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## Testimony of James Papillo, State Victim Advocate Submitted to the Judiciary Committee Friday, February 23, 2007

Good Morning Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. For the record, my name is James Papillo and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

**House Bill No. 7085**, *An Act Concerning the Statute of Limitations for Prosecution of Certain Sexual Assault Offenses Using DNA Evidence*

**House Bill No. 7086**, *An Act Concerning Registration of Sexual Offenders*

House Bill No. 7085 proposes eliminating the statute of limitation for the prosecution of persons charged with specific crimes of sexual assault, including sexual assault 1<sup>st</sup> degree, sex assault 2<sup>nd</sup> degree, and sexual assault 3<sup>rd</sup> degree. This Bill will allow prosecutors to pursue the prosecution of an individual that has seemingly escaped accountability for serious sexual assault offenses where such crimes were reported to law enforcement officials in a timely manner and where the identity of the perpetrator can be established through DNA evidence collected at the time of the offense. As the recent wrongful conviction matter involving James Tillman clearly demonstrates, DNA evidence and the availability (and continuing evolvement) of sophisticated DNA testing techniques allow criminal justice professionals to effectively solve crimes that may otherwise remain unsolved. In the interest of attaining justice for victims of sexual assault, I strongly urge the Committee to support House Bill No. 7085.

With respect to House Bill No. 7086, the Office of the Victim Advocate (OVA) strongly supports any and all legislative efforts to enhance the effectiveness of the Sex Offender Registry and the supervision of sex offenders and sexual predators. With respect to enhancing the penalties for sexual assault crimes, the OVA has several concerns.

From the general public's perspective, the effectiveness of the Sex Offender Registry is dependent primarily on the accuracy of information contained therein and, thus, is critically dependent to a great extent upon the resources devoted to updating and maintaining the Registry. Unfortunately, heretofore, we have relied too heavily on the honesty of convicted sex offenders to fulfill their statutory obligations to register under the law and to keep the system informed as to their whereabouts.

House Bill No. 7086, as proposed, would improve the quality of information about registered sex offenders to the Department of Public Safety (DPS), tightens measures to improve compliance with the registration requirements and increases penalties for non-compliance, including consequences to anyone aiding a non-compliant registered sex offender. **However**, without providing DPS with adequate funding and resources to maintain and to enforce non-compliance with the proposed improved requirements and obligations of registered sex offenders proposed in the Bill, Connecticut will continue to rely primarily on the honesty of convicted sex offenders. To the extent this Bill constitutes an unfunded mandate, passage of this Bill will likely do little more than provide a false sense of security to the general public. Please provide adequate funding to make these improvements truly effective.

As of February 15, 2007, there were 603,245 registered sex offenders in the United States.<sup>1</sup> The increased mobility of our society has led to “lost” sex offenders, those who fail to comply with registration duties yet remain undetected. In addition, the wide disparity among the state programs in both registration and notification procedures permits, and actually encourages, sex offenders to “shop around” for the state with the least stringent laws, in order to live in communities with relative anonymity.

On July 27, 2006, President Bush signed the Adam Walsh Child Protection and Safety Act of 2006. The new law creates a national public sex offender database and implements measure that will improve the tracking of convicted sex offenders. Specifically, the law establishes consistent sex offender requirements in all states; penalizes an offender’s failure to register as a state and federal felony; and enhances the ability of law enforcement to track sex offenders when they move. Although states have up to three years to implement the new law, House Bill No. 7086 provides for some of the provisions.

With respect to those sections of House Bill No. 7086 which model Florida’s “Jessica’s Law,” the undersigned has the following concerns regarding those sections.

While the OVA certainly supports reasonable efforts to “get tough” on those who commit sexual assaults on minor children in Connecticut, there are a number of potential, negative consequences that may result from the sentencing structure proposed under the Bill.

Exposing those convicted with sexually assaulting minor children to a 25 year mandatory minimum sentence may have the following unintended consequences:

- (1) The lengthy sentences would prompt prosecutors to charge offenders with lesser crimes through the plea bargaining process;
- (2) Exposure to longer sentences will make offenders less likely to plead guilty and decide to “roll the dice” at a trial, thereby causing many more trials, forcing child victims to take the stand and have to relive their

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<sup>1</sup> National Center for Missing & Exploited Children- Attached is a United States map showing the breakdown, by state, of registered sex offenders. [www.missingkids.com](http://www.missingkids.com)

experience, and enabling a greater number of sex offenders to go unpunished;

- (3) Victims and families would be deterred from reporting child sexual abuse; and
- (4) Predators might be more likely to kill their victims to silence them.

Each of these unintended consequences would lead to undesirable results in terms of public and victim safety.

Consequence number 1 would likely result in plea bargains that include an agreement to plead guilty to much lesser charges than are warranted—charges that don't require registration on Connecticut Sex Offender Registry and don't include adequate monitoring or supervision or any sex offender treatment.

Consequence number 2 would likely cause a significant increase in the number of trials involving sexual assault charges and, due primarily to the complexities involved in successfully prosecuting such cases, would result in many serious sex offenders walking free to commit crimes against others.

In the vast majority of cases involving child sexual assault, the perpetrator and victim either know each other or are related. A child molested by a “family friend” or family member could be pressured not to report the crime or to cooperate with the investigation and/or prosecution of the case if the perpetrator faced a long sentence.

Consequence number 4 is reason enough, in my view, to strongly advise this Committee to be extremely cautious in deciding on the penalty enhancements being proposed in the Bill.

In short, long mandatory minimum sentences, as proposed in House Bill No. 7086 can have a number of very serious and negative consequences that could, for the reasons described above, serve to *decrease* rather than increase public and victim safety.

It should be noted that many victims' groups and state prosecutors around the country have opposed laws to toughen penalties on child sex offenders for the very reasons outlined above.

It is also important to note that the state of Utah had a mandatory sentencing structure similar to that being proposed in House Bill No. 7086 for a ten year period before repealing it in 1996 after problems became apparent. The mandatory minimum sentencing structure was replaced by an indeterminate sentencing system. Under Utah's indeterminate sentencing structure, a convicted sex offender could be sentenced up to life as determined by a judge. The Utah Board of Pardons and Parole makes determinations as to if and when an offender is released from prison.

Utah's indeterminate sentencing structure as applied to child sexual assault cases has been successful in keeping dangerous offenders out of communities for prolonged

periods. In addition, it provides incentive for the offender to behave in prison and to sincerely cooperate with treatment opportunities. Because the offender has no certain release date, s/he has optimism that his/her actions will be noted by the Board of Pardons and Parole. Conversely, offenders who have a set sentence under a mandatory minimum structure have little incentive to improve themselves, take responsibility for their criminal conduct, or cooperate while incarcerated because their future release date is known and concrete.

After Utah eliminated mandatory minimum sentences for child sex offenses in 1996, the number of persons convicted of first degree sex offenses against children and sentenced to prison DOUBLED and the percent of perpetrators receiving probation DECREASED by more than 12%. Also, since 1996, the annual number of felony sex offenders sent to prison has increased by 42%.<sup>2</sup>

In contrast to Utah's mandatory minimum sentencing structure, that state's indeterminate system has been found to provide incentive to the offender to enter a plea of guilty to a count as charged because the offender's prison sentence is not yet determined and the offender may focus on the minimum sentence pronounced by the judge and hope to convince the Board of Pardons and Parole to release after the minimum years have been served. This resulted in fewer trials necessitating victim participation and fewer plea deals resulting in lesser penalties for offenders. In fact, with a ceiling of life in prison on many sex offenses, Utah's current sentencing laws actually have the capacity to punish offenders more than what "Jessica's law" would provide.<sup>3</sup>

Finally, I respectfully recommend that to more effectively address the problem of child sex assault in Connecticut, this Committee consider focusing on supporting the efforts of prosecutors in our state to obtain convictions rather than extending sentences. Sex crimes are particularly tough to prove. Children often don't reveal what happens for a long time. They may not know what's happening is wrong. They may be ashamed. There is often no forensic evidence or injury. Sex crimes are particularly tough to prosecute. In many ways, such cases are very different from the prosecution of most other crimes. Specialized expertise is needed in handling victims, evidence, expert witnesses, and in the presentation of the case to a jury to successfully prosecute and convict child sex offenders. Such cases should not be handled by the "generalist" prosecutor.

Specialized Sexual Assault Units should handle the vertical prosecution of major felony sex crimes. These important units would be responsible for the aggressive prosecution of sex offenders while also protecting and assisting the victims of these crimes as the case proceeds through the criminal justice system.

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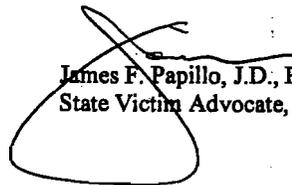
<sup>2</sup> See, *A Statement Regarding Utah's Indeterminate Sentencing System*, Utah Sentencing Commission, September, 2006 (attached hereto).

<sup>3</sup> See, Utah Sentence Commission Weblog: Jessica's Law" Utah's Response, <http://utahsentencing.blogspot.com/2006/03/jessicas-law-utahs-response.html>.

Developing specialized prosecution units would create certain efficiencies as prosecutors become more familiar with issues in the cases, develop expertise with the issues, and begin to establish working relationships with others working with child victims of sexual assault.

Sex offenders won't face tougher sentences without convictions. In my view, it would be more productive and helpful in addressing the utterly despicable problem of child sexual assaults by arming our state prosecutors with the tools and expertise needed to successfully prosecute and convict those who do irreparable harm to the children of our state.

Thank you for considering my testimony.



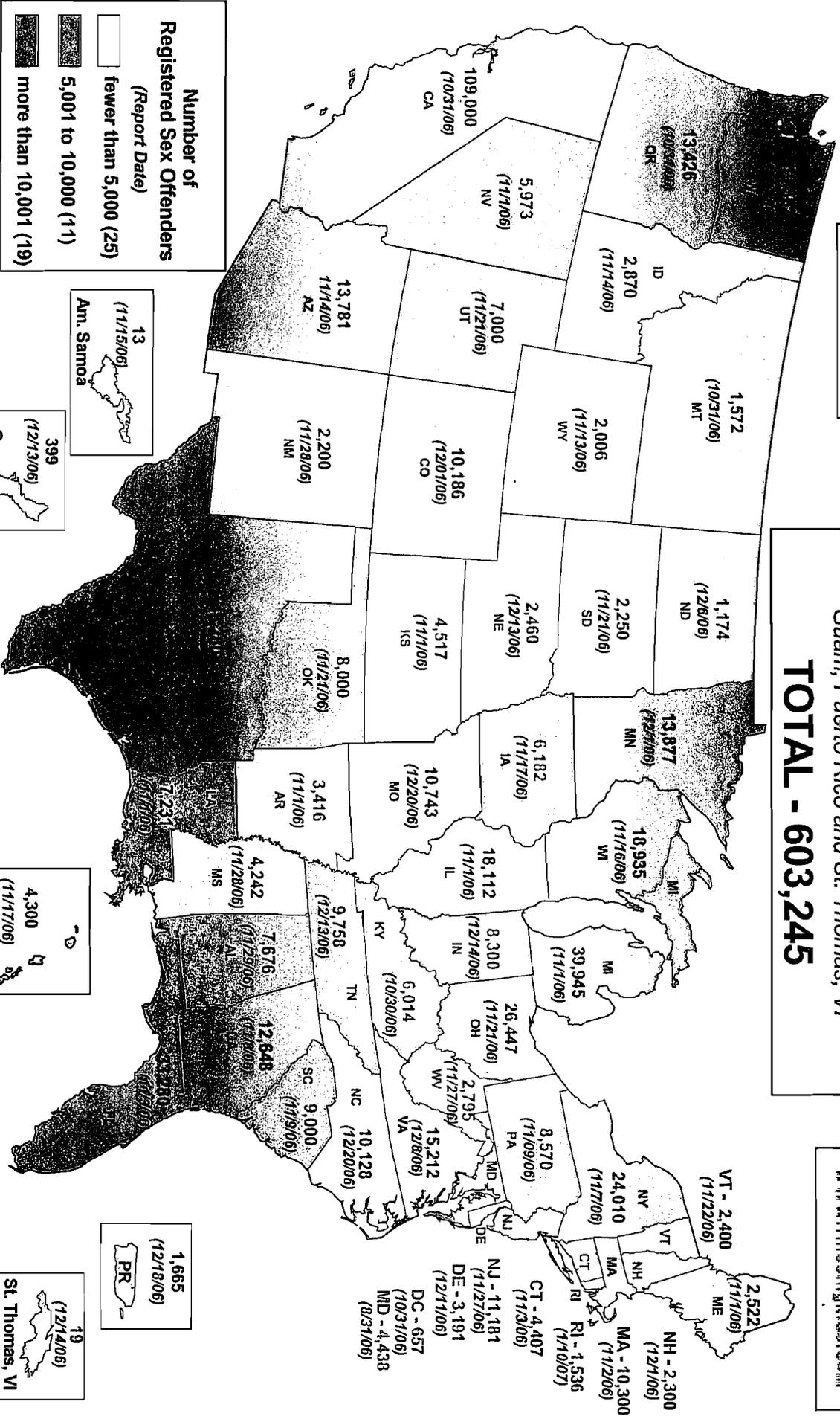
**James F. Papillo, J.D., Ph.D.**  
**State Victim Advocate, State of Connecticut**

# Registered Sex Offenders in the United States

Including the District of Columbia and  
Territories of American Samoa,  
Guam, Puerto Rico and St. Thomas, VI

## TOTAL - 603,245

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN  
CHILDREN  
www.missingkids.com



**Number of Registered Sex Offenders (Report Date)**

- fewer than 5,000 (25)
- 5,001 to 10,000 (11)
- more than 10,001 (19)

Source: Individual Sex Offender Registries  
Source: National Center for Missing & Exploited Children, Alexandria, VA  
Source: Environmental Systems Research Institute, Inc., Redlands, CA

National Center for Missing & Exploited Children  
Case Analysis and Support Division  
February 15, 2007



## A Statement Regarding Utah's Indeterminate Sentencing System

**Executive Summary:** By avoiding precise and fixed sentencing and release determinations, Utah's primary sentencing interests are best protected. An offender's release from incarceration is contingent on the individual nature of the crime committed, mitigating and aggravating circumstances associated with the criminal offense, past criminal history, the offender's conduct in the prison system, and proven amenability to rehabilitation over time. Our indeterminate system preserves control over the offender and enables a careful evaluation of the offender prior to releasing him back into the community.

We, the Utah Sentencing Commission, issue this statement by way of explanation and in support of preserving Utah's indeterminate sentencing structure.

### **Primary Sentencing Interests**

When considering sentencing and release determinations, the primary points of focus for judges and the Board of Pardons and Parole are:

- 1) Public Safety
- 2) Victim Rights
- 3) Offender Rehabilitation

While enumerated as three areas, the last two can be looked at as subcomponents of Public Safety because each enhances safer communities. Specifically, when the devastating concerns of victims are addressed by the judicial system, the whole community benefits because it is less likely that additional victimization will occur. Moreover, offender rehabilitation minimizes the risk to the public upon the offender's return to society - true public safety is determined after incarceration and release into the community. The driving focus of indeterminate sentencing is public safety.

### **Indeterminate Sentencing**

The Miriam-Webster Dictionary defines "indeterminate" as "not definitely or precisely determined or fixed." One unfamiliar with the nuances of indeterminate sentencing may, at first blush, find the report of an offender's sentence perplexing, vague, or even "weak on crime." Understandably, an initial reaction to these observations is to argue for more precise and pre-measured sentences.

“By avoiding precise and fixed sentencing and release determinations, Utah’s primary sentencing interests are best protected.”

The Utah Sentencing Commission’s purpose in drafting this statement is to explain the demonstrated benefits of Utah’s indeterminate system. By avoiding precise and fixed sentencing and release determinations, Utah’s primary sentencing interests are best protected. These interests are protected by virtue of the ability to individualize sentencing and release determinations. For example, unlike a determinate sentencing structure, an offender does not typically leave the prison merely because of the passage of time. Rather, release is contingent on the individual nature of the crime committed, mitigating and aggravating circumstances associated with the criminal offense, past criminal history, the offender’s conduct in the prison system, and proven amenability to rehabilitation over time. Our indeterminate system enables a careful evaluation of the offender prior to releasing him back into the community - in addition to the judge’s findings following trial or plea, the Board of Pardons and Parole exercises broad discretion in order to tailor dispositions to best address the public safety risks offenders pose. This discretion includes determining conditions of probation or parole in accordance with the unique potential risks associated with each offender.\* These decisions consider offender risk profiles, their probation/parole conditions, supervision, and revocations. Each individual case can be fine-tuned to the particular risks and propensities individual offenders present. Ultimately, this indeterminate sentencing system best empowers judges and the Board of Pardons and Parole to ensure that an offender, who continues to present indications of risk to the public, remains incarcerated. Thus, our present structure gives us the best of both worlds – a front and back end evaluation of each offender.

The primary difference between a determinate and indeterminate sentencing system is *when* the sentence is determined. In a determinate system, the offender knows with reasonable certainty when he can expect to return to the community. This release determination is made by a judge who has the limited benefit of a pre-sentence report and observation of the offender during court proceedings. Parenthetically, with a long-established expected release date, the offender has less motivation to cooperate or rehabilitate while incarcerated.

Conversely, in an indeterminate system the offender’s sentence is largely in a state of flux – continually being evaluated using pre-sentence reports, court sentencing documents and remarks of the trial judge, victim impact statements at both initial sentencing and at parole hearings, observations of the offender’s behavior and efforts to rehabilitate, and continued reports and evaluations by Board of Pardons and Parole and prison staff. This makes it less likely that decisions will be based on inaccurate, incomplete, or stereotypical information and provides maximum information available over a prolonged period to the entity making the release determination and best ensures that public safety is the paramount consideration. Additionally, built in is a high level of motivation for the offender to genuinely participate in rehabilitative efforts. This benefits the offender and contributes to a safer public when the offender ultimately returns.

Finally, while one criticism of indeterminate sentencing systems is a perception of disparity in sentencing, our state has been successful in combating disparity. This is partially achieved by sentences and release determinations that are consistent with the Sentencing and Release Guidelines promulgated by this Commission. These guidelines, which include matrices that factor in the nature of the crime along with criminal history of the offender, provide the judicial branch guidance prior to sentencing/release determinations. Our research shows general uniformity in sentencing across judicial districts. Another vital element in preventing disparity is the fact that an intimate five-member Board of Pardons and Parole considers each and every release determination. This fosters consistency and familiarity across the board.

### **Mandatory Minimums**

A common, and understandable, reaction to a particularly heinous crime is to legislate more rigid penalties for similar future offenses. Often these penalties include mandatory minimum sentences where the offender is certain to serve a minimum period of incarceration. These legislative mandates immediately address public outcry and enable the proponent to claim the moniker “tough on crime.” However, mandatory minimum legislation always has the effect of taking discretion away from judges and the Board of Pardons and Parole and conversely exposes additional vulnerability to public safety, as discussed above. While Utah has carved out some mandatory sentences within its indeterminate system (e.g. murder and many sex offenses), it must be understood that each required mandatory sentence comes at the cost of lost judicial and Board discretion. The benefits of addressing public perception on one particular case must be carefully weighed against the certain loss of the ability to exercise discretion in all cases.

Does this mean Utah and its indeterminate sentencing system is more lenient with criminal behavior? No, Utah’s experience with mandatory minimum sentencing would indicate otherwise. For example, Utah experimented with mandatory minimum sentencing for sex offenses against children in 1983. These were repealed in 1996 after considerable experience and research indicated mandatory minimums for sex offenses were failing Utah’s justice system, its citizens, and most importantly, the vulnerable victims these mandatory minimum sentences were designed to protect. For instance, mandatory minimum sentences were resulting in more child sex cases going to trial though evidence strongly favored the prosecution. It was observed that in the mandatory minimum scheme, defendants had nothing to lose by going to trial as their time of incarceration was definite if found guilty. In these trials, child victims were forced to re-live their private devastation in a public forum, in the presence of the offender, and under cross-examination from defense counsel. Additionally, for cases that were not incredibly strong or the credibility of the child witness was perceived to be less than stellar due largely to the victim’s reluctance to testify, a plea agreement was negotiated and the offender ended up not being convicted of the mandatory minimum offense at all – rather, they often ended up with a plea agreement to a second or third degree felony when the underlying charge was a first degree felony.

*“First degree  
felony  
sex offense  
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Since repealing these mandatory minimums in 1996, research indicates Utah is actually getting more sex offenders convicted of first degree felonies. First degree felony sex offense admissions to prison have dramatically increased. These sentences have the potential of keeping the offender in prison for life. Additionally, since 1996, the annual number of felony sex offenders admitted to prison has significantly increased. Movement away from mandatory minimum sentences has also resulted in fewer trials as defendants enter a plea prior to trial in hopes of leniency by the Board of Pardons and Parole. These inmates end up being more motivated to rehabilitate and easier to supervise within the prison system as they have hope for release contingent upon prison behavior. Most important though, in addition to keeping dangerous offenders locked up for prolonged periods based on individual case assessments, fewer child victims are required to re-live their anguish by testifying in court.

### **Conclusion**

In summary, Utah's present indeterminate sentencing structure, while operating on a balance focusing on individualization and largely reliant on conscientious judges, Board of Pardons and Parole, and their supporting staff, is working well by best protecting society, serving victims, and enabling maximum rehabilitation for offenders. This balance has been proven most effective over time especially in comparison with Utah's past negative experience with mandatory minimums.

The Utah Sentencing Commission remains committed to evaluate and identify ways our indeterminate system can be protected and improved.

\*Many determinate sentencing systems have eliminated parole entirely. Parole in an indeterminate system is an additional safe-guard to protect the public as the Board of Pardons and Parole has continuing jurisdiction to monitor the offender after release. This continuing jurisdiction enables the Board of Pardons and Parole to modify conditions of parole or revoke as needed. It has been observed that many revocations result from technical violations of the parole conditions rather than the commission of new crimes. This is continued assurance that the Board of Pardons and Parole places public safety as its highest priority.

