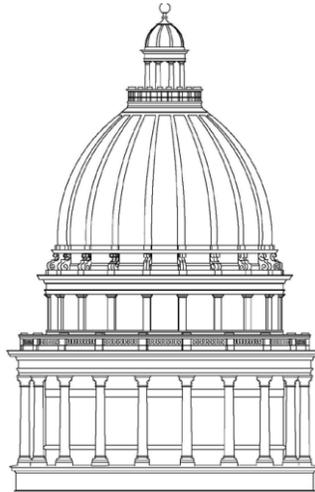


REPORT TO THE
UTAH LEGISLATURE

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

Office of the Legislative Auditor General

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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,

A handwritten signature in black ink that reads "Kade minchey".

Kade R. Minchey, CIA, CFE
Auditor General



PERFORMANCE AUDIT

▶ 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.

Court Fines and Surcharges



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 statute 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 community service credits.



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

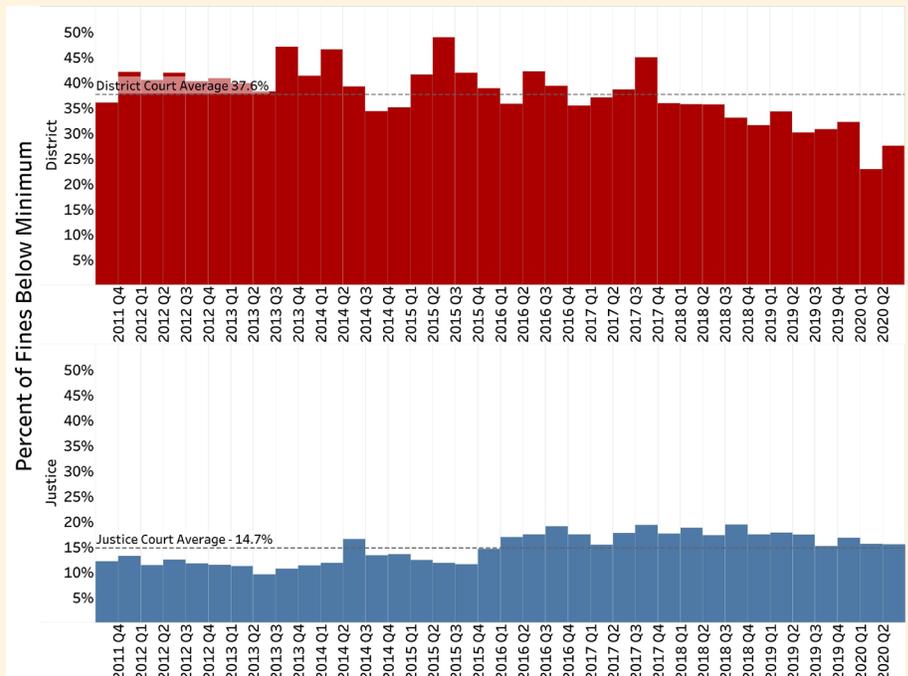
collections of court security surcharge led to a recent \$10 increase. Monitoring of court security surcharges will help ensure consistency with the Legislature’s intent.

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

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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.

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:

- 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

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.

The Judicial Council is the policy-making body for the courts, and the Administrative Office of the Courts oversees all nonjudicial activities.

Local entities retain 100 percent of the fine in justice courts, while all of the criminal surcharge goes to the state.

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.

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

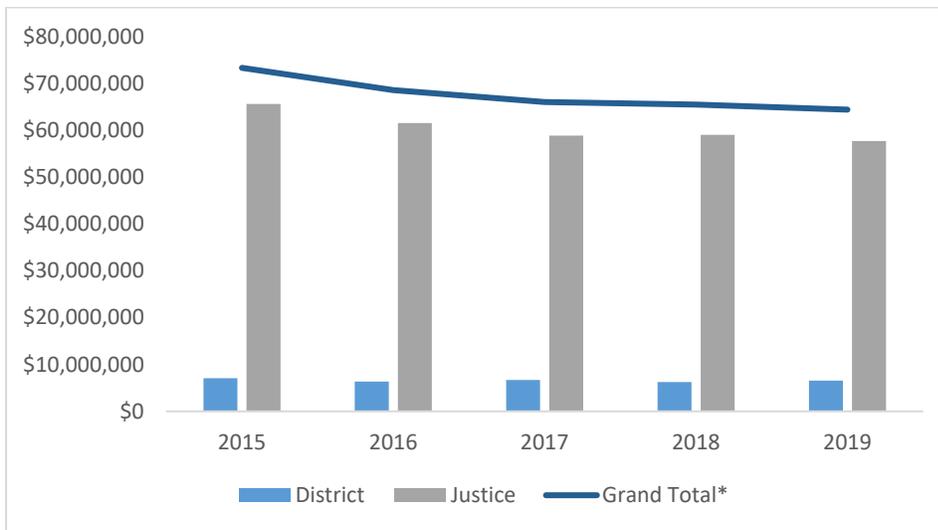
accounts to the Office of State Debt Collection (OSDC). While this report focuses on the courts' role in ordering and collecting fines and surcharges, our office recently conducted an audit of OSDC that examined how defendants' debts were handled after transfer from the courts; the report can be found 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.

District court case filings increased by 8 percent, but district court collections decreased.

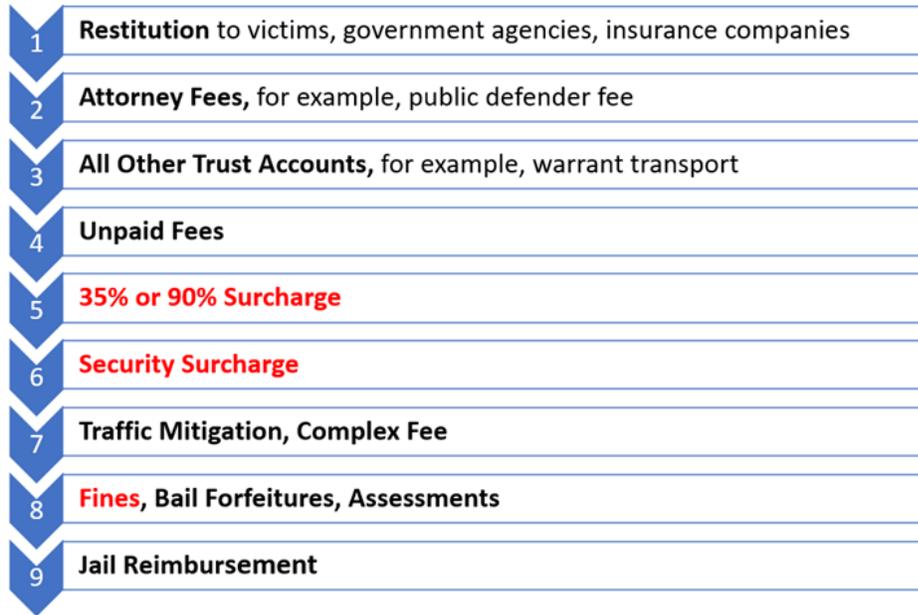
We found that justice court criminal filings decreased by 12 percent from 2015 to 2019, which is the same percentage as the decrease in justice court collections. This equates to a decrease of 8,534 cases. This data does not include traffic cases which make up the majority of justice court filings. Additionally, 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.

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.

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.

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.

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.*

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.

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.

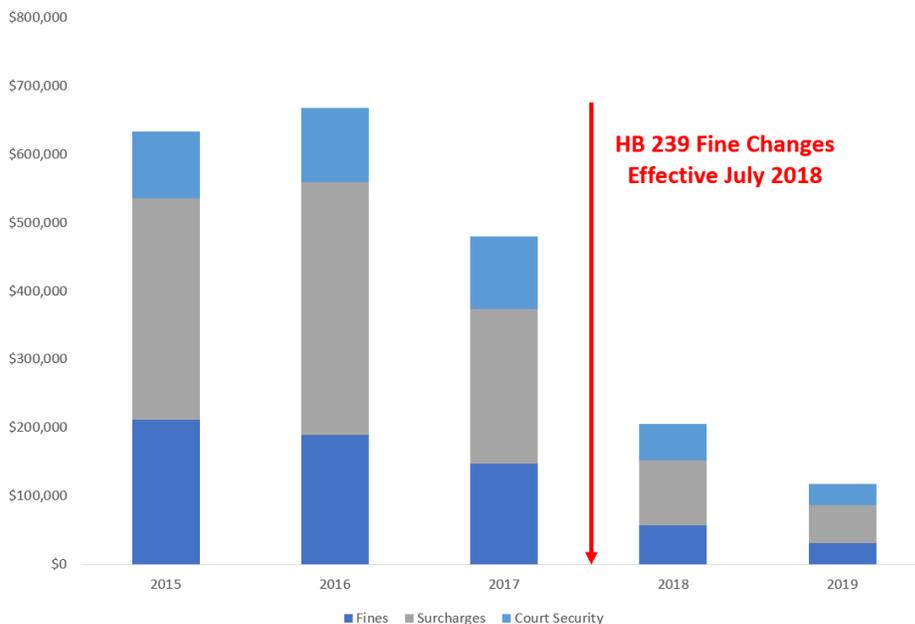
Juvenile Court Fines and Surcharges Permanently Reduced by 2017 Legislation

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.

Juvenile courts' yearly collections averaged only \$429,709 from fiscal years 2015 through 2019.

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.

We reviewed practices of judges, staff, and the AOC to determine causes of the decline in fine and surcharge collections.

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 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 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:

- 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.

We reviewed sentencing for some DUI and drug offenses to evaluate the role of judges in the recent declines in fines and surcharges.

The Legislature sets policy regarding the amount of discretion judges have in determining fines, and this discretion varies by the type of offense.

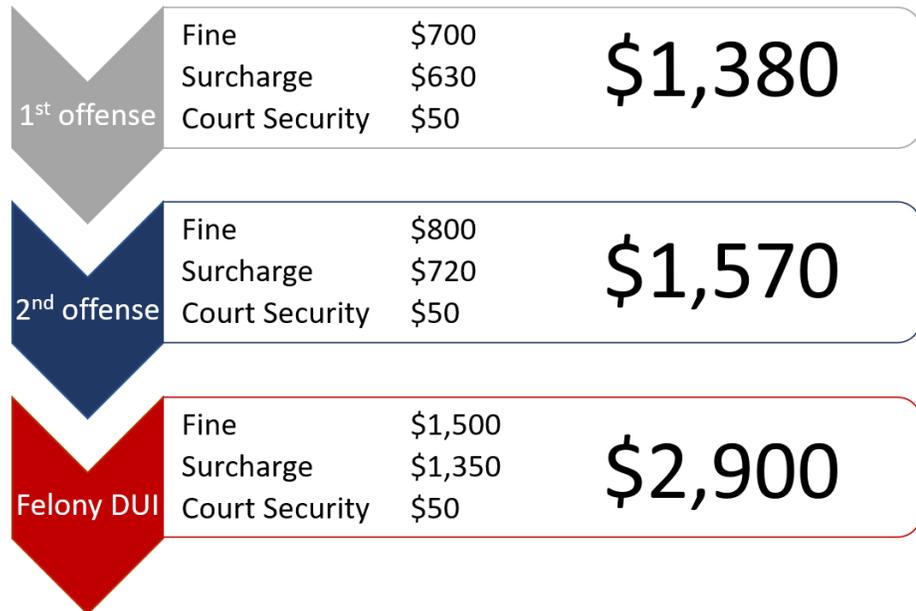
It is for the Legislature to decide if policy should change regarding the discretion judges have in setting fines. In this report, we provide our findings as they relate to compliance with required and recommended fines. Based on our findings of significant discrepancies in fines imposed, we recommend better tracking, monitoring, and reporting of judicially imposed fines.

Some Judges Routinely Failed to Order the Minimum Statutorily Required Fines for DUI Cases

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.

Unlike other offenses we reviewed, DUI offenses have a statutorily required minimum fine amount.

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.

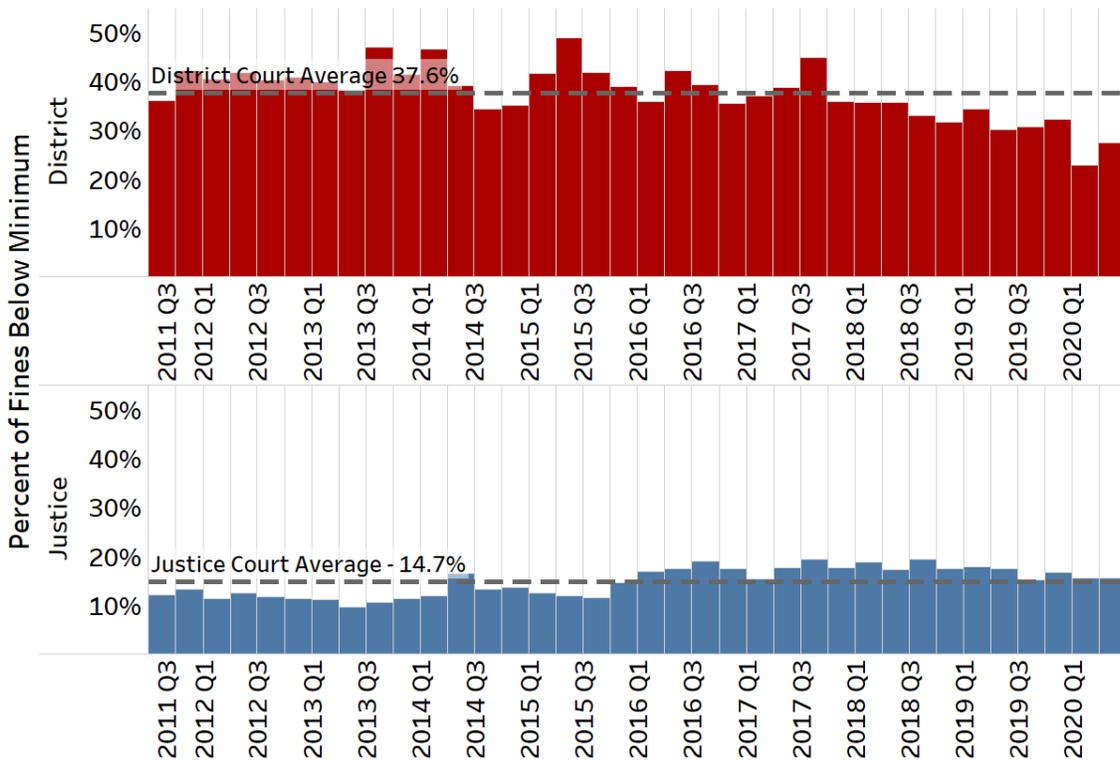
First and second offenses may be either Class A or Class B misdemeanors. The fine amount increases for subsequent violations within a 10-year period.

Statute requires fine increases for subsequent violations within 10 years.

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.

Over eight years, the difference between the amount ordered and statutory minimum equals \$4.8 million.

Other offenses we reviewed do not have a statutory minimum, but the Uniform Fine Schedule recommends a fine amount.

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 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

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.

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.

A defendant’s fine will be determined more by the court location where the case is heard than by the Uniform Fine Schedule.

When judges suspend fines, the suspended amount can be reinstated if the defendant does not meet probation terms.

Practice of Suspending Fines Has Resulted in Inconsistent Sentences for Defendants

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:

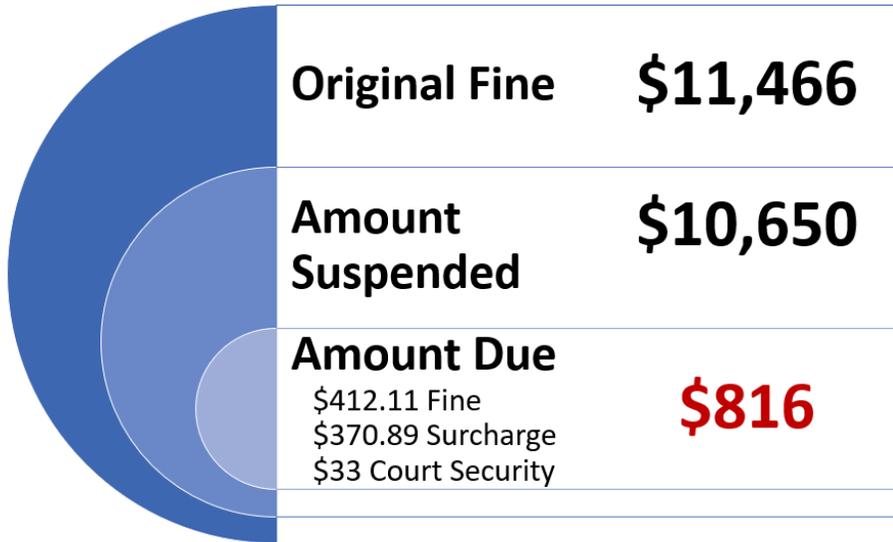
- In some cases, judges ordered significant amounts before suspension.
- Sentencing Commission Guidelines recommend against suspending fines.
- Suspension of fines resulted in defendants paying higher amounts for misdemeanors than felonies because of different approaches between justice and district courts.

Some Judges Ordered Fines but Immediately Suspended All or a Portion of the Fine

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.

The 35 percent or 90 percent criminal surcharge was based on the amount after suspension.

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.

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.

We found over 600 cases in which the amount suspended was \$10,000 or higher.

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.

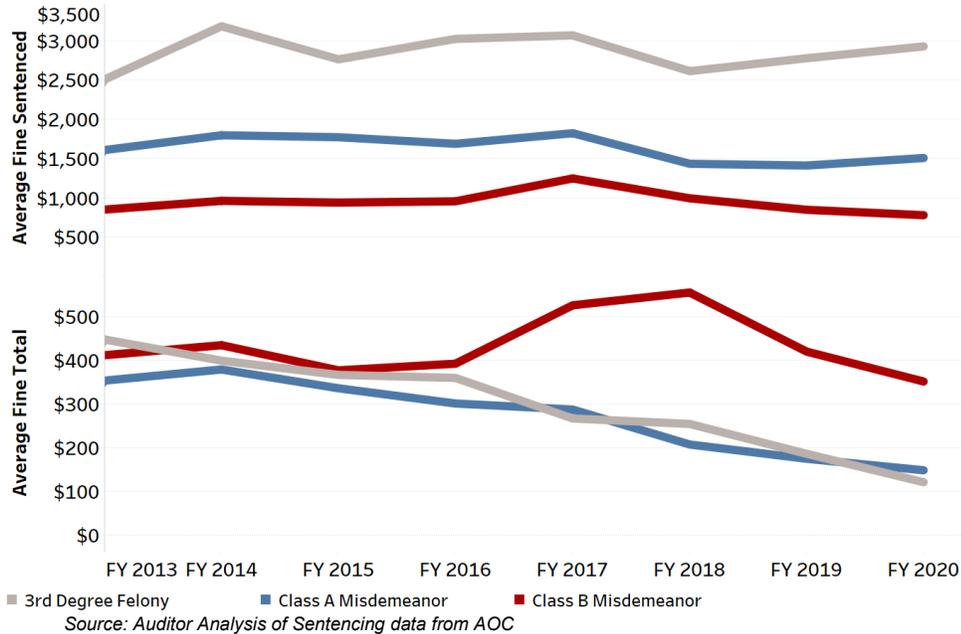
Structured Decision-Making Tool 5 includes sanctions that a probation or parole officer can impose, such as requiring a change in residence, restricting travel, or ordering a curfew. Courts can impose higher-level sanctions such as ordering one to three days of jail or electronic monitoring. Despite 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.

Sentencing Commission Guidelines recommend sanctions such as ordering a curfew or electronic monitoring instead of imposing a suspended amount of fine.

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.



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

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 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.

The Administrative Office of the Courts does not report data aggregated by judge.

The United States Sentencing Commission publishes sentencing statistics that do not identify individual judges, but allow for comparison between locations.

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.

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

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.

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.

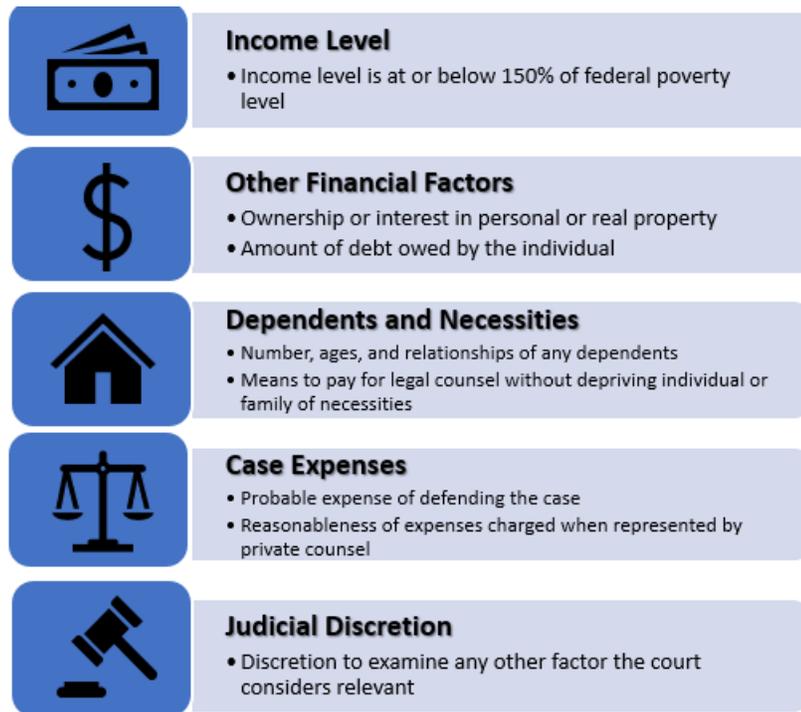
Courts decide if a defendant qualifies for a public defender based on statutory criteria.

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

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.



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

We found that the form used to determine indigency is not consistent across courts, and some forms in court records were incomplete.

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 report issued in 2015 by the Judicial Council Study Committee recommended steps "...to see that accurate and effective procedures, forms, and colloquies¹ 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 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

A Judicial Council report from 2015 recommended standardization of indigency determination processes.

Colorado and Washington have standard forms for indigency determinations.

- 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

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.

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.

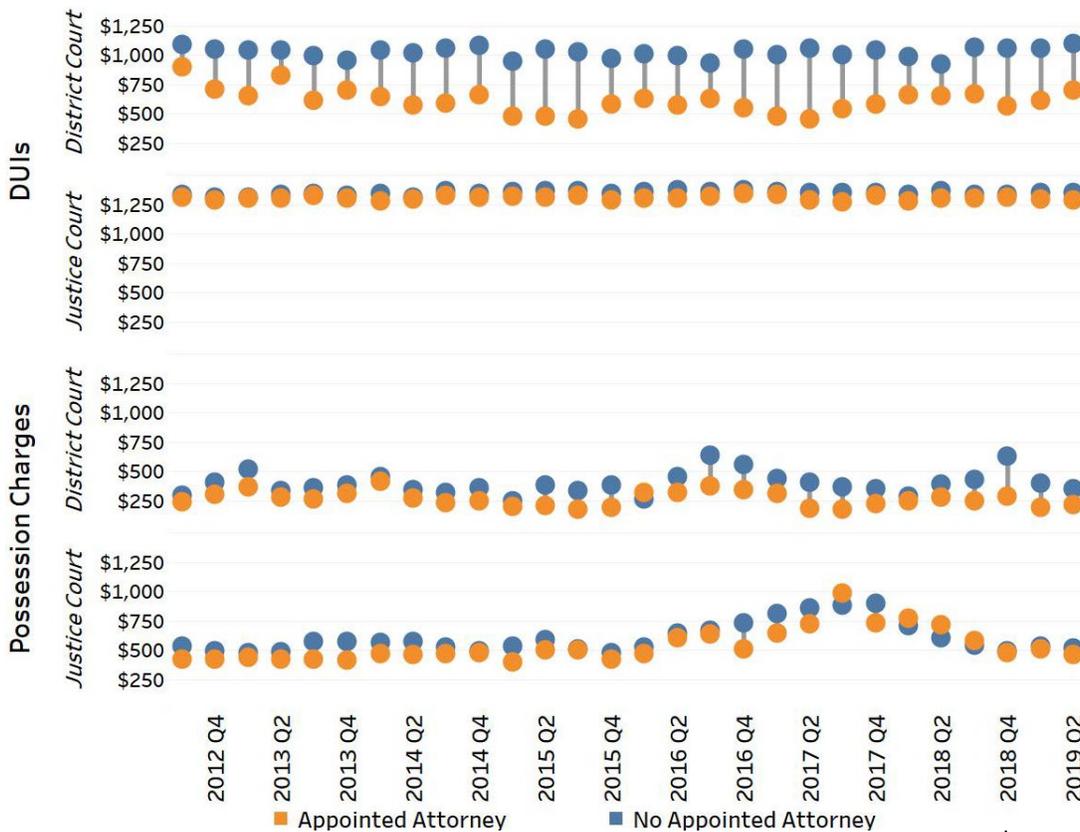
Judges Order Lower Fines for Defendants Who Qualify for a Public Defender

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.

While there are legal consequences in Utah for misreporting information used to determine indigency, none of the courts we interviewed routinely validate this information.

Some larger jurisdictions in Washington fund positions to validate reported information, but we did not find this to be feasible in Utah.

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.

The 2020 Uniform Fine Schedule includes consideration of a defendant's ability to pay when ordering fines.

Defendants can pay down their debts through community service and other credits, but oversight is lacking.

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.

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

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.

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:

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 courts have greater restrictions regarding when community service can be fulfilled than others, resulting in inconsistent accessibility.

House Bill 248, passed during the 2018 general session, was expected to result in greater uniformity in how community service is made available.

One court credited community service at \$12.50 per hour, which does not align with the \$10 per hour rate set by statute.

- 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.

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.

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.

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.

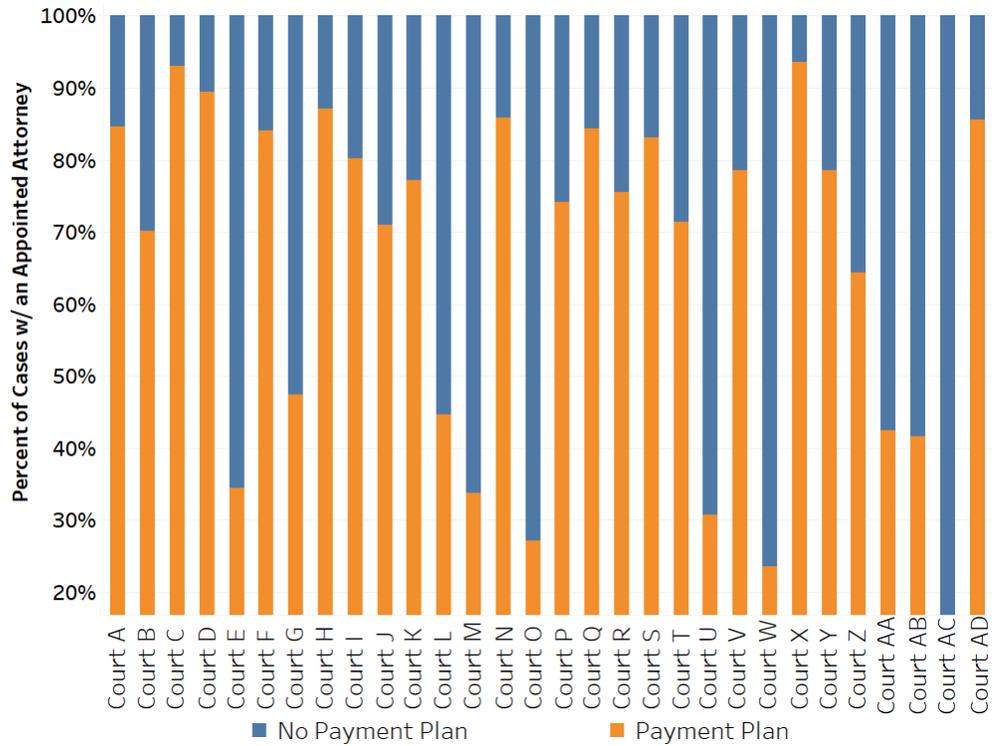
Judicial Council Should Review Availability of Payment Plans in All Courts

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.

Two courts allowed credit towards or in lieu of fine for donations made to non-profit organizations.

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).

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

The court security surcharge is a flat fee assessed for each violation.

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).

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 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.

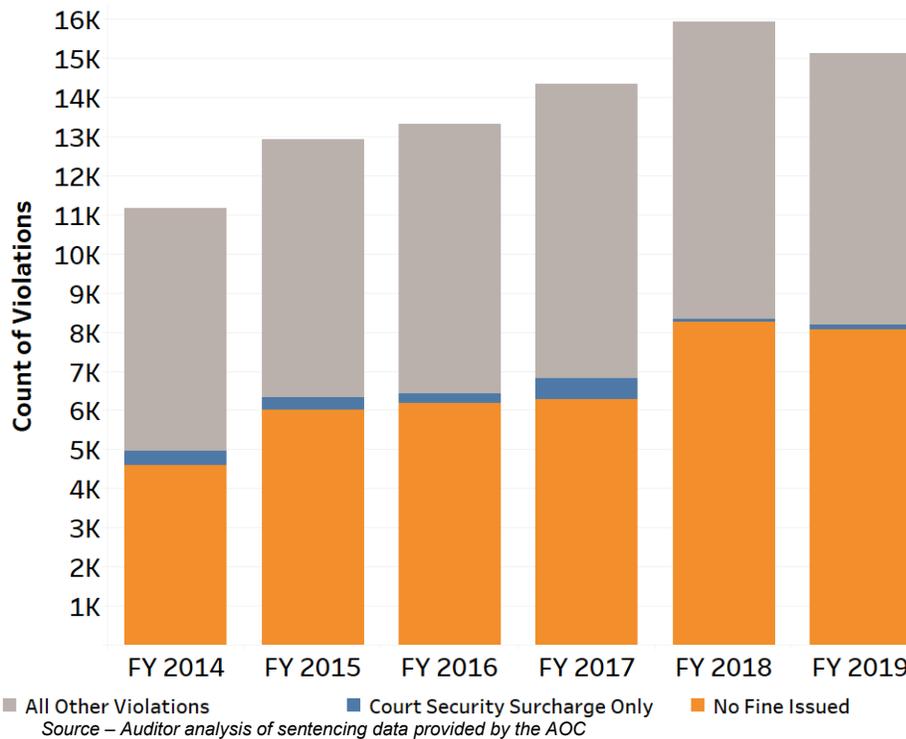
Statute requires both district and justice courts to impose the court security surcharge.

Some courts correctly ordered the statutorily required court security surcharge even when fines and criminal surcharges were not ordered.

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.



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 Court Security Account is the main source of state funding for court security operations. The account supplements county sheriff resources for security purposes.

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.

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.

The surcharge goes into a restricted account that provides the main source of state funding for court security.

The Legislature appropriated \$500,000 of general fund money in fiscal years 2019 and 2020 to offset a portion of the decline.

It is unclear whether the \$10 increase will address the need for court security funding because some judges do not order the surcharge.

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.

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.

Audit 2020-08 reviews whether JRI in Utah is meeting its objectives. This chapter evaluates the impact of JRI on fines and surcharges.

Because we could not identify a direct causal link between fines and JRI, we do not recommend action by the Judicial Council.

H.B. 348 reduced severity levels for drug and traffic violations, but recommended fine amounts did not change.

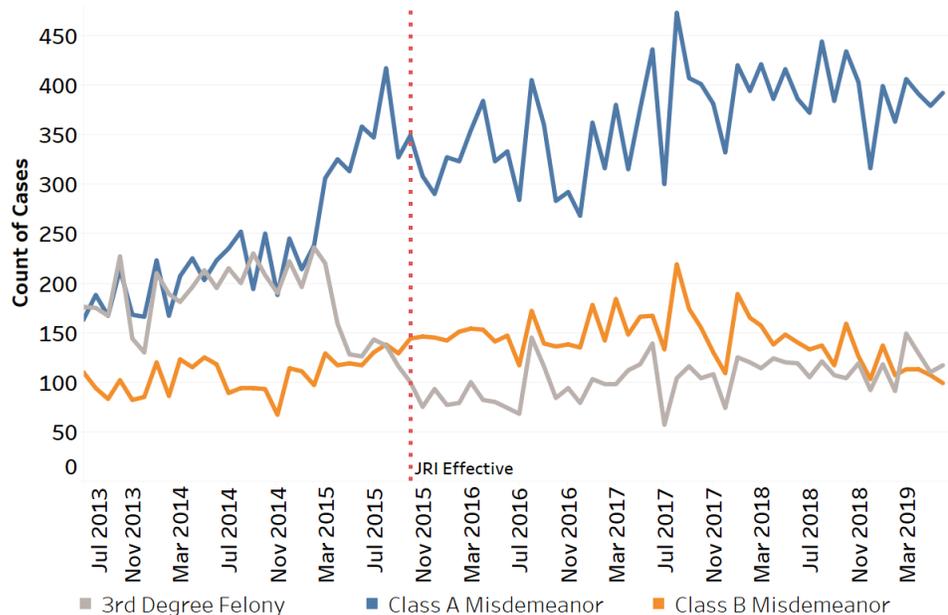
JRI Lowered Severity Level of Violations, but Recommended Fine Amounts Did Not Change

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.

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,

- 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

The number of third-degree felony cases dropped from 220 in February 2015 to 75 in November 2015.

The default severity of drug violations affected by H.B. 348 remained a Class B misdemeanor even after the passage of the bill.

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 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.

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.

Only 3 of 262 traffic violations included in H.B. 348 had reduced fine amounts after the bill's implementation.

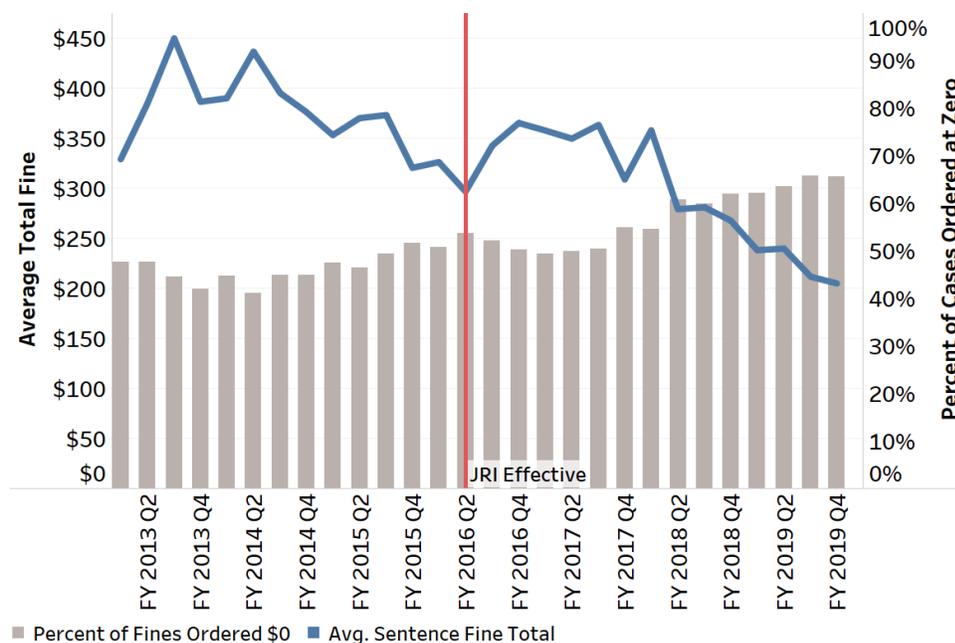
Severity levels for traffic violations were lowered to remove the possibility of incarceration, not to reduce fines.

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.

finer 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 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

Court personnel reported that turnover among judges during recent years was a contributing factor to decreased fines.

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

MW **FILED**
 AUG 05 2014
 4TH DISTRICT
 STATE OF UTAH
 UTAH COUNTY

 Defendant's Name

 Defendant's Street Address

 City, State and Zip

 Telephone



IN THE FOURTH JUDICIAL DISTRICT COURT
 UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. _____ Defendant	AFFIDAVIT OF INDIGENCY Case No. _____ Judge _____
---	---

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: _____		
Spouse's Employer's Name and Address: <i>DIVORCED</i>	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 its 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, _____, 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.

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 77-32-202², 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.

Dated this 5 day of Aug, 2014

BY THE COURT


District Court Judge



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 Apt [REDACTED]	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
[REDACTED]	\$		\$
	\$		\$

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

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 in the above referenced case.

DATED 2/13/18

[REDACTED]
District Court Judge



Example 3

FILED DISTRICT COURT
Third Judicial District
AFFIDAVIT OF INDIGENCY

MAY 08 2013

SALT LAKE COUNTY

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
[REDACTED]	\$		\$

ASSETS

(PLEASE CIRCLE) Home Apartment Buy Rent	MONTHLY PAYMENT	EQUITY
AUTOMOBILE MAKE	MODEL	YEAR
PRESENT VALUE	AMOUNT OWED	LIENHOLDER
OTHER ASSETS		

CASH

SOURCE	AMOUNT	SOURCE	AMOUNT
[REDACTED]	\$		\$

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:

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 ab
STAMP USED AT DIRECTION OF JUDGE



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

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**

450 South State Street / P.O. Box 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3800/ Fax: 801-578-3843

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 J. Noonan
State Court Administrator