkable increase in CW filings. It was subsequently discovered that the CW filings report was written incorrectly when converted from the Access to the Cognos platform and had the FY19 filings hardcoded and embedded in the filings report. This resulted in the FY20 report counting both the FY19 and FY20 CW filings which produced the inaccurate report of a 55% increase in CW filings.

The Juvenile Justice Reform (HB 239) requires annual reporting of delinquency filings to the Commission on Criminal and Juvenile Justice (CCJJ). This report has traditionally been generated by the juvenile court data analyst and is separate from the annual delinquency filings report produced by Court Services. One of the components of the CCJJ report is the number of delinquency episodes referred to juvenile court each fiscal year. The comparison of the CCJJ and the annual delinquency filings reports indicated a discrepancy of 1,150 referrals with the FY20 annual filings report showing 14,709 delinquency referrals and the CCJJ report showing 15,859 referrals.

This discrepancy was concerning since there is an established criterion for counting delinquency referrals to juvenile court so there should not be any significant differences in the referral counts between the two reports. A juvenile court delinquency referral is counted by the most severe incident in a single episode. A single delinquency episode is defined as incidents that share the same offense date, law enforcement agency, and police report number.

In addition to the discrepancies between the two reports as outlined above, there was an error in the annual delinquency filings report presented to the Judicial Council on August 21, 2020. This error occurred during the process of transposing data from the filings report to the slides used to present the data.

Review and Analysis

Juvenile Court administrators and the Court Services team reviewed the categories of filings, the discrete filings, and the parameters/filters written into the child welfare, delinquency, adult violations, and domestic/probate juvenile court filings reports. During this review, several issues were discovered such as inaccuracies in counting delinquency referrals; juvenile court filings that have not been counted in the prior annual filings reports; and inclusion of filings in wrong categories.

One notable issue in the delinquency report was an inaccurate parameter of filtering delinquency referrals by the "intake" date in the CARE system and only counting one referral per intake date. The intake date signifies the date in which a referral is entered into CARE by court staff. This is an inaccurate method for counting delinquency referrals since multiple delinquency episodes may be entered into CARE on the same date on the same case. By only including one referral per intake date, the annual filings report undercounted the actual number of delinquency episodes referred to juvenile court.

Other issues discovered during the review of the reports included filings that have not been counted in prior reports such as the substantiation and emancipation petitions. A detailed list of filings that were not previously counted and other revisions to the filings reports are outlined in Appendix A.

Prior Fiscal Years

Delinquency

The annual delinquency filings report was written in Cognos last year with the incorrect parameter of filtering referrals by intake date. As such, both the FY20 and FY19 annual delinquency filings reports undercounted delinquency referrals. Prior to FY19, the report was written in the Access platform. There is no information on what criteria and parameters were used in the Access reports. However, a comparison of the FY18 filings revealed a similar discrepancy as found in FY19 and FY20, which may indicate a long-standing inaccuracy in delinquency filings reported in annual filings reports. It should be noted that the practice of counting referrals to juvenile court changed approximately three years ago to count and dispose of episodes rather than individual incidents referred to juvenile court. The filings reports were not evaluated following this change which may have contributed to the inaccuracies in counting delinquency referrals to juvenile court.

Delinquency Filings			
	Court Services Report	CCJJ Report	Difference
FY20	14,709	15,859	1,150 (7.2%)
FY19	15,858	17,354	1,496 (8.6%)
FY18	16,883	18,331	1,552 (8.4%)

Child Welfare and Other Juvenile Court Filings

Unlike the annual delinquency filing report which could be compared with the CCJJ report, there are no similar reports in child welfare and other filings that could be used to compare prior fiscal years. However, with the discovery of several types of filings that were not previously accounted for and with

the revisions in how some filings are counted, it is reasonable to conclude that child welfare and other juvenile court filings were undercounted in prior fiscal years.

Impact on the Juvenile Judicial Weighted Caseload

The delinquency filings report used in the FY20 Juvenile Judicial Weighted Caseload included the inaccurate intake date parameter. The weighted caseload study was impacted since the case weights are applied to filings, and the filings used in the study were undercounted. Specific to child welfare, there was no impact on the FY20 Juvenile Judicial Weighted Caseload study because a modified version of the child welfare filings report was used. The modified version included filings for less than a full year as it was a preliminary report and the data element that caused the error in the child welfare annual filings report was not used in this report. Lastly, although several types of filings have not been previously included in the annual filings report, these were accounted for in the weighted caseload study. For example, substantiations and order to show cause filings have not been counted in the filings report but were accounted for in the workload study and a case weight was assigned to those filings.

Actions

1. Court Services reviewed and modified the child welfare filings report to remove the hard coded data and only count the single and correct fiscal year filings in the annual report. Court Services reviewed all other juvenile court filings reports and confirmed that the same error of embedding prior year filings did not occur with any other reports.
2. Court Services corrected the error caused by transposing delinquency data from the annual filings report to the presentation slides.
3. Juvenile Court administrators met with the Court Services data team on multiple occasions to review the categories of filings, the discrete filings, and the parameters/filters written into all juvenile court filings reports (child welfare, delinquency, adult violations, and domestic/probate).
4. The categories and the discrete filings within the categories were revised to accurately reflect in which category a filing should be counted.
5. Types of filings in district court were reviewed for comparison purposes.
6. Types of filings that were previously unaccounted for were added to the filings reports. Conversely, some types of filings that were previously counted were removed from the reports (see Appendix A).
7. The inaccurate parameter of counting delinquency referrals by intake date was removed.
8. The revised FY20 juvenile court filings data was pulled using the revised filings report (Appendix B).
9. Court Services will rewrite the monthly filings reports using the revised categories and parameters.
10. The Court Services annual filings reports and the CCJJ report on delinquency filings will be aligned to have uniform data parameters for both reports.

Next phase

As outlined previously, the analysis and actions taken thus far have been specific to the reporting of juvenile court filings which include initial referrals, petitions filed, and incidents created. The next phase of the review and revision of juvenile court data reporting processes will include the creation of reports based on dispositions. Whereas the filings reports encompass the work coming into the juvenile court, dispositional reports would reflect the resolution of those filings. Utilizing dispositional reports would also provide an indication of the work that is being advanced from the juvenile court to partner agencies within the juvenile justice and child welfare system. This allows for the ability to directly compare data from these agencies with juvenile court data for analysis and validation purposes.

Additionally, the filings reports alone do not provide sufficient information for judicial or other weighted workloads in Utah Courts. Filings are an important component of any workload study, but additional information and data must be included in order to accurately capture the workload of Judges, Judicial Assistants, or Probation Officers. We eagerly anticipate the analysis of the Courts' weighted workload processes by the National Center for State Courts' consultants. This analysis and recommendations will further inform and improve our information and processes relevant to juvenile court data.

Conclusion

The comprehensive review conducted on the juvenile court filings reports has provided an opportunity to address long-standing questions and issues with juvenile court data. Several improvements have already been implemented during this process and a specific plan to further expand and refine the reporting of juvenile court data has been outlined. Through these efforts, we are committed to instilling confidence in future data reports by establishing clear and transparent processes resulting in consistently accurate and reliable data.

Appendix A

Prior Categories of Filings	New Categories of Filings
Delinquency ● Felony ● Misdemeanor ● Infraction ● Status ● Contempt	Delinquency ● Felony ● Misdemeanor ● Infraction ● Status ● Expungement
Child Welfare ● Child Welfare Proceeding ● Termination of Parental Rights ● Voluntary Relinquishment	Child Welfare ● Child Welfare Proceeding ● Adoption ● Termination of Parental Rights ● Voluntary Relinquishment
Adult Violations ● Adult Violations	Adult Filings ● Adult Violations ● Child Protective Order ● Administrative Review
Domestic/Probate ● Domestic / Probate	Miscellaneous ● Emancipation ● Petition to Marry ● Judicial Bypass

Revisions made within the categories		
Filing	**Prior Category**	**New Category / Sub-category**
Compulsory Education	Delinquency	Adult Filings *(Adult Violations)*
Protective Orders	Adult Violations	Adult Filings *(Child Protective Order)*
Petition to Marry	Domestic/Probate	Miscellaneous
Paternity Petition	Domestic/Probate	Child Welfare *(Child Welfare Proceeding)*
Custody Change	Domestic/Probate	Child Welfare *(Child Welfare Proceeding)*
Adoption	Domestic/Probate	Child Welfare *(Adoption)*
Voluntary Relinquishment **Previously counted but only if occur prior to TPR*	Child Welfare *(Voluntary Relinquishment)*	Child Welfare *(Voluntary Relinquishment)*

Filings added to the reports *(not counted previously)*	
Filing	**Category / Sub-category**
Substantiation / Administrative Appeal	Adult Filings *(Administrative Review)*
Expungement	Delinquency *(Expungement)*
Emancipation	Miscellaneous
Judicial Bypass filing	Miscellaneous
Temporary Restraining order	Adult Filings *(Administrative Review)*
Interstate Compact Requisition	Delinquency *(Status)*

Filings removed from the reports
Juvenile Contempt
Adult Contempt
Motion for Expedited Placement

Appendix B

The table below compares the FY20 juvenile court filings reported in August 2020 to the Judicial Council with the revised FY20 filings generated after the filings reports were corrected.

		FY20 filings Reported in August 2020	**Revised FY20 filings**	**Notes**
Adult Filings	Administrative Review		36	Added Substantiation petitions
	Adult Violations		154	Moved Compulsory Education from Delinquency
	Child Protective Orders		1512	Moved from Adult Violations to a standalone sub category
	Adult Filings	**1511**	**1702**	
Child Welfare	Child Welfare Proceedings	6253	3135	Removed double counted CW filings (report error). Moved Paternity and Custody Change from Domestic/Probate.
	Termination of Parental Rights	1354	621	Removed double counted TPRs (report error)
	Voluntary Relinquishments	368	561	Revised how Voluntary Relinquishments are counted
	Adoption		625	Moved from Domestic/Probate
	Child Welfare	**7975**	**4942**	
Delinquency	Felony	1800	2128	Corrected the intake date parameter
	Misdemeanor	11462	12088	Corrected the intake date parameter
	Infraction	498	537	Corrected the intake date parameter
	Status	929	971	Corrected the intake date parameter. Added ICJ Requisition Request.
	Expungement		287	Added Expungement petitions
	Contempt	234		Removed Contempt
	Delinquency	**14923**	**16011**	
Miscellaneous	Petition to Marry		34	Moved from Domestic/Probate
	Emancipation		53	Added Emancipation petitions
	Judicial Bypass		18	Added Judicial Bypass petitions
	Miscellaneous		**105**	
Domestic/Probate	Domestic/Probate	677		Moved to new categories
	Domestic/Probate	**677**		Removed Domestic/Probate category
Total		**25,086**	**22,760**	
Total (after removing the double counted CW filings)		**21,614**	**22,760**	

**In the FY20 numbers reported in August 2020, there were 3472 CW filings (2549 CW proceedings; 733 TPR; 190 VR) included from FY19 due to an error in the report.*

The table below compares the revised FY19 juvenile court filings with the revised FY20 juvenile court filings. The FY19 filings were re-generated using the corrected filings reports.

		Revised FY19 filings Using the revised reports	**Revised FY20 filings** Using the revised reports
Adult Filings	Administrative Review	43	36
	Adult Violations	283	154
	Child Protective Orders	1454	1512
	Adult Filings	**1780**	**1702**
Child Welfare	Child Welfare Proceedings	3489	3135
	Termination of Parental Rights	763	621
	Voluntary Relinquishments	738	561
	Adoption	767	625
	Child Welfare	**5757**	**4942**
Delinquency	Felony	2181	2128
	Misdemeanor	12985	12088
	Infraction	549	537
	Status	1283	971
	Expungement	253	287
	Delinquency	**17251**	**16011**
Miscellaneous	Petition to Marry	10	34
	Emancipation	50	53
	Judicial Bypass	14	18
	Miscellaneous	**74**	**105**
Total		**24,862**	**22,760**

** The FY19 referrals reported to the Judicial Council in August 2019 were 22,760.*

Tab 12

Agenda

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: **Members of the Judicial Council Management Committee**

FROM: Neira Siaperas
Utah Juvenile Court Administrator

DATE: October 5, 2020

RE: Proposed Probation Policies for Review and Approval

The Board of Juvenile Court Judges has proposed revisions of the following policies which are now advanced to the Management Committee for review and consideration. Additionally, I seek placement on the Judicial Council's consent agenda for October 26, 2020.

Section 2.1 Preliminary Interview
This policy was last updated May 21, 2018. The purpose of the policy is to provide direction to probation officers when conducting a preliminary interview with a minor and the parent/guardian/custodian regarding a referral to the Juvenile Court. Changes to this policy include the replacement of the pre and post adjudication Acknowledgement of Legal Rights forms with a singular form currently in use and the addition a requirement for probation officers to provide notification of the preliminary interview appointment to the designated school representative for school-based referrals.

Section 4.2 Formal and Intake Probation
This policy was last updated December 16, 2019. The purpose of the policy is to provide guidelines for supervision of minors placed on Intake Probation and Formal Probation by the Court. Updates to the policy include the removal of a reference to the old Serious Youth Offender statute and a change requiring that a probation officer make contact with a youth and family to review the conditions of the order within three business days of a youth being placed on Intake or Formal probation.

I will be available to respond to questions during your meeting on October 13, 2020.

Thank you.

2.1 Preliminary Interview

Policy:
This policy provides direction for probation officers when conducting a preliminary interview with a minor and the parent/guardian/custodian regarding a referral to the Juvenile Court.

Scope:
This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:
- UCA 78A-6-602
- UCA 53G-8-211(4)

Procedure:
1. The probation officer shall conduct a preliminary interview with all minors referred to the court following the outlined purposes below.
   1.1. Verify and/or update information contained in the CARE case profile;
   1.2. Review the rights of the minor using Addendum 2.1.1 Notice and Acknowledgement to Legal Rights of Minors form;
      1.2.1. The probation officer shall reschedule the interview if the minor and/or parents or guardians request time to retain a private attorney.
      1.2.2. The probation officer shall postpone the interview and send the referral to the prosecutor if the minor or parent/guardian requests a court-appointed attorney.
   1.3. Gather social information (written consent required);
   1.4. Conduct assessments as outlined in Probation Policy 2.7;
      1.4.1. The probation officer shall postpone the interview and send the referral to the prosecutor if a minor and/or parent or guardian declines to provide social information for the completion of a risk assessment.
   1.5. Address victim impact and restitution;
   1.6. Complete a nonjudicial adjustment if eligible as outlined in Probation Policy 2.4;
   1.7. Gather necessary information to prepare a court report, if applicable, as outlined in Probation Policy 2.8.

2. The probation officer shall schedule an appointment for a preliminary interview in the Case Calendar Module in CARE with the minor and the minor's parents and/or guardians within 14 days of the referral being assigned to the probation officer in CARE.
   2.1. The designated guardian for minors in the custody of the Division of Child Family Services or the Division of Juvenile Justice Services shall be the assigned caseworker or Guardian ad Litem.

2.2. The designated school representative shall also be notified of the preliminary interview appointment for minors referred to the court on school-based offenses listed in 53G-8-211(4).

2.3. For referrals that have been petitioned, the probation officer shall make every attempt to schedule the preliminary interview with the minor and the minor's parents or guardians prior to the court hearing or within 14 days of the referral being assigned to the probation officer in CARE.

2.3.1. The designated guardian for minors in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services shall be the assigned caseworker or Guardian ad Litem.

2.3.2. The designated school representative shall also be notified of the preliminary interview appointment for minors referred to the court on school-based offenses listed in 53G-8-211(4).

Addendum 2.1.1 Notice and Acknowledgement of Minor's Legal Rights

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History:
Effective Date May 21, 2018
Updated by Policy Group June 15, 2020
Approved by Chiefs July 9, 2020
Approved by JTCE Group August 6, 2020
Approved by BJCJ August 14, 2020

UTAH STATE JUVENILE COURT
NOTICE & ACKNOWLEDGMENT OF MINOR'S LEGAL RIGHTS

Minor's Name: _____ **Case Number:** _____

Right to Counsel (Attorney)
You have the right to be represented by an attorney throughout all court proceedings. If you do not have an attorney present and would like to retain an attorney, this interview may be rescheduled.

Privilege Against Self-Incrimination (Right to Remain Silent)
You have the right to refuse to answer any questions or to make any statements concerning the offense or condition for which you have been referred to the court.

Notice of Charges
You have the right to receive written notice on petitioned allegations referred to the court.

Right to Trial and to Confront and Cross-Examine Witnesses
If a petition is filed with the court, you have the right to a trial where witnesses will testify and evidence will be presented. You, or your attorney, will be entitled to question the witnesses. You may present witnesses and testify on your own behalf, but you cannot be required to testify.

I acknowledge that the above legal rights have been reviewed with me and I understand my rights. In addition, I understand that this is a voluntary meeting and I have the right to end this meeting at any time.

_____ _____
Date Minor

_____
Parent/Guardian

~~Section~~ 2.1 Preliminary Interview

Policy:

This policy provides direction for probation officers when conducting a preliminary interview with a minor and the~~ir~~ parent/guardian**/custodian** regarding a referral to the Juvenile Court.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:

- UCA 78A-6-602
- **UCA 53G-8-211(4)**

Procedure:

1. The probation officer shall conduct a preliminary interview with ~~every~~ **all** minor**s** ~~who is~~ referred to the court **following the outlined purposes below**. ~~If the minor is in the custody of the Division of Child and Family Services or Division of Juvenile Justice Services, the probation officer shall notify the assigned caseworker or Guardian ad Litem and provide information regarding the referral.~~
   1.1. ~~If the referral has not been petitioned, an appointment for the preliminary interview shall be scheduled with the minor and the minor's parents or guardians within 14 days of the referral being assigned to the probation officer in CARE.~~
   1.2. ~~If the referral has been petitioned, the probation officer shall make every attempt to schedule the preliminary interview with the minor and the minor's parents or guardians prior to the court hearing or within 14 days of the referral being assigned to the probation officer in CARE.~~

~~2. The purpose of the preliminary interview when a referral has not been petitioned is to:~~

~~2.1~~**1.1** **V~~v~~**erify and/or update **~~the~~** information contained in the CARE case profile;

~~2.2~~**1.2** **R~~r~~**eview the rights of the minor using **Addendum 2.1.1** **~~the~~** Notice and Acknowledgement to Legal Rights of Minors (**~~pre-petition)~~** form;

~~2.1.1~~**1.2.1**The probation officer shall reschedule the interview if the minor and/or parents or guardians request time to retain a private attorney.

~~2.1.2~~**1.2.2** The probation officer shall postpone the interview and send the referral to the prosecutor if the minor or parent/guardian requests a court appointed attorney.

~~2.3~~**1.3** **~~G~~g**ather social information (written consent required);
~~2.4~~**1.4** **~~C~~c**onduct assessments as outlined in **Probation** Policy 2.7;
~~2.4.1~~ **1.4.1**The probation officer shall postpone the interview and send the referral to the prosecutor if a minor and/or parent or guardian declines to provide social information for the completion of a risk assessment.
~~2.5~~ **1.5** **~~A~~a**ddress victim impact and restitution;
~~2.6~~ **1.6** **~~C~~c**omplete a nonjudicial adjustment if eligible as outlined in **Probation** Policy 2.4;
~~2.7~~ **1.7** **~~G~~g**ather necessary information to prepare a court report, if applicable, as outlined in **Probation** Policy 2.8.

~~3. The purpose of a preliminary interview when a referral has been petitioned is to:~~
~~3.1Verify and/or update information contained in the CARE case profile;~~
~~3.2Review the rights of the minor using the Notice and Acknowledgement to Legal Rights of Minors (post-petition) form;~~
~~3.2.1The probation officer shall reschedule the interview if the minor and/or parents or guardians request time to consult with an attorney.~~
~~3.3Gather social information (written consent required);~~
~~3.4Conduct assessments as outlined in Policy 2.7;~~
~~3.5Gather necessary information to prepare a court report, if applicable, as outlined in Policy 2.8.~~

2. The probation officer shall schedule an appointment for a preliminary interview in the Case Calendar Module in CARE with the minor and the minor's parents and/or guardians within 14 days of the referral being assigned to the probation officer in CARE.

1.1. The designated guardian for minors in the custody of the Division of Child Family Services or the Division of Juvenile Justice Services shall be the assigned caseworker or Guardian ad Litem.

1.2. The designated school representative shall also be notified of the preliminary interview appointment for minors referred to the court on school-based offenses listed in 53G-8-211(4).

1.3. For referrals that have been petitioned, the probation officer shall make every attempt to schedule the preliminary interview with the minor and the minor's parents or guardians prior to the court hearing or within 14 days of the referral being assigned to the probation officer in CARE.

1.3.1. The designated guardian for minors in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services shall be the assigned caseworker or Guardian ad Litem.

1.3.2. The designated school representative shall also be notified of the preliminary interview appointment for minors referred to the court on school-based offenses listed in 53G-8-211(4).

~~Addendum 2.2 Notice and Acknowledgment to Legal Rights of Minors (Pre-Petition)~~

~~**Addendum 3.2 Notice and Acknowledgment to Legal Rights of Minors (Post-Petition)**~~

Addendum 2.1.1 Notice and Acknowledgement of Minor's Legal Rights

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History:
Effective Date May 21, 2018
Updated by Policy Group June 15, 2020
Approved by Chiefs July 9, 2020
Approved by JTCE Group August 6, 2020
Approved by BJCJ August 14, 2020

~~Feedback Note: Until the matter is reviewed by the prosecutors office and a petition is filed, the minor is not eligible to receive a court appointed attorney.~~

Proposed Policy Update for 2.1 Preliminary Interview

1. Comment/Theme:

- **In the following section, I believe it should be the Division of Child and Family Services. 2.3.1 The designated guardian for minors in the custody of the Division of Family Services or the Division of Juvenile Justice Services shall be the assigned caseworker or Guardian ad Litem.**
  - **Policy Committee Response:** Good catch!
  - **Policy Committee Decision:** Updated to reflect the accurate name

2. Comment/Theme:

- **1.17- I'd recommend this be worded as gather information to accurately complete the applicable assessments or something to that nature. If the youth declines the NJ agreement, or the offense is petitioned due to the prosecuting attorney choosing to petition for unsubstantial compliance, the PO will be required to gather information to write a court report at that time. Information for a court report at the time of the PI for an NJ closure will be outdated information if the offense(s) result in a petition after going through the NJ process (up to 180 days if an extension is requested and granted).**
  - **Policy Committee Response:** We've reviewed the steps outlined in the policy and note that it already includes completing assessments (1.4) and also outlines that you would only need to collect information for a court report if applicable to the situation. It is true that you may have to collect updated social information in the future if the NJ ultimately gets petitioned to court.
  - **Policy Committee Decision:** After review, we deleted paragraph 2.1 for additional clarity.

3.Comment/Theme:

- **Section 2. 2.0 Should PO's be required to create the appointment in CARE? Is this something to add for statewide expectations and consistency? Some PO's make apts by phone but shouldn't they also generate the appointment in CARE?**
  - **Policy Committee Response:** Yes, we should schedule the appointment in CARE for data tracking purposes. The POs could still opt to schedule by phone, but should also schedule the appointment in the case calendar module in CARE.
  - **Policy Committee Decision:** Updated #2 to reflect that the calendar should be scheduled in CARE.

4.Comment/Theme:

- **2. The probation officer shall schedule an appointment for a preliminary interview with the minor and the minor's parents and/or guardians within 14 days of the referral being assigned to the probation officer in CARE.**

Does this mean the PO should have the letter sent out within 14 days scheduling the PI or the appointment with the family should be held within 14 days of being assigned? This is being interpreted differently throughout the state.

- ➢ **Policy Committee Response:** The Court has interpreted the statute to say that the meeting only has to be scheduled within 14 days of the assignment. When scheduling the appointment the PO should keep in mind that the offense still needs to be resolved within 30 days from case assignment, so they should schedule appointments with enough time to allow for that to happen.
- ➢ **Policy Committee Decision:** NA

4.2 Intake and Formal Probation

Policy:
The probation department shall supervise minors placed on Intake Probation and Formal Probation by the Court.

Scope:
This policy applies to all probation staff of the Utah State Juvenile Court.

Authority:

- Utah Code of Judicial Administration
  - Rule 7-301
  - Rule 7-304
- UCA 78A-6-105
- UCA 78A-6-117
- UCA 78A-6-703

Procedure:

1. The probation officer shall recommend either Intake Probation or Formal Probation at a minor's final dispositional hearing when the minor will be supervised by the probation department:
   1.1. Intake Probation is defined in statute as a period of court monitoring that does not include field supervision, but the minor is supervised by a probation officer (78A-6-105).
      1.1.1. Intake probation shall not extend beyond the three month presumptive time frame unless at least one of the following exist:
         1.1.1.1. A request by a treatment provider or intervention facilitator to complete a court-ordered treatment or intervention;
         1.1.1.2. The minor commits a new misdemeanor or felony offense;
         1.1.1.3. Service hours have not been completed;
         1.1.1.4. There is an outstanding fine; OR
         1.1.1.5. There is a failure to pay restitution in full.
   1.2. Formal Probation is defined in statute as a period of court monitoring that includes field supervision and the minor is supervised by a probation officer (78A-6-105).
      1.2.1. Formal probation shall not extend beyond the four to six month presumptive time frame unless at least one of the following exist:
         1.2.1.1. A request by a treatment provider or intervention facilitator to complete a court-ordered treatment or intervention;
         1.2.1.2. The minor commits a new misdemeanor or felony offense; OR
         1.2.1.3. There are outstanding service hours, fines, and/or restitution.
            1.2.1.3.1. The probation officer shall recommend Formal Probation be terminated and the minor be placed on Intake Probation if the only

remaining obligation is service hours and/or unpaid fines or restitution.

1.3. The probation officer shall inform the court of the recommended length of time needed to address the specific circumstances when requesting that Intake or Formal Probation continue past the presumptive time frame.

1.3.1. If the extension is only for service hours, the probation officer shall not recommend an extension for longer than 90 days.

1.4. The presumptive time frames do not apply to minors adjudicated for the offenses outlined under 78A-6-703.

2. The probation officer shall consider the individualized needs of the minor and the following standard field supervision conditions when determining whether or not to recommend Formal Probation.

2.1. The need for the minor to be contacted at their home, school, place of employment, or elsewhere as deemed appropriate.

2.2. The need for the minor to be subject to a search of their person or anything under the minor's ownership, possession, or control.

2.3. The need for the minor to notify the probation department prior to leaving the state of Utah or remaining away from their place of residence overnight.

2.4. The need for additional supervision based upon the risk the minor poses to the community.

3. The probation officer shall make contact with the minor and the minor's parent/guardian/custodian within three working days of the minor's placement on intake or formal probation to review the conditions of the court order.

4. The probation officer shall complete a case plan on all moderate and high risk youth as outlined in Probation Policy 4.3.

5. The probation officer shall supervise minors placed on either Intake Probation or Formal Probation according to risk, need, responsivity, evidence-based principles, and Quality Assurance Plans.

History:
Effective December 16, 2019
Updated by Policy Group July 16, 2020
Approved by Chiefs August 13, 2020
Approved by JTCEs September 3, 2020
Approved by BJCJ September 23, 2020

4.2 Intake and Formal Probation

Policy:

The probation department shall supervise minors placed on Intake Probation and Formal Probation by the Court.

Scope:

This policy applies to all probation staff of the Utah State Juvenile Court.

Authority:

- Utah Code of Judicial Administration
  - Rule 7-301
  - Rule 7-304
- UCA 78A-6-105
- UCA 78A-6-117
- **UCA 78A-6-703**

Procedure:

1. The probation officer shall recommend either Intake Probation or Formal Probation at a minor's final dispositional hearing when the minor will be supervised by the probation department:
   1.1. Intake Probation is defined in statute as a period of court monitoring that does not include field supervision, but the minor is supervised by a probation officer (78A-6-105).
      1.1.1. Intake probation shall not extend beyond the three month presumptive time frame unless at least one of the following exist:
         1.1.1.1. A request by a treatment provider or intervention facilitator to complete a court-ordered treatment or intervention;
         1.1.1.2. The minor commits a new misdemeanor or felony offense;
         1.1.1.3. Service hours have not been completed;
         1.1.1.4. There is an outstanding fine; OR
         1.1.1.5. There is a failure to pay restitution in full.
   1.2. Formal Probation is defined in statute as a period of court monitoring that includes field supervision and the minor is supervised by a probation officer (78A-6-105).
      1.2.1. Formal probation shall not extend beyond the four to six month presumptive time frame unless at least one of the following exist:
         1.2.1.1. A request by a treatment provider or intervention facilitator to complete a court-ordered treatment or intervention;
         1.2.1.2. The minor commits a new misdemeanor or felony offense; OR
         1.2.1.3. There are outstanding service hours, fines and/or restitution.

1.2.1.3.1. The probation officer shall recommend Formal Probation be terminated and the minor be placed on Intake Probation if the only remaining obligation is service hours and/or unpaid fines or restitution.

1.3. The probation officer shall inform the court of the recommended length of time needed to address the specific circumstances when requesting that Intake or Formal Probation continue past the presumptive time frame.

1.3.1. If the extension is only for service hours, the probation officer shall not recommend an extension for longer than 90 days.

1.4. The presumptive time frames do not apply to minors adjudicated for the offenses outlined under ~~the Serious Youth Offender statute (~~78A-6-70**3**~~2)~~.

2. The probation officer shall consider the individualized needs of the minor and the following standard field supervision conditions when determining whether or not to recommend Formal Probation.

2.1. The need for the minor to be contacted at their home, school, place of employment, or elsewhere as deemed appropriate.

2.2. The need for the minor to be subject to a search of their person or anything under the minor's ownership, possession, or control.

2.3. The need for the minor to notify the probation department prior to leaving the state of Utah or remaining away from their place of residence overnight.

2.4. The need for additional supervision based upon the risk the minor poses to the community.

3. The probation officer shall m~~eet~~**take contact** with the minor and the minor's parent~~s or /~~guardian**/custodian** within ~~five~~ **three** working days of the minor's placement on **intake or** formal probation ~~**and**~~ **to** review the conditions of the court order.

4. The probation officer shall complete a case plan on all moderate and high risk youth as outlined in **Probation** Policy 4.3.

5. The probation officer shall supervise minors placed on either Intake Probation or Formal Probation according to risk, need, responsivity, evidence-based principles and Quality Assurance Plans.

History:
Effective December 16, 2019
Updated by Policy Group July 16, 2020
Approved by Chiefs August 13, 2020
Approved by JTCEs September 3, 2020
Approved by BJCJ September 23, 2020

Tab 13

Agenda

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 2, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: **Judicial Council Management Committee**

FROM: **Board of District Court Judges**

RE: **Court Forms Committee -Vacancy**

Judge James Taylor (4th Judicial District) announced that he will be retiring at the end of calendar year 2020. Judge Taylor currently serves on the Court Forms Committee and his departure will create a vacant district court judge vacancy on this committee. The intent is to have a replacement identified for this vacancy by mid-September so he/she can attend (as a non-voting member) the October and December meetings. This will allow the new member to get up to speed on committee work in advance of the legislative session and prior to Judge Taylors departure.

An email was sent to the district court bench requesting judges who were interested in being considered to serve on this committee to submit a brief biography and a list of current committees on which they now serve. Two district court judges expressed interest in serving on this committee and the District Board considered which candidate to recommend to the Judicial Council on August 24, 2020.

The Board of District Court Judges recommends that Judge Su J. Chon (3rd Judicial District) be appointed to serve on the Court Forms Committee.

Judge Su J. Chon (Third Judicial District)

Committee and Other Assignments:
I currently serve on the Community Relations Subcommittee of the Utah State Courts. I previously served on the Language Access Program. I also serve on the following committees through the Utah State Bar: co-chair of the Modest Means Committee; a member of the New Lawyer Training Program; and a member of the Executive Committee of the Litigation Section.

BIO:
Judge Su J. Chon was appointed to the Third District Court in August 2012 by Governor Gary R. Herbert. She serves Salt Lake, Summit, and Tooele counties. She graduated from Brigham Young University with a Bachelors of Arts in English in 1991 and a Juris Doctorate in 1994. Judge Chon worked in small and medium law firms and dealt with litigants who often needed to fix their documents in family law cases. Most of her legal experience was in transactional legal work. As the Executive Director of the Multi-Cultural Legal Center, she worked with low income and underserved communities on various legal issues. At the time of her appointment, she served as a Property Rights Ombudsman for the State of Utah.

Judge Chon received the Utah State Bar's 2005 Pro Bono Lawyer of the Year Award and the 2008 Raymond S. Uno Award. She is a member of the American Bar Association and National Association of Women Judges. She serves on the Community Relations committee, is the co-chair of the Utah Bar's Modest Means Committee, a member of Executive Committee for the Utah Bar's Litigation Section and a member of the New Lawyer Training Committee.

Current members of the Court Forms Committee are:

Randy L. Dryer - Chair, S. J. Quinney College of Law
Amber Alleman - LPP
Cyndie Bayles - UPA President
Judge Randy Birch - Heber City Justice Court
Guy Galli - Judicial Team Manager - Third District Court
Judge Elizabeth Lindsley - Third District Juvenile Court
Kara Mann - Interpreter Program Coordinator - Administrative Office of the Courts
Commissioner Russell Minas - Third District Court
Nathanael Player - Attorney - Self-Help Center
Clayson Quigley - Court Services Director - Administrative Office of the Courts
Stewart Ralphs - Attorney
Judge James Taylor - Fourth District Court
Jessica Van Buren - Director, Utah State Law Library
Mary Westby - Attorney
Brent Johnson - Staff, General Counsel - Administrative Office of the Courts

Tab 14

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 18, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: **Management Committee / Judicial Council**

FROM: **Keisa Williams**

RE: **Rules for Public Comment**

The Policy and Planning Committee recommends the following rules to the Judicial Council for public comment.

CJA 4-202.02. Records Classification (AMEND)

HB 206 went into effect on October 1, 2020. That bill requires judges to consider an individual's ability to pay a monetary bail amount any time a financial condition of release is ordered. The Judicial Council recently adopted a new matrix that recommends affordable monetary bail amounts based on an individual's gross household income and number of dependents. In order to provide judges with that information at the time an initial release decision is made, law enforcement will begin asking defendants those two questions and submitting the answers to the court electronically via the probable cause system.

Rule 4-202.02 classifies affidavits of indigency as Private records, but as it is currently written, the rule would not cover the two data elements because the answers would not be submitted as part of an affidavit. The proposed amendment at line 142 would cover both affidavits of indigency and the financial data elements as Private records.

Programming required to submit and capture the two data elements has not yet been completed, but the estimated completion date is December 31, 2020.

Rule 4-403. Electronic signature and signature stamp use (AMEND)

The proposed amendments at lines 31-40 authorize judges' electronic signatures to be automatically affixed to automatic expungement orders.

Rule 4-202.02. Records Classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records.** Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) appellate filings, including briefs;

(2)(D) arrest warrants, but a court may restrict access before service;

(2)(E) audit reports;

(2)(F) case files;

(2)(G) committee reports after release by the Judicial Council or the court that requested the study;

(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

(2)(K) financial records;

(2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

(2)(L)(i) amount in controversy;

(2)(L)(ii) attorney name;

(2)(L)(iii) licensed paralegal practitioner name;

(2)(L)(iv) case number;

(2)(L)(v) case status;

(2)(L)(vi) civil case type or criminal violation;

(2)(L)(vii) civil judgment or criminal disposition;

(2)(L)(viii) daily calendar;
(2)(L)(ix) file date;
(2)(L)(x) party name;

(2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

(2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;

(2)(O) name, business address, business telephone number, and business email address of a lawyer or licensed paralegal practitioner appearing in a case;

(2)(P) name, business address, business telephone number, and business email address of court personnel other than judges;

(2)(Q) name, business address, and business telephone number of judges;

(2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;

(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury is discharged;

(2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

(2)(U) order or decision classifying a record as not public;

(2)(V) private record if the subject of the record has given written permission to make the record public;

(2)(W) probation progress/violation reports;

(2)(X) publications of the administrative office of the courts;

(2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

(2)(Z) record of the receipt or expenditure of public funds;

(2)(AA) record or minutes of an open meeting or hearing and the transcript of them;

(2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

(2)(CC) record of a request for a record;

(2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

(2)(EE) rules of the Supreme Court and Judicial Council;

(2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

(2)(GG) statistical data derived from public and non-public records but that disclose only public data; and

(2)(HH) notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(3) Sealed Court Records. The following court records are sealed:

(3)(A) records in the following actions:

(3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(iii) Section 76-7-304.5 – Consent required for abortions performed on minors; and

(3)(A)(iv) Section 78B-8-402 – Actions for disease testing;

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and

(3)(I) other records as ordered by the court under Rule 4-202.04.

(4) Private Court Records. The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

(4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;

(4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed;

(4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and

(4)(A)(v) cases initiated in the district court by filing an abstract of a juvenile court restitution judgment.

(4)(B) records in the following actions, except that the case history, judgments, orders, decrees, letters of appointment, and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) records related to determinations~~affidavit~~ of indigency;

(4)(D) an affidavit supporting a motion to waive fees;

(4)(E) aggregate records other than public aggregate records under subsection (2);

(4)(F) alternative dispute resolution records;

(4)(G) applications for accommodation under the Americans with Disabilities Act;

(4)(H) jail booking sheets;

(4)(I) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(J) judgment information statement;

(4)(K) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(L) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(4)(M) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email

address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(N) medical, psychiatric, or psychological records;

(4)(O) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(O)(i) name change of a minor;

(4)(O)(ii) guardianship or conservatorship for a minor;

(4)(O)(iii) felony, misdemeanor, or infraction;

(4)(O)(iv) protective orders; and

(4)(O)(v) custody orders and decrees;

(4)(P) nonresident violator notice of noncompliance;

(4)(Q) personnel file of a current or former court personnel or applicant for employment;

(4)(R) photograph, film, or video of a crime victim;

(4)(S) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(S)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(S)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(T) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(U) record submitted for in camera review until its public availability is determined;

(4)(V) reports of investigations by Child Protective Services;

(4)(W) victim impact statements;

(4)(X) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(Y) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(Z) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and

(4)(AA) other records as ordered by the court under Rule 4-202.04.

(5) Protected Court Records. The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in

anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

(5)(B) records that are subject to the attorney client privilege;

(5)(C) bids or proposals until the deadline for submitting them has closed;

(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;

(5)(F) court security plans;

(5)(G) investigation and analysis of loss covered by the risk management fund;

(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;

(5)(I) confidential business records under Utah Code Section 63G-2-309;

(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

(5)(J)(i) interfere with an investigation;

(5)(J)(ii) interfere with a fair hearing or trial;

(5)(J)(iii) disclose the identity of a confidential source; or

(5)(J)(iv) concern the security of a court facility;

(5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;

(5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;

(5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;

(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation, or parole;

(5)(O) record the disclosure of which would jeopardize life, safety, or property;

(5)(P) strategy about collective bargaining or pending litigation;

(5)(Q) test questions and answers;

(5)(R) trade secrets as defined in Utah Code Section 13-24-2;

(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(T) presentence investigation report;

(5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and

(5)(V) other records as ordered by the court under Rule 4-202.04.

(6) Juvenile Court Social Records. The following are juvenile court social records:

(6)(A) correspondence relating to juvenile social records;

(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
(6)(C) medical, psychological, psychiatric evaluations;
(6)(D) pre-disposition and social summary reports;
(6)(E) probation agency and institutional reports or evaluations;
(6)(F) referral reports;
(6)(G) report of preliminary inquiries; and
(6)(H) treatment or service plans.

(7) Juvenile Court Legal Records. The following are juvenile court legal records:
(7)(A) accounting records;
(7)(B) discovery filed with the court;
(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
(7)(D) name of a party or minor;
(7)(E) record of a court hearing;
(7)(F) referral and offense histories
(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) Safeguarded Court Records. The following court records are safeguarded:
(8)(A) upon request, location information, contact information, and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
(8)(C) location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list;
(8)(D) location information, contact information, and identity information other than name of a prospective juror summoned to attend court;
(8)(E) the following information about a victim or witness of a crime:
(8)(E)(i) business and personal address, email address, telephone number, and similar information from which the person can be located or contacted;
(8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

Effective November 1, 2019

Rule 4-403. Electronic signature and signature stamp use.

Intent:

To establish a uniform procedure for the use of judges' and commissioners' electronic signatures and signature stamps.

Applicability:

This rule shall apply to all trial courts of record and not of record.

Statement of the Rule:

(1) A clerk may, with the prior approval of the judge or commissioner, use an electronic signature or signature stamp in lieu of obtaining the judge's or commissioner's signature on the following:

(1)(A) bail bonds from approved bondsmen;

(1)(B) bench warrants;

(1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;

(1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);

(1)(E) orders to show cause;

(1)(F) orders to take into custody;

(1)(G) summons;

(1)(H) supplemental procedure orders;

(1)(I) orders setting dates for hearing and for notice;

(1)(J) orders on motions requesting the Department of Workforce Services (DWS) to release information concerning a debtor, where neither DWS nor the debtor opposes the motion;

(1)(K) orders for transportation of a person in custody to a court hearing, including writs of habeas corpus ad prosequendum and testificandum; and

(1)(L) orders appointing a court visitor.

(2) When a clerk is authorized to use a judge’s or commissioner’s electronic signature or signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.

(3) ~~In a case where a domestic relations injunction must be issued under URCP 109, the electronic signature of the judge assigned to the case may be automatically attached to the domestic relations injunction form approved by the Judicial Council, without the need for specific direction from the assigned judge and without the need for a clerk’s signature accompanying the judge’s signature.~~ The electronic signature of a judge may be

automatically affixed to the following documents without the need for specific direction from the assigned judge when issued using a form approved by the Judicial Council;

(3)(A) a domestic relations injunction issued under URCP 109; and

(3)(B) an automatic expungement order issued under Utah Code § 77-40-114.

(4) All other documents requiring the judge's or commissioner's signature shall be personally signed by the judge or commissioner, unless the judge or commissioner, on a document by document basis, authorizes the clerk to use the judge's or commissioner's electronic signature or signature stamp in lieu of the judge's or commissioner's signature. On such documents, the clerk shall indicate in writing that the electronic signature or signature stamp was used at the direction of the judge or commissioner and shall sign his or her name directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.

Effective ~~January 1, 2020~~