



## Utah Sentencing Commission Data, Research & Policy Underlying SB167 October 7, 2015

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### Juvenile Subcommittee Members:

Jennifer Valencia, Susan Burke, Darin Carver, Christina Zidow, Pamela Vickrey, Judge Mark Andrus, Judge Julie Lund, Peter Stirba, Ron Gordon, Paul Boyden, Patrick Anderson, Scott Garrett

### Additional individuals/members in attendance for proposed legislation discussions:

Ray Wahl, Clark Harms, Mike Haddon, Reg Garff, Sim Gill, Debra Moore, Dorie Farah, Cuong Nguyen, Judge Scott Johansen, Judge Janice Frost, David Brickey, Chris Roach, Carlene Walker, Rich Mauro, Rick Schwermer, Adam Trupp

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From June to October 2014, the Juvenile Subcommittee of the Sentencing Commission considered a joint proposal from the Statewide Association of Prosecutors and Juvenile Justice Services regarding the housing of juveniles under 18 who were committed to the Utah State Prison. The proposal stemmed in part from concerns related to the 2014 conviction and sentencing of a male 16 year old for Aggravated Burglary. The juvenile had been transferred to District Court pursuant to the Serious Youth Offender statutory process and was ultimately sentenced to two 1-15 year sentences at the Utah State Prison on May 9, 2014. Due to PREA (Prison Rape Elimination Act) policies and concerns, he was held in isolation initially at the Utah State Prison in Draper, then transferred to the Daggett County Jail for 161 days, and paroled on November 5, 2014. While Juvenile Justice Services had offered to house him in their facilities, there was no mechanism by which he could have been transferred to a JJS facility.

The Sentencing Commission coordinated a tour of the facilities at the Utah State Prison in Draper, including the unit for offenders with mental illnesses where the juvenile had been housed. The Sentencing Commission also observed several parole hearings, including the parole hearing for the juvenile, who was then 17 years old.

The Sentencing Commission reviewed and considered the following research:

- Cheesman, E. (2011). *Future Trends in State Courts: A Decade of NCSC Research on Blended Sentencing of Juvenile Offenders: What Have we Learned About "Who Gets a Second Chance?"* Williamsburg, VA: National Center for State Courts.
- Daugherty, C. (2013). *State Trends: Legislative Victories from 2011-2013 Removing Youth from the Adult Criminal Justice System*. Washington, DC: Campaign for Youth Justice.
- Griffin, P. (2008). *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform*. Pittsburgh, PA: National Center for Juvenile Justice, Models for Change.
- Griffin, P., Addie, S., Adams, B., and Firestone, K. (2011). *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*. OJJDP Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Moriarty, P. (2013). *Transfer of Juveniles to Adult Court: Recent Trends and Implications*. Minneapolis, MN: National Association of Sentencing Commissions 2013 Annual Meeting, University of Minnesota Law School.
- Mulvey, E. and Schubert, C. (2012). *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*. OJJDP Bulletin, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Senator Aaron Osmond also became aware of the same case and opened a bill file regarding concerns similar to those of SWAP and JJS, as well as other concerns regarding the entire process by which the juvenile initially entered the system to the resulting sentence. The Sentencing Commission did not coordinate with Senator Osmond until the legislative session began in January 2015. Senator Osmond coordinated with multiple other entities and organizations prior to and during the 2015 General Session in attempting to obtain consensus on multiple issues.

The Sentencing Commission's review included a review of the statutory process for transfer of jurisdiction from juvenile to district court, which is delineated on pages 5 and 6 of the 2015 Juvenile Disposition Guidelines. Prior to passage of SB167, the District Court obtained jurisdiction over minors alleged to have violated the law by three methods: **Direct File** (statutory jurisdiction); **Certification** (discretionary waiver by juvenile court); and **Serious Youth Offender Transfer** (presumptive waiver by juvenile court). Areas amended by SB167 are highlighted and explained further below.

**Statutory District Court Jurisdiction (Direct File)**

Utah Code Ann. §78A-6-701 specified that the District Court had exclusive original jurisdiction over all persons 16 years of age or older charged with:

- An offense which would be murder or aggravated murder if committed by an adult;
- Any felony if the minor was previously committed to a secure facility; or
- Any offense if the District Court has previously taken jurisdiction over the minor.

**Certification to District Court (Discretionary Waiver)**

For a minor 14 years of age or older, the prosecuting attorney may request the Juvenile Court waive jurisdiction under Utah Code Ann. §78A-6-703 and certify the minor to the District Court for any alleged offense which would be a felony if committed by an adult. A preliminary hearing is then held for the State to establish probable cause, as well as that it would be contrary to the best interests of the minor or the public for the Juvenile Court to retain jurisdiction. The Juvenile Court considers the following factors, enumerated fully in Utah Code Ann. §78A-6-703(3), with the Juvenile Court determining the weight to be given to each factor:

- The seriousness of the offense;
- If the offense was committed with two or more persons;
- If the offense was committed in an aggressive, violent, or premeditated manner;
- The juvenile's maturity;
- The juvenile's previous history;
- The likelihood of rehabilitation;
- The desirability of trial;
- The desirability of disposition with co-defendants; and
- The use or possession of a firearm or dangerous weapon.

Written reports or other materials relating to the minor's mental, physical, educational, and social history may be considered under Utah Code Ann. §78A-6-703(5). If a minor is certified to District Court, the jurisdiction of the Juvenile Court and the Division of Juvenile Justice Services would then be terminated regarding that offense, any other offense arising from the same criminal episode, and any other subsequent violations of law. Juvenile Court and the Division of Juvenile Justice Services would regain jurisdiction if there was an acquittal, a finding of not guilty, or dismissal of all charges in District Court.

**Serious Youth Offender Transfer (Presumptive Waiver)**

In the case of a minor 16 years of age or older, there was a presumption under Utah Code Ann. §78A-6-702(1) that the minor would be bound over to District Court upon a finding of probable cause that the minor had committed the following offenses:

- Aggravated arson;
- Aggravated assault resulting in serious bodily injury to another;
- Aggravated kidnapping;
- Aggravated burglary;
- Aggravated robbery;
- Aggravated sexual assault;
- Felony discharge of a firearm;
- Attempted aggravated murder;
- Attempted murder; or
- Any other felony offense involving the use of a dangerous weapon if the minor has previously been adjudicated or convicted of a similar offense.

If probable cause was established by the State, the Juvenile Court could only retain jurisdiction upon **clear and convincing evidence** that bind over would be contrary to the best interest of the minor and the public. In making the determination, the Juvenile Court Judge considered only the following:

- Whether the minor was previously adjudicated delinquent for a felony offense involving the use of a dangerous weapon;
- The degree of the minor's culpability in relation to the co-defendants;
- The extent to which the minor's role was violent, aggressive, or premeditated;
- The number and nature of the minor's prior adjudications; and
- **Whether public safety is best served in District Court or Juvenile Court.**

The Sentencing Commission requested data from multiple sources in order to analyze the three methods by which the District Court had obtained jurisdiction over juveniles from July 1, 2013 through June 30, 2014.<sup>1</sup> The following graph illustrates that a total of 39 juveniles were under District Court jurisdiction; 32 of which were Direct Files; 5 of which were transferred under the Serious Youth Offender statute; and 2 of which were transferred through Certification. 17 of those identified as "other" under Direct Files include

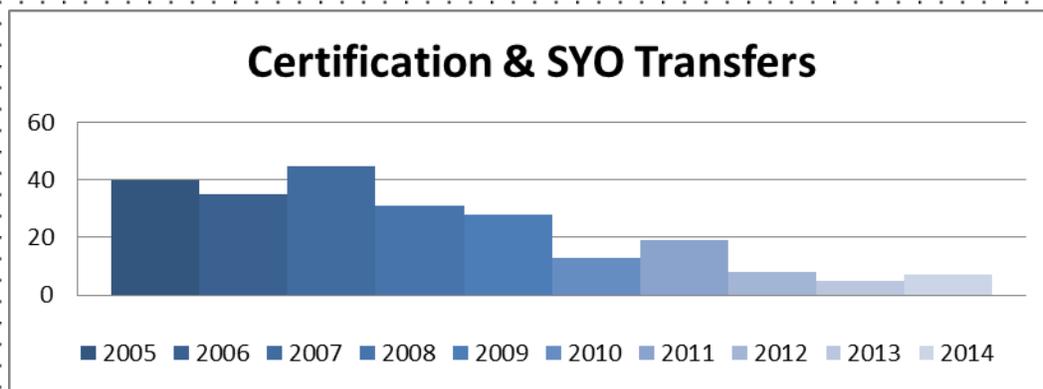
<sup>1</sup> Post April 30, 2014 data collected by the Juvenile AOC should provide a more comprehensive collection of data from the multiple and varied sources which were compiled in this report.

charges of murder and cases where the District Court has previously taken jurisdiction. 15 of those identified under Direct Files as “Post JJS Felony” were filed based upon the allegation that the juvenile had committed any felony after commitment to a secure care facility within Juvenile Justice Services.

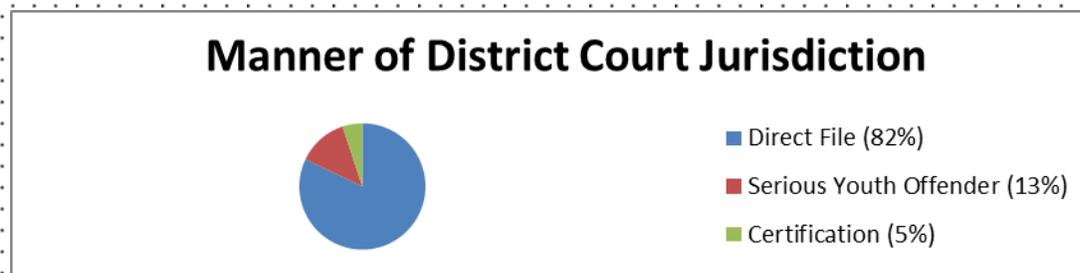
Total Juvenile Informations Filed in District Court			
		39	
Direct Files		Bound Over	
32		7	
Post JJS Felony	Other	Ser. Youth Off.	Certified
15	17	5	2

Source: Utah Juvenile Court Administrative Office of the Courts, Utah Xchange system and CARE database

Several amendments to the Serious Youth Offender statute had occurred in 2013, anticipating a reduction in the number of juveniles transferred to District Court in 2014. An analysis of the fiscal impact of the 2013 legislation by the State Auditor’s Office could not confirm any actual decrease of transfers. Actual transfers under either Certification or SYO in fact slightly increased from 5 to 7.<sup>2</sup>



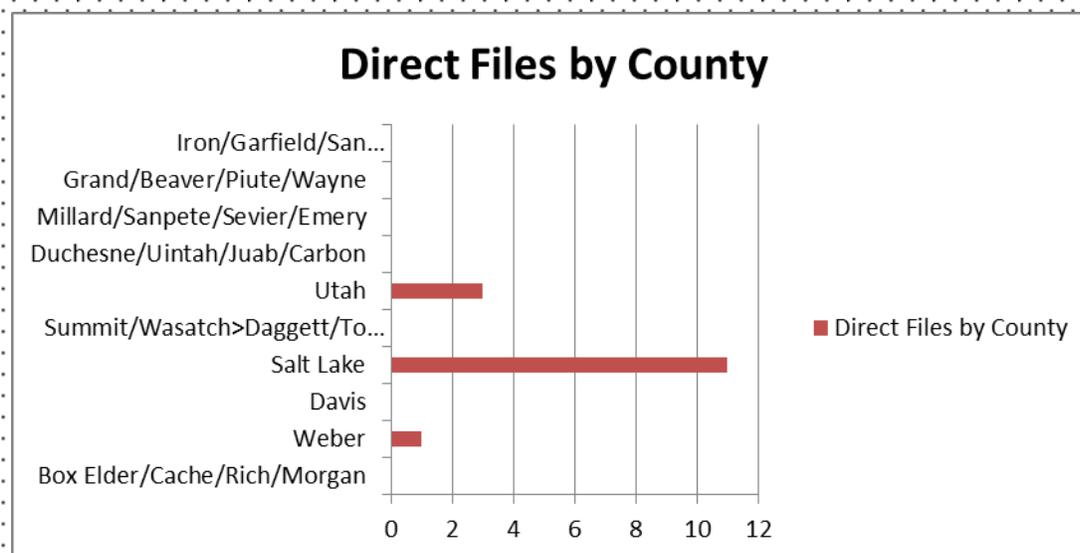
In collecting the data regarding the transfer of juveniles pursuant to the Certification and Serious Youth Offender statutes, it became clear that the majority of juveniles under District Court jurisdiction were actually there as a result of the Direct File process. Direct Files accounted for 32 of the 37 cases, or 82% of minors under District Court jurisdiction; whereas Serious Youth Offender Transfers accounted for 5 of the 37, or 13%; and Certification accounted for only 2 of the 37, or 5%.



<sup>2</sup> Statistical significance cannot be determined given the low number of total transfers.

The Direct File process had remained largely unchanged for decades and a more in-depth analysis of the underlying offenses and resulting sentences had not previously occurred. While the cases bound over under the Serious Youth Offender Statute had been analyzed previously and continue to be of concern, those cases are at least subject to an analysis by a Juvenile Court Judge. By contrast, the Direct File process accounts for the significant majority of juveniles under District Court jurisdiction and yet, those cases are not subject to any analysis by a Juvenile Court Judge.

Of the 32 Direct Files, those included in the 17 "other" category were not further examined, given that the statutory scheme accounted for the manner by which they were transferred to District Court. Specifically, the nature of the offenses charged and/or the prior exercise of District Court jurisdiction over the juvenile was apparent from the filings. Those included in the 15 "Post JJS Felony" Direct File category were then examined further. Only 3 of the 29 counties statewide accounted for all of the Post JJS Direct Files: Salt Lake (11); Utah County (3); and Weber County (1).

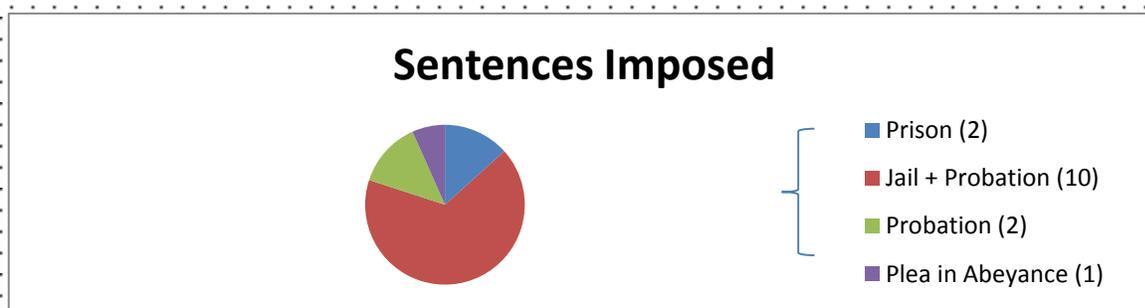


Specific data regarding Post JJS Felony charges which could have been filed in District Court (but were not) has not previously been tracked, as the statutory presumption ("shall") is such that charges would be presumed to be filed as a matter of course in District Court. Extrapolated data from JJS however, indicate that more than 30 felonies were allegedly committed by juveniles after confinement to a Secure Care facility (double the number actually filed). Informal responses from county attorneys who chose not to utilize the direct file statute in such situations indicated that the statutory process for Post JJS Felony Direct Filings was somewhat arbitrary and did not consistently represent the "habitual offender" generally assumed to be the target of the statutory Post JJS Felony Direct File process. A case by case analysis was more often utilized, taking into account the seriousness of the offense, the current rehabilitative needs of the juvenile, and services available in Juvenile Court which would not be available in District Court.

The nature of the Post JJS Felony Direct File offenses were then examined further: A total of seven of the fifteen offenses, or 47% were actually non-violent offenses: two (2) of which were filed in Utah county and five (5) of which were filed in Salt Lake County. Non-violent offenses included charges such as: theft, theft by receiving, joyriding, controlled substance possession, controlled substance distribution, and restricted person offenses. The limited resources in the adult criminal justice system are largely intended for violent offenders. Therefore, the use of such resources for juvenile non-violent offenders was of particular concern to the Sentencing Commission.

The sentences received for all offenders under District Court jurisdiction were then examined (which were under District Court jurisdiction through any of the three available paths: Certification, SYO or Direct File). A total of twelve (12) juveniles were located in O-track records through the Department of Corrections. Three (3) additional juveniles were located through District Court xChange records. Two (2) of the juveniles under District Court jurisdiction received a prison commitment, both of which were convicted of violent felonies. Ten (10) juveniles received a period of 0-180 days in jail and adult probation. Two (2) juveniles received straight probation with no jail time and one (1) received a plea in abeyance.

Aside from the prison commitments, both of which were for violent felony convictions, no clear distinction between the violent/non-violent nature of the offenses appeared to be determinative of the sentence imposed. For instance, of the three (3) **Utah County** cases, the two (2) non-violent offenses resulted in sentences of straight probation for one and 178 day jail commitment for the other. The one (1) violent offense resulted in a sentence of 180 days in jail with probation. The one (1) **Weber County** case was a violent offense and resulted in a prison commitment. Of the eleven (11) **Salt Lake County** cases, the five (5) non-violent offenses resulted in sentences ranging from straight probation, 5 days jail with probation, 90 days jail with probation, to 180 days jail with probation. The six (6) violent offenses resulted in sentences ranging from a plea in abeyance, completion of CATS with probation, 120 days jail, 250 days jail, to 730 days jail with probation. In all, 13 juveniles of the 15 under District Court jurisdiction, or 87% were sentenced to some form of probation, whereas 2 juveniles of the 15, or 13% were sentenced to prison.



The two (2) prison commitments were of special concern to SWAP, JJS, and Senator Osmond and were addressed in the section of the bill regarding the housing of juveniles under 18 upon a prison commitment. Of particular concern to the Sentencing Commission was that the large majority (87%) of juveniles transferred to District Court were ultimately placed on some form of adult probation. The ratio of offenders to agents in the adult system is much larger than in juvenile system. The purpose and philosophy underlying the juvenile court is one of Balanced and Restorative Justice. While both adult and juvenile probation services have the same underlying goal of reducing an offender's risk to commit future crimes, the Sentencing Commission's position was that juvenile probation services are generally more appropriate, more intensive, and more tailored to juvenile offenders than adult probation services. As such, the Sentencing Commission supported the amendments to the Direct File process as well as the Serious Youth Offender transfer process.

The Sentencing Commission was initially concerned with the potential for "net-widening" which could occur if a "prison commitment" in reality meant housing in a JJS facility after adjudication in District Court. The underlying philosophy behind transferring a juvenile to adult court seemed to intuitively call for a punishment consistent with adults who committed similar crimes. However, with the amendments to Direct File and the Serious Youth Offender process, the likelihood that the "net" would be widened was deemed less likely to occur than if the housing bill were passed in isolation.

Senator Osmond's concerns were not solely focused on the issues delineated above. Senator Osmond

was concerned regarding the entire process within the juvenile justice system, stemming partly from concerns related to the same case mentioned above. Senator Osmond's bill included the additional provisions establishing a presumption against shackling all juveniles and ensuring a knowing and voluntary waiver of counsel. Senator Osmond's initial proposal was quite broad, including a clearly defined presumption against shackling in all cases and requiring a knowing and voluntary waiver in all cases.

The Administrative Office of the Courts objected to the firm presumption against shackling, as it would infringe upon the authority of the judiciary to conduct proceedings. A compromise was ultimately reached to allow for exceptions through the establishment of Judicial Rule. The Administrative Office of the Courts and the Utah Association of Counties also objected to the appointment of counsel in all cases where a liberty interest existed, as such a requirement would significantly impact the number of hearings required to be conducted and the fiscal impact on counties to provide counsel in all cases with a liberty interest at stake would be unduly financially burdensome. Initial data provided by the Administrative Office of the Courts indicated that delinquency cases included 2,147 contempt offenses; 957 status offenses; 3,254 misdemeanor offenses; and 267 felony offenses. A compromise was ultimately reached given the concerns of the AOC and UAC to require a knowing and voluntary waiver of counsel for felony offenses only. While several would have preferred to include more than just felony offenses, without further resources to accommodate more than the 267 felony offenses, all entities reached consensus on this issue as well.