



UPAN Newsletter Volume 6 Number 4 | APRIL 2019

“Empowerment and Growth Through Knowledge and Unity”

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S O Reg Update – Expungement Bills – Get a Job! Compassionate Release – Women’s Dignity Bill

NEXT UPAN MEETING: MONDAY, MAY 13, 2019 6:30 – 8:30 p.m.
Kafeneio Coffee House 258 West 3300 South, Salt Lake City

TOPIC: Director Greg Hendrix Presenting on LS/RNR – Determining Risk Assessment
All UPAN Meetings are free and open to the public.

Next FOCUS MEETING: Monday, May 6, 2019 6:30 – 8:00 PM Topic: Visiting Policies
NEW LOCATION: AP&P Central Valley Office in West Valley, 3200 W 3500 S, West Valley, UT

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Disclaimer: Formulate your own opinions about the information presented.
This information is presented for the reader’s enlightenment and evaluation.

HB298 Sex Offender Registry Amendments & Other Relevant Bills by Faye Jenkins

Bill Sponsor: Rep. Jim Dunnigan, Senate Floor Sponsor: Sen. Lyle Hillyard

I’m happy to announce Representative Dunnigan’s bill, HB298, passed the legislature with only a few objections after some modifications were made to the bill. It was signed by Gov. Herbert on March 27, 2019.

The notable highlights of the final bill are:

➤ Increases the penalty of producing child pornography that depicts the original act of sexually or physically abusing a young child to a first-degree felony;

- It removes the annual driver’s license renewal requirement from the registry;
- Allows registrants to legally change their name after going through a process;
- It provides an opportunity for 10-year registrants to petition the courts to be removed from the registry after completing ten years in the community if they have not reoffended, have complied with all registry requirements, completed treatment, and payed all restitution.

What was eliminated from original bill. The original version of the bill lessened the registration period from lifetime to 10 years for those who are convicted of Sexual Exploitation of a Minor if the conviction was limited to viewing or possession of child pornography. Victim advocates, members of ICAC (Internet Crimes Against Children), the FBI, and law enforcement agencies lobbied against that portion of the bill. Due to their efforts, the bill was held up in the House Law Enforcement and Criminal Justice Committee until the provision that reduced child pornography to a 10-year registry requirement was removed.

Applicants petitioning to be removed from the registry will pay a fee for the process. Another hurdle the bill had to overcome was the fiscal note added by the Attorney General's Office and the Dept. of Corrections' Registry Department. Currently, those who qualify to petition removal from the registry after 5 years pay an application fee and certificate fee to BCI to determine their eligibility to petition removal. BCI then asks the Registry Department to determine eligibility. The Registry Department does all the work, but BCI collects and keeps the fees. The last version of the bill clarified that there is a \$230 application fee to begin the process to determine eligibility for removal and from that fee, \$140 of that will be given to the Department of Corrections to off-set their costs.

Utah ID or driver's license is no longer tied to the S.O. Registry. While registrants will continue to renew their registration twice a year with their PO or with local law enforcement when off paper, they will no longer need to renew their driver's license or ID card annually. They will renew just like every other Utah citizen. However, they will renew in person with proof of residence and ID. They will renew within 30 days of moving to a new residence.

Other sex offender legislation. There were a few other important pieces of legislation regarding sex offenders that passed or attempted to pass this session.

HB075 Sex Offender Registry Amendments. was sponsored by Rep. Ken Ivory and Senator Luz Escamilla and was signed by the Governor on March 27, 2019. This bill originally attempted to change the S O registry to require those convicted of attempted unlawful sexual activity with a minor, a class A misdemeanor, to register. The bill was amended so only those 21 or older who plead guilty of this attempted offense must register, removing the requirement for those under the age of 21 from registering.

HB287 Sex Offense Amendments sponsored by Rep. Ken Ivory and Daniel McCay passed and was signed by Gov. Herbert on March 22, 2019. It originally extended the definition of "position of special trust" to include employers and university professors who engage in sexual activities with adult students or employees. The

bill met opposition for making sexual relationships between consenting adults a criminal offense. The bill was then modified to include in the definition of special trust, professors, teachers, or teaching assistants who are employed by a place of higher education, making it a criminal offense to engage in a sexual relationship with students under the age of 18. This is the version that has been put into law.

One that did not pass. HB141 Aggravated Sexual Exploitation of a Minor, sponsored by Representative Paul Ray. This bill attempted to aggravate some instances of child pornography to a first-degree felony. The enhancement would include the production of child pornography, when a family member or a person in a position of trust with the victim possesses the images, when the images depict infants or toddlers, or when it is a second sexual offense. The Sentencing Commission, CCJJ, defense attorneys, and representatives of UPAN spoke out in opposition to the bill because the language in the bill was too broad and could include a large portion of persons convicted of viewing or possessing child pornography. The simple definition of production could include consensual images between older minors (late-adolescents) as well as overlap the definition of voyeurism. The bill was held up in the Senate Judiciary Committee with a request the bill sponsor amend the bill to include a narrower definition of production. Ultimately, the bill died in favor of Rep. Dunnigan's bill, HB 298 S03, which did include a narrow definition for first-degree child pornography production.

A positive year. Overall, this was a year in which lawmakers began to look at the differences in types of sexual offenses and made decisions accordingly. They were willing to revise or remove some registration requirements that were burdensome to former offenders and have not proven to be necessary for public safety. This was a positive legislative year for those on the registry and the changes passed will benefit everyone. Ten-year registrants have the opportunity to get off a few years early if they are willing to pay the cost of going through the petition process. We didn't accomplish all we hoped for this year, but nevertheless, we will continue our efforts to make more positive changes to the registry in the coming years.

On behalf of UPAN families and incarcerated persons impacted by this legislation, I would like to extend our appreciation for the hard work that has gone into these bills by not only our elected legislators, but the legal and legislative staff that support them in their work.

Finally, UPAN wishes to extend its thanks to everyone who has been involved in the often difficult discussions of these bills – from those who work with victims and victims themselves to law enforcement, ICAC, Adult Probation & Parole officers, county prosecutors (who came out on both sides of these discussions) and defense attorneys, to the numerous family members

and former offenders who spoke in the various committee meetings and bill debates, allowing themselves to be vulnerable and opening themselves up as they

shared their histories and stories about how the various registration laws impact themselves, their families, and communities.

Expungement Bills Passed in 2019 Legislative Session

by Wendy Parmley

Two bills were passed in Utah this year related to expungements. HB 212 was signed by Gov. Herbert on March 28 and HB 431 was signed on March 27, 2019.

HB212 – Expungement Changes – House Sponsor, Rep. Barlow, Senate Sponsor, Senator Iwamoto

This bill amends and expands the Expungement law and allows a job applicant (for a government job or for a private employer) who has an expunged record to answer questions related to their prior criminal record as though the criminal action never happened. A public (government) employer cannot ask about criminal history prior to a job interview. A public employer cannot ask about expunged records unless the position is with or for the following: a law enforcement agency, part of the criminal or juvenile justice system, a non-employee volunteer, a public employer that works with children or vulnerable adults, the Department of Alcoholic Beverage Control, the State Tax Commission, a public employer whose primary purpose is performing financial or fiduciary functions.

HB431 - Expungement Act Amendments – House Sponsor Rep. Hutchings, Senate Co-Sponsor Senator Thatcher. This bill amends the Expungement Act and requires the Department of Public Safety to put together a process whereby certain low-level offenses are to be expunged automatically. These include “Clean Slate Eligible” cases involving Class C mis-

demeanors after 5 years, Class B misdemeanors after 6 years, and Class A **possession only** misdemeanors after 7 years. No other Class A or Felonies will be automatically expunged.

To be “Clean Slate Eligible,” individuals must have paid all fines or judgments, must not have any pending cases against them and must not have too many past offenses (2 or more felony, 3 or more Class A offenses, 4 or more Class C, refer to the Expungement Act for more details related to possession offenses) – unless 10 years have passed since last offense. “Clean Slate Eligible” includes cases dismissed as successful completion of plea in abeyance for Class A possession or Class B and C misdemeanors or infractions.

“Clean Slate Eligible” does not include:

- Individual found not guilty by reason of insanity
- Cases with a fine or judgment that has not been paid and has gone to collections
- Any of the following Plea in Abeyance or Convictions
 - A registerable sex offense
 - A registerable child abuse offense
 - Weapons offense
 - Sexual battery
 - Lewdness
 - DUI and Reckless Driving
 - Damage to or interruption of communication device
 - Domestic violence

HB0318: A First Step To #DIGNITY For Incarcerated Women In Utah

by Britnee Webb

UNANIMOUS. A word rarely, if ever, associated with Utah and women’s rights. In fact, in 2018, Utah was ranked the second most sexist state in the nation. Yet in March of 2019, HB0318 unanimously passed both houses of Utah’s legislature, giving incarcerated women dignity during childbirth while in custody. Something a formerly incarcerated woman, Michelle Aldana, desperately needed. In 2001, her 30-hour labor and delivery left her with bleeding ankles and a fractured pelvis and affected her newborn child while in Utah’s custody (Salt Lake Tribune March 13, 2019). Over the last two decades, countless women have come forward with similar and often horrific stories. Stories of shackled births gone dangerously wrong, traumatic, damaging, and even deadly effects for some infants. Twenty-two states have laws to outlaw this barbaric practice. The Utah **Inmate Restrictions Standards Amendments, HB0138**, chief sponsor Rep. Stephanie Pitcher

and Senate Sponsor: Jacob L. Anderegg includes:

- * provides that the least restrictive restraints are to be used on a pregnant inmate;
- * requires that a correctional staff member individually review an inmate’s situation before allowing restraints to be used on an inmate during labor, delivery, and postpartum recovery;
- * prohibits the use of shackles or other restraints during labor and delivery;
- * requires the correctional staff member to document in a written record all decisions made regarding the use of restraints on a pregnant inmate;
- * makes the record public with individually identifying information redacted;
- * extends the requirements to county jails; and
- * requires that specific information regarding inmate births be reported to the Commission on Criminal and Juvenile Justice (CCJJ) for its annual report.

Previously, the Utah State Prison changed their policy in 2015 to no longer shackle women during labor, but

when the bill's writer, Stephanie Pitcher, spoke to the U of U hospital staff – where the prison takes its laboring women – she heard differently. Making the “policy” a law that is not changeable on a whim or on the mood or beliefs of the attending guard or officer or hospital staff, is the safest option for the prison's female residents.

The new law extends to ALL the state's facilities – jails and prisons. UPAN IS SO PLEASED WITH THIS!

The dignity of women in prison is finally being recognized as a national issue, one we can no longer ignore.
Nila Bala, Baltiore Sun

HB 398 Substance Use and Health Care Amendments for Jails

Summary by Mike McAinsh

HB 398 was introduced during the 2019 legislative session by Representative Brad Daw, who represents House District 60, in Orem. Its co-sponsor was Senator Todd Weiler of District 23, Davis County and parts of Salt Lake County. This bill modifies and enacts provisions relating to substance use, mental health treatment and health care.

HB 398 requires that county jails in Utah shall submit a report to the Commission on Criminal and Juvenile Justice reach year which includes:

- a. the number of in-custody deaths that occurred during the preceding calendar year;
- b. the known, or discoverable on reasonable inquiry, causes and contributing factors of each of the in-custody deaths;
- c. the county jail's policy for notifying an inmate's next of kin after the inmate's in-custody death;
- d. the county jail policies, procedures and protocols for treatment of an inmate experiencing withdrawal from alcohol or substance use, including use of opiates;
- e. the jail policies, procedures, protocols and decisions that relate to the county jail's provision, or lack of provision, of medications used to treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all forms of buprenorphine and naltrexone;
- f. and the jail policies and procedures and protocols that relate to screening, assessment, and treatment of an inmate for a substance use or mental health disorder;
- g. and any report the county jail provides or is required to provide, under federal law or regulation relating to inmate deaths.

Then the CCJJ will compile the information from these reports and redact any identifying information of an inmate in their report to comply with state and federal law and submit this report to the Law Enforcement and Criminal Justice Interim Committee and the Utah

Echoing other states before it, and the landmark federal First Step Act bill passed last December, we can be hopeful this is only the “first step” in women's #dignity bills in Utah. UPAN will communicate and work with Rep. Pitcher into the next session on more criminal justice reforms. We thank her for her hard work on this bill, on her role in educating the other legislators on its importance, and are excited for what more we can do. **UNANIMOUS. For women. In the 2nd most sexist state. Imagine what we could do next! – Britnee**

Substance Use and Mental Health Advisory Council before November 1 of each year.

Taking a bill from introduction through passage is a messy process, and the process has been compared to making sausage. There are big differences between these two processes, however – when making sausage, the end product is usually tasty, whereas a completed bill can be hard to swallow!

Since this bill was not “on my radar,” I wasn't following it through the seemingly endless morass of hearings in the house and senate through final passage. However, while reviewing the bill in retrospect, there were lofty goals proposed by Representative Daw. Among these were provisions for reporting jail and prison deaths, dispensing methadone in jails to prevent dangerous withdrawal symptoms, and not shackling women inmates during labor and delivery.

These lofty goals were watered down drastically. A working group will study the proposed changes and report back to the legislature.

I reached out to Representative Daw for his analysis of the bill that was finally passed. He wrote, “The hope is that the working group will assemble current practices for a number of more sensitive treatments in a jail or prison setting and report to the legislature. We further hope to use the information to assist in crafting the best policy. The medical treatments in question are:

1. Medically assisted treatment for drug addiction.
2. Giving contraceptives to female inmates.
3. Not shackling an inmate during delivery.**
4. Being careful when to do a body cavity search.”

** Please note there is another new law that now stops Utah prisons and jails from shackling women during labor and delivery. See page 3 for article on HB 318.

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.” — Nelson Mandela

Miscellaneous Legislative Highlights

by Deon Corkins

The following bills passed in the 2019 Utah Legislative session may be of interest to incarcerated individuals and their families as well as those on probation or parole. UPAN appreciates the hard work of the lawmakers who worked hard on these bills which will benefit many.

SB 96 Medicaid Expansion Chief Sponsor: Sen. Allen Christensen. House Sponsor: Rep. James Dunnigan. This bill expands Medicaid eligibility to 100% of poverty level and alters Proposition 3, which Utah voters approved in 2018.

About 70,000 individuals with medical coverage through the Affordable Care Act, (ACA) are being switched over to Medicaid without applying, effective April 1, 2019. Unlike fully expanded Medicaid, there will be a cap on the number of participants. Apply soon. Sent to governor 2/11/2019. Governor allowed it to go into law without signature or veto as of 3/30/2019.

HB 460 Medicaid Eligibility Amendments Chief Sponsor: Rep. Carol Spackman Moss. Senate Sponsor: Sen. Todd Weiler. The Medicaid program is now prohibited from terminating eligibility solely because the individual is incarcerated or on probation or paroled. However, subsection (13) (a) also states it does not require the Medicaid program to provide coverage for any services for an individual while the individual is incarcerated. So no coverage while in a correctional facility but can get back on upon release. Signed into law on 3/25/2019.

SB 11 Medicaid Dental Coverage Chief Sponsor: Sen. Allen M. Christensen. House Sponsor: Rep. Steve Eliason. The Utah Dept. of Health is required to apply for a federal Medicaid Dental Care waiver by June 11, 2019. If approved, dental care will be added for Medicaid participants in substance abuse treatment programs. Dental care will be provided by the University of Utah School of Dentistry and its satellite locations. Previous to this, only children, the blind and the disabled are eligible for dental services. Became law on 3/21/2019.

SB 129 Public Safety and Fire Fighter Tier II Retirement Enhancements Chief Sponsor: Sen. Wayne A. Harper. House Sponsor: Rep. Lee B. Perry. In 2011, the legislature changed the formula for calculating retirement pay. The result was a big drop in recruitment of correctional officers due to a significant decrease in future pensions for newly hired employees. This bill restores much of the old method of calculation. Perhaps now more correctional officers will be hired, stress reduced, and morale improved. This could make Utah's prison environments safer for everyone and provide more coverage for programming. This was signed by the Governor on April 1, 2019.

HB 90 – Occupational Licensing Modifications

Chief Sponsor: Rep. Eric Hutchinson. Senate Sponsor: Sen. Karen Mayne. Convicted felons were not eligible for many occupational licenses issued by the state. The law provides for a convicted individual to apply for a determination of whether the individual's criminal history should disqualify him or her from receiving a specific occupational or professional license if all other licensing requirements for the occupation were met. According to section 58-1-310, to receive a determination, the individual is required to submit an application in the format required by the Division of Professional & Occupational Licensing (DOPL) and it must include information regarding:

- the individual's complete criminal conviction history;
- what occupational or professional license the individual is interested in seeking;
- what licensing requirements have been met by the individual;
- what licensing requirements have not been met by the individual; and
- any other information required by the division as established by the division.

DOPL may charge an application fee. DOPL then has 30 days from the day it receives a completed application to provide a written determination to the applicant of whether their criminal record would disqualify them from obtaining a license in the regulated occupation or profession if they were to complete all other licensing requirements.

If the individual's criminal record would disqualify the individual from obtaining a license in that occupation or profession, the written determination may also include information regarding additional steps the person could take to qualify for licensure. Became law on 3/25/2019.

HB 414 – Restitution Reporting (by county jails in Utah)

Chief Sponsor: Rep. Stephanie Pitcher. Senate Sponsor: Sen. Todd Weiler. Fees imposed to inmates by county jails for their housing in the jail and transportation disproportionately impact indigent defendants. This bill requires:

- County jails to report specified data regarding certain fees collected from inmates to the Commission on Criminal and Juvenile Justice (CCJJ);
- creates a task force for the purpose of reviewing the collected data and making findings and recommendations based on that data;
- requires the CCJJ to compile the data collected and submit it to the Jail Incarceration and Transportation Costs Study Council (JITCSC);
- directs the membership and purpose of the JITCSC;
- provides a repeal date for provisions relating to the JITCSC. Signed into law on 3/25/2019

SB 34 Affordable Housing Amendments Chief Sponsor: Sen. Jacob L. Anderegg. House Sponsor: Rep. Val K. Potter. Parolees, their families, and families of incarcerated individuals face hardships in search of housing because of the shortage in Utah's urban counties. This law encourages development of more affordable housing through modification of local requirements. It is an attempt to create more affordable housing in the state by encouraging cities to implement a variety of strategies, such as allowing for mother-in-law apartments, preserving existing moderate-income housing and allowing for single room occupancy

dwelling. For example, one provision would allow small habitable dwellings be allowed on single family lots detached from a main house. Municipalities that meet the requirements outlined in the bill would then be eligible for transportation funding from the state. The bill is the product of a dozen meetings by the state Commission on Housing Affordability created by lawmakers last year to address rapidly escalating housing prices in Utah and a shortage of homes for those earning moderate incomes or below. The law passed, but funding was cut as the session ended due to tax and revenue disputes. Became law on 3/26/2019.

“The greater ignorance towards a country is not ignoring what its politicians have to say, it is ignoring what the inmates in its prisons have to say.” — Philosopher Criss Jami, Killosophy

Utah BOPP Updating Compassionate Release Policy

by Molly Prince

We are pleased that there is a revised rule for policy that the Board is submitting for public comment to guide compassionate release.

Utah has an aging inmate population. With this comes a growing number of situations in which prisoners suffer from chronic, debilitating disability or illness. According to truthout.org's op-ed by Vijay Das and David A. Love on January 23, 2019, there are currently 1.2 million people incarcerated in state prisons in the US. Utah is home to about 6,800 of those prisoners. The number of US prisoners serving life sentences is four times what it was in 1984. The growth and continuing aging prison population in Utah is unsustainable and begs for solutions because elderly prisoners have complex and expensive medical needs. The Federal Bureau of Prisons has found that institutions with the highest percentages of aging individuals spend five times more per prisoner on medical care and 14 times more per inmate on medication than those prisons with younger inmates. Research has suggested that in the aging inmate population, heart disease and cancer are the major causes of death. These chronically, seriously, and terminally ill persons do not generally pose a threat to public safety. One solution that would reduce Utah's prison population, save taxpayer funds, and allow humane care for elderly, chronically ill, and terminally ill individuals who are currently incarcerated is to increase the use of compassionate release. In their op-ed, Das and Love write that, "The early release of elderly and ill prisoners is an effective way to affirm human dignity and morality." I wholeheartedly agree.

In addition, our prisons are charged with providing an appropriate level of care for patients with severe or debilitating illness, which can be difficult and at times, impossible, in Utah State Prison. In the community, hospice can be a standard for end-of-life care. However, as of 2017, prison hospices were only offered in 69 of 1,719 state prisons according to a September 2017 AMA Journal of Ethics article *Human Dignity: the Ethical Principle Justifying Use of Compassionate*

Release Policies. In the community, it is recognized that social and family support is a core component of quality care. This is often denied our terminally and chronically ill incarcerated population in Utah. Even when we get the new prison, which is supposed to have a hospice program, prison hospice is costly because it has not been allowed to be billed to insurances.

My interest in compassionate release. I first became aware of the difficulty for Utah's incarcerated folks to even be recommended for compassionate release about 10 years ago. The realization of the problem came when a respected inmate friend of our incarcerated loved one was diagnosed with late stage cancer after repeatedly being told by the Medical Service that his pain in his shoulder and back was simply muscle strain. I did not know this man but became familiar with him through our loved one's reports and concerns about his well-being. Through our inmate, I vicariously experienced his struggle to receive treatment in a timely manner. I even contacted Medical on his behalf myself at one point when he was several weeks overdue to begin another round of chemotherapy. I received regular updates on his decline as he approached death from my loved one. I understood his reluctance to move out of his cell as long as he could put his own pants on and had help from others on the block for his daily living needs. He had a life sentence and had been incarcerated for close to 25 years. He wanted to die with his friends on his block around him, not alone and without dignity in a dreary back room in Draper's Medical unit. No one in Corrections submitted this dying man's name to the Board for compassionate release so he could die with dignity in the community with family around him. Why? I do not know those reasons. But I believe he was not considered because at that time (and up until recently)

recommendations for compassionate release were a role delegated solely to the doctors of Utah State Prison. For whatever reason, the medical staff at that time did not see fit to offer this dying, middle aged man and his family the opportunity to pass out of this world at home or in a care center, with family close by, round the clock care, and dignity.

USP does not have anywhere that is suitable to house and appropriately care for a dying inmate.

In 2013, courtesy of Rollin Cook, I had occasion to see the little rooms at the end of the hall in Medical that inmates are put in who are recovering from surgeries or are chronically ill and cannot remain in general population. I saw two rooms with very ill inmates in them. I was shocked and appalled. Out of the way, the rooms and hall smelled bad and seemed to double as storage rooms with a bed in the middle of the room. There was no window, no bedside table, no TV, no phone, and certainly no day-room to go into to sit and see other people. Just isolation in their illness. It is a sad and heart-wrenching way to leave this world. Nothing to comfort those unfortunate souls who end up in those rooms to make their final journey out of this life.

Even worse, there are not regular visiting hours for inmates remanded to the Medical service, limiting them in their ability to receive visits from family and friends.

Human dignity - a core ethical principle in medicine.

Upholding human dignity, which is defined as the *"inherent value or inner worth of every person"* is a core ethical principle in medicine, just as it is in my own professional discipline, social work. This means that every individual has inherent worth, which is not subject to circumstance, despite the situations that led to incarceration. The first tenant of the American Medical Association's Principles of Medical Ethics states, *"A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights."* In palliative care (care of the dying to keep them as comfortable as possible in their process) or in care of patients with serious illness aimed at symptom control rather than cure, the AMA principle requires that the maintenance of human dignity is considered a fundamental ethical principle – regardless of whether the patient is a prisoner or not.

For individuals with serious and life-limiting or terminal illness, maintenance of human dignity is defined as *the provision to the extent it is possible to the patient of meaning and purpose, autonomy and control and attention to spiritual and emotional needs.* At the end-of-life this requires that one settles their relationships with others, shares words of love with their families and friends, and comes to terms with the myriad of end-of-life issues that everyone faces when that time comes.

A person with dementia, at some point, will no longer be mentally, emotionally, and spiritually present to resolve

and settle their life, despite the fact that they could live for years before physically passing on.

It is my understanding that the incarcerated have a constitutional right to appropriate care. It seems that in the case of long-term chronic debilitating illness, terminal illness, and dementia, the prison setting cannot accommodate the necessary end of life processes that a humane and enlightened society embraces. Compassionate release offers a way to allow prisoners in these situations to receive appropriate care and connection to loved ones. It provides families an opportunity to resolve any relationship issues and participate in and oversee the care and comfort of their loved one.

Use of compassionate release has been limited throughout the country

According to the truthout.org op-ed, 49 states and the District of Columbia offer compassionate release, geriatric release, or medical parole. However, only three states – Texas, Utah, and Louisiana, freed a dozen or more people under these programs in 2015. (Utah released 12 in 2015). This can be for various reasons. Some states have very strict and narrow rules. Many prisoners and their families are not aware that compassionate release programs exist, and prison officials and medical staff are often uncertain of the policies and procedures necessary to initiate and facilitate it.

It has been proposed by various sources that recommending a prisoner for compassionate release by the medical service staff employed by the prison appears to be a conflict of interest and that prison doctors are reluctant to make such recommendations because it goes against the continuing culture of punishment in our prisons. I am not saying that this applies across the board here in Utah, but it is certainly something to consider. We know that there are still medical staff involved with the Utah prison system that are stuck in the antiquated punitive idea that prison is simply to punish, rather than being the mechanism for removal from society long enough to reduce risk through education, rehabilitation and recovery.

All of the above reasons are why several of us have been talking to Greg Johnson for several years about the need for a broader compassionate release policy with Utah's Board of Pardons & Parole. He listened!

Utah's compassionate release rules have been narrow.

Despite being a leader in the US for compassionate release numbers, Utah's compassionate release guidelines have been narrow and restrictive. For years, I have been talking to people who would listen about the need to broaden the Board of Pardons & Parole's Compassionate Release Policy. Finally, over the past several months, we have worked to take a step in the right direction with revisions to the policy. Margie Nash of the ACLU of Utah and I have brought this issue up during Community Outreach

Committee meetings with the BOPP Director of Administrative Services, Greg Johnson and during 2018, the committee worked on this issue. Attorneys from the Disability Law Center researched what other states do for compassionate release and presented those findings to the committee. Medical Services Administrator Tony Washington was invited to one of our meetings to talk with us about how the prison medical service handles a recommendation to the Board for compassionate release. Greg Johnson followed up with prison officials about the details of the process they will take if a request for compassionate release originates from a source other than prison Medical Service. Today, we are pleased that there is a revised rule for policy that the Board is submitting for public comment to guide compassionate release!

Who will be able to request compassionate release.

One of the most significant changes is the broadening of who can request a consideration for compassionate release. In the past, the Board's official rule was that it would only consider requests from the Utah Department of Corrections that an inmate be considered for this type of release. Now, the new guidelines allow for consideration to be initiated upon receiving a written request from not only the UDC medical services, but also from the offender, an attorney, a member of the offender's immediate family. Anyone holding a Power of Attorney for the inmate can also submit a written request for consideration for compassionate release.

Per the proposed new rule, "Immediate family member is defined as a parent, step-parent, spouse, child, sibling, grandparent or grandchild." Please note that much discussion over the last three months has involved defining immediate family. Rather than getting bogged down in another three month discussion, at our March meeting, representatives from the Disability Law Center, the ACLU, and UPAN voted that we proceed with that wording. We can revisit this in the future after the Board and the prison have dealt with the new rule for a while. In the future we could work to expand that definition to accommodate other types of relationships that could constitute immediate family. Moving forward now, we no longer delay getting the rule out for public comment and implementation.

Grounds for a request. There are basically three reasons that exceptional circumstances exist for which an inmate may be eligible for consideration for early release for compassionate reasons.

1. If the offender suffers from a "serious and persistent medical condition which requires extensive medical attention, nursing home care, or palliative care."
2. If the offender has a terminal illness.
3. If the offender is already scheduled for a release date and has an immediate family member die within 120 days of that scheduled release date. A death certificate must be included with this request.

Other factors to be considered include if an offender's risk to public safety and recidivism risk is significantly and permanently reduced due to effects or symptoms of advancing age, medical infirmity, disease, disability, or mental health disease or disability.

How to request a review for compassionate release

The written request must explain the circumstances supporting the request for early release on one of the grounds listed above. It should include:

- the specific diagnosis, effects, conditions, or symptoms that the Board should consider;
- the treatments available in the community as well as the prison;
- when possible, the prognosis (expected prediction of how the inmate will be impacted by the illness over the long term) of such effects, conditions, or symptoms;
- a statement explaining how the offender's risk for public safety or to reoffend has been permanently reduced by the condition;
- the release plan for the inmate – will they go home and be cared for by family or will they go to a nursing home or care center?
- If care will be required, a recommendation for the transition time necessary to complete arrangements for a care center, nursing home, or home care.
- If applicable, the name of the nursing or care facility that will accept them upon their parole.

If the request received by the Board does not include a report and recommendation from the Department of Corrections Medical Service regarding the inmate's medical or mental health condition, then the Board will request a review and report of inmate's condition from Corrections. The Board may request that the UDC review the request and provide any institutional or other reports requested by the Board and make a recommendation regarding the request.

Hearing or paper review. The Board is not required to conduct an in-person hearing for a compassionate release but could schedule one; if not scheduled, the Board will do what is called a paper review of all the documents regarding the inmate and their condition. The exception to this is if the compassionate release would occur before an offender's original hearing, then the Board will hold a hearing.

If a decision is made without a hearing, the Board will make a reasonable effort to contact, inform, and consider the input of any victim of record in the case for which the person is incarcerated, if the victim of record has previously requested notice of hearings, as required by Utah law.

Finally, a compassionate release request submitted for a prisoner does not limit or preclude other requests for special attention or redetermination consideration.

Carrying out compassionate release upholds human dignity and medical ethics. Due to Utah State Prison's current inability to provide comprehensive and compassionate round-the-clock nursing, hospice, or palliative care, the failure of providing compassionate release in qualifying circumstances has been a violation of human dignity.

This issue has been addressed by physicians in an article entitled *"Release Policy Reform: Physicians as*

Advocates for Human Dignity" in the September 2017 *Journal Of Ethics* of the American Medical Association.

On behalf of UPAN families and many incarcerated individuals who suffer from debilitating illnesses, or who are facing end of life, I would like to express gratitude to the Board for the opportunity to have a voice in this progressive move. Finally, many of us are simply thankful that the Board, as an entity, is open to expand these guidelines to become a more compassionate system in Utah while maintaining public safety.

***"While compassionate release is nearly universal, it is underused."
Families Against Mandatory Minimums (FAMM) 2018***

Finding Employment While on Probation/Parole

By: Blake Marshall

Being involved in the criminal justice system may seem like a series of never-ending hoops to jump through, and none more so than being on probation/parole. You have been through the courts, served your time in jail/prison and now that you are out, your PO will have requirements for you to abide by in order to complete the debt that you owe to society. One of the major requirements that you are expected to abide by is to hold down a full-time job.

For my entire life, the process of finding, interviewing, and ultimately landing a job had been pretty simple. That was, of course, until the moniker of a felon was chained to the name that I had worked my whole life to build, and through a series of unhealthy choices brought down to the cellar. Almost a year after my conviction, the job that I loved, and the job that I thought I would be in for years to come, became impossible to do under my restrictions. This is the moment that I began one of the most frustrating experiences of my life: finding a job with the term "felony" attached to my name.

On one occasion, during this time, I was told that I had ultimately been the best candidate for the job but was not able to be hired because of the red on my criminal ledger. My story is not uncommon, as I'm sure any person with a felony record could tell you about not getting a job because of what their background check revealed. This can be frustrating, emotionally draining, and ultimately can be a trigger for some to return to the unhealthy habits that got us to the point of committing our crimes. For me, I got to a point where wanting to try for a job became something that I actively avoided, only to be reminded that if I did not have employment, I would be in violation of my probation agreement.

My experience of applying and interviewing for jobs as a convicted felon has taught me a lot about the ins and outs of the hiring process, and I have been able to create some tips for landing a job that I enjoy despite my past choices. Is this my forever career? I'm not sure. But what I do know is that I am happy in my work

environment and I am in compliance with my probation agreement and able to support myself and my family. These tips are universal for all job seekers but apply especially to probationers and parolees.

1. Until you have a job, your job is finding a job

If a journey of a thousand miles begins with a single step, then this is the beginning of our thousand-mile trek. Some people are blessed with being able to apply to one job and landing it on the first try. With felons, this is rarely the case. Actively seeking a job requires time and effort. Often times, it requires setting a goal to apply for X amount of jobs each and every day. It requires discipline to walk out of the house and look for "Now Hiring" signs. It requires a sheer volume, knowing that the return will

not be as large as the output. Make a schedule, "From 9:00 a.m. till 3:00 p.m. every day, I will seek out and apply for jobs." This is your highest priority, which means attention to detail is important. Wake up, shower, eat breakfast, put on nice clothes. It will amaze you how just preparing yourself for the day will put you in the frame of mind for success. Do this even if you are applying online for jobs from home. Make it your job to find a job.

2. Leverage Personal Networks "It's not always what you know, but who you know." Personal networks have been the backbone of successful job acquisition for ages. Finding those family, friends, or acquaintances who know your character and work ethic and then talking to them about your job search will send out feelers for jobs that you may not have even considered. For me, it came down to maintaining a good relationship with a former employer that I had early in college that led to my current work situation. Make an inventory of those in your life who you have a strong rapport with and start contacting them. If they are not business owners themselves, they may know of positions at their workplace, and having a current employee who can vouch for you (with their permission) will go a long way for you to land a job.

3. Honesty is King It is scary and embarrassing to reveal to a potential employer your criminal history. Do it anyway. It will come up on a background check, which nearly all companies require, so it shows integrity on your part that you are willing to be up front and honest. Employers respect that and respect the fact that you are not there to waste their time. I can't promise that this will turn into receiving the job, but you will have the respect of the employers and the peace of mind that you are not hiding anything from them.

4. Prepare for Interviews This tip is especially important for anyone who has done an extended period of time in jail or prison. This is a break in job history on a resume. Be prepared for how to address this, because it will be asked. Use this as an opportunity to explain what you have learned in your time away.

5. Highlight Who You Are Today Interviews are tricky. Employers are looking to examine every part of your life and how you would fit into the culture of the company. Many times a felony conviction is an immediate Red Flag of questionable character. When these things come up, remember Tip 4 (prepare and practice) to highlight who you are today, as opposed to who you were when your offense was committed. Explain what you have learned through your process, in treatment you may have gone through, and express

goals you have for the future. The key is to separate the offense that you committed from who you are as a human being who adds value to a company.

6. Keep an Open Mind – Don't Give Up These last goals can be especially difficult for those who, before their crimes, held a professional career, or who have a degree in a specific field. For myself, I have worked in marketing for the past 3 years and had plans of working in marketing for the remainder of my career. Does this mean that I have given up on working in my desired field? Not in the slightest, but it does mean that my career path has taken a slight detour while I work to prove that I am responsible, reliable, and capable of making healthy choices in the future. Maybe there is an industry that you never considered working in. It may be the best place for you to flourish at this time in your journey. Never give up on your dreams and goals, while still keeping an open mind about possibilities for employment in the present. You may be surprised by what you discover you enjoy.

As scary as re-entering the workforce post-felony can be, ultimately it will be a powerful ally to future success and creating lasting, healthy change in your life. Don't give up, keep pushing forward, even when the job you find is not the most glamorous thing in the world. It will be one of life's great teachers.

A Couple of Smiles and Maybe a Laugh

Joe was being interviewed for a new job. The manager said, "We're looking for someone who is responsible." Joe replied, "I'm your man. When there was a problem at my last job, everyone said I was responsible."

You know you're getting old when the first lit candles on your birthday cake melt into oblivion before the last ones get lit.

A man trying to raise funds for a charity was collecting old cans and bottles. At one house he asked an old woman if she had any old beer bottles. Indignantly she replied, "Do I look like a person who drinks beer?" "Sorry," he paused, then asked, "How about some old vinegar bottles."

Federal 2nd Step Act – Getting jobs for former inmates (5 times more likely to be unemployed) with job training skills, budgeting \$88 million to reduce this unemployed group to single digit numbers in one year, proving, "We're a nation that believes in redemption." Let's get Utah started. – that's cool! Ed.

NOTE: Summary of the April UPAN meeting will be included in May's newsletter.

Utah Prisoner Advocate Network

President: Shauna Denos
Past-President & Treasurer: Molly Prince
Vice-president: Unfilled
Secretary: Unfilled
Director of Communications: Shane Severson
Inmate Newsletter Volunteer Coord: Deon Corkins
Director of Sex Offender Policy Issues: Faye Jenkins
Director of Women's Issues: Britnee Webb
Volunteer Coordinator: An Bradshaw
Newsletter Editor: Warren Rosenbaum

Utah Prisoner Advocate Network
P.O. Box 464, Draper, UT 84020
Website: UtahPrisonerAdvocate.org
Email: Utahprisoneradvocate@gmail.com
Facebook: [Facebook.com/UtahPrisoner](https://www.facebook.com/UtahPrisoner)
(go here to view recent UPAN meetings)

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has." Margaret Mead