



*By Eva Shang and Bianca Tylek of the ACLU's Center for Justice  
under the direction of ACLU Policy & Advocacy Counsel Chloe Cockburn  
with collaboration from ACLU of Utah Public Policy Advocate Anna Brower*

## **MEMORANDUM: JULY 2014**

### **Sex Offense Laws in Utah**

#### **1. Introduction**

In Utah, a relatively high percentage of the prison population is incarcerated for sex offenses, raising the question of whether Utah is over-incarcerating for sex offenses – and whether this enhances public safety. In analyzing the state's sex offense rates and reviewing its legal statutes and funding allocations, we examine the necessity of Utah's sex offense incarceration rates. Although Utah's sex offense rates, both reported and based on victimization-surveys, are similar to those of its neighbor states, Utah charges sex offenses more severely and incarcerates convicted individuals for longer. Thus, these individuals represent a greater proportion of Utah's prison population than they do in Arizona, Colorado, New Mexico, Idaho, and Nevada. These high rates are the result of policy choices based on the incorrect assumption that more incarceration will increase the safety of the people of Utah. In fact, an alternative approach focused on treatment works better and costs less, leaving even more money for treatment programs (which can cut recidivism by half), and victims' services. Utah's neighbors have seen the rate of serious sexual assaults drop while maintaining lower rates of incarceration and charging fewer sex offenses as first degree felonies. Utah should follow suit.

This memo sets forth background information about Utah's sex offense laws, explores the rate of incarceration for sex offenses as a function of crime, provides a legislative history of sex offense laws that have led to the high number of people incarcerated for sex crimes in the state currently, and offers some thoughts about solutions.

#### **2. An Overview of Utah Sex Offenses**

Utah's criminal code includes 29 sex offenses, 25 of which trigger registration requirements for either a period of 10 years following release (and parole) or life.<sup>1</sup> In general, sex offenses fall into four categories: (A) offenses against people, (B) offenses against the public, (C) offenses against family, and (D) inchoate offenses. However, some criminal offenses, though not generally sex

---

<sup>1</sup> Utah Code Ann. § 77-41-102, 106

offenses, may be viewed as sex offenses if a sexual component is introduced, including, kidnapping, false imprisonment, and human trafficking.

### ***A. Offenses against people***

Offenses against people are distilled according to the severity of bodily intrusion on the victim as either sexual contact (i.e. touching) or sexual penetration (i.e. vaginal, anal, or oral). Non-consensual sexual contact may be referred to as sexual abuse, sexual conduct, molestation, and, in a few cases, sexual assault. However, sexual assault tends to refer to non-consensual sexual penetration.

*Utah differs most from its key neighbor states, Arizona, Colorado, and New Mexico, in this area of sex offense laws, which may help explain the significant disparity in incarceration rates. Utah's laws governing sex offense against people are unique in three ways: (i) sentence severity, (ii) sentence ranges, and (iii) statutory structure. These offenses are likely the largest contributors to the extreme incarceration of individuals convicted for sex offenses in Utah as they drive both the number of individuals entering prison as well as the length of their stays.*

#### ***i. Sentence severity***

Utah has the most severe sentences for sex offenses against people compared to its key neighbor states, contributing to lengthy stays upon incarceration. Utah has several sentencing red flags: mandatory minimums for first offenses, mandatory minimums for repeat offenses, life without parole (LWOP), and, in several cases, mandatory LWOP. In fact, Utah's has 10 statutes that call for mandatory LWOP<sup>2</sup> (though we should note that this includes six statutes that are typically rolled into just one or two statutes in other states). Its key neighbor states also have some combination of these sentencing practices, but with shorter sentences and/or narrower applicability. Arizona's "Dangerous Crimes Against Children" statute enhances the sentences of nearly all sex offenses against victims under 15 years old to include mandatory minimums for first offenses and repeat offenses.<sup>3</sup> However, Arizona has only one statute, "Violent Sexual Assault," that calls for mandatory LWOP for a repeat offense with aggravating factors.<sup>4</sup> New Mexico includes mandatory enhancements for repeat felony offenses that range from one to eight years.<sup>5</sup> New Mexico's three strikes law for violent offenses and two strikes law for violent sex offenses apply mandatory LWOP when the individual has the prerequisite conviction history.<sup>6</sup> Colorado has mandatory sentence enhancements for violent crimes and repeat offenses.<sup>7</sup> However, Colorado has no statutory application of LWOP.

---

<sup>2</sup> Utah Code Ann. § 76-5-301.1, 302, 402, 402.1, 402.2, 402.3, 403, 403.1, 404.1, 405

<sup>3</sup> Ariz. Rev. Stat. Ann. § 13-705

<sup>4</sup> Ariz. Rev. Stat. Ann. § 13-1423

<sup>5</sup> N.M. Stat. Ann. § 30-18-17

<sup>6</sup> N.M. Stat. Ann. § 30-18-23, 25

<sup>7</sup> Colo. Rev. Stat. Ann. § 18-1.3-406, 801, 1004

To further clarify the sentence disparity, below is a chart that compares the sentences applied by each state for rape and child rape.

Offense	Utah <sup>8</sup>	Arizona <sup>9</sup>	Colorado <sup>10</sup>	New Mexico <sup>11</sup>
<b>Rape</b>				
- 1 <sup>st</sup> Offense	5 yrs – Life	Man. 5.25 – 14 yrs	2 – 6 yrs	9 yrs
- 2 <sup>nd</sup> Offense	Man. LWOP	Man. 7 – 21 yrs	Man. 36 yrs – Life	Man. 1 yr
- 3 <sup>rd</sup> + Offense	Man. LWOP	Man. 14 – 28 yrs	Man. 36 yrs – Life	Man. 4 yrs
- w/ DW / SBI	Man. 6 yrs – Life	Life	Man. 16 yrs – Life	Life
<b>Child Rape</b>				
- 1 <sup>st</sup> Offense	Man. 25 yrs – Life	Man. Life	2 – 6 yrs	18 yrs
- 2 <sup>nd</sup> Offense	Man. LWOP	Man. Life	Man. 36 yrs – Life	Man. 1 yr
- 3 <sup>rd</sup> + Offense	Man. LWOP	Man. Life	Man. 36 yrs – Life	Man. 4 yrs
- w/ DW / SBI	Man. LWOP	Man. Life	Man. 16 yrs – Life	Life

***Note:** Information drawn from state criminal statutes. Rape has been limited to rape involving the use of force where statutory language implies another type of rape might be possible. Only first offenses for rape with a deadly weapon or rape resulting in serious bodily injury have been included, repeat offenses in this category have been omitted for simplification (DW = deadly weapon; SBI = serious bodily injury). However, it is for those omitted offenses that both Arizona and New Mexico apply mandatory LWOP. Each state draws the line for child rape at a slightly different age, generally between 12 and 14 years old.*

Lastly, at times the aggravating factors that drive felony class enhancements and, thus, applicable sentences, capture nearly all circumstances under which the offense would have occurred. For example, Utah’s Criminal Code separates “Sexual Abuse of a Child,” a second-degree felony, from “Aggravated Sexual Abuse of a Child,” a first-degree felony that triggers several mandatory minimums, including LWOP.<sup>12</sup> There are multiple factors that would enhance the felony class of Sexual Abuse of a Child, including, a defendant who is a stranger or, alternatively, who is one of a series of enumerated persons of special trust.<sup>13</sup> Given the victim is a child, it is hard to conceive of a defendant who would be neither a stranger nor a person of special trust. Consequently, under very few situations, if any, would an incident of “Sexual Abuse of a Child” not be aggravated to a first-degree felony, making the lower incident a fallacy.

## *ii. Sentence ranges*

<sup>8</sup> Utah Code Ann. § 76-5-402, 402.1

<sup>9</sup> Ariz. Rev. Stat. Ann. § 13-705, 1405, 1406

<sup>10</sup> Colo. Rev. Stat. Ann. § 18-3-402; § 18-1.3-401, 402, 412, 501, 801

<sup>11</sup> N.M. Stat. Ann. § 30-9-11; § 30-18-23, 25

<sup>12</sup> Utah Code Ann. § 76-5-404.1

<sup>13</sup> *Id.*

Utah has inexplicably wide presumptive sentence ranges for sex offenses, which gives sentencing courts broad discretion. Given the cultural distaste for sex offenses, such discretion is very likely to be exercised toward harsher sentences. Utah's key neighbor states have much narrower presumptive sentence ranges than Utah. For example, Utah applies a sentence range of three years to life for "Enticing a Minor over the Internet."<sup>14</sup> For the same offense, Colorado applies a sentence range of two to six years.<sup>15</sup> While the lower end of each sentence range is comparable (two versus three years), the upper end of each sentence range is vastly different (life versus six years).

One explanation for Utah's broad sentence ranges may be the state's limited felony class structure in which all sex offenses must be bucketed. Utah only has three felony classes, while both Arizona and Colorado have six and New Mexico has four. Additional felony classes allow states to nuance sentence ranges.

### *iii. Statutory structure*

Utah's sex offense laws are extensively stratified, presumably to emphasize the cultural abhorrence associated with each specific offense, as well as allow for tailored sentencing. The Utah Criminal Code distinguishes between sex offenses along three lines: 1) age of victims, 2) form of sexual conduct, and 3) severity of harm. While most of its neighbor states delineate their sex offenses along a similar combination of factors, none does so in such a codified manner.

***Age of victims:*** Utah's statutory stratification along this line simply reinforces the generally accepted inverse correlation between sentence length and victim's age. The Utah Criminal Code includes a separate statute for unlawful sexual activity against each of the following: victims under 14 years old, 14 to 15 years old, 16 to 17 years old, and 18 years old and over.<sup>16</sup> In contrast, Utah's neighbor states only consider differences between offenses against children, adolescences, and adults, and often these differences are captured through the multiple felony classes within a single statute. For example, the Utah Criminal Code includes statutes for "Sexual Abuse of a Child," "Sexual Abuse of a Minor," "Unlawful Sexual Conduct with a 16/17 year old," and "Forcible Sexual Abuse."<sup>17</sup> Colorado covers the same ground, but does so using just two statutes: "Sexual Assault on a Child" and "Unlawful Sexual Contact."<sup>18</sup> Arizona and New Mexico take a similar approach. Nevertheless, all states tend to apply increasingly stringent sentences as the age of a sex offense victim decreases. Thus, the specificity Utah applies to its statutory structure allows it to merely apply stricter sentences as each victim group decreases in age.

---

<sup>14</sup> Utah Code Ann. § 76-5-401

<sup>15</sup> Colo. Rev. Stat. Ann. § 18-3-306, 18-1.3-401

<sup>16</sup> Utah Code Ann. § 76-5-401, 401.1, 404, 404.1

<sup>17</sup> *Id.*

<sup>18</sup> Colo. Rev. Stat. Ann. § 18-3-404, 405

**Form of sexual conduct:** The extensive stratification of statutes along this line has no effect on sentencing, but may reflect a cultural disapproval of enumerated sexual activity. The Utah Criminal Code differentiates between different forms of non-consensual sexual penetration—rape (i.e. vaginal intercourse), object rape (i.e. penetration by other object), and sodomy (i.e. anal or oral penetration)<sup>19</sup>—unlike any of its key neighbor states. Theoretically, this allows Utah to apply tailored sentences for each form of sexual penetration. However, the sentence imposed by each statute related to sexual penetration is identical, creating no social acceptance hierarchy among the forms of sexual penetration.<sup>20</sup>

**Severity of harm:** Stratification along this line reduces the discretionary application of aggravating factors, enforces mandatory minimums, and mutes the impact of mitigating factors. The Utah Criminal Code includes separate statutes for the “aggravated” form of several sex offenses, involving a deadly weapon, serious bodily injury, or aid from others.<sup>21</sup> As expected, these carry longer sentences than their less severe analogs.<sup>22</sup> Utah’s neighbors vary on their approach to “aggravated” offenses. Arizona aligns most with Utah’s approach with at least one separate statute for Violent Sexual Assault.<sup>23</sup> However, Arizona also has a sentencing statute providing mandatory enhancements for “Dangerous Crimes Against Children,” including several sex offenses.<sup>24</sup> Colorado has a similar statute providing mandatory enhancements for all violent crimes.<sup>25</sup> Though Colorado does not have any standalone statutes for aggravated sex offenses specifically, aggravating factors are involved in the determination of felony class within sex offense statutes. New Mexico, on the other hand, only includes a sparing consideration of aggravating factors within its basic sex offense statutory language. Such factors are generally considered only to determine whether an offense should be classified as violent for the application of mandatory LWOP.<sup>26</sup> Nevertheless, all states consider aggravating and mitigating factors to some extent in sentencing individuals for sex offenses. Stratification along severity lines allows Utah to apply the aggravating factors on a mandatory rather than discretionary basis, diminishing the impact of mitigating factors.

## ***B. Offenses against the public***

Offenses against the public are based on either imposing on the privacy of another or exposing oneself to another—voyeurism and lewdness. In every state except New Mexico, sentencing for voyeurism depends on whether film equipment was used.<sup>27</sup> Lewdness is often broken down into indecent exposure and public indecency, though Utah does not make this distinction. Sentencing

---

<sup>19</sup> Utah Code Ann. § 76-5-402, 402.2, 403

<sup>20</sup> *Id.*

<sup>21</sup> Utah Code Ann. § 76-5-302, 310, 404.1, 405; § 76-10-1306

<sup>22</sup> *Id.*

<sup>23</sup> Ariz. Rev. Stat. Ann. § 13-1423

<sup>24</sup> Ariz. Rev. Stat. Ann. § 13-705

<sup>25</sup> Colo. Rev. Stat. Ann. § 18-1.3-406

<sup>26</sup> N.M. Stat. Ann. § 30-18-23, 25

<sup>27</sup> Utah Code Ann. § 76-9-702.7; Ariz. Rev. Stat. Ann. § 13-1424; Colo. Rev. Stat. Ann. § 18-3-405.6

appears less severe in Utah than Arizona and New Mexico. Utah does not impose any mandatory sentences for either voyeurism or lewdness, including lewdness involving a child.<sup>28</sup> Both Arizona and New Mexico impose mandatory sentences for lewdness if the convicted individual has prior convictions, however, in New Mexico, the conviction must be for aggravated indecent exposure.<sup>29</sup>

### ***C. Offenses against family***

Offenses against family typically are limited to incest. The states vary mildly on covered parties or covered sexual activity. Only Colorado has an aggravated incest offense.<sup>30</sup> Both Colorado and New Mexico impose mandatory sentences if the convicted individual has a prior conviction.<sup>31</sup>

### ***D. Inchoate offenses***

Inchoate offenses focus on the solicitation or enticement of children for sexual activity. The Utah Criminal Code only includes one statutory offense for enticing a child over the internet,<sup>32</sup> while its neighbor states include offenses for child enticement via electronic and non-electronic communications.<sup>33</sup> All these states impose mandatory minimum sentences for convicted individual with prior convictions.<sup>34</sup> Utah has a curiously wide range of three years to life, allowing sentencing courts to exercise broad discretion.<sup>35</sup> Colorado has the longest mandatory minimums for repeat offenses, starting at nine years.<sup>36</sup> New Mexico has the shortest mandatory minimums for repeat offenses, starting at one year.<sup>37</sup> Because New Mexico applies the same mandatory minimum for all repeat felony offenses, sex offenses carry no additional weight.

## **3. Utah's Sentencing as a Function of Crime**

Ideally, we would be able to compare the rate of sex offense crimes in Utah to its neighbors. Unfortunately, data is limited to rape crimes only.<sup>38</sup> Moreover, we have found no conclusive sources regarding whether the rate of non-rape sex offenses tracks that of rapes. For our current purposes we will make the assumption that forcible rape account for about a third of all sex offenses based on Utah's 2010-2012 forcible rape to other sex offense ratio.<sup>39</sup>

---

<sup>28</sup> Utah Code Ann. § 76-9-702, 702.5, 702.7

<sup>29</sup> Ariz. Rev. Stat. Ann. § 13-1402, 1403; N.M. Stat. Ann. § 30-18-17

<sup>30</sup> Colo. Rev. Stat. Ann. § 18-6-302

<sup>31</sup> Colo. Rev. Stat. Ann. § 18-1.3-412, 801; N.M. Stat. Ann. § 30-18-23, 25

<sup>32</sup> Utah Code Ann. § 76-4-401

<sup>33</sup> Ariz. Rev. Stat. Ann. § 13-3554, 3560; Colo. Rev. Stat. Ann. § 18-3-305, 306; N.M. Stat. Ann. § 30-9-1, § 30-37-3.2, 3.3

<sup>34</sup> Utah Code Ann. § 76-4-401; Ariz. Rev. Stat. Ann. § 13-705; Colo. Rev. Stat. Ann. § 18-1.3-801; N.M. Stat. Ann. § 30-18-17

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Data on total sex offenses depends on state crime reports, and are only available for some states. However, in the available states of Utah, Wyoming, Arizona, and Nevada, total sex offenses exceed rapes by variable amounts.

<sup>39</sup> Crime in Utah Reports, 2010-2012: <http://publicsafety.utah.gov/bci/crimestatistics.html>

Based on UCR reported crime rates, Utah's rape rate is similar to or lower than that of its neighbors. This appears to be confirmed by national victimization surveys.<sup>40</sup> However, the ratio of rape rates to total violent crime rates is much higher in Utah than in Arizona, New Mexico and Nevada. The ratio of rates is similar to that found in Idaho, Wyoming and Colorado.

Reported Crime Rates by State, 2009						
	Total Violent Crime	Murder	Robbery	Aggravated Assault	Rape	Rape as % of Total
<b>U.S. Average</b>	439.7	5.1	137.6	268.6	28.5	6.5%
<b>Nevada</b>	704.6	5.9	228.0	432.1	38.6	5.5%
<b>New Mexico</b>	652.8	10.0	98.7	490.3	53.9	8.3%
<b>Oklahoma</b>	510.4	6.5	92.9	369.0	42.1	8.2%
<b>Arizona</b>	423.2	5.5	123.9	261.1	32.7	7.7%
<b>Colorado</b>	340.9	3.2	67.9	224.5	45.4	13.3%
<b>Idaho</b>	238.5	1.5	16.5	183.4	37.2	15.6%
<b>Wyoming</b>	219.3	2.0	14.3	171.3	31.7	14.5%
<b>Utah</b>	216.2	1.4	47.3	133.8	33.7	15.6%

*Note: For year ending December 31. Rates per 100,000 population. Offenses reported to law enforcement. Data from US Census Bureau report: Crime Rates by State, released in 2012.<sup>41</sup>*

Rates of rape vary less than any other violent crimes. For example, the highest rate of murder in New Mexico is more than seven times the lowest rate in Utah while the highest rate of rape in New Mexico is only 1.7 times the lowest rate in Wyoming. Notably, New Mexico has the second highest rate of violent offenses and Utah and Wyoming have two of the lowest. From this we conclude that the rate of rape is not correlated with the rate of other violent offenses. Unlike aggravated assault and, to some degree, murder, rape is neither a driver of the overall rate of violent offenses or significantly impacted by it. Rape appears to be a function of the general population rather than dependent on a violent environment.

<sup>40</sup> While the National Crime Victimization Survey as collected by the Bureau of Justice does not include enough data for state-by-state comparisons, a brief overview of data from Utah's state victimization surveys and those of its neighbors reveals that true Utah sex crime rates are similar to those of its neighbors. In 2010, 0.9 percent of those surveyed in Utah reported being a victim of a sex crime, including both rape and sexual assault. By comparison, Arizona reported 0.3 percent, Nevada reported 0.8 percent, and both New Mexico and Idaho reported 1.1 percent. While it should be noted that all of these victimization surveys are restricted to state residents over age 18 and might not depict the true range of sex crimes, including child abuse, it nevertheless presents Utah as similar to its neighbors in actual sex crime victimization rates. In other words, Utah's true sex crime victimization rates also do not differ significantly from those of its neighbors.

<sup>41</sup> US Census Bureau: Crime Rates by State: <http://www.census.gov/compendia/statab/2012/tables/12s0308.pdf>

#### 4. History of Sex Offense Incarceration in Utah

Over the past 20 years, Utah lawmakers have taken an increasingly punitive stance toward sex offenses, both with regard to classification of crimes and sentence length (See Appendix A for a breakdown of Utah's laws). The results are severe and getting worse. Thirty-one percent of Utah's total prison population is incarcerated for a sex offense, as compared to 6.2 percent nationally, 19% in Idaho, 10.9% percent in Arizona, and 12.4% in Nevada.<sup>42434445</sup>

##### ***A. Prosecutorial and judicial discretion***

In 1996, when the state had long mandatory minimum sentences for first-degree sex offenses, only 13-percent of felony sex offenses received first-degree convictions with a maximum sentence of life. A decade later in 2006, 26-percent of felony sex offenses received first-degree convictions.<sup>46</sup> As seen in the graph below, an increasing number of people are sentenced to prison instead of probation. Moreover, they are given very long sentences. Of the 31-percent of the prison population incarcerated for sex offenses, 53-percent have a life sentence. Though Utah has few mandatory minimum sentences, prosecutors are at ease to bring more severe charges and courts are free to exercise discretion in applying long prison sentences.

---

<sup>42</sup> Idaho Department of Correction Annual Statistical Report 2013:  
[http://www.idoc.idaho.gov/content/document/annual\\_report\\_fy13](http://www.idoc.idaho.gov/content/document/annual_report_fy13)

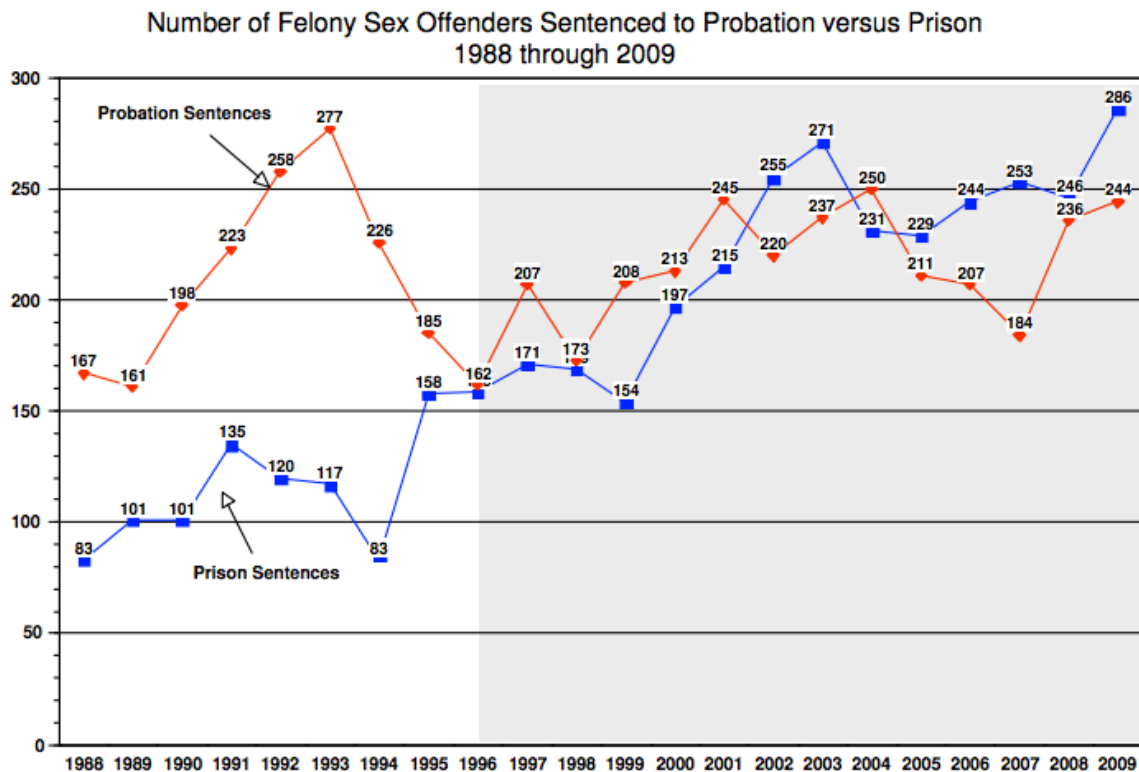
<sup>43</sup> Arizona Department of Corrections At a Glance 2013:  
[http://www.azcorrections.gov/adcr/reports/inmate\\_population/inmate\\_population\\_063013.pdf](http://www.azcorrections.gov/adcr/reports/inmate_population/inmate_population_063013.pdf)

<sup>44</sup> Colorado Department of Corrections Report 2013  
[http://www.doc.state.co.us/sites/default/files/opa/0\\_Stat\\_Report\\_Website.pdf](http://www.doc.state.co.us/sites/default/files/opa/0_Stat_Report_Website.pdf)

<sup>45</sup> Reports for Departments of Corrections in Oklahoma, New Mexico, and Nevada did not break down violent crime into components.

<sup>46</sup> Jessica's Law Update: <http://www.sentencing.state.ut.us/Policy/JessicasLawUpdate.pdf>





*Note:* Shows the number of sex offenses sentenced to prison or probation between 1988 and 2009. Shaded area represents repeal of mandatory minimums in 1996. Image from Utah Department of Corrections.<sup>47</sup>

## **B. Legislation**

Critical legislative decisions over the past 30 years have led to this increase. These include Senate Bill 26, rescinding mandatory minimum sentences; Jessica's Law, enacting mandatory minimum sentences for sex offenses against children; and the stagnation of funding for treatment. These are discussed in further detail below.

### ***i. SB 26***

Enacted in 1996, Senate Bill 26 rescinded mandatory minimum sentencing practices for some sex offenses against children, which resulted in an increase in guilty pleas to first-degree sex offenses. It also enacted a plea bargain option of attempted aggravated sexual abuse of a child, a non-mandatory prison offense that maintains a maximum sentence of life.<sup>48</sup> Because 85-percent of

<sup>47</sup> Sex Offender Treatment in Utah 2010:

<http://corrections.utah.gov/images/sex%20offender%20treatment%20report%202010-1.pdf>

<sup>48</sup> Criminal Juvenile Justice Consortium: A Research Report: Sex Offense Cases and Plea Negotiation

<http://www.justice.utah.gov/Documents/Research/SexOffender/Qualitative2002.pdf>

previously mandatory minimum charges retained a first-degree felony charge after the bill was passed, the increase in plea bargains accounts for some increase in incarceration.<sup>49</sup>

## *ii. HB 256: Jessica's Law*

Enacted in 2008, Jessica's Law also widened the range of first-degree sex offenses to include attempt to commit sex offenses against children.<sup>50</sup> The law also requires a mandatory minimum sentence of 25 years to life for sex related crimes against a child under the age of 14, including rape of a child, object rape of a child, sodomy of a child, removing the authority of the court to impose lesser sentences.

## *iii. Stagnation of treatment funding*

From 1988 to 2012, the average length of time served for first-degree felony sex offenses has doubled.<sup>51</sup> A major reason those incarcerated for sex offenses have been forced to serve longer sentences in Utah maybe due to insufficient funding for treatment programs.<sup>52</sup> Because the Utah Legislature hasn't increased funding for sex offense treatment since 1996, in spite of inflation and a 150-percent increase in the sex offense prison population, the Utah Department of Corrections has struggled to meet demand.<sup>53</sup> At the same time, the Utah Board of Pardons and Parole typically follows an informal policy of not releasing any individual incarcerated for sex crimes unless that inmate has received some kind of treatment to reduce recidivism.<sup>54</sup>

# **5. More Effective Channels for Funding to Support Public Safety in Relation to Sex Offenses**

## ***A. Access to sex offense treatment can reduce correctional costs***

Lawmakers should consider increasing treatment funding. Treatment for sex offenses has not received an increase in funding since 1996, despite huge increases in the sex offense prison population. Increased availability of treatment may help to reduce the incarcerated population through parole. Studies based in Utah have also shown such treatment reduces recidivism among the population of individuals incarcerated for sex offenses. Compelling research from these studies shows that recidivism for sex offenses is low compared to that for other crimes, and can be further lowered by treatment.

---

<sup>49</sup> Utah Sentencing Commission Annual Report 2002: <http://www.sentencing.state.ut.us/Policy/SENTCOMREPORT02.pdf>

<sup>50</sup> See Footnote 15

<sup>51</sup> Salt Lake Tribune: Utah Crime Rate <http://www.sltrib.com/sltrib/news/56907157-78/crime-rate-violent-lake.html.csp>

<sup>52</sup> Correctional News: Longer Stays for Utah Sex Offenders  
<http://www.correctionalnews.com/articles/2012/07/12/longer-stays-utah-sex-offenders>

<sup>53</sup> Utah Department of Corrections: Sex Offender Treatment in Utah  
<http://www.justice.utah.gov/Documents/Research/SexOffender/Sex%20offender%20treatment%20report%202010.pdf>

<sup>54</sup> See Footnote 20

Before exploring the effects of treatment, we should establish a baseline. *A 2003 Bureau of Justice Statistics report found that people arrested for sex offenses were less likely than those convicted of other crimes to be rearrested for any crime.*<sup>55</sup> According to a Utah Department of Corrections study between January 1991 and May 2004, only nine people or 0.05 percent of the treated and released population returned to prison for a new sex offense within a year.<sup>56</sup> In a Utah-specific longitudinal study, University of Utah criminologist Larry Bench tracked 389 people convicted of sex offenses for up to 25 years after release. His 2008 report disclosed that only 7.2-percent had been arrested for a new sex crime within 25 years compared to 33.1-percent of individuals arrested for violent crime overall who were rearrested within five years for another violent crime.<sup>57,58</sup> Eighty-three-percent of those released had no new criminal convictions during the entire follow-up period.

Treatment can further lower recidivism rates. *One analysis of Utah inmates convicted of sex offenses and released from prison showed that those who completed treatment returned to prison at less than half the rate of those who did not complete treatment.* In both groups, most people returned because of parole violations rather than because they committed new crimes.<sup>59</sup> According to a report published by UDC, the majority of sex offense recidivism results from technical violations of the conditions of parole (including the registration requirement), rather than new criminal behavior, primarily because people convicted are scrutinized on parole more closely than most other offense groups.<sup>60</sup>

Despite this powerful evidence of the efficacy of treatment, the state has not allocated many resources to providing sex offense treatment. Since 1996, which was the last time the state increased the treatment budget, the state has spent \$1 million a year for treatment of those incarcerated for sex offenses, a sum that also covers personnel costs. In 2010, UDC released a report that stated, “Lack of adequate treatment funding has stressed treatment staff, delayed treatment progress, and may influence the possibility of an offender receiving an earlier parole release date.”<sup>61</sup> By comparison, Wyoming spent \$1.8 million a year and Colorado spent \$2.8 million a year.<sup>62,63,64</sup> Colorado established its Sex Offender Treatment and Monitoring Program in 1984 and

---

<sup>55</sup> Bureau of Justice 2003: Recidivism of Sex Offenders Released from Prison in 1994

<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1136>

<sup>56</sup> See Footnote 1

<sup>57</sup> Deseret News: Rehabilitation and Recidivism Hot Topics

<http://www.deseretnews.com/article/695261976/Rehabilitation-recidivism-hot-topics.html?pg=all>

<sup>58</sup> Bureau of Justice Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010

<http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>

<sup>59</sup> Salt Lake Tribune: Utah sex offender policy in spotlight as numbers soar <http://www.sltrib.com/sltrib/news/56769578-78/sex-offenders-prison-treatment.html.csp>

<sup>60</sup> See Footnote 1

<sup>61</sup> Sex Offender Treatment in Utah 2010:

<http://corrections.utah.gov/images/sex%20offender%20treatment%20report%202010-1.pdf>

<sup>62</sup> Report on the Sex Offender Program within the Wyoming Department of Corrections

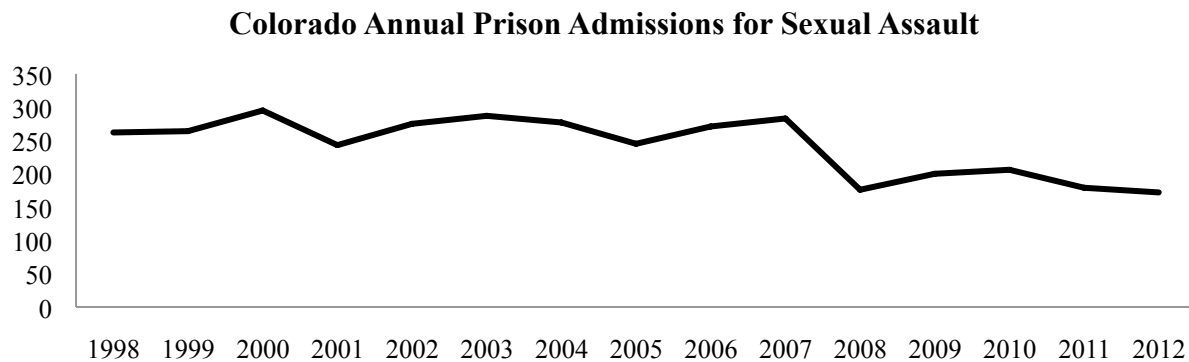
<http://legisweb.state.wy.us/ReportsDue/2010/Report%20ID%20687.pdf>

<sup>63</sup> Arizona Sex Offender Program Fund Description: <http://www.azcourts.gov/apsd/ProgramFundDescriptions.aspx>

<sup>64</sup> Colorado Springs Gazette: Fixes to contentious Colorado sex offender treatment system pushed out

<http://gazette.com/fixes-to-contentious-colorado-sex-offender-treatment-system-pushed-out/article/1500599#11DqX4hq5Lsp7Qj.99>

specifically began allocating treatment funding in 1992. Each year since, the Colorado Department of Corrections has requested additional state funding for the treatment program. The chart below tracks prison admissions for sex assault since 1998 when Colorado passed its “Lifetime Supervision Act” for individuals convicted of felony sex offenses, which required treatment prior to release on parole.



*Note: Fiscal year ending June 30. Data from the Annual Statistical Report released by the Colorado Department of Corrections between 1998 and 2012.*

### ***B. Funding can help victims find justice and pursue treatment***

Victims of sex offenses would be better served if the state appropriated funding to secure community safety from sex crimes and victim services rather than incarceration. Utah has a long backlog of unprocessed rape kits. In January, officials in the state crime lab reported that only about 30 percent of rape kits are submitted by law enforcement for testing. Lawmakers took action to redress the backlog-of roughly 2,000 untested kits, by approving a one-time funding injection of \$750,000. However, the Utah legislature turned down requests for an annual increase of \$600,000 a year in ongoing funding.<sup>65</sup>

In addition, the Victim Reparation Fund that enables service providers to pay for sexual assault forensic exams and counseling services for survivors of rape and sexual assault is in need of replenishment. This past spring, the Utah legislature approved an emergency appropriation of \$877,000 just to continue services, but the Utah Coalition Against Sexual Assault is still requesting \$1.5 million to restore the fund for the future.<sup>66</sup> Meeting the needs of victims for timely treatment and counseling will have a larger impact on the lives of sexual assault survivors than unreasonable and ineffective sentencing for sex offenses.

## **6. Conclusion**

---

<sup>65</sup> Utah 2014 Legislative Recap: Salt Lake City Tribune [http://www.cityweekly.net/utah/article-504-18924-2014-utah-legislative-recap.html?current\\_page=all](http://www.cityweekly.net/utah/article-504-18924-2014-utah-legislative-recap.html?current_page=all)

<sup>66</sup> Utah Coalition Against Sexual Assault: Legislative Advocacy <http://www.ucasa.org/index.php/action-items/legislative-advocacy>

Over the past few decades, Utah has seen its population of individuals incarcerated for sex offenses increase drastically, despite a steady sex crime rate, due to an expanded suite of first degree felonies with broad sentence ranges and the reduced funding for treatment program paired with increased demand.

Recommended reforms include: (1) adjusting sex offense laws to fall in line with neighboring states such as Colorado by eliminating life without parole sentencing, constricting the class of first-degree felonies, and narrowing sentence ranges; (2) increasing treatment funding to \$2 million a year, comparable to Wyoming and adjusted for a higher rape rate; and (3) devoting savings to victims services programs. These reforms have the power to make Utahans safer by reducing recidivism while also limiting the costs of incarcerating people under an ineffectively punitive sentencing classification design.

## Appendix A – Summary of Utah’s Sex Offense Laws

### I. Statutes

Sex offense registries require registration for committing the following offenses:

- *Note:* Attempting, soliciting, or conspiring to commit any of the offenses that trigger life registration requires registration for 10 years following termination of sentence
- *Note:* Two or more separate convictions of any offense that has less than a lifetime requirement for registrations requires registration for life

#### A. Inchoate offenses

- Enticing a Minor Over the Internet (Utah Code Ann. § 76-4-401) – Individual under 18 years old
  - o Using internet or text messages to solicit or entice an individual believed to be a minor to engage in sexual activity
  - o Sentencing:
    - 2<sup>nd</sup> degree felony if sexual activity would be 1<sup>st</sup> degree felony
      - 1<sup>st</sup> degree felony if not first offense
        - o (4)(a)(ii) 3 years to life
          - *Mandatory* if previous conviction for a series of sexual offenses including enticement
    - 3<sup>rd</sup> degree felony if sexual activity would be 2<sup>nd</sup> degree felony (and so on)
  - o Registration: Life

#### B. Offenses against the person

- Kidnapping
  - o Kidnapping (Utah Code Ann. § 76-5-301) – Individual 14 years old or older
    - Intentionally or knowingly detaining or restraining individual for substantial period of time or in circumstances risking bodily injury, holding individual in involuntary servitude, moves individual any substantial distance or across a state line, against one’s will (or without consent of legal guardian)
    - Sentencing: 2<sup>nd</sup> degree felony
    - Registration: 10 years following termination of sentence
  - o Child Kidnapping (Utah Code Ann. § 76-5-301.1) – Individual under 14 years old
    - Intentionally or knowingly seizes, confines, detains, or transports an individual without the consent of legal guardian
    - Sentencing: 1<sup>st</sup> degree felony
      - (3)(a) 15 years to life
        - o Judicial discretion, but *mandatory* minimum of 6 years

- (3)(b) LWOP if caused serious bodily harm to another during commission of offense unless defendant under 18 years old
      - Judicial discretion, but *mandatory* minimum of 6 years
    - (3)(c) *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
  - Registration: Life
- Aggravated Kidnapping (Utah Code Ann. § 76-5-302)
  - Intending to commit a sexual offense during the commission of a kidnapping or unlawful detention
  - Sentencing: 1<sup>st</sup> degree felony
    - (3)(a) 15 years to life
      - Judicial discretion, but *mandatory* minimum of 6 years
    - (3)(b) LWOP if caused serious bodily harm to another during commission of offense unless defendant under 18 years old
      - Judicial discretion, but *mandatory* minimum of 6 years
    - (3)(c) *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
  - Registration: Life
- Human Trafficking & Sexual Exploitation
  - Human Trafficking (or Forced Sexual Exploitation) (Utah Code Ann. § 76-5-308, 309)
    - Individual 18 years old or older
      - Recruiting, harboring, transporting, or obtaining individual through use of force, fraud, or coercion OR benefitting, receiving, or exchanging anything of value from knowing participation
      - Sexual exploitation includes all forced commercial sexual activity (i.e. sexually explicit performance, prostitution, participation in the production of pornography, performance in strip clubs, and exotic dancing or display)
      - Sentencing: 2<sup>nd</sup> degree felony
      - Registration: None
  - Aggravated Human Trafficking (or Forced Sexual Exploitation) (Utah Code Ann. § 76-5-310)
    - In the commission of human trafficking or forced sexual exploitation:
      - Committing any of the mandatory minimum triggering offenses
      - Excessive in scale (more than 10) or duration (longer than 30 days)
      - Trafficked individual is under 18 years old
    - Sentencing: 1<sup>st</sup> degree felony
    - Registration: Life
  - Sexual Exploitation of a Minor (Utah Code Ann. § 76-5b-201) – Individual under 18 years old

- Knowingly producing, possessing, or possessing with intent to distribute or intentionally distributing or viewing child pornography (or legal guardian who allows exploitation)
      - Separate offense for each depicted child and each depiction
    - Sentencing: 2<sup>nd</sup> degree felony
    - Registration: Life
  - Sexual Exploitation of a Vulnerable Adult (Utah Code Ann. § 76-5b-202) – Individual 18 years old or older
    - Knowingly producing, possessing, or possessing with intent to distribute or intentionally distributing or viewing known vulnerable adult pornography (or legal guardian who allows exploitation)
      - Separate offense for each depicted vulnerable adult and each depiction
    - Sentencing: 3<sup>rd</sup> degree felony
    - Registration: 10 years following termination of sentence
  - Aggravated Exploitation of Prostitution (Utah Code Ann. § 76-10-1306)
    - Using force or threat of force, sharing proceeds with child or spouse, committing human trafficking in exploiting prostitution (any involvement)
    - Sentencing: 1<sup>st</sup> degree felony if involves individual under 18 years old, otherwise 2<sup>nd</sup> degree felony
    - Registration: Life
  - Distribution of an Intimate Image (Utah Code Ann. § 76-5b-203)
    - Distributing intimate image created under reasonable expectation of privacy without consent causing emotional distress with such intention
    - Sentencing: Class A misdemeanor for first offense, 3<sup>rd</sup> degree felony for subsequent offenses
    - Registration: None
- Unlawful Sexual Activity (Sexual Offense)
  - Sexual Abuse of a Child (Utah Code Ann. § 76-5-404.1) – Individual under 14 years old
    - Touching the genitals or causing individual to take indecent liberties
    - Sentencing: 2<sup>nd</sup> degree felony
    - Registration: Life
  - Aggravated Sexual Abuse of a Child (Utah Code Ann. § 76-5-404.1) – Individual under 14 years old (Grievous Sexual Offense)
    - Sexual abuse involving dangerous weapon, bodily or psychological injury, stranger, relationship of special trust, pornography, previous conviction of sexual offense, multiple victims, benefited from sexual act with other person, penetration by body part other than genitals or mouth
    - Sentencing: 1<sup>st</sup> degree felony
      - (5)(a) 15 years to life



- Judicial discretion, but *mandatory* minimum of 6 years
  - (5)(b) LWOP if caused serious bodily harm to another during commission of offense unless defendant under 18 years old
    - Judicial discretion, but *mandatory* minimum of 6 years
  - (5)(c) *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
- Registration: Life
- Sexual Abuse of a Minor (Utah Code Ann. § 76-5-401.1) – Individual 14 or 15 years old
  - Touching the genitals or causing individual to take indecent liberties when defendant is at least 7 years older or has relationship of special trust
  - Sentencing: 3<sup>rd</sup> degree felony (technically a class A misdemeanor with enhancement for defendant over 18 years old as required for offense)
  - Registration: None
- Unlawful Sexual Activity with a Minor (Utah Code Ann. § 76-5-401) – Individual 14 or 15 years old
  - Engaging in sexual intercourse, sodomy, or penetration with other object
  - Sentencing: 3<sup>rd</sup> degree felony unless defendant is less than 4 years older than individual, in which case offense is reduced to class B misdemeanor
  - Registration: 10 years following termination of sentence
- Unlawful Sexual Conduct with 16 or 17 Year Old (Utah Code Ann. § 76-5-401.2) – Individual 16 or 17 years old
  - Sexual intercourse, sodomy, penetration with other object, or touching genitals when defendant is 7 to 9 years older and knew or should have known individual's age
  - Sexual intercourse, sodomy, penetration with other object, or touching genitals when defendant is at least 10 years older or has a relationship of special trust
  - Sentencing: 3<sup>rd</sup> degree felony (technically includes reduction to class A misdemeanor for touching, but age enhancement would prohibit)
  - Registration: 10 years following termination of sentence
- Forcible Sexual Abuse (Utah Code Ann. § 76-5-404) – Individual 14 years old or older
  - Touching the genitals or causing individuals to take indecent liberties without consent
  - Sentencing:
    - 2<sup>nd</sup> degree felony
      - (2)(a) 1 year to 15 years
    - 1<sup>st</sup> degree felony if caused serious bodily injury to another
      - (2)(b) 15 years to life
        - Judicial discretion, but *mandatory* minimum of 6 years
  - Registration: 10 years following termination of sentence

- Aggravated Sexual Assault (Utah Code Ann. § 76-5-405) (Grievous Sexual Offense)
  - Rape, object rape, forcible sodomy, or forcible sexual abuse using or threatening with dangerous weapon, kidnapping, death or serious bodily injury to any person OR aided by another person
    - Same for attempts of offenses, but also includes causing bodily harm to anyone
  - Sentencing: 1<sup>st</sup> degree felony
    - (2)(a) Commission, 15 years to life
      - Judicial discretion, but *mandatory* minimum of 6 years
      - *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
    - (2)(b) Attempts excluding forcible sexual abuse, 10 years to life
      - Judicial discretion, but *mandatory* minimum of 6 years
      - *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
    - (2)(c) Attempt of forcible sexual abuse, 6 years to life
      - Judicial discretion, but *mandatory* minimum of 3 years
      - *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
  - Registration: Life
- Rape (Sexual Offense, Grievous Sexual Offense)
  - Rape (Utah Code Ann. § 76-5-402) – Individual 14 years old or older
    - Sexual intercourse without consent
    - Sentencing: 1<sup>st</sup> degree felony
      - (3)(a) 5 years to life
      - (3)(b) 15 years to life if caused serious bodily harm to another during commission of offense or defendant under 18 years old and previously convicted of grievous sexual offense
        - Judicial discretion, but *mandatory* minimum of 6 years
      - (3)(c) *Mandatory* LWOP if previously convicted of grievous sexual offense
    - Registration: Life
  - Rape of a Child (Utah Code Ann. § 76-5-402.1) – Individual under 14 years old
    - Sexual intercourse
    - Sentencing: 1<sup>st</sup> degree felony
      - (2)(a) *Mandatory* 25 years to life
      - (2)(b) *Mandatory* LWOP if caused serious bodily harm to another during commission of offense or previously convicted of grievous sexual offense unless defendant under 18 years old
    - Registration: Life
  - Object Rape (Utah Code Ann. § 76-5-402.2) – Individual 14 years old or older

- Penetration of genitals by foreign object (i.e. not mouth or genitals)
- Sentencing: 1<sup>st</sup> degree felony
  - (1)(a) 5 years to life
  - (1)(b) 15 years to life if defendant under 18 years old and previously convicted of grievous sexual offense
    - Judicial discretion, but *mandatory* minimum of 6 years
  - (1)(c) *Mandatory* LWOP if previously convicted of grievous sexual offense unless defendant under 18 years old
- Registration: Life
- Object Rape of a Child (Utah Code Ann. § 76-5-402.3) – Individual under 14 years old
  - Penetration of genitals by foreign object (i.e. not mouth or genitals)
  - Sentencing: 1<sup>st</sup> degree felony
    - (2)(a) *Mandatory* 25 years to life
    - (2)(b) *Mandatory* LWOP if caused serious bodily harm to another during commission of offense or previously convicted of grievous sexual offense unless defendant under 18 years old
  - Registration: Life
- Sodomy (Sexual Offense)
  - Sodomy (Utah Code Ann. § 76-5-403) – Individual 14 years old or older
    - Oral or anal sex
    - Sentencing: Class B misdemeanor
    - Registration: None
  - Sodomy on a Child (Utah Code Ann. § 76-5-403.1) – Individual under 14 years old (Grievous Sexual Offense)
    - Oral or anal sex
    - Sentencing: 1<sup>st</sup> degree felony
      - (2)(a) *Mandatory* 25 years to life
      - (2)(b) *Mandatory* LWOP if caused serious bodily harm to another during commission of offense or previously convicted of grievous sexual offense unless defendant under 18 years old
    - Registration: Life
  - Forcible Sodomy (Utah Code Ann. § 76-5-403) (Grievous Sexual Offense)
    - Sodomy without consent
    - Sentencing: 1<sup>st</sup> degree felony
      - (4)(a) 5 years to life
      - (4)(b) 15 years to life if caused serious bodily injury to another during commission of offense or defendant is under 18 with previous conviction for grievous sexual offense
        - Judicial discretion, but *mandatory* minimum of 6 years
      - (4)(c) *Mandatory* LWOP if defendant has previous conviction for grievous sexual offense

- Registration: Life
- Custodial Sexual Relations (Sexual Offense) (Utah Code Ann. § 76-5-412, 413)
  - Sexual intercourse, sexual act involving genitals and mouth or anus, or any penetration to inflict harm with a person in custody as custodial actor
    - Sentencing: 3<sup>rd</sup> degree felony unless individual under 18 years old, in which case offense is enhanced to 2<sup>nd</sup> degree felony
  - Touching or other indecent liberties between person in custody as custodial actor
    - Sentencing: Class A misdemeanor unless individual under 18 years old, in which case offense is enhanced to 3<sup>rd</sup> degree felony
  - Registration: If individual under 18 years of age, then 10 years following termination of sentence

### ***C. Offenses against the family***

- Incest (Utah Code Ann. § 76-7-102)
  - Sexual intercourse or any exchange of sperm or eggs between related persons
  - Sentencing: 3<sup>rd</sup> degree felony
  - Registration: 10 years following termination of sentence

### ***D. Offenses against public order and decency***

- Voyeurism (Utah Code Ann. § 76-9-702.7)
  - Intentionally secretly viewing portion of body for which individual has reasonable expectation of privacy without his / her knowledge or consent
  - Sentencing:
    - Class B misdemeanor unless individual under 14 years old, in which case offense is enhanced to class A misdemeanor
    - Class A misdemeanor if using photography or filming equipment unless individual under 14 years old, in which case offense is enhanced to 3<sup>rd</sup> degree felony
      - 3<sup>rd</sup> degree felony if images distributed unless individual under 14 years old, in which case offense is enhanced to 2<sup>nd</sup> degree felony
  - Registration: 10 years following termination of sentence
- Lewdness
  - Lewdness (Utah Code Ann. § 76-9-702) – Individual 14 years old or older
    - Publicly engaging in sexual intercourse or sodomy, exposing oneself, masturbating, or committing another sexual act, which defendant should know might alarm individual
    - Sentencing: Class B misdemeanor for first offense unless defendant is a labeled “sex offender,” has two or more previous convictions for lewdness,

- or one previous conviction for lewdness and conviction for lewdness involving a child, in which case offense is enhanced to 3<sup>rd</sup> degree felony
    - Registration: 4 convictions required for registration, then 10 years following termination of sentence
  - Lewdness involving a Child (Utah Code Ann. § 76-9-702.5) – Individual under 14 years old
    - Intentionally or knowingly committing lewdness in presence of individual
    - Sentencing: Class A misdemeanor for first offense unless actor is a labeled “sex offender,” in which case the offense is enhanced to 3<sup>rd</sup> degree felony
    - Registration: 10 years following termination of sentence
- Sexual Battery (Utah Code Ann. § 76-9-702.1)
  - Intentionally touching genitals in a way defendant should know will cause alarm
  - Sentencing: Class A misdemeanor
  - Registration: 4 convictions required for registration, then 10 years following termination of sentence

#### ***E. Other***

- Consent (Utah Code Ann. § 76-5-406)
  - Individual cannot consent if under 14 years old, under 18 years old in relationship of special trust, or 14 to 17 years old if defendant is more than 3 years older
- Mandatory Sentencing (Utah Code Ann. § 76-3-406)
  - Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted
    - Child kidnaping and aggravated kidnaping
    - Rape, object rape, and forcible sodomy, if caused harm to another or has previous conviction for grievous sexual offense
    - Rape, object rape, and forcible sodomy of a child or their attempts
    - Forcible sexual abuse, if caused harm to another
    - Aggravated sexual abuse of a child
    - Aggravated sexual assault
    - Enticing a minor over the internet with previous sex offense conviction (see separate statute and sentencing guidelines)
- Repeat and Habitual Sex Offenders (Utah Code Ann. § 76-3-407)
  - Maximum penalty of a sexual offense increased by 5 years for each previous conviction of a sexual offense from a separate event to be served consecutive to any other prison term
    - Previous conviction refers to felony convictions of unlawful sexual activity, rape, sodomy, custodial sexual activity, sexual exploitation of a minor, enticing a minor over the internet, attempts to commit these offenses, and offenses in other states that would constitute one of these offenses in Utah

- Circumstances permitting probation or suspension in sexual offenses (Utah Code Ann. § 76-5-406.5)
  - o No use of weapon, bodily or severe psychological harm, threat of harm during or after commission of offense
  - o No previous conviction of public offense involving sexual misconduct or future sexual offense conviction
  - o No multiple victims or offense in concert with others, including encouraging or aiding in sexual act with others
  - o No use or production of pornography
  - o Not an “exclusive pedophile”
  - o Defendants admits the offense and accepts treatment in residential mental health facility given rehabilitation is probable after undergoing psychological evaluation
    - Must still serve first 90 days in prison
    - If probation, cannot reside in home with children under 18 for at least a year and throughout probation
  - o Judicial discretion to deny for anything including “characteristics of defendant”
- Sexual Exploitation Act (Utah Code Ann. § 76-5b-102)
  - o Focuses on the production, possession, and distribution of sexually explicit material exploiting a minor or vulnerable adult

## II. Sentencing Guidelines

### ***A. Jessica’s Law***

- *Mandatory* sentence of 25 years to life without possibility of sentence suspension or reduction in consideration for mitigating circumstances for rape, object rape and sodomy of a child under 14 years old

### ***B. Sentencing matrix***

- Separate sentencing matrix applied to all sex offenses requiring registration
- Criminal history considers prior adult felony and misdemeanor convictions, prior juvenile adjudications, supervision history and risk, violence history, number of prior victims, weapon use in current offense, and time range of sex offenses

## FORM 3 - SEX OFFENDER MATRIX

### CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.  
Matrix timeframes refer to imprisonment only.

<b>PRIOR FELONY CONVICTIONS</b> (SEPARATE CRIMINAL CONVICTIONS)	0 NONE 2 ONE 4 TWO 6 THREE 8 MORE THAN THREE	<b>WEAPONS USE IN CURRENT OFFENSE</b> (ONLY WHEN CURRENT CONVICTION DOES NOT REFLECT WEAPON USE OR WHEN STATUTORY ENHANCEMENT IS NOT INVOLVED)	1 CONSTRUCTIVE POSSESSION 2 ACTUAL POSSESSION 3 DISPLAYED OR BRANDISHED 4 ACTUAL USE 6 INJURY CAUSED 0 NO PRIOR VICTIMS 3 ONE PRIOR VICTIM 4 MORE THAN ONE PRIOR VICTIM
<b>PRIOR MISDEMEANOR CONVICTIONS</b> (SEPARATE CRIMINAL CONVICTIONS) (INCLUDES DUI & RECKLESS) (EXCLUDES OTHER TRAFFIC)	0 NONE 1 ONE 2 TWO TO FOUR 3 FIVE TO SEVEN 4 MORE THAN SEVEN	<b>NUMBER OF PRIOR VICTIMS</b> (PRIOR SEX OFFENSE VICTIMS, NOT INCLUDING PRESENT VICTIM)	1 ONE-TIME INCIDENT 2 WITHIN ONE YEAR 3 WITHIN TWO YEARS 4 TWO YEARS OR OVER
<b>PRIOR JUVENILE ADJUDICATIONS</b> (ADJUDICATIONS FOR OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT)(THREE MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY ADJUDICATION)	0 NONE 1 ONE 2 TWO TO FOUR 3 MORE THAN FOUR 4 SECURE PLACEMENT	<b>TIME RANGE</b> (NUMBER OF YEARS OFFENDER HAS BEEN OFFENDING SEXUALLY)	
TOTAL SCORE: _____			

CRIMINAL HISTORY CATEGORY	
III	7+
II	4 - 6
I	0 - 3

<b>SUPERVISION HISTORY</b> (ADULT OR JUVENILE)	0 NO PRIOR SUPERVISION 1 PRIOR SUPERVISION 2 PRIOR RESIDENTIAL PLACEMENT 3 PRIOR REVOCATION 4 ACT OCCURRED WHILE UNDER CURRENT SUPERVISION OR PRE-TRIAL RELEASE
<b>SUPERVISION RISK</b> (ADULT OR JUVENILE)	0 NO ESCAPES OR ABSCONDINGS 1 FAILURE TO REPORT (ACTIVE OFFENSE) OR OUTSTANDING WARRANT 2 ABSCONDED FROM SUPERVISION 3 ABSCONDED FROM RESIDENTIAL PROGRAM OR EXTRADITION REQUIRED 4 ESCAPED FROM CONFINEMENT
<b>VIOLENCE HISTORY</b> (PRIOR JUVENILE OR ADULT CONVICTION FOR AN OFFENSE WHICH INCLUDES USE OF A WEAPON, PHYSICAL FORCE, THREAT OF FORCE, OR SEXUAL ABUSE)	0 NONE 1 MISDEMEANOR 2 3rd DEGREE FELONY 3 2nd DEGREE FELONY 4 1st DEGREE FELONY

		CRIME CATEGORY								2nd Degree		3rd Degree	Class A Misd
		1st Degree											
		A	B	C	D	E	F	G	H	I	J		
		Mandatory Prison 15 to Life	Mandatory Prison 10 to Life	Mandatory Prison 6 to Life	Mandatory Prison 5 to Life	Mandatory Prison 3 to Life	5 yrs to Life	3 yrs to Life	1 to 15	0 to 5	0 to 1		
CRIMINAL HISTORY	III	21 YRS	14 YRS	100 MOS	75 MOS	75 MOS	IMPRISONMENT		64 MOS	42 MOS			
	II	18 YRS	12 YRS	90 MOS	66 MOS	64 MOS	66 MOS	62 MOS	48 MOS	36 MOS			
	I	16 YRS	11 YRS	80 MOS	60 MOS	42 MOS	60 MOS	42 MOS	40 MOS	32 MOS			

CONSECUTIVE ENHANCEMENTS: 40% of the shorter sentence is to be added to the full length of the longer sentence.

CONCURRENT ENHANCEMENTS: 10% of the shorter sentence is to be added to the full length of the longer sentence.

- Aggravating and mitigating circumstances should be considered in sentencing on sex offenses

**Form 4**  
**Aggravating and Mitigating Circumstances Associated with**  
**Offenses with Alternative Minimum Lengths of Stay**  
(Also use Form 2 for all sex offenses)

Utah law provides alternative indeterminate lengths of stay (6 years to life, 10 years to life, or 15 years to life) in addition to life without the possibility of parole (LWOP) for sex offenses represented by columns A, B, and C on Form 3 – Sex Offender Matrix. The court shall order the term of 15 years to life, for offenders convicted of one of these offenses unless aggravating and mitigating circumstances justify departure. Aggravating circumstances may exist which justify an upward departure to LWOP. Similarly, mitigating circumstances may justify a downward departure to an indeterminate term of ten years to life or six years to life. The responsibility to weigh aggravating and mitigating circumstances in each case rests with the court. The weight given to each factor by the sentencing authority will vary in each case. Any one factor could outweigh some or all other factors. The pre-sentence investigator should note any aggravating or mitigating circumstance that merits consideration by the court by entering the page number of the presentence report where the court can find supporting information.

**This list of aggravating and mitigating factors is non-exhaustive and illustrative only.**

**Aggravating Circumstances**

The following aggravating circumstances should only be considered if they are not an element of the offense.

PSI Page #

- \_\_\_\_ 1. The victim suffered substantial bodily injury or serious bodily injury.
- \_\_\_\_ 2. The offender has a prior history of such offenses. Prior history could be dependent on number of victims, length of involvement, number of incidents, or continued involvement subsequent to arrest.
- \_\_\_\_ 3. The offense was characterized by extreme cruelty or depravity.
- \_\_\_\_ 4. The victim was unusually vulnerable.
- \_\_\_\_ 5. There existed a relationship of special trust or offender was in position of authority over victim(s).
- \_\_\_\_ 6. Offender has previously failed to complete treatment or has completed treatment and re-offended.
- \_\_\_\_ 7. The defendant exhibited grooming, stalking or enticing behaviors.
- \_\_\_\_ 8. Other (Specify) \_\_\_\_\_

**Mitigating Circumstances**

- \_\_\_\_ 1. The offense represents a single incident with the offender having no prior history of such offenses.
- \_\_\_\_ 2. The offender was exceptionally cooperative with law enforcement.
- \_\_\_\_ 3. Offender is a good candidate for a recognized treatment program. Substance abuse treatment may be appropriate if the offense was specifically substance related.
- \_\_\_\_ 4. Developmental disabilities of the offender may be considered in mitigation if highly structured alternatives can be utilized to control the offender's criminal behavior.
- \_\_\_\_ 5. Other (Specify) \_\_\_\_\_

**Appendix B – Additional Information**

Compared nationally, Utah has an extremely low rate of violent crime, which by the FBI's violent crime metric includes murder, rape, robbery and aggravated assault. Although 5,900 violent crimes were committed in Utah last year, up about 4-percent from the previous year, the state's



rate of violent crimes per 100,000 people was the still sixth-lowest in the country behind Maine, Vermont, New Hampshire, Virginia and Wyoming. In 2011, the state had the third-lowest rate.<sup>67</sup>

Of the range of violent crimes, rape is the only one that occurs in Utah at a higher rate than the national average. One in three Utah women will experience some type of sexual assault in their lifetime and one in eight will be raped. In 2008, Utah's reported rape rate was 63.7 per 100,000 females compared to a national rate of 57.4 per 100,000 females.<sup>68</sup>

Compared to its peer states, Nevada, Arizona, New Mexico, Colorado, and Idaho, Utah has significantly lower total violent crime rate at 225.6 per 100,000 population in 2008 and 216.2 per 100,000 population in 2009. In comparison, its forcible rape rates are similar to that of its neighbors, at 33.7 per 100,000 population in 2009. For example, Arizona, which has a forcible rape rate of 32.7 per 100,000 and lower than Utah's, has twice the total crime rate of Utah.<sup>69</sup>

According to the Utah Commission on Criminal and Juvenile Justice (CCJJ), a possible reason for Utah's high forcible rape rate can be traced to improvement in the reporting of rapes.<sup>70</sup> A dramatic improvement in the reporting of rapes would result in higher figures being reported to the UCR. However, according to the National Crime Victimization Survey 2012, nationally 28-percent of rapes and sexual violence are reported, while in Utah only 22-percent of rapes and sexual violence are reported.<sup>71,72</sup>

Other researchers and advocates have cited risk factors that differentiate Utah from its neighbors that might account for the disparity in reported rape rates. Alana Kindness, executive director of the Utah Coalition Against Sexual Assault, said in an interview with Free Republic that a risk factor associated with higher reported rape rates is having a youth-heavy population, and that Utah has one of the highest rates of young people under the age of 18.<sup>73</sup>

Utah lawmakers have also cited cultural reasons as an explanation for Utah's higher proportion of prison population incarcerated for sex offenses. In an interview with the Salt Lake Tribune, Rep. Eric Hutchings, R-Kearns and a member of the Criminal Justice Appropriations subcommittee, said "Our culture has a very strict credo, a moral sense, of what is appropriate sexually and what is not appropriate sexually."<sup>74</sup>

---

<sup>67</sup> Salt Lake Tribune: Utah Crime Rate <http://www.sltrib.com/sltrib/news/56907157-78/crime-rate-violent-lake.html.csp>

<sup>68</sup> Utah Department of Health: <http://www.health.utah.gov/vipp/rapeSexualAssault/overview.html>

<sup>69</sup> US Census Bureau: Crime Rates by State <http://www.census.gov/compendia/statab/2012/tables/12s0308.pdf>

<sup>70</sup> Utah Commission on Criminal and Juvenile Justice: Rape in Utah <http://www.justice.utah.gov/Documents/Research/SexOffender/RapeInUtah.pdf>

<sup>71</sup> See Footnote 3.

<sup>72</sup> National Crime Victimization Survey 2012; Bureau of Justice: <http://www.bjs.gov/content/pub/pdf/cv12.pdf>

<sup>73</sup> Free Republic: <http://www.freerepublic.com/focus/news/2488197/posts>

<sup>74</sup> Salt Lake Tribune: <http://www.sltrib.com/sltrib/news/56769578-78/sex-offenders-prison-treatment.html.csp>