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**Executive Summary  
Key Findings and Recommendations**

**Part I**

**Response to April meeting of Executive Appropriations**

**1. How does the Utah Department of Corrections (UDC) determine placement in county jails?**

*The decision to place an inmate in a particular setting is based on bed availability, programmatic needs and individual security classifications. Most inmates assigned to county jails are offenders serving 0 to 5-year terms. Sheriffs may refuse to house any inmates that pose a risk to the local facility.*

**2. How many counties have built new jail facilities and what is the per capita bed count in those counties?**

*Although state funding only provides for 965 annual inmates in the counties, there are 1,529 total beds available to the state in various counties. Counties participating in jail contracting have an average of 2.54 beds per 1,000 residents available for state use.*

**3. Is the state legally obligated to provide any minimum number of inmates to counties?**

*The state is not legally obligated to provide a minimum number of inmates.*

**4. If contracted beds are cut, which counties will be first in line for cuts?**

*Plans in April called for a “last in, first out” system. UDC and county sheriffs now agree that removal of inmates from county facilities should be done proportionally.*

**5. Would the State benefit if counties followed an Request for Proposal (RFP) process and bid for state jail contracts?**

*The state may see some savings but such a plan could be extremely detrimental to small counties.*

## Part II

### Response to Intent Language

*It is the intent of the Legislature that the Legislative Fiscal Analyst prepare a report on the capacity and operational needs of the Department of Corrections. The report should provide an analysis of the merits of various construction methods, jail contracting, jail reimbursement and offer recommendations for future funding for the housing of inmates. (House Bill 1, Item 70, 2001 General Session).*

#### State Capacity

- ▶ There is enough capacity within the Department of Corrections (UDC) and county jails to house state inmates for at least two years.
- ▶ UDC should identify operational capacity as an absolute number rather than a straight percentage.

#### County Contracting

- ▶ There is a benefit for counties and the State in county contracting.
- ▶ Counties should not count on State contracts to fund operations or debt service.
- ▶ During periods when growth slows, UDC should remove inmates from county jails proportionally.
- ▶ UDC should not over-fill jail contracts expecting to receive supplemental funding

#### New Facility Construction

- ▶ New facilities should be built as dormitories unless UDC demonstrates a compelling need for a different type of facility.
- ▶ UDC should consider allowing counties to build additional facilities to house special populations of inmates.
- ▶ DFCM should analyze county construction to find ways to enhance savings on state construction projects.

#### Inmate Funding

- ▶ The Legislature should consider funding inmate growth through a “weighted inmate unit”.

#### Jail Reimbursement

- ▶ The Legislature should consider moving the Jail Reimbursement program out of the Department of Corrections.
- ▶ The Legislature should consider creating a standard rate for medical and transportation costs.
- ▶ The Legislature should make a definitive decision on funding levels for jail reimbursement.

## **Introduction**

The Utah Department of Corrections (UDC) operates its own facilities and contracts with 20 counties to provide beds for inmates. County contracts provide a cost-effective option for the state and a base for economic development in rural counties. Jail Programs provide funds for county sheriffs that would not be available otherwise and allow the state to house inmates without incurring capital costs.

Although the relationship between facility needs, county contracts, and jail reimbursements are entangled, there seems to be no source of information that attempts to set policy direction for the programs individually or as a group. This leads to short term consideration for funding and construction – often leaving the legislature with few options in the budget setting process. This report will provide policy recommendations regarding physical and operational capacity, appropriate use of county programs (both contracting and reimbursement), construction options and long term planning.

## **Overview**

This report is divided in two parts. Part I will address issues raised by the Executive Appropriations Committee during its April meeting. Part II will address legislative intent language requiring a report on capacity and operational needs of the Department of Corrections.

## **Part I**

### **Jail Contracting – County Concerns**

In late March and early April of 2001, the UDC told certain counties that some state inmates previously committed to the county jail would either be relocated to state facilities or not sent to the county in the first place. This position taken by UDC was due in large part to the availability of excess state beds caused by a decline in inmate growth. However, some counties had made financial commitments based on anticipated state prisoners. In light of these concerns, the Executive Appropriations Committee asked the office of the Legislative Fiscal Analyst to address the following questions:

1. How does the Utah Department of Corrections (UDC) determine placement in county jails?
2. How many counties have built new jail facilities and what is the per capita bed count in those counties?
3. Is the state legally obligated to provide any minimum number of inmates to counties?
4. If contracted beds are cut, which counties will be first in line for cuts?
5. Would the State benefit if counties followed an Request for Proposal (RFP) process and bid for state jail contracts?

**Question One:  
How does the Utah  
Department of  
Corrections  
determine placement  
in county jails?**

To maximize safety for staff and inmates, prisoners are classified according to their level of threat to the general population and assigned to a housing unit appropriate to their security risk. Newly arriving inmates pose management problems because other prisoners are moved from one place to another to accommodate the needs of the new arrivals. The following anecdote provides some insight into the daily operations involved in prisoner management:

*I just thought I would send you a quick note to tell you about a housing problem that we had today at the prison. As you may have noticed from the e-mail this morning, we only had four R&O beds available. I received a call informing me that Salt Lake County would be bringing in seven new commitments to R&O and there were at least three diagnostic inmates being committed to R&O as well.*

*To accommodate this new intake of inmates I will have to move other inmates out of R&O. I showed 25 empty level 3 kappa beds available, however, of those 25, five of them are for Security Threat Group inmates, two are for phase one sex-offenders, four are for in-patient sex offenders, four are on hold for inmates who are currently being seen by medical personnel either at the UMC or in our infirmary, three are beds that are in a dorm setting with prior approval needed to live there because they are part of a green thumb program, two more beds are being used by inmates who have received their level 3 from a level 2 and need to be moved out. As you can see we will be busy today trying to shuffle inmates to make room for new ones coming in to R&O.<sup>1</sup>*

*Inmate Intake*

Inmates are assessed at intake and given a score that will determine appropriate housing. Upon arrival, inmates are given a security score, custody rating and behavioral classification.<sup>2</sup>

Risk	Security	Custody Level	Behavior	Housing ID
High   Low	A	1	I	Kappa
	B	2	II	
	C	3	III	Omega
	D	4	IV	Sigma
	E	5	V	
		6		

<sup>1</sup> Email from Mary Ann Redding, Department of Corrections. Dated April 25, 2001.

<sup>2</sup> Utah Department of Corrections, *FC 04 Inmate Classification*, Revised December 1, 1993.

Based on the table above, an inmate may be classified as a B2O (*Omega* – Standard Inmate), meaning that the inmate is a prisoner who committed a serious violent offense that requires “close” custody but poses no extraordinary threat to the general inmate population. This scoring system is the driver in the daily inmate shuffle. If the person assigned were B2S (*Sigma* indicating that the individual is likely to be a victim while incarcerated), he would be housed in a close custody area that separated him from more predatory inmates (*Kappa*). The need to segregate inmates for their own protection and the protection of staff means that a “bed is not a bed.” As new inmates arrive, the Department must shuffle inmates into vacant beds (discussed below as “operational capacity”) while back-filling other beds with new arrivals or inmates more in need of a particular level of supervision.

The decision to place an inmate in a particular setting is based on bed availability, programmatic needs and individual security classifications. Most inmates assigned to county jails are offenders serving 0 to 5-year terms. Sheriffs may refuse to house any inmates that pose a risk to the local facility

**Question Two:  
How many counties  
have built new jail  
facilities and what is  
the per capita bed  
count in those  
counties?**

Twenty counties participate in the Jail Contracting program. Although state funding only provides for 965 annual inmates in the counties, there are 1,529 total beds available to the state in various counties.<sup>3</sup> In addition to these beds, an additional 760 are planned to come online in Millard, Beaver and Cache Counties.

County	Available	Planned	Total	Population	Beds Per 1,000
Beaver	161	200	361	6,005	60.12
Box Elder	60		60	42,745	1.40
Cache	11	460	471	91,391	5.15
Carbon	15		15	20,422	0.73
Daggett	63		63	921	68.40
Davis	20		20	238,994	0.08
Duchesne	142		142	14,371	9.88
Garfield	88		88	4,735	18.59
Grand	12		12	8,485	1.41
Kane	8		8	6,046	1.32
Millard	68	100	168	12,405	13.54
San Juan	61		61	14,413	4.23
Sanpete	8		8	22,763	0.35
Sevier	84		84	18,842	4.46
Summitt	19		19	29,736	0.64
Tooele	3		3	40,735	0.07
Uintah	33		33	25,224	1.31
Wasatch	48		48	15,215	3.15
Washington	225		225	90,354	2.49
Weber	400		400	196,533	2.04
<b>Total</b>	<b>1,529</b>	<b>760</b>	<b>2,289</b>	<b>900,335</b>	<b>2.54</b>

<sup>3</sup> Utah Department of Corrections, September 13, 2000. *DIO Bed Space Utilization Planning Meeting*

Counties participating in jail contracting have an average of 2.54 beds per 1,000 residents available for state use. This does not include additional beds used for county needs. The latest data for inmate counts shows that Utah incarceration rates total 2.08 inmates per 1,000 citizens.<sup>4</sup> National rates for incarceration average 4.6 inmates per 1,000 and western states average 4.15 inmates per 1,000 residents. As the table above shows, some counties are housing multiples of expected need just in state inmate populations. This is an indication that some counties see an economic benefit to taking on state inmates in their local jails.

**Question Three:  
Is the state legally  
obligated to provide  
any minimum  
number of inmates  
to counties?**

The Department of Corrections contracts with 20 counties for as many as 1529 beds to house inmates. The program provides flexible space for the department, low cost housing for the state and economic benefits for the counties. Contracts with counties are written to ensure state access to a maximum number of beds but do not require any minimal level of support from the state. The contract places no legal obligation on the state to house any inmates in county jails. In practice however, it could create economical difficulties for counties if the state were to suddenly end the program.

**Question Four:  
If contracted beds  
are cut, which  
counties will be first  
in line for cuts?**

New initiatives on the part of the Department of Corrections promise to reduce the rate of growth of inmate populations.<sup>5</sup> The Department plans to reduce growth by providing more rehabilitation services for low level drug offenders and reducing the average length of stay for technical parole violators. The plan also will close the Promontory facility and delay opening of the 288 bed facility in Gunnison. Counties should not plan on new inmate growth to fund programs within their departments. Counties should be able to work with UDC to ensure that contracting levels are used to the greatest extent possible, but there may be years in which the state needs fewer county beds, not more.

Following the 2001 Legislative Session, the Department realized it would have to recall approximately 100 inmates from county facilities on July 1, 2001. The initial plan called for a “last in, first out” approach that would have disproportionately taken inmates from Weber County jail. A secondary plan offered to “distribute the pain” by taking a proportionate share from each county. County Sheriffs complained that this, too, hurt them because their budget cycle did not end until December 31 and spending commitments were made under the assumption that funding would continue.

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<sup>4</sup> Bureau of Justice Statistics

<sup>5</sup> UDC FY '02 Budget Holdback Initiatives, June 2001

*Funding Compromise*

The Sheriffs Association and UDC reached a compromise wherein the Gunnison facility opening would be postponed until January 1, 2002 and counties would continue to receive funding through the end of their fiscal year. As the new Gunnison facility opened, counties would see a proportional reduction in the number of state inmates. However, with the proposed postponement of the Gunnison facility to July 1, 2002 and the closing of Promontory, there may be a need to increase county utilization in the next county fiscal year.

**Recommendation**

The Analyst recommends that any county capacity reductions should be distributed among all counties. A “last in, first out” system penalizes those counties that built to meet future state needs with the expectation of participating in a statewide program.

**Question Five:  
Would the State  
benefit if counties  
followed an RFP  
process and bid for  
state jail contracts?**

At its inception, the jail contracting program called for uniform rates across counties. As discussed above, the cost for housing inmates varies from county to county and could allow the state to benefit from a bidding process in which counties respond to an Request for Proposal (RFP) to provide the lowest daily cost. This model considers the county to be a vendor not unlike a private sector provider of service. Viewed in this light, it would also make sense to allow private prison providers an opportunity to bid for inmates. The state could reap substantial savings if this type of program were instituted.

*RFP's could create  
hardships for smaller  
counties*

While an RFP process could save State funds, it could also be devastating to smaller counties. As a political subdivision of the state, counties are partners with the state in delivery of services to taxpayers. Establishing a competitive system for housing of inmates would allow larger counties to undercut smaller counties, leaving “economic development” counties with empty jails they could never fill. The incremental cost of adding inmates in Weber County is a few dollars for food and utilities. For example, Weber County must house a large number of inmates as part of its county role. Therefore, adding state inmates for less than the current rate of \$43.07 would be easy for the sheriff. Similarly, Cache, Salt Lake, and Utah Counties could expand programs to take on state inmates at a rate that Beaver, Garfield and Millard would find hard to match.

## **Part I**

## **Summary**

### *County Planning for Jails*

The state and county partnership in contracting provides benefits to each party. The state receives inexpensive bed space and reduced need for capital outlay while counties receive economic stimulus and budget assistance in operation of core missions. In an effort to meet the demands of a then-exploding inmate population, the Department encouraged some counties to add jail space as quickly as possible. Until 1998 it seemed that inmate growth would continue at close to 500 inmates per year with no relief. Fortunately, 1999 and 2000 saw the rate of growth slow to 250 inmates per year and current projections anticipate approximately 325 inmates per year over the next five years. This flattening of the growth rate should provide counties with an opportunity to work with the department to formalize growth plans before embarking on expensive construction projects that may not meet state needs.

### *Counties should not expect supplemental funding*

As mentioned above, legislation approved during the 2001 General Session now requires legislative acknowledgement of department plans to use county beds for state contracting. This will provide a safeguard against adding future capacity that exceeds the state's needs. Counties should also be wary of taking inmates in excess of funding with the expectation that the Legislature will make up the funds through a supplemental appropriation. To add flexibility the Legislature moved the county contracting program into the Institutional Operations line item. This will allow the UDC to use more discretion in the future and reduce the need to ask for supplemental appropriations, but counties should ensure that there is funding available for every inmate they take prior to accepting them from the Department.

### *Capacity should be prioritized*

As counties seek to add capacity, commissioners and sheriffs should consult with the Department and advise the Legislature of their intent. Capacity intended for permanent state use should be given priority over capacity built to meet future county needs. Those counties that seek to house state inmates to enhance rural economic opportunities provide the state with inexpensive housing that carries no capital cost. Counties that build for their own future needs and plan to use state inmates as an interim funding source also provide value to the state, but capital cost for those inmates is only delayed rather than eliminated.

## **Recommendation**

The Analyst recommends that the Legislature consider impacts on all counties as it determines the best method for contracting for additional bed space.

## Part II

### Response to Legislative Intent Language

Intent language approved during the 2001 General Session included the following directive:

*It is the intent of the Legislature that the Legislative Fiscal Analyst prepare a report on the capacity and operational needs of the Department of Corrections. The report should provide an analysis of the merits of various construction methods, jail contracting, jail reimbursement and offer recommendations for future funding for the housing of inmates. (House Bill 1, Item 70, 2001 General Session).*

The report sections that follow will address the issues as identified.

#### Capacity and Operational needs of the Department of Corrections

As the 2001 General Session opened, the Department of Corrections request for new capacity totaled \$35 million: \$11 million in ongoing funds to add 643 beds, \$4.5 million in one-time funds for supplemental county bed funding and another \$19.5 million to purchase the 552 bed Oxbow facility.<sup>6</sup> As the session progressed, it became clear that the Department held more than 250 empty beds at the Draper site and an additional 260 beds were reserved for “operational capacity.” The Legislature acted to fund the state’s need by providing funds for actual growth and moved the Jail Contracting line item into the Division of Institutional Operations (DIO) line item to allow the Department to manage inmates in the most efficient manner possible.

This policy may, in fact, result in reduced funds flowing to counties over the next fourteen months. **However, the 2001 Legislature provided sufficient funds to take care of the remaining growth in the current budget year.** Although initial evidence suggests that some counties may find themselves in a financial bind if they can not count on a guaranteed level of state funding, the only obligation of the Legislature is to fund growth – not to create excess capacity.

#### Growth Projections

Anticipated growth drives facility acquisition and funding for institutional operations within the Department of Corrections. Current incarceration rates show a need to house an additional twenty-seven inmates every month – a growth rate of approximately 325 inmates per year. Based on current funding levels, this growth rate could result in a deficit of 101 beds to begin Fiscal Year 2003.

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<sup>6</sup> Governor’s Office of Planning and Budget (December 2000). *State of Utah Budget Recommendations*.

*Operational Status as of March 31, 2001*

State Owned Beds		5,187
County Beds (Funded)		965
<b>Total Beds</b>		<b>6,152</b>
Admin. Reduction	(55)	
Operational Reserve	(259)	
DIO Placement	(4,463)	
County Placements (Total)	(1,071)	
<b>Total Bed Reduction</b>	<b>(5,848)</b>	
<b>Surplus (Deficit) Beds</b>		<b>304</b>
Growth (4/1/01 to 7/1/02)	405	
<b>FY 2003 Surplus (Deficit) Beds</b>		<b>(101)</b>

*Cell Capacity:  
Deficit is “on paper”*

The deficit shown is somewhat misleading in that the chart assumes that operational capacity reductions are appropriate and funded county capacity equates to actual county capacity. The department sets aside five percent of all beds as a reserve – counting ninety-five percent as full “operational capacity”. (This is discussed more fully below). If a dire funding crises were to arise between now and the beginning of FY 2003, the 101 bed deficit could be absorbed into the operational reserve of 259 beds.

*There is a surplus of  
beds*

Furthermore, counties have more than 1,500 beds available that the state could use and three counties are considering the construction of another 760 beds. If current physical capacity is considered, the 100 bed deficit turns into a 463 bed surplus. Construction of an additional 760 county beds would push available physical capacity over one thousand beds. A more accurate picture of capacity is shown in the following table:

*Physical Status as of March 31, 2001*

State Owned Beds		5,187
County Beds (Total)		1,529
<b>Total Beds</b>		<b>6,716</b>
Admin. Reduction	(55)	
Operational Capacity	(259)	
DIO Placement	(4,463)	
County Placements (Total)	(1,071)	
<b>Total Bed Reduction</b>	<b>(5,848)</b>	
<b>Surplus (Deficit) Beds</b>		<b>868</b>
Growth (4/1/01 to 7/1/02)	405	
<b>FY 2003 Surplus (Deficit) Beds</b>		<b>463</b>

*Current state owned beds*

The Department of Corrections places inmates in state-owned facilities and in county jails through a contracting system. The State owns 5,187 beds spread over facilities in Draper, Cedar City and Gunnison. Of these, 55 beds are not available because some inmates must be housed in single cells due to mental illness. The Analyst accepts this reduction of beds as proper to manage special needs inmates and uses 5,132 as total physical capacity for state-owned beds as shown on the table that follows.

Facility	Location	Type	Beds	Percent
CUCF Central	Gunnison	Cells	636	12.39%
CUCF North	Gunnison	Cells	192	3.74%
CUCF III	Gunnison	Dorm	288	5.61%
Promontory	Draper	Dorm	400	7.79%
Lone Peak	Draper	Dorm	300	5.85%
Uinta	Draper	Cells	812	15.82%
Wasatch	Draper	Cells	745	14.52%
Wasatch SSD	Draper	Cells	127	2.47%
Oquirrh	Draper	Cells	828	16.13%
Olympus	Draper	Cells	149	2.90%
Timpanogos	Draper	Cells	565	11.01%
Iron County	Cedar City	Cells	90	1.75%
<b>Total Available Beds</b>			<b>5,132</b>	

*Physical vs. Operational Capacity*

The Department monitors capacity in two ways: physical and operational. **Physical capacity** (also called *rated* capacity) is the total number of beds owned. **Operational capacity** sets the number of beds *available* for inmate placement – currently the department defines operational capacity as ninety-five percent of physical capacity. With the opening of the new facility in Gunnison, the Department will consider its facilities to be at capacity when it holds 4,875 inmates in state-owned beds.

Operational capacity provides a key element of the Department’s inmate management plan. Inmate placement must be conducted in a way that minimizes group hazards – especially gang activity – and maximizes safety for staff and inmates. The Department relocates as many as 200 inmates per day for reasons that range from malfunctioning plumbing to separating known gang members.

It seems clear that the Department must maintain some level of “buffer” but the Analyst believes that the five percent figure may be too high as inmate populations grow. At this point, reserved bed capacity approaches the size of a new facility. Conversations with the Bureau of Justice Statistics indicate that best practices would set aside a fixed number of beds at each facility based on the type of facility and level of incarcerated inmates. A blanket percentage may misstate the actual need (either high or low) and hamper operations.<sup>7</sup>

<sup>7</sup> Conversation on April 2, 2001 with Christopher Mumola, Policy Analyst with the Federal Bureau of Justice Statistics

*Early release is not imminent*

With continued growth in inmate populations, the question of overcrowding arises on a regular basis. The Department has been quoted at least twice this year as saying that early release of inmates could occur if funding is not increased. Although the stories sound dire, **the reality is that early release is not imminent, mandated nor dire**. Capacity is not threatened by Department estimates of new growth at approximately 325 inmates per year. As of March 31, the Department housed 4,463 inmates in its own facilities – allowing for an additional 412 inmates before reaching operational capacity. At the point of reaching operational capacity, an additional 338 beds would be available but “reserved” within the state-owned system and another 600 beds would be available through county jails.

*Early release is often misunderstood*

Even if one imagines that capacity is reached and county jails are not available, early release is not mandated. Furthermore, the concept of “early release” is widely misunderstood. Utah Code sets out guidelines for early release<sup>8</sup>. Before an overcrowding emergency can be declared, the Utah State Prison must be at physical (not operational) capacity for forty-five days. At that point the executive director **may** declare an overcrowding emergency, notify the governor and request action from the Board of Pardons and Parole. The key is that the language is permissive – the use of the word “may” indicates that the Legislature believes that inmate levels at or above physical capacity within the Utah State Prison does not automatically constitute an emergency.

### **Jail Contracting**

In Fiscal Year 2001, the daily rate per inmate charged by counties was derived through negotiations between the Department of Corrections and the Utah Sheriff’s Association.<sup>9</sup> This procedure allowed counties and the Department to set rates outside of the traditional budgetary procedure. Since the Legislature was not involved in the rate process, the actual number of funded beds changed after the session. For example, if the Legislature set aside \$15,000,000 for jail contracting, it could fund any number of beds depending on the daily rate:

<b>Rate</b>	<b>Funded Beds</b>
\$38	1081.47
\$39	1053.74
\$40	1027.40
\$41	1002.34
\$42	978.47
\$43	955.72
\$44	934.00
\$45	913.24

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<sup>8</sup> Utah Code 64-13-38

<sup>9</sup> Utah Code 64-13c-201

In addition to the fact that the rate could change following legislative appropriations, there was no cap on the number of inmates that could be sent to county facilities. The result was that the Department would over-fill its county inmate allocations, then return to the Legislature to request supplemental funding. This year, the Department requested supplemental funding for approximately 200 inmates even though there were more than that number of beds empty at the Draper facility.

*Legislature must approve rate*

House Bill 337<sup>10</sup> changed the process to include the Legislature. Beginning with the 2002 General Session, the rate must be approved by the Legislature in advance and an “approximate” number of beds must be presented as part of the funding request. This change will allow the Legislature to have more control over the number of inmates it funds.

*Appropriate Level of Outsourcing (Jail Contracting or Privatization)*

Attitudes toward outsourcing change as Department leadership changes. The prior Executive Director, operated with a twenty percent cap on outsourcing, but believed that outsourcing could rise as high as thirty percent without compromising the Department’s mission. The current administration continues to believe that thirty percent is a reasonable level for outsourcing.

Theoretically, there is no reason that all inmates could not be sent to county or private facilities, creating a department that administered inmates rather than incarcerated them. However, keeping the core inmate population in UDC housing allows the Department to respond to performance measures and provides an alternative to county housing that ensures counties will continue to provide excellent service. As part of this report, the Analyst asked the UDC about the outsourcing. Their response follows:

**Response on outsourcing from the UDC**

*Approximately 70 percent of all prison admissions come from courts along the Wasatch Front. There is currently only one outsourcing entity along the Wasatch Front willing to provide beds for state offenders. In order to accommodate offenders who would return to the Wasatch Front area, either private entities or Salt Lake County would need to provide housing options.*

*The effect of pushing large numbers of offenders further away from their court of conviction and into rural county jail facilities can create problems in (1) transportation to and from court appearances, (2) locating offenders farther from their most likely location for community supervision would make transition services more difficult to deliver, and (3) visitation of family and friends would become burdensome and often, family members play a key role in the success of an offender’s prison experience and the eventual success of an offender released to parole.*

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<sup>10</sup> 2001 General Session

*Also, offenders with extensive medical or mental health issues are not outsourced. These offenders are particularly expensive to maintain in prison. Moving them to outsourced locations will increase the cost per day in those locations, assuming services were actually available.*

*UDC: Offender Management Plan*

*The Department of Corrections is currently in the process of implementing an agency-wide **Offender Management Plan** database system that is designed to assess and track each offender's successful or unsuccessful attempt to complete treatment and programming services. If the entire incarcerated population was outsourced, local government agencies would be responsible for data collection and entry into the State's OTRACK database system. The ability of the state to maintain adequate training of local government staff, ensure that security of protected data is maintained, and guarantee that computer equipment was functional and on-line may be too difficult and could potentially interfere with accurate tracking of offenders.*

*UDC: Cost controls through partial outsourcing*

*Finally, centralization of the majority of offenders in large-scale prison complexes has provided the state with economies of scale that smaller jail systems would not be able to achieve. If the State made the decision to locate the entire incarcerated population in outsourced facilities, there would be a long-term loss in the ability of the state to control costs.<sup>11</sup>*

**UDC should consider outsourcing level two inmates**

Current policy requires the Department to send out only level three, four or five offenders to county jails. UDC reasons that they are better equipped to hold level one and two offenders in state facilities. However, the Department should consider outsourcing of level two inmates as well. Weber County's core population includes level two inmates and could provide the Department with a facility to house state inmates in a maximum-security environment. Modern county facilities match state facilities in security and operation quality. If sheriffs and local commissioners are willing to take on the state's level two inmates, then the Department should consider using this as an option for space.

**State Benefit of Jail Contracting**

A statutory change enacted in 1998 matched the contract rate and rate for jail reimbursement. By tying the contract rate to the reimbursement rate, the per day cost for jail contracting rose while funding for reimbursement remained unchanged but was distributed differently among the counties.

The contract rate has always been uniform across the counties, but the new law raised the rate at which counties were billing the state. Even with the new higher rate, half of the counties participating in the jail contracting program maintained a daily cost higher than the \$43.07 rate funded in FY 2001.

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<sup>11</sup> Cliff Butter, Utah Department of Corrections

The table below offers evidence as to motivation for county contracting. There are two primary motivators for a county to seek to contract with the Department of Corrections: economic development and budget enhancement. **Economic development** counties struggle to find jobs that offer sufficient salary and benefits to allow young people to remain in the county. Some county commissions working with their sheriff’s department have embarked on programs that built jails far in excess of county need. **Budget enhancement** counties have a core need to house inmates but can offset costs by taking on additional state inmates. These counties realize that the incremental cost of adding inmates is low, allowing the sheriff to offset costs for county needs and provide a savings to the state.

Budget Enhancement Counties			Economic Development Counties		
County	Core Rate	State Capacity	County	Core Rate	State Capacity
Box Elder	\$43.18	60	Beaver	\$26.57	161
Cache	\$53.95	11	Daggett	\$36.72	63
Carbon	\$48.96	15	Duchesne	\$35.95	142
Davis	\$43.12	20	Garfield	\$45.42	88
Grand	\$40.65	12	Millard	\$49.35	68
Kane	\$67.72	8	San Juan	\$43.00	61
Sanpete	\$43.36	8			
Sevier	\$36.16	84			
Summitt	\$56.15	19			
Tooele	\$30.99	3			
Washington	\$43.60	225			
Weber	\$41.64	400			
Uintah	\$23.41	33			
Wasatch	\$30.44	48			

Both types of counties offer a benefit to the state by housing inmates at less than 80 percent of the average cost of housing inmates in state facilities. Cost savings arise from the following factors:

1. Inmates housed in “budget enhancement” counties are incremental additions that do not cost the receiving county the full cost that the state pays. While it is true that the inmate would add only incremental cost to the state as well, the state is able to use this program to avoid building more facilities.
2. Costs at “economic development” counties are lower primarily do to lower wages than those required for Wasatch Front counties.
3. Inmates assigned to county contracting programs are lower-risk inmates who do not need high security housing. They are often able to serve on work crews that go outside the walls to clean roads, repair parks or perform other work for the local community.

4. Counties build smaller jails and therefore incur lower costs for facility construction – much of which can be offset by grants from the local CIB and the Federal Government.

*County Programming Options*

In addition to county contracting, large counties maintain an ability to house special populations of inmates. Weber, Utah, Davis and Salt Lake Counties hold significant populations of inmates with drug, alcohol and mental problems that require special programming. One of the objections to increased outsourcing raised by UDC involved special programming for some inmates. If given a promise of a core number of inmates, large counties may be willing to take on larger populations of special needs inmates. Such a program could be arranged outside the traditional contracting program with differential rates, but should be brought to the Legislature to ensure full understanding of all stakeholders.

*Contract Calculations Improved*

The Legislative Auditor found in 1998 that the Department of Corrections was not accurately showing all costs associated with jail contracting.<sup>12</sup> At that time, the contract rate was \$38 per day and was often cited as a savings of \$16 per day over the UDC average cost of \$54 per day. The auditor found that additional medical, travel and administrative overhead added as much as \$12 per day to the cost of housing a county inmate. As a result of the audit, the Department began calculating total costs to house inmates at all facility types. Actual reports for FY 2000 calculate the cost of housing an inmate at a county jail to be \$50.12 per day, approximately \$13 less per day than the system wide average of \$63.50 per day.

The savings may not be as great as it seems due to non-quantifiable factors. As noted by the Auditor, inmates sent to county jails are generally low risk inmates that do not cost as much to house. State inmates sent to county facilities are also less likely to need significant medical care or intensive management while in jail. Even so, a savings of \$13 per day for 1,000 inmates provides a savings to the state of \$4.7 million. Even if the rate saved the state only \$6.50 per day, the \$2.3 million savings is a significant benefit to the state.

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<sup>12</sup> Utah Legislative Auditor. A performance audit of the Utah Department of Corrections. November 1998

**Funding for Inmates**  
– *Should the Legislature consider a weighted inmate unit (WIU)?*

One of the strengths of the Department of Corrections is in its ability to calculate costs of housing inmates at various levels and to achieve an overall cost per inmate in each type of facility. This information should become a central element of the budgeting process. The Legislature already funds growth for higher education and public education by applying core costs to student growth - this seems to be possible with inmate growth as well. The FY 2000 “weighted inmate unit” (WIU) would total \$63.50 per inmate. If this were applied during the 2001 session to the growth of 325 inmates, the Department would request \$7.5 million to cover costs. Although this funding would lag behind actual costs by 18 months, the Department could manage costs in the same way as higher education and public education do. Using the “weighted inmate unit” on an 18-month lag may also help the Department solve salary equity issues. If the WIU were fully funded at \$63.50, it would fund salaries and administrative overhead. The state salary package would add additional money specifically for personal services, resulting in enhanced ability to meet critical salary needs within the Department.

*WIU would include new facility start-up costs*

The WIU would also streamline the capital facility process by removing the “start up” cost from consideration in building new facilities. The Department would bring capacity estimates to the Building Board and the Legislature that would show needs for new space to be considered for funding. Legislative consideration would be given to actual need in relation to other state needs and county availability. This would provide the Legislature with the opportunity to build large blocks of cells at once – saving costs and “banking” cells for future use.

*Operational efficiencies could increase under a WIU.*

As an operational tool, the WIU would force the Department to ask for funds to manage inmate growth, not fund new facilities. Funding for operation would be formula driven, eliminating the confusion that arises when UDC requests funding for specific facilities or inmate populations. The Legislature would have the discretion to fund the entire WIU or to fund a specific percentage based on performance measures and available budgets within the Department. The Department’s responsibility then becomes one of managing funds in the most efficient way possible – whether that be opening a new facility, filling an existing facility or using additional county contracts.

*The WIU may allow for more flexibility in construction*

One of the greatest costs for corrections funding is the construction of new capital facilities. However, this cost is not reflected in the reported costs shown by the Department of Corrections. Legislative processes divide the capital process from the operating budget, creating a disconnect between ongoing funding and funding of new facilities. To bridge this gap, chairs of both the Executive Offices and Criminal Justice and Capital Facilities and Administrative Services communicate regarding the needs of the Department. This allows both committees to understand future needs and make short term recommendations to the Executive Appropriation Committee. As part of its annual budget request, UDC submits a five year plan for housing needs that includes new construction and outsourcing to counties. During the 2001 General Session the Analyst noted that growth projections did not match up with construction plans, resulting in a long term program for new facilities that overstated needs by more than 500 beds.<sup>13</sup>

If the Weighted Inmate Unit funding proposal is implemented as described above, it could lead to a system that streamlines the capital process and allows for more flexibility in construction. Under such a system, the Capital Facilities and Administrative Services (CFAS) Appropriation Subcommittee would be able to analyze construction needs independently of operating concerns. Under this plan, UDC would provide data on number of inmates, growth projections and available beds. The CFAS committee would then weigh funding requests against other state needs in recommending new construction. The committee would analyze construction costs, size needs, facility type and outsourcing options.

## **Construction Methods**

Construction costs escalate as facilities are built to be more secure. In 1999 the Legislature approved funding for the new Lone Peak Dormitory on the north end of the Draper Campus. The 300 bed facility was built for approximately \$12,000 per bed because the minimum security design was created to meet the needs of “trustee” level inmates who participated in work crews outside the fences. This “soft” construction will not meet security requirements for the standard inmate. More secure environments are more costly, but the Department should be able to hold down costs by building pod-style dormitories and cell blocks that reduce construction costs and lower ongoing staff costs.

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<sup>13</sup> Office of the Legislative Fiscal Analyst: Facility Report on Courts, Adult and Youth Corrections. February 2001.

The pod system replaces the classic straight line cell block by placing observation rooms in a central location with pods surrounding the area. One staff member can monitor several pods directly from one chair, increasing safety by eliminating “walk throughs.” Pod designs can accommodate double bunked cells or dormitories. Cell pods usually hold 36 or 44 inmates while dormitories can hold 70 or more inmates. While dormitories can not be used for all housing needs, the Analyst believes it should be the standard model for future construction. The 288 bed facility costs less to build than a 192 bed cell facility and costs less to run on an annual basis. Inmate control is slightly more difficult in a dorm setting because the open nature prevents “lock downs” during emergencies, but dorm-housed inmates are generally those that have demonstrated willingness to behave appropriately.

*UDC should assume dormitory construction as the default method*

As UDC prepares its capital request, it should assume that the Legislature will approve dormitory style facilities unless the Department demonstrates a compelling reason to build more secure (and more costly) facilities.

*State construction costs should compare to County costs*

Counties seem to be able to build new facilities to state standards for less money. Recent county construction projects come in at less than \$30,000 per bed for facilities that mix dormitories with cell pods and include funding for capitalized interest. DFCM estimates submitted in the 2001 General Session anticipate costs reaching nearly \$40,000 per bed for state construction.

<b>County</b>	<b>Bed Count</b>	<b>Construction Cost</b>	<b>Cost Per Bed</b>
Washington	400	\$11,777,707	\$29,444
Weber	800	\$22,270,570	\$27,838
Beaver	200	\$6,000,000	\$30,000

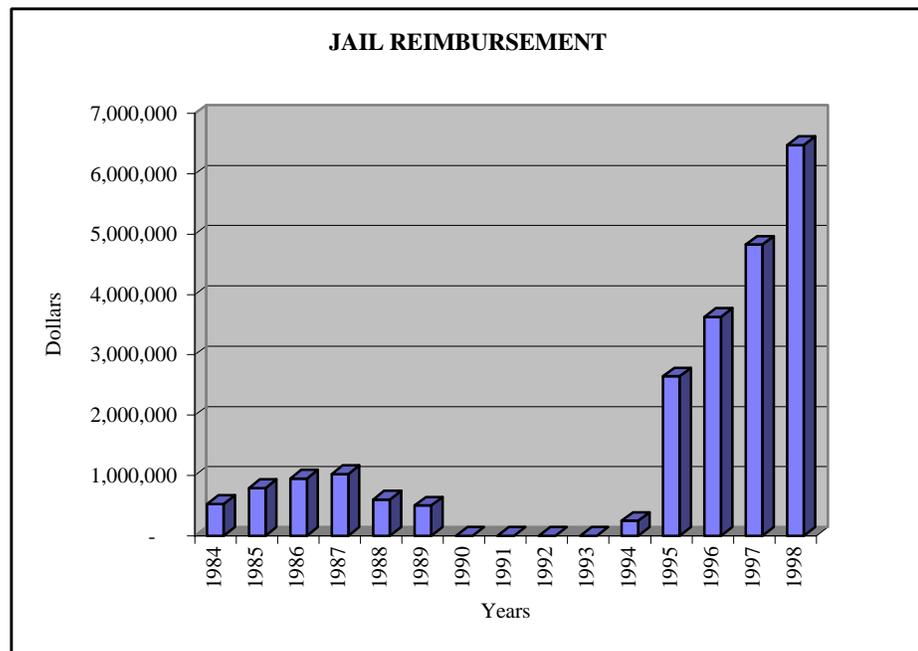
If counties are able to offer significant savings and demonstrate a desire to take on more state inmates, then UDC should consider additional outsourcing. As the state moves ahead with its own construction projects, DFCM should work with counties to see if their processes can provide savings to the state.

The Legislative Fiscal Analyst will work with Governors Office of Planning and Budget (GOPB) and DFCM to further analyze this issue in preparation for the 2002 General Session. Final analysis will be presented to the Capital Facilities and Administrative Services Appropriations Subcommittee.

## Jail Reimbursement

County jails serve a dual function in housing inmates sentenced for violation of either county ordinance or state law. Each of the twenty-six counties<sup>14</sup> that operate a jail must take in those sentenced to the county facility as a condition of probation. In the early 1980s, counties began to argue that they were housing inmates convicted of state offenses and should therefore receive compensation from the state to cover these expenses. When county courts were merged into the state court system, the argument grew stronger that state offenders, sentenced in state courts, should be funded by the state for their incarceration in county jails. To offset these costs, the Legislature began to provide funds to the counties in a new program called “jail reimbursement.”

The jail reimbursement program provides funds to offset costs associated with housing those inmates sentenced to probation by state judges and assigned to county jails. This type of inmate is not counted by the Department of Corrections as part of its daily count. The reimbursement program was suspended in 1990 and reinstated in Fiscal Year 1994.



Since reinstatement, the reimbursement program has grown to over \$7 million per year to offset the costs associated with housing those sentenced to county jail as a condition of probation. County sheriffs point out that the amount funded does not meet the total cost associated with housing inmates. However, statute calls for funding to be provided to the “extent that funds are available.”<sup>15</sup>

<sup>14</sup> Three counties have no jail: Morgan, Piute, and Wayne

<sup>15</sup> 63-13c-303

Fiscal Year 2001 funding totaled 70.2 percent of the full cost to manage inmates in the jail reimbursement program. While the \$7 million provided full funding to the extent that funds were available, Sheriffs maintain that the remaining 29.8 percent constitutes an unfunded mandate. At this point, there is no consensus as to the level of funding that the state should provide to the jail reimbursement program. The following table shows funding needed to increase the jail reimbursement program to selected percentages of funding.<sup>16</sup>

<b>Reimbursement Funding FY 2001</b>	
Projected Billings	\$10,339,366
FY 2001 Funding	\$7,258,000
Difference	(\$3,081,366)
<b>Funding Percentage</b>	<b>70.2%</b>
\$ Needed to Reach:	
80 Percent	\$1,013,493
85 Percent	\$1,530,461
90 Percent	\$2,047,429
95 Percent	\$2,564,397
100 Percent	\$3,081,366

Jail reimbursement is funded through a “core rate” applied to each inmate day and distributed across the counties. This change resulted in the smaller counties commanding a larger share of the available funds. Even with this change, four counties received seventy-three percent of all jail reimbursement funds in FY 2000.<sup>17</sup>

Conversations with county Sheriffs and other officials indicate that many counties consider jail reimbursement and jail contracting to be essentially one program. The two programs became even more intertwined when the “core rate” was established to standardize rate charges from the counties for both the jail reimbursement and jail contracting programs. In fact, the two are only distantly related and should be considered as separate programs with separate funding needs.

<sup>16</sup> Data compiled by UDC.

<sup>17</sup> Davis and Weber received twelve percent each, Utah County received twenty-two percent and Salt Lake collected twenty seven percent of all funds.

*All counties do not receive the same funding for jail reimbursement*

Although the “core rate” is paid equally across all counties, not all counties receive the same per day funding. The core rate does not include funds for medical cost or transportation. Inmates requiring medical care and transportation are counted separately from the standard inmate – approximately one-fourth of state inmates do not need medical care or transportation.<sup>18</sup> Statewide counts of inmates serving jail time as a condition of probation totaled 1,557,910 days. Of those inmates, 1,163,020 also needed medical and transportation services. The total rate for Daggett County to house inmates serving time as a condition of probation will be \$281.31 per day for Fiscal Year 2002.

The rate for Daggett County is skewed due to the county’s small size and lack of inmate days. Daggett County’s total medical need was only 91 inmate days compared to a total of 22,440 inmate days. The four largest counties (highlighted) in the program will receive from \$47 to \$57 per day for their inmates.

<b>COUNTY RATES FOR REIMBURSEMENT</b>				
	<b>Basic Core Rate</b>	<b>Medical Rate</b>	<b>Transp Rate</b>	<b>Total County Rate</b>
<b>Beaver</b>	\$43.95	\$1.41	\$6.33	\$51.69
<b>Box Elder</b>	\$43.95	\$1.30	\$1.97	\$47.22
<b>Cache</b>	\$43.95	\$0.65	\$4.04	\$48.64
<b>Carbon</b>	\$43.95	\$7.08	\$0.00	\$51.03
<b>Daggett</b>	\$43.95	\$16.35	\$221.01	\$281.31
<b>Davis</b>	\$43.95	\$5.46	\$5.19	\$54.60
<b>Duchesne</b>	\$43.95	\$2.43	\$2.46	\$48.84
<b>Emery</b>	\$43.95	\$1.70	\$4.87	\$50.52
<b>Garfield</b>	\$43.95	\$1.65	\$3.61	\$49.21
<b>Grand</b>	\$43.95	\$1.33	\$1.76	\$47.04
<b>Iron</b>	\$43.95	\$1.87	\$0.23	\$46.05
<b>Juab</b>	\$43.95	\$2.53	\$0.51	\$46.99
<b>Kane</b>	\$43.95	\$3.10	\$0.08	\$47.13
<b>Millard</b>	\$43.95	\$4.37	\$0.37	\$48.69
<b>Morgan</b>	\$43.95	\$0.05	\$3.24	\$47.24
<b>Piute</b>	\$43.95	\$0.00	\$34.00	\$77.95
<b>Rich</b>	\$43.95	\$0.00	\$0.00	\$43.95
<b>Salt Lake</b>	\$43.95	\$12.64	\$0.77	\$57.36
<b>San Juan</b>	\$43.95	\$0.64	\$1.19	\$45.78
<b>Sanpete</b>	\$43.95	\$6.13	\$9.08	\$59.16
<b>Sevier</b>	\$43.95	\$2.77	\$0.12	\$46.84
<b>Summit</b>	\$43.95	\$2.43	\$0.36	\$46.74
<b>Tooele</b>	\$43.95	\$2.60	\$0.00	\$46.55
<b>Uintah</b>	\$43.95	\$1.30	\$0.71	\$45.96
<b>Utah</b>	\$43.95	\$1.65	\$1.64	\$47.24
<b>Wasatch</b>	\$43.95	\$8.84	\$4.17	\$56.96
<b>Washington</b>	\$43.95	\$3.39	\$0.16	\$47.50
<b>Wayne</b>	\$43.95	\$3.15	\$29.26	\$76.36
<b>Weber</b>	\$43.95	\$3.26	\$0.02	\$47.23
<b>Total Avg</b>	<b>\$43.95</b>	<b>\$7.02</b>	<b>\$1.34</b>	<b>\$52.31</b>

<sup>18</sup> Department of Corrections

*Equity in medical / transportation rates*

It seems inconsistent that Salt Lake County's medical rate is in excess of \$12 when other large counties are less than half of that amount. This raises an equity issue in considering how the medical/transportation rate should be funded. It would be a legitimate question to ask if the Legislature should cover any of the costs associated with medical and transportation costs.<sup>19</sup> If that rate were not paid by the state, more "core rate" days could be funded to cover county costs directly associated with housing inmates. If state funding is appropriate and counties are able to hire their own doctors at a cost in excess of what it costs to contract with local hospitals – especially in urban areas – then it seems that the state should not bear the cost of that service beyond some basic rate similar to the core rate.

*Is jail reimbursement a mandated cost?*

The key policy question for jail reimbursement centers on the issue of mandated costs. Counties see "jail as a condition of probation" as an unfunded (or partially funded) mandate. However, counties play a large role in law enforcement and public safety. The fact that state judges are sentencing county offenders to county jails for violations of state code does not necessarily mean that that state should provide 100 percent of the funding for that program. A similar case could be made that the state should fund sheriff patrol operations since deputies are in the community enforcing state law and will take violators to state court. Over the past 20 years, the Legislature has taken various positions on the role of the state in jail reimbursement. At one time, the Legislature adopted a plan to fund all costs with a five year phase-in. Prior to that, the Legislature viewed the costs as those appropriate for county government and provided no funding from the state.

**Recommendations – Jail Reimbursement**

1. The Legislature should develop a long range plan that will fit state budget needs and allow county sheriffs to establish long term plans. It is important that jail reimbursement levels should be driven by statewide legislative policy goals – the appropriate funding level is the level at which the Legislature believes the state is imposing costs on individual counties.
2. The Legislature should continue to annually review the policy issues regarding funding levels for jail reimbursement and consider continuing the policy set during the 2001 General Session that placed the Jail Reimbursement program in its own line item.
3. The Executive Offices and Criminal Justice Appropriation Subcommittee should devote enough time to this issue prior to the 2002 session so that it can address the issue more thoroughly for FY 2003 and beyond.

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<sup>19</sup> Utah Code 63-13c-302 requires that the state "negotiate" medical and transportation reimbursement. There is no requirement that UDC fully fund costs in which the state has no control over.

4. The Executive Offices and Criminal Justice Subcommittee should take testimony from the Department of Corrections, the Courts and Counties and offer policy recommendations to the Executive Appropriations Committee regarding the following issues:
  - ▶ What is the appropriate level of state funding for jail reimbursement?
  - ▶ Should the state continue to fund costs for medical and transportation?
  - ▶ Would jail reimbursement be more appropriately funded through the Courts?

## **Conclusion**

As UDC, counties, and the Legislature prepare for the 2002 General Session, steps should be taken to make long-range plans. In the past no consideration was given to the possibility that growth might not continue to spiral upward. New programs promise to reduce inmate growth and offer the possibility that new capital facilities won't be needed as quickly as once thought. Once a plan is in place administrators, sheriffs and legislators will be better equipped to make budget decisions.