

2023 Legislation

Criminal Law and Procedure



**STATEWIDE ASSOCIATION OF
PROSECUTORS & PUBLIC ATTORNEYS**



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PROSECUTORS & PUBLIC ATTORNEYS**

Record Breaking Year

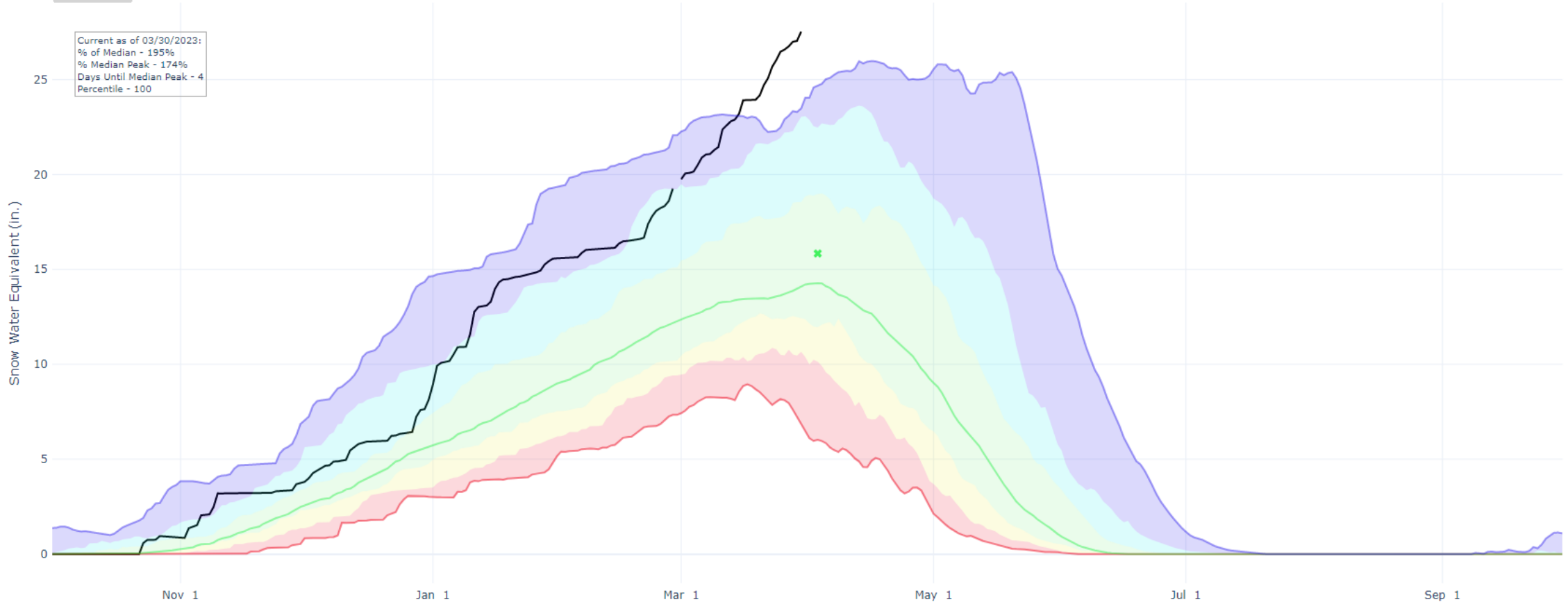
SNOW WATER EQUIVALENT IN STATE OF UTAH

Reset Range

[Link to data: CSV / JSON](#)

[Station List](#)

Current as of 03/30/2023:
% of Median - 195%
% Median Peak - 174%
Days Until Median Peak - 4
Percentile - 100



- ✱ Median Peak SWE
- Max
- Median (POR)
- Median ('91-'20)
- Min
- Stats. Shading
- 2023 (114 sites)
- 2022 (114 sites)
- 2021 (114 sites)
- 2020 (114 sites)
- 2019 (114 sites)
- 2018 (113 sites)
- 2017 (114 sites)
- 2016 (114 sites)
- 2015 (114 sites)
- 2014 (114 sites)
- 2013 (114 sites)
- 2012 (114 sites)
- 2011 (114 sites)
- 2010 (105 sites)
- 2009 (99 sites)
- 2008 (99 sites)
- 2007 (96 sites)
- 2006 (96 sites)
- 2005 (96 sites)
- 2004 (92 sites)
- 2003 (92 sites)
- 2002 (90 sites)
- 2001 (90 sites)
- 2000 (89 sites)
- 1999 (87 sites)
- 1998 (87 sites)



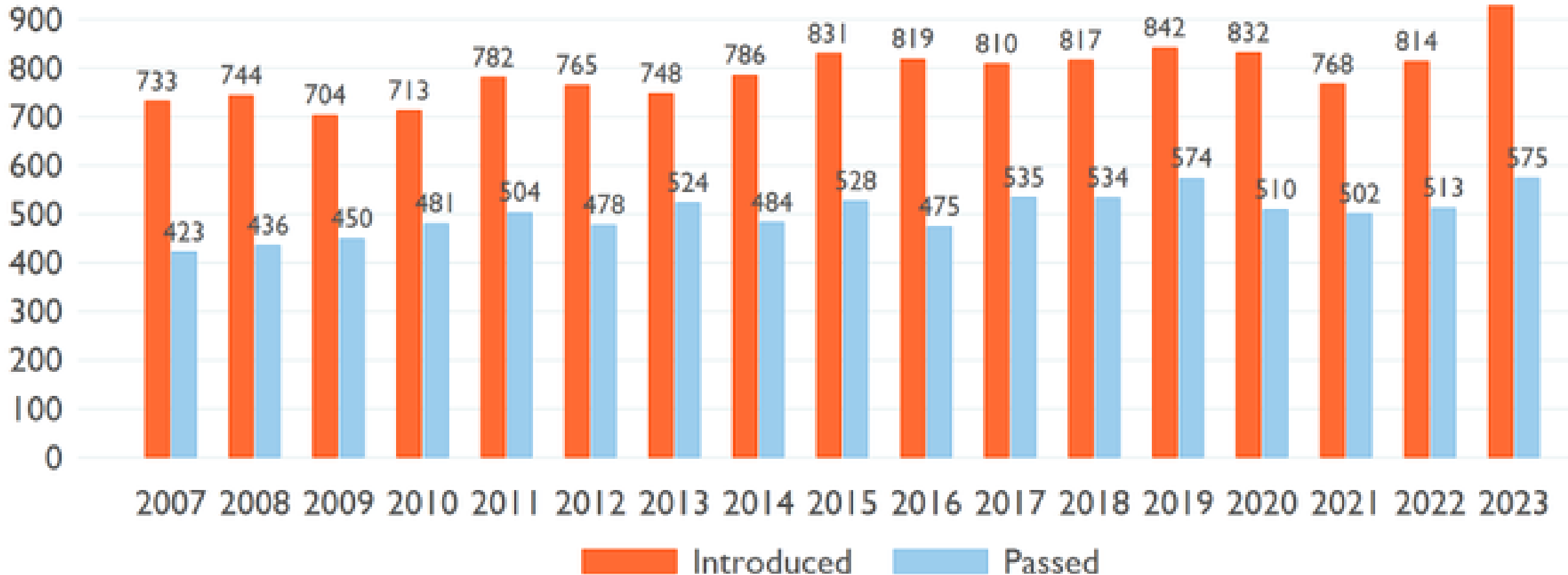


Meanwhile in Utah



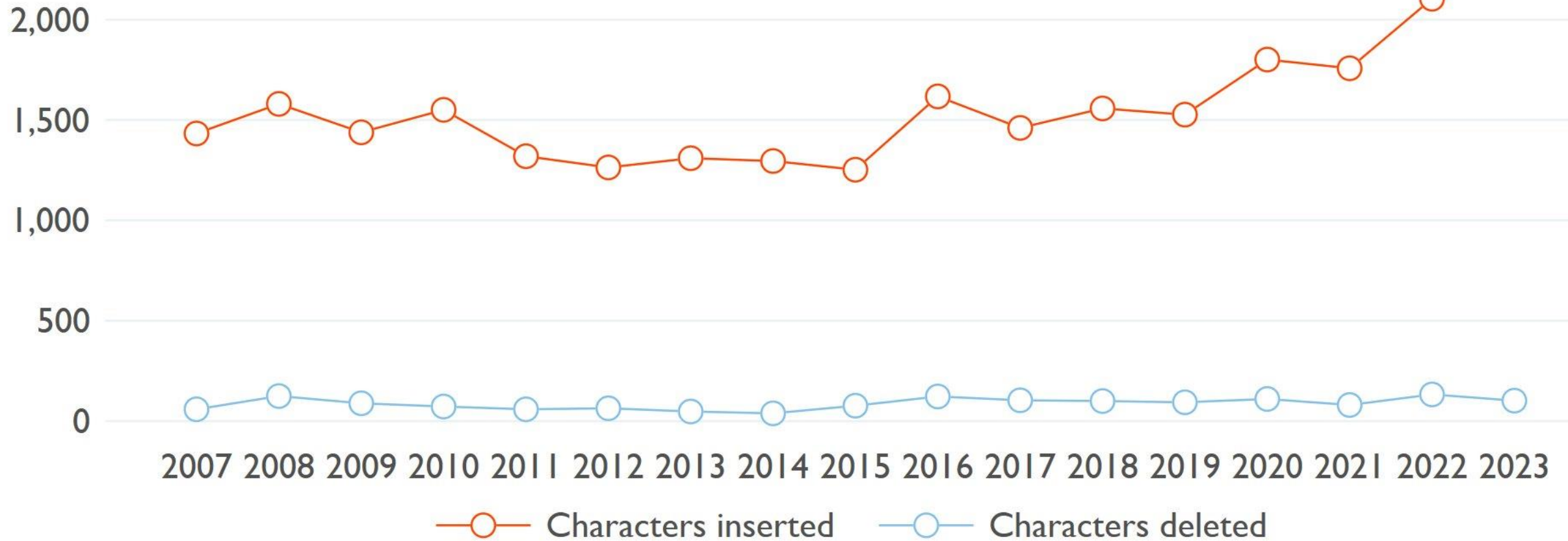
More Bills Than Ever

Total bills and resolutions per General Session



Longer Bills

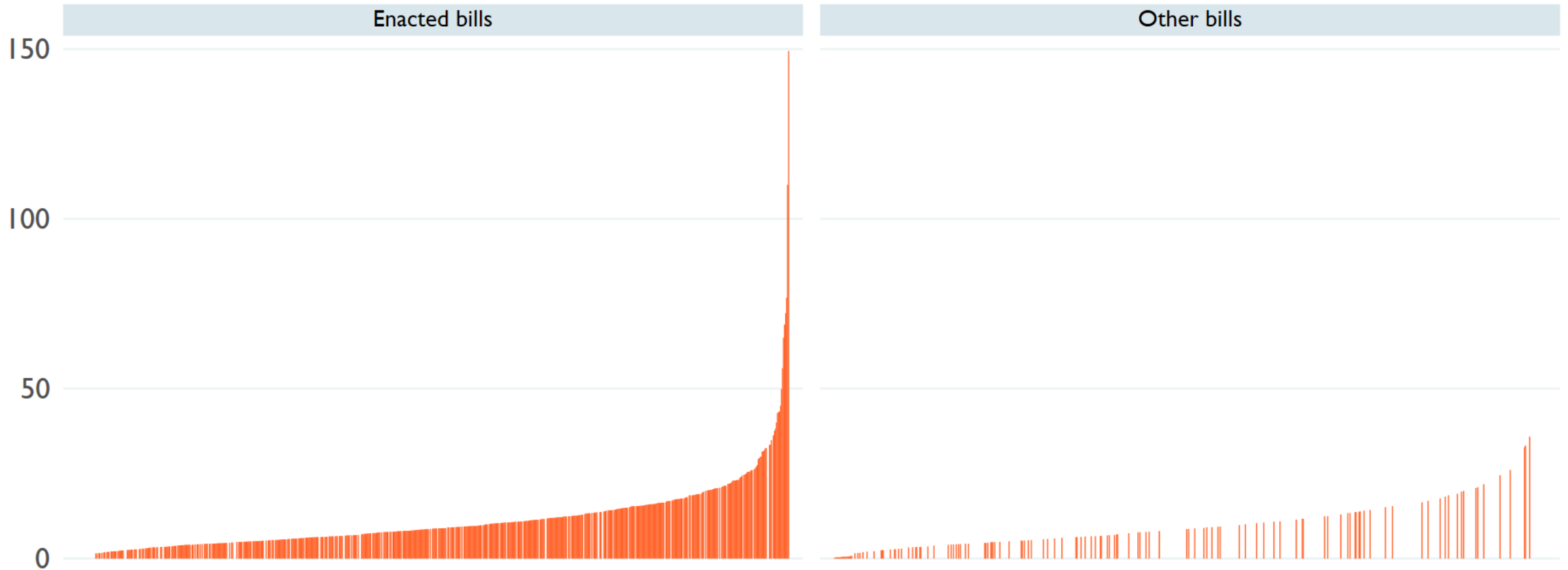
Median enacted bill's changes to Utah Code



Excludes bill containing repeal language (most of which, but not all, merely repeal sunsets).

Short Debates

Total floor time per bill (2023)

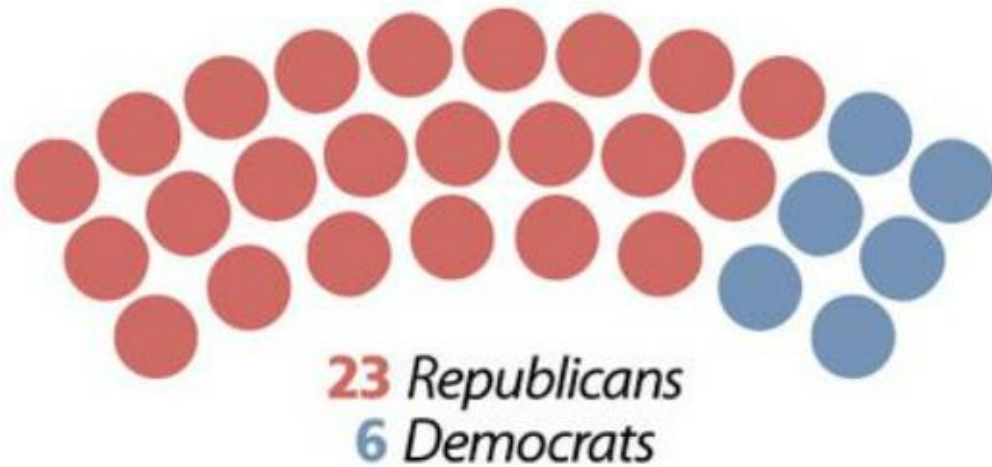


Each vertical bar represents combined minutes of House and Senate floor time spent on a particular bill. The median enacted bill received a total of 9.2 minutes.

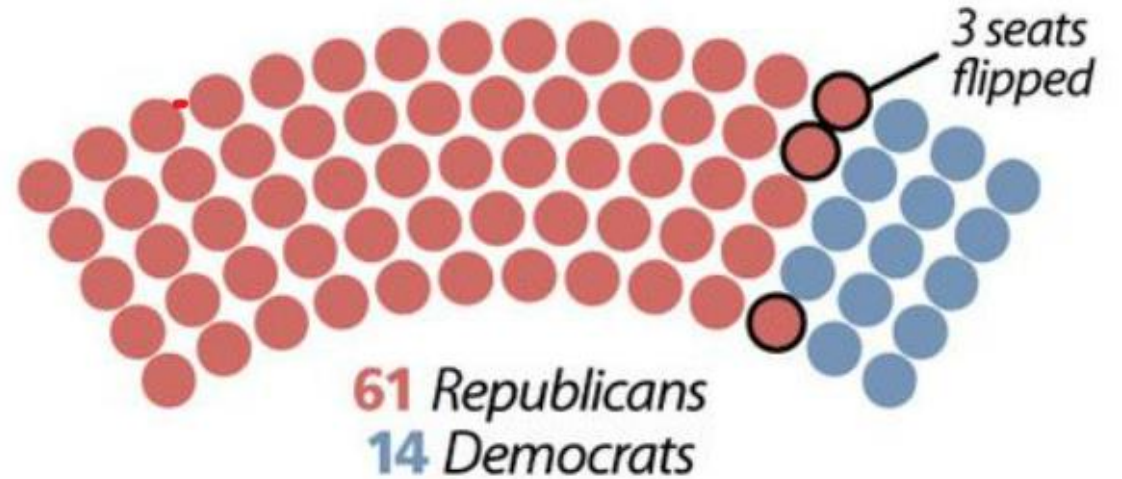
Who to Credit/Blame?

Utah's Legislature got more red during the 2022 elections, with Republicans gaining seats in the Utah House.

Utah State Senate



Utah House of Representatives



Source: utah.gov

GRAPHIC BY CHRISTOPHER CHERRINGTON | *The Salt Lake Tribune*

**WHAT THIS COUNTRY
NEEDS ARE MORE
UNEMPLOYED
POLITICIANS**



- **HB43 Domestic Violence Modifications**

- This creates a Domestic Violence Data Task Force
- Gather information on a variety of DV topics and help standardize data collection
- *Department of Public Safety will develop an online DV course to train officers on DV response*
- Task Force has seats for Chiefs of Police Association, SWAP, and one shared between UAC and the League

- **HB50 Criminal Financial Obligation Amendments**

- We have been cleaning up criminal restitution for last two sessions
- Courts can no longer leave restitution determinations “open”
- *Prosecutors must be better prepared with complete restitution, sooner in the process*
- Best practice is to resolve restitution before resolving the charges

- **HB53 Protective Order Amendments (Rep. Gwynn)**

- Allows an alleged perpetrator, “after a law enforcement officer . . . Notifies or attempts to notify the alleged victim, [the alleged perpetrator] may enter the premises while accompanied by a law enforcement officer”
- *This is a safety issue for the officer and victim, and a liability risk to the city*
- Best practice is to ensure the victim has actual notice and takes precautions

- **HB60 Juvenile Justice Modifications**

- *Public employers cannot require an applicant to disclose a juvenile delinquency adjudication either on a job application or before an initial interview*
- At the initial interview or afterward, public employers can ask about or consider an adjudication
- If an applicant has an expunged adjudication, the applicant can answer as if the adjudication never occurred

- **HB62 DUI Modifications**

- For DUI arrestees this provides a process to become an interlock restricted driver in lieu of a suspension, pre-conviction
- *Now defendants whose license was NOT suspended administratively will be less likely to plead to DUI (they will ask for an impaired driving IOT avoid post-conviction suspensions)*
- Prosecutors must be aware of the impaired driving limitations



Somebody's celebrating with TWO cups of Bone Broth tonight!



- **HB66 Behavioral Health Crisis Response Commission**

- Read this bill if your city desires a receiving center or a mobile crisis outreach team

- **HB103 Weapon Possession While Under the Influence Amendments**

- Expands the exemptions from carrying a dangerous weapon while under the influence
- *Now a person can carry while under the influence of a prescription drug if: (1) is not a danger to him/herself or another, (2) is capable of safely handling the weapon, and (3) takes the drug as prescribed*

- **HB143 Parental Kidnapping Amendments**

- Closes gap between custodial interference (usually a B misdemeanor) kidnapping (2nd degree felony) and child kidnapping (1st degree felony) when a parent with no rights takes a child
- The new offense is a 3rd or 2nd degree felony (if child taken out of state)

- **HB174 Conviction Reduction Amendments**

- Defines “in the interest of justice”
- Provides new reduction paths for offenders who were unsuccessful on probation/parole

- **HB192 Traffic Violation Amendments**

- *Expands traffic offense deferred prosecution eligibility*, if the driver completes traffic school, to include:
 - Has two or fewer citations from the same incident
 - Was involved in an accident if didn't cause serious bodily injury or death
 - Citation is for speed between 20 and 30 mph over, so long as it is not double the posted speed limit
- Limits eligibility for drivers under 21 yoa, commercial drivers, drivers without a current Utah license, or drivers with a prior within 24 months
- Courts cannot require an in-person appearance to get the deferred prosecution

- **HB208 Criminal Trespass Amendments**

- New offense for streambeds on private property
- Will not apply on navigable streams, public property or where public access already exists
- For mens rea need only show the trespasser was warned, the property is fenced, or signs are posted

- **HB210 Justice Court Changes**

- Ongoing, multi-year effort to reform justice courts (see 2020 report)
- Ultimate goal is a return to circuit courts under AOC control
- 2023 changes:
 - Justice court judge shall have a law degree (need not be admitted to the bar)
 - Currently serving judges who do not have a law degree may continue to serve until the judge resigns, retires or is removed from office
 - If there are not at least two applicants for a judge position with a law degree, may re-advertise and accept applicants who do not have a law degree
 - Full-time judge salaries must be between 70% and 90% of district court judge's salary

found my new lawyer



- **HB219 Firearms Regulations**

- “Declares the state’s commitment to the Second Amendment”
- *Prohibits, unless specifically exempted, prosecutors and police from any involvement with federal firearm regulation or enforcement*

- **HB236 DUI Testing Amendments**

- Clarifies that immunity will apply for police blood draws if they are conducted in a law enforcement facility in a secure area

- **HB247 Alcohol Control Amendments**

- Intended to address alcohol overservice
- Creates penalties for record retention violations
- New definition of intoxication
- Clarifies dramshop liability

- **HB266 Amber Alert Amendments**

- *New criteria for when an Amber Alert may be issued*
- No alerts for runaways or custody disputes unless credible threat of imminent danger

- **HB297 Victim Services Amendments**

- *By 7/1/23 police annual training must include one hour on response to and investigations of sexual trauma, sexual assault and sexual abuse*
- *By 1/1/24 police agencies shall create policies regarding sexual assault investigations and these must be on agencies' websites*

- **HB317 Pretrial Release Modifications**

- Year three of pretrial release legislative battles
- Defines “material change of circumstances” for motions to modify release orders
- Requires courts to consider using a bail bond

- **HB324 Workplace Violence Protective Order Amendments**

- *Creates a new protective order for employers who believe workplace violence has occurred against the employer or an employee*
- Employer has immunity if seeks order in good faith

- **HB313 Suspect Metal Amendments**

- Increases penalties to a third degree felony for metal theft when weight is over 25 lbs but less than \$5,000 in value

- **HB370 Utility Infrastructure Amendments**

- Applies to critical infrastructure (e.g., oil refineries, power plants, ports, etc.)
- Creates first and second degree felonies for damaging or destroying critical infrastructure
- Creates a class A and third degree felony for impersonating an infrastructure employee or officer

- **HB461 Airport Firearm Possession Amendments**

- Removes negligence as a mens rea
- Prohibits forfeiture of the gun

OH, IT'S MOTHER'S DAY?



**TELL ME ALL ABOUT HOW NICE YOU
TREAT YOUR MOM ONE DAY A YEAR.**

- **HB385 Mentally Ill Offender Amendments**

- Attempt to mitigate the narrowness of Utah's insanity defense and to recognize that mentally ill offenders need a different criminal justice pathway
- Guilty with a mental condition applies to a person with schizophrenia spectrum and other psychotic disorders, serious mental health conditions with psychotic features, or a mental disability defined as an intellectual disability or neurodevelopmental disorder.
- *If judge finds defendant is guilty with a mental condition, sentencing can be delayed for up to one year while defendant receives treatment*
- *Sentencing must take into account treatment undergone*
- *Route for a two step reduction or 3 step with prosecutor's stipulation*

- **HB485 Restricted Persons Amendments**

- Requires prosecutor, defense counsel, court or police officer to inform person served with a protective order that he/she is a firearm restricted person

- **HB511 Crime Victim Identification Amendments**

- *Police may not disclose to the media the name or personally identifying information of a minor homicide victim until the agency has made a reasonable effort to obtain the consent of the victim's parent or guardian*

- **SB27 Transportation Revisions**

- Drivers may not pass a snowplow displaying flashing yellow lights on the side which the plow blade is deployed
- Driver may not pass on either side three or more snowplows operating in echelon formation
- *Stationary vehicles with hazard lights flashing on the side of the road now been have same protections as emergency vehicles*

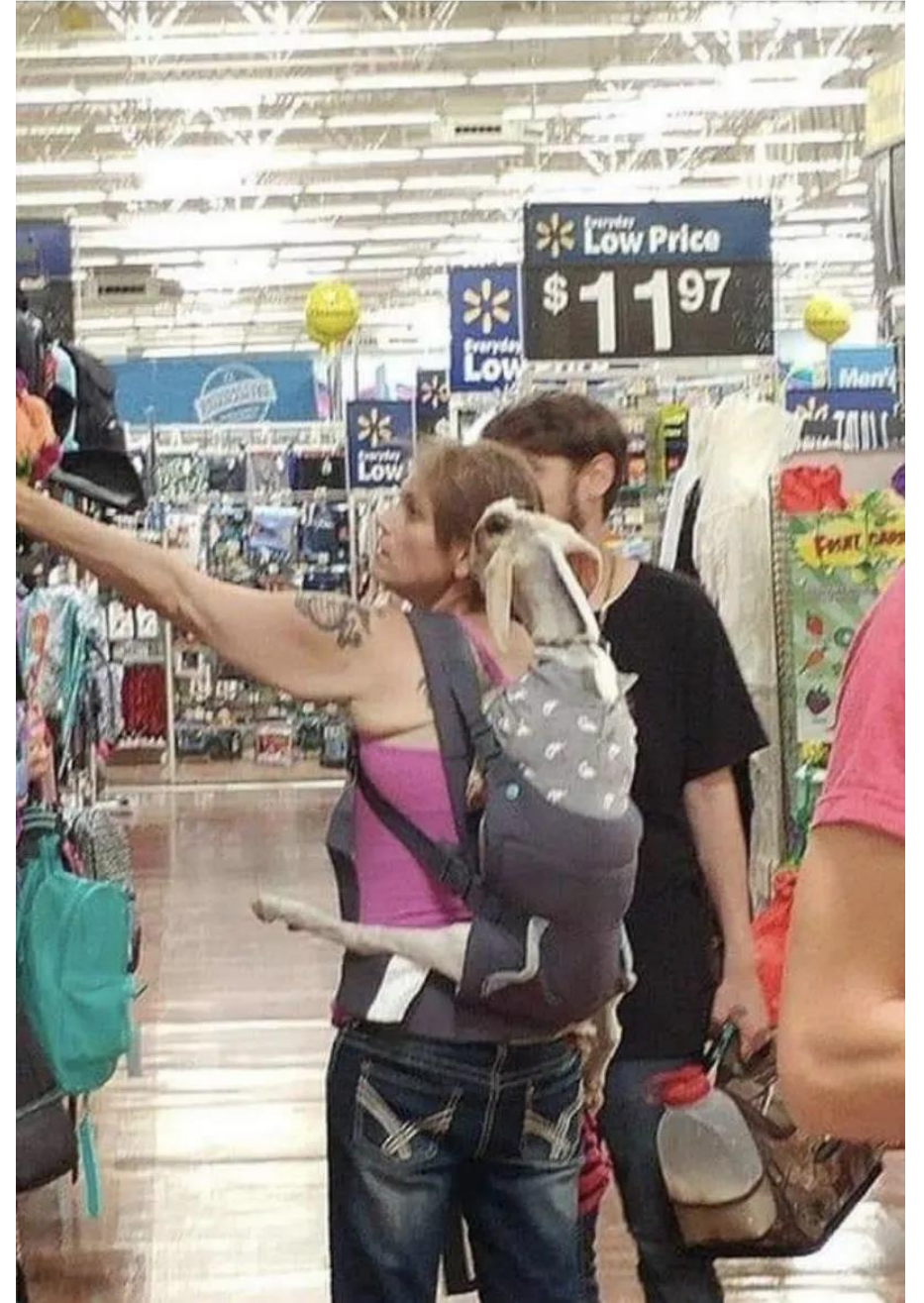
- **SB80 Driver License Suspension and Revocation Amendments**
 - Expands benefits of the 24/7 Program
 - Allows for other Judicial Council approved problem-solving courts to offer drivers license benefits similar to the 24/7 Program (can reinstate driver license if driver is successfully participating or has completed the program and elects to become an interlock restricted driver for the duration of the suspension)
- **SB85 Transportation Revisions**
 - *Prohibits use of a tinted or translucent license plate cover that obscures the readability of the plate from 100 feet during daylight*
- **SB117 Domestic Violence Amendments**
 - *Requires police officers to complete a lethality assessment at all DV calls*

Decisions were made here

Memedroid



Tuesday at 10:54 PM
Mean while in Elkton, walmart



- **SB120 Property and Contraband Amendments**

- Primarily about police agencies and evidence room space
- Mainly focused on misdemeanor evidence
- Too long and detailed to effectively summarize—your prosecutor and evidence technician need to familiarize

- **SB127 Cybersecurity Amendments**

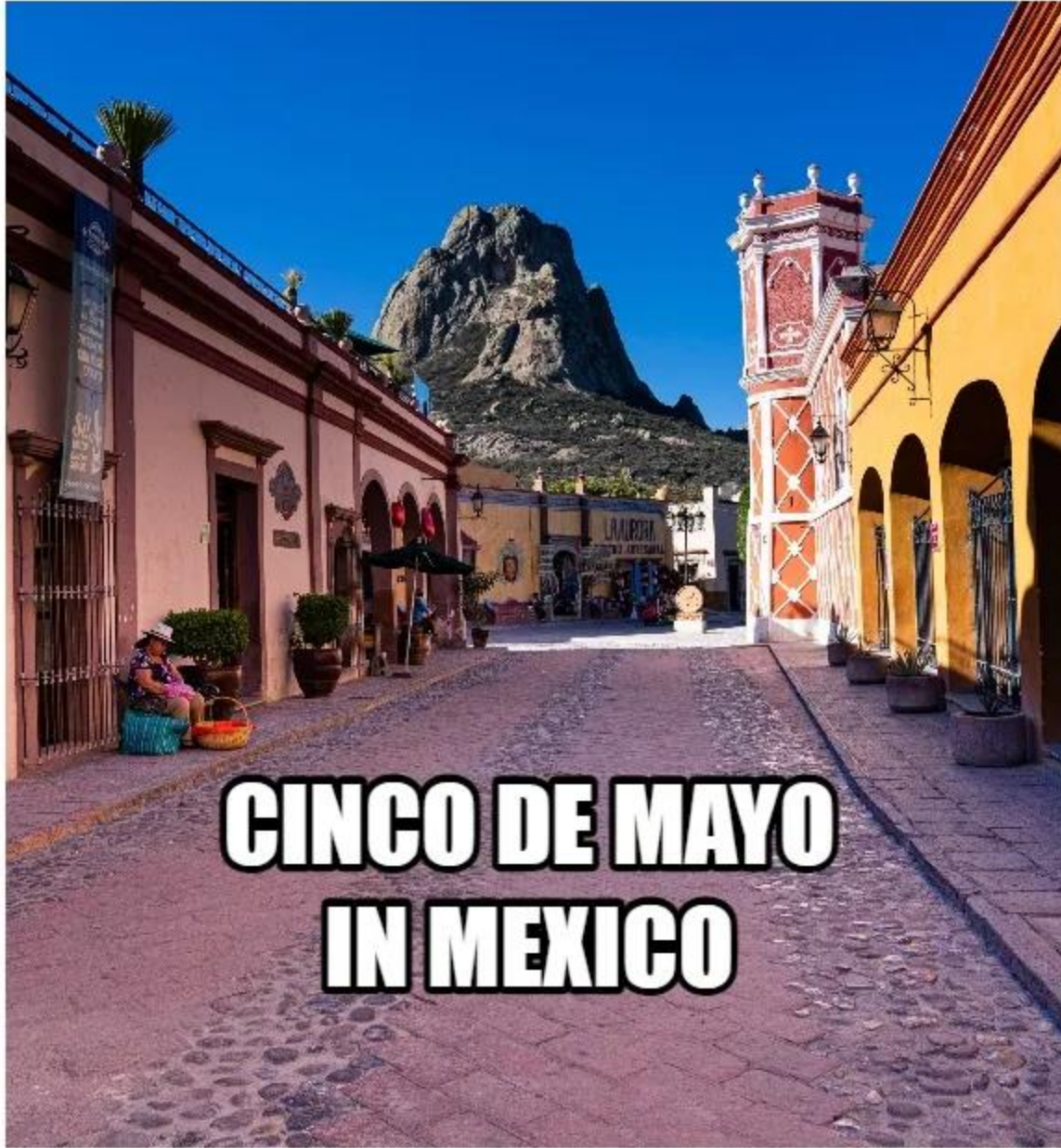
- If city has a breach that may expose 500 or more residents it must notify those residents, the AG and the Utah Cyber Center
- If 1000 or more exposed, must also notify the national consumer reporting agencies
- Creates the Utah Cyber Center
- *If city's domain name doesn't end with a "gov," "edu," or "mil," it will have to beginning January 1, 2025, unless waivable under 63D-2-105 (4)*

- **SB135 Government Transportation Cost Amendments**
 - Prohibits a court from ordering a defendant to pay government transportation costs related to convicted offense
 - Does not prohibit costs for extradition or civil proceedings
- **SB148 Invisible Condition Information Amendments**
 - Reinforces notice protocols to police regarding certain individuals
 - Applies to communication impediments, hearing loss, blindness, autism spectrum disorder, Alzheimer's disease or dementia, schizophrenia, Down syndrome, etc.
 - *Permits a person's name to be voluntarily added to a database that police can see when running their name*
 - *Local policy agency, once notified, have a duty to enter the information*

- **SB218 Private Probation And Court Ordered Services**

- *Prohibits private probation and private treatment providers from soliciting clients on court property*
- *Requires those conducting assessments to offer a list of treatment providers (not just their company)*
- *Limits ability of private probation providers to also provide therapy or treatment to their clients*
- Note: if your county or city already provides probation services, private providers may be prohibited from operating unless they have a contract with the county/city

- **SB226 Electronic Information or Data Privacy Act Amendments**
 - Applies to the “Automobile Exception” to the 4th Amendment
 - Police will need a warrant to search a vehicle’s onboard computer system or a person’s cell phone found within the vehicle
- **SJR6 Joint Resolution Amending Rules of Procedure and Evidence Regarding Criminal Prosecutions**
 - This was the main event for criminal law and procedure
 - *Prosecutors must “disclose all evidence that the prosecutor relied upon to file the information within five days” of receiving a request for discovery—i.e., the evidence the prosecutor had when screening the case*
 - *For preliminary hearings, probable cause findings “may not be based solely on hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence*
 - *Eliminates “paper prelims”*
 - *For 1102 Statements a prosecutor or staff “may transcribe a declarant’s statement verbatim or assist a declarant in drafting a statement” but “may not draft a statement for a declarant” or assist in a way that amounts to tampering with a witness*



**CINCO DE MAYO
IN MEXICO**



**CINCO DE MAYO
IN AMERICA**