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# **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

**2nd Edition**

**Submitted to the Utah Sentencing Commission, May 1995**

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**Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**  
**Executive Summary**

### **Executive Summary**

In Utah there has been a considerable amount of concern regarding the response to child sexual abuse. In the 1980's, child advocacy groups initiated laws that made it a crime for not reporting child sexual abuse if a person had reason to believe that it had occurred. Similarly, legislation (House Bill 209 or HB 209) was passed in 1983 that created mandatory minimum sentences for those convicted of sexual offenses against children. If an individual was convicted of one of these crimes and did not meet stringent requirements for a probation exception, they would be sentenced to prison for a "mandatory minimum" term of 10 years. The term could be 5 years if mitigating circumstances existed or 15 years if there were aggravating circumstances. The judge was required to impose one of these terms, and the Board of Pardons and Parole could not release earlier than the minimum time.

The severity of these sentences and the lack of flexibility to address exceptional cases has caused them to be criticized in some circles. The Utah State Sentencing Commission had determined to study mandatory minimum sentencing and to make recommendations to the 1996 legislature.

However, in the 1995 general session of the legislature, a surprise bill (Senate Bill 287 or SB 287) surfaced in the closing minutes. It eliminated the mandatory provisions of the law. It passed with very little debate. Advocacy groups were angered and became very vocal. The Governor let the bill become law without signature and then quickly called a special session of the legislature to delay the effective date of the law for one year, so that the Sentencing Commission could thoroughly study it. What was anticipated to be a fairly low key study was catapulted into a very prominent position surrounded by considerable emotion.

During the emotional response to SB 287, many assertions were made about what impact would occur and statistics were bantered about that were questionable. In addition, many questions were raised for which there were no immediate answers.

This report was crafted in an attempt to provide sound information and a common frame of reference for discussants' reaction. There may be those who disagree with the content or the conclusions reached. Such disagreement is welcome since this report is preliminary. The information and conclusions are certainly subject to modification and refinement as the study continues. Reaction, feedback, and suggestions are encouraged.

The report was built around a series of questions that seemed to be most frequently raised. The questions were framed as they were typically asked, not taking into account how easily they might be answered by research. These questions, with a very brief response to each, follow:

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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**Question** *How would repeal of mandatory minimum sentences affect the reporting of sex offenses?*

The simple answer to this question is that we do not know. The answer would be very dependent on what laws, policies, and practices were to replace mandatory minimum sentencing.

The research staff's informed opinion is that repeal of mandatory minimum sentencing would not have a major impact on reporting. Reporting rates increased dramatically from 1983 to 1992, but have seen a substantial drop in 1993 and 1994. When HB 209 created mandatory minimum sentences in 1983, Utah and the nation were experiencing a dramatic shift in correctional philosophy from a rehabilitative model to a punishment and public protection model. This shift in philosophy may be a significant factor in explaining an increased reporting rate. Currently, correctional philosophy appears quite stable.

**Question** *How would repeal of mandatory minimum sentences effect the rate of sex offending?*

Again, the simple answer is that we do not know. Child sexual abuse has been, and continues to be a hidden crime. Frequently, it is not reported. Studies suggest that approximately one-third of all females are sexually abused prior to turning 18. Similar studies suggest that one-tenth of males are sexually abused. The number of reported cases of child sexual abuse in Utah increased from 611 in 1983 to 2,444 in 1992. It is doubtful that passage of the law increased the incidence of abuse. Most likely, a climate was created that encouraged a greater sensitivity to the problem as well as a greater likelihood to report.

**Question** *What relationship exists between victims and sex offenders?*

Three different data sources show that in a large percent of the cases, child sex abuse victims know the perpetrators. Family members make up a large portion of the perpetrators with brothers, fathers, step fathers, and uncles being the largest groups, respectively. Female relatives are also abusers.

**Question** *How many victims do sex offenders have before they are caught?*

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## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Executive Summary

Again, the simple answer is that we do not know. Several prominent academic studies, as well as Utah specific data, suggest quite different answers. The answers appear to be very dependent on the population being studied. Chaffin (1994) suggested that every program ought to explore the characteristics of its offender population and make policy appropriate to the population.

We do know that some sex offenders have many victims. Such offenders are often characterized as "fixated pedophiles," meaning that they have a strong sexual interest that is limited to children of specific ages or characteristics. Other offenders may have normal sexual interest in adult members of the opposite sex, but also have sexual attraction to children. Usually these offenders have far fewer victims, and in some instances may have a single victim or incident, seemingly initiated by stress or some unusual circumstance.

The reader is cautioned against the use of "mean" or "average" data when discussing sex offenders. If one examined 10 sex offenders and found 9 had one victim and one had 31 victims, the "mean" would be four victims. The conclusions drawn would be quite erroneous.

**Question** *How were judges sentencing sex offenders prior to the passage of HB 209 in 1983?*

A comprehensive table is included within the report that itemizes the changes in the Utah Code Annotated made by House Bill 209 (HB 209). There were no specific child sex offenses in the code before 1983.

**Question** *What do we know about the characteristics of sex offenders?*

Those reported for child sexual abuse cover a wide range of ages. Teenagers account for the single largest group with those in their 30's being the next largest group. Most other types of crime would have a much higher percentage in their 20's. Several studies suggest that in up to 50% of those with paraphilias interest in the sexual misbehavior started as teenagers. In 70% of the cases, no weapon was used in offenses that appeared chargeable as a mandatory minimum case.

**Question** *What do we know about the modus operandi of sex offenders?*

Most commonly the offender is a family member of the victim. Baby sitters are also quite common offenders. Often the offender is polite or seductive. In about one-quarter of the cases where the offender is sentenced to corrections, the offender threatens the victim. Looking at those arrested for sexual offenses, about 30 percent reported that a weapon was used.

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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### **Executive Summary**

**Question** *Are there more plea agreements when offenses carry mandatory minimum sentences?*

We were unable to answer this question directly due to the lack of appropriate data. Most felony cases are resolved by plea agreement. This is also true of child sexual abuse cases. Prosecutor's seem to generally agree that mandatory minimum sentences give them a powerful tool to use in plea negotiations. Not infrequently, the bargain involves removal of the mandatory provisions.

It is difficult to convict offenders for child sexual abuse. This occurs for a variety of reasons. For instance, children often make poor witnesses. In some cases family members are not cooperative. Of 100 substantiated cases of child sexual abuse, 60 were adults and 40 were juveniles. Of the 60 adults, only 20 were prosecuted. Seventeen of the 20 plead guilty. There were three trials, of which two offenders were found guilty.

**Question** *What is happening to Utah Corrections as a result of sex offenders?*

Assuming that it costs \$25,000 per year to house a sex offender and assuming the typical sentence of 10 years in prison, the decision to incarcerate an offender costs \$250,000. Of course there are also major financial and emotional costs when reoffense occurs.

Since passage of HB 209 in 1983 until May of 1995, it appears that 266 sex offenders have been sentenced to prison under the mandatory provisions of the law. The most common charge of conviction was sexual abuse of a child (28%), followed by sodomy upon a child (27%), aggravated sexual assault (20%) and rape of a child (17%).

The time sex offenders serve in prison has more than doubled since 1983. Those who are sentenced under mandatory minimum provisions do serve somewhat longer than those sentenced under indeterminate provisions, but the numbers have increased dramatically for both groups.

The number of sex offenders in the total prison population has increased from about 7% in 1983 to 26% in 1995. This is a result of both an increased number of sex offenders being sentenced and the more than doubling of the length of time they serve. The average length of stay for 1st degree sex offenders increased from 35.7 months for those released in 1985 to 86.6 months for those released in 1994. The number of persons being admitted to prison for 1st degree sex offenses has dropped since HB 209 was enacted while the number being admitted for 2nd and 3rd degree sex related felonies has increased.

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Of the 266 offenders that have been sentenced on mandatory minimum sentences, 34 have been paroled, five have died in prison, three were released by the courts, and one sentence was terminated.

**Question** *Does it make sense to attempt to classify sex offenders?*

There appear to be many different types of sex offenders. These range from the fixated pedophile with many victims, to aggressive rapists and street criminals that also offend sexually, and to people with quite normal sexual orientation who may have abused on only one occasion during a time of stress.

Prentky and Knight (1991) have probably done the most work on classification of sex offenders. They suggest that it can be done, and that it has great implication for anticipating requirements for public protection and for planning treatment programs.

**Question** *How effective is treatment in reducing recidivism?*

This is one of the most intriguing questions in the report. Almost everyone strongly agrees that treatment is critical and should be mandated and provided. There is general agreement that recidivism rates are suppressed while offenders are actively involved in treatment, that thinking errors can be corrected, that victim empathy can be increased, that social skills can be improved, that offenders can receive a sexual education, and that they can be taught to understand their cycle of abuse and learn ways to interrupt that cycle to prevent relapse. Also drugs can reduce sexual drive and fantasies.

Research in this area is still not a mature undertaking and much remains to be learned. Many studies show positive results. However, to date the most rigorous research suggests little long range difference in recidivism between offenders who receive treatment and those who do not. Still, those programs that provide treatment and evaluate its outcome offer the best hope for progress in dealing with sex offenders.

**Question** *How frequently do sex offenders recidivate?*

To recidivate is to relapse into former patterns of behavior. Unfortunately, the concept is clouded because there are a variety of ways to measure it. For example, it could be argued that for one convicted of rape, a second rape conviction would be recidivism. But it could also be argued that a conviction for a new sex offense would constitute recidivism, or for that matter, any new

offense or a violation of the technical conditions of parole or probation such as using alcohol or violating curfew.

Another important factor in recidivism is the length of follow-up. If a case is only followed up for six months, the likelihood of recidivism is much less than if it is followed up to 10 years. Many will jump to the conclusion that differences in recidivism rates between programs are mostly a function of the program. Most research to date suggests that differences are more a function of the types of offenders in the program. As a general rule, the programs with the lowest recidivism rates will be those with the lowest risk offenders.

For example, Intermountain Specialized Abuse Treatment Program reports a recidivism rate of 3 percent by asking the Division of Family Services and the Department of Public Safety to look for new offenses. The Bonneville Sex Offender Treatment Program reports a recidivism rate of 6 percent for those who successfully complete their treatment program. However, nearly 50% do not complete the program, but are reincarcerated for either a new offense or violation of the conditions of their parole.

Unlike most other types of offenders whose likelihood of recidivism declines dramatically with age, sex offenders are more likely to reoffend at any age. However, sex offenders appear to recidivate at lower rates than most other types of offenders.

# **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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## **Elements of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

The table that follows summarizes changes made by the Utah Legislature to the Utah Criminal Code in 1983 with the implementation of House Bill 209. This analysis compares the Utah Criminal Code as it stood in 1982 with the Utah Criminal Code from 1983. The table also includes changes made since 1983 to several sex offense statutes.

### **Changes made in the Utah Code Annotated regarding sex offenses between 1981 and 1983.**

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- ✓ In exception to the standard in the penal code where attempted offenses are normally reduced one degree, attempts to commit the following 1st degree felony offenses remain 1st degree felonies: child kidnaping, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, sexual abuse of a child, and aggravated sexual assault. Other attempted 1st degree felonies become 2nd degree felonies.
  
- ✓ Kidnaping becomes a 2nd degree felony from a 3rd degree felony.
  
- ✓ The offense of child kidnaping is created which carries a mandatory minimum sentence of 5, 10, or 15 years. It appears that kidnaping of a child before 1983 would qualify as aggravated kidnaping, thus it was already a 1st degree felony.
  
- ✓ The definition of aggravated kidnaping was added to include intent to commit certain sex offenses. It is no longer a capital offense, but is still a 1st degree felony offense with a mandatory minimum sentence of 5, 10, or 15 years.
  
- ✓ Rape becomes a 1st degree felony from a 2nd degree felony.
  
- ✓ The offense of rape of a child is created which carries a mandatory minimum sentence of 5, 10, or 15 years. Rape of a child before 1983 was already a 1st degree felony.
  
- ✓ The offense of object rape is created which is a 1st degree felony.

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### **Sexual Abuse Act of 1983**

- ✓ The offense of object rape of a child is created which is a 1st degree felony with a mandatory minimum sentence of 5, 10, or 15 years.
- ✓ Forcible sodomy becomes a 1st degree felony from a 2nd degree felony.
- ✓ The offense of sodomy upon a child is created which carries a mandatory minimum sentence of 5, 10, or 15 years. Sodomy upon a child before 1983 was already a 1st degree felony.
- ✓ Forcible sexual abuse applies only if the victim is 14 years of age or older, and it becomes a 2nd degree felony from a 3rd degree felony.
- ✓ The offense of sexual abuse of a child is created which is a 1st degree felony and carries a mandatory minimum sentence of 3, 6, or 9 years.
- ✓ Aggravated sexual assault carries a mandatory minimum sentence of 5, 10, or 15 years.
- ✓ The offense of sexual exploitation of a child is created which is a 2nd degree felony.
- ✓ The offense of lewdness involving a child is created as a class A misdemeanor, as opposed to plain lewdness which remained a class B misdemeanor.

### **Changes made to sex offenses between 1983 and 1994**

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- ✓ The rape section applies whether or not the actor is married to the victim.
- ✓ Sexual abuse of a child becomes a second degree felony, from a first; however, aggravated sexual abuse of a child, which meets the previous definition of sexual abuse of a child, is created as a first degree felony with a mandatory minimum sentence of 3, 6, or 9 years.
- ✓ The section on circumstances in which there is no consent from the victim was reworked and expanded.

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## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

### **Offense Related Issues**

- ✓ A list of conditions were added that must be satisfied before an offender can receive probation or a suspended sentence with the commission or attempted commission of one of the sex offenses involving a child.
  
- ✓ The offense of gross lewdness is further defined and is created as a class A misdemeanor, as opposed to lewdness which is a class B misdemeanor.

It is clear from these comparisons that many other changes were made to sex offense statutes other than creating mandatory minimum sentencing. Abolishing the mandatory minimum penalty structure would leave in place many other changes that were made in 1983. Most of the mandatory minimum sentences were attached to sexual offenses against children.

### **Offense Related Issues**

#### **What Impact Would Repeal Have on Sex Offense Reporting?**

How would repeal of mandatory minimum sentences affect the reporting rate of sex offenses? How would repeal of mandatory minimum sentences affect the rate of sex offending? The answer to both of these questions is that we don't know. The answer would be very dependent on what laws, policies, and practices replace mandatory minimum sentences.

Mandatory minimum sentences for offenses against children were passed by the 1983 legislature during a time when Utah was moving away from the philosophy of corrections that permeated the late 1970's and early 1980's. During that period the emphasis was to minimize the use of incarceration and work with offenders in the community. That emphasis started to dissipate in about 1982, and since that time there has been a considerable shift. The prison population is more than six times larger than it was in 1975. Mandatory minimum sentences were introduced at a time when the trend in Utah, and throughout the nation, was to "get tough on crime". It is very difficult to isolate the impact of mandatory minimum sentences, other than to say that they dramatically accelerated this process. Currently correctional philosophy appears quite stable. Repeal of mandatory sentencing would likely not have major impact on reporting or offending. These seem more a function of public awareness and education.

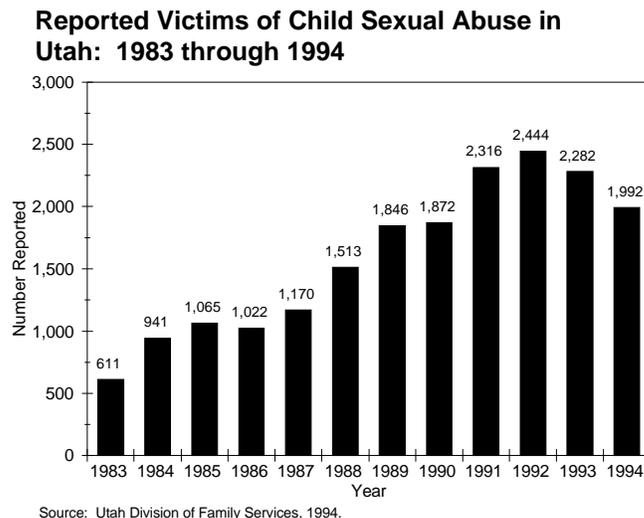
During the early 1980's there was great concern that sex offenses, and particularly sex offenses against children, were not being reported very frequently. A law was passed that made it a crime for anyone who had reason to believe that child sexual abuse had occurred and to not report it to law enforcement or child protective services. This law,

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### **Offense Related Issues**

and the social emphasis associated with it, certainly has dramatically impacted reporting. In this environment, mandatory minimum sentencing was associated with the increased emphasis on reporting.

There is general agreement that sex offenses, and particularly sex offenses against children, are frequently not reported (U.S. Department of Justice, 1992). As a result, increases in reporting may not reflect an increase in the number of sex offenses actually occurring. Many would agree that much of the fluctuation in the number of offenses reported in Utah is due to changes in willingness to report rather than dramatic changes in the amount of abuse actually occurring.



With this background in mind, the above figure shows the changes in the numbers of victims of child sexual abuse reported in Utah from 1983 to 1994 according to the Utah *Child Abuse Registry* maintained by the Utah Division of Family Services. No attempt has been made to speculate on what is associated with the decrease after 1992.

The magnitude of the problem is further emphasized by a variety of studies that estimate that approximately one-third of all females in our society are sexually abused prior to turning 18 years of age and one-tenth of all males are similarly abused. (*When the Victim is a Child*. 2nd Edition, U.S. Department of Justice, Office of Justice Programs. National Institute of Justice, 1992.).

It appears that even though we recognize child sexual abuse as a major problem, like an iceberg, a great deal of the problem is still not visible for our inspection.

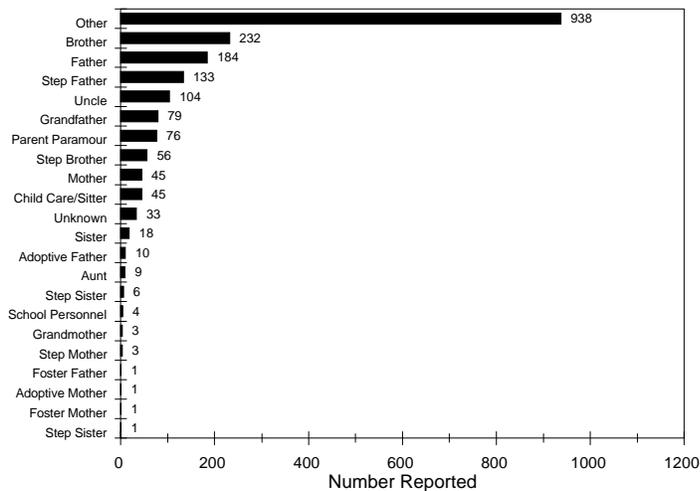
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## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Offense Related Issues

### What Impact Did HB 209 Have on the Number of Sex Offenses Committed in Utah?

It is very difficult to evaluate any reduction in sex offenses in Utah since crime rate information is obtained from reports of crime, rather than actual criminal events. The Utah Department of Public Safety Uniform Crime Reports Bureau gives ten year trends for nationally reported index crimes. Crime rate data is only reported for rape. Using 1994 Utah data on rape, we can see that the number and rate of rapes has doubled since the passage of HB 209 in 1983. In 1983, there were a total of 399 total rapes in Utah, a rate of .25 per 1,000 population. In 1994, there were a total of 786 rapes in Utah, a 97% increase. The 1994 rate was .41 per 1,000 population. Since growth in the state population cannot explain this increase, this could be a result of an actual increase in the rate of rapes or of an increased rate of reporting related to enhanced public awareness.

**Child Sex Offender Relationship to Victim: 1993**



Source: Child Abuse Registry, 1993

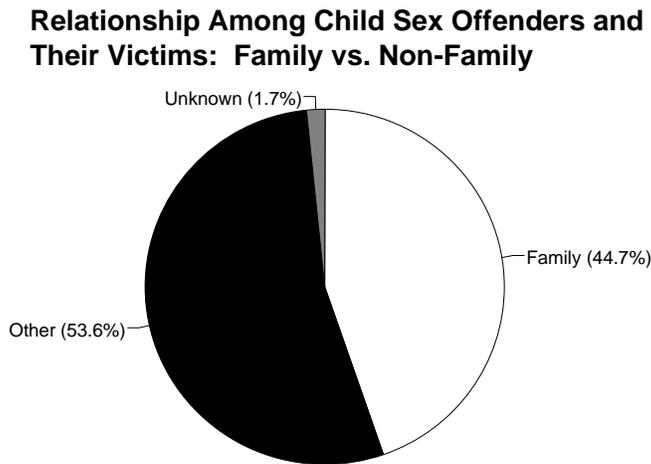
### Relationship Between Sex Offenders and Victims

What relationships exist between victims and sex offenders? Three different data sources show that in a large percent of cases, child sex abuse victims know their perpetrators. The two figures that follow show reported child sex abuse statistics from the Utah *Child Abuse Registry*.

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### Offense Related Issues

Family members make up a large portion of identifiable groups of child sex abuse perpetrators with brothers, fathers, step fathers, and uncles being the largest groups respectively. Female relatives are also found among the groups of perpetrators.

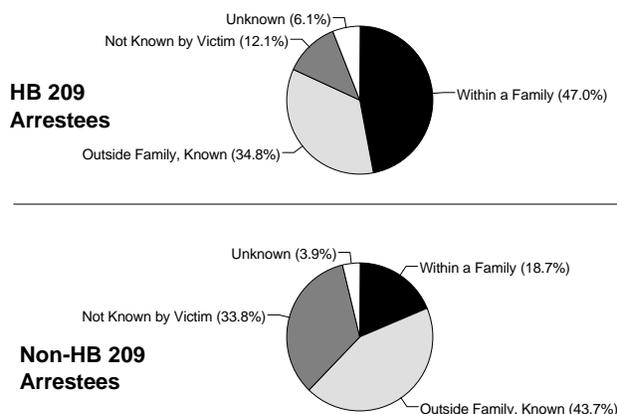


Source: Child Abuse Registry, 1993

The previous figure summarizes the first figure. Nearly half of the reported child sex abuse perpetrators were family members. Many of the perpetrators in the "Other" category are acquaintances.

From Incident System child sex perpetrator relationships victims as Abuse However, reported are an arrest

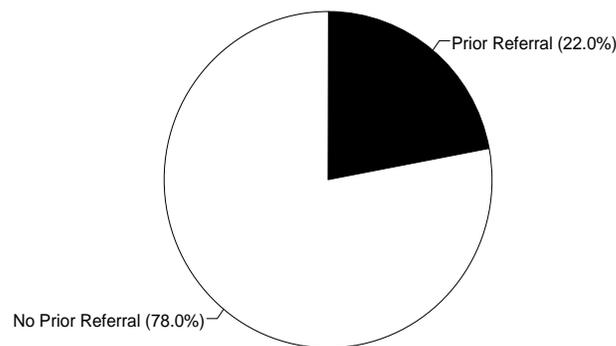
### Relationship of Victim to Arrestee in Eligible HB 209 Offenses and Non-HB 209 Person Felony Offenses



Utah's National Based Reporting (NIBRS) data set, abuse s have similar ps with their seen in the *Child Registry* data. instead of offenses, these offenses where was made.

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

**Prior Substantiated Referrals to the Utah Division of Family Services for Child Sexual Abuse**



Source: Utah Division of Family Services

From the total 936 offenders we identified in the data set, 131 (14%) were eligible HB 209 arrestees and 805 (86%) are other person felony arrestees. In this comparison, a much larger percent of the HB 209 offense victims are in a family situation with their

perpetrators (47%) compared to the other person felony offense victims (19%). These findings are similar to those identified in the *Child Abuse Registry*. This comparison also shows that in more than three-quarters of the cases, HB 209 victims know their perpetrators, and only a small percentage do not know their perpetrators. In one-third of the cases, the other person felony offense victims do not know their perpetrators.

From the *Sex Offender Registry* we were able to identify 153 sex offenders who were convicted of an offense that could carry a mandatory minimum sentence. Of these 153 offenders, 116, or 75.8%, either approached the victim through a family member or was a family member.

### **How Many Victims Does Each Sex Offender Have?**

How many victims do sex offenders have before they are caught? We do not know. However, Utah specific data and numerous academic studies reveal very different answers.

The *Child Abuse Registry* keeps track of those who are reported as perpetrators in child sexual abuse situations. Although about 22 percent of those reported as offenders have previously been reported, 78 percent have not. As a result, there is no documented reason to believe that the majority of those reported as perpetrators are previous offenders.

One of the most prominent studies was conducted by Abel, et. al. (1987). They recruited 561 male individuals to participate in the study. Abel described the numbers in his sample that had various types of paraphilia and the number of sex acts committed by those individuals. He found a large portion of his sample had multiple paraphilias. Many have used Abel's data as being descriptive of the sex offender population. This appears to be inappropriate.

Marshall, Barbaree, and Eccles (1991) reported on data obtained contemporaneously with Abel. The screening criteria for their sample did not require the paraphiliac diagnosis, only that the offender had been identified. The study confirmed that sexual

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

### **Prosecution/Court Issues**

interest in children for up to 40% of the sample began during adolescence. However, this study found a much lower mean number of victims than Abel reported (4.7 victims versus 19.8 victims for extra familial girl molesters; 3.3 victims versus 15 victims for extra familial boy molesters; and 1.4 victims versus 1.8 victims for intra familial girl molesters). These differences are substantial and have serious implications for policy at both the global and program level. Chaffin (1994) suggested that every program ought to explore the characteristics of its offender population and make policy appropriate to that population.

The use of the mean in describing sex offenders or their victims also presents some serious problems. If one examined 10 sex offenders and found 9 had one victim and one had 31 victims, the mean would be four victims. However, 9 of the 10 offenders only had one victim. In addition to means, researchers should report medians or modes when they more accurately describe the data set.

In the emotional rhetoric surrounding the controversy relating to mandatory minimum sentencing, statistics have been quoted that the typical "fixated pedophile" has over a hundred different victims. No information appears to currently be available that would suggest what percentage of a sex offender population would qualify as "fixated pedophiles", but most experts would agree that the number would be relatively small.

### **Age and Other Characteristics of Sex Offenders**

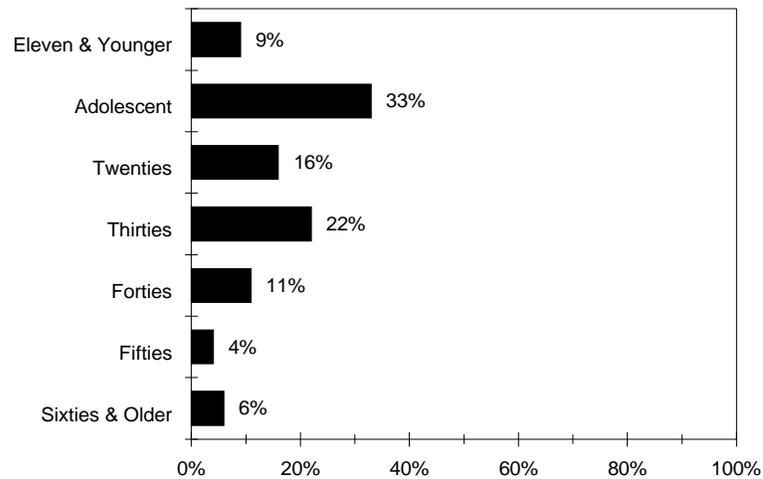
Obviously, we only know about sex offenders who are identified. Many cases are not reported, so we know little about them. The *Child Abuse Registry* contains the most comprehensive information in Utah.

Those reported for child sexual abuse cover a wide range of ages. Teenagers account for the single largest group with those in their 30's being the next largest group. Most other types of crime would have a much higher percentage of offenders in their 20's.

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### Age of Child Sex Abuse Perpetrators in Utah



Source: Utah Division of Family Services

Several studies (Abel, et. al., 1987, and

Marshall, et. al.) suggest that up to 50% of the offenders with paraphilias, interest in the sexual misbehavior, started as a teenager. The response to adolescent sexual perpetrators needs to be carefully considered.

One of the most prominent studies was conducted by Abel, et. al. (1987). Abel's sample ranged in age from 13 to 76 years old, with an average age of 31.5 years. The majority were moderately educated and 40% had completed at least one year of college. Two-thirds were working. They came from all socioeconomic levels and were generally representative of the ethnic groups in the general population where they lived. Approximately one-half were presently living with a woman or had been previously married.

Of the 561 male offenders evaluated, 53.6% reported the onset of at least one deviant sexual interest prior to age 18.

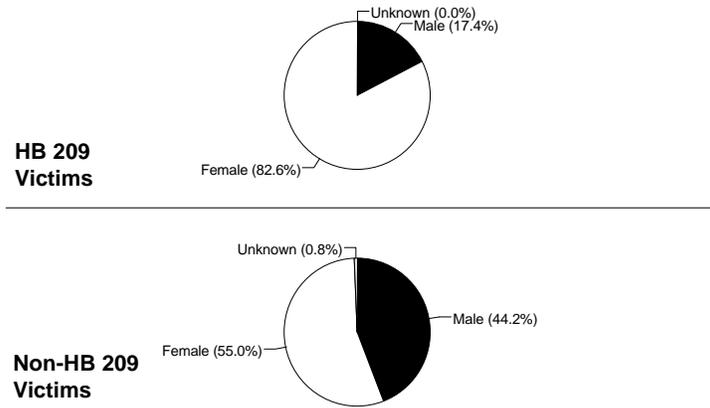
### National Incident Based Reporting System (NIBRS) Depiction of Sex Offense Arrestees

The figures that follow were developed from Utah's NIBRS system, representing 1994 data. The figures contain information regarding certain sex offense arrestees

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Offense Related Issues

(identified as HB 209 arrestees) compared with other person felony offense arrestees contained in the data set including non-mandatory minimum sex offenses, murder/non-negligent manslaughter, robbery, and aggravated assault (identified as non- HB 209 arrestees).

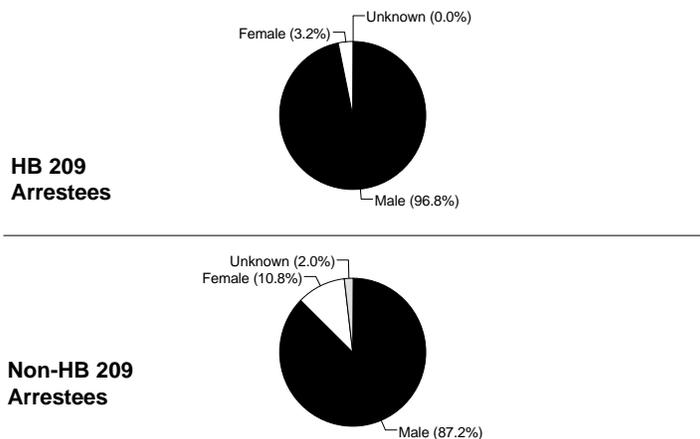
### Gender of HB 209 Victims & Non-HB 209 Victims



Source: Utah Department of Public Safety, 1995.

A larger eligible HB from the data compared to arrestees.

### Gender of Eligible HB 209 Arrestees & Non-HB 209 Person Felony Arrestees

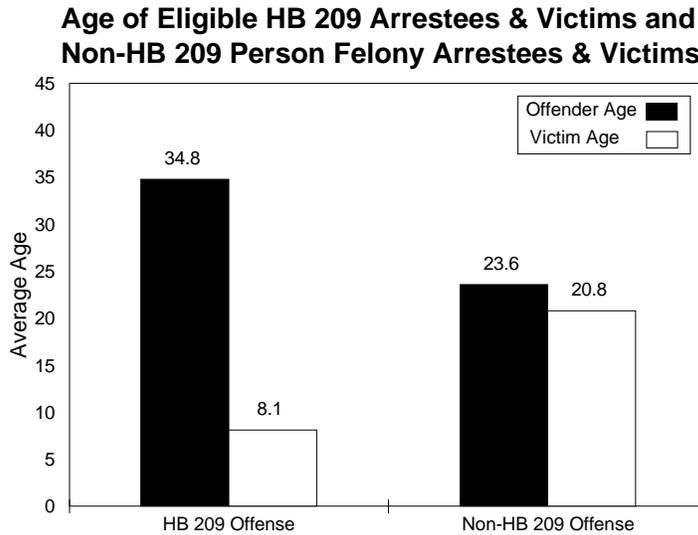


Source: Utah Department of Public Safety, 1995.

percent of the 209 arrestees set are male the non-HB 209

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Offense Related Issues

The gender of victims is quite between male and female and 55%. However, HB largely female compared to



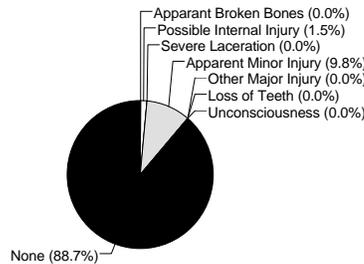
the non-HB 209 evenly split and female 44% respectively. 209 victims are (83%) male (17%).

Source: Utah Department of Public Safety, 1995.

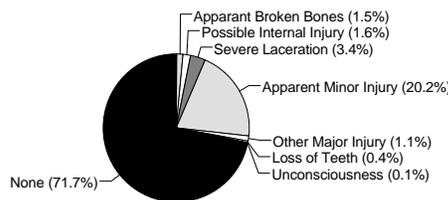
From this data HB 209 arrestees an average of 10 than the non-HB arrestees. HB appear to be younger than the victims. must keep in purposes of this had to identify 209 arrestees by victims who were of 14 (although offenses, aggravated kidnaping and aggravated sexual assault, could involve adult victims).

### Type of Physical Injury to Victim

#### HB 209 Offenses



#### Not HB 209 Offenses



Source: Utah Department of Public Safety, 1995.

set, eligible appear to be years older 209 209 victims much non-HB 209 However, we mind that for analysis we eligible HB selecting under the age two HB 209

## Analysis of Utah’s Child Kidnaping and Sexual Abuse Act of 1983 Offense Related Issues

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According to the NIBRS data set, a larger percent of HB 209 victims (88.7%) had no physical injury as compared to the non-HB 209 victims (71.6%). It appears that more serious physical injuries are found among the other person felony offenses as compared to the eligible HB 209 offenses.

**Table 1: Weapon Use in Sex Offense**

	Mandatory Offense		Non-Mandatory Offense	
	Number	%	Number	%
None	106	69.3%	1,788	85.1%
Knife/sharp instrument	18	11.8	45	2.1
Pistol	6	3.9	17	0.8
Assailant brought weapon	3	2.0	5	0.2
Ligature (wire, binding material)	2	1.3	4	0.2
Blunt instrument	1	0.7	3	0.1
Long gun	0	0.0	6	0.3
Weapon of opportunity	0	0.0	3	0.1
Other	8	5.2	28	1.3

Source: Utah Sex Offender Registry, 1995.

As seen in the table above, in most cases, for both mandatory and non-mandatory sex offenses, no weapon was used. When a weapon was involved, it was most likely to be a knife or other sharp instrument. Pistols were used, by comparison, infrequently.

In summary, we found HB 209 offenders are generally older than perpetrators of the other person offenders while their victims tend to be younger. The HB 209 victims are more likely to know their perpetrators, but are subject to less physical injury.

### Modus Operandi of Sex Offenders

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Offense Related Issues

The tables that follow contain data from the Utah *Sex Offender Registry*. Each table contains a comparison of the 153 individuals who have convictions for offenses that could carry a mandatory minimum sentence (identified as Mandatory Offense) and the 2,102 individuals who have convictions for offenses that do not carry a mandatory minimum sentence. The tables contain valuable insight into a variety of characteristics in sex offenses.

**Table 2: Sex Offender Approach to Victim**

	Mandatory Offense		Non-Mandatory Offense	
	Number	%	Number	%
Family member	116	75.8%	1,484	70.6%
Friendly approach/then grabs	41	26.8	153	7.3
Babysitter	38	24.8	250	11.9
Exposes himself/herself	31	20.3	282	13.4
Offers gifts or money	15	9.8	82	3.9
Meets victim at party, bar, etc...	13	8.5	133	6.3
Shows pornography (Commercial)	10	6.5	167	7.9
Breaks in	9	5.9	108	5.1
While walking, jogging, or playing	8	5.2	67	3.2
Loiters in area	7	4.6	41	2.0
Offers assistance	7	4.6	58	2.8
Follows and sneaks up from behind	6	3.9	14	0.7
Pretext of service	4	2.6	25	1.2
Knocks/rings at door	4	2.6	19	0.9
Shows pornography (Homemade)	3	2.0	19	0.9
Sits near bus, theater, home, etc...	2	1.3	4	0.2
Produces pornography	2	1.3	6	0.3
Offers job	2	1.3	36	1.7
From concealment, bushes, alley, etc...	2	1.3	46	2.2
Request assistance	1	0.7	19	0.9
Answers ad	0	0.0	5	0.2
Writes notes	0	0.0	6	0.3
Shows child pornography	0	0.0	19	0.9
Claims to be sent by parents	0	0.0	21	1.0
Poses as public official	0	0.0	4	0.2
Attacks victim in elevator	0	0.0	14	0.7
<b>Other</b>	<b>51</b>	<b>33.3</b>	<b>915</b>	<b>43.5</b>

Source: Utah Sex Offender Registry, 1995.

Note: Columns do not add up to 100 percent because offenders can exhibit a number of the identified characteristics.

The table above depicts the way in which the sex offenders approached their victims. It should be noted that each offender may exhibit more than one of the characterizations listed in this table and the following tables. It is clear that nearly three-quarters of the sex offenders approached their victims through a family member (victim was either a family member or offender got to know the victim through a family member). Many sex offenders approach the victim in a friendly manner and then grab them. Babysitters

**Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**  
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make up another large group of sex offenders. In many cases, the offender exposes him/herself to the victim or offers the victim gifts or money.

**Table 3: Sex Offender Conversation With Victim**

	Mandatory Offense		Non-Mandatory Offense	
	Number	%	Number	%
Threatens victim	38	24.8%	210	10.0%
Polite	20	13.1	291	13.8
Orders victim to be quiet	15	9.8	45	2.1
Talkative	13	8.5	577	27.5
Silent, makes no comment	11	7.2	390	18.6
Threatens to harm victim's children, family, etc.	10	6.5	88	4.2
Abusive language of victim	7	4.6	53	2.5
Ask victim about sex experiences	6	3.9	96	4.6
Indicates he knows victim	6	3.9	61	2.9
Obscene language during crime	6	3.9	47	2.2
Apologizes	5	3.3	100	4.8
Ask victim to meet again	3	2.0	37	1.8
Says he has been in jail or prison	3	2.0	6	0.3
Says he will return/returns	2	1.3	11	0.5
Demands jewelry	0	0.0	0	0.0
Demands money	0	0.0	3	0.1
Says he has raped or murdered	0	0.0	3	0.1
Reveals racial hostility	0	0.0	3	0.1
Other	13	8.5	215	10.2

Source: Utah Sex Offender Registry, 1995.

Note: Columns do not add up to 100 percent because offenders can exhibit a number of the identified characteristics.

The above table describes the sex offender's conversation with the victim. In the case of mandatory offenses, the offender often threatens the victim, orders the victim to be quiet, or threatens to harm the victim's family, etc.. In many other cases, the offender was polite and talkative in his/her conversation with the victim. In the case of non-mandatory offenses, the offender was likely to be either talkative or silent. More offenders were polite, and there appears to be less instances of threatening the victim.

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Offense Related Issues

**Table 4: Vehicle Involvement in Sex Offense**

	Mandatory Offense		Non-Mandatory Offense	
	Number	%	Number	%
No vehicle involved	88	57.5%	1,518	72.2%
Assaults victim in vehicle	17	11.1	154	7.3
Unknown	11	7.2	95	4.5
Forces victim to lie (sit) on floor or seat	3	2.0	4	0.2
Jumps into victim's vehicle	3	2.0	5	0.2
Lures victim to or into his vehicle	2	1.3	27	1.3
Hitchhiker (assailant or victim)	2	1.3	3	0.1
Forces victim into own car	2	1.3	1	0.0
Forces victim into assailant's vehicle	2	1.3	3	0.1
Stops victim's car on highway	1	0.7	1	0.0
Approaches from vehicle	1	0.7	10	0.5
Demands transportation after crime	1	0.7	0	0.0
Parks car and follows on foot	1	0.7	4	0.2
Revolving red lights/siren	0	0.0	0	0.0
Disables victim's vehicle	0	0.0	0	0.0
Carries victim into vehicle	0	0.0	3	0.1
Causes accident	0	0.0	0	0.0
Happens after victim parks vehicle	0	0.0	21	1.0
Tells victim vehicle is disabled	0	0.0	3	0.1
Follows victim's vehicle	0	0.0	4	0.2
Hides in victim's vehicle	0	0.0	1	0.0
Exposes from vehicle	0	0.0	28	1.3
Other	3	2.0	91	4.3

Source: Utah Sex Offender Registry, 1995.

Note: Columns do not add up to 100 percent because offenders can exhibit a number of the identified characteristics.

The table above indicates that most frequently no vehicle is involved in either mandatory or non-mandatory sex offenses. When a vehicle was involved, in both groups of offenses, the vehicle is used as the location of the sexual assault.

**Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**  
**Offense Related Issues**

**Table 5: Offender Treatment of Victim**

	Mandatory Offense		Non-Mandatory Offense	
	Number	%	Number	%
Removes victim's clothing	58	37.9%	436	20.7%
Victim attacked with hands/feet	11	7.2	86	4.1
Forces victim into concealment	10	6.5	34	1.6
Victim thrown to ground	10	6.5	67	3.2
Battery to breast	9	5.9	31	1.5
Victim grabbed around neck-choked	7	4.6	37	1.8
Victim kidnaped	6	3.9	8	0.4
Victim gagged	6	3.9	8	0.4
Battery to buttocks	6	3.9	19	0.9
Victim tied, bound	5	3.3	18	0.9
Grabs with hand over mouth	5	3.3	36	1.7
Rips/tears victim's clothing	5	3.3	23	1.1
Attempts to kill victim	3	2.0	0	0.0
Covers victim's head (blanket, etc..)	3	2.0	15	0.7
Other battery (sexual implication)	2	1.3	42	2.0
Victim stabbed	2	1.3	3	0.1
Torture (any form)	1	0.7	6	0.3
Victim beaten with weapons	1	0.7	9	0.4
Victim blindfolded	1	0.7	4	0.2
Victim handcuffed	1	0.7	5	0.2
Cuts victim's clothing	0	0.0	4	0.2
Victim killed	0	0.0	1	0.0
Victim suffocated	0	0.0	4	0.2
<b>Other</b>	<b>32</b>	<b>20.9</b>	<b>804</b>	<b>38.2</b>

Source: Utah Sex Offender Registry, 1995.

Note: Columns do not add up to 100 percent because offenders can exhibit a number of the identified characteristics.

In both mandatory and non-mandatory offenses, the offender most frequently removes the victim's clothing. The other most common actions sex offenders take against their victims include attacking with hands or feet, forcing the victim into concealment, throwing the victim to the ground, battery to the breast, and choking.

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Offense Related Issues

**Table 6: Sex Acts Committed by Offender**

	Mandatory Offense		Non-Mandatory Offense	
	Number	%	Number	%
Plays with victim's genitals	91	59.5%	1,359	64.7%
Disrobes him/herself	58	37.9	478	22.7
Lies on top of victim	57	37.3	317	15.1
Lifts or raises victim's clothing	55	35.9	681	32.4
Fondles or sucks breasts	55	35.9	832	39.6
Vaginal intercourse	53	34.6	350	16.7
Sexual penetration fellatio to assailant	53	34.6	251	11.9
Inserts finger into vagina or rectum	49	32.0	505	24.0
Sexual penetration cunnilingus to victim	44	28.8	298	14.2
Rubs genitals against victim	32	20.9	304	14.5
Anal sex	31	20.3	137	6.5
Licks	30	19.6	151	7.2
Forces victim to masturbate offender	26	17.0	368	17.5
Places genitals between victim's legs	25	16.3	236	11.2
Masturbates	24	15.7	270	12.8
Sexual penetration fellatio to victim	21	13.7	160	7.6
Place victim on lap	16	10.5	143	6.8
Other oral perversion to victim	16	10.5	48	2.3
Forces victim to masturbate him/herself	13	8.5	104	4.9
Photographs victim during/after offense	10	6.5	47	2.2
Forces victim to disrobe assailant	7	4.6	14	0.7
Intercourse canine position	7	4.6	36	1.7
Uses lubricant on victim	7	4.6	38	1.8
Inserts foreign object into vagina	6	3.9	26	1.2
Bites	6	3.9	17	0.8
Other oral perversion to offender	6	3.9	35	1.7
Sexual penetration cunnilingus to assailant	5	3.3	26	1.2
Cleans him/herself (or attempts)	4	2.6	17	0.8
Cleans victim (or attempts)	3	2.0	12	0.6
Shows/uses contraceptives	3	2.0	15	0.7
Other non-penile penetration	3	2.0	23	1.1
Unable to achieve erection	2	1.3	12	0.6
Request help in accomplishing sex act	2	1.3	21	1.0
Engages in sodomy/animals	2	1.3	8	0.4
Inserts foreign object into rectum	2	1.3	11	0.5
Forces victim to engage in sodomy/animals	1	0.7	7	0.3
Takes souvenir	1	0.7	3	0.1
<b>Other</b>	<b>13</b>	<b>8.5</b>	<b>268</b>	<b>12.7</b>

Source: Utah Sex Offender Registry, 1995.

Note: Columns do not add up to 100 percent because offenders can exhibit a number of the identified characteristics.

This final table depicts the sex acts committed by the offender. Again, it is important to know that each offender may have committed several different sex acts on each victim. It is clear that

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Prosecution Issues

perpetrators engage in many different sexual acts with their victims. It is also clear that mandatory minimum offenders were involved with greater frequency in a greater variety of sex acts with their victims.

**Table 7: Offenses by Location Type (Where Offenses Took Place)**

Location Type	HB 209 Offense		Non-HB 209 Offense	
	Number	Percent	Number	Percent
Air/Bus/Train Terminal	0	0.0%	1	0.1%
Bar/Night Club	0	0.0%	5	0.6%
Church/Synagogue/Temple	0	0.0%	2	0.2%
Commercial/Office Building	0	0.0%	1	0.1%
Construction Site	1	0.8%	3	0.4%
Convenience Store	0	0.0%	4	0.5%
Department/Discount Store	1	0.8%	0	0.0%
Drug Store/Doctor Office/Hospital	0	0.0%	4	0.5%
Field/Woods	2	1.5%	38	4.7%
Government/Public Building	1	0.8%	5	0.6%
Grocery/Supermarket	0	0.0%	7	0.9%
Highway/Road/Alley	2	1.5%	129	16.0%
Hotel/Motel/Etc.	1	0.8%	6	0.7%
Jail/Prison	0	0.0%	10	1.2%
Lake/Waterway	0	0.0%	1	0.1%
Parking Lot/Garage	1	0.8%	41	5.1%
Rental Storage Facility	0	0.0%	1	0.1%
Residence/Home	113	85.6%	424	52.7%
Restaurant	0	0.0%	5	0.6%
School/College	3	2.3%	52	6.5%
Service/Gas Station	0	0.0%	2	0.2%
Specialty Store	0	0.0%	1	0.1%
Other/Unknown	7	5.3%	62	7.7%

Source: Utah Department of Public Safety, 1995.

From our data set it appears that nearly all HB 209 offenses occur in the home, with the next most prevalent locations being school/college, field/woods, and highway/road/alley. The locations of the non-HB 209 offenses are more diverse. Again, most, though not nearly as large of a percent, occur in the home. Similarly a large percent occur in the following locations: highway/road/alley, school/college, parking lot/garage, and field/woods.

### Prosecution Issues

Are there more plea agreements when offenses carry mandatory minimum sentences? Are there differences among Utah's regions? What effect would repeal have on charging patterns? We were unable to answer this question directly. The court's data system cannot identify reduction in original charges due to a plea agreement. It was determined that in order to answer this question directly, we would have to go to

## Analysis of Utah’s Child Kidnaping and Sexual Abuse Act of 1983

### Prosecution Issues

original case files, and even then problems exist. This would be a time intensive project that has not been undertaken to date.

### Mandatory Minimums’ Impact on Plea Bargaining

The information that follows should not be considered a depiction of plea bargaining in sex offense situations. The *Sex Offender Registry* contains both the original charged offense and the offense of conviction. By comparing these two situations, we can see instances where an offender was eventually convicted of an offense of “less severity” than the offense initially charged. This does not necessarily mean the offense was “bargained” down.

We were able to classify the charged offense and convicted offense for 2,255 offenders from the *Sex Offender Registry* as mandatory or non-mandatory offenses. The table that follows depicts comparisons of the charged offense and the convicted offense among these sex offenders.

**Table 8: Number and percent of sex offenders charged/convicted of mandatory and non-mandatory sex offenses**

	Number	Percent
Charged with mandatory minimum offense	688	30.5%
Charged with a non-mandatory minimum offense	1,567	69.5%
Convicted of a mandatory minimum offense	153	6.8%
Convicted of a non-mandatory minimum offense	2,102	93.2%

Source: Utah Sex Offender Registry, 1995.

This table indicates that nearly one-third of the offenders in our data set were charged with an offense that could carry a mandatory minimum sentence and over two-thirds of the offenders were charged with an offense that does not carry a mandatory minimum sentence. Of the same group, only seven percent were convicted of an offense that could carry a mandatory minimum sentence. The remaining 93% were convicted of offenses that do not carry mandatory minimum sentences.

Of the 688 offenders in the data set that were charged with an offense that could carry a mandatory minimum offense, 144 (or 20.9%) were convicted of an offense that could carry a mandatory minimum offense. The remaining 544 (or 79.1%) of the offenders who were charged with an offense that could carry a mandatory minimum sentence were convicted of an offense that does not carry a mandatory minimum sentence.

We do know that mandatory minimum sentences removes discretion from the Board of Pardons and Parole. They cannot release offenders before the minimum sentence has

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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### **Prosecution Issues**

been served. It also removes discretion from the courts. A judge cannot sentence certain offenders to probation (unless the offender meets very stringent criteria) and must impose a minimum term if an offender is convicted of specified offenses. Almost all of the discretion is transferred to the prosecutor who determines the penalty by determining what elements of an offense are prosecuted. Prosecutors admit using the "stick" that mandatory minimum sentences provide them in seeking guilty pleas or plea bargaining to lesser offenses. Cases resolved by a guilty plea involve less time for all concerned, eliminate potentially difficult testimony for child victims, and greatly reduce the likelihood of an appeal in these difficult cases. Approximately 90 percent of all felony cases in Utah are resolved by a guilty plea (Utah Department of Corrections, 1995). However, it is very difficult to identify how much plea negotiation is involved.

The following chart illustrates the flow of 100 typical cases once Utah Child Protective Services has found that there is reason to believe that abuse actually occurred. Of 100 such cases, 20 were referred to adult court and 18 to juvenile court. Five offenders were sentenced to prison and one to youth corrections. Two offenders were placed in the State Hospital. Sixty two of the cases were not found suitable for prosecution. This figure suggests the difficulties inherent in a criminal justice response that pivots on proving guilt beyond a reasonable doubt in a court of law. From this study, we see that in nearly 70% of the cases formal sanctions are not being exercised.

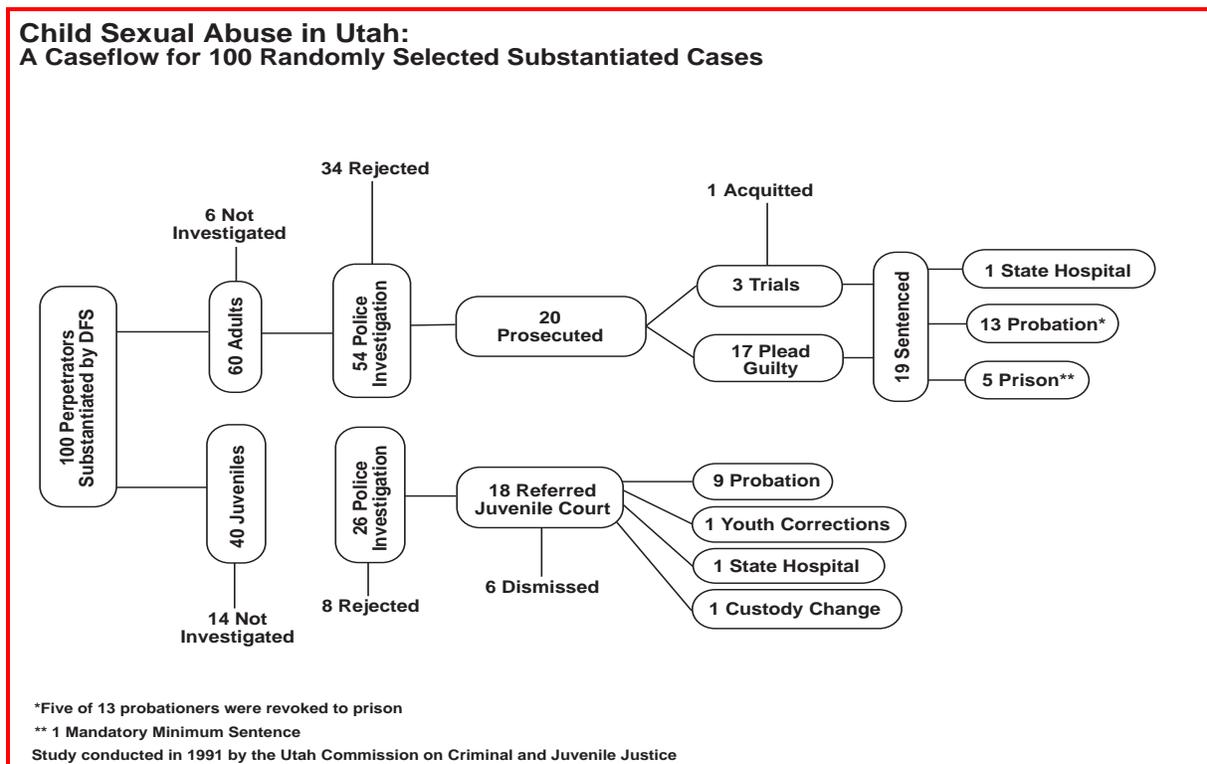
# Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

## Sentencing Issues

### Sentencing Issues

#### Sex Offenders Sentenced to the Utah Department of Corrections

The sex offenders supervised by the Utah Department of Corrections provides another perspective. These sex offenders can be divided into three groups: 1) offenders with mandatory minimum sentences for sex offenses against children; 2) offenders sentenced for the same sex offenses against children who did not receive mandatory minimum sentences (sentences for these offenders are an indeterminate 0 to 5 years, 1 to 15 years, or 5 years to life depending upon the degree of the offense); and 3) offenders sentenced for sex offenses which do not carry a mandatory minimum under



any circumstance. The following table shows how many of these offenders are under corrections' supervision.

**Table 9: Sex Offenders Under the Supervision of the Department of Corrections**

	Inmates	Parolees	Probationers
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## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Sentencing Issues

Mandatory sentence for sex offense against children	232 (29.5%)	31 (8.6%)	1*(.1%)
Non-mandatory sentence for sex offense against children**	327 (41.6%)	216 (59.7%)	465 (56.6%)
Other sex offenses	228 (29.0%)	115 (31.8%)	355 (43.2%)
<b>TOTAL NUMBER OF SEX OFFENDERS</b>	<b>787 (39.9%)</b>	<b>362 (18.4%)</b>	<b>821 (41.7%)</b>

Source: Utah Department of Corrections, May 4, 1995.

\*Note: This probation case was originally sentenced to prison. The court reversed the original sentence and placed this offender on probation.

\*\*Note: These are offenses which carry a mandatory minimum sentence under some conditions. Some of these cases were sentenced prior to 1983 when the statute was enacted.

### Comparing Mandatory Minimum Offenders to Other Offenders

As part of the original development of sentencing guidelines in the early 1980's, the Utah Department of Corrections developed a risk assessment scale to determine an offender's risk based on a set of objective criteria. In 1986, an evaluation of the risk assessment scale determined that the risk assessment had predictive validity. Offenders who later committed another felony had original risk scores which were almost twice as high as offenders who committed no further crimes.

The risk assessment contains the following elements:

- |   |   |
|---|---|
| <input type="checkbox"/> Age at first arrest              | <input type="checkbox"/> Alcohol use problems |
| <input type="checkbox"/> Prior juvenile record            | <input type="checkbox"/> Attitude             |
| <input type="checkbox"/> Prior adult arrests              | <input type="checkbox"/> Address change       |
| <input type="checkbox"/> Correctional supervision history | <input type="checkbox"/> Family support       |
| <input type="checkbox"/> Supervision risk                 | <input type="checkbox"/> Assault              |
| <input type="checkbox"/> Percent of time employed         | <input type="checkbox"/> Total Risk Score     |

**Table 10: Risk Element Comparison Between Mandatory Minimum Sex Offenders and Other First Degree Sex Offenders, Other First Degree Person Offenders, and the General Inmate Population, 1995**

	Mandatory Minimum Offenders	Other 1st Degree Sex Offenders	1st Degree Person Offenders	Total Other Prison Population
Average age	35.20	33.86	28.76	30.04
Total incarcerations	1.37	1.33	1.62	1.61
Total arrests	5.43	5.41	7.53	9.38
Total convictions	3.64	3.65	4.67	6.02
Percent completing high school	59.6%	54.4%	41.5%	44.0%
Percent married	28.4%	26.6%	15.0%	18.3%
Percent male	98.7%	100.0%	96.5%	95.1%
<b>TOTAL RISK SCORE</b>	<b>24.39</b>	<b>24.13</b>	<b>28.20</b>	<b>24.64</b>

Source: Utah Department of Corrections, May 4, 1995.

## **Analysis of Utah’s Child Kidnaping and Sexual Abuse Act of 1983**

### **Sentencing Issues**

As the table above indicates, sex offenders sentenced under mandatory minimum legislation tend to be older than both the general inmate population and other 1st degree person and sex offenders. These mandatory minimum sex offenders have fewer total incarcerations than 1st degree person offenders and the general prison population. However, mandatory minimum sex offenders and other first degree sex offenders have very similar arrest and conviction histories.

It appears from these scores that sex offenders sentenced under HB 209 have similar risk scores as other first degree sex offenders and the general incarcerated population. All three of these groups have much lower risk scores than first degree person offenders.

### **Number of Mandatory Minimum Prison Sentences**

As stated previously, there are six different mandatory minimum prison sentences. These include 3, 6, or 9 years to life for aggravated sexual abuse of a child, with 6 years being the assumed sentence. The sentence can be reduced to 3 years with mitigating circumstances or increased to 9 years with aggravating circumstances. All of the other first degree mandatory minimum offenses carry 5, 10, or 15 year to life sentences, with 10 years being the assumed sentence and 5 years given with mitigating circumstances or 15 years with aggravating circumstances.

The following table shows the number of each type of mandatory minimum prison commitment given in Utah since the legislation was passed in 1983.

**Table 11: Utah Commitments to Prison for Mandatory Minimum Offenses**

Year	Aggravated Sexual Abuse of a Child			Other Mandatory Minimum Offenses			Total Commits
	3 Years	6 Years	9 Years	5 Years	10 Years	15 Years	
1983	1	0	0	0	2	1	4
1984	3	2	1	7	6	1	20
1985	3	2	1	10	5	3	24
1986	4	2	1	8	9	4	28
1987	4	1	0	5	11	4	25
1988	1	5	1	4	8	5	24
1989	2	7	2	8	5	5	29
1990	2	3	0	10	8	1	24
1991	1	2	0	3	10	5	21

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1992	0	1	2	6	8	4	21
1993	6	2	2	8	3	1	22
1994	2	4	1	6	3	8	24
Total Commits	29	31	11	75	78	42	266

Source: Utah Department of Corrections, May 4, 1995.

From both groups of mandatory minimum offenses, it appears more offenders receive either the assumed sentence or the mitigated sentence. Less frequently do the offenders receive the aggravated sentence.

If these 266 offenders were released as soon as they had completed their *minimum* time, they would have spent a total of 2,157 years in prison. The total prison operating cost to house these offenders would exceed \$45 million, with an estimated construction cost of \$13 million for an additional facility to account for growth in the incarcerated population.

**Types of Offenses for Which Mandatory Minimum Prison Sentences Were Imposed**

The total number of mandatory minimum sentences since the enactment of HB 209 is 266. The following table lists the type of mandatory minimum offense and the number of offenders sentenced under each offense type since May of 1983. The most common mandatory minimum sentences are for sexual abuse of a child and sodomy upon a child while object rape of a child and child kidnaping occur quite infrequently.

**Table 12: Type of Offense Committed by Mandatory Minimum Offenders**

Offense	Number of Offenders*	Percent of Total Mandatory Minimum Offenses
Sexual Abuse of a Child	74	27.8%
Sodomy Upon a Child	72	27.1
Aggravated Sexual Assault	54	20.3
Rape of a Child	46	17.3
Aggravated Kidnaping	16	6.0
Object Rape of a Child	2	0.8
Child Kidnaping	2	0.8

Source: Utah Department of Corrections, May 4, 1995.

\*NOTE: This data does not include 1995 commitments.

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

### **Sentencing Issues**

#### **Court District's Commitments to Prison for Mandatory Minimum Offenses**

The following table lists the court districts in Utah which sentenced each of the 266 mandatory minimum offenders between May of 1993 and December of 1994.

**Table 13: Number and Percent of Mandatory Minimum Prison Commitments From Each Court District in Utah**

Court	Number of Mandatory Minimum Commitments	Percent of Total Mandatory Minimum Commitments	Percent of Total Prison Commitments
1st District	32	12.0%	5.0%
2nd District	89	33.5	27.5
3rd District	61	22.9	42.6
4th District	38	14.3	10.3
5th District	18	6.8	6.3
6th District	5	1.9	2.5
7th District	19	7.1	3.4
8th District	4	1.5	1.7

Source: Utah Department of Corrections, May 4, 1995.

As the table above illustrates, the percent of mandatory minimum commitments sentenced out of each court district is not the same as the total percent of prison commitments from each court district.

For example, the 2nd District accounts for 33.5% of all the mandatory minimum commitments since May of 1983, while they generally sentence 27.5% of the total prison commitments. The 3rd District sentenced 22.9% of the total number of mandatory minimum commitments since May of 1983, while sentencing over 42% of the total prison commitments.

The number of mandatory minimum commitments is so small that these differences may not be meaningful.

#### **Probation Sentences for Sex Offenses Against Children**

The next table lists the number of offenders sentenced to probation after being convicted of a sex offense against a child from May 1983 through December of 1994. Remember that in the first degree category, the non-attempted offenses are mandatory minimum offenses.

It should be noted that the original 1983 legislation includes eligibility for an incest exception to the mandatory sentence. However, offenders must meet a number of eligibility requirements prior to the court granting probation. It is important to note that several not-attempted first degree sex offenses received a probation sentence where,

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Sentencing Issues

generally, a mandatory minimum prison sentence was required. However, most of the probation sentences for child sex offenders were in the second and third degree felony range.

**Table 14: Probation Sentences for Sex Offenses Against Children**

Year	First Degree		Second Degree		Third Degree	
	Not Attempted	Attempted	Not Attempted	Attempted	Not Attempted	Attempted
1983	1	0	1	0	0	0
1984	6	0	15	0	0	5
1985	0	2	29	2	3	16
1986	5	2	41	2	10	25
1987	3	2	48	1	6	50
1988	3	9	52	2	5	32
1989	1	3	50	2	8	40
1990	3	5	66	5	7	36
1991	3	4	77	3	4	53
1992	2	8	81	2	8	58
1993	2	8	88	9	13	73
1994	5	3	65	4	12	49
<b>TOTAL</b>	<b>34</b>	<b>46</b>	<b>613</b>	<b>32</b>	<b>76</b>	<b>437</b>

Source: Utah Department of Corrections, May 4, 1995.

Of offenders convicted of a first degree (not attempted) sex offense against children, 89% went to prison between 1983 and 1994. Of the first degree person offenders, 75% were sentenced to prison between 1988 and 1994.

### Expected Outcomes from Mandatory Minimum Sentencing

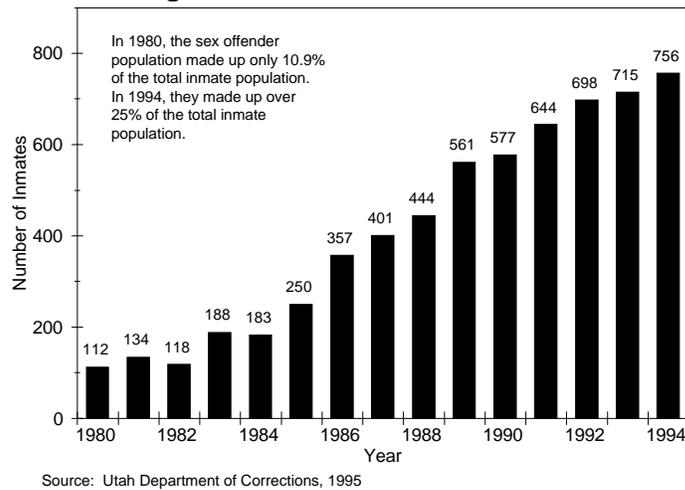
What has been the impact on Corrections from HB 209 in terms of original intent and unexpected outcomes? Have we incarcerated more sex offenders and has the length of stay increased? The following list identifies some of the possible purposes of passing HB 209 and creating mandatory minimum sentences for certain child sex offenders:

- ▣ Incarcerate more sex offenders

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Sentencing Issues

- ▣ Hold sex offenders in prison for longer periods of time

**Utah Sex Offender Inmate Population:  
1980 through 1994**



It is clear from that if the legislation was purpose of more sex has been actual number in prison has

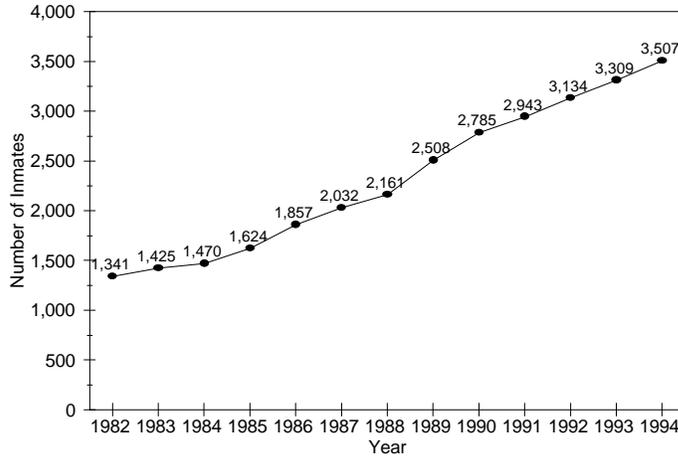
almost six times since 1980. Today, 25% of the inmate population is in prison for a sex offense, requiring over 750 of the available beds.

the figure above original passed for the incarcerating offenders, then it successful. The of sex offenders increased by

# Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

## Sentencing Issues

**Utah Average Daily Prison Population: 1982 through 1994**

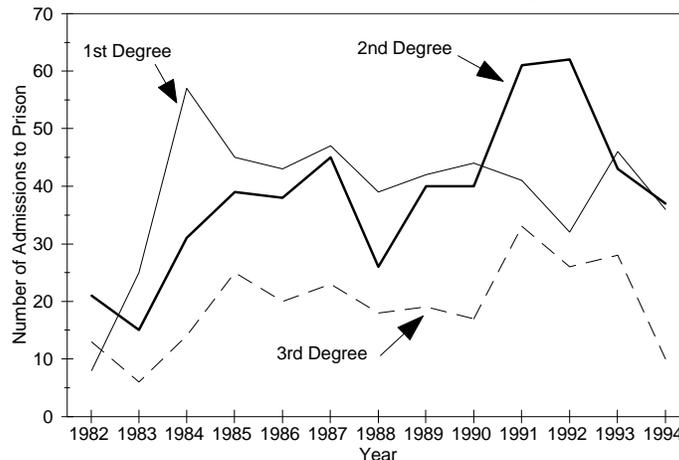


Source: Utah Department of Corrections, 1995

The total incarcerated population in Utah has grown by over 162% since 1982. As shown previously, the sex offender prison population has grown by over 575% since 1980.

There has been a suggestion that growth in the incarcerated sex offender population is just a result of overall “get tough on crime” posture of law enforcement, the legislature and the community. However, growth in the number of sex offenders has exceeded growth in the general inmate population, suggesting that getting tough on crime alone does not explain the growth in the sex offender population.

**Number of 1st, 2nd, and 3rd Degree Sex Offenders Admitted to Prison in Utah: 1982 through 1994**

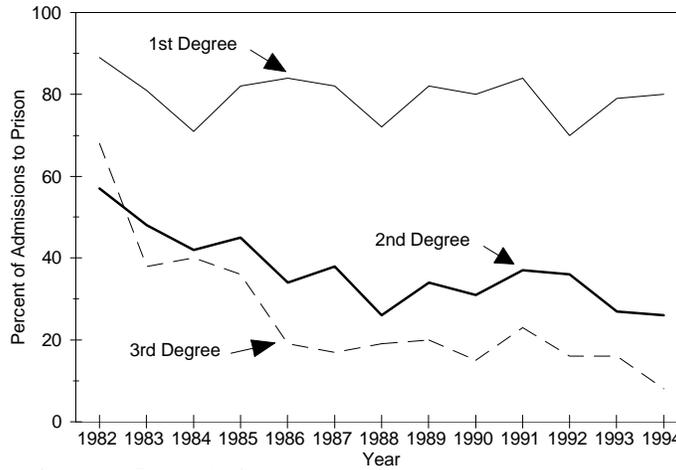


Source: Utah Department of Corrections, 1995

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Sentencing Issues

The number of 1st degree sex offender admissions to prison has actually decreased since 1985, while the number of 2nd degree sex offender admissions to prison has continued to increase over the same period of time.

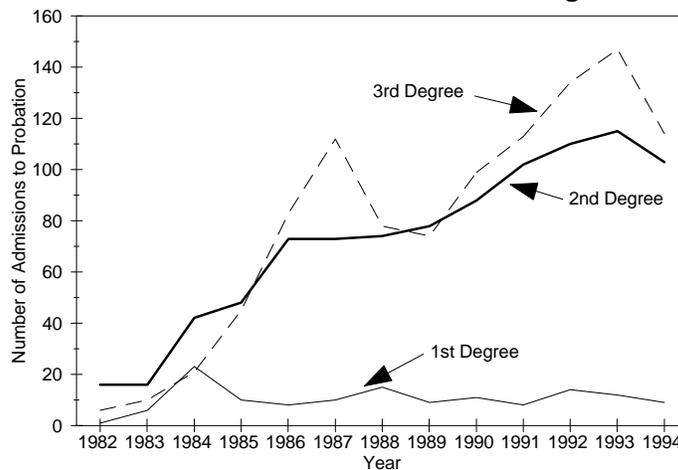
**Percent of 1st, 2nd, and 3rd Degree Sex Offenders Admitted to Prison in Utah: 1982 through 1994**



Source: Utah Department of Corrections, 1995

Since the passage of HB 209, the percent of first and second degree sex offense convictions which result in a prison commitment has not increased. Information on admissions is difficult to interpret since HB 209 reclassified a large number of sex offenses from 3rd to 2nd degree or 2nd to 1st degree.

**Number of 1st, 2nd, and 3rd Degree Sex Offenders Admitted to Probation in Utah: 1982 through 1994**



Source: Utah Department of Corrections, 1995

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Board of Pardons and Parole Issues

It is clear that many more sex offenders are being sentenced to probation than in the early 1980's. A much larger percent of 2nd and 3rd degree sex offenders now receive probation sentences than before passage of HB 209.

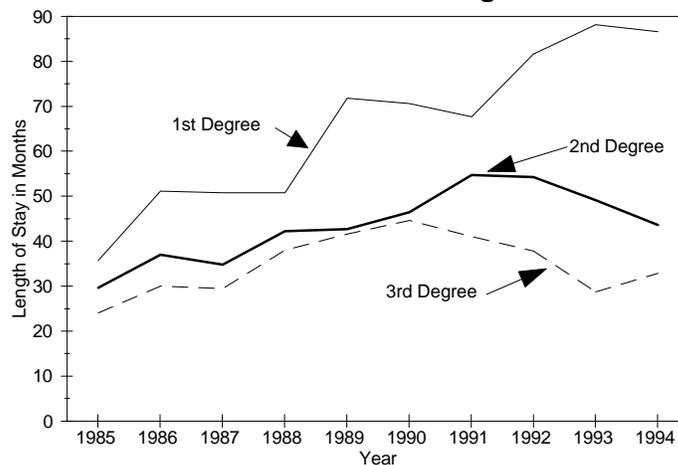
If the purpose of HB 209 was to incarcerate more sex offenders, it has been successful. If the purpose was to incarcerate a larger *percent* of the total sentenced sex offender population, this has not been achieved.

### Board of Pardons and Parole Issues

#### Release Length of Stay for Sex Offenders

Because of its indeterminate sentencing system, in Utah the Board of Pardons and Parole determines the length of stay for incarcerated offenders. Length of stay for first degree sex offenders has increased from 35.7 months for offenders released in 1985 to 86.6 months for 1994 releases, an increase of 142%. Length of stay for second degree sex offenders has increased from 29.6 months for 1985 releases to 43.6 months for 1994 releases, 47%. Length of stay for third degree sex offenders has increased from 24.0 months for 1985 releases to 32.8 months for 1994 releases, an increase of 37%.

**Release Length of Stay for 1st, 2nd, and 3rd Degree Sex Offenders in Utah: 1985 through 1994**



Source: Utah Department of Corrections, 1995

Since 1985, the average length of stay for first degree sex offenders has been increasing at a rate of 5.58 months per year. If this rate were to continue to the year

**Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**  
**Board of Pardons and Parole Issues**

2000, the average length of stay for first degree sex offenders would be 124 months, or 10.34 years. Since almost 50% of the first degree sex offenders have received minimum sentences of over nine years, the average length of stay for first degree sex offenders will continue to increase throughout the remainder of this decade.

Of the total number of first degree sex offenders currently incarcerated, 112 (48%) have minimum sentence lengths greater than 10 years.

**Time Served in Prison for Mandatory Minimum Offenders**

Only 61 of the 266 offenders sentenced under the mandatory minimum sentences have either been paroled (34) or received a parole date (27). None of the 42 offenders with a 15 year minimum have been paroled or have received a scheduled parole date.

**Table 15: Time Served in Prison for Offenders with Mandatory Minimum Sentences**

Minimum Sentence	Number of Offenders	Number Paroled or Scheduled for Parole	Average Time Served in Years
3 Years	29	15	5.54
5 Years	75	29	5.82
6 Years	31	7	6.94
9 Years	11	1	10.50
10 Years	78	9	11.92
15 Years	42	0	none scheduled
<b>TOTAL</b>	<b>266</b>	<b>61</b>	<b>not depicted*</b>

Source: Utah Department of Corrections, May 4, 1995.

\*Note: It would be deceptive to indicate a total average time served in years because very few of the offenders with long minimum sentences have been released. Therefore, any average depicted would seriously underestimate the actual average time served in years.

Only 22.9% of the 266 offenders given a mandatory minimum sentence have been paroled or scheduled for parole. It is clear that those being paroled are generally those offenders receiving the shorter minimum term, and these offenders are clearly serving at least the minimum term in prison.

Of the original number of offenders sentenced to prison with a mandatory minimum, the following have been released from prison:

- ▣ 34 Paroled
- ▣ 5 Died in prison
- ▣ 5 Released by the court after an appeal and terminated from all supervision
- ▣ 3 Released by the court after an appeal and placed on probation
- ▣ 1 Dismissed by court but held on another non-sex offense
- ▣ 1 Sentence terminated without parole

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

### **Classification Issues**

#### **Time Served in Prison for Mandatory Minimum Offenses Before and After Passage of HB 209**

In May of 1983, Corrections reported the average length of stay for offenders released since 1973. In the following table, this data is compared to the average release length of stay for offenders released between 1992 and 1994. Comparisons of the average release length of stay are made with the caveat that some of the numbers of offenders for certain offenses are small.

In several offense categories, offenses that did not exist in the 1983 study are grouped with offenses that are similar. For example, even though sexual abuse of a child did not exist prior to May of 1983, it would probably have been categorized as forcible sexual abuse.

**Table 16: Time Served in Prison for Mandatory Minimum Offenses Before and After Passage of HB 209**

Offense	1973-1983 Release Length of Stay	1992-1994 Release Length of Stay	Difference in Months
Aggravated Kidnaping	43.63 (n = 8)	118.01 (n = 3)	74.38
Aggravated Sexual Assault	39.13 (n = 24)	106.42 (n = 10)	67.29
Forcible Sexual Abuse/Sexual Abuse of a Child	25.03 (n = 29)	44.42 (n = 185)	19.39
Rape/Rape of a Child	34.65 (n = 43)	63.70 (n = 31)	29.12
Forcible Sodomy/Sodomy on a Child	35.77 (n = 18)	78.32 (n = 27)	42.55
TOTAL AVERAGE	33.99 (n = 122)	53.62 (n = 256)	19.63

Source: Utah Department of Corrections, 1995.

As depicted above, if the purpose of HB 209 was to increase the length of time a sex offender would serve in prison, it has been extremely successful. Sex offenders are staying in prison much longer today as compared to 1983.

### **Classification Issues**

It is almost impossible to find a representative sample of sex offenders to be able to generalize about their characteristics. Most programs do look at the characteristics of the offenders in their programs. As a general rule, they find that the offenders are broadly distributed through socioeconomic and racial groups. The nature of their crimes and their motivation to commit those crimes differ greatly as do their reactions to being identified as an offender. Some pose little threat and some pose great threat. There is probably more heterogeneity among sex offenders than most other offender groups, and much can be gained by classifying them for both decision making and treatment planning purposes.

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## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

### **Classification Issues**

The information presented above strongly suggests that sex offenders are not a very homogenous group. This raises questions regarding whether they can or should be classified for diagnostic or management purposes. The most comprehensive classification approach to date has been done by Knight and Prentky (1989, 1990, 1991, and 1994). They confront both practical and methodological concerns and use powerful statistical tools to help establish categories.

Knight and Prentky first concluded that those who rape or abuse adults should be put in a separate category from those who abuse children. Their second conclusion was that those who abuse children can be more easily subcategorized than those who sexually offend adults (mostly rapists in their population).

### **Classifying Child Molesters**

The first factor Knight and Prentky identified in classifying child molesters is the degree of sexual fixation the offender has on children. This can be inferred from answering such questions as: What is the offender's marital status? What is the offender's sexual history with adults? How does the offender respond to sexual stimuli as measured by the plethysmograph? Clearly, those who are fixated on children present different problems than those who are attracted to adults. Particularly those whose sexual encounter with a child is atypical, and may be related to stress or substance abuse, etc..

The next major factor Knight and Prentky identified was the amount of contact the offender had with children. Those who had a high amount of contact seemed to be seeking out opportunities while those who had low contact might even be trying to avoid a sexual encounter. Other factors that proved valuable to consider were the offender's social competence, whether the contact with the child was interpersonal or narcissistic, the extent of physical injury, and how sadistic the contact was. Based on these factors, Knight and Prentky established ten different categories of child sexual abusers, with each category having significant implications for supervision and treatment.

It is easy to appreciate that offenders with a low degree of fixation on children as sex objects pose a substantially lower risk than those with a high fixation. Their treatment needs would also differ dramatically. Similarly those with high social competence would generally pose less risk than those with low social competence. The second main concern regarding Knight and Prentky's classification is the amount of contact that those identified as offenders have with children, the meaning of that contact, and the amount of injury that occurred.

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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### **Treatment Issues**

Knight and Prentky's classification scheme for child molesters appears to be the most functional to date. Research will continue, and it is likely findings will be adopted for use in both classification and treatment planning.

### **Classifying Rapists**

Knight and Prentky found the rapists more difficult to categorize. Factors useful in classifying them include: poor social competence, impulsivity, content and frequency of sexual fantasies, sadistic fantasies and sexual arousal to the infliction of pain, irrational attitudes and cognitive distortions, the early association between dominance and sexual behavior, and use of alcohol.

Although there are some offenders that have incredibly high numbers of victims and offenses, as a general rule the recidivism rates for sex offenders as a whole are comparatively low. Unfortunately, Knight and Prentky's classification scheme has not as yet been equated to recidivism.

### **Classification and Prediction of Recidivism**

Forensic clinicians are increasingly asked to make assessments of dangerousness. For sex offenders, there is interest in establishing sexual predator laws that allow offenders to be confined until they no longer pose a risk. Past research has been nearly unanimous in concluding that clinicians cannot predict with great accuracy (Monahan, 1981, Quinsey & Ambtman, 1979, and Quinsey & Mcguire, 1986). One of the major problems has been that recidivism rates in most groups have been quite low, making the task of accurately identifying those that would reoffend much like finding a needle in a haystack. However, it now appears possible to classify sexual offenders into groups with comparatively high base rates of offending. Prediction seems much more viable once these groups are identified. Although this seems feasible, implementing this approach routinely has yet to be done.

### **Treatment Issues**

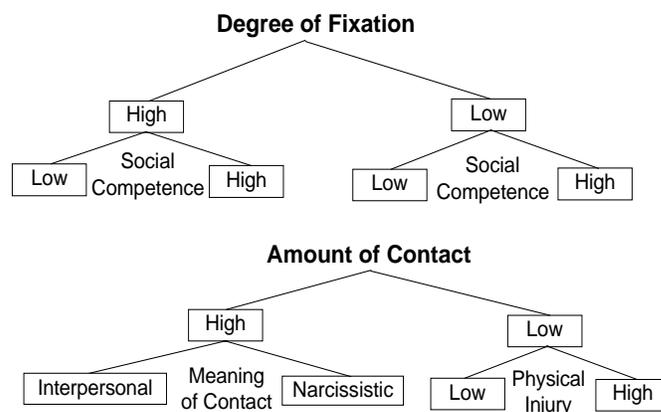
#### **Is Treatment Effective In Reducing Recidivism?**

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

Can sex offenders be treated effectively? What are the types of treatment available? This question is still debated heavily. In many ways the answer depends on how "effectively" is defined. There is general agreement that recidivism rates are suppressed while offenders are actively involved in treatment, that thinking errors can

be corrected, that victim empathy can be increased, social skills can be improved, that offenders can receive a sexual education, and that offenders can be taught to understand their cycle of abuse and learn ways to interrupt that cycle to prevent relapse. Also, drugs can reduce sexual drive and the frequency of fantasies. Still, the question of whether offenders can be "cured" once treatment is concluded is the most questionable.

The answer also depends in great measure on whom you listen to. There are about six programs currently being evaluated. However, the experimental rigor varies



Source: Knight and Prentky, 1991.

substantially between programs and the answer seems to be less optimistic as experimental rigor increases. Most serious researchers in this area agree that sex offender treatment is a young and rapidly evolving field, and that much more evaluation is needed. Several

suggest that more important questions are: "What treatment works, for what kind of offender, in what type of setting, and with what definition of success?" (Marques, Day, Nelson, and Miner 1993).

### **California's Relapse Prevention Program**

The best research to date probably comes from the Sex Offender Treatment and Evaluation Project, California's Relapse Prevention Program (Marques, Day, Nelson, and Miner 1989 and 1993). The treatment program began in 1985 and uses what is generally accepted as state of the art treatment methods including an emphasis on a "Cognitive-Behavioral Approach" and "Relapse Prevention."

All sex offenders are sentenced to the Department of Corrections. However, inmates who meet certain criteria can apply for transfer to Atascadero State Hospital when they are between 18-30 months of release. Qualifying volunteers are randomly selected to participate. Those not randomly selected constitute the control group in the research. Another control group consists of inmates who did not apply for the program, but who are matched on a number of variables. Released offenders will be followed up until the year 2000 with interim reports being issued on their recidivism.

The measure of success is no arrest for another sex offense or felony. The 1993 interim report looked quite positive, but, as the next figure shows, by 1994 there was little difference in the recidivism rates of the three groups.

### **Washington State Special Sex Offender Program**

The State of Washington has established a formal process for dealing with sex offenders. The program has undergone considerable evaluation by the Washington State Institute for Public Policy. One of the options is a prison-based sex offender treatment program located at the Twin Rivers Corrections Center. Qualifying inmates may volunteer to participate in the program that lasts from one to four years. Those successfully completing the program were compared with a comparable group of inmates who were released from Washington prisons during the same time period without treatment (Song and Lieb, 1995). Eleven percent of the treated inmates were rearrested for a new sex offender felony in contrast to twelve percent of the non-treated inmates. The small difference was not statistically significant.

### **Review of Earlier Programs**

Furby, Weinrott, and Blackshaw (1989) attempted a comprehensive review of published research on sex offender treatment and recidivism. They found seven studies that compared the recidivism rates of treated and untreated offenders. They noted that the recidivism rate was higher for treated offenders than non-treated

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

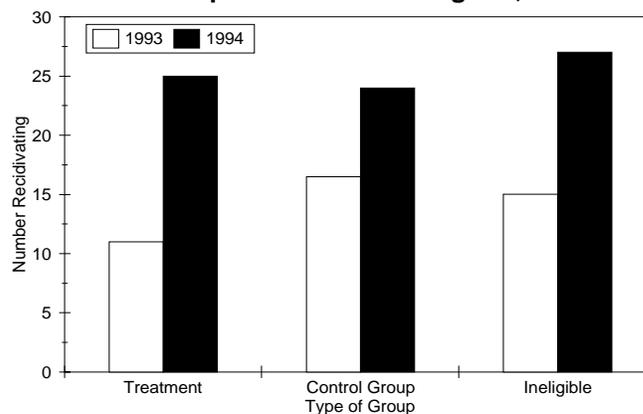
### Treatment Issues

offenders in six of the seven studies. They speculated that this was possibly because the treated offenders were monitored more closely. They also noted that in only one of the studies was there random assignment to treatment and non-treatment groups. In that study, there was no statistical difference between the two groups.

### Vermont Relapse Prevention Program

Vermont is another state that has established a structured approach to sex offender treatment and attempted to evaluate its impact. Treatment programs in Vermont focussed on teaching the offender to understand his own cycle of abuse and look for danger signs associated with relapsing back into the offense behavior. There has been effort to evaluate the success of this approach. The reviews have generally been quite positive, although the research does not utilize randomly assigned control groups (Freeman-Longo and Knopp, 1992).

**Sex Offender Treatment and Evaluation Project Results:  
California's Relapse Prevention Program, 1993 & 1994**



Source: Marques, Day, Nelson, and Miner, 1989 and 1993.

### Canadian Studies

One of the most optimistic researchers in the area of sex offender treatment is W.L. Marshall at Queens University. He is involved with

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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a sex offender treatment program that works with the Canadian prison system centered in Kingston, Ontario. Marshall emphasizes that sex offender treatment and research is a very young field. Marshall (1991) reviewed a number of studies (although none included a randomly assigned control group) and concluded that "sex offenders can be effectively treated so as to reduce subsequent recidivism" and that "comprehensive cognitive/behavioral programs and those programs that utilize antiandrogens in conjunction with psychological treatments seem to offer the greatest hope." This conclusion was challenged by Quinsey, Harris, Rice, and LaLumiere (1993) who criticized Marshall's approach and his conclusions. They noted the lack of comparability in control groups that are not randomly assigned and explained how differences in the groups tend to explain their differences in recidivism. They conclude, "lowering our standards of scientific rigor will backfire if it turns out that cognitive/behavior treatment has little salutary effect for sex offenders."

How important is it for offenders to admit committing the offense in order for treatment to be effective? It is very difficult for a treatment provider to pursue treatment unless the client acknowledges a problem. Laflen and Sturm (1994) take the position that at least some denial is normal, and that treatment programs accept all offenders and make working through the denial a continuing part of the treatment process. The one rigorous study that has been done found no difference in recidivism between those who accepted responsibility and those who denied responsibility for the offense. There is still much work to do in this area.

### **Treatment Summary**

Mark Chaffin (1994) reviewed the controversial opinions of researchers of sex abuse treatment and looked optimistically at the quality research being done in California at Atascadero State Hospital. Unfortunately, the most recent follow-up data suggests there were no significant long term differences in recidivism between treated and non-treated offenders.

We are learning that there are many differences among sex offenders and the dynamics associated with their offending. We are learning to classify them into categories that differentiate their likelihood of reoffending and suggest differential treatment. This appears to be an important area for future research.

### **Recidivism Issues**

What is the recidivism rate for sex offenders compared with other offenders? Corrections uses a three year period after parole to calculate recidivism statistics, to allow offenders time to commit new offenses or return to prison for a violation of parole conditions. Of sex offenders released since 1985, 312 have been out of prison for

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Recidivism Issues

three or more years, allowing the calculation of recidivism rates. Offenders can return to prison in two ways: with a new conviction or with a violation of parole conditions.

After the first six months, 15.1% of sex offenders have returned to prison. After the first 12 months, 21.5% have returned to prison; after 24 months, 31.1% have returned to prison; and after 36 months, 37.2% have returned to prison. Most of these returns are for violations of conditions of parole supervision, rather than a new conviction. After the first 12 months, 4.2% have returned with a new conviction; after 24 months, 8.7%; and after 36 months, only 10.6% of the 312 sex offenders have returned to prison with a new conviction. As shown in the following table, these recidivism rates for sex offenders are much lower than the recidivism rates for the general parole population.

**Table 17: Comparison of Rate of Return to Prison for Violations of Parole Conditions or for a New Offense for Sex Offenders and the General Parole Population**

Time From Release =>	12 Months	24 Months	36 Months
Paroled Sex Offenders	21.5%	31.1%	37.2%
General Parole Population	53.6	67.3	72.1

Source: Utah Department of Corrections, May 4, 1995.

Of special concern are the sex offenders who have returned to prison with a new conviction. Thirty three offenders were returned to prison within the three year follow-up. An additional five of the 621 total sex offenders who were released have been returned to prison at some time with a new conviction. The following three tables describe the recidivism of these 38 offenders.

Of the 38 offenders with an original commitment for a sex offense, 20 had another commitment for a sex offense. Since 1985, only 20 of the 621 (3%) sex offenders paroled from the Utah State Prison system have been returned to prison for another sex offense.

**Table 18: Original Offenses of Recidivists**

Offense	Degree	Number
Sodomy on a Child	1st	2
	2nd	1
Forcible Sodomy	2nd	5
Aggravated Sexual Assault	1st	4
	2nd	3
Forcible Sexual Abuse	2nd	2
	3rd	4
Rape	1st	2
	2nd	6

## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983 Recidivism Issues

Sexual Abuse of a Child	1st	1
	2nd	5
Incest	3rd	1
Other Sex Offense	3rd	1
Lewdness with a Child	Class A	1

Source: Utah Department of Corrections, May 4, 1995.

**Table 19: Second Commitment for Recidivists for Sex Related Offenses**

Offense	Degree	Number
Sexual Abuse of a Child	1st	2
	2nd	4
	3rd	3
Forcible Sexual Abuse	1st	1
	2nd	1
	3rd	1
Rape	1st	2
Sodomy on a Child	1st	2
Aggravated Sexual Assault	1st	1
Lewdness with a Child	Class A	3

Source: Utah Department of Corrections, May 4, 1995.

**Table 20: Second Commitment for Recidivists for Non-sex Related Offenses**

Offense	Degree	Number
Aggravated Kidnaping	1st	1
Possession of a Controlled Substance	3rd	1
	Class A	1
Burglary	3rd	1
	Class A	1
Weapons Violation	2nd	1
Theft	3rd	3
	Class A	1
Driving Under the Influence	Class B	2
Forgery	2nd	1
	3rd	1
Assault on a Peace Officer	1st	1
Battery	Class B	1
Public Intoxication	Class B	1
Aggravated Assault	Class A	1

Source: Utah Department of Corrections, May 4, 1995.

## Studies of Sex Offender Recidivism

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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### **Recidivism Issues**

To recidivate is to relapse into former patterns of behavior. Unfortunately, the concept is clouded because there are a variety of different ways to measure it. For example, it could be argued that for one convicted of rape, a second rape conviction would be recidivism. However, it could also be argued that a conviction for a new sex offense would constitute recidivism or, for that matter, any new offense or perhaps even a violation of the technical conditions of parole or probation, such as using alcohol or drugs or violating curfew. Other ways to measure recidivism include arrest, self-reported behavior, or victim reported behavior. It is important to define and understand what recidivism means in each setting, and not to compare apples with oranges since the definition greatly influences the rate.

Another important factor related to recidivism is the length of follow-up time. If a case is only followed up for six months, the rate is likely to be much lower than if it is followed up for 10 years. The length of time needs to be specified and care must be taken not to make inappropriate comparisons.

Many will jump to the conclusion that differences in recidivism rates between programs are mostly a function of the program. Most research to date suggests that it is more a function of the types of offenders in the program. As a general rule, the programs with the lowest recidivism rates will be those with the lowest risk offenders.

For example, Intermountain Specialized Abuse Treatment reports a recidivism rate of 3 percent when they gave a list of all of their clients to the Utah Division of Family Services to look for new reports of sexual abuse and to the Utah Department of Public Safety to look for new arrests. Their population consists largely of probationers, although they also work with parolees.

The Department of Corrections reports a recidivism rate of 6 percent for new sex offenses of those who complete the Bonneville Sex Offender Treatment Program. However, nearly 50 percent of those who participate in this program for sex offender parolees being released from prison are returned to prison for either a new offense or a violation of the conditions of their parole.

Song and Lieb (1995) found that 12 percent of the sex offenders released from the Washington State Prison sex offender treatment program were rearrested for a new sex offense within three years. Those who were selected for their sex offender treatment program had a rearrest rate for new sex offenses of about six percent after three years and 12 percent after seven years.

Furby, et.al. (1989) found that recidivism for sex offenders committing any new crime continued to increase to about 45 percent over 24 years of follow up. Most of the studies they consolidated involved offenders who had been incarcerated.

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## Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983

### Recidivism Issues

We do not have current recidivism rates for sex offenders placed on probation in Utah, but there is agreement that the rates of rearrest or other subsequent report of new offense will be very low.

Some suggest that official reports dramatically underestimate actual reoffense rates. There appears to be justification for this position. Weinrott & Saylor (1991) found that self-reports of behavior by offenders greatly exceeded official reports. Most of those studied were incarcerated in special sex offender treatment programs. There is reason to *suspect* additional offenses when assessing sex offenders, but it appears inappropriate to *assume* additional offenses.

Recidivism for sex offenders appears to follow quite a different pattern from other offenders. Most other offenders tend to recidivate within the first 18 months on probation or parole, and as they grow older, their rates of offending are greatly reduced. In contrast, sex offenders tend to do quite well for the initial years following their offense. As they complete treatment and are no longer closely supervised, their recidivism tends to increase. The most critical time appears to be about 3 years after release, but the likelihood of recidivism does not substantially decline as they grow older (Song & Lieb, 1995 , Firby, et.al., 1989, and Marques, 1994).

### General Factors Associated with Recidivism

The following list summarizes the research literature's depiction of recidivism among sex offenders:

- ▶ Rapists recidivate at a higher rate than child molesters. [Quinsey, et.al. (1995); Chaffin (1994); Song & Lieb (1995)]
- ▶ Offenders who molest non-familial child victims of the same sex recidivate at higher rates than other child molesters. [Quinsey, et.al. (1995); Able & Rouleau, (1989)]
- ▶ Offenders who molest non-familial child victims of the opposite sex recidivate at higher rates than those who molest family members. [Able & Rouleau (1989)]
- ▶ Incest offenders have comparative low rates of recidivism. [Able & Rouleau (1989)]
- ▶ Multiple convictions increase the likelihood of recidivism. [Quinsey, et.al (1995)]
- ▶ Those identified by a variety of means as psychopaths recidivate at higher rates. [Quinsey, et.al (1995)]

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### **Data Sources**

### **Data Sources**

This report attempted to utilize as many valuable data sources as possible. Data was collected from the reports made to law enforcement and protective services. Prosecution data was explored, but most prosecution data bases are not uniform or well established. In some instance's, prosecutors went back into their files and hand searched information. Court records were also explored. The new court data base is not yet operational, hindering the gathering of much information in this area. The literature was also thoroughly searched, and personal contact was made with prominent researchers in this field around the country and in Canada. The local data sources that provided the most information were:

#### **Offender-Based State Correctional Information System (OBSCIS)**

OBSCIS is Corrections' database that keeps track of information on all convicted offenders referred for Pre-sentence Investigation (PSI) or sentenced to Correction's supervision. It provides excellent demographic and crime information as well as recidivism data on all convicted felons and many misdemeanor offenders.

#### **Child Abuse Registry**

It is a crime for any person who has reason to believe that child sexual abuse has occurred not to report. All of these reports, including the information about the perpetrator and the victim, are kept in the child abuse registry.

#### **National Incident Based Reporting System (NIBRS)**

NIBRS is a new method of crime reporting used among some law enforcement jurisdictions in Utah. The system contains national standardized data elements collected by law enforcement and submitted to the FBI. Using this system, we are able to gather very specific information about the offenders, the victim(s), and the manner in which the offense was carried out. The data is from 1994 and was collected from only 24 law enforcement agencies in Utah. Nine offenses were used, from which two comparison groups were developed. House Bill 209 offenses include all sex offenses (forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, and kidnaping/abduction) where the victim was under the age of 14 and the offender was over the age of 18. Not HB 209 offenses include the non-mandatory minimum sex offenses, murder/non-negligent manslaughter, robbery, and aggravated assault.

#### **Sex Offender Registry**

## **Analysis of Utah's Child Kidnaping and Sexual Abuse Act of 1983**

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### **Data Sources**

The Utah Department of Corrections maintains an information database that includes information about sex offenders in Utah. For the first time, we were able to aggregate this information for analysis purposes. From the data set we were able to identify the most serious charged offense and the most serious convicted offense for each offender. Using this information, we identified those offenses that could carry a mandatory minimum sentence, and those offenses that do not carry mandatory minimum sentences. The database also provided information that characterizes the elements of the offender and the offense.

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