Justice Reinvestment Report

November 2014

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About the Utah Commission on Criminal and Juvenile Justice

In 1983 the Utah legislature created the Commission on Criminal and Juvenile Justice (CCJJ). CCJJ is comprised of 22 criminal justice leaders and stakeholders. It was created to:

- promote broad philosophical agreement concerning the objectives of the criminal justice system in Utah;
- provide a mechanism for coordinating the functions of various branches and levels of government concerned with criminal and juvenile justice; and
- coordinate statewide efforts to reduce crime and victimization in Utah.

Members of CCJJ	
Sen. Stuart Adams	State Senate, District 22
Camille Anthony	Chair, Utah Substance Abuse Advisory Council
Spencer Austin	Chief Criminal Deputy, Utah Office of the Attorney General
Dan Becker	State Court Administrator
Susan Burke	Director, Juvenile Justice Services
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Doug Thomas	Director, Division of Substance Abuse and Mental Health
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Carlene Walker	Chair, Sentencing Commission
Ron Gordon	Executive Director, Utah Commission on Criminal and Juvenile Justice

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Executive Summary

Over the last two decades, Utah has maintained an imprisonment rate below the national average while achieving significant reductions in the state crime rate.[1] However, Utah's prison population grew by 18 percent in the last decade and, absent reform, it is projected to grow an additional 37 percent in the next 20 years, requiring an additional 2,700 prison beds.[2]

Utah taxpayers spent $269 million on corrections in 2013. The impending relocation of the state prison at Draper is projected to cost state taxpayers more than $1 billion, with half of this cost tied to inmate growth alone.[3] The high cost of prison expansion coupled with Utah's high recidivism rate – almost half of the inmates (46 percent) released from state prisons return within three years – have provoked larger questions about whether Utah is achieving the best public safety return on corrections spending.

In his 2014 State of the State address, Governor Gary 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." He noted that the "prison gates through which people re-enter society must be a permanent exit, and not just a revolving door." Following the governor's address, state leaders from all branches of government joined together to request technical assistance from the Public Safety Performance Project of The Pew Charitable Trusts and the U.S. Department of Justice as part of the Justice Reinvestment Initiative. 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 with "develop[ing] a package of data-driven policy recommendations that will reduce recidivism and safely control the growth in the state prison population."

Beginning in April 2014, CCJJ analyzed the state's criminal justice system, which included an in-depth review of sentencing and corrections data. Chief among CCJJ's findings was recognition that Utah is regarded, in several ways, as a national leader in corrections, maintaining a relatively low imprisonment rate and focusing the majority of prison beds on serious and violent offenders.

However, in the last decade, Utah's prison population has grown six times faster than the national average and the state has used an increasing number of prison beds for nonviolent offenders and technical revocations. Additionally, the length of time offenders remain behind bars has increased for all offense types, including drug and property offenses as well as probation revocations. Meanwhile, rates of success on probation and parole have declined in the last decade and revocations from supervision now constitute two-thirds of all prison admissions.

Based on this analysis of state corrections and criminal justice data, CCJJ developed a comprehensive set of evidence-based policy recommendations to reduce recidivism, hold offenders accountable, and control the state's prison growth. If adopted, these recommendations are projected to reduce prison growth by 2,551 inmates over the next 20 years and would avert $542 million in corrections spending. CCJJ recommends reinvesting a portion of these savings into programs and practices proven to reduce recidivism and cut crime.

Background

The Utah Commission on Criminal and Juvenile Justice is a diverse group of criminal justice stakeholders, including representatives from corrections, law enforcement, the legislature, the judiciary, the prosecutorial and defense bars, behavioral health, and victim advocacy. From April through November 2014, CCJJ conducted a rigorous review of Utah's sentencing and corrections data, evaluated current policies and programs across the state, discussed best practices and models in sentencing and corrections from other states, and engaged in in-depth policy discussions.

To provide the opportunity for detailed analysis and discussion of specific issues, CCJJ members split into three subgroups:

- Sentencing, chaired by Carlene Walker, Chair of the Sentencing Commission;
- Release, chaired by Angela Micklos, Chair of the Board of Pardons and Parole; and
- Supervision & Treatment, chaired by Rollin Cook, Executive Director of the Department of Corrections.

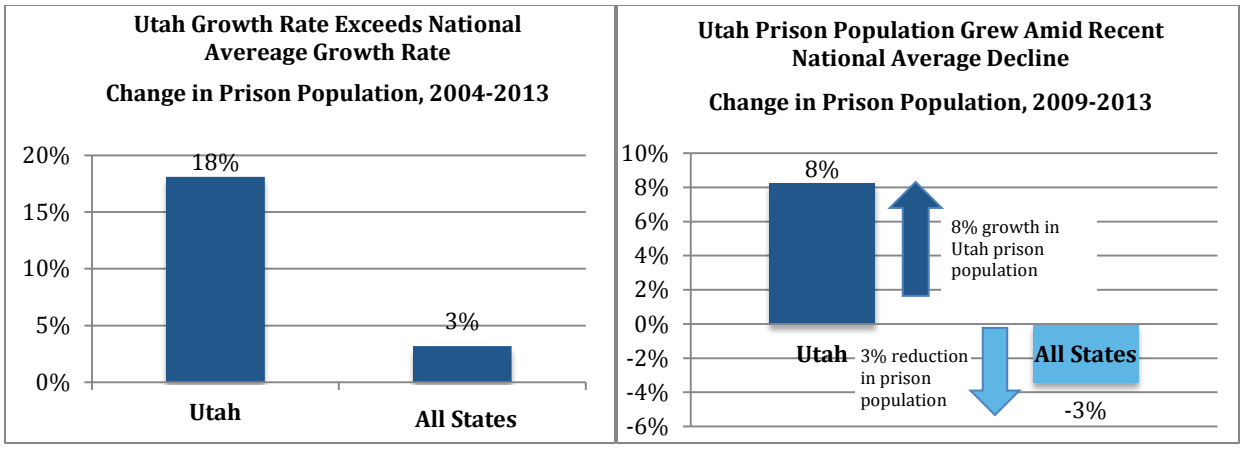
Each subgroup's goal was to craft recommendations within their criminal justice policy area that would meet CCJJ's charge. Subgroups reported their policy recommendations to the larger CCJJ for consideration.

Throughout the process, CCJJ received input from a wide range of stakeholders. It held six public hearings across the state and two roundtable discussions with victims, survivors, and victim advocates to identify key priorities. These roundtables were conducted in Salt Lake City and in St. George, and included specific outreach to representatives from tribal and rural communities. CCJJ subgroups also received input from prosecutors, behavioral health experts, and other criminal justice stakeholders throughout their policy development work.

CCJJ received technical assistance from the Public Safety Performance Project of The Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice. This assistance was provided as part of the Justice Reinvestment Initiative of the U.S. Department of Justice, a public-private partnership between Pew and the Justice Department.

Utah's Prison Growth in the National Context

Historically, Utah's imprisonment rate has been well below the national average (the average of all state prison populations). At the end of 2013, for example, Utah's imprisonment rate of 244 (per 100,000) was 43 percent below the average state rate of 428.[4] Between 2004 and 2013, the state's violent crime rate fell four percent and the property crime rate fell 27 percent compared to 21 percent and 22 percent nationally.[5] However, while Utah's imprisonment rate has remained relatively low, its prison population has grown by 18 percent since 2004, six times faster than as the national growth rate of three percent.[6]



Prison growth has come at great cost to Utah taxpayers. The state's corrections budget increased eight percent since FY2004 (adjusted for inflation using FY2013 dollars) to almost $270 million in FY2013. The majority of these additional dollars went to fund correctional institutions; of the $67.7 million in new annual spending, 60 percent is directed to prisons compared with 13 percent to probation and parole supervision.[1]

Utah's prisons are at capacity. With no available state beds, and with the impending relocation of the state prison at Draper, each additional inmate comes at a particular high cost to taxpayers. As the state considers when and where to build the new state prison, policymakers are also confronted with the 2,700 inmate growth[7] projected over the next two decades.

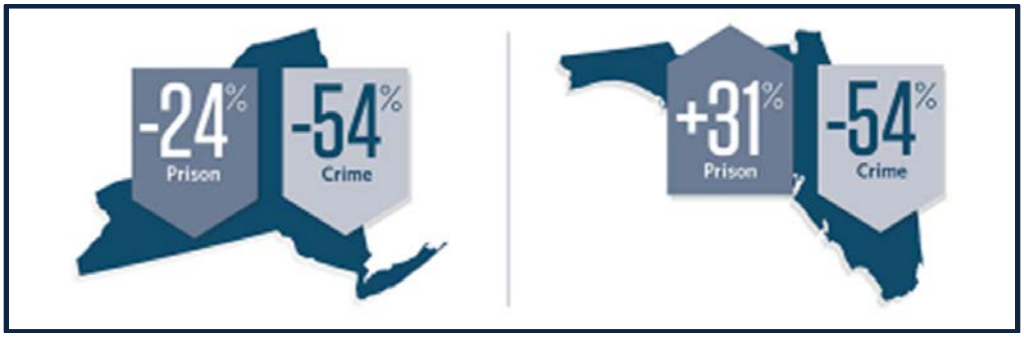
While Utah's public safety and corrections system stands out in many positive ways from the rest of the country, its challenge with long-term prison growth is not unique. Notwithstanding the recent prison population declines in some states, the average state prison population has grown dramatically since the early 1970s and appropriators have diverted an increasing share of taxpayer dollars to keep pace with soaring prison costs. From the mid-1980s to the mid-2000s, spending on corrections was the second fastest growing major state budget category, behind only Medicaid.[8] In 2012, one in 14 state general fund dollars went to corrections.[9]

Evidence suggests that a meaningful share of crime reduction can be attributed to prison expansion, but this is not the full picture. The national crime rate has been falling since the early 1990s, and is now at its lowest level since 1968.[10] Utahns are also less likely to experience crime than a decade ago, with a 26 percent decline in the crime rate from 2003 to 2012. Prison expansion certainly contributed to this trend: the most often-cited research credits prison growth for one-quarter to one-third of the crime drop during the 1990s.[11] In short, the increased use of incarceration had an important but minority role in improved public safety. Other factors likely included increasing numbers of law enforcement officers on the streets, advances in law enforcement practices, changes in drug markets, and an aging resident population.[12] Finally, while a quick glance at the nation's rising imprisonment rates and falling crime rates over the last 20 years might imply that states must expand prisons to achieve more public safety, a deeper look at state trends reveals a far more complicated picture.

Consider Florida and New York: over the past 20 years, both states experienced massive and identical crime rate reductions of 54 percent. New York achieved that reduction while reducing its

[1] The remainder of new dollars went to meet rising medical and administrative costs.

imprisonment rate by 24 percent, while Florida expanded its use of prison by 31 percent – costing taxpayers hundreds of millions of dollars a year.[13] New York is not alone. In the last five years, 32 states reduced both their imprisonment and crime rates.[14]



State experiences like these, alongside dramatic reforms in law-and-order states like Texas and supportive public opinion,[15] have combined with state budget pressures to provoke a growing national conversation that puts prison spending under greater scrutiny than ever before. For the better part of the past four decades, the most common question that policy makers asked about their state corrections budgets was, "How many more prisons do we need?" Today, state leaders from both parties are asking a much tougher question: "How do we get taxpayers a better public safety return on their corrections dollars?"

Many states have adopted policies to rein in the size and cost of their corrections systems through a "justice reinvestment" strategy. Georgia, Kentucky, Mississippi, North Carolina, Oregon, Pennsylvania, Texas and many others have implemented reforms to protect public safety and control corrections costs. These states revised their sentencing and corrections policies to focus state prison beds on violent and career offenders and then reinvested a portion of the savings from averted prison growth into more cost-effective strategies to reduce recidivism.

In 2011, policymakers in Georgia faced a projected eight percent increase in the prison population over the next five years at a cost of $264 million. Rather than spend more taxpayer dollars on prisons, Georgia leaders looked for more cost-effective solutions. The state legislature unanimously passed a set of reforms that controlled prison growth through changes to drug and property offense statutes, and improved public safety by investing in local community supervision, sanctions, and services.[16] Since 2011, the state crime rate has fallen eight percent and the state prison population has declined 3.5 percent, giving taxpayers better public safety at a lower cost.[17]

In these and other states, state working groups focused on evidence about what works to improve public safety and integrated the perspectives of the three branches of government and key system stakeholders. This data-driven, inclusive process resulted in wide-ranging innovations to the laws and policies that govern who goes to prison, how long they stay, and whether they return.

Incarceration and Recidivism

The success of Georgia, Texas, and other states in reducing crime and imprisonment at the same time has prompted new attention to research about the relationship between the two variables.

Beyond the crime control benefit, many people believe that prison is the appropriate sanction for many crimes purely to incapacitate offenders and to exact retribution for their actions. This is especially true for serious, violent offenders.

However, there is a growing body of research showing that for many low-level offenders, prison terms may increase rather than reduce recidivism.[18] At the same time, for a substantial number of offenders there is little or no evidence that keeping them incarcerated for longer periods of time prevents additional crime.[19] These findings have encouraged policymakers across the country to ask questions about whether long prison terms are the most effective way to increase public safety.

There are two methods by which length of stay in prison can benefit public safety: incapacitation (the reduction of current criminal involvement because offenders are physically held in prison) and deterrence (the reduction of future criminal involvement because offenders desire to avoid penalties). Incapacitation is very effective at preventing individual offenders from committing crimes (though the number and type of crimes averted varies substantially by offender and offense type) and it comes at a substantial cost. The best measurement for whether deterrence works is whether similar offenders, when subjected to different terms of incarceration, recidivate at different levels. The most methodologically sophisticated research studies (those matching offenders to minimize the effect of pre-existing differences) find no significant effect, positive or negative, of longer prison terms on recidivism rates.[20]

Based on these kinds of research findings, many states have implemented a variety of reforms to reduce prison admissions and length of stay with the goal of controlling corrections spending and reducing recidivism:

- reclassification of offense types (including Alabama, California, Colorado, Delaware, Kentucky, Montana, South Carolina, and Washington among others);
- expansion of prison alternatives for lower-level offenders (including Georgia, Mississippi, and Oregon among others);
- revision of mandatory minimum laws (including Michigan, New York, and Oregon);
- expansion of earned time opportunities for inmates (including Colorado, Kansas, Pennsylvania, South Carolina, and Washington); and
- alteration of parole policy and practice to create more certainty and to reduce length of stay (including Mississippi, Pennsylvania, and Texas).

Key Findings in Utah's Corrections System

CCJJ found that, over the past decade, the majority of Utah's prison beds have been occupied by violent and sex offenders. However, CCJJ also saw that the state has been sending large numbers of lower-level and nonviolent offenders to prison and keeping them in prison for longer periods of time. These trends are contributing significantly to the projected prison population growth.

Nonviolent Offenders

The majority (62 percent) of offenders sent directly to prison from court in 2013 were sentenced for nonviolent crimes. For these offenders, seven of the top 10 offenses of admission were nonviolent. More offenders were sent to prison for simple possession of drugs than any other

criminal offense. While prison admissions for drug possession declined significantly from 2004 to 2009, they have increased in each of the last four years.

Offense	NCC[2] in 2004	NCC in 2013	% Change
Poss/Use Of Controlled Substance	151	120	-21%
Theft	62	71	15%
Poss W/ Intent To Dist Cont Substance	60	70	17%
Retail Theft (Shoplifting)	12	51	325%
Driving Under The Influence Of Alc/Drugs	52	47	-10%
Aggravated Sexual Abuse Of A Child	41	44	7%
Aggravated Assault	47	43	-9%
Distrib/Arrange Dist Cont Substance	36	41	14%
Theft By Receiving Stolen Property	27	39	44%
Sexual Abuse Of A Child	45	37	-18%

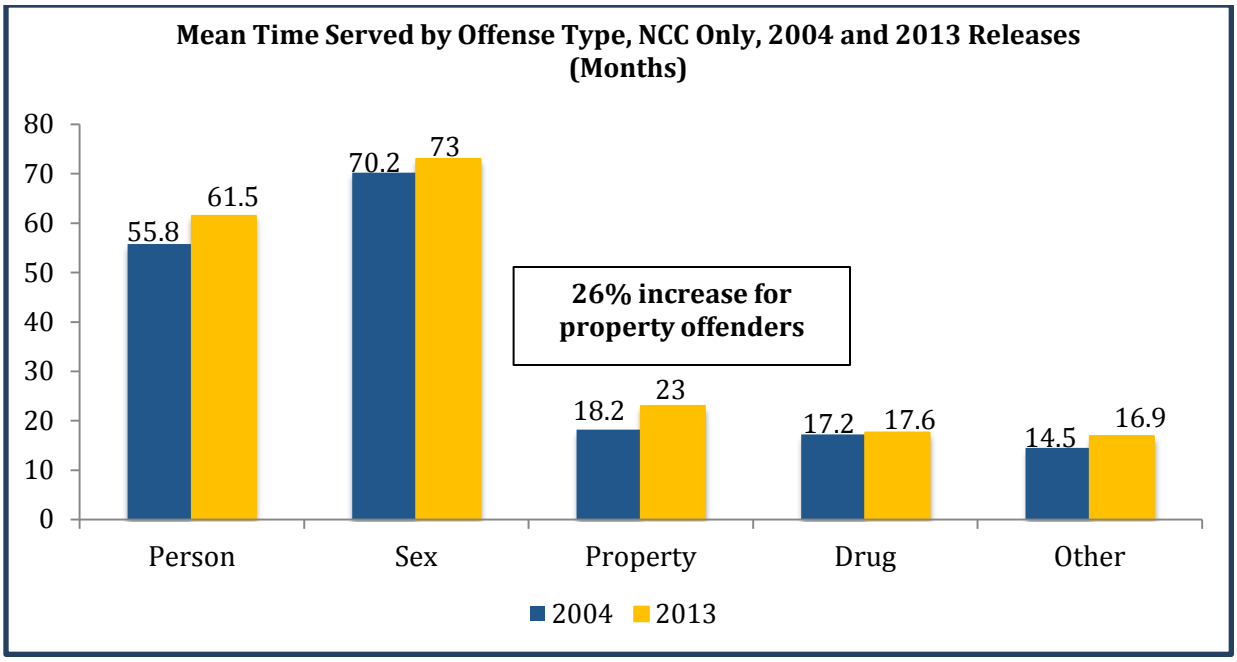
**Shaded offenses are nonviolent*

CCJJ's review of the data show that in 2013, nearly one in five property and drug offenders sentenced to prison had no prior felony conviction. Thirty percent of drug offenders and 33 percent of property offenders sentenced to prison had one or zero prior felony convictions. These data suggest that enhancements and criminal history scores driven by non-felony histories may be contributing to the prison admission rates for these offenders.

While admissions present a mixed picture of growth and decline, length of stay in prison has been a steady driver of the prison population. Over the last decade, the amount of time offenders spend in prison has increased by 18 percent, or 3.5 months. Length of stay is up across all offense types, with property offenders spending 26 percent longer in prison than they did in 2004, and drug possession offenders spending 22 percent longer. For some offenses, time in prison has increased by just a few months. However, even just a few months longer in prison can add up to significant costs when multiplied by the thousands of offenders exiting prison every year. Newly sentenced property offenders released in 2013, for example, spent 4.8 months longer than those released in 2004. This increase in length of stay for property offenders has contributed to an additional 183 beds used today than were used for new property offenders in 2004.

CCJJ examined why length of stay has been increasing. In Utah's system - an indeterminate sentencing system - the Sentencing Guidelines suggest an appropriate disposition and length of stay for offenders based on their current offense and criminal history. Among the potential explanations for increased length of stay in prison were double-counting of elements within the criminal history score and increasing adherence to the Sentencing Guidelines by the Board of Pardons and Parole (the Board) where they had previously departed below guidelines.

[2] NCC stands for new court commitments and refers to offenders sentenced to prison directly from court. It excludes offenders returned to prison on a revocation of probation or parole supervision.



The admissions and length of stay trends have combined to comprise a state inmate population that, in January 2014, was 41 percent nonviolent.[3] Three of the top 10 crimes of conviction among inmates in prison are nonviolent: theft, possession of a controlled substance, and possession with intent to distribute a controlled substance.

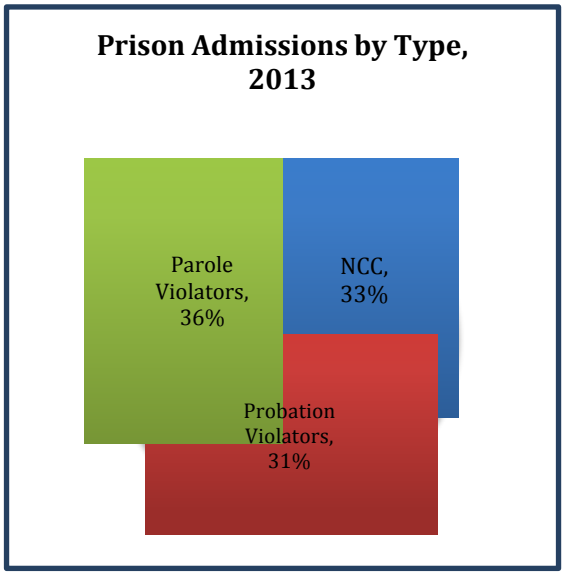
While admissions for drug possession have declined, length of stay for these offenders has increased, leading to 14 percent growth overall in the number of drug possession offenders in prison. Meanwhile offenders sentenced for commercial drug activities have been admitted to prison more frequently and stayed longer, leading to an overall 48 percent growth in prison bed use for possession with intent to distribute offenders and 11 percent growth for offenders convicted of distribution and sale.

Revocations from Supervision

Even after a recent decline in parole revocations, two-thirds of admissions to prison are due to failures on community supervision. Over the last decade, parole revocations fell from a peak of 1,654 in 2005 to 1,087 in 2013, a decline of 34 percent. At the same time, probation revocations rose 17 percent.

Parole and probation violators sent to prison include many technical violations of supervision conditions: in 2012, 43 percent of the offenders admitted to prison had no new criminal conviction, up from 38 percent in 2002.[4] In particular, the number of probation technical violators entering prison each year rose 34 percent, from 367 in 2004 to 490 in 2012. Eighty percent of probation technical violators and 63 percent of parole technical violators were originally convicted of nonviolent crimes.

[3] The data designation of 'nonviolent' is determined by the most serious offense associated with the offender's prison stay, whether that offense is new or the underlying offense.
[4] All data regarding technical violations uses 2012 as its final year in order to make sure new convictions have time to be processed and updated in the data.



While length of stay in prison declined for parole technical violators, it increased 24 percent for probation technical violators, and over 25 percent for parole and probation violations with new convictions. In 2013, probation technical violators spent an average of 15.7 months in prison, compared to 7.9 months for parole violators. In addition, many probation violators spent time in local jails before being revoked, meaning the total length of their incarceration was even longer.

Due to the growth in both admissions and length of stay, probation technical violators now take up 67 percent more beds than in 2004. Overall, probation and parole revocations account for 46 percent of all Utah prison beds.

Sex offenders make up the single largest offense group in prison, accounting for 31 percent of the prison population, and occupying 32 percent more prison beds than a decade ago**.** However, legislative appropriations for sex offender treatment have not kept pace with the significant growth of the incarcerated sex offender population in the last 10 years. While admissions for sex offenders have stayed fairly steady, recent legislative changes have significantly lengthened minimum terms for many of these offenders. These recent changes are expected to lead to additional prison bed growth among this population.

Finally, the female prison population has grown 31 percent in the last decade, compared to 18 percent for the male prison population. CCJJ's examination found that nonviolent crimes and probation technical revocations were even more significant drivers of the female population. Among female inmates, growth in prison admissions was driven almost entirely by drug and property offenders revoked from probation. In addition, nonviolent female offenders experienced significant growth in length of stay, including a 66 percent increase for property offenders. Therefore, the female prison population is mostly nonviolent (69 percent) and made up of revocations from supervision (59 percent).

Community Corrections

More than 97 percent of offenders entering Utah prisons eventually return to their homes and communities. Over the last 30 years, a growing body of research has zeroed in on effective strategies for boosting successful re-entry and reducing the rates at which offenders return to crime and drugs. Research has identified several key strategies for changing offender behavior: 1) focus resources on high risk offenders and target criminogenic needs; 2) tailor conditions of supervision (incorporate rewards and incentives and apply swift, certain, and proportional responses for violations and compliance); 3) frontload resources; and, 4) combine treatment with surveillance.

Focus on High Risk Offenders: Many states have adopted risk and needs assessment tools to identify offenders' likelihood of recidivism. Using a validated risk assessment, supervision agents can focus their oversight and service resources on those who pose the highest risk of reoffending, a

practice that provides the biggest return on investment. Meanwhile the needs assessment helps agents target offenders' criminal risk factors (those changeable attributes such as anti-social attitudes and behavior, unstable employment and housing, and substance abuse that can increase an offender's likelihood of committing crime) to ensure they are working to effectively reduce the risk of recidivism.

Tailor conditions of supervision: Traditionally, probation and parole supervision was focused on surveillance and sanctioning in order to catch or interrupt negative behavior. However, research shows that encouraging positive behavior with incentives and rewards can have an even greater effect on behavior change. Earned discharge policies can encourage offenders to comply with the rules of supervision. At least 14 states have implemented these policies such as earned compliance credits. These allow offenders to earn time off supervision, reducing caseloads while encouraging positive behavior.[5]

Apply swift, certain, and proportional responses: Behavior change research also demonstrates that offenders are more responsive to sanctions (or incentives) that are swift and certain rather than those that are delayed and inconsistently applied. Swift and certain responses work both because they help offenders see the response as a consequence of their behavior rather than a decision levied upon them, and because offenders heavily weigh the present over the future (consequences that come months and years later are steeply discounted). Certainty establishes a credible and consistent threat (or promise), creating a clear deterrent (or incentive) due to the definite nature of the response. Many states and localities have applied this research by creating a pre-defined set of sanctions and incentives which can be applied swiftly and certainly in response to offender behavior.

Frontload resources: Frontloading resources is a cost-effective approach because the majority of people who reoffend do so within a year after release. For this reason, it is important to focus community supervision and support services in the first days, weeks, and months after an inmate's release.

Combine treatment with surveillance: Lastly, to reduce recidivism and modify offender behavior, treatment must be integrated with standard supervision practices of monitoring and reporting. Research has shown that treatment that is focused on assessed criminogenic needs can greatly reduce recidivism. Addressing those specific factors that are associated with an offender's risk to recidivate has a measurable impact on the future behavior and successful reintegration of the offender. Conversely, surveillance-oriented supervision without treatment underperforms supervision that integrates treatment in terms of reducing recidivism.[21]

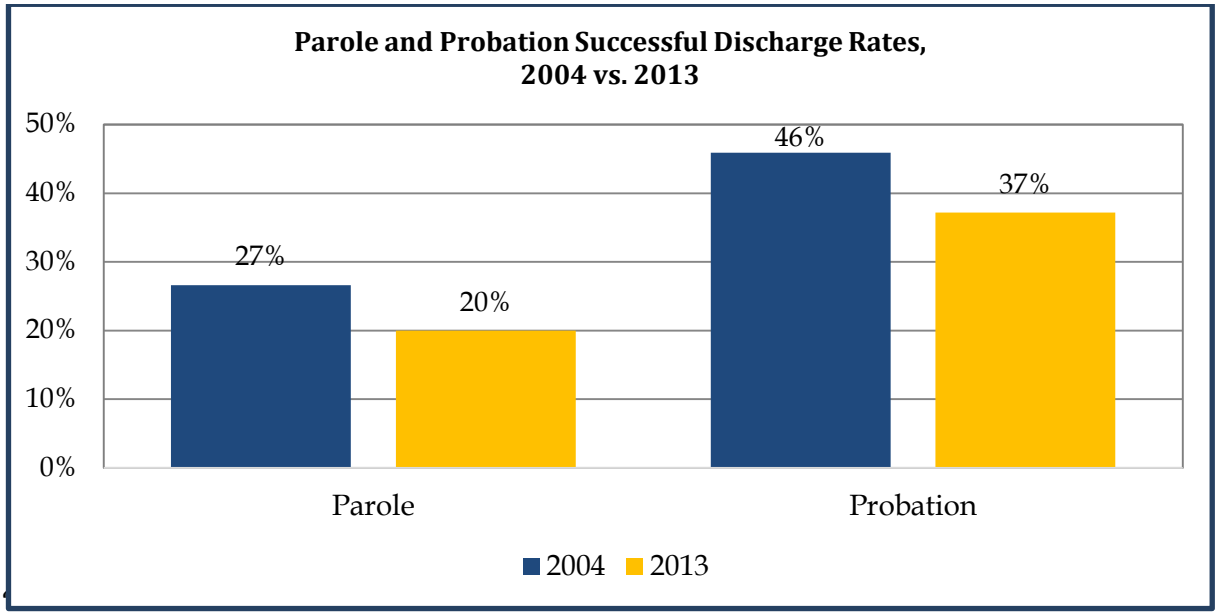
Utah's Use of Best Practices

The Office of the Legislative Auditor General for the State of Utah published a performance audit of the Division of Adult Probation and Parole (AP&P) in September 2013. The audit identified key challenges for AP&P, namely inconsistencies in supervision practices from region to region, lack of application of evidence-based practices, and poor tracking of outcomes. In its own review, CCJJ corroborated many of the findings in the performance audit and discussed additional challenges in Utah's community corrections system.

[5] States that have earned compliance credits: Arizona, Arkansas Kansas, Kentucky, Georgia, Maryland, Mississippi, Missouri, Nevada, New Hampshire, Oregon, South Carolina, South Dakota, and Texas.

First, CCJJ recognized the significant strides AP&P has made in embracing evidence-based practices in its supervision policies. The gaps revealed by CCJJ's analysis were largely attributed to a disconnect between AP&P's policies and the statutory authority and budgetary support needed to fully implement them.

The fundamental finding of CCJJ's community corrections analysis was that Utah has had an overall decline in offender success on supervision during the last 10 years. For parolees, successful discharge rates have decreased from 27 percent to 20 percent, and for probationers, from 46 percent to 37 percent. Overall, almost half (46 percent) of offenders released from prison in Utah return within three years, including 63 percent of those offenders released on parole supervision.[6]

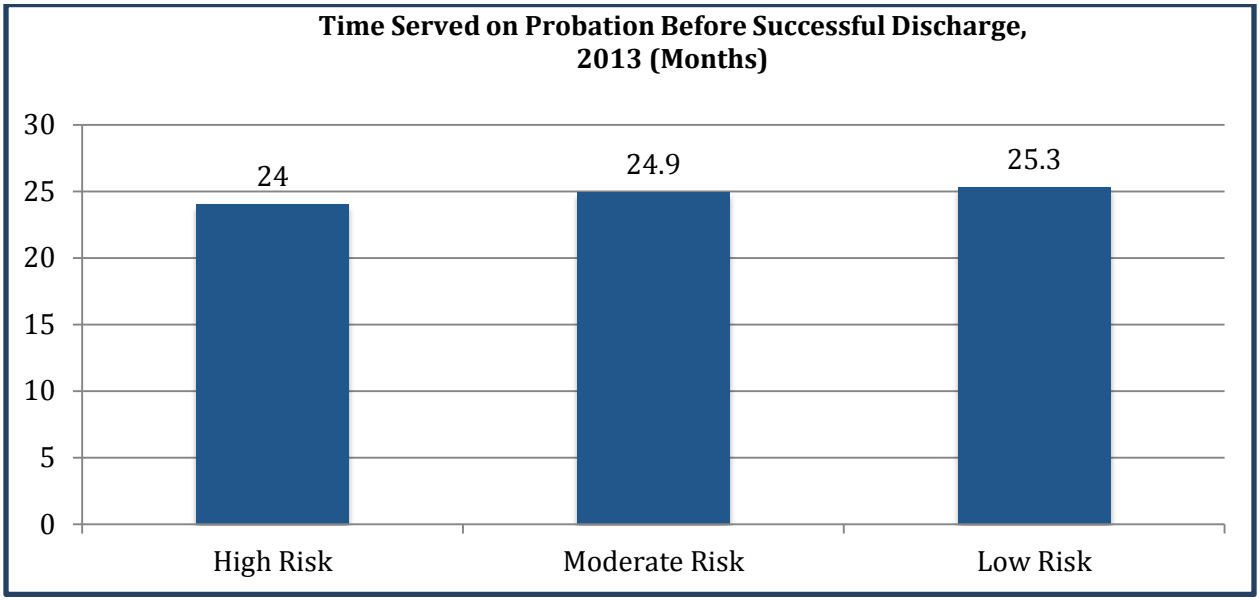


Despite research demonstrating that swift, certain, and proportional sanctioning is more effective at reducing recidivism than delayed, inconsistent, and severe sanctioning, the number of technical violations that occur prior to a revocation to prison varies widely from region to region in Utah.[22] In the place of a standardized statewide graduated sanctioning system, CCJJ found some courts have adopted informal response strategies that are inconsistent with the research about what works to change offending behavior. These include "zero tolerance probation" where courts give probationers one shot at complying with conditions before a full revocation to prison and extending probation terms through "revoke and reinstate" orders.

Further, Utah uses a variety of screening and assessment tools to identify individual offenders' risk of reoffending and specific programming needs, and has made many improvements in connecting these tools to supervision practice. However, many supervision resources are still directed to low-risk offenders and for longer periods of time than is necessary. This is likely because there is currently no standard method for AP&P to terminate supervision for compliant offenders. Rather, applications to terminate supervision must be made before a court and on an individual basis. CCJJ saw in the corrections data that low risk offenders are actually spending more time on supervision than high risk offenders. Many of these offenders need little, if any, intervention and their

[6] Not all offenders released from prison are released to parole. In 2013, 32 percent of offenders were released from prison without parole supervision.

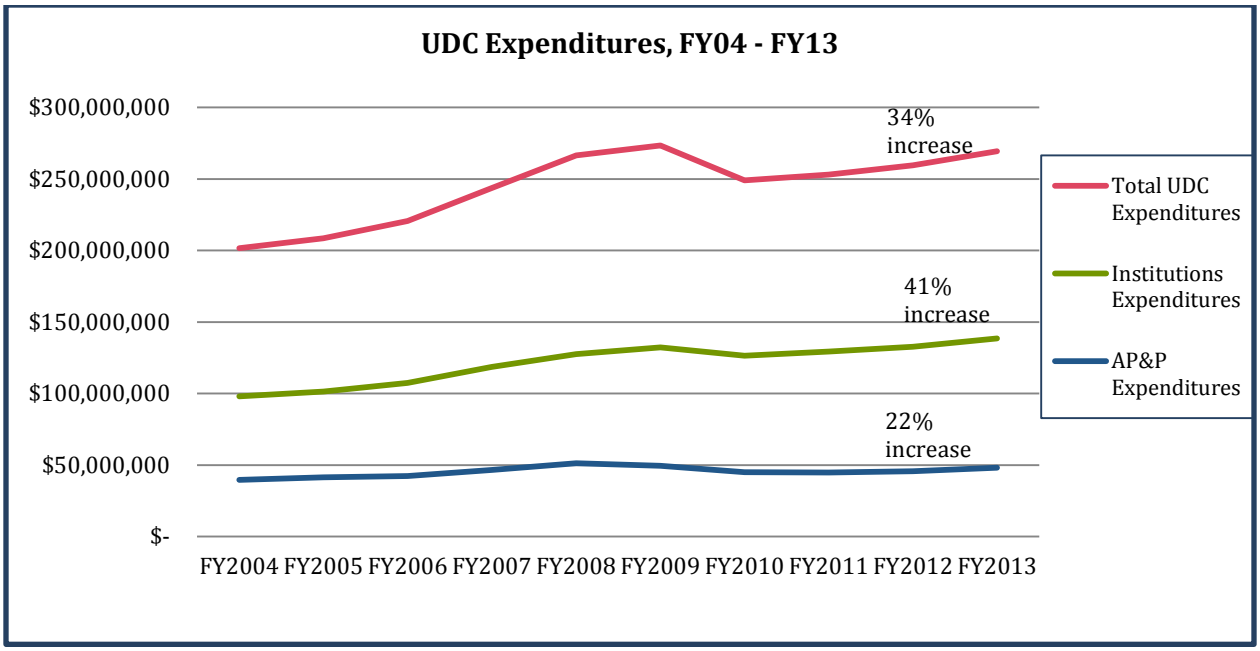
supervision diverts resources from higher risk offenders. Due, in part, to this disconnect between research and practice, high risk offenders are still failing on probation and parole at dramatically high rates.



The ability to combine treatment with supervision requires access to evidence-based treatment. The Commission reviewed a survey by the Division of Substance Abuse and Mental Health revealing that an estimated 84 percent of substance abuse needs and 88 percent of mental health needs in Utah go unmet by the state's behavioral health system. The treatment resources that do exist across the state do not necessarily match offender needs. Often the treatment that is accessible is designed for the general population and is not focused on treating criminogenic needs and thus successfully reducing recidivism. These programs may also fail to meet other evidence-based standards for offender populations, such as sorting programs by risk level and focusing attention on high risk offenders.

Budget

Absent reform, the state's prison population is projected to grow by 37 percent over the next 20 years.[23] This population growth implies a commensurate increase in Utah's corrections budget. In fiscal year 2013 the state spent $269 million on corrections, or one in nine state general fund dollars. Over the past decade, the corrections budget has increased eight percent (adjusted for inflation using FY2013 dollars). Understandably, incarceration costs the state more than supervision, but while there are over twice as many people on supervision as are incarcerated, of the $67.7 million in new spending, 60 percent went to correctional institutions and only 13 percent to community supervision.



Policy Recommendations

Over the last eight months, the Commission on Criminal and Juvenile Justice analyzed the drivers of Utah's prison population and reviewed examples of successful criminal justice innovations in other states as well as key research, identifying practices that lead to successful outcomes. Based on that data and information, CCJJ proposes a comprehensive set of changes to sentencing and corrections policy and practice in Utah. These recommendations will:

- 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

Underlying all these recommendations is the need to incorporate validated risk and needs assessment tools that inform treatment and supervision practices.

Focus Prison Beds on Serious and Violent Offenders

Recommendation 1: Revise drug penalties to target chronic felony offenders and drug dealers who sell in the presence of minors and where minors are likely to be

Drug offenders are a significant and growing segment of the Utah prison population. While prison may provide access to substance abuse treatment, it is not the most cost-effective environment to deliver treatment.[24] This population can be more effectively managed and treated in the community instead of serving long and more expensive prison terms. Additionally, research indicates that for first-time offenders and drug offenders, prison can actually increase the likelihood of recidivating

after release, because mixing with high risk offenders can increase recidivism in lower risk offenders.[25]

CCJJ found that nearly 20 percent of new court commitments for drug offenses have no prior felony convictions, indicating that enhanced penalties may be contributing to the number of first-time drug felons going to prison.

Finally, the original intent of creating drug-free zone enhancements was to reduce the exposure of children to illegal drug activity. These policies have expanded over time to include areas that are not traditionally where children congregate.

CCJJ recommends:

- Reclassifying simple drug possession from a 3rd degree felony to a Class A misdemeanor but allowing enhancements for chronic offenders with four or more prior convictions for drug possession or two prior convictions for commercial drug offenses.[26]

- Reclassifying commercial drug offenses from a 2nd degree felony to a 3rd degree felonies, unless the defendant has at least two prior commercial drug convictions or in circumstances when the transaction occurs in a structure with fortifications.

- Restructuring drug-free zone enhancements to ensure they are focused on drug dealers targeting children by restricting the drug-free zone enhancements to commercial drug offenses in the presence of a minor, and to areas and hours of the day in which children are likely or expected to be present and setting the distance of the drug-free zone to within 100 feet of facilities or grounds, including their parking areas.

Recommendation 2: Revise criminal history scoring to avoid double-counting and limit factors to those most relevant to the risk of re-offense

The Utah Sentencing Guidelines rely heavily on criminal history scores to determine which nonviolent offenders should receive a prison sentence and which should be supervised in the community. However, the criminal history score currently double-counts certain elements, resulting in higher scores and, consequently, longer lengths of stay in prison. Additionally, certain factors used in the calculation of the criminal history score, like prior failure to report, have little or no proven relationship to an offender's risk of re-offending and are not commonly used by other states.

CCJJ recommends:

- Reducing criminal history points given for misdemeanor offenses and counting only more serious (Class A) misdemeanors in the criminal history score.

- Eliminating factors that are already counted in another criminal history category, including prior supervision or residential placement, and prior failure to report.

- Eliminating factors that are not major indicators of an offender's risk of re-offense, including offenses that took place more than 10 years in the past.

<u>Recommendation 3</u>: Revise Sentencing Guidelines for certain lower-level crimes

Over the past 10 years, the Board has made release decisions that are increasingly in accordance with Utah Sentencing Guidelines. Previously, the Board's decisions often departed below the guidelines. This means that the increase in length of stay (up an average of 18 percent in the last decade) may have been driven by the Board complying more with the state's guidelines system.

CCJJ was in agreement that the predictability and transparency that result from greater compliance with the guidelines is an important part of a sentencing and release system. The discussion, then, was about whether the guidelines themselves needed to be revised in order to address increases in length of stay, especially since much of this growth has occurred among offenders serving time for property and drug offenses. As discussed above, research shows that for many offenders, additional time served in prison yields little or no recidivism reduction benefit.

CCJJ recommends:

- Reducing guidelines terms by 4-6 months for offenses in lower level crime categories (Crime Categories G – L).

<u>Recommendation 4</u>: Establish formal graduated revocation caps for technical probation revocations

A growing portion of Utah's prison population is incarcerated for technical probation revocations. The number of technical violators revoked to prison has increased 34 percent since 2004 and the amount of time they serve has increased 24 percent. Probation technical violators now take up 67 percent more beds than in 2004.

CCJJ recommends:

- Establishing recommended lengths of jail stay for technical probation revocations of no more than 30-days, 90-days, and 180-days for first, second, and subsequent revocations respectively.

- Crediting time spent in jail on a probation revocation towards the imposed prison sentence.

<u>Recommendation 5</u>: Establish formal graduated revocation caps for technical parole revocations

More than a third of prison admissions are parolees coming back to prison due to revocations of release. Of those returning to prison on a parole revocation, 72 percent return for technical violations of their parole conditions. The Board has followed an informal policy of limiting the length of prison stays for parolees revoked on technical violations, generally applying a graduated sanction of three months for the first revocation, six months for the second revocation, and nine months for the third revocation.

CCJJ recommends:

- Creating a formal graduated sanctions system for revocations based on technical violations of parole conditions of two months, four months, and six months respectively for the first, second, and subsequent technical revocation.

  This policy would not create a right to parole, and the Board would be able to override the length of stay for good cause.

Recommendation 6: Establish a system of earned time credits offered by the Board

Research demonstrates that providing incentives like earned time in prison reduces recidivism and saves taxpayer dollars.[27] In Utah, approximately 20 percent of offenders who are released are awarded time off of their sentences by the Board, with reductions averaging approximately three months. Like the earned time practices in other states, these time credits incentivize completion of risk reduction programs such as substance abuse treatment or vocational training. These incentives, however, are not applied consistently to all offenders who might qualify. Instead, they are awarded only when an offender is brought to the special attention of the Board by institutional staff.

CCJJ recommends:

- Establishing a statutory earned time policy that creates a standard minimum time credit of four months for a top treatment priority listed in the offender's individualized Case Action Plan and four additional months for completion of other priorities (e.g. cognitive behavioral therapy). To the extent possible, programming and hearings would be provided early enough in an offender's sentence to allow inmates to earn the standard time credit off their parole date.

  Additionally, the Board would continue to use its discretion to reward time credits above and beyond the standard minimum for outstanding leadership and other commendable actions and behaviors such as payment of victim restitution.

  Earned time could be forfeited due to serious institutional misconduct and re-earned through a period of sustained good behavior before release.

  This policy would not create an entitlement to earned time or to parole.

Strengthen Probation and Parole Supervision

Recommendation 7: Implement a graduated sanctions and incentives matrix

The Office of the Legislative Auditor General for the State of Utah released a performance audit of AP&P in September 2013. The audit identified many inconsistencies in supervision practices throughout the state. Primary among them was the varied number of violations that trigger a revocation in each AP&P region. Agents would often allow minor misconduct to go unsanctioned and only pursue a full revocation to prison when the agent felt there were a sufficient number of serious violations. CCJJ confirmed these findings and additionally found regional variation in the

types and numbers of violations leading to a revocation. The audit recommended implementation of a structured system to provide more uniformity in responding to violations.

CCJJ recommends:

- Requiring the Sentencing Commission to develop, and AP&P to implement, a clear system to respond swiftly and proportionately to both positive behavior and technical violations of supervision conditions. The incentives or sanctions imposed would consider the current conduct or violation of the offender, the offender's assessed risk level, and previous violations and sanctions.

  Elements of the system would include a graduated system of sanctions that include verbal warnings, increased reporting, increased drug and alcohol testing and short jail stays of up to three days for certain violations (not to exceed five days in any month). The matrix would also include a graduated system of incentives for compliance that includes verbal recognition, reduced reporting, and credits for early discharge.

  CCJJ recognized the importance of establishing an administrative sanctioning and incentives system that upholds due process. Many states that have granted sanctioning and rewarding authority to administrative supervision agencies have built into their systems hearing waivers and higher level review and notification for sanctions that threaten liberty interests.[28] CCJJ recommends this new system of accountability be checked with due process safeguards.

<u>Recommendation 8</u>: Establish a system of earned compliance credits on supervision

Earned compliance credits can provide a powerful incentive for offenders to participate in programs, obtain and retain a job, and remain drug- and alcohol-free.[29] As compliant and low risk offenders earn their way off supervision, earned compliance credits also work to focus limited supervision resources on the higher risk offenders who most require attention. The data revealed that current risk-based early release models for probation and parole are not working to focus caseloads on high-risk offenders, since Utah probationers are currently remaining on supervision for approximately the same length of time regardless of risk level.

CCJJ recommends:

- Establishing a system of earned compliance credits for probationers and parolees who are complying with the conditions of their supervision and engaged in programming that addresses the risk and needs identified through individualized Case Action Plans.

- Requesting the Sentencing Commission conduct a review of all standard conditions of probation and parole supervision to ensure conditions are backed by evidence-based practices and incorporate use of a risk and needs assessment tool.

Improve and Expand Reentry and Treatment Services

Recommendation 9: Expand treatment services

Geographic and funding constraints limit access to substance abuse and mental health treatment services throughout the state for the general population as well as those involved in the criminal justice system. Treatment accessibility and quality vary throughout the state. Rural and remote areas have few qualified providers, and although the more populated areas of the state have more public treatment resources, the vast majority of those in need in every locality are unserved by the public substance abuse and mental health care system.

When criminal offending behavior is related to unmet substance abuse or mental health needs, access to quality treatment can have significant public safety benefits. The state funds five Treatment Resource Centers and two satellite offices for offenders returning to their communities from prison. These centers effectively combine surveillance and treatment for the supervised populations they reach. However, they do not have the capacity to meet demand.

CCJJ recommends:

- Expanding community treatment capacity for offenders, including but not limited to, funding additional licensed clinicians to provide services to offenders in Treatment Resource Centers and investing in community-based substance abuse, mental health, and sex offender treatment services and programming.

  CCJJ emphasized the importance of the state increasing funding for treatment and not simply diverting existing resources to support treatment needs.

This recommendation will require an investment of state resources.

Recommendation 10: Establish treatment standards and certification

Community treatment services designed for the general public do not always meet the needs of those who are involved in the criminal justice system. Risk and needs assessment tools can help identify whether offenders have certain characteristics that are correlated with a higher likelihood of reoffending. If these factors, such as antisocial attitudes or poor impulse control, can be changed they are identified as "criminogenic needs" and can be addressed through targeted treatment and programming. A major body of research has identified the types of programming interventions that can successfully reduce a person's risk to reoffend by targeting their individual criminogenic needs. In Utah, however, no statewide standards exist for community providers offering treatment and programming to offenders to ensure those evidence-based principles are followed.

CCJJ recommends:

- Establishing statewide standards for substance abuse, mental health, and sex offender treatment programming that specifically address criminality and criminogenic needs. The Division of Substance Abuse and Mental Health and the Department of Corrections (DOC), with support from the Utah Substance Abuse Advisory Council, will establish standards for substance abuse and mental health treatment for criminal-justice-involved persons. The

DOC in partnership with DSAMH will establish standards for sex offender treatment.

Recommendation 11: Establish standards for recovery and reentry support programs

As Governor Herbert emphasized in his State of the State address, "the prison gates through which people re-enter society must be a permanent exit, and not just a revolving door." Recovery and reentry support programs help offenders who are returning to their communities find housing, employment, and other supports that increase their chances of long-term success. By helping offenders reestablish themselves as productive citizens, recovery and reentry support programs can also make Utah communities safer. Currently, however, the programs available in Utah are not assessed for quality or effectiveness.

CCJJ recommends:

- 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.

Recommendation 12: Enhance transition planning, supports, and services for offenders returning to their communities

A small and shrinking percentage of offenders returning to the community complete their parole term successfully. Those assessed as high risk to reoffend are most in need of supervision and supports. They are the least successful cohort on parole, returning to prison at a very high rate (82 percent). By comparison, only 12 percent of low risk offenders have their parole revoked. Those who fail on parole generally do so in their first year after they are released from prison.

A robust body of research, however, shows reduced recidivism for offenders when resources are focused on high risk offenders returning to their communities, front-loaded toward the first months following release, and targeted at their individual criminogenic needs. Because transition planning and supports require significant resources to implement, CCJJ recommends an investment in dedicated staff positions within the Department of Corrections' Division of Adult Probation and Parole.

CCJJ recommends:

- Instituting a period of collaborative transition planning for high risk offenders between institutional and parole staff. DOC staff will work on transition planning with both offenders who are paroled and those who are discharged, ensuring that Case Action Plans carry over from the institution to the community, and, when possible, placing offenders on waitlists for treatment in the community before they are released from prison.

- Creating and funding Transition Specialist positions to provide quality transition planning and support for high risk offenders who are being released from prison, including but not limited to pre- and post-release transition planning; support with housing, employment, treatment, and family re-integration; and connection to agencies and service providers that can reduce the likelihood of re-offense.

- Suspending rather than terminating Medicaid for those who qualify during their period of incarceration in order to address delays in restoration of coverage for treatment in the months directly following release.
- Utilizing empty beds at the state's Parole Violator Center to increase halfway house capacity for appropriate offenders who are being released from prison.

This recommendation will require an investment of state resources.

Support Local Corrections Systems

Recommendation 13: Reclassify moving vehicle misdemeanors in order to focus jail resources on higher-level offenders and relieve undue burdens on localities

Under current state law, drivers can be placed in county jail for up to three months for certain Class C misdemeanors and up to six months for certain Class B misdemeanors. This practice mixes individuals convicted of minor traffic offenses with more serious and violent misdemeanor and felony offenders and is unnecessarily burdensome for counties and taxpayers. Additionally, other CCJJ recommendations may result in a greater number of offenders held locally rather than in prison. Focusing county jail beds on more serious misdemeanor and felony offenders will help ensure counties have the resources they need to manage this offender population.

CCJJ recommends:

- Reducing the flow of lower level offenders into jails and focusing jail resources on higher-level offenders by reclassifying certain moving vehicle misdemeanors from Class B to Class C, and from Class C to infractions. This re-classification would exclude dangerous driving violations (including handheld device violations), DUI, and other substance-related violations.

Recommendation 14: Establish evidence-based jail treatment standards

By contracting with county jails to house state prison inmates, the Department of Corrections has expanded its capacity while avoiding new construction. County facilities now house and provide programming for nearly a quarter of the state's prison population. For that reason, and in order to get the most public safety return from each dollar spent on institutional corrections, the programming provided must comport with evidence-based practice standards not only in state prison facilities, but also in county jails that house state inmates.

CCJJ recommends:

- Establishing evidence-based standards as well as performance and oversight measures for educational, rehabilitation, and treatment programming provided to state inmates in county jail settings. The DOC will partner with the Utah Sheriffs' Association to develop these standards and measures.

<u>Recommendation 15</u>: Establish a county performance-incentive grant program

A broad consensus exists among CCJJ members, criminal justice stakeholders, and members of the public who testified at public hearings across the state that counties do not have the resources they need to reduce recidivism, hold offenders accountable, and control corrections costs. This dearth of resources at the local level often makes prison – a state funded and extremely expensive option – the only viable penalty.

Furthermore, counties and judicial districts are often best suited to identify the correctional programming, treatment, and services that would go farthest to reduce recidivism, hold offenders accountable, and control costs. With this in mind, some states have created performance incentive grant programs that provide funding to support programs and practices that reduce recidivism, revocations, and the eventual impact on state prison populations.[30] These grant programs help enhance the local public safety infrastructure through housing, employment, treatment, problem-solving courts, and re-entry services.

CCJJ recommends:

- Creating a grant fund available to counties that submit proposals for programs or practices that would reduce recidivism, hold offenders accountable, and control corrections spending. The grant fund will be administered by CCJJ.

This recommendation will require an investment of state resources.

<u>Recommendation 16</u>: Provide better support to victims of crime

Often those most affected by crime – victims and survivors themselves – go underserved by the state system established to provide justice. In order to include the voices of crime victims and victim advocates in the assessment of Utah's criminal justice system and in the process of developing recommendations for legislative and budgetary changes, two Victim Roundtables were held, one in Salt Lake City focused on victims' needs in the most populated part of the state, and a second gathering in St. George focusing on victims' needs in rural, remote, frontier, and tribal jurisdictions. Feedback was also received from members of the Utah Council on Victims of Crime (UCVC). The primary priority conveyed by roundtable participants and members of the UCVC was a request for additional state investments into services and supports for victims of crime.

CCJJ recommends:

- Expanding the number of victim advocates and services for victims of crime in rural and remote areas of the state.

This recommendation will require an investment of state resources.

Ensure Oversight and Accountability

Recommendation 17: Provide enhanced training for decision makers and community supervision officers

Drawing on the best, most current research in the field, criminal justice practitioners can increase the likelihood that offenders will achieve long-term success and stability. This requires regular training.

CCJJ recommends:

- Requiring annual trainings for AP&P agents and supervisors, Board members, pro tempore members, and hearing officers on evidence-based practices and decision-making, based on guidelines set by nationally recognized organizations like the American Probation and Parole Association and the Association of Paroling Authorities International. Training topics should include identifying, understanding, and targeting criminogenic risks and needs, principles of effective risk reduction interventions, and how to support and encourage compliance and behavior change.

This recommendation will require an investment of state resources.

Recommendation 18: Require collection and reporting of key performance measures and establish oversight

Utah prides itself on using data and outcomes to improve agency operations and inform policy-making and budgetary decisions. In order to track implementation of the criminal justice reforms recommended above, 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. Because of CCJJ's familiarity with the recommendations and its longstanding service as a nonpartisan authority on criminal justice legislation and initiatives, CCJJ is well positioned to serve as an oversight council for the policy reforms once adopted.

CCJJ recommends:

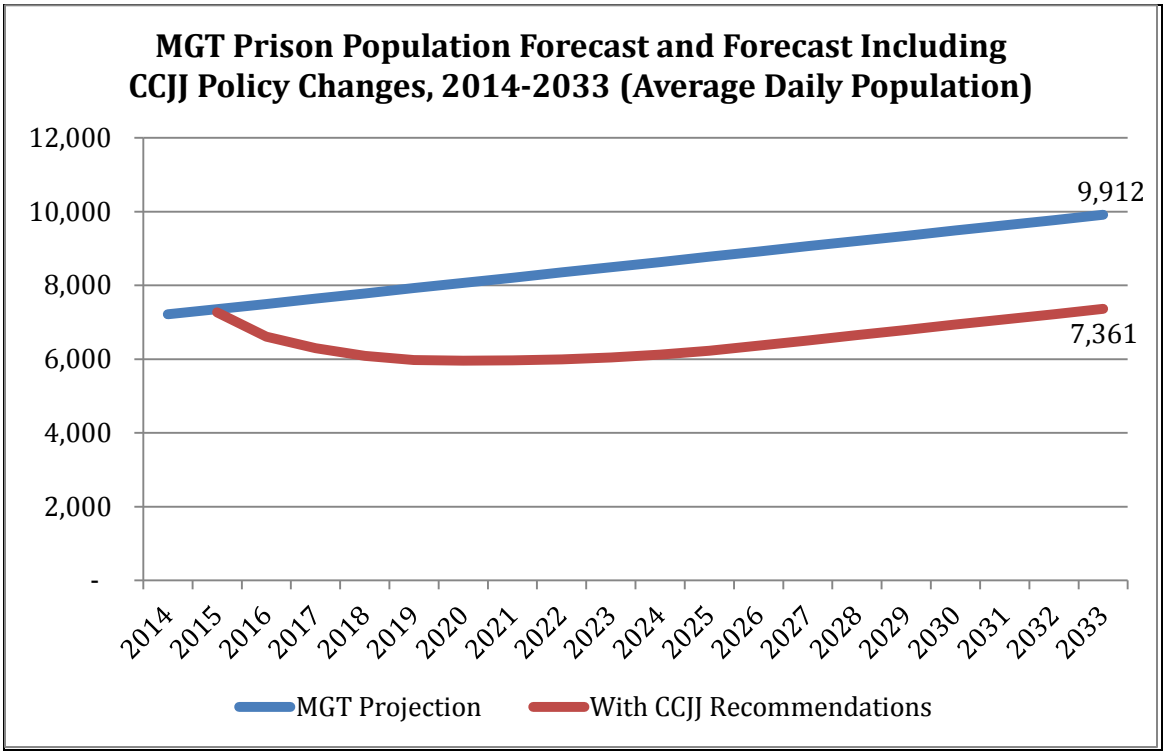
- Requiring the DOC, the Board, and the Administrative Office of the Courts to collect and report data to CCJJ on all data points and key performance measures relevant to the implementation and effectiveness of the policy changes recommended in this report.

- Requiring CCJJ to meet at least twice per year specifically to monitor the reforms, report back to the Legislature on their implementation, and make additional legislative and budgetary recommendations for future data-driven, fiscally sound criminal justice policy changes.

This recommendation will require an investment of state resources.

Projected Impact of Policy Recommendations

The policy proposals designed to focus prison beds on serious and violent offenders will result in a significant impact on the state's projected prison growth. As a package, CCJJ recommendations will avert 98 percent of the anticipated growth in the prison population, avoid the need for 2,551 prison beds, and save taxpayers at least $542 million over the next two decades.



Items for Further Review

There were several policy areas that provoked significant discussion by CCJJ members but required further analysis and deliberation before recommendations can be formed. CCJJ proposes looking into each of these issues in the near future.

Aging Prisoners and Prisoners with Mental Health Disorders

The first addressed aging prisoners and prisoners with serious mental health disorders and developmental disabilities. The Department of Corrections houses a large and growing population of prisoners over the age of 55. Older prisoners have more chronic medical conditions than younger prisoners, and are therefore far more expensive to incarcerate and care for. At the same

time, because age is one of the strongest predictors of recidivism, this cohort of aging prisoners poses a much smaller risk to the public than their younger counterparts.

The Department also houses hundreds of prisoners with serious mental health disorders and developmental disabilities, many of whom are unable to progress in prison-based programming because of the disorders or disabilities. Nationally, prisoners with mental illnesses and developmental disorders are more likely to be preyed upon and victimized by other prisoners, more likely to be housed in segregation while in prison, and generally stay in prison for longer periods of time.[31]

Sex Offender Length of Stay

The second area of interest was sex offender length of stay. Sex offenders make up the single largest offense group in prison, accounting for 31 percent of the prison population, and taking up 32 percent more prison beds than a decade ago. While admissions for sex offenses have remained fairly steady, recent legislative changes have significantly lengthened minimum terms for many of these offenders. These recent changes are expected to lead to additional prison bed growth among this population. CCJJ discussed the extent to which sex offender treatment programming might be affecting this length of stay, whether sex offenders needed to wait to engage in treatment until the end of their prison terms or whether treatment needed to be as long as it is, and whether and how to use risk assessment and clinical recommendations to determine which offenders could safely receive treatment while under community supervision. CCJJ is committed to further examination of the complex issues related to this group of offenders.

Release Decision-Making Process

Finally, several CCJJ members were very supportive of addressing length of stay decisions by the Board that depart significantly upward from the Sentencing Guideline recommendations. While departures are not the norm, they are costly. There was also concern that departures from the Sentencing Guidelines could reduce offenders' motivation to engage in rehabilitative programming.

While there was interest in exploring each of these issues further, CCJJ felt the issues were much more complex than could be addressed in the time available.

ENDNOTES:

[1] Unless otherwise cited, the analyses in this report were conducted for the Commission on Criminal and Juvenile Justice by the Public Safety Performance Project of the Pew Charitable Trusts using prison population data 2004 – 2013 provided by the Utah Department of Corrections; Utah Administrative Office of the Courts data for felony charges, 2004-2013 and felony convictions, 2004-2013, and national data from the Federal Bureau of Investigation, Uniform Crime Reports, and Census Bureau.

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Appendix:

Utah Substance Abuse Advisory Council recommendations

APPENDIX

Utah Substance Abuse Advisory (USAAV) Council Recommendations

Provide Behavioral Health Treatment for Justice-Involved Individuals in Need

- Conduct risk and needs assessments for each offender prior to sentencing.
- Ensure a full continuum of behavioral health treatment and recovery support services are available on demand.
- Provide behavioral health treatment in prison/jail for incarcerated offenders and in community-based settings for offenders on probation/parole.
- In order to improve success, behavioral health treatment must be based on risk and need, and shall be constantly modified to meet the changing risk and needs characteristics of the offender as he/she transitions and stabilizes.

Ensure Continuity of Care to Enable Offenders to Transition Effectively into Community-Based Services Upon Release from Incarceration

- Ensure the Board of Pardons and Parole has access to behavioral health expertise (e.g., staff who are knowledgeable about substance use disorders and mental illness).
- The treatment plan for offenders with behavioral health conditions should begin in prison/jail and then transition with the offender into community-based treatment, recovery support, and supervision services upon release.
- Include treatment, recovery support (e.g., housing, career employment), and supervision services in the Parole Agreement.

Utilize Evidence-Based Treatment and Supervision Practices

- Use only licensed programs/providers who employ evidence-based practices including, but not limited to:
    - Treatment shall be assessment-driven and multi-dimensional rather than addressing addiction alone, and shall target factors that are associated with criminal behavior, including criminogenic risk and need factors;
    - Treatment shall be of sufficient dosage/duration to affect stable behavioral change and dosage shall be based on the client's assessed criminogenic needs and clinical needs (risk level and response to services);
    - Drug use during treatment shall be carefully monitored via weekly or more frequent testing;
    - A balance of rewards and sanctions shall be utilized to encourage pro-social behavior and treatment participation;
    - Treatment quality shall be assessed on the basis of ongoing evaluation strategies that are based on evidence-based principles and practices;

- Persons with co-occurring substance use and mental health disorders shall receive integrated treatment;
- Approved medications shall be incorporated into treatment where appropriate (medication assisted treatment/MAT);
- Criminal justice supervision shall incorporate treatment planning for persons with behavioral health disorders, and treatment providers shall be aware of correctional supervision requirements; and
- Given adequate community resources, specialty treatment programs shall be developed that focus on risk assessment and placement in a way that minimizes the negative consequences that can occur when high risk and low risk populations are combined in treatment facilities.

Provide Health Care Coverage for Justice-Involved Individuals

- Adopt the Governor's ***Healthy Utah Plan***.
- Adopt a statewide policy of suspending Medicaid/health care insurance coverage rather than terminating it when an individual is incarcerated.
- Complete an inmate's application for health care coverage while incarcerated so it will be ready for submission immediately upon release.
- Facilitate the enrollment of offenders sentenced to probation in health care coverage.
- Direct the Insurance Commissioner to establish a process to ensure coverage for behavioral health services for justice-involved individuals (exception: individuals in incarcerated settings).
- When appropriate (e.g., based on risk and need), refer inmates to community-based treatment and/or recovery residences upon release from incarceration, as health care coverage is available in these settings.

Collaborate!

- Share offender information by keeping findings/data from screenings, assessments, and treatment records in a separate medical record that is not part of the criminal record, and making this information available to judges and the Board of Pardons and parole with proper consent.
- Promote strong linkages between the treatment, justice, and support services systems via more structured collaboration, communication, and information sharing (e.g., the DORA model).
- Expand both the CCJJ and USAAV voting membership to include a representative of the Department of Workforce Services.
- Hold joint meetings of the Executive Offices and Criminal Justice and Social Services Appropriations Subcommittees to ensure a comprehensive and coordinated approach to addressing the treatment and supervision needs of individuals with behavioral health disorders who are involved with the criminal justice system.