



VERSION 2016

# THE CRIMINAL JUSTICE SYSTEM

## CHAPTER 5

UTAH STATE BOARD OF EDUCATION  
CAREER AND TECHNICAL EDUCATION

## **CHAPTER FIVE: THE CRIMINAL JUSTICE SYSTEM**

### **COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM**

When someone talks about the criminal justice system, the first people who come to mind are usually law enforcement officers. More thought will suggest lawyers, judges, prison guards, and possibly others. But the criminal justice system is far larger than even these participants. It is composed of three distinct components: police, courts, and corrections. In 2007, the various governmental bodies in the U.S. spent \$228 billion to finance criminal justice activities—\$37 billion at the federal level, and \$191 billion at the state and local levels.

Under the concept of separation of powers, responsibility for the administration of justice is divided among the three branches of the government, which are the executive, legislative, and judicial. Laws are enacted or created by the legislative branch of government, which is composed of the U.S. Congress, state legislatures, and county and city governments. Laws are then enforced by various law enforcement agencies, which are part of the executive branch of government. The executive branch is also responsible for the corrections system, which must deal with those persons who have been found guilty of the crime. The role of the judicial branch, composed of the various courts, is to determine the guilt of, and appropriate punishment for, individuals who have been charged with a violation of the law. The judicial branch is also given the responsibility for verifying the constitutionality of the laws enacted by the legislative branch.

### **CRIME**

We have previously examined the number of crimes committed each year in the United States. The odds that an individual will be the victim of a crime depend on factors such as age, race, occupation, nature of employment, activities, and location of work and residence.

Think for a moment as you answer the following questions:

1. Have you been the victim of any crime in the past year?
2. Has a relative been the victim of a crime in the past year?
3. Do you know of a friend, neighbor, or relative who has been burglarized in the past year?
4. Do you think people in general have changed their activities in the past few years because they are afraid of crime?

When the last question was asked of over 15 million individuals, 87% said that yes, they had changed their activities due to their fear of crime. Here is a list of some changes:

1. Added or improved locks in home.
2. Had neighbors check house while on vacation.
3. Avoided certain areas of town.
4. Had parents tell them not to associate with certain individuals.

5. Had a neighborhood watch program set up in their neighborhood.
6. Attended a speech on crime prevention, rape prevention, etc.
7. Engraved social security number or driver's license number or valuables.
8. Started checking whether car doors were locked.
9. Carried less money in purse or wallet.
10. Stopped leaving valuables in school locker.

The obvious way to reduce costs within the criminal justice system is to reduce crime. Of course, only the crimes reported to police or other law enforcement agencies are processed by the criminal justice system. In the past, law enforcement has shouldered most of the responsibility for the security of the public. However, two trends are changing this picture significantly.

First, public concern over the increase in crime has caused increased citizen participation in crime prevention. Such activities include neighborhood watch programs designed to have each neighbor look for and report suspicious activities in the neighborhood. Other neighborhood groups, particularly in urban areas, have initiated civilian patrols armed with cell phones, and other organizations sponsor fundraising activities in order to purchase equipment for police departments. While areas using such programs often show a decline in property crimes, unless the program covers a large enough area, criminals may simply move or be displaced to other, less resistant locations.

The second trend is the rapidly growing private security sector, which protects businesses, homes, and people. Private security activities include private investigators, armored car services, alarm companies, couriers, bodyguards, private security guards, and polygraph services. The primary functions of the private security sector include investigation of crimes against businesses; protection of goods, employees, and trade secrets; recovering lost or stolen property; investigation of fraud and false insurance claims; and risk reduction by investigating the credit ratings of individuals. All of these activities in the private sector provide numerous job opportunities for interested applicants, with job requirements ranging from minimal qualifications to highly specialized skills and educational attainment. Most of these activities are regulated or controlled by government, as in the state of Utah. In 1979, the Security Licensing Act was passed, requiring training of private security employees, to regulate the private security business. Expenses accrued by a business for private security are passed on to the consumer through higher prices. When losses due to theft, security devices, employee training, and the cost of security guards are totaled, they often represents three to five percent of each consumer dollar spent.

## **COURTS**

Courts have the responsibility of deciding what the law means, whether the law has been violated, and what should be done with those who violate it. A court must act impartially, without favor or bias to either side. Justice requires that society can demand that people obey the law, but the rights of the accused must also be protected by the courts. Any decisions regarding punishment after guilt has been established must not only involve the likely effects on the criminal, but also on victims, relatives, and society in general. The court system is designed to remove these types of decisions from the influence of public opinion, bias, and extreme emotion.

Utah's courts are classified as limited, general, or appellate courts. A limited court is only allowed to hear specific classifications of criminal cases. A Justice Court can only hear criminal cases that are classified as a class B misdemeanor or below. Utah's limited courts are the justice and juvenile courts. Utah's general court, District Court, can hear all criminal cases. These courts are all trial courts, which are courts of original jurisdiction.

The decision or *judgment* of these trial courts can be appealed to a higher court. An appellate court is a court that will only hear cases on appeal from a lower court. An appeal can be submitted by either side, prosecution or defense, if it is felt that there has been an error in the proceedings. The appellate court will then determine whether the trial court was fair and impartial. The appellate courts in the state of Utah are the Court of Appeals and the Supreme Court. State cases can only be appealed to the federal system when there are federal constitutional issues raised. Other questions relating to an appeal must go through the Utah appellate court system.

Before a trial can be held, the judge must ensure that the court has jurisdiction to hear the case. The question of jurisdiction is based on geographic area as well as the type of crime that was committed. *Original jurisdiction* refers to the court in which the trial will be first heard. *Exclusive jurisdiction* signifies that there is only one type of court in which the trial can be initiated. For example, felony involving an adult cannot be heard in a Justice Court. Therefore, the District Court in this instance would be the only court in which the trial could be held. *Concurrent jurisdiction* means that two or more types of courts can hear a specific case. A juvenile cited for a traffic violation could be tried in juvenile court or Justice Court.

Federal courts try cases that involve a violation of federal law, cases where the United States is a party, cases in which citizens of different states are parties, or cases involving ships at sea. Special federal courts exist to deal with certain kinds of cases, such as lawsuits against the government, federal taxes, and patent cases. The federal court system includes magistrates, 89 Federal District Courts, 13 Federal Circuit Courts of Appeals, and the U.S. Supreme Court. The highest court in the land is the U.S. Supreme Court, which is composed of nine justices. Their decisions are the final word on a point of law and must be obeyed by all other courts. Not all petitioners can have a case heard before the Supreme Court, because the Court receives so many petitions. Because of the number of requests made to the Court, normally the Supreme Court chooses to hear cases which will significantly affect many people or resolve important constitutional issues.

## **JUDGE SELECTION AND RETENTION**

A judge is a public servant holding an office of high public trust, and so should answer to the public. However, the obligation of a judge is to resolve disputes impartially and to base decisions solely upon the facts of the case and the law as written. Therefore, judges tend to be insulated from public pressure to ensure that they can remain unbiased and neutral in all of the decisions that must be made.

Merit selection of judges in Utah was developed in 1985 as an alternative to requiring judges to run in contested elections. There are four steps in the Utah merit selection plan: nomination, appointment, confirmation and a retention election. The nomination of judges is by a committee of lawyers and non-lawyers selected by the governor. The Judicial Nominating Commission nominates between three and five of the best qualified candidates from among all applicants. The governor reviews and appoints one of the nominees. The name of the nominee is submitted to the Utah State Senate, which must then confirm the nomination. Justice Court judges are the exception. They are appointed by local county commissions or city councils and mayors. All judges except Justice Court judges must be graduates of law school and members of the Utah State Bar. They must retire at 70, and can be removed from office by impeachment, a two-thirds vote of the Legislature, upon

recommendation of the Judicial Qualification Commission, or by a retention election vote by the citizens of Utah.

Under the Utah Constitution, judges must stand for retention election at the end of each term of office. The term of office for Justice Court judges is four years, while the term of office for District Court judges is six years. Judges for the Court of Appeals also have a renewable six-year term, while the Supreme Court justices have a ten-year renewable term. When a judge is listed on the ballot, the public has the opportunity to vote on whether or not to retain the judge for another term. Before a judge stands for retention election, he/she is evaluated by the Judicial Council. The Utah Judicial Council is established by the Utah Constitution as the policymaking body for the judicial branch of government. It is required by its own rules and by statute to evaluate the performance of all judges. As a result of the evaluation, the Judicial Council certifies whether the judge is qualified for retention election. The results of the individual evaluations are published in a voter information pamphlet printed by the lieutenant governor of Utah.

A frequent concern of judges is the pay. Although it is adequate in comparison to other members of the criminal justice system, most lawyers can earn far more in private practice than they would as judges. It is often argued that raising the salaries of our judges will thus increase the quality of justice by encouraging the best lawyers to become judges.

The biggest problem facing the courts today is an excessive workload. Although the U.S. Constitution guarantees a speedy trial, occasionally a defendant may wait months before he/she appears in court. This affects the quality of justice as well, for the need to clear up a case backlog may take priority over protecting the rights of society. Many times, however, a case may be delayed due to a continuance requested by the attorneys involved in the trial.

## **APPELLATE COURTS**

### **UTAH SUPREME COURT**

The Supreme Court is the court of last resort in Utah. The court is composed of five justices who serve ten-year renewable terms. The justices elect a chief justice by majority vote who serves for four years, and an associate chief justice, who serves for two years. The Supreme Court has original jurisdiction to answer questions of state law certified from Federal Courts and to issue extraordinary writs. The court has appellate jurisdiction to hear first degree and capital felony convictions from the district court and civil judgments other than domestic or divorce cases. It also reviews formal administrative proceedings of other state agencies such as the Public Service Commission, Tax Commission, School and Institutional Trust Lands Board of Trustees, etc. It has jurisdiction over judgments of the Court of Appeals by writ of certiorari, proceedings of the Judicial Conduct Commission, and both constitutional and election questions.

The Supreme Court adopts rules of civil and criminal procedure and rules of evidence for use in the state lower courts, as well as managing the appellate process. The court also governs the practice of law, including admission to the Utah State Bar and the conduct and discipline of the state's practicing attorneys. The court conducts sessions regularly at the Matheson Courthouse in Salt Lake City.

## UTAH COURT OF APPEALS

The Utah Court of Appeals, created in 1987, consists of seven judges who serve six-year renewable terms. A presiding judge is elected by majority vote to serve for two years. The jurisdiction of the Appeals Court is complementary to that of the Supreme Court. The Court of Appeals hears all appeals from the Juvenile and District Courts, except those from the small claims department of a District Court. It determines appeals from District Court involving domestic relations cases, including divorce, annulment, property division, child custody, support, visitation, adoption and paternity, and criminal matters of less than a first degree or capital felony. It also has jurisdiction to hear cases transferred to it by the Supreme Court.

Court of Appeals sessions usually are conducted in Salt Lake City, but the court travels several times per year, holding court in different geographical regions of the state. The court sits and renders judgment in rotating panels of three judges. It is prohibited by statute from sitting *en banc*. The panels hear oral arguments in cases during the third and fourth weeks of each month.

## **TRIAL COURTS**

### DISTRICT COURT

District Court is the general jurisdiction trial court. There are currently 71 full-time district judges serving in the state's eight judicial districts. A District Court has original jurisdiction to try civil cases, all criminal felonies, and misdemeanors in certain circumstances. Another important part of the District Court caseload is domestic relations cases such as divorce, child custody and support, adoption, and probate. District judges have the power to issue an extraordinary writ, which is a writ of special assistance. The court additionally serves as an appellate court to review various informal adjudicative proceedings from administrative agencies. District Court is defined as a *court of record*, meaning that there is a court reporter or an electronic recording device used to maintain a verbatim record of all court proceedings. All courts in Utah other than the Justice Court serve as courts of record. Some courts also use videotape to document all action that occurs in a courtroom, which is the case at the Matheson Courthouse in Salt Lake City.

In more populous districts, court commissioners have been appointed to assist the district judges by conducting pretrial hearings, pursuing settlements, and making recommendations to the judges in domestic relations cases. Commissioners can also accept pleas in misdemeanor cases and, with the consent of the parties, conduct misdemeanor trials. If a party disagrees with the court commissioner's recommendation, a rehearing may be requested before a judge. Court referees have also been appointed to assist in the resolution of traffic cases.

Other than those involving a criminal conviction of a first degree or capital felony, criminal appeals from the District Court are heard in the Court of Appeals. These appeals go directly to and are heard by the Supreme Court. All civil appeals from the District Court are heard in the Supreme Court, except for domestic relations cases, which are heard in the Court of Appeals.

### Small Claims Court

The District Courts have a small claims department, which covers disputes under \$5,000. A District Court judge may hear small claims cases, but in some areas of the state, the Supreme Court will appoint a lawyer as a judge *pro tempore* to hear the cases. In areas where a judge *pro tempore* has not been assigned, the district judge may transfer the case to a Justice Court.

Any individual or business may use Small Claims Court. Most litigants appear without an attorney, although an attorney may represent someone in small claims. However, attorneys are discouraged from involvement or attending court. Both the plaintiff and the defendant present the events, witnesses, and evidence that they feel is appropriate to support their claim. Each side has the right to cross examine the opposing side. Both the plaintiff and the defendant can appeal the court's judgment. Small Claims Court is not a court of record, and there is no verbatim record kept of the proceedings.

### Drug Court

In 1996, the first Drug Court in Utah was established in the Third District Court in Salt Lake City. This court is designed as an alternative for nonviolent drug offenders, and provides intensive drug treatment and monitoring as opposed to traditional sentencing and incarceration. Drug Court participants are required to meet with the judge weekly to report the results of systematic drug testing and treatment progress. Participants who fail to make their court appearances or complete the requisite drug testing are dropped from the program and transferred to the regular District Court calendar.

During 1997, the Third District's Drug Court began to see the fruits of its labor with the first graduates of the program. According to the U.S. Department of Justice, the recidivism rate of drug offenders sent to prison can be more than 60 percent. However, the recidivism rate among Drug Court participants ranges currently from five to 28 percent. Third District Juvenile Court also operates a Drug Court specifically for first-time juvenile drug offenders.

### Domestic Violence Court (Under District Court)

In 2009, Utah courts handled approximately 14,919 domestic violence cases. The number of domestic violence cases is high, and the damage it causes is serious. Studies have shown that domestic violence left untreated in one generation will often appear in the next generation. To address both the volume of calendared cases and the damage inflicted by domestic violence, a court designed to focus specifically on domestic violence cases was launched as a pilot project in 1997.

Domestic Violence Court provides a unified approach to domestic violence cases. Once a plea of guilty is entered or the defendant is found guilty by the court, a perpetrator is given a choice between treatment intervention and incarceration. If intervention is chosen by the defendant, the court then orders the perpetrator to actively participate in, pay for, and complete treatment during the specific probationary period. Perpetrators are monitored during this probationary period through monthly reports that are submitted to the court. These reports remind the perpetrator of his/her accountability and allow the court to indirectly monitor the treatment process.

### JUSTICE COURT

A Justice Court is a limited court that can be established by a county or municipality and has the authority to deal with class B and class C misdemeanors, infractions, county or city ordinance violations, and any small claims committed within their territorial jurisdiction where the claim is \$5,000 or less. Many Justice Courts may also perform marriages. The geographical jurisdiction of a Justice Court is determined by the boundaries of local government entities such as cities and counties.

Justice Court judges are normally appointed by a county commission or council or by a city council or mayor, and stand for retention election every four years. Some judges serve as both the

county and the municipal judge in rural areas. They may hear cases every day, or may set limited court hours each week, depending upon their specific caseload within the jurisdiction.

Unlike all other judges in the State of Utah, a Justice Court judge is not required to have graduated from law school. However, by state law, he/she must receive extensive and continuing legal training in order to serve as a Justice Court judge. All Justice Court judges must attend 30 hours of continuing judicial education each year to remain certified. Currently, 128 Justice Court judges serve in 147 county and municipal courts.

The Justice Court shares concurrent jurisdiction with the Juvenile Court involving minors 16 or 17 years of age who are charged with certain traffic offenses. Automobile homicide, alcohol- or drug-related traffic offenses, reckless driving, fleeing an officer, and driving on a suspended license are exceptions. Those charges are only handled through Juvenile Court.

Jury trials in Justice Court consist of four jurors. A city attorney will prosecute municipal and state law violations in a municipal justice court. A county or district attorney will prosecute violations of county ordinances and state law in a county court. Defendants often appear without an attorney in Justice Courts. Any person not satisfied with a judgment rendered in a Justice Court is entitled to a new trial in District Court. A Justice Court is not a court of record and does not keep a verbatim record of court proceedings, but written records of case outcomes are maintained.

## JUVENILE COURT

Juvenile Court is also a component of the Utah State Court system. Juvenile laws and the courts will be discussed in Chapter 8.

## **PRE-TRIAL PROCESSING**

For many years it was deemed appropriate for any person accused of a crime to be placed in jail. This process, known as booking, includes identification of the arrestee, a search to ensure jail security, fingerprinting, and the taking of a picture or mugshot for law enforcement purposes. But after many hundreds of years, society has come to the realization that serious problems result from the practice of keeping people in jail until they can be tried. Of utmost concern is that the jailed individual may, in fact, be found not guilty after a lengthy jail stay. This would unfairly punish an innocent citizen. Other concerns include the following:

- the cost to the taxpayer
- the inability of the jailed person to provide for his/her family
- the costs of consulting with a lawyer, arranging for a defense, etc.
- the loss of employment, reputation, etc.
- jail overcrowding

These concerns resulted in a constitutional right to bail in the United States. Arrested persons are allowed to post bail in order to get out of jail until the time of the trial. Bail is money or property posted with the court as a promise that the defendant will show up for trial. The actual amount of bail required is determined by a judge, and depends on the seriousness of the crime and the likelihood of the defendant's appearance. This decision is based on such things as the strength of community ties, such as family, employment, and whether the defendant has a prior criminal record.

The major purpose of bail is to ensure court appearance of a defendant while allowing a defendant to remain free until trial. Government employees could defeat the purpose of bail if they were allowed to set bail at any level they wanted. To protect against such practices, the Eighth Amendment to the U.S. Constitution states that “excessive bail shall not be required.”

The Supreme Court, in *Stack v. Boyle* stated that “This traditional right to freedom before conviction permits the defendant preparation of a defense, and serves to prevent the infliction of punishment prior to conviction... Bail set at a figure higher than amount reasonably calculated to fulfill this purpose is ‘excessive.’”

If you were arrested right now, how much bail could you come up with?

Money in your pockets, purse, or wallet \$ \_\_\_\_\_

Money in savings accounts, etc. \$ \_\_\_\_\_

Money that relatives would be willing to put up for you \$ \_\_\_\_\_

Money that friends would be willing to put up for you \$ \_\_\_\_\_

If the defendant appears in court as required, then bail is returned. If not, the bail is forfeited and used to help pay the cost of locating and bringing the defendant to court. Bail is available for almost all crimes except for a crime where execution is a possible sentence. It is felt that no amount of bail would be sufficient to ensure a court appearance by a guilty defendant on such a charge. However, bail may be set in capital cases at the judge’s discretion.

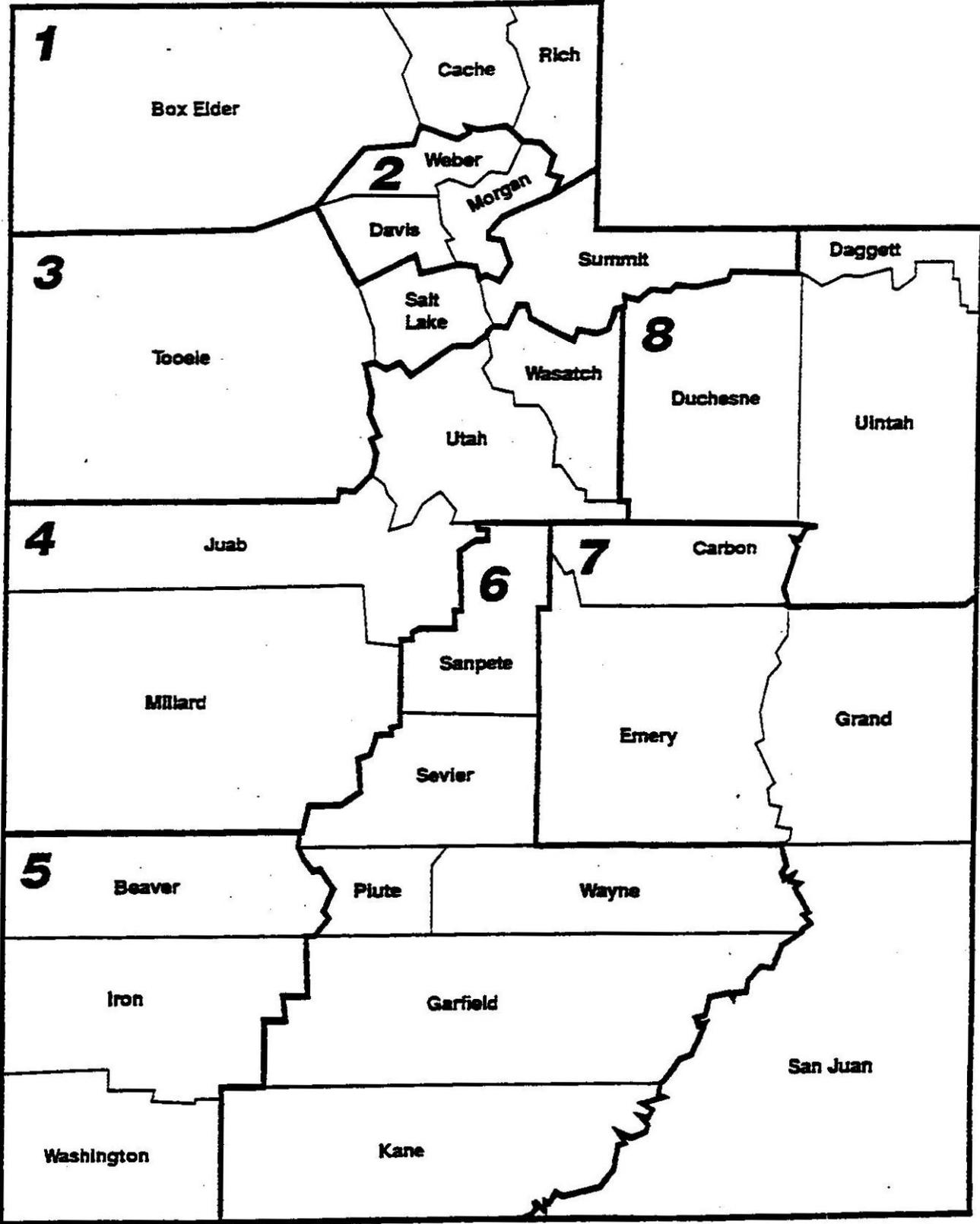
There are two basic methods for posting bail. First, the individual can use his/her own money or that of relatives, friends, or associates willing to believe the defendant will appear in court. When the defendant appears in court, the bail amount is released to the defendant. If the defendant does not appear in court, the bail is forfeited to the court.

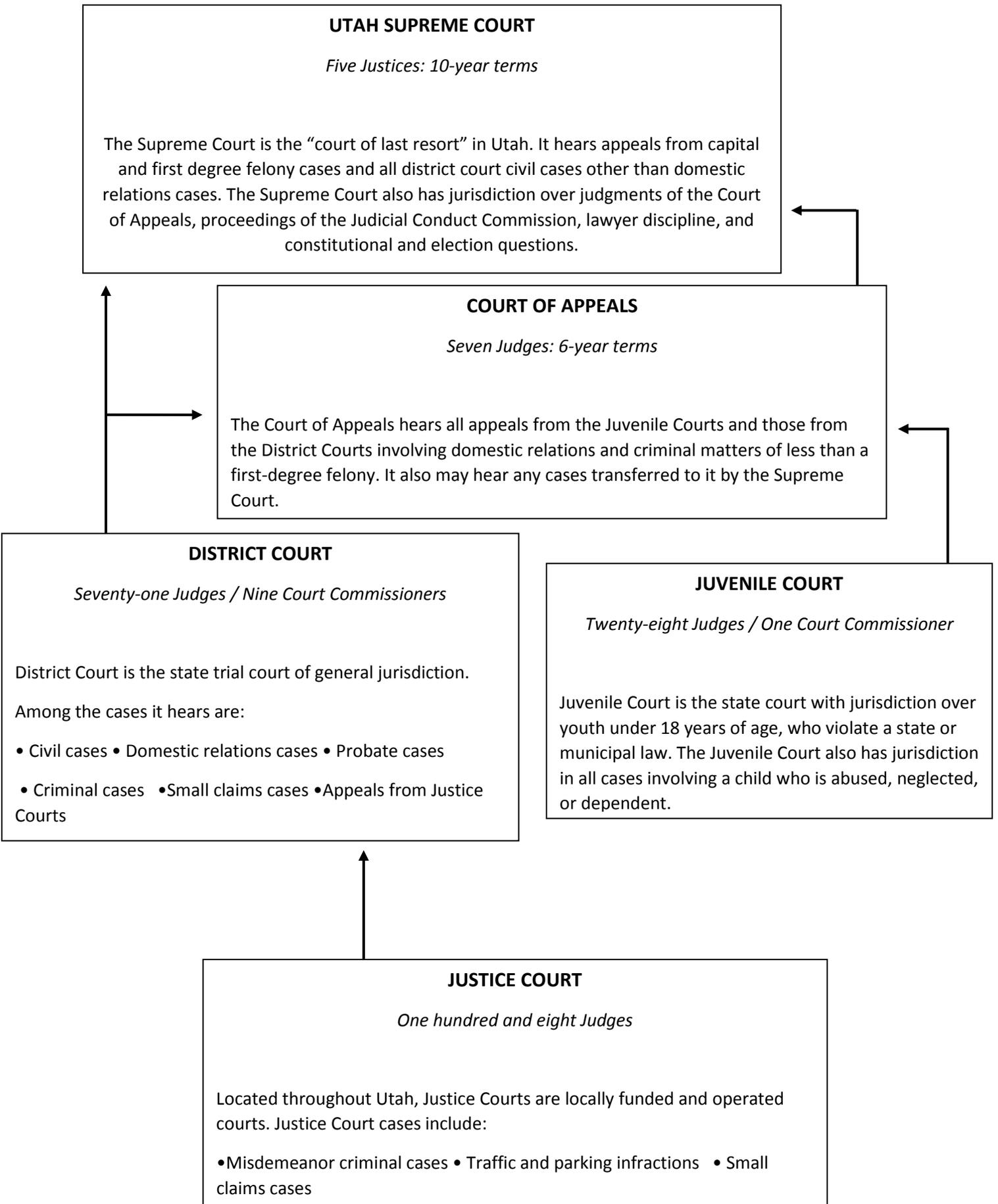
The other method involves the utilization of a bail bondsman. The bail bondsman may be used for convenience, or become the defendant may not be able to pay the full amount of the bail. The fee for the bondsman to post bail for the defendant is 10 percent. If the defendant fails to appear, the bail bondsman forfeits his/her money. When the defendant appears in court as scheduled, the bail amount is returned to the bondsman. However, the defendant does not have his/her money returned because this is the cost of securing the bail bondsman’s service. If an individual fails to show for trial, the bail bondsman or his/her employees have the legal right to take the person into custody and return him or her to the court for trial.

In recent years, several alternatives have been developed in an effort to reform the traditional bail system. The most common alternative is called an own recognizance (O.R.) release. Such a pre-trial program uses a screening sheet to assess the defendant’s suitability for release. Those who are found to have sufficient community ties are released O.R. and are not required to post bail.

A defendant who does not qualify for an O.R. release may qualify for a supervised release (S.R.). Such as individual is placed under the supervision of a pre-trial service counselor who will monitor the case, ensuring that the court knows how to contact the defendant and that the defendant is aware of court times, locations, etc. The release agreement on the following page demonstrates some of the restrictions commonly placed on those released by pre-trial services.

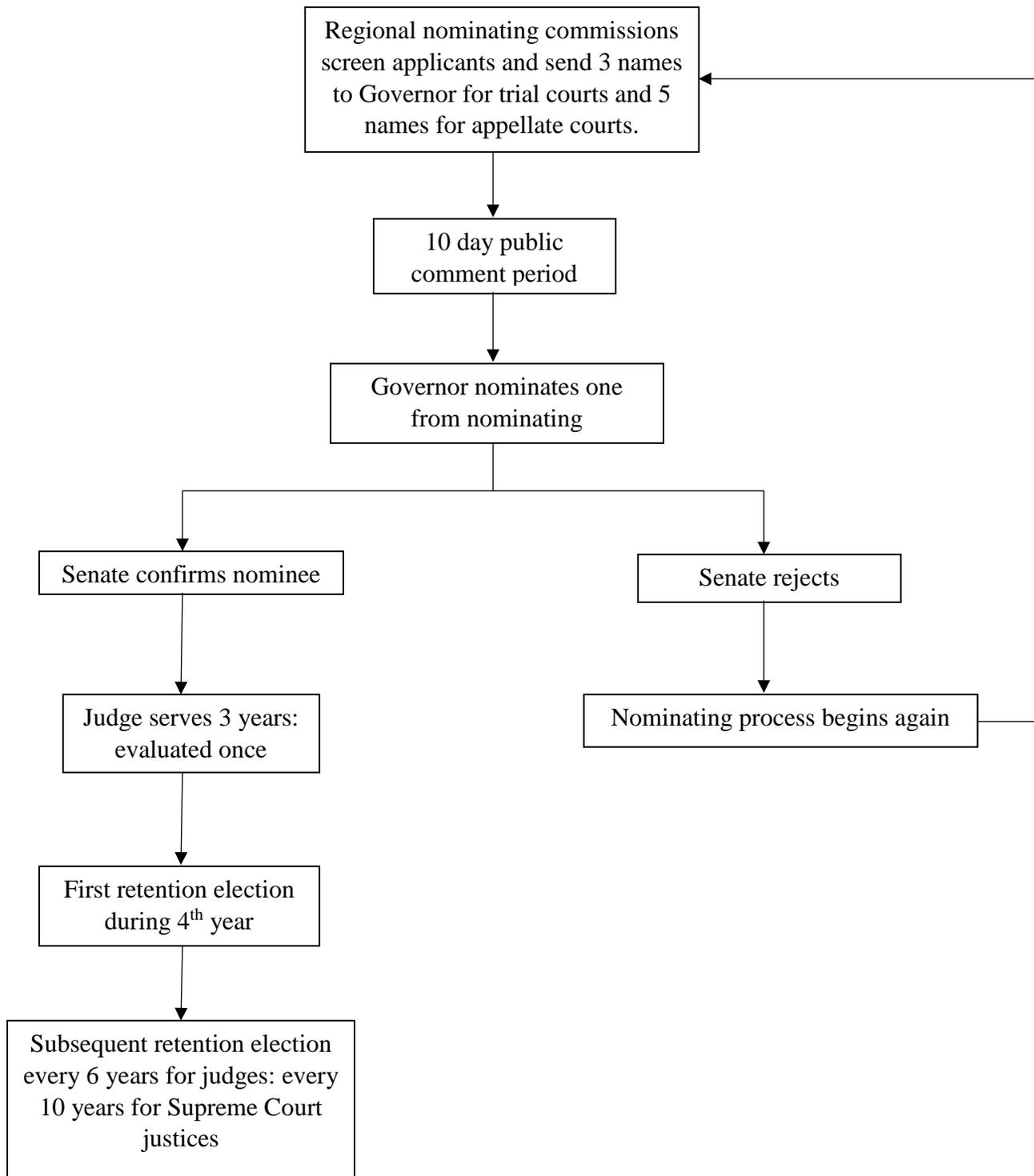
STATE OF UTAH JUDICIAL DISTRICTS





# Appointment and Retention of Utah Judges

(Four courts of record only)



## **CITATION ARREST**

Many law enforcement agencies allow officers to make misdemeanor *citation releases* as an alternative to the entire booking process. Much like the traffic ticket process, the defendant is given a citation that requires appearance before the assigned court within 14 days. A citation arrest is utilized for a minor crime, such as shoplifting or possession of alcohol by a minor. This can be an effective way of utilizing the time of a law enforcement officer as well as minimizing the costs to society and the individual. Rather than having to book a person into jail, the officer is able to issue a citation and release the individual, returning back to his/her assigned duties much more quickly. With clear policy guidelines and good officer judgment, the rate of appearance is very high, usually 95-96 percent. This is comparable to the rate of appearance for individuals who are booked into jail.

## **SUMMONS**

Another alternative to booking an individual in jail is the summons process. After a judge has been presented with an information or complaint accusing a person of violating a specific law, the judge may decide that it is not necessary for the defendant to be booked into jail prior to trial. In such cases, a constable or a peace officer will officially serve the defendant with a summons requiring a court appearance at a certain time, date, and place. The summons process may be utilized in some felony cases. Failure to appear for trial as required by a summons is considered to be contempt of court and is punishable as a separate offense, without regard to the defendant's guilt or innocence on the original charge. In such cases, a bench warrant is issued that can result in a jail booking.

## **CORRECTIONS**

At the end of 2009, there were more than 7.2 million adults in the United States under some form of federal, state, or local correctional supervision. There were 4,203,967 individuals on probation, 819,308 on parole, 1,613,740 in prison, and 760,400 sentenced to jail.

The corrections system nationwide involves the employment of many individuals and large expenditures of public funds. In 2007, over \$74 billion was spent on correctional activities. This includes salaries for over 755,236 employees. In Utah, the cost to the taxpayers was \$170,000,000, with 5,439 individuals employed. Correctional functions within our state are handled by such agencies as the Department of Corrections, the Board of Pardons and Parole, Adult Probation and Parole, the Department of Social Services, Sheriff's Office jail staffs, and juvenile probation units. In addition, there are private correctional facilities where juveniles can be placed voluntarily by parents.

## **CORRECTIONS HISTORY**

Early man dealt with situations on his own when he felt wronged. Assuming that he was strong enough, he could inflict any punishment that he wished on another. Revenge was the goal, but it is easy to see how such punishment could get out of hand. One intent of the biblical Law of Moses, "an eye for an eye, and a tooth for a tooth," was to limit the amount of punishment that could be given to a lawbreaker, in the interests of justice.

In our western culture, as society organized under the feudal system of kings and nobles, communities stopped individuals from punishing criminals themselves. Instead, that responsibility was

taken over by rulers on behalf of the people. Of course, the powerful wanted laws protecting their interests, so many unfair laws were created to protect these individuals.

As governments took over punishment of the lawbreakers, the penalties remained harsh and criminals were frequently executed. Other common punishments included being burned at the stake, boiled in oil, the use of stocks and pillory, public whippings, and various forms of physical mutilation. Torture was common when questioning a suspect, which obviously led to many questionable admissions. Such severe penalties were believed to discourage others from committing the same crimes, a theory known as deterrence.

In England during the 1800s, over 300 crimes were punishable by death, and children as young as eight were executed. But in both England and the United States, there was increased public concern over the severity of such punishments. By the 1800s, prisons and jails were common in the United States as an alternative to other forms of physical punishment.

As the number of prisoners grew, community resources failed to keep up. A typical jail of the early 1800s was no more than a giant dormitory, with men, women, and children housed together. There was little concern for privacy, health, or age. Guards were not held responsible for their conduct or the misuse of prisoners. Some even made extra money on the side by operating jail liquor stores or through other profitable methods.

As a result of the influence of the Philadelphia Society for Alleviating the Miseries of Public Prisons, prisons began to adopt a goal, at least on paper, of reforming rather than punishing a prisoner. Many such jails and prisons were known as reformatories. Solitary confinement was one such suggestion for reforming or rehabilitation of a prisoner. It was believed that if a prisoner was locked in a small cell with a Bible, that he would be motivated to read it, learn its truths, and reform himself. Such confinement is now used in a limited fashion as a punishment due to court orders based on the belief that withdrawing prisoners from social contacts is psychologically damaging to the individual.

Community opinion later shifted to a belief that prisoners should be required to work while in jail or prison. First, it was felt that work would counter the evil of idleness, and secondly, it would help pay back the government for the cost of imprisoning them. Under the Pennsylvania Plan, each prisoner lived and worked silently in his own cell, without contact with other prisoners. Under the Auburn Plan, prisoners worked as a group, again under a strict rule of silence.

Prior to 1931, some states allowed prisoners to be legally leased. Companies, and even individuals, could lease prisoners to use in factories, for building roads, or housework. Prisoners had no choice in the matter, and their wages were given directly to the state, or sometimes to the warden as part of his salary. There were physical abuses, few concerns for prisoner safety, and many scandals. One can imagine the fairness of appearing before a judge who owned stock in a local factory that depended on prisoners as workers.

The official goal of corrections today is rehabilitation. The government attempts to provide programs and training that will solve the problems that led an individual to criminal activity, thus allowing him or her to return to the community as productive citizens. There are a variety of such programs to assist an individual with rehabilitation, three of which are probation, parole, and pre-release programs.

## PROBATION

Probation is an alternative to being put in prison or jail. After conviction, a judge may decide that there is minimal risk to society that the likelihood of reform or rehabilitation is sufficient to allow the defendant to remain in the community. The judge therefore suspends the imposition of confinement and places the defendant under the control of a probation officer. For a designated period of time, the probationer must live according to a set of rules and report in to the probation officer regularly, and he/she is often required to participate in some type of treatment program. Failure to complete the list of requirements may result in the sentencing judge imposing the original sentence.

The rules of probation vary from state to state and among individuals being tracked. The following probation rules from the Federal Sentencing Guidelines are a good example of the types of conduct regulated by a probation officer:

- The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer.
- The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- The defendant shall support his dependents and meet other family responsibilities.
- The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court.
- The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

## PAROLE

In Utah, parole of a convicted felon who has been sent to prison is handled by the Utah Board of Pardons and Parole. Parole is a system for releasing prisoners from custody before their prison term has been completed. Much like probation, the prisoner is required to abide by certain rules. Its members review each prisoner's file after the individual has become eligible for parole. If the Board feels that the individual has made satisfactory progress toward rehabilitation while in prison and would be able to succeed in the community, he/she may be paroled. The rules and procedures are much like those of probation, and many of the same officers are used for supervision of the parolees. As with probation, if the parolee fails to meet the parole requirements, he/she may be returned to prison to finish the original sentence.

## PRE-RELEASE PROGRAMS

In order to start reintegrating inmates into the community, a number of pre-release programs are currently in use throughout the country. Most common is work-release, where jobs in the community are found for inmates. They work during the day and return to prison at night and on weekends. Similar programs are used to allow prisoners to go to school or on recreational outings. This also allows the inmate to have an income and to support his/her family.

Another program is the furlough, where a prisoner may visit home and family for a weekend or a longer period of time. This is particularly useful in keeping inmate families together. Some states allow conjugal visits, where inmates can spend time within the prison with his/her spouse in a completely private area.

A halfway house is another program to an inmate back into society. This could be a set of apartments or a house within the community. The inmates work, associate with neighbors, and participate in recreation with other community members, but return to the halfway house to sleep. The value of such a program must be weighed against the increased security risk and the possibility that participating inmates will commit crimes while involved in the program. However, it appears that when an inmate goes through a slower assimilation back into society prior to release, he/she stands a better chance of success.

## **INDETERMINATE SENTENCE**

Given an official goal of rehabilitation, the practice of sentencing to a fixed term has been replaced by many states with what is known as an *indeterminate* or *unfixed sentence*. Under this system, the inmate is to be released when rehabilitation has occurred. In effect, the sentencing function is shifted from the courts to other government officials. Some critics of this type of sentence feel that it creates problems. The first is the elimination of what is known as *good time*. Under fixed-term sentencing, an inmate knows exactly how long his/her sentence will be. As an incentive to behave according to the rules of the facility, good time is given for good behavior. For example, an inmate may reduce his/her sentence by five days for every month of good behavior.

There is also a concern that the uncertainty of indeterminate sentencing can lead to certain psychological problems, such as severe depression and low morale. Perhaps of even greater concern is the wide discretion given to prison and other government officials in deciding when an individual is to be released. Individuals in very similar situations may be released years apart. Certainly, an indeterminate sentence can be abused by officials and used for a purpose other than that for which it was intended.

Suppose you were an inmate convicted of burglary and had been given a choice of five years in prison with good time of five days per month of good behavior, or an indeterminate sentence of up to 10 years, but with eligibility for release upon being found rehabilitated.

Which option would you choose?

How does one determine when an individual is rehabilitated?

## **DIVERSION**

Some states, including Utah, have initiated a program known as *diversion*. This is much like probation except that it occurs before trial, at the discretion of the prosecutor, and with the approval of the court. Such a program must be entered into voluntarily by the person charged with a crime. If the diversion program is successfully completed, then no prosecution occurs, saving the defendant a possible conviction record and saving the government the cost of a trial.

There is no guarantee that individuals in a similar situation will be afforded equal access to diversion. It is possible that an arrestee who retains counsel is more likely to be placed in such a program. It is also possible that an innocent arrestee would participate in such a program in order to avoid the costs of trial, such as publicity, lawyers' fees, etc.

A diversion program can result in an increased use of community resources, which are paid for by taxpayers. It will be interesting to examine public opinion as diversion is utilized more frequently.

Do you feel the majority of the public will favor or oppose diversion? Why?

## **RECIDIVISM**

*Recidivism* is the rate of return of paroled or released individuals back to prison. This could occur for several reasons. First, the individual may have committed another criminal act. Secondly, he/she may have violated one of the rules placed on him or her as a result of parole, causing his/her parole to be revoked. The key question regarding corrections' goal of rehabilitation is whether it works. Related questions are which programs work the best and what variables affect a prisoner's likelihood of rehabilitation or returning to criminal activity.

To answer these and other questions, recidivism rates are used. Such rates indicate what percentage of treated individuals return to prison. Examination of recidivism rates can assist criminologists and others to determine the success of various programs. However, there is no way to determine whether the reason a person has given up crime is due to a treatment program or to incarceration.

## **FORFEITURE**

Forfeiture is government seizure of property derived from or used in criminal activity. Its use as a sanction aims to strip racketeers and drug traffickers of economic power gained through criminal activity. Forfeiture was devised as an additional penalty because the traditional sanctions of imprisonment and fines had been found inadequate to deter or punish enormously profitable crimes. Seizure of assets aims not only to reduce the profitability of illegal activity, but to curtail the financial ability of crime organizations to continue illegal operations. The two types of forfeiture are civil and criminal.

## CIVIL FORFEITURE

Civil forfeiture is a proceeding involving property used in a criminal activity. Property subject to civil forfeiture often includes vehicles used to transport contraband, cash used in illegal transactions, equipment used to manufacture illegal drugs, and property purchased with the proceeds of the crime. No finding of criminal guilt is required in such proceedings. The government is required to post a notice of the proceedings so that any party who has an interest in the property may contest the forfeiture.

## CRIMINAL FORFEITURE

Criminal forfeiture is a part of the criminal action taken against a defendant accused of racketeering or drug trafficking. The forfeiture is a sanction imposed upon conviction that requires the defendant to forfeit various property rights and interests related to the violation. In 1970, Congress revived this sanction, which had been dormant in American law since the American Revolution.

Originally, most forfeiture provisions were designed to cover the seizure of contraband, modes of transportation, or any other property utilized to facilitate distribution of such materials. Since the 1970s, the property that can be forfeited has been expanded to include assets, cash, securities, negotiable instruments, real property (including houses or other real estate), and proceeds traceable directly or indirectly to the violation of certain laws. Provisions permit seizure of conveyances such as airplanes, boats, and cars; raw materials, products, and equipment used in manufacturing, trafficking, or cultivation of illegal drugs; and drug paraphernalia.

The disposition of forfeited property is controlled by statute or, in some states, by the state constitution. In many cases, the seizing agency is permitted to place an asset in official use once it has been declared forfeit by the court. Such assets are usually cars, trucks, boats, or planes used during the crime or purchased with proceeds of the crime.