



# Assessing the Impact of Utah's Reclassification of Drug Possession

## Justice Reinvestment Initiative

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**From 2004 to 2014, Utah's prison population increased 18 percent (six times faster than the national average) and was projected to increase 37 percent more over the next two decades (CCJJ 2017). Rather than increase taxpayer costs by more than \$500 million to accommodate this growth, Utah embarked on a data-driven process to examine its justice system, culminating in legislation (House Bill 348) that incorporated recommendations from the Commission on Criminal and Juvenile Justice (CCJJ) and state and local leaders (Pew 2015).**

In 2014, Utah state leaders requested assistance through the Justice Reinvestment Initiative (JRI), a public-private partnership funded by the Bureau of Justice Assistance and the Pew Charitable Trusts. The CCJJ, which comprises 22 criminal justice leaders across the state and coordinates interagency justice activities, was charged with examining the drivers of incarceration and recommending ways to slow corrections growth and reinvest in evidence-based strategies to improve public safety. The Pew Charitable Trusts and the Crime and Justice Institute provided technical assistance and research support.

As part of its analysis, the CCJJ identified drug offenses as a major driver of prison admissions and reviewed options for more effective and less costly responses in the community. Drug possession was the most common conviction for new prison admissions in 2013 (having risen each year since 2009), and nearly one-third (30 percent) of those sentenced to prison for drug-related offenses had zero or one prior felony convictions (CCJJ 2014). With time served in prison for drug possession also rising 22 percent over the previous decade, these admissions were a major driver of incarceration and corrections spending (CCJJ 2014).

Recognizing this prison population growth and the associated fiscal and societal costs, the Utah legislature adopted the CCJJ's recommendations, and Governor Gary Herbert signed House Bill (H.B.) 348 into law in March 2015. Among other policy changes, the legislation reclassified first and second convictions for drug possession from a Third Degree Felony to Class A Misdemeanor.

The state also invested significant new resources in community-based substance abuse programs, including an initial annual appropriation of \$4.5 million to the Division of Substance Abuse and Mental Health and an additional \$6 million annually beginning in FY 2018 (CCJJ 2019). Expanding behavioral health treatment capacity has been at the core of Utah's criminal justice reforms, and increased funding has allowed treatment providers to serve 34 percent more people since FY 2015 (CCJJ 2019).

In this brief, we examine criminal justice outcomes related to Utah's reclassification of drug possession. Using data from the Utah Department of Corrections (UDC) and the Utah Bureau of Criminal Investigation (BCI), we analyzed trends associated with the policy change including those related to sentencing outcomes, probation<sup>1</sup> and parole populations, and recidivism among people convicted of drug possession. The brief also documents trends in arrests and dispositions for all drug-related offenses in Utah.

Key findings include the following:

- **New felony convictions for drug possession fell more than two-thirds (71 percent) between 2014 and 2018.** As a result, the share of new drug possession convictions that are felonies, rather than misdemeanors, fell from 84 percent (2014) to 35 percent (2018).
- Prison admissions and time served for drug possession have both declined, reducing the number of people in prison for drug possession by 59 percent between 2014 and 2018. **People spent 105,011 fewer days in prison for drug possession in the two years after H.B. 348 than in the two years before.**
- **Revocations from probation or parole supervision constitute a growing share of prison admissions with a primary drug possession conviction.** The share of prison admissions for drug possession due to revocations of parole increased from 40 percent (2014) to 52 percent (2018).
- **New convictions for possession with intent to distribute (PWID), a felony offense, increased 24 percent between 2014 and 2018.** As a result, growing shares of people on probation and in prison for drug offenses were convicted of PWID.
- Arrests for drug possession are rising despite declining arrests overall, and the number of drug possession arrest charges is growing rapidly. In fact, **arrest charges for drug possession increased 209 percent, accounting for all of the growth in drug-related arrest charges and more than half of the growth in overall arrest charges between 2014 and 2018.**
- Recidivism rates for people convicted of drug possession are low during the first 12 months after starting probation or being released from prison, and **reconviction and imprisonment rates are unchanged since H.B. 348.** While rearrest rates rose slightly in the post-H.B. 348

period, monthly rearrests have declined since implementation and a preexisting trend of rising rearrests has been reversed.

## Background

In 2014, Utah's prison population had risen 18 percent over the previous decade and was projected to increase 37 percent more over the next 20 years (Pew 2015). Such growth would have required 2,700 more prison beds, estimated to cost taxpayers more than \$500 million (Pew 2015).

To address this unsustainable growth, state leaders charged the CCJJ with identifying the drivers of incarceration and recommending policy changes to reduce the prison population and invest in more effective public safety strategies. The CCJJ working group included representatives from corrections, law enforcement, the legislature, the judiciary, prosecution and defense attorneys, behavioral health service providers, and victim advocacy groups.

With technical assistance from the Pew Charitable Trusts and the Crime and Justice Institute, the CCJJ identified substance abuse and convictions for drug offenses as major drivers of prison admissions and incarceration (CCCJ 2014). In 2013, 7 of the 10 most common convictions resulting in a prison sentence were nonviolent crimes—led by drug offenses (CCJJ 2014). In fact, drug possession was the most common conviction for prison admissions and the number of people sentenced to prison for drug possession had increased each of the previous four years (CCJJ 2014). Moreover, prison time served for these sentences had increased 22 percent over the previous decade (CCJJ 2014). Importantly, the CCJJ also found that nearly one-third (30 percent) of people admitted to prison for drug-related offenses had zero or one prior felony convictions (CCJJ 2014).

In addition to these findings, the CCJJ documented significant gaps in community-based mental health and substance abuse treatment, which can increase the likelihood of criminal justice involvement. In 2013, Utah's Division of Substance Abuse and Mental Health estimated that more than 70 percent of the people in need of substance abuse and mental health treatment had been involved in the criminal justice system (Pew 2015). It also estimated that 84 percent of substance abuse needs and 88 percent of mental health needs were going unmet by Utah's behavioral health system (CCJJ 2014).

In 2015, Governor Gary Herbert signed H.B. 348 into law, codifying the CCJJ's recommendations and adopting wide-ranging changes to state sentencing laws, community supervision practices, and behavioral health funding. These changes included reclassifying first and second drug possession convictions from a Third Degree Felony to Class A Misdemeanor.<sup>2</sup> However, the bill did not redefine drug possession, and people who have been convicted of possession three or more times can still receive felony sentences.<sup>3</sup> Table 1 summarizes Utah's old and new drug possession laws.

TABLE 1

**Reclassification of Drug Possession from Felony to Misdemeanor**

*Definition, classification, and sentence range for drug possession before and after H.B. 348*

Old Law			New Law		
Definition: <i>Knowingly or intentionally possessing Schedule I or Schedule II controlled substances (excluding marijuana)</i>					
Convictions	Class	Penalty	Convictions	Class	Penalty
All	Third Degree Felony (F3)	0–5 year prison sentence	1st and 2nd conviction	Class A Misdemeanor	0–1 year jail sentence
			3rd and subsequent convictions	Third Degree Felony (F3)	0–5 year prison sentence
Probation terms: <ul style="list-style-type: none"> <li>• 0–3 years for a misdemeanor</li> <li>• 0–5 years for a felony</li> </ul>					

In addition to reclassifying drug possession, H.B. 348 reclassified possession of marijuana and prescription drugs from a Class A Misdemeanor to Class B Misdemeanor; narrowed drug-free zones from 1,000 to 100 feet and restricted the enhancement to offenses involving the sale of drugs to children during school hours; and revised the sentencing guidelines to reduce the sentencing range for nonviolent offenses and limit the impact of prior misdemeanor convictions.<sup>4</sup>

To address its lack of substance abuse treatment in the community, Utah made an upfront investment of \$4.5 million in an annual appropriation to the Division of Substance Abuse and Mental Health (CCJJ 2019). The policy changes have also enabled significant reinvestments—Utah had already reinvested \$35 million into behavioral health by FY 2017 and increased the annual appropriation to \$10.5 million in FY 2018 (CCJJ 2019). Because of these investments, 34 percent more people received substance abuse treatment in FY 2019 than in FY 2015, and the population receiving residential substance abuse treatment has nearly doubled (97 percent) (CCJJ 2019).

Using eight years of individual-level data from UDC and the BCI, as well as summary statistics from the CCJJ, the Urban Institute analyzed trends throughout Utah’s criminal justice system, including arrests, convictions, probation starts, prison admissions and time served, and supervision revocations. We also examined trends for other drug-related offenses (such as PWID) and differences between Salt Lake County (Utah’s most populous county) and the rest of the state. Our analysis also includes the first snapshot of recidivism outcomes among people convicted of drug possession in Utah.

Specifically, Urban researchers sought to answer the following four key research questions:

- Has reclassification reduced the number of felony convictions for drug possession?

- How has reclassification impacted Utah’s prison and probation populations?
- What trends in other parts of Utah’s criminal justice system seem related to reclassification?
- Have recidivism rates changed among people convicted of drug possession?

## Findings

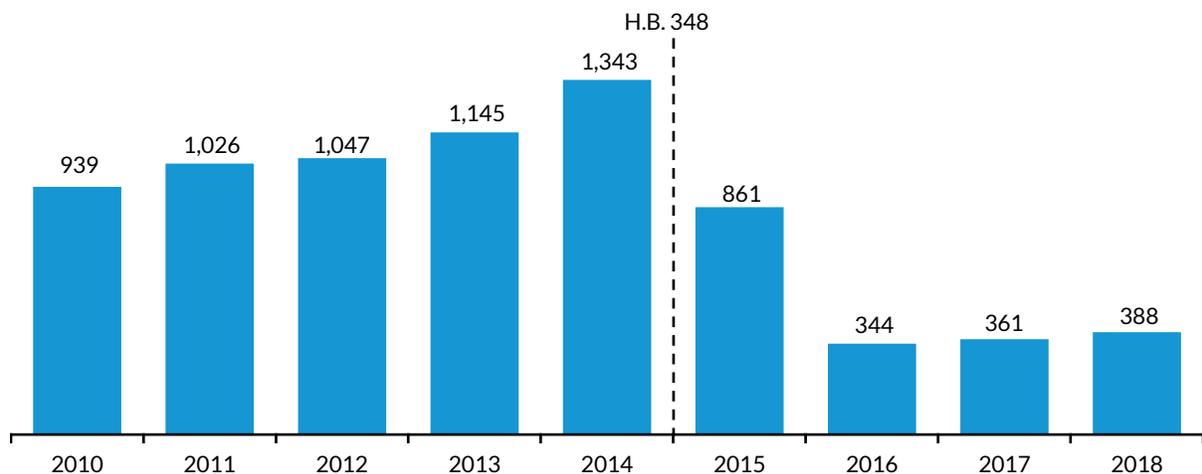
### FELONY CONVICTIONS HAVE FALLEN SHARPLY FOR DRUG POSSESSION

Since the passage of H.B. 348, felony convictions for drug possession have fallen sharply, as the legislation intended.<sup>5</sup> Between 2014 and 2018, new felony convictions for drug possession—that is, either new court commitments to prison or probation starts—declined more than two-thirds (71 percent) (figure 1).

FIGURE 1

#### Felony Convictions for Drug Possession Have Fallen 71 Percent

*New court commitments to prison and probation starts for felony drug possession convictions*



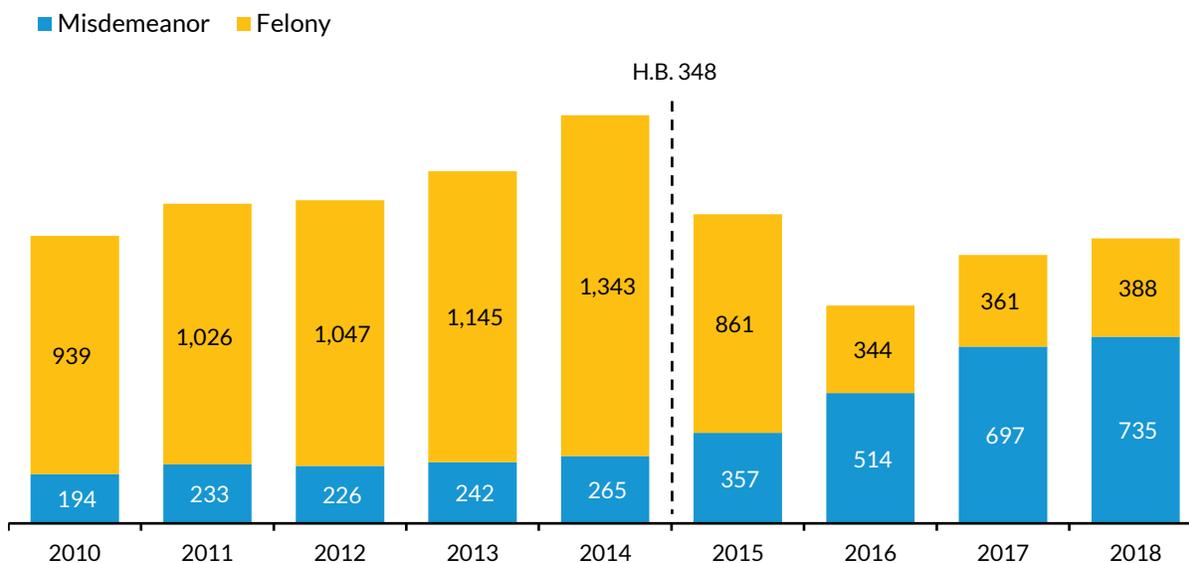
Source: Utah Department of Corrections.

Although Class A Misdemeanor convictions increased 177 percent, the total number of new convictions for drug possession fell 30 percent between 2014 and 2018. As a result, the share of drug possession convictions that were felonies fell from 84 percent of new convictions in 2014 to 35 percent in 2018 (figure 2).

FIGURE 2

### Convictions for Drug Possession Have Fallen 30 Percent

New court commitments to prison and probation starts for drug possession



Source: Utah Department of Corrections.

#### FEWER PEOPLE ARE IMPRISONED FOR DRUG POSSESSION

As expected, the number of people sentenced to prison for drug possession has fallen sharply since H.B. 348. In 2018, there were only 25 prison admissions for people with a new court commitment for drug possession, 69 percent fewer than in 2014. Although the vast majority of people sentenced for drug possession before and after reform received probation, the share receiving a prison sentence fell from 1 in 20 (2014) to 1 in 50 (2018).

Although overall admissions to prison for drug possession fell 20 percent between 2014 and 2018, that decline owes entirely to decreases in new court commitments. New court commitments to prison for drug possession have fallen sharply since H.B. 348, but prison admissions from community supervision have been more stable. Between 2014 and 2018, annual prison admissions involving a primary drug possession conviction and resulting from a probation revocation dropped 10 percent, whereas admissions from parole rose slightly (4 percent). In 2018, revocations from probation and parole (N=230) accounted for 90 percent of admissions to prison for drug possession, and most revocations were for violations of supervision that did not involve new crimes (i.e., technical violations). In fact, more than half of all prison admissions for drug possession that year were for technical revocations of either parole (36 percent) or probation (21 percent) (figure 3).

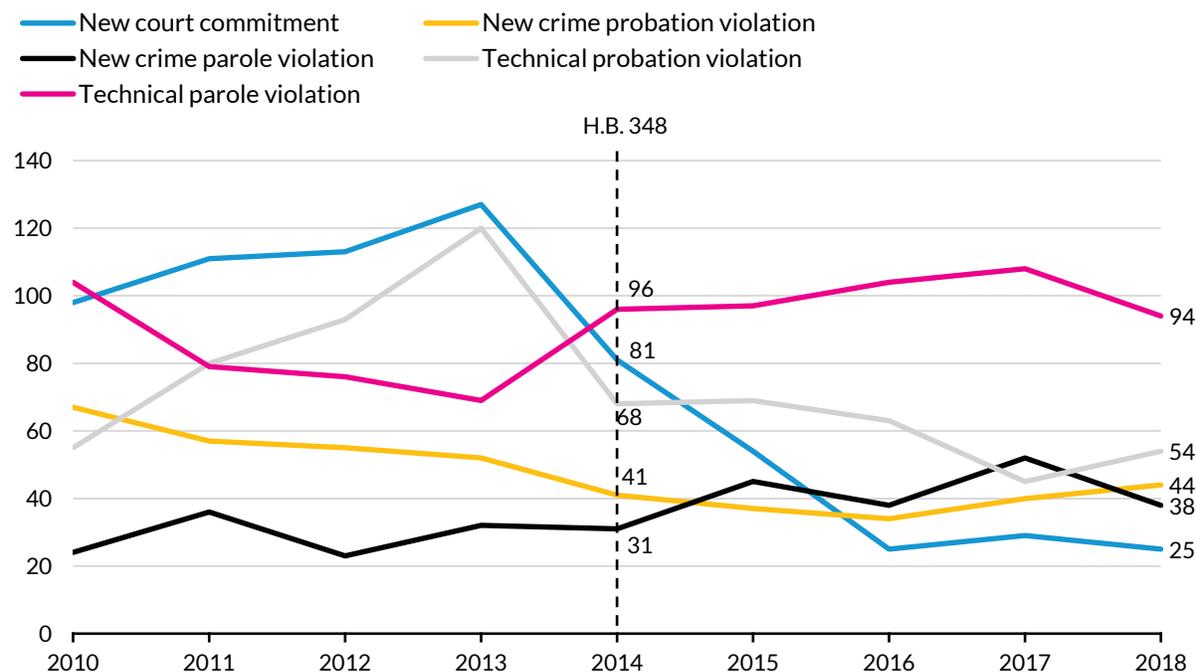
This increase in revocations to prison might be expected if the number of people on supervision had risen since H.B. 348 and more people were therefore at risk of being revoked. However, the number of people on probation for drug possession dropped 22 percent between 2014 and 2018.<sup>6</sup> Moreover, a much smaller share of the population on probation for drug possession now has a felony sentence that

can result in revocation to prison. In fact, the proportion of people starting probation for drug possession with a felony conviction dropped from 83 percent in 2014 to 33 percent in 2018.

**FIGURE 3**

**Prison Admissions from Community Supervision Increasing as New Court Commitments Decline**

*Admissions to prison for drug possession by admission type*



Source: Utah Department of Corrections.

Of course, the prison population depends both on the number of people sent to prison and how long they are in prison. Since H.B. 348, the average time served in prison has fallen for all drug offenses.<sup>7</sup> Length of stay for drug possession fell the most steeply, declining 35 percent between 2014 and 2018. Together, decreases in prison admissions and time served have resulted in fewer people being imprisoned for drug possession. Overall, the number of people in prison for drug possession dropped 59 percent between 2014 and 2018.

Importantly, the number of people in prison for drug possession has dropped significantly across nearly all admission types. The only exception is the number of people in prison for a new crime parole revocation, which fell by only three people and accounted for 31 percent of the people in prison for drug possession in 2018 (up from 13 percent in 2014). All told, the proportion of the prison population convicted of drug possession fell from 5 percent in 2014 to 2 percent in 2018.

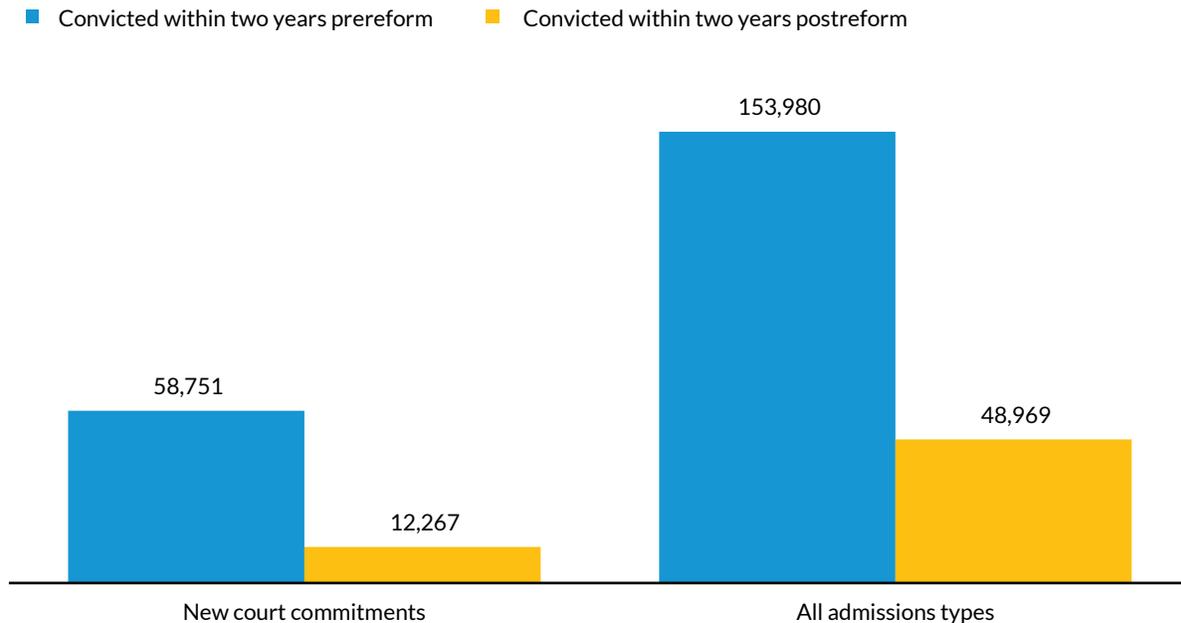
Indeed, there has been a significant decline in the number of days people are imprisoned for drug possession in Utah. Days of imprisonment for drug possession were 68 percent lower in the two years

after H.B. 348 took effect than the two years before. This decline means people spent 105,011 fewer days in prison for drug possession in the first two years of H.B. 348 implementation alone (figure 4).

FIGURE 4

### Imprisonment for Drug Possession Has Fallen Sharply

Days of imprisonment in the two years pre- and post-H.B. 348



Source: Utah Department of Corrections.

### CONVICTIONS FOR POSSESSION WITH INTENT TO DISTRIBUTE ARE RISING

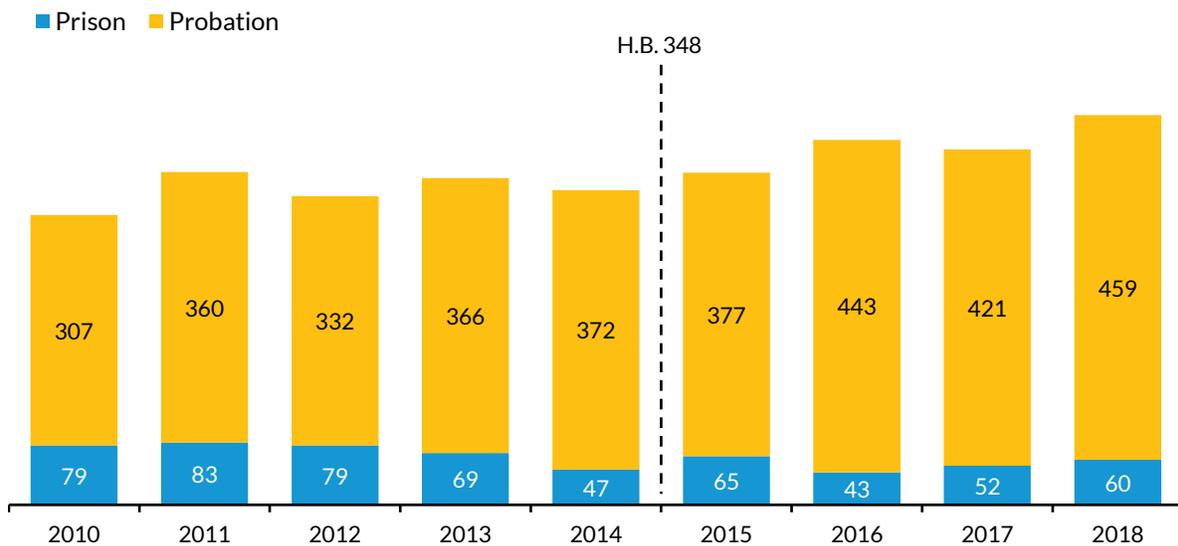
As shown above, people convicted of drug possession represent a shrinking proportion of the prison population. This is also true as a proportion of all drug offenses: the share of new court commitments to prison for drug possession among all drug offenses fell from 45 percent in 2014 to 21 percent in 2018.

As fewer people are admitted to prison for drug possession, it should be expected that other drug offenses would constitute a growing proportion of prison admissions for drug offenses. However, prison admissions for PWID are growing in not only proportion but also absolute number. In fact, new court commitments to prison and probation starts for PWID have both increased since H.B. 348, rising by a combined 24 percent between 2014 and 2018 (figure 5).

Admissions to prison for PWID rose 57 percent between 2014 and 2018, across all admission types. During that period, annual admissions involving a primary PWID conviction and resulting from technical parole violations outpaced other admission types for PWID, replacing new court commitments as the largest admission category. People with controlling PWID offenses also represent a growing share of people in prison for drug offenses, increasing from 18 to 28 percent between 2014 and 2018.

The rise in PWID convictions is also impacting Utah’s probation population. Probation starts for PWID rose 23 percent between 2014 and 2018, while starts for drug possession fell 28 percent and starts for other drug offenses fell 10 percent. Similarly, the number of people on probation for PWID rose 26 percent during that period, while the number of people on probation for drug possession dropped 22 percent and the number on probation for other drug offenses fell 13 percent. Overall, the proportion of people on probation for PWID rose from 17 percent to 25 percent of all people on probation for a drug offense.

**FIGURE 5**  
**Convictions for PWID Have Risen Since H.B. 348**  
*Probation starts and new court commitments to prison for PWID*



Source: Utah Department of Corrections.

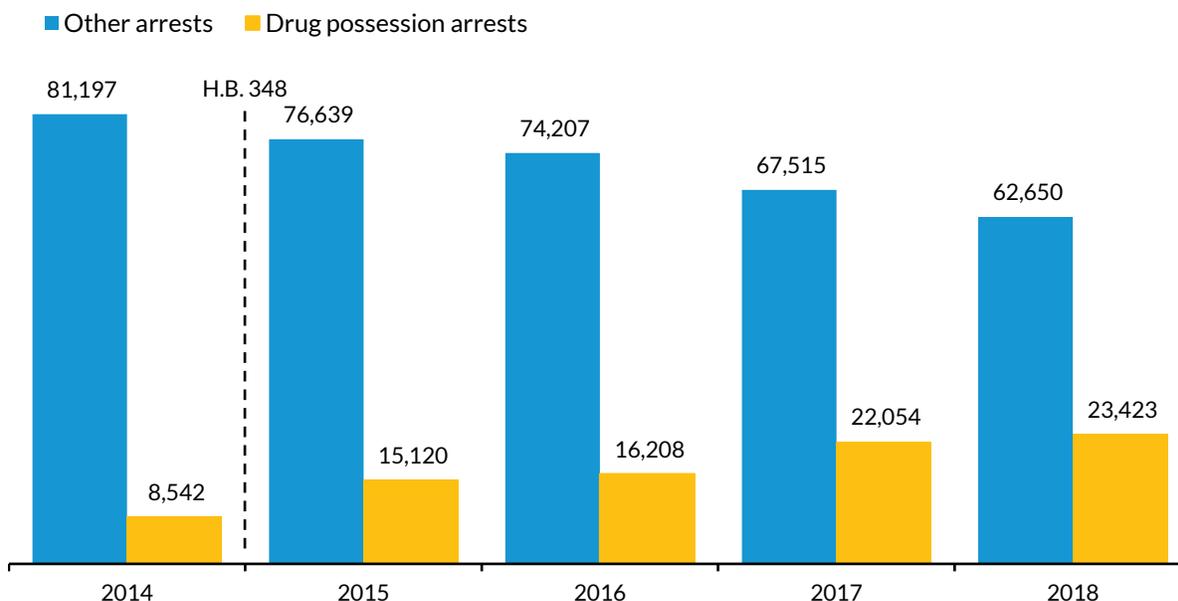
**INCREASED ARRESTS FOR DRUG POSSESSION BUCK OVERALL ARREST TRENDS**

Between 2014 and 2018, arrests for drug possession increased even as overall arrests decreased (4 percent). In fact, drug possession arrests increased 174 percent and accounted for the entire increase in drug-related arrests during that period. Put another way, drug possession arrests nearly tripled even as arrests for all other offenses fell 23 percent (figure 6).

FIGURE 6

### Arrests for Drug Possession Moving in Opposite Direction of Overall Arrests

Unique arrests reported by law enforcement agencies



Source: Utah Bureau of Criminal Investigation.

Whereas overall arrests have fallen 4 percent since H.B. 348, the number of arrest charges (i.e., the number of crimes charged at arrest) increased 22 percent. Sharp increases in arrest charges for drug possession were a major driver of this growth—between 2014 and 2018, drug possession arrest charges jumped 209 percent. This precipitous rise accounted for all the growth in drug-related arrest charges and more than half the growth in overall arrest charges. Aggravating this trend is the fact that arrests with multiple drug possession charges rose faster (237 percent) than arrests with only one drug possession charge (153 percent).

#### BOX 1

##### Salt Lake County Plays a Unique Role in Criminal Justice Trends

Law enforcement agencies in Salt Lake County (SLC) account for more than 40 percent of statewide arrest charges, and the county has the three largest arresting agencies based on total number of arrest charges. As a result, SLC can have a major influence on statewide trends.

Drug possession arrest charges brought by SLC law enforcement agencies<sup>8</sup> rose 209 percent between 2014 and 2018. This rise drove 36 percent of the overall increase in annual charges brought by SLC agencies during this period, mirroring the statewide trend of 209 percent growth in arrest charges for drug possession.

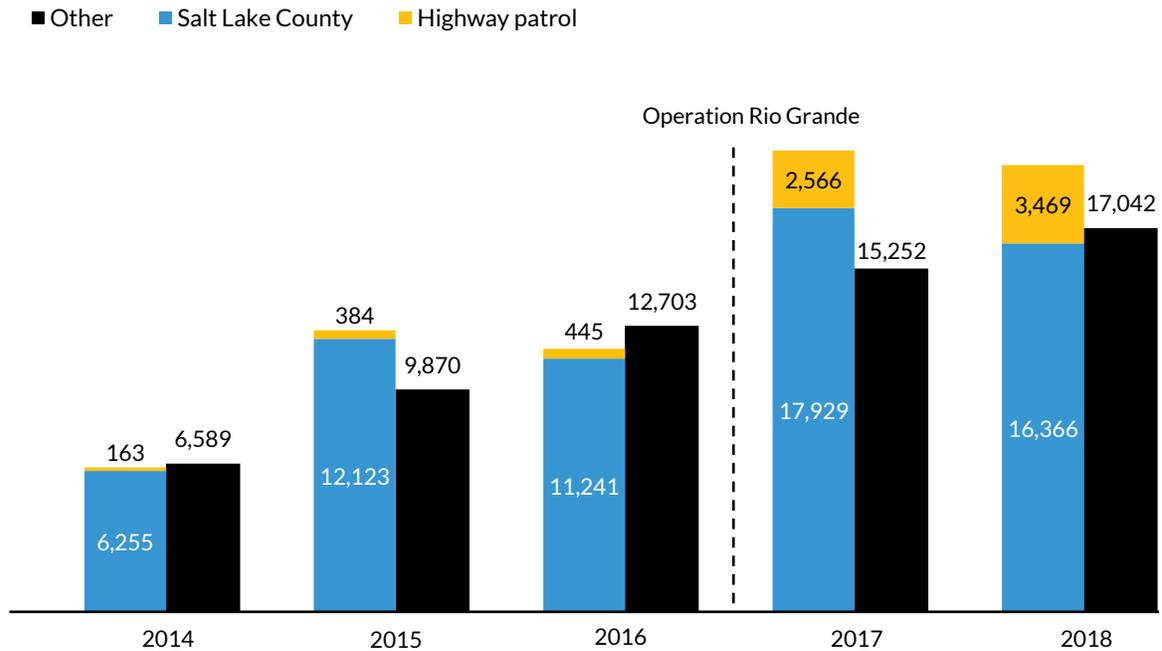
Notably, arrest charges in Salt Lake County peaked in 2017, the first year of Operation Rio Grande, a multiagency effort to address homelessness and drug use in the Rio Grande area.<sup>9</sup> This targeted law enforcement operation was implemented with the highway patrol and led to a 75 percent increase in

drug possession arrest charges in SLC between 2016 and 2017. Drug possession arrest charges leveled off the following year as arrest charges elsewhere in the state continued rising (figure 7).

**FIGURE 7**

**Arrest Charges for Drug Possession Rose Sharply in Salt Lake County**

*Drug possession arrest charges by arresting agency*



Source: Utah Bureau of Criminal Investigation.

Although drug possession arrest charges in SLC have mirrored those throughout the rest of Utah since H.B. 348, new court commitments to prison and probation revocations from SLC constitute a smaller share of the statewide total. In 2018, there were only four new court commitments to prison for drug possession from SLC. In other words, although SLC law enforcement agencies accounted for half of Utah’s drug possession arrest charges in 2018, fewer than 1 in 6 new court commitments to prison for drug possession was from SLC. Including supervision revocations, fewer than 1 in 10 prison admissions for drug possession came from SLC in 2018.

This trend does not hold, however, on convictions for PWID. The proportion of statewide new court commitments to prison for PWID that came from SLC rose from less than one-third (32 percent) in 2014 to nearly half (48 percent) in 2018. Collectively, these trends suggest prosecutorial preference for diversion and community supervision for drug possession arrest charges (as well as supervision violations), and increased preference for prison sentences on PWID charges.

**INCREASED ARRESTS FOR DRUG POSSESSION LEADING TO INCREASED CONVICTIONS**

As arrests for drug possession have increased, so too have total convictions for drug possession (figure 8). Although the number of primary convictions—convictions leading to a new court commitment or

probation start—has fallen, that number excludes less serious convictions that do not determine the court sentence. In fact, while the number of primary drug possession convictions fell 30 percent between 2014 and 2018, total drug possession convictions increased 31 percent.

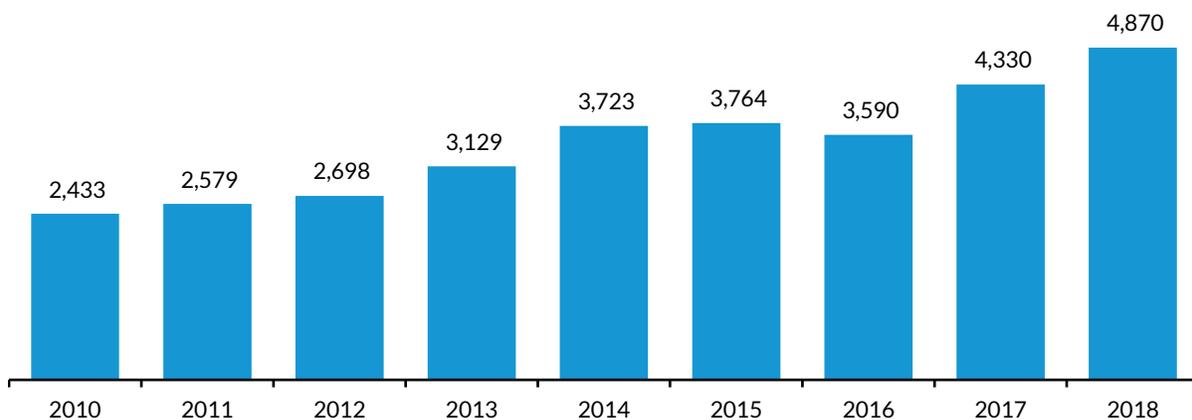
Although this increase in total convictions has not led to a sharp increase in prison admissions or probation starts, it is relevant for anticipating future trends since third and subsequent convictions for drug possession are still eligible for a felony sentence and prison time. As more people receive multiple drug possession charges in the same arrest and subsequently receive multiple drug possession convictions, more people will be eligible for felony sentences and prison time in the future.

Total guilty dispositions for drug possession (including Class B Misdemeanor convictions) also increased sharply during the study period, including a 30 percent rise in guilty pleas and 94 percent increase in pleas in abeyance (i.e., prosecutorial or court diversion). Guilty dispositions rose 69 percent for Class A Misdemeanor convictions and 58 percent for Class B Misdemeanor convictions between FY 2015 and FY 2018.

Additionally, before H.B. 348 took effect, most people starting probation (55 percent) for drug possession convictions were on their first or second possession conviction. In 2018, less than half of people (43 percent) starting probation for drug possession were on their first or second possession conviction. These trends suggest an increasing number of people will be eligible for felony drug possession convictions and prison sentences in the coming years.

**FIGURE 8**  
**Total Convictions for Drug Possession Rising Even As New Court Commitments and Probation Starts Decline**

*Total drug possession convictions held by people admitted to prison or starting probation*



Source: Utah Department of Corrections.

## RECIDIVISM RATES ARE LOW FOR PEOPLE CONVICTED OF DRUG POSSESSION AND RELATIVELY UNCHANGED

Since H.B. 348 was implemented, the share of people convicted of drug possession who are rearrested, reconvicted, or subsequently incarcerated has not changed dramatically, despite the increase in arrests shown in figure 8. Although the trends before and after reform are mixed, 12-month recidivism rates remain low across all recidivism measures.<sup>10</sup>

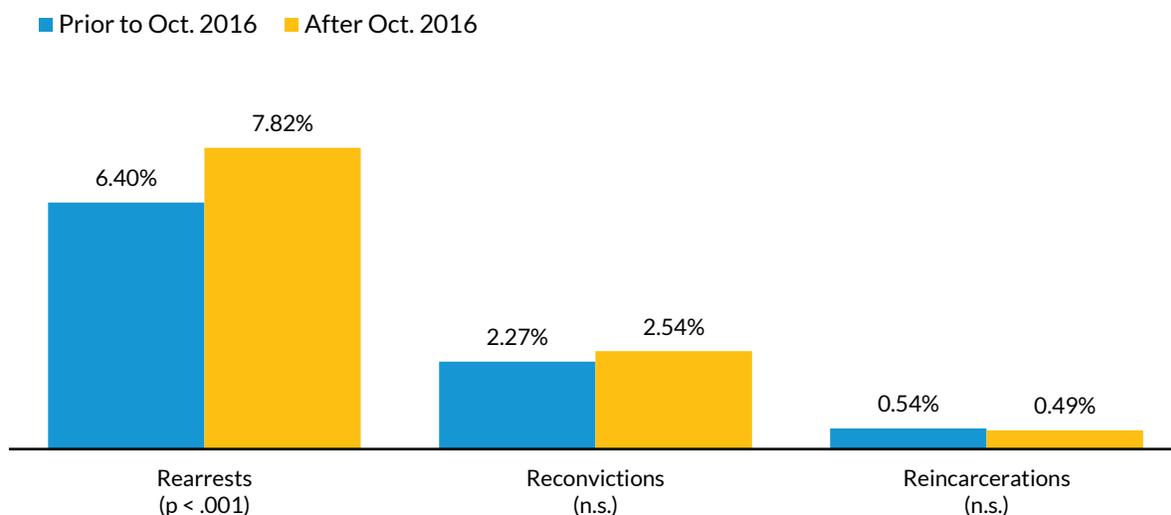
For people with a primary drug possession conviction, rearrest rates within 12 months of starting probation or being released from prison were 6.4 percent in the 4.5 years before H.B. 348 and 7.8 percent in the nearly 2.5 years after. Although this increase is statistically significant, rearrest rates actually began rising before the reforms and have leveled off since. From April 2012 to September 2016, rearrest rates increased from 4.4 to 7.7 percent, and the roughly 7.8 percent rearrest rate in the 2.5 years after reform represents a statistically significant change in the direction of the trend.

Reconviction and imprisonment rates are very low in the 12 months following probation starts and release from prison, and have not changed since H.B. 348. Reconviction rates averaged 2.3 percent before the reforms, and the increase to 2.5 percent after H.B. 348 was not statistically significant. Imprisonment rates were less than 1 percent and the trend line was unchanged before and after reform.

FIGURE 9

### Recidivism Rates Are Low Across All Measures

Rearrest, reconviction, and imprisonment within 12 months of starting probation or being released from prison



Source: Utah Department of Corrections; Utah Bureau of Criminal Investigation.  
n.s. = not statistically significant

## Conclusion and Recommendations

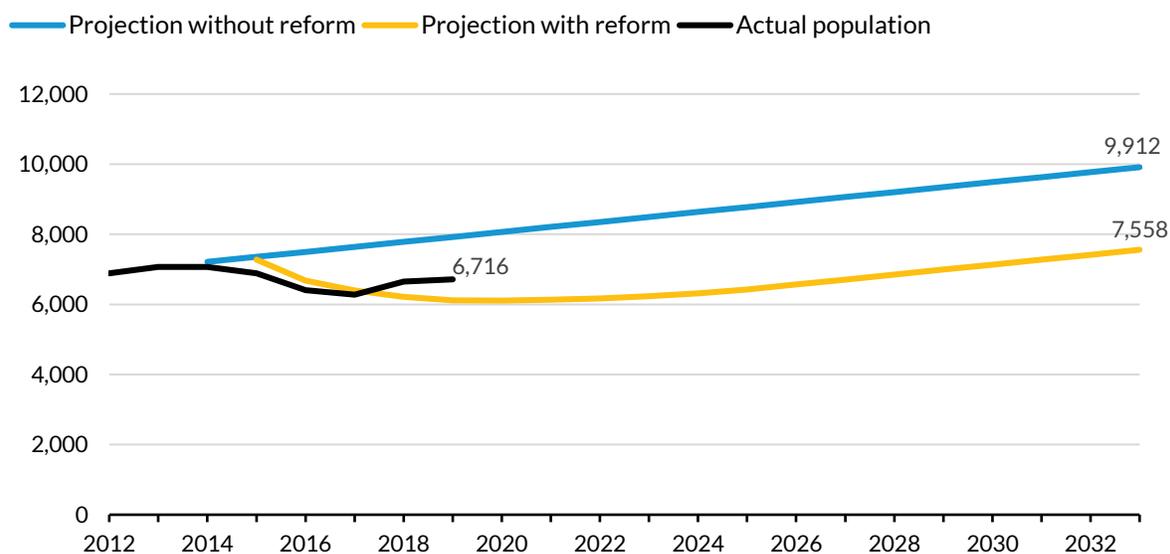
Utah's JRI reforms have helped slow corrections growth and allowed the state to reinvest in more effective public safety strategies. The number of people sent to prison or supervised on probation for drug possession has fallen since H.B. 348, and the state has been able to substantially increase spending on substance abuse and mental health treatment in the community. These changes have led to fewer harmful felony convictions, less imprisonment for drug possession convictions, and more people receiving behavioral health treatment.

Despite these gains, Utah's prison population is on the rise again and now exceeds the projection at the time of H.B. 348. This population growth is placing new strains on the corrections system and state leaders are currently examining rising revocations and other trends in community supervision to make additional legislative changes. Our research also documents concerning trends related to rises in arrest charges for drug possession and increasing convictions and prison sentences for PWID.

FIGURE 10

### Utah's Prison Population Is Rising Again

*Projected and actual prison population in Utah*



Sources: Pew Charitable Trusts, Data Trends: Utah Criminal Justice Reform (May 2018); 2018 and 2019 data from Utah Department of Corrections data dashboard.

Research conducted by the CCJJ and emerging best practices from the field suggest Utah can still take numerous steps to fulfill its original JRI goals. Research has shown that public health responses to drug use are more effective than criminal justice responses, and the Pew Charitable Trusts recently found no relationship between imprisonment rates and rates of drug use, overdose deaths, or arrests for drug law violations (Pew 2018c). This evidence suggests that increasing arrests and convictions for drug possession does not deter drug use and could be causing more harm than good.

Furthermore, the collateral consequences of felony convictions are far ranging and can impact everything from employment to housing to civic participation. These restrictions can be major barriers to success for people sentenced to probation or returning home from prison, and studies have shown that felony convictions can undermine public safety and impose significant economic costs on taxpayers (Elderbroom and Durnan 2018).

To continue building on the goals of H.B. 348, help reverse recent corrections growth related to rising revocations and imprisonment for drug offenses such as PWID, and continue investing in more effective public safety strategies, Utah should consider the following policy changes related to enforcement, sentencing, and supervision of people involved in the criminal justice system:

- **Reclassify all drug possession convictions as a Class A Misdemeanor**, eliminating the current enhancement for third and subsequent convictions. Several other states have begun treating all drug possession as a misdemeanor with positive results (Elderbroom and Durnan 2018). Eliminating felony convictions for drug possession would allow Utah to safely reduce prison admissions (particularly for violations of probation and parole supervision) and further invest in community-based treatment.
- **Make the current policy retroactive and resentence people who would have received a misdemeanor conviction** if they were charged with drug possession today. Certain district attorneys in Utah have begun reviewing old cases and resentencing people on an individual basis,<sup>11</sup> and the legislature could expedite this process and reduce the harm of old felony convictions by applying the policy retroactively.
- **Increase the burden of proof for PWID and require factors that indicate commercial activity** to be present, such as client lists, large amounts of cash, firearms, or the packaging materials necessary to distribute drugs. Utah does not currently define PWID, and these charges can be applied at the complete discretion of prosecutors. Several states, including Arkansas, Louisiana, and Nevada, have passed similar laws requiring factors that indicate intent or establishing weight-based thresholds for PWID to increase consistency in charging and sentencing (Pew 2018a).
- **Limit arrests and incarceration for technical violations of supervision.** Most people who are convicted of drug possession (classified as a felony or misdemeanor) are sentenced to probation supervision in Utah. Studies have shown that graduated sanctions in the community produce better supervision and public safety outcomes than short jail stays or revocations to prison, and Utah can build on its prior implementation efforts in this area (Villettaz, Gillieron, and Killias 2015). Policymakers should also consider policy changes to reduce revocations, such as lowering the number of standard supervision conditions, requiring court summons rather than arrest warrants for violation hearings, and prohibiting revocations of supervision for technical violations.
- **Further increase funding for behavioral health treatment and expand the capacity of community-based treatment providers.** More people in Utah are being treated for substance

use disorders and mental health issues as a result of JRI, but even more can be done to reduce drug abuse and ensure people have access to needed treatment. Studies have shown that community-based treatment is more effective than correctional programming and provides greater public safety benefits than incarceration (WSIPP 2006).

- **Implement pre-arrest diversion programs** that reduce unnecessary contact with the criminal justice system and improve law enforcement interactions with people who have substance use disorders. Many local jurisdictions have begun implementing innovative diversion programs that encourage law enforcement to treat drug use as a public health problem and refer people to service providers in lieu of arrest. An evaluation of Law Enforcement Assisted Diversion in Seattle found that pre-arrest diversion led to 58 percent lower rearrest rates among participants (Collins, Lonczak, and Clifasefi 2015).
- **Require law enforcement and prosecutors to collect and share data on charging decisions.** With both arrest charges and unique arrest incidents rising for drug possession, more information is needed to understand the basis for those decisions and their impact on the justice system and communities across Utah. Better access to data and greater transparency about local decisionmaking can also increase people’s trust in the criminal justice system and allow policymakers to make informed decisions about state drug laws (Olsen et al. 2018).

## Data and Methodology

This analysis is based on three primary data sources. The first is individual-level administrative data provided by the UDC. This dataset includes any person under UDC jurisdiction (probation, prison, or parole) with a drug offense conviction from January 1, 2010, through March 31, 2019. This dataset includes a wide range of variables, including all convictions, classifications, violation codes, sentence and release dates, admission types, criminal history, and demographic factors.

The second data source is administrative data from the BCI containing statewide arrest incidents and charges occurring from the beginning of FY 2012 through Q3 FY 2019. This dataset includes information on all arrests and charges, arresting agency, classifications, and violation codes. The third dataset is aggregated statewide disposition data from the CCJJ, which includes all dispositions occurring between FY 2014 and FY 2018. This source includes aggregate data on all misdemeanor and felony dispositions in Utah, including dispositions from district courts and justice courts.

Offense breakdowns in this analysis are based on the primary “controlling” offense—typically the conviction with the most serious sentence—unless otherwise noted. Analyses of probation data are limited to people with a Class A Misdemeanor or felony conviction, who are supervised in the UDC system rather than by local probation departments. For the purposes of this analysis, drug offenses are categorized as any offense named within the Prohibited Acts and Penalties section (58-37-8) of the Utah Controlled Substances Act. Drug possession offenses include 58-37-8-2Ai, 58-37-8-2Bii, and 58-37-8-2D offenses. All PWID offenses are defined as 58-37-8-1Aiii offenses.

The recidivism analysis is based on *t*-tests to compare average recidivism rates before and after H.B. 348 took effect, and interrupted time series models to compare the trend lines before and after the policy change. This analysis measures recidivism based on three metrics for subsequent justice system contact: rearrest, reconviction, and imprisonment. We assessed monthly recidivism events within 12 months of admission to probation or release from prison for a primary drug possession conviction between April 2012 and March 2019. A total of 8,586 people were in the recidivism analysis sample, with an average of 1,089 in each month's sample.

## Notes

- <sup>1</sup> For the purposes of this analysis, "probation" refers to supervision under UDC's jurisdiction and excludes people on probation who are supervised by local government authorities.
- <sup>2</sup> Criminal Justice Programs and Amendments, Utah H.B. 348 (2015)
- <sup>3</sup> Criminal Justice Programs and Amendments, Utah H.B. 348 (2015)
- <sup>4</sup> Criminal Justice Programs and Amendments, Utah H.B. 348 (2015)
- <sup>5</sup> Analyses of conviction data include new primary "controlling offense" convictions that result in a new court commitment to prison or probation start. Secondary convictions that do not affect the sentence (i.e., "non-controlling" convictions) are not included unless otherwise noted.
- <sup>6</sup> Analyses of probation data are limited to people with a Class A Misdemeanor or felony conviction who are supervised by the Utah Department of Corrections. Local probation departments supervise people with a Class B Misdemeanor or even less serious convictions.
- <sup>7</sup> Among the many policy changes contained in H.B. 348 was a directive that the Utah Sentencing Commission reduce sentencing ranges by four to six months in the lower half of the sentencing guidelines grid. The legislation also reduced the impact of misdemeanor convictions and old felony convictions when calculating criminal history. These changes are likely a driver of the reductions in time served that we observed in the data.
- <sup>8</sup> Here, Salt Lake City Agency refers to any agency that has an ORI starting with 018 or "Salt Lake" in its name.
- <sup>9</sup> Carter Williams and Josh Furlong, "Homeless in Utah: What Happened to Rio Grande Crime after Operation Rio Grande?," KSL, May 8, 2019, <https://www.ksl.com/article/46548162/homeless-in-utah-what-happened-to-rio-grande-crime-after-operation-rio-grande>.
- <sup>10</sup> The pre-reform cohort consists of the months prior to October 2016. Although the law was effective October 1, 2015, this is the first month in which at least 75 percent of the people starting probation or released from prison were sentenced under the new law due to lags in case processing and prison time served.
- <sup>11</sup> Paighen Harkins, "Salt Lake County Is Reducing The Penalties In 13,929 Drug Cases," *Salt Lake Tribune*, September 24, 2019, <https://www.sltrib.com/news/2019/09/24/salt-lake-county-is/>.

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