

1995

Utah v. Mark Dean Anderson : Brief of Appellee

Utah Court of Appeals

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Keith C. Barnes; Attorney for Appellant.

Scott M. Burns; Iron County Attorney; Attorney for Appellee.

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UTAH SUPREME COURT

BRIEF

950778-CA

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)
)
 Plaintiff-Appellee,) Case No. 950778-CA
)
 vs.) Classification Priority 2
)
 MARK DEAN ANDERSON,)
)
 Defendant-Appellant.)

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A SENTENCE FOLLOWING CONVICTIONS
FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, A
CLASS A MISDEMEANOR, IN VIOLATION OF UTAH CODE
ANN. §41-6-44 (1994); DRIVING ON SUSPENDED OR
REVOKED OPERATOR'S LICENSE, A CLASS B
MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN.
§53-3-227 (1994); AND FALSE INFORMATION TO A
LAW ENFORCEMENT OFFICER, A CLASS B
MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN.
§76-8-507 (1983), IN THE FIFTH JUDICIAL
DISTRICT COURT IN AND FOR IRON COUNTY, THE
HONORABLE ROBERT T. BRAITHWAITE, PRESIDING.

SCOTT M. BURNS
Iron County Attorney
97 North Main, Suite 1
P.O. Box 428
Cedar City, Utah 84721-0428

Attorney for Appellee

MAR - 5 1996

COURT OF APPEALS

KEITH C. BARNES
110 North Main
P.O. Box 765
Cedar City, Utah 84721-0765

Attorney for Appellant

FILED

FEB 20 1996

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Plaintiff-Appellee,)	Case No. 950778-CA
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vs.)	Classification Priority 2
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SCOTT M. BURNS
Iron County Attorney
97 North Main, Suite 1
P.O. Box 428
Cedar City, Utah 84721-0428

Attorneys for Plaintiff-Appellee

KEITH C. BARNES
110 North Main
P.O. Box 765
Cedar City, Utah 84721-0765

Attorney for Appellant

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
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Plaintiff-Appellee,)	Case No. 950778-CA
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BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a sentence following convictions for Driving Under the Influence of Alcohol, a Class A Misdemeanor, in violation of Utah Code Ann. §41-6-44 (1994); Driving on Suspended or Revoked Operator's License, a Class B Misdemeanor, in violation of Utah Code Ann. §53-3-227 (1994); and False Information to a Law Enforcement Officer, a Class B Misdemeanor, in violation of Utah Code Ann. §76-8-507 (1983), in the Fifth Judicial District Court in and for Iron County, State of Utah, the Honorable Robert T. Braithwaite, presiding. This Court has jurisdiction to hear this appeal pursuant to Utah Code Ann. §78-2a-3(2)(f) (1995).

STATEMENT OF THE ISSUES AND
STANDARD OF APPELLATE REVIEW

The issues presented in this appeal are:

1. Did the trial court abuse its discretion in sentencing Defendant to consecutive terms of imprisonment and staying an

additional six-month term of imprisonment? "Before the reviewing court may overturn the sentence given by the trial court, it must be clear that the actions of the judge were so inherently unfair as to constitute an abuse of discretion." State v. Rhodes, 818 P.2d 1048, 1051 (Utah App. 1991) (Citing State v. Gerrard, 584 P.2d 885, 887 (Utah 1978) (Emphasis added)).

2. If the Court adopts a stricter standard, based upon the fact that appellant failed to provide the appellate court with the presentence report, is the "presumption of regularity" still applicable? In order to avoid errors, sentencing procedures require a somewhat stricter standard than the general presumption of regularity. State v. Lipsky, 608 P.2d 1241, 1248 (Utah 1980). Even if this Court were to take the more rigorous stance, refusing to presume the regularity of the proceedings below in absence of the presentence report, the proceedings at the sentencing hearing amply show that the trial court did not abuse its discretion. Moreover, the presentence report, as provided by appellee, supports the proposition that the trial court did not abuse its discretion. For questions of fact involved in sentencing decisions, frequently constituting threshold inquiries that must be satisfied prior to addressing the legal intricacies, a "clearly erroneous" standard applies. State v. Rhodes, 818 P.2d 1048, 1049-50 (Utah App. 1991).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Determinative constitutional provisions, statutes and rules

are compiled in Appendix A where not set forth in the body of this brief.

STATEMENT OF THE CASE

This is an appeal from the sentence, set forth in a Judgment, Sentence, Stay of Execution of Sentence, Order of Probation, and Commitment by the Honorable Robert T. Braithwaite, Fifth Judicial District Court, following a trial.

On or about April 24, 1995, the Defendant was convicted of Driving Under the Influence of Alcohol, a Class A Misdemeanor, in violation of Utah Code Ann. §41-6-44 (1994); Driving on Suspended or Revoked Operator's License, a Class B Misdemeanor, in violation of Utah Code Ann. §53-3-227 (1994); and False Information to a Law Enforcement Officer, a Class B Misdemeanor, in violation of Utah Code Ann. §76-8-507 (1983). Following a presentence investigation report, as prepared by the Utah Department of Adult Probation and Parole, sentencing occurred on October 10, 1995, and the Defendant was sentenced to one (1) year in the Iron County Jail pursuant to his conviction for Driving Under the Influence of Alcohol, a Class A Misdemeanor; six (6) months in the Iron County Jail pursuant to his conviction for Driving on a Suspended or Revoked Operator's License, a Class B Misdemeanor, said term to run consecutively to the one (1) year term set forth above; and six (6) months in the Iron County Jail pursuant to his conviction of False Information to a Law Enforcement Officer, a Class B Misdemeanor, said term of imprisonment to run concurrently with the other sentences.

Moreover, the Court sentenced the Defendant to pay a fine in the sum and amount \$900, and ordered the Defendant to pay restitution in the amount of \$5,000 as a term and condition of any probation the Defendant may receive.

STATEMENT OF FACTS

On October 8, 1994, on Interstate 15 near Cedar City, Utah, Adam Russell was driving a vehicle (pulling a trailer) and was traveling toward his home when his vehicle was struck violently from behind by another vehicle. Mr. Russell's vehicle careened off the highway and rolled, causing serious injuries to Mr. Russell and severely damaging Mr. Russell's vehicle and trailer. Mr. Russell suffered neck injuries that required treatment with a "halo" and pins in his head for several weeks. Utah Highway Patrol Trooper Doug Twitchell responded to the accident scene and located another male individual "hiding in the bushes" and obviously intoxicated. The individual, later identified as Defendant Mark Dean Anderson, initially gave Trooper Twitchell the name of his brother (who is deceased), and it took several hours for Trooper Twitchell to learn that the Defendant had provided a false name. The State asserted at sentencing that the Defendant submitted the false name as Defendant has an extensive criminal record, numerous wants and warrants throughout the state of Utah, and the Defendant has not held a valid Utah driver's license since 1985.

The Defendant was tried twice in absentia, after several efforts to locate the Defendant for trial and sentencing failed,

but each time the Defendant objected and the matter was set for a new trial date. On April 24, 1995, the Defendant was again convicted (in his absence) of Driving Under the Influence of Alcohol, a Class A Misdemeanor; Driving on Suspended or Revoked Operator's License, a Class B Misdemeanor; and False Information to a Law Enforcement Officer, a Class B Misdemeanor. The Defendant fled to the state of Oregon, was located, and refused to waive extradition. The Iron County Attorney's Office forwarded a governor's warrant to Oregon and, after several hearings in Oregon regarding extradition and days before the governor's warrant was to arrive, the Defendant waived extradition and was returned to Utah.

On September 6, 1995, the Defendant appeared before the Court for sentencing. The Court ordered a presentence investigation report prior to sentencing, to be prepared by the Utah Department of Adult Probation and Parole, and upon completion of the presentence report the matter was called on for sentencing on October 10, 1995, at 9:00 a.m., in Cedar City, Utah.

SUMMARY OF ARGUMENT

Defendant has not provided this Court with a copy of the presentence report, and so it should presume regularity in the proceedings below and decline to consider Defendant's claims. However, even without the report, the transcript of the sentencing hearing shows that the trial court did not abuse its discretion in sentencing the Defendant to consecutive terms of imprisonment in the Iron County Jail, staying an additional six-month sentence, and

ordering the Defendant to pay a fine in the sum and amount of \$900 and restitution in sum and amount of \$5,000. The presentence report, as set forth and included in appellee's brief, clearly supports the Court's sentence in this case and as relating to this Defendant.

ARGUMENT

POINT I

REGULARITY IN THE PROCEEDINGS BELOW SHOULD BE PRESUMED WHERE DEFENDANT FAILED TO INCLUDE IN THE RECORD ON APPEAL THE PRESENTENCE REPORT. HOWEVER, RELYING ONLY ON THE RECORD OF THE SENTENCING HEARING, THE RECORD INDICATES THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN SENTENCING DEFENDANT.

"Before the reviewing court may overturn the sentence given by the trial court, it must be clear that the actions of the judge were so inherently unfair as to constitute an abuse of discretion." State v. Rhodes, 818 P.2d 1048, 1051 (Utah App. 1991) (Citing State v. Gerrard, 584 P.2d 885, 887 (Utah 1978)).

"The burden of showing error is on the party who seeks to upset the judgment." State v. Noren, 704 P.2d 568, 571 (Utah 1985) (Quoting State v. Jones, 657 P.2d 1263, 1267 (Utah 1982)).

In this case, Defendant has failed to include in the record on appeal the presentence report containing relevant information regarding the Defendant's background and criminal history which undoubtedly formed the basis of the trial court's sentencing decision. On such failure, this Court may decline to review the merits of Defendant's claim, presuming regularity in the

proceedings below. See State v. Eloge, 762 P.2d 1, 2 (Utah 1988) per curiam (presuming regularity in the proceedings below where the Defendant, challenging the trial court's discretion in denying him a 90-day diagnostic evaluation and sentencing him to a potential life sentence, failed to provide the court with a copy of the presentence report from which it might have assessed the trial court's discretion); State v. Mitchell, 671 P.2d 213, 215 (1983) (presuming regularity in the proceedings below where, though no transcript of the sentencing hearing was provided the appellate court, there was no suggestion that a presentence report was effectively concealed from the defendant.)

The Defendant's only argument is that the trial court abused its discretion in sentencing the Defendant because the sentencing judge stated, "I think you've been deceptive with the Court, dishonest with the Court. You have a serious drinking problem, criminal problem. This, to me, is a clear cut case that requires the maximum sentence." (Tr. 9) The Defendant fails to set forth any case law or statutory support for the proposition that these statements by the trial court constitute an abuse of discretion. The Defendant's argument is frivolous.

The Defendant then argues that Article I, Section 9 of the Constitution of the State of Utah, and the Eighth Amendment of the United States Constitution have been violated as the Court's sentence constitutes cruel and unusual punishment. Again, the Defendant fails to cite case law or statutory authority for the

proposition that a sentencing judge cannot impose consecutive sentences. Moreover, it should be noted that if the trial court had deemed it appropriate, the Defendant could have been sentenced to an additional six (6) months, consecutive to the two (2) other counts, causing for a total term of incarceration of twenty-four (24) months, as opposed to the eighteen (18) months actually imposed by the trial court. Again, the Defendant's argument is frivolous.

Finally, the sentence imposed by the trial court was within the parameters provided by law with respect to the terms of imprisonment (Utah Code Ann. §76-3-204 (1973)), the fine (Utah Code Ann. §76-3-301 (1995)), and the restitution (Utah Code Ann. §76-3-201 (1995)).

POINT II

EVEN IF THIS COURT WERE TO TAKE THE MORE RIGOROUS STANCE, REFUSING TO PRESUME THE REGULARITY OF THE PROCEEDINGS BELOW IN ABSENCE OF THE PRESENTENCE REPORT, THE PROCEEDINGS AT THE SENTENCING HEARING AMPLY SHOW THE TRIAL COURT DID NOT ABUSE ITS DISCRETION.

State v. Lipsky, 608 P.2d 1241, 1246 (Utah 1980) (citing State v. Carson, 597 P.2d 862, 866 (Utah 1979), stands for the proposition that, in order to avoid errors, sentencing procedures require a somewhat stricter standard than the general presumption of regularity. Even if this Court were to take the more rigorous stance, refusing to presume the regularity of the proceedings below in absence of the presentence report, the proceedings at the sentencing hearing amply show the trial court did not abuse its

discretion. The transcript from the sentencing proceedings, setting forth the statements by the sentencing judge ("I think you've been deceptive with the Court, dishonest with the Court. You have a serious drinking problem, criminal problem. This, to me, is a clear cut case that requires the maximum sentence.") is not an abuse of discretion.

Finally, the State has included the presentence investigation report (see Appendix A), and the State of Utah asserts that the presentence report provided the sentencing judge with a sufficient basis upon which to sentence the Defendant to eighteen (18) months in the Iron County Jail, with a six- (6-) month sentence stayed, together with a \$900 fine and restitution in the amount of \$5,000.

CONCLUSION

Based upon the foregoing reasons, the State of Utah respectfully requests that this Court affirm the Defendant's sentence.

RESPECTFULLY SUBMITTED this 22 day of February, 1996.

By:



SCOTT M. BURNS
Iron County Attorney
Attorney for Appellee

MAILING CERTIFICATE

I HEREBY CERTIFY that I mailed two (2) full, true and correct copies of the within and foregoing BRIEF OF APPELLEE to Mr. Keith C. Barnes, Esquire, Attorney for Appellant, P.O. Box 765, Cedar

City, Utah 84721-0765, by first-class mail, postage fully prepaid,
on this 22 day of February, 1996.

A handwritten signature in black ink, appearing to read "Burns", written over a horizontal line.

SCOTT M. BURNS
Iron County Attorney
Attorney for Appellee

APPENDIX A

41-6-41. Statistical information regarding accidents — Annual publication.

The department shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, related statistical information as to the number and circumstances of traffic accidents. 1987

41-6-42. Local powers to require report.

A local authority may by ordinance require that the operator of a vehicle involved in any accident, or the owner of the vehicle, also file with the designated municipal department a written report of the accident or a copy of any report required under this article to be filed with the department on accidents occurring within its jurisdiction. All reports are for the confidential use of the municipal department and are subject to Section 41-6-40. 1987

ARTICLE 5

DRIVING WHILE INTOXICATED AND RECKLESS DRIVING

41-6-43. Local DUI and related ordinances and reckless driving ordinances — Consistent with code.

(1) An ordinance adopted by a local authority that governs a person's operating or being in actual physical control of a motor vehicle while having alcohol in the blood or while under the influence of alcohol or any drug or the combined influence of alcohol and any drug, or that governs, in relation to any of those matters, the use of a chemical test or chemical tests, or evidentiary presumptions, or penalties, or that governs any combination of those matters, shall be consistent with the provisions in this code which govern those matters.

(2) An ordinance adopted by a local authority that governs reckless driving, or operating a vehicle in willful or wanton disregard for the safety of persons or property shall be consistent with the provisions of this code which govern those matters. 1987

41-6-43.10. Repealed.

1985

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant — Penalties — Suspension or revocation of license — Penalties.

(1) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of 0.08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath

(3) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

(A) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(B) had a passenger under 16 years of age in the vehicle at the time of the offense.

(b) In this section, the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(c) In this section, a reference to this section includes any similar local ordinance adopted in compliance with Section 41-6-43.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours nor more than 240 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 24 hours nor more than 50 hours.

(c) (i) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate.

(ii) For a violation committed after July 1, 1993, the court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug dependency rehabilitation facility determines that the person has a problem condition involving alcohol or drugs.

(5) (a) Upon a second conviction for a violation committed within six years of a prior violation under this section the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours nor more than 720 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 80 hours nor more than 240 hours.

(c) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate. The court may, in its discretion, order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(6) (a) A third conviction for a violation committed within six years of two prior violations under this section is a:

(i) class B misdemeanor except as provided in Subsections (ii) and (7); and

(ii) class A misdemeanor if both of the prior convictions are for violations committed after April 23, 1990.

(b) (i) Under Subsection (a)(i) the court shall as part of any sentence impose a mandatory jail sentence of not less than 720 nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility, as appropriate.

(c) (i) Under Subsection (a)(ii) the court shall as part of any sentence impose a fine of not less than \$1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work

program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(7) (a) A fourth or subsequent conviction for a violation committed within six years of the prior violations under this section is a third degree felony if at least three prior convictions are for violations committed after April 23, 1990.

(b) The court shall as part of any sentence impose a fine of not less than \$1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(c) (i) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence.

(ii) Enrollment in and completion of an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(d) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(8) (a) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, until the convicted person has furnished evidence satisfactory to the department that:

(i) all required alcohol or drug dependency assessment, education, treatment, and rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

(ii) all fines and fees including fees for restitution and rehabilitation costs assessed against the person have been paid, if the conviction is a second or subsequent conviction for a violation committed within six years of a prior violation; and

(iii) the person does not use drugs in any abusive or illegal manner as certified by a licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or subsequent conviction for a violation committed within six years of two prior violations committed after July 1, 1993.

(9) (a) (i) The provisions in Subsections (4), (5), (6), and (7) that require a sentencing court to order a convicted person to: participate in an assessment and educational series at a licensed alcohol or drug dependency

rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an alcohol or drug dependency rehabilitation facility; or do any combination of those things, apply to a conviction for a violation of Section 41-6-45 that qualifies as a prior conviction under Subsection (10).

(ii) The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-45 that qualifies as a prior conviction under Subsection (10), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), (6), and (7).

(b) For purposes of determining whether a conviction under Section 41-6-45 that qualified as a prior conviction under Subsection (10), is a first, second, or subsequent conviction under this subsection, a previous conviction under either this section or Section 41-6-45 is considered a prior conviction.

(c) Any alcohol or drug dependency rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(10) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45 or of an ordinance enacted under Section 41-6-43 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) (i) The court shall advise the defendant before accepting the plea offered under this subsection of the consequences of a violation of Section 41-6-45 as follows.

(ii) If the court accepts the defendant's plea of guilty or no contest to a charge of violating Section 41-6-45, and the prosecutor states for the record that there was consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation, the resulting conviction is a prior conviction for the purposes of Subsections (5), (6), and (7).

(c) The court shall notify the department of each conviction of Section 41-6-45 that is a prior offense for the purposes of Subsections (5), (6), and (7).

(11) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(12) (a) The Department of Public Safety shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (1); and

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (1) if the violation is committed within a period of six years from the date of the prior violation.

(b) The department shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223, if the previous suspension was based on the same occurrence upon which the record of conviction is based. 1994

41-6-44.1. Procedures — Adjudicative proceedings.

The Department of Public Safety shall comply with the procedures and requirements of Title 63, Chapter 46b, in its adjudicative proceedings. 1987

41-6-44.2. Repealed.

1983

41-6-44.3. Standards for chemical breath analysis — Evidence.

(1) The commissioner of the Department of Public Safety shall establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

(2) In any action or proceeding in which it is material to prove that a person was operating or in actual physical control of a vehicle while under the influence of alcohol or any drug or operating with a blood or breath alcohol content statutorily prohibited, documents offered as memoranda or records of acts, conditions, or events to prove that the analysis was made and the instrument used was accurate, according to standards established in Subsection (1), are admissible if:

(a) the judge finds that they were made in the regular course of the investigation at or about the time of the act, condition, or event; and

(b) the source of information from which made and the method and circumstances of their preparation indicate their trustworthiness.

(3) If the judge finds that the standards established under Subsection (1) and the conditions of Subsection (2) have been met, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary. 1987

41-6-44.4. Person under 21 may not operate vehicle with detectable alcohol in body — Chemical test procedures — Temporary license — Hearing and decision — Suspension of license or operating privilege — Fees — Judicial review.

(1) (a) As used in this section "local substance abuse authority" has the same meaning as provided in Section 62A-8-101.

(b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6-44(2).

(2) (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle with any measurable blood, breath, or urine alcohol concentration in his body as shown by a chemical test.

(b) (i) A person with a valid operator license who violates Subsection (a), in addition to any other applicable penalties arising out of the incident, shall have his operator license denied or suspended as provided in Subsection (ii).

(ii) (A) For a first offense under Subsection (a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the 30th day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection (a), within three years of a prior denial or suspension, the Driver License Division shall suspend the person's operator license for a

period of one year beginning on the 30th day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (ii).

(ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle and the Driver License Division may not issue the person an operator license or learner's permit.

(3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection (2), the peace officer may, in connection with arresting the person for a violation of Section 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the officer directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection (2).

(4) When the officer serves immediate notice on behalf of the Driver License Division, he shall:

(a) take the Utah license certificate or permit, if any, of the operator;

(b) issue a temporary license certificate effective for only 29 days if the driver had a valid operator's license; and

(c) supply to the operator, on a form to be approved by the Driver License Division, basic information regarding how to obtain a prompt hearing before the Driver License Division.

(5) A citation issued by the officer may, if approved as to form by the Driver License Division, serve also as the temporary license certificate under Subsection (4)(b).

(6) The peace officer serving the notice shall send to the Driver License Division within five days after the date of arrest and service of the notice:

(a) the person's driver license certificate, if any;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the Driver License Division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection (2).

(7) (a) (i) Upon written request, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest under Section 32A-12-209.

(ii) The request shall be made within ten days of the date of the arrest.

(b) A hearing, if held, shall be before the Driver License Division in the county in which the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

53-3-226. Grounds for confiscation of licenses, plates, and other articles issued by state — Additional fee for reinstatement.

- (1) (a) The division, any peace officer acting in his official capacity, or a person authorized under Subsection (2) may take possession of any certificate of title, registration card, decal, permit, license certificate, registration plate, or any other article issued by the state:
 - (i) upon expiration, denial, suspension, disqualification, revocation, alteration, or cancellation of it;
 - (ii) that is fictitious;
 - (iii) that has been unlawfully or erroneously issued; or
 - (iv) that is unlawfully or erroneously displayed.
- (b) A receipt shall be issued that describes each confiscated item.
- (2) The division may enter into contractual agreements with constables or other law enforcement agencies to facilitate confiscation of items listed in Subsection (1) if a person fails or refuses to surrender any of those documents to the division upon demand.
- (3) The division shall assess against a person making an application referred to in Subsection 53-3-205(14), in addition to any fee imposed under Subsection 53-3-205(14), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover the costs required to serve orders related to the purposes of Subsection (2)

1993

53-3-227. Driving a motor vehicle prohibited while license denied, suspended, disqualified, or revoked — Penalties.

- (1) A person whose license has been denied, suspended, disqualified, or revoked under this chapter or under the laws of the state in which his license was issued and who drives any motor vehicle upon the highways of this state while that license is denied, suspended, disqualified, or revoked shall be punished as provided in this section.
- (2) A person convicted of a violation of Subsection (1), other than a violation specified in Subsection (3), is guilty of a class C misdemeanor.
- (3) (a) A person is guilty of a class B misdemeanor whose conviction under Subsection (1) is based on his driving a motor vehicle while his license is suspended, disqualified, or revoked for:
 - (i) a refusal to submit to a chemical test under Section 41-6-44.10;
 - (ii) a violation of Section 41-6-44;
 - (iii) a violation of a local ordinance that complies with the requirements of Section 41-6-43;
 - (iv) a violation of Section 41-6-44.6;
 - (v) a violation of Section 76-5-207;
 - (vi) a criminal action that the person plead guilty to as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances under this subsection;
 - (vii) a revocation or suspension which has been extended under Subsection 53-3-220 (2); or
 - (viii) where disqualification is the result of driving a commercial motor vehicle while the person's CDL is disqualified, suspended, canceled, or revoked under Subsection 53-3-414(1).
- (b) A person is guilty of a class B misdemeanor whose conviction under Subsection (1) is based upon his driving a motor vehicle while his license is suspended, disqualified, or revoked in his state of licensure for violations corresponding to the violations listed in Subsection (a).
- (c) A fine imposed under this subsection shall be at least the maximum fine for a class C misdemeanor under Section 76-3-301.

1994

53-3-228. Making false affidavit is perjury.

A person who makes any false affidavit or knowingly or affirms falsely, to any matter or thing required under chapter to be sworn to or affirmed, is guilty of perjury.

53-3-229. Prohibited uses of license certificate alty.

It is a class C misdemeanor for a person to:

- (1) display, cause or permit to be displayed, or in possession any license certificate knowing it is false or has been canceled, denied, revoked, suspended, qualified, or altered;
- (2) lend or knowingly permit the use of a certificate issued to him, by a person not entitled to it;
- (3) display or to represent as his own a license certificate not issued to him;
- (4) fail or refuse to surrender to the division demand any license certificate that has been suspended, disqualified, canceled, or revoked;
- (5) use a false name or give a false address application for a license or any renewal or duplicate license certificate, or to knowingly make a false statement, or to knowingly conceal a material fact or otherwise commit a fraud in the application; or
- (6) permit any other prohibited use of a license certificate issued to him.

53-3-230. Violation of part — Misdemeanor.

A violation of this part is a class C misdemeanor, otherwise specified.

PART 3

IMPAIRED PERSONS LICENSING

53-3-301. Short title.

This part is known as the "Impaired Persons Licensing Act."

53-3-302. Definitions.

As used in this part:

- (1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.
- (2) "Health care professional" means a physician, nurse, or other health care professional licensed to practice medicine in the state when recommended by the Medical Advisory Board include other health care professionals licensed to conduct physical examinations in this state.
- (3) (a) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability that may impair the person's ability to exercise reasonable and ordinary control at all time a motor vehicle while driving on the highways.
- (b) "Impaired person" does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

53-3-303. Driver License Medical Advisory Board Membership — Guidelines for licensing impaired persons — Recommendations to the board.

- (1) There is created within the division the Driver License Medical Advisory Board.
- (2) (a) The board is comprised of three regular members appointed by the executive director of the Department of Health.
- (b) The board shall be assisted by expert panels members nominated by the board as necessary and approved by the executive director of the Department of Health.

76-3-104. Misdemeanors classified.

(1) Misdemeanors are classified into three categories:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors;
- (c) Class C misdemeanors.

(2) An offense designated a misdemeanor, either in this code or in another law, without specification as to punishment or category, is a class B misdemeanor. 1973

76-3-105. Infractions.

(1) Infractions are not classified.

(2) Any offense which is an infraction within this code is expressly designated and any offense defined outside this code which is not designated as a felony or misdemeanor and for which no penalty is specified is an infraction. 1973

PART 2**SENTENCING****76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Hearing — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences [Effective until April 29, 1996].**

(1) As used in this section:

- (a) "Conviction" includes a:
 - (i) judgment of guilt; and
 - (ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including the accrual of interest from the time of sentencing, insured damages, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Subsection (4)(c).

(e) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

- (a) to pay a fine;
- (b) to removal from or disqualification of public or private office;
- (c) to probation unless otherwise specifically provided by law;
- (d) to imprisonment;
- (e) to life imprisonment;
- (f) on or after April 27, 1992, to life in prison without parole; or
- (g) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

- (i) forfeit property;
- (ii) dissolve a corporation;

- (iii) suspend or cancel a license;
- (iv) permit removal of a person from office;
- (v) cite for contempt; or
- (vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution, a victim has the meaning as defined in Section 77-38-2 and family member has the meaning as defined in Section 77-37-2.

(ii) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (4)(c) and (4)(d).

(iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and provide notice of the order to the parties.

(iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil Procedure, and the person in whose favor the restitution order is entered may seek enforcement of the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the Department of Corrections may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(v) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover reasonable attorney's fees.

(vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(b) (i) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(ii) In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (4)(c).

(c) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(i) Complete restitution means the restitution necessary to compensate a victim for all losses caused by the defendant.

(ii) Court-ordered restitution means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(iii) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (8).

(d) (i) If the court determines that restitution is appropriate or inappropriate under this subsection, the

court shall make the reasons for the decision a part of the court record.

(ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

(iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(e) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue.

(5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (a)(i) shall be calculated according to the following schedule:

(A) \$75 for up to 100 miles a defendant is transported;

(B) \$125 for 100 up to 200 miles a defendant is transported;

(C) \$250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection

(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(6) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) The court in determining a just sentence shall consider sentencing guidelines regarding aggravation and mitigation promulgated by the Commission on Criminal and Juvenile Justice.

(7) (a) (i) If a defendant subject to Subsection (6) has been sentenced and committed to the Utah State Prison, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Board of Pardons and Parole, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if the defendant had not previously been sentenced, so long as the new sentence is no greater than the initial sentence nor less than the mandatory time prescribed by statute.

(ii) The resentencing shall take into consideration the sentencing guidelines established under this section by the Commission on Criminal and Juvenile Justice to eliminate disparity of sentences and to promote uniformity of sentencing.

(iii) Credit shall be given for time served.

(b) (i) The court shall state the reasons for its choice of sentence on the record at the time of sentencing.

(ii) The court shall also inform the defendant as part of the sentence that, if the defendant is released from prison, the defendant may be on parole for a period of ten years.

(c) If during the commission of a crime described as child kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the aggravated mandatory term in state prison. This subsection takes precedence over any conflicting provision of law.

(8) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including non-medical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; the cost of necessary physical and occupational therapy and rehabilitation; and the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim; and

(iii) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsection (b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(d) The court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim. 1995

Sentences or combination of sentences allowed — Civil penalties — Restitution — Hearing — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences [Effective April 29, 1996].

(1) As used in this section:

(a) "Conviction" includes a:

- (i) judgment of guilt; and
- (ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including the accrual of interest from the time of sentencing, insured damages, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Subsection (4)(c).

(e) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

- (a) to pay a fine;
- (b) to removal from or disqualification of public or private office;
- (c) to probation unless otherwise specifically provided by law;
- (d) to imprisonment;
- (e) to life imprisonment;
- (f) on or after April 27, 1992, to life in prison without parole; or
- (g) on or after April 29, 1996, to imprisonment at not less than five years and which may be for life for an offense under Title 76, Chapter 5, Part 4, and Sections 76-5-301.1 and 76-5-302; or
- (h) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

- (i) forfeit property;
- (ii) dissolve a corporation;
- (iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution, a victim has the meaning as defined in Section 77-38-2 and family member has the meaning as defined in 77-37-2.

(ii) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (4)(c) and (4)(d).

(iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and provide notice of the order to the parties.

(iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil Procedure, and the person in whose favor the restitution order is entered may seek enforcement of the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the Department of Corrections may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(v) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover reasonable attorney's fees.

(vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(b) (i) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(ii) In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (4)(c).

(c) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(i) Complete restitution means the restitution necessary to compensate a victim for all losses caused by the defendant.

(ii) Court-ordered restitution means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(iii) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (8).

- (d) (i) If the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record
- (ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim
- (iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing
- (e) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue
- (5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was
- (i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges,
- (ii) charged with a felony or a class A, B, or C misdemeanor, and
- (iii) convicted of a crime
- (b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply
- (i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction, or
- (ii) the defendant was not transported pursuant to a court order
- (c) (i) Restitution of governmental transportation expenses under Subsection (a)(i) shall be calculated according to the following schedule
- (A) \$75 for up to 100 miles a defendant is transported,
- (B) \$125 for 100 up to 200 miles a defendant is transported, and
- (C) \$250 for 200 miles or more a defendant is transported
- (ii) The schedule of restitution under Subsection (c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip
- (6) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime
- (b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing
- (c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing
- (d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term
- (e) The court in determining a just sentence shall consider sentencing guidelines regarding aggravation and mitigation promulgated by the Commission on Criminal and Juvenile Justice
- (7) (a) (i) If a defendant subject to Subsection (6) has been sentenced and committed to the Utah State Prison, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Board of Pardons and Parole, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if the defendant had not previously been sentenced, so long as the new sentence is no greater than the initial sentence nor less than the mandatory time prescribed by statute
- (ii) The resentencing shall take into consideration the sentencing guidelines established under this section by the Commission on Criminal and Juvenile Justice to eliminate disparity of sentences and to promote uniformity of sentencing
- (iii) Credit shall be given for time served
- (b) (i) The court shall state the reasons for its choice of sentence on the record at the time of sentencing
- (ii) The court shall also inform the defendant as part of the sentence that, if the defendant is released from prison, the defendant may be on parole for a period of ten years
- (8) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern
- (b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including
- (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense,
- (ii) the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; the cost of necessary physical and occupational therapy and rehabilitation, and the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim, and
- (iii) the cost of necessary funeral and related services if the offense resulted in the death of a victim
- (c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsection (b) and:
- (i) the financial resources of the defendant and the burden that payment of restitution will im-

pose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(d) The court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim. 1995 (1st S.S.)

76-3-201.1. Nonpayment of fine or restitution as contempt — Imprisonment — Relief where default not contempt — Collection of default.

(1) When a defendant sentenced to pay a fine or to make restitution defaults in the payment of any installment, the court on motion of the prosecution, victim, or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part of it, is paid.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the fine or make the restitution from those assets. His failure to do so may be held to be contempt unless he makes the showing required in Subsection (2).

(4) The term of imprisonment for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the fine or order of restitution or the unpaid portion in whole or in part.

(6) (a) A default in the payment of a fine or costs or failure to make restitution or any installment may be collected by any means authorized by law for the enforcement of a judgment.

(b) The prosecuting attorney may collect restitution in behalf of a victim.

(c) The levy of execution for the collection of a fine or restitution does not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected. 1987

76-3-201.2. Civil action by victim for damages.

(1) Provisions in this part concerning restitution do not limit or impair the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution under this part or Section 77-18-1, may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in the civil action

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action. 1990

76-3-201.3. Minimum mandatory sentences — Effective law.

The Legislature provides that the following sections of the Utah Code regarding minimum mandatory sentencing provisions are retained and are considered to be effective law until April 29, 1996:

76-3-201, as last amended by Chapters 111, 117, and 301, Laws of Utah 1995;

76-3-406, as last amended by Chapter 64, Laws of Utah 1994;

76-5-301.1, as last amended by Chapter 18, Laws of Utah 1984;

76-5-302, as last amended by Chapter 88, Laws of Utah 1983;

76-5-402.1, as enacted by Chapter 88, Laws of Utah 1983;

76-5-402.3, as enacted by Chapter 88, Laws of Utah 1983;

76-5-403.1, as last amended by Chapter 156, Laws of Utah 1988;

76-5-404.1, as last amended by Chapter 170, Laws of Utah 1989;

76-5-405, as last amended by Chapter 170, Laws of Utah 1989;

76-5-406.5, as last amended by Chapter 64, Laws of Utah 1994; and

77-27-9, as last amended by Chapter 13, Laws of Utah 1994. 1995 (1st S.S.)

76-3-202. Paroled persons — Termination or discharge from sentence — Time served on parole — Discretion of Board of Pardons and Parole.

(1) Every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, or in the case of a person convicted of violating Section 76-5-301.1, Subsection 76-5-302(1)(e), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, upon completion of ten years on parole outside of confinement and without violation, be terminated from his sentence unless the person is earlier terminated by the Board of Pardons and Parole. Any person who violates the terms of his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons and Parole, but not to exceed the maximum term

(2) Any person paroled following a former parole revocation may not be discharged from his sentence until either:

(a) he has served three years on parole outside of confinement and without violation, or in the case of a person convicted of violating Section 76-5-301.1, Subsection 76-5-302(1)(e), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, ten years on parole outside of confinement and without violation;

(b) his maximum sentence has expired; or

(c) the Board of Pardons and Parole so orders.

(3) (a) All time served on parole, outside of confinement and without violation constitutes service of the total sentence but does not preclude the requirement of serving a three-year or ten-year, as the case may be, parole term outside of confinement and without violation.

(b) Any time a person spends outside of confinement after commission of a parole violation does not constitute

(a) third degree felony shall be as if the conviction were for a first degree felony;

(b) second degree felony shall be as if the conviction were for a first degree felony; or

(c) first degree felony shall remain the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor to determine the length of incarceration.

(4) (a) In all cases, notice that the prosecution intends to seek punishment as a habitual violent offender under this section shall be provided in writing and shall be served upon the defendant or his attorney not later than ten days prior to trial. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(c) The court shall determine if this section applies prior to or at the time of sentencing. The court shall consider any evidence presented at trial and shall afford the prosecution and the defendant an opportunity to present any necessary additional evidence. Prior to sentencing under this section, the court shall determine whether this section is applicable by a preponderance of the evidence.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived his right to have counsel present, and that his plea was understandingly and voluntarily entered.

(e) If the court finds this section applicable, it shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the court to be a habitual violent offender and is sentenced under this section.

(5) The habitual violent offender provisions of this section are not an element of the offense, and proof of a defendant's conduct as a habitual violent offender is not necessary at a preliminary hearing or at trial.

(6) (a) The sentencing enhancement provisions of Sections 76-3-407 and 76-3-408 shall apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses, and shall supersede the provisions of this section.

(b) Notwithstanding Subsection (6)(a):

(i) the convictions under Sections 76-5-404 and 76-5a-3 shall be governed by the enhancement provisions of this section; and

(ii) the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense

violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender. 1995

76-3-204. Misdemeanor conviction — Term of imprisonment.

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

(1) In the case of a class A misdemeanor, for a term not exceeding one year;

(2) In the case of a class B misdemeanor, for a term not exceeding six months;

(3) In the case of a class C misdemeanor, for a term not exceeding ninety days. 1973

76-3-205. Infraction conviction — Fine, forfeiture, and disqualification.

(1) A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture, and disqualification, or any combination.

(2) Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor. 1973

76-3-206. Capital felony — Penalties.

(1) A person who has pled guilty to or been convicted of a capital felony shall be sentenced in accordance with Section 76-3-207. That sentence shall be death, life imprisonment, or, on or after April 27, 1992, life in prison without parole.

(2) The judgment of conviction and sentence of death shall be subject to automatic review by the Utah State Supreme Court within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Utah State Supreme Court for good cause shown. Such review by the Utah State Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Utah State Supreme Court. 1992

76-3-207. Capital felony — Sentencing proceeding.

(1) When a defendant has pled guilty to or been found guilty of a capital felony, there shall be further proceedings before the court or jury on the issue of sentence. In the case of a plea of guilty to a capital felony, the sentencing proceedings shall be conducted by the court which accepted the plea or by a jury upon request of the defendant. When a defendant has been found guilty of a capital felony, the proceedings shall be conducted before the court or jury which found the defendant guilty, provided the defendant may waive hearing before the jury, in which event the hearing shall be before the court. If, however, circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings the court may dismiss that jury and convene a new jury for such proceedings. If a retrial of the sentencing proceedings is necessary as a consequence of a remand from an appellate court, the sentencing authority shall be determined as provided in Subsection (4).

(2) (a) In capital sentencing proceedings, evidence may be presented on:

(i) the nature and circumstances of the crime;

(ii) the defendant's character, background, history, mental and physical condition;

(iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and

(iv) any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence.

(b) Any evidence the court considers to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney

and the defendant shall be permitted to present argument for or against sentence of death.

(3) Aggravating circumstances shall include those outlined in Section 76-5-202. Mitigating circumstances shall include:

(a) the defendant has no significant history of prior criminal activity;

(b) the homicide was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(c) the defendant acted under extreme duress or under the substantial domination of another person;

(d) at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was substantially impaired as a result of mental disease, intoxication, or influence of drugs;

(e) the youth of the defendant at the time of the crime;

(f) the defendant was an accomplice in the homicide committed by another person and his participation was relatively minor; and

(g) any other fact in mitigation of the penalty.

(4) The court or jury, as the case may be, shall retire to consider the penalty. In all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous verdict for death and that the penalty of either life in prison or with regard to sentences to be imposed on or after April 27, 1992, life in prison without parole, shall be imposed if a unanimous verdict for death is not found. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death. *If the jury is unable to reach a unanimous verdict imposing the sentence of death, with regard to sentences to be imposed on or after April 27, 1992, the court shall instruct the jury to determine by a unanimous vote whether the penalty of life in prison without parole shall be imposed. If the jury is unable to reach a verdict, the court shall discharge the jury and impose the sentence of life imprisonment.*

(5) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to correct the error or errors. No error in the sentencing proceedings shall result in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings shall be admissible in the new sentencing proceedings, and if the sentencing proceeding was before a:

(a) jury, a new jury shall be impaneled for the new sentencing proceeding;

(b) judge, the original trial judge shall conduct the new sentencing proceeding; or

(c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding.

(6) In the event the death penalty is held to be unconstitutional by the Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence the person to life in prison, if the death penalty is held unconstitutional prior to April 27, 1992, or life in prison without parole if the death penalty is held unconstitutional on or after April 27, 1992, and any person who is thereafter convicted of a capital felony shall be sentenced to life in prison or life in prison without parole.

1995

76-3-207.5. Applicability — Effect on sentencing — Options of offenders.

(1) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 applies only to those capital offenses for which the offender is sentenced on or after April 27, 1992. The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

(2) An offender, who commits a capital offense prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

1992

76-3-208. Imprisonment — Custodial authorities.

(1) Persons sentenced to imprisonment shall be committed to the following custodial authorities:

(a) felony commitments shall be to the Utah State Prison;

(b) (i) class A misdemeanor commitments shall be to the jail, or other facility designated by the town, city, or county where the defendant was convicted, unless the defendant consents to commitment to the Utah State Prison for an indeterminate term not to exceed one year;

(ii) if the defendant consents to commitment to the Utah State Prison for an indeterminate term not to exceed one year, the court may impose the sentence. The court may not order the imprisonment of a defendant to the Utah State Prison for a fixed term or other term that is inconsistent with this section and Section 77-18-4;

(c) all other misdemeanor commitments shall be to the jail or other facility designated by the town, city or county where the defendant was convicted.

(2) Custodial authorities may place a prisoner in a facility other than the one to which he was committed when:

(a) it does not have space to accommodate him; or

(b) the security of the institution or inmate requires it.

1995

PART 3

FINES AND SPECIAL SANCTIONS

76-3-301. Fines of persons.

(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:

(a) \$10,000 for a felony conviction of the first degree or second degree;

(b) \$5,000 for a felony conviction of the third degree;

(c) \$2,500 for a class A misdemeanor conviction;

(d) \$1,000 for a class B misdemeanor conviction;

(e) \$750 for a class C misdemeanor conviction or infraction conviction; and

(f) any greater amounts specifically authorized by statute.

(2) This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.

1995

76-3-301.5. Uniform fine schedule — Judicial Council.

(1) The Judicial Council shall establish a uniform recommended fine schedule for each offense under Subsection 76-3-301(1).

(a) The fine for each offense shall proportionally reflect the seriousness of the offense and other factors as determined in writing by the Judicial Council.

(b) The schedule shall be reviewed annually by the Judicial Council.

(c) The fines shall be collected under Section 77-18-1.

(2) The schedule shall incorporate:

(a) criteria for determining aggravating and mitigating circumstances; and

(b) guidelines for enhancement or reduction of the fine, based on aggravating or mitigating circumstances.

(3) Presentence investigation reports shall include documentation of aggravating and mitigating circumstances as determined under the criteria, and a recommended fine under the schedule.

(4) The Judicial Council shall also establish a separate uniform recommended fine schedule for the juvenile court and by rule provide for its implementation.

(5) This section does not prohibit the court from in its discretion imposing no fine, or a fine in any amount up to and including the maximum fine, for the offense. 1988

76-3-302. Fines of corporations, associations, partnerships, or government instrumentalities.

A corporation, association, partnership, or governmental instrumentality shall pay a fine for an offense defined in this code for which no special corporate fine is specified. The fine shall not exceed:

(1) \$20,000 for a felony conviction;

(2) \$10,000 for a class A misdemeanor conviction;

(3) \$5,000 for a class B misdemeanor conviction; and

(4) \$1,000 for a class C misdemeanor conviction or for an infraction conviction. 1995

76-3-303. Additional sanctions against corporation or association — Advertising of conviction — Disqualification of officer.

(1) When a corporation or association is convicted of an offense, the court may, in addition to or in lieu of imposing other authorized sanctions, require the corporation or association to give appropriate publicity of the conviction by notice to the class or classes of persons or section of the public interested in or affected by the conviction, by advertising in designated areas, or by designated media or otherwise.

(2) When an executive or high managerial officer of a corporation or association is convicted of an offense committed in furtherance of the affairs of the corporation or association, the court may include in the sentence an order disqualifying him from exercising similar functions in the same or other corporations or associations for a period of not exceeding five years if it finds the scope or willfulness of his illegal actions make it dangerous or inadvisable for such functions to be entrusted to him. 1973

PART 4

LIMITATIONS AND SPECIAL PROVISIONS ON SENTENCES

76-3-401. Concurrent or consecutive sentences — Limitations.

(1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. Sentences for state offenses shall run concurrently unless the court states in the sentence that they shall run consecutively.

(2) The court shall order that sentences for state offenses shall run consecutively if the new offense is committed while the defendant is imprisoned or on parole unless the court finds and states on the record that consecutive sentencing would be inappropriate.

(3) A court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative

needs of the defendant in determining whether to impose consecutive sentences.

(4) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.

(5) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment. However, this limitation does not apply if an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment.

(6) The limitation in Subsection (5) applies if a defendant:

(a) is sentenced at the same time for more than one offense;

(b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of sentence for any one or more of them; or

(c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction.

(7) In determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that shall consist of the aggregate of the validly imposed prison terms as follows:

(a) if the aggregate maximum term exceeds the 30-year limitation the maximum sentence is considered to be 30 years; and

(b) when indeterminate sentences run consecutively the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.

(8) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the lesser sentence shall merge into the greater and the greater shall be the term to be served. If the sentences are equal and concurrent, they shall merge into one sentence with the most recent conviction constituting the time to be served.

(9) This section may not be construed to restrict the number or length of individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed but only to limit the length of sentences actually served under the commitments.

(10) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases. 1991

76-3-402. Conviction of lower degree of offense.

(1) If the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute and to sentence the defendant to an alternative normally applicable to that offense, the court may unless otherwise specifically provided by law enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

(2) If a conviction is for a third degree felony the conviction is considered to be for a class A misdemeanor if:

(a) the judge designates the sentence to be for a class A misdemeanor and the sentence imposed is within the limits provided by law for a class A misdemeanor; or

(b) (i) the imposition of the sentence is stayed and the defendant is placed on probation, whether committed to jail as a condition of probation or not;

(ii) the defendant is subsequently discharged without violating his probation; and

(iii) the judge upon motion and notice to the prosecuting attorney, and a hearing if requested by either party or the court, finds it is in the interest of justice

PART 5

FALSIFICATION IN OFFICIAL MATTERS

76-8-501. Definitions.

For the purposes of this part:

(1) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other governmental body or official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any of these proceedings.

(2) "Material" means capable of affecting the course or outcome of the proceeding. A statement is not material if it is retracted in the course of the official proceeding in which it was made before it became manifest that the falsification was or would be exposed and before it substantially affected the proceeding. Whether a statement is material is a question of law to be determined by the court.

1973

76-8-502. False or inconsistent material statements.

A person is guilty of a felony of the second degree if in any official proceeding:

(1) He makes a false material statement under oath or affirmation or swears or affirms the truth of a material statement previously made and he does not believe the statement to be true; or

(2) He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this section, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true.

1973

76-8-503. False or inconsistent statements.

A person is guilty of a class B misdemeanor if:

(1) He makes a false statement under oath or affirmation or swears or affirms the truth of the statement previously made and he does not believe the statement to be true if:

(a) The falsification occurs in an official proceeding, or is made with a purpose to mislead a public servant in performing his official functions; or

(b) The statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or

(2) He makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this section, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true.

(3) No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

1973

76-8-504. Written false statement.

A person is guilty of a class B misdemeanor if:

(1) He makes a written false statement which he does not believe to be true on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

(2) With intent to deceive a public servant in the performance of his official function, he:

(a) Makes any written false statement which he does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by

omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(3) No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

1973

76-8-505. Perjury or false swearing — Proof of falsity of statements — Denial of criminal guilt.

(1) On any prosecution for perjury or false swearing, except a prosecution upon inconsistent statements, pursuant to Subsection 76-8-502(2), falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

(2) No prosecution shall be brought under this part when the substance of the defendant's false statement is his denial of guilt in a previous criminal trial.

1973

76-8-506. Provision of false information to law enforcement officers, government agencies, or specified professionals.

A person is guilty of a class B misdemeanor if he:

(1) knowingly gives or causes to be given false information to any law enforcement officer with a purpose of inducing the officer to believe that another has committed an offense; or

(2) knowingly gives or causes to be given to any law enforcement officer, any state or local government agency or personnel, or to any person licensed in this state to practice social work, psychology, or marriage and family therapy, information concerning the commission of an offense, knowing that the offense did not occur or knowing that he has no information relating to the offense or danger.

1988

76-8-507. False personal information to peace officer.

A person commits a class C misdemeanor if, with intent of misleading a peace officer as to his identity, birth date, or place of residence, he knowingly gives a false name, birth date, or address to a peace officer in the lawful discharge of his official duties.

1983

76-8-508. Tampering with witness — Retaliation against witness or informant — Bribery — Communicating a threat.

(1) A person is guilty of a third degree felony if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, item;

(c) elude legal process summoning him to provide evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person is guilty of a third degree felony if he:

(a) commits any unlawful act in retaliation for anything done by another as a witness or informant;

(b) solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the acts specified under Subsection (1); or

(c) communicates to a person a threat that a reasonable person would believe to be a threat to do bodily injury to the person, because of any act performed or to be performed by the person in his capacity as a witness or informant in an official proceeding or investigation.

1988

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law. 1986

78-2-5. Repealed. 1988

78-2-6. Appellate court administrator.

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals. The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court. 1986

78-2-7. Repealed. 1986

78-2-7.5. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state. 1988

78-2-8 to 78-2-14. Repealed. 1986, 1988

CHAPTER 2a

COURT OF APPEALS

Section

- 78-2a-1. Creation — Seal.
78-2a-2. Number of judges — Terms — Functions — Filing fees.
78-2a-3. Court of Appeals jurisdiction.
78-2a-4. Review of actions by Supreme Court.
78-2a-5. Location of Court of Appeals.

78-2a-1. Creation — Seal.

There is created a court known as the Court of Appeals. The Court of Appeals is a court of record and shall have a seal. 1986

78-2a-2. Number of judges — Terms — Functions — Filing fees.

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels,
- (b) act as liaison with the Supreme Court;

(c) call and preside over the meetings of the Court of Appeals; and

(d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court.

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Sovereign Lands and Forestry actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) appeals from the circuit courts, except those from the small claims department of a circuit court;

(e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(j) appeals from the Utah Military Court; and

(k) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings. 1995

78-2a-4. Review of actions by Supreme Court.

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. 1986

78-2a-5. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state. 1986

PRIVATE

STATE OF UTAH
ADULT PROBATION AND PAROLE
REGION V, CEDAR CITY
2134 North Main
Cedar City, Utah 84720
Telephone: (801)586-0102

PRESENTENCE INVESTIGATION REPORT

Date Due: 10-05-95
Sentencing Date: 10-10-95

JUDGE ROBERT T BRAITHWAITE FIFTH DISTRICT COURT

CEDAR CITY IRON UTAH
(CITY) (COUNTY)

RODNEY SEYMOUR INVESTIGATOR

NAME: ANDERSON, MARK DONELSON
ALIASES: MARK ANDERSON
ADDRESS: IRON COUNTY
CORRECTIONAL FACILITY, CEDAR CITY,
UTAH
BIRTHDATE: 01-06-50 AGE: 45
BIRTHPLACE: SALT LAKE CITY, UTAH
LEGAL RESIDENCE: UTAH
MARITAL STATUS: DIVORCED

COURT CASE NO: 941500984
OBSCIS NO: 99914957
CO-DEFENDANTS: NONE
OFFENSE: DUI/Class A; DRIVING ON
SUSPENSION/Class B; FALSE
INFORMATION TO POLICE/Class B
PLEA: NOT ANNOUNCED, FOUND
GUILTY IN DEFENDANTS ABSENCE
DATE: 04-24-95
PROSECUTING ATTY: SCOTT M BURNS
DEFENSE ATTY: JAMES M PARK

PAGE 2
PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

PLEA BARGAIN: Mark Anderson was originally charged with DUI, a Class A Misdemeanor; Driving on Suspension, a Class B Misdemeanor; and False Information to Police, a Class B Misdemeanor. On 04-24-95, the Defendant was convicted in all three counts in his absence.

SOURCE OF INFORMATION: Scott M. Burns, Iron County Attorneys Office.

OFFICIAL VERSION OF OFFENSE: On October 8, 1994, on I-15 near Cedar city, Utah, Adam Russell was driving a vehicle (pulling a trailer) and headed toward his home when he was struck violently from behind by another vehicle. Mr. Russell's vehicle careened off the highway and rolled, causing extensive and serious injuries to Mr. Russell, including neck injuries that required treatment with a "halo" and pins in his head. UHP Trooper Doug Twitchell responded to the accident scene and located another male individual "hiding in the bushes" and obviously intoxicated. The individual, later identified as Mark D. Anderson, initially gave Trooper Twitchell the name of his brother (who is deceased), and it took several hours for Trooper Twitchell to learn that the Defendant had provided a false name. The State of Utah believes that the Defendant submitted a false name because he has an extensive criminal record and had numerous wants and warrants for DUI's and other traffic offenses. Trooper Twitchell also learned that the Defendant has not had a valid Utah driver's license since 1985.

After several trials in absentia, and several efforts to locate the Defendant for trial and sentencing, the Defendant was ultimately convicted (in his absence) on April 24, 1995, of Driving Under the Influence of Alcohol, a Class A Misdemeanor (DUI involving injuries); Driving on a Suspended or Revoked License, a Class B Misdemeanor; and False Information to a Law Enforcement Officer, a Class B Misdemeanor. The Defendant fled to the State of Oregon, was located, and refused to waive extradition. The Iron County Attorney's Office forwarded Governor's Warrant extradition documents to Oregon. After several hearings in Oregon regarding extradition, days before the Governor's Warrant was to arrive, the Defendant waived extradition and was returned to Utah.

On September 6, 1995, the Defendant appeared before the Court for sentencing. The Court ordered a presentence investigation report prior to sentencing, which has been set for October 10, 1995, at 9:00 a.m. in Cedar City, Utah.

SOURCE OF INFORMATION: Iron County Attorney's Office.

DEFENDANT'S VERSION OF OFFENSE: "I was driving south bound on I15 from Salt Lake to St. George I was in slow lane and seen tail lights of vic in front of me so I put on left hand sig and all of a sudden a trailer right in front of me being towed with no tail lights and couldn't hardly see it even being right on top of it. So I turned to the left and hit trailer on left side, my car on right side, of front of car if there would have been lights on trailer that was being towed there wouldn't have been an accident,

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

also it appeared to me the vic. was under min speed but I could be wrong about that. Also I had two drinks before I left Salt Lake and none on the road there was no alcohol in my car. I had been on road 4 to 5 hours plus stopped and got a hamburger to eat on way before all this happened. Also you have this as a promise there will be no more DUIs cuz I quit drinking.”

SOURCE OF INFORMATION: Written statement made by Mark D. Anderson.

CO-DEFENDANT STATUS: None

SOURCE OF INFORMATION: Police Reports and investigators comments.

VICTIM IMPACT STATEMENT: The victim’s wife in this matter responded with a typed letter. Her letter is attached for the courts review.

The victim’s wife indicated that the Defendant had to be life flighted to LDS Hospital, also that the family along with the children had suffered extensively due to the lack of the fathers physical abilities. The recommendation by the victim indicated the following: **“We feel Mark Anderson should be punished to the fullest extent of the law. And even then, it is still not enough. My husband spent longer out of work, than Mark Anderson ever will in jail. Also, we lost more money and property, than Mark Anderson will ever own from this accident.”**

SOURCE OF INFORMATION: Victim’s wife.

RESTITUTION: According to the victim’s wife in this matter, there is pending civil litigation. The victim’s family indicated that much of their losses was covered by the State of Utah insurance and various sources. (Please see victim letter).

SOURCE OF INFORMATION: Investigation by this officer.

CUSTODY STATUS: Mark Anderson was arrested on 06-15-95 in Oregon. If sentencing takes place on 10-10-95 he will have served 117 days incarcerated. Mr. Anderson was booked into the Iron County Facility in Cedar City on 08-25-95.

SOURCE OF INFORMATION: Utah State Iron County Correctional Facility and Defendant.

LAW ENFORCEMENT STATEMENT: Doug Twitchell of the Utah State Highway Patrol, and also the investigating officer on this matter indicated that Mr. Anderson needs serious help and/or put him away.

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

SOURCE OF INFORMATION: Law enforcement officers comment.

JUVENILE RECORD: According to a presentence report prepared by the State of Utah/Adult Probation and Parole, on or about 05-05-80, it indicated that the Defendant had the following juvenile record between 1961 and 1967. Destruction of Property, Destruction of Property, Truancy, Theft, Trespassing, Depriving Owner of Vehicle, Theft, Curfew, Auto Theft, Fraud, and Public Intoxication with Possession of Tobacco. According to the presentence report prepared by the State of Utah, it indicated that Mr. Anderson was committed to the Utah State Industrial School in October of 1965 and he served approximately one year in that institution. Mr. Anderson may want to expound on his juvenile record. The Defendant indicated many of these entries did not result in convictions.

SOURCE OF INFORMATION: Adult Probation and Parole presentence report prepared on or about 05-05-80 and Defendant.

ADULT RECORD: Using the name Mark D. Anderson with the date of birth 01-06-50, it shows that the Defendant in this matter has an FBI number of 723272G. This also appears to match the SSN listed by arresting officers on this current matter of 528-74-2928.

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
01-17-69	Salt Lake City SO Utah	Burglary, Grand Larceny	Dismissed per this agencies information
10-19-69	Salt Lake City SO Utah	Petty Larceny	Dismissed according to this agencies information
01-19-70	San Diego PD California	Burglary/Criminal Conspiracy reduced To Petty Larceny	Probation; terminated 10-20-70
06-24-70	Salt Lake City PD Utah	Grand Larceny, Burglary I	10-13-70 Burglary I dismissed, Grand Larceny reduced to lesser included offense of Petty Larceny
12-03-71	Salt Lake City SO Utah	Receiving Services By Deception	Dismissed

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
03-04-73	Salt Lake City SO Utah	Grand Larceny	Dismissed
09-20-73	Salt Lake City SO Utah	DUI/Carrying Concealed Weapon	According to AP&P records, he was placed on Probation
04-11-74	Salt Lake City SO Utah	Driving On Revocation	6 months Salt Lake County Jail, 12 months probation and halfway house. According to AP records, this was terminated on 08-16-75.
01-22-75	Salt Lake City SO Utah	Failure to Appear, DUI	No disposition
05-15-76	Constable	Three commitments: Failure To Appear, Receiving & Retaining Utah Safety Inspection Sticker, Displaying Unlawful Safety Inspection Sticker	15 days jail and/or \$105 fine
07-25-77	UHP	Driving on Revocation, Expired Safety Inspection Sticker	Unknown
11-19-78	Salt Lake City SO Utah	DUI	Dismissed
04-05-79	UHP	Failure To Appear	Unknown
03-08-80	Ogden PD Utah	Theft By Deception, Carrying a Concealed Weapon	Committed to the Utah State Prison on 05-13-80 for 0-5 years

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
01-16-82	Lehi PD Utah	DUI	None listed
05-06-82	Salt Lake City SO Utah	Possession of Controlled Substance	Unknown
12-18-82	Salt Lake City SO Utah	DUI	Unknown
05-18-83	Centerville PD Utah	Larceny	Unknown
06-14-85	Salt Lake City SO Utah	DUI .	Unknown
06-20-85	Salt Lake City SO Utah	Shoplifting, False Information to Police	Unknown
12-26-85	American Fork PD Utah	Theft By Receiving	Unknown
02-03-86	Orem PD Utah	Theft By Receiving	Unknown
02-11-86	American Fork PD Utah	Theft By Receiving	It appears Mr. Anderson was committed to Utah State Prison on 10-24-86 for Theft By Receiving/Two Counts; 0-5 years
06-02-91	Salt Lake SO Utah	DUI, Driving On Revocation, Never Obtaining a License, Unlicensed Person to Drive	It appears case #912005318 was reduced to Reckless Alcohol Related Class B, guilty

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

<u>DATE</u>	<u>AGENCY</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
02-22-92	Las Vegas PD Nevada	Possession of Controlled Substance - Felony	\$225 fine, reduced to Misdemeanor Mr. Anderson in ordered review indicated he was in a car with four others. The car was stopped by police and someone threw an illicit drug out of the car. Mr. Anderson was charged due to it being his car.
04-09-92	Salt Lake City SO Utah	DUI, Driving on Revocation, Speeding, License on Wrong Vehicle, FTA, Never Obtaining A License, Open Container, Intoxication, Allowing Unlicensed Person to Drive	Unknown
04-20-92	Manti SO Utah	DUI, Driving On Suspension, Open Container	Mr. Anderson states he paid a \$1,500 fine and matter is cleared successfully.
06-27-93	Las Vegas PD Nevada	Burglary, Felony	Unknown
10-08-94	UHP	DUI, Driving on Suspension, False Info. to Police Officer	Present Offense Pending
10-18-94	Washington Co. SO St. George, Utah	DUI	Checks with Washington County Sheriff's Office and criminal courts in this jurisdiction showed no warrants or pending action.

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

SOURCE OF INFORMATION: Criminal history check, Adult Probation and Parole records of the State of Utah and oral/written interview with Mr. Anderson.

DRIVING HISTORY: Mr. Anderson has many driving violations listed including speeding, improper registration, no license, faulty equipment and others.

SOURCE OF INFORMATION: Correctional records.

PENDING CASES: There are no pending cases.

SOURCE OF INFORMATION: Criminal history check.

PROBATION/PAROLE HISTORY: It appears the Defendant was on supervision as a juvenile (please see juvenile criminal history). According to Utah State Adult Probation and Parole, the Defendant was under probation supervision between 1974 and 1975. According to the correctional records, the Defendant had major difficulties from repeated traffic offenses. It appears that probation was terminated on this matter in 1975. In 1980, the Defendant was referred to the Department of Utah Corrections for a presentence report for Carrying a Concealed Weapon, a Third Degree Felony. It appears that the Defendant was detained by store security at Grand Central stores in Weber County. It appears that the Defendant had on his possession a pistol. According to the presentence report, the Defendant handed the pistol to the arresting officer indicating that he was carrying it for self protection. It is noted that in Mr. Anderson's shoes during his arrest on this matter there was found a number of small white pills with crosses on the top. According to the presentence report, it appears that the pills were speed. Mr. Anderson indicated in oral interview with this investigator he was holding pills for his girlfriend. It appears that Mr. Anderson was committed to the Utah State Prison. Mr. Anderson was committed to the Utah State Prison also for Theft By Receiving, a Third Degree Felony/Two Counts. It appears the Defendant was committed in 1986 on this matter. It appears that the Department of Corrections and Board of Pardons closed their supervision of Mr. Anderson on or about 04-25-91 with successful termination.

SOURCE OF INFORMATION: Criminal history check, Utah State Corrections, Board of Pardons Information and interview with Defendant.

BACKGROUND AND PRESENT LIVING SITUATION: Mark Donelson Anderson was born January 6, 1950 in Salt Lake City, Utah to the union of Eugene and Elaine Anderson. There were two sons and one daughter born to the union. From a prior presentence report, the Defendant described his childhood as lousy that his mother and father fought like dogs and cats for as long as he could recall. The Defendant indicated that his father and mother were divorced when he was approximately 12 years

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

of age and that his mother consequently remarried Kenneth Hyde when he was approximately 14 years of age. The Defendant left home at 16 years of age. The Defendant was subsequently committed to the State Industrial School as a teenager. The Defendant has a sister still living. The Defendant's father's whereabouts are unknown. The Defendant's mother passed away in 1994. The Defendant plans to return to Oregon when this matter is resolved.

SOURCE OF INFORMATION: Defendant and presentence report.

MARITAL HISTORY: The Defendant married LeAnn Williams on May 2, 1969 in San Diego, California. The Defendant was divorced in February 1979. The Defendant has three children as a result of that union. In 1982 the Defendant married Debbie Anderson, two children were born to this union. The Defendant was divorced in 1989. The children, ages 10 and 13, live in Oregon with their mother.

SOURCE OF INFORMATION: Defendant and correctional records.

EDUCATION: The Defendant completed his eleventh grade at the Utah State Industrial School. The Defendant, according to a prior presentence report, had completed a General Motors school in the field of auto mechanics.

SOURCE OF INFORMATION: Defendant and prior presentence report.

GANG AFFILIATIONS: The Defendant is not a member of any gangs.

SOURCE OF INFORMATION: Criminal history check and Defendant.

PHYSICAL HEALTH: The Defendant describes his physical health as fair. Mr. Anderson indicated that since being incarcerated medical staff found a tumor in his back.

SOURCE OF INFORMATION: Defendant and presentence report.

MENTAL HEALTH: The Defendant describes his mental health as being affected by the death of loved ones. It is noted Mr. Anderson's mother passed away recently along with other family members.

SOURCE OF INFORMATION: Defendant and investigator.

ALCOHOL HISTORY: The Defendant has numerous arrests related to alcohol. It appears to this investigator that this is a serious, intensive, and extensive problem for Mr. Anderson. Mr. Anderson indicated alcohol only became a real problem in the past four years.

SOURCE OF INFORMATION: Correctional records, criminal history check, and Defendant.

DRUG HISTORY: The Defendant has a prior record which includes illicit drugs. Mr. Anderson indicated in oral interview with this investigator he's used marijuana several times.

SOURCE OF INFORMATION: Correctional records, criminal history check, and Defendant.

EMPLOYMENT HISTORY: The Defendant states he is self employed as a mechanic. He can earn between \$1,000 or \$2,000 per month when employed. **The defendant's Social Security Number is 528-74-2928.**

SOURCE OF INFORMATION: Correctional records and Defendant.

FINANCIAL SITUATION: The Defendant is basically indigent, having few assets.

SOURCE OF INFORMATION: Defendant.

MILITARY RECORD: The Defendant has never served in any branch of the armed services.

SOURCE OF INFORMATION: Defendant and investigators comments.

COLLATERAL CONTACTS: A letter from the victim reads as follows:

"Mark Anderson was the drunk driver who hit my husband from the behind while he was coming home from the Elk Hunt on October 8, 1994. (Victim) received a broken neck, broken ribs, and other cuts. He was taken by ambulance from the scene of the accident to Valley View Medical Center, where he was later transported by ambulance to the Cedar City Municipal Airport, where he was then taken by Life Flight, to the Salt Lake City International Airport, where once again, he was transported by ambulance, to L.D.S. Hospital in Salt Lake City, Utah. Where he then underwent surgery for 6 hours, to fix his broken neck. He was then in the hospital for 10 days. He had a halo screwed into his head for 2 ½ months, then a collar (hard) for 2 ½ month. He was out of work for a total of 6 months. He still has limited movement in his neck, and also limited use of his neck and also limited use of his right arm and hand. (Victim) will not be able to advance any further in his trade, due to his injuries. Our total lossess and medical bills have

exceeded well over the range of \$150,000.00!!!! Our whole family has suffered a lot because of this accident. Our children were unable to have a normal relationship, that children do with their dads, because of his injuries. I had to take care of our 4 children, as well as for (victim) for 4 months before, he could do normal things on his own. We feel Mark Anderson should be punished to the fullest extent of the law. And even then, it is still not enough. (Victim) spent longer out of work, then Mark Anderson ever will in jail. Also, we lost more money and property, then Mark Anderson will ever own from this accident. We lost these items: a Jeep Wagoneer, 4 wheeler, 16 foot trailer. All of these items were paid for prior to this accident. Because of this accident, and Mark Anderson being uninsured, we had to take a total loss for someone like this person who is out there driving on the streets and highways without any insurance what so ever. And, Mark Anderson still continues to drive uninsured and unlicensed whenever he wants, and he is going to end up killing someone some day if some action is not taken to this matter. We sincerely hope that you will take the time to really think about what kind of person this Mark Anderson really is, and what he could do to other people if no kind of action or extent of the law is used against him. Thank you for your time in this matter.”

A letter from Scott M. Burns, Iron County Attorney, reads as follows:

“The Defendant has shown, as evidenced by his criminal record, a complete and total disregard for the law and for the safety of others. He has driven without a driver’s license since 1985, has been charged with multiple DUI and other traffic offenses, and attempts to continue driving by his professed sophistication in not being caught or convicted. The Defendant was extradited from Oregon where he fled under the assumption that he could not be extradited back to Utah. He was wrong. I sincerely believe that this Defendant is a danger to the good citizens of Utah, he will continue to drink and drive, and that he should serve the full eighteen (18) months incarceration in the Iron County Jail. I believe that is the only way the justice system will impress upon the severity of his actions. I strongly suggest that you contact the victim in this case for their recommendations as well.”

EVALUATIVE SUMMARY: Brought before the court for sentencing is Mark Donelson Anderson, a 45 year old male who has an extensive alcohol related criminal history. The Defendant has numerous prior arrests for DUI’s according to the criminal history printout. It also appears according to this investigators information that the Defendant was not cooperative with law enforcement on this matter. It is noted that Mr. Anderson has been committed to the Utah State Prison on a prior occasion, and appears to know the law enforcement system well. The victim on this matter indicated that the Defendant should be punished to the fullest extent of the law, and this investigator concurs from the point of community safety. It is hoped that Mr. Anderson would use the tools that he has learned in the past and seek new

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PRESENTENCE INVESTIGATION REPORT
ANDERSON, MARK D

learning methods in avoiding the use of alcohol that has damaged his life and others as evidenced from this current criminal episode.

Aggravating circumstances in this case in part appear to be:

1. Extensive alcohol use history going back to 1970's.
2. The Defendant's lack of cooperation in this case including false information to police and extradition.
3. Prior prison commitments.
4. Prior probation and parole privilege.
5. Extensive damage to property (vehicle).
6. Extensive medical costs and disability to victim.
7. Extensive criminal history includes burglary, weapons possession, and theft.
8. Victim request for punishment.
9. Prior juvenile record.
10. Intensive criminal history, over 20 adult entries.

RESPECTFULLY SUBMITTED,

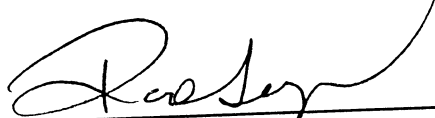


RODNEY SEYMOUR, INVESTIGATOR

AGENCY RECOMMENDATION

It is recommended that DUI, a Class A Misdemeanor, and Driving on Suspension, a Class B Misdemeanor, run consecutively and that False Information to Police, a Class B Misdemeanor, run concurrent. It is the recommendation of Adult Probation and Parole staffing committed that the Defendant not be placed on probation but serve 18 months in the Iron County Jail.

RESPECTFULLY SUBMITTED,



RODNEY SEYMOUR, INVESTIGATOR

j:\psi\ander-ma.psi
mj/rph

Mark D. Anderson
CRIMINAL HISTORY ASSESSMENT

PRIOR FELONY CONVICTION
(SEPARATE CRIMINAL INCIDENTS)

0 NONE
2 ONE 2
4 TWO
6 THREE
8 MORE THAN THREE

CRIMINAL HISTORY CATEGORY

POOR 16 - 28
FAIR 12 - 15
MODERATE 8 - 11
GOOD 4 - 7
EXCELLENT 0 - 3

PRIOR MISD. CONVICTIONS
(SEPARATE CRIMINAL INCIDENTS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

0 NONE
1 ONE 5
2 TWO TO FOUR
3 FIVE TO SEVEN
4 MORE THAN SEVEN

PRIOR JUVENILE REFERRALS
(FINDINGS OF DELINQUENT FOR
INCIDENTS THAT WOULD HAVE BEEN
FELONIES IF COMMITTED BY AN ADULT)
[3 NON-STATUS MISD. = 1 FELONY]

0 NONE
1 ONE 4
2 TWO TO FOUR
3 MORE THAN FOUR
4 SECURE PLACEMENT

PLEASE CIRCLE THE
CORRECT CATEGORY

SUPERVISION HISTORY

(ADULT OR JUVENILE)

0 NO PRIOR SUPERVISION
1 PRIOR SUPERVISION
2 PRIOR RESIDENTIAL PLACEMENT
3 PRIOR REVOCATION
4 CURRENT SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK
(ADULT OR JUVENILE)

0 NO ESCAPES OR ABSCONDINGS
1 FAILURE TO REPORT (ACTIVE OFF) OR OUTSTANDING WARRANT
2 ABSCONDED FROM SUPERVISION
3 ABSCONDED FROM RESIDENTIAL PROG
4 ESCAPED FROM CONFINEMENT

WEAPONS ENHANCEMENT
(ACTIVE OFFENSE)

0 NONE
1 OTHER
2 KNIFE
3 FIREARM OR EXPLOSIVE

** NOTE: 2nd FIREARMS CONVICTION
REQUIRES A MANDATORY 5 - 10 YEAR
CONSECUTIVE SENTENCE **

TOTAL PLACEMENT SCORE: 16

GENERAL DISPOSITION MATRIX

		CRIME SEVERITY							
CRIMINAL HISTORY	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS
		MUR II	OTHER	HOMICIDE 2ND DEG 2ND SEX	2ND DEG 3RD SEX	3RD DEG	2ND DEG	3RD DEG	A B
	<u>POOR</u>	\$10,000 ↑	\$10,000 ↑	\$10,000 ↑	\$5,000 ↑	\$5,000 ↑	\$10,000 \$5,000	\$5,000 \$2,500	X JAIL XX \$2,500 \$1,000 \$2,000 \$800
	FAIR			PRISON			\$5,000 \$2,500	\$5,000 \$2,500	\$2,000 \$800 \$1,500 \$600
	MODERATE				\$5,000	\$2,500 \$2,500	\$2,500	\$1,250	\$1,500 \$600 \$1,000 \$400
	GOOD		\$5,000 \$2,500	ALTERNATE					PROBATION \$1,000 \$400 \$500 \$200
	EXCELLENT	\$5,000 \$2,500	\$2,500 \$1,250	\$2,500 \$1,250	\$1,250 \$625	\$1,250 \$625	\$1,250	\$625	\$500 \$200 \$200 \$50

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

TIME MATRIX

USED TO CALCULATE MINIMUM TIME IF SENTENCE IS INCARCERATION

CRIME SEVERITY

CRIMINAL HISTORY	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR II	OTHER	HOMICIDE 2ND SEX	2ND DEG 3RD SEX	3RD DEG	2ND DEG	3RD DEG	A	B
POOR		12 YRS	10 YRS	6 YRS	36 MON	24 MON	24 MON	18 MON	X 12 MON	xx 6 MON
FAIR		10 YRS	7 YRS	5 YRS	30 MON	21 MON	21 MON	15 MON	10 MON	5 MON
MODERATE		7 YRS	5 YRS	4 YRS	24 MON	18 MON	18 MON	12 MON	8 MON	4 MON
GOOD		5 YRS	5 YRS	3 YRS	21 MON	15 MON	15 MON	9 MON	4 MON	3 MON
EXCELLENT		5 YRS	5 YRS	2 YRS	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
CONSECUTIVE ENHANCEMENTS										
		36 MON	30 MON	24 MON	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
CONCURRENT ENHANCEMENTS ADDED BY B.O.P.										
		18 MON	15 MON	12 MON	9 MON	6 MON	6 MON	3 MON	3 MON	3 MON

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

ACTIVE CONVICTIONS

		DEGREE	YEARS	MONTHS
MOST SERIOUS	DUI	A		12
NEXT MOST SERIOUS	DOS	B		6
OTHER	FI	B		6
OTHER				
TOTAL				24

SENTENCES SHOULD GENERALLY BE CONCURRENT. HOWEVER, THE EXISTENCE OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES SUGGEST CONSIDERATION OF CONSECUTIVE SENTENCES:

1. ESCAPE OR FUGITIVE
2. UNDER SUPERVISION OR BAIL RELEASE WHEN OFFENSE WAS COMMITTED
3. UNUSUAL VICTIM VULNERABILITY
4. INJURY TO PERSON OR PROPERTY LOSS WAS EXTREME FOR CRIME CATEGORY
5. OFFENSE CHARACTERIZED BY EXTREME CRUELTY OR DEPRAVITY

IF THE SENTENCES ARE TO BE CONSECUTIVE, USE THE CONSECUTIVE ENCHANEMENTS PORTION OF THE "TIME MATRIX" FOR ALL CONSECUTIVE SENTENCES EXCEPT THE

AGGRAVATING AND MITIGATING CIRCUMSTANCES
(Use Form 2 For Mandatory Sentence Situations)

Circle the numbers of circumstances that may justify departure from the guidelines. Reference the page number of the presentence investigation where the judge can find supportive information.

Aggravating Circumstances

Only use aggravating circumstances if they are not implicit in the conviction offense or the calculation of criminal history score.

PSI Page #

- ✓ 1. Established instances of repetitive criminal conduct.
____ 2. Offender presents a serious threat of violent behavior.
____ 3. Victim was particularly vulnerable.
✓ 4. Injury to person or property loss was unusually extensive.
____ 5. Offense was characterized by extreme cruelty or depravity.
✓ 6. There were multiple charges or victims.
✓ 7. Offender's attitude is not conducive to supervision in a less restrictive setting.
____ 8. Offender continued criminal activity subsequent to arrest.
____ 9. Sex Offenses: Correction's formal assessment procedures classify as an high risk offender.
✓ 10. Other (specify) prior probation, prior prison,
✓ extortion

Mitigating Circumstances

- ____ 1. Offender's criminal conduct neither caused nor threatened serious harm.
____ 2. Offender acted under strong provocation.
____ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
____ 4. Offender is young.
____ 5. Offender assisted law enforcement in the resolution of other crimes.
____ 6. Restitution would be severely compromised by incarceration.
____ 7. Offender's attitude suggests amenability to supervision.
____ 8. Domestic crime victim does not want incarceration.
____ 9. Offender has exceptionally good employment and/or family relationships.
____ 10. Imprisonment would entail excessive hardship on offender or dependents.
____ 11. Offender has extended period of arrest-free street time.
____ 12. Other (specify) _____

PLEASE COMPLETE THIS SECTION

DAYS OF JAIL CREDIT Book Iron Co 8/25/95 (45 DAYS JAIL)

GUIDELINE RECOMMENDATION JAIL

AP&P RECOMMENDATION JAIL

REASON FOR DEPARTURE N/A

COMMUNITY DEMAND Victim = Jail

SENTENCE ACTUALLY IMPOSED _____

TOTAL
117 IF
Oregon
County