

## **Jail as a Condition of Felony Probation**

### **Policy In-depth: 09-30-2009**

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### **Abstract**

Although the literature has found that incarceration generally has no effect on recidivism, alternative sentencing practices have been found to have some reductions on recidivism rates. Jail as a condition of felony probation (JCFP) is the practice of sentencing convicted felony offenders to jail for up to a year as a privilege for receiving probation. The purpose of this article is to describe the use of JCFP throughout the state of Utah and to reveal the effects of time in jail on recidivism. The results of the present study found that individuals served approximately 70% of time sentenced and that this trend was similar across offense types and most counties. Both the survival analyses and the linear regression model revealed that longer periods of time spent in jail for similar offenses did not reduce or increase the likelihood of recidivism. Additionally, the study did not find an “optimal time” for jail to reduce recidivism. The study also found that the largest effect on recidivism was risk level of offenders, which highlights the need for assessment and provision of appropriate services to address offender needs in order to reduce re-offense.

### **Jail as a Condition of Felony Probation: A Utah Study**

Jail as a condition of felony probation (JCFP) is the practice of sentencing convicted felony offenders to jail for up to a year as a privilege for receiving probation. The purpose of JCFP is to punish the offender, reveal the consequences of re-offending and, therefore, reduce the likelihood of re-offending and the demand for prison space. However, the actual use of JCFP and its effects are largely unknown. The purpose of this article is to describe the use of JCFP throughout the state of Utah and to reveal the effects of time in jail on recidivism.

Nationally, the practice of jail as a condition of probation is referred to as “split sentencing” and is used in 26% of felony cases (Petersilia 1997). The practice of split sentencing dates back to the 1920s in California and then later to the first federal statute authorizing this type of sentence in 1958. This practice was later adopted by most states in the 1970s (Parisi 1980). In Utah, this practice first became an issue in the early 1980s when counties began to request compensation for jails that were increasingly receiving larger numbers of probationers sentenced in state court. In 1982, legislation was enacted that set rates that the state would reimburse local jails for housing state felony offenders who were sentenced to jail time as a condition of their probation (C. Mitchell, personal communication, Aug. 27, 2008).

Research on the effects of jail time revolves around the notion of jail as a deterrent. The deterrence hypothesis posits that increases in jail sentences will result in decreases in recidivism (recidivism is the rate of re-offense for a given population over a discrete amount of time). However, the literature has not supported such a hypothesis. Empirical studies have repeatedly found that increases in jail sentences result in no effect or even increases in recidivism, even after taking into account the risk level and offense history of the offender (Dejong 1997; Spohn

& Holleran 2002; von Hirsh, Bottoms, Burney, and Wikstrom 1999). For example, Smith, Gendreau, and Goggin (2002) conducted a meta-analysis of 117 US and Canadian studies to investigate the effects of various sanctions on prisoner recidivism. Findings were that incarceration (vs. community sanctions) was associated with an increase in recidivism and that longer (vs. shorter) prison stays were associated with slight increases in recidivism. Similarly, Sung (2003) tested the “deterrence” hypothesis vs. the “rehabilitation” hypothesis and found that 100 days in incarceration resulted in a 4% increase in recidivism whereas 100 days in treatment length results in a 461% decrease in recidivism. Therefore, the study did not find a deterrent effect of incarceration. Additionally, the study found that the longer a mentally ill offender spent incarcerated without treatment, the more significant the increases in recidivism.

The general conclusion of the peer reviewed literature is that incarceration achieves certain goals (retributive goals and incapacitation), but it is not effective at reducing recidivism after release. In order to achieve the latter goal, there should be an inclusion of intensive treatment or use of alternative sanctions. A study investigating alternative sentencing by Ulmer (2001) found that house arrest reduced chances of re-arrest compared to probation and incarceration. Gainey, Payne, and O'Toole (2000) also found that more time spent on electronic monitoring (vs. jail), the lower the likelihood of re-offense. These studies suggest that these alternative sentencing practices reduce recidivism by allowing the offender to maintain pro-social attachment, while preventing the negative socialization to a criminal community in prison.

There is some support for the inclusion of intensive treatment with incarceration to reduce recidivism (e.g., Hoff, Baranosky, Buchanan, Zonana, & Rosenheck 1999; Swartz, Lurigio, & Slomka 1996). For example, in a study where half of 6500 DWI first time offenders were required to participate in 30 day treatment plus jail (vs. jail only), Kunitz, Woodall, Zhao, Wheeler, Lillis, and Rogers (2002) found that treatment plus jail had lower recidivism rates as far out as 5 years (59.9%) as compared to jail only (76.6%). These studies demonstrate that while jail may not have an effect on recidivism, jail with treatment may result in reduced re-offending.

In summary, the literature does not support a general deterrent effect of incarceration on recidivism but there is some support for alternative sentencing, such as house arrest, electronic monitoring, and inclusion of intensive treatment with short jail stays. The present study by the Utah Criminal Justice Center investigated the alternative sentence practice of JCFP that is presently being used in the State of Utah. The specific purpose of the study was to describe days sentenced and days served as a result of JCFP by county and severity of offense. Reasons for the reductions in jail stays are not uniformly recorded across the State of Utah, but anecdotal evidence suggests that some of the major reasons for these reductions are good behavior and “over-crowding releases.” These reductions were of special interest to legislators and judges who wanted to know how often sentences were being reduced and by how much. Additionally, the study investigated the effect of jail days served from JCFP on reducing the likelihood of re-offense. Finally, the study explored the potential for an “optimal time” for jail days served to reduce re-offense.

## Participants

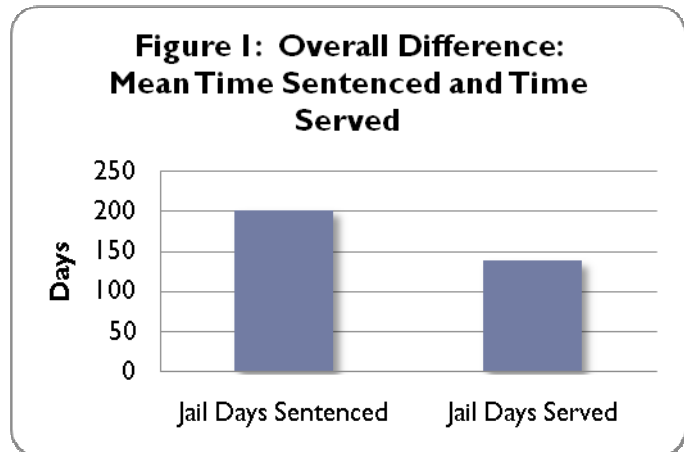
The participants for this study were felony offenders in Utah between 1997 and 2007, with a sentence of probation and jail time. These criteria identified 10,540 offenses for 7,752 individuals in 9,379 court cases.<sup>1</sup>

## Measures

The data for this study came from three sources. First, the state “O-Track” or offender tracking system was used to find the individuals that had qualifying sentences for inclusion in this study. Additionally, this database compiles the ‘Level of Service Inventory-Revised’ (LSI-R), which is a nationally used offender risk assessment. The LSI-R consists of 54 items used to assess both the offender’s likelihood of re-offense and their treatment needs. Unfortunately, the jail time served is not accurately recorded by this database. To determine when individuals were entering or exiting jail, the “Jail Connect” database was used. This compiles booking records from around the state. Finally, to determine subsequent arrests for individuals, the Bureau of Criminal Identification database was used. This database is specifically designed to track arrests in the State of Utah.

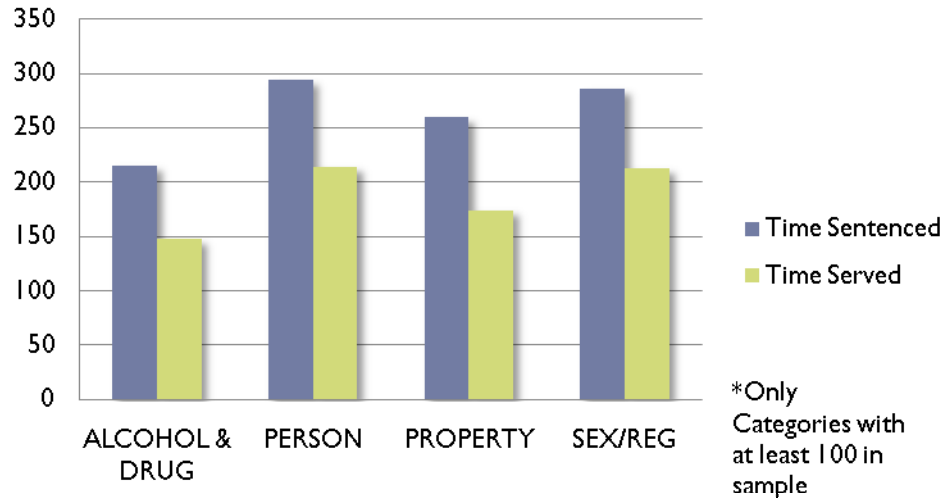
## Results

The study found that time sentenced and time served were roughly proportional across the state, with individuals on average serving 68% of their sentences (Figure 1). This finding was similar across type of felony offense (i.e. person felony, property felony) (Figures 2 & 3). Although this trend was also found across counties in felony 2 offenses (Figure 4), there was somewhat more variation in time served compared to time sentenced for felony three offenses (Figure 5). For example, differences between time sentenced and time served were much smaller in Uintah County than other counties, such as Salt Lake County (66% vs. 89% of sentence served). However, these differences were mostly explained by offender characteristics like the seriousness of the offense that they were sentenced for. Additionally, Salt Lake County sentenced more days in jail (and therefore more days served) than other counties (although similar to Utah and Washington counties). The authors explored the offender risk level by counties and did not find any significant average differences between counties (Figure 6).

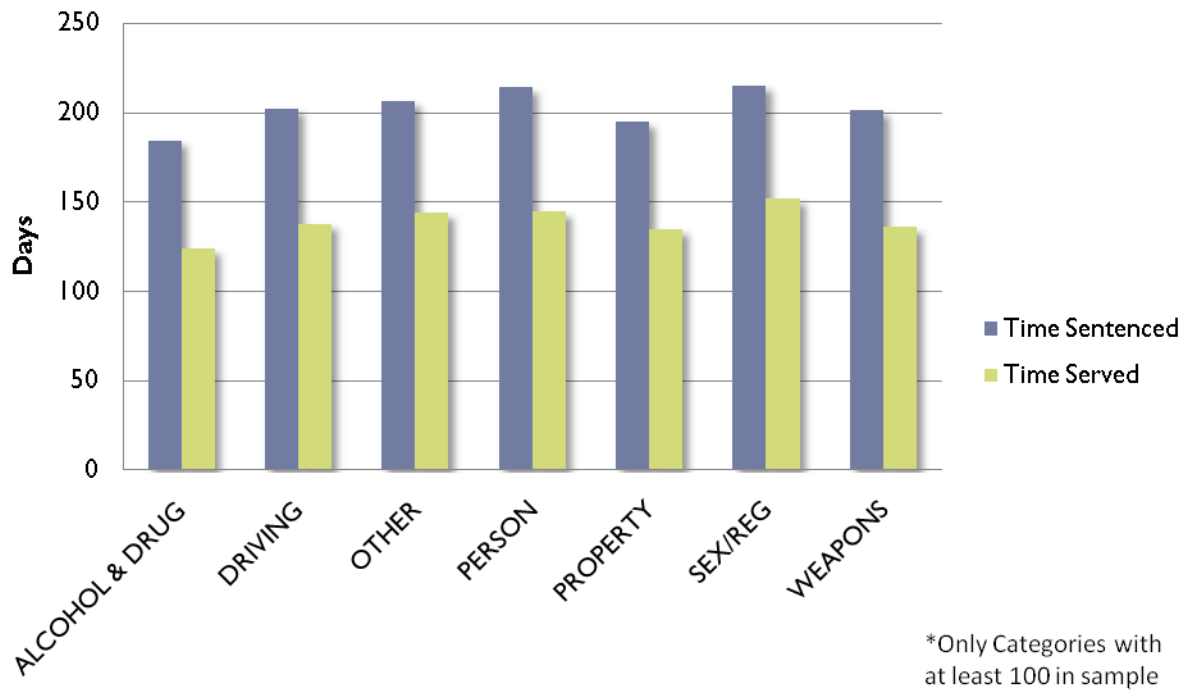


<sup>1</sup> This study was approved by the University of Utah Institutional Review Board.

**Figure 2: Felony Two Mean Jail Sentences in Utah by Category\***



**Figure 3: Felony Three Mean Jail Sentences in Utah by Category**



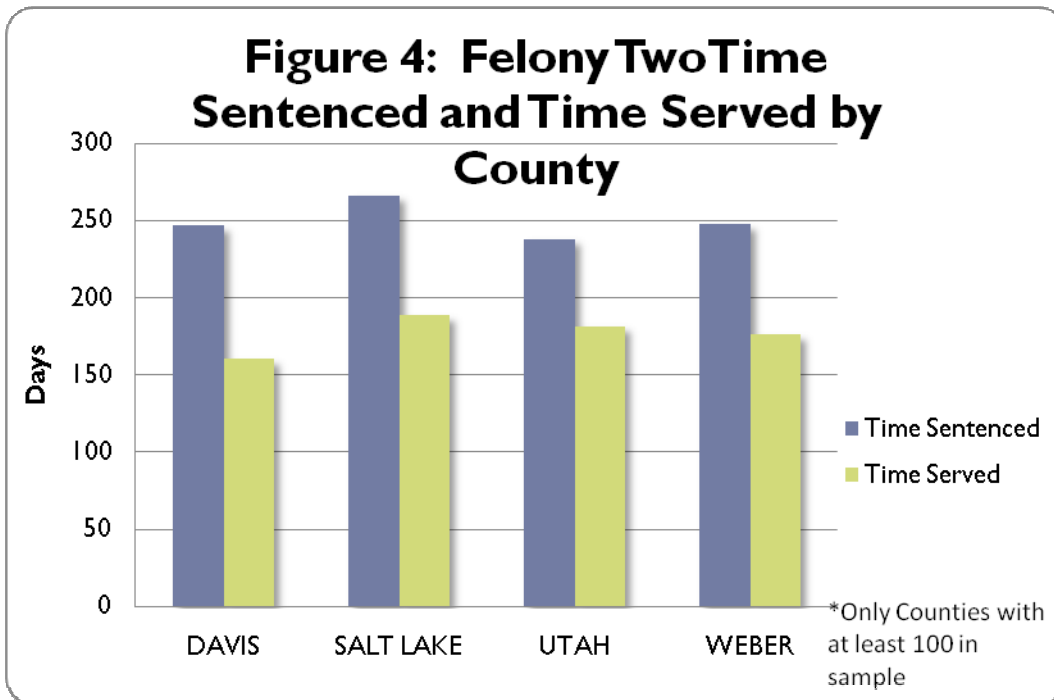
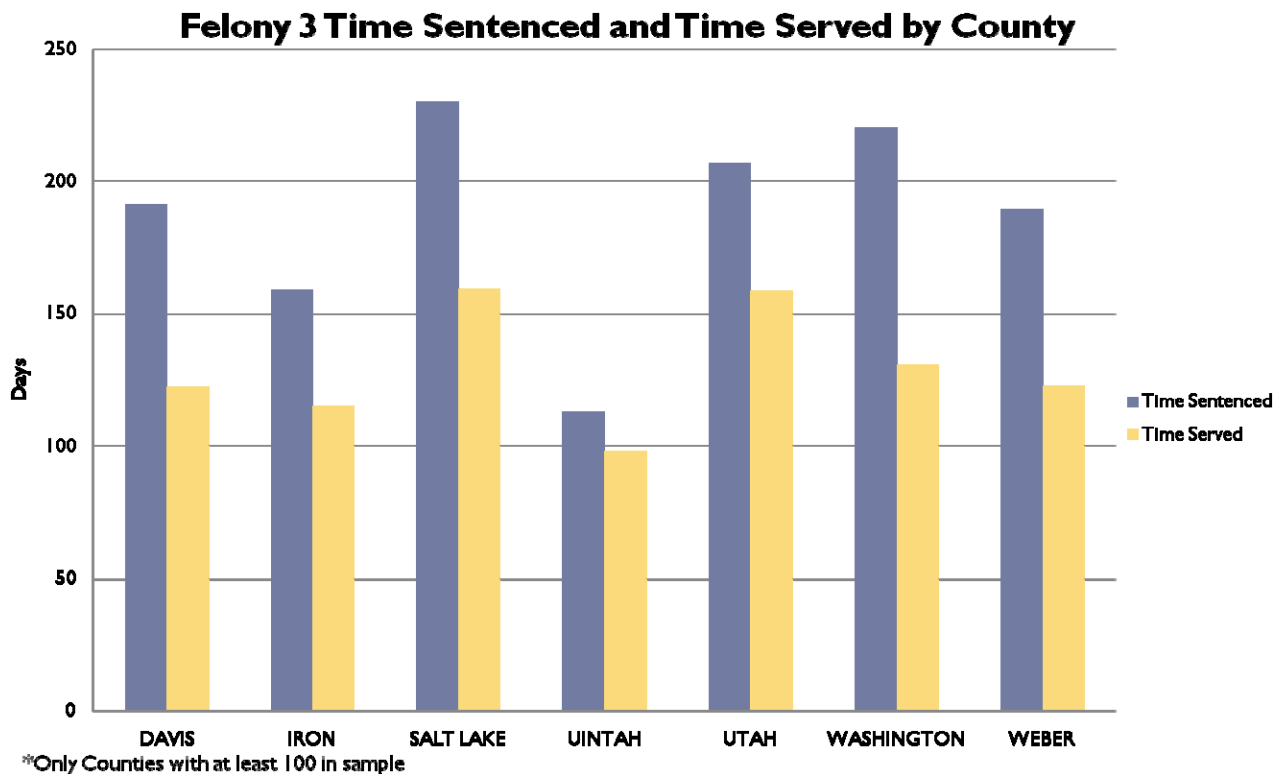
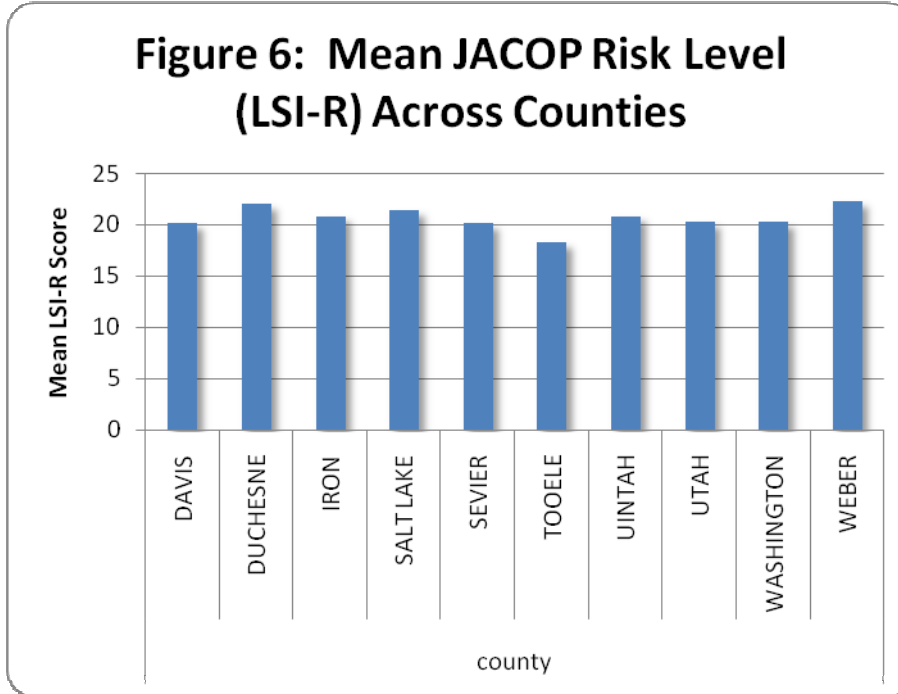


Figure 5



**Figure 6: Mean JACOP Risk Level (LSI-R) Across Counties**



Survival analysis was used to examine whether time served in jail had an effect on subsequent offenses. After controlling for age, gender and risk score, days in jail did not have a significant effect on re-offense after release. That is, time in jail did not decrease or increase the likelihood of re-offense. The strongest predictor for re-offense was pre-existing risk of offending, measured by the LSI-R. Additionally, to explore an “optimal time” for jail days served to reduce re-offense, time served was broken up into quintiles based on the population in the study (less than 47 days, 48-90, 91-144, 145-223, more than 223). The analysis did not find any significant re-offense differences in the different intervals for time served, thereby not finding an “optimal time” for jail days to reduce re-offense.

### Conclusion

The literature has found that incarceration generally has no effect or increases recidivism, with more days incarcerated related to higher recidivism rates. However, studies on alternative sentencing practices have found some reductions in recidivism rates. The present study investigated the use of JCFP in Utah and found that individuals served approximately 70% of time sentenced and that this trend was similar across offense types. Although risk level of offenders was similar across counties, some counties did sentence offenders to more jail days across similar offenses (e.g., Salt Lake County). Both the survival analyses and the linear regression model showed no evidence of a deterrent effect of incarceration. In other words, even after controlling for the individual risk of re-arrest, longer periods of time spent in jail for similar offenses did not reduce or increase the likelihood of recidivism. Lastly, in this sample, there does not appear to be any “ideal” jail sentence length to reduce recidivism.

The present study did reveal that adding jail days to a sentence did not affect re-offending, which is consistent with the peer reviewed literature. However, the study was not

able to explore whether jail sentences were associated with intensive programming, which the literature has found to be effective in reducing recidivism. Therefore, JCFP, in conjunction with intensive treatment may reduce re-offense rates. Future research on such a practice is needed for policy recommendations. Lastly, the study did find that the strongest predictor of recidivism was the risk level of the offender, which highlights the need for rigorous assessment in order to provide appropriate, focused services for offender needs.



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Note: The Utah Criminal Justice Center (UCJC) is an exciting and unique interdisciplinary partnership between the University of Utah and state government. In coordination with the Utah Commission on Criminal and Juvenile Justice (CCJJ), the center supports collaborative work by scholars and researchers from three academic units—the colleges of law, social and behavioral science, and social work. The overarching goal is to serve the needs of the criminal and juvenile justice systems in Utah, university students and faculty, and the citizens of Utah. This goal is being achieved by bringing together the talents, resources, and leadership of various academic departments and colleges at the University of Utah and CCJJ in a physical center dedicated to education and research in the areas of criminal and juvenile justice. The center's objectives include:

- conducting usable research on criminal and juvenile justice issues in Utah
- teaching an interdisciplinary curriculum in criminal and juvenile justice
- educating students and placing them in Utah criminal and juvenile justice jobs.

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