2015 Sentencing Guidelines Frequently Asked Questions & Answers

Q. It appears criminal history scores will be reduced under the new guidelines. Why?
A. *The presenting offense is arguably as important as the criminal history of an offender in assessing an appropriate penalty at sentencing. Form 1 represents the weight of these two variables (present offense and criminal history) in determining whether a prison commitment is warranted. Form 1 of the 2014 Utah Guidelines weights criminal history more heavily than any other primary grid nationwide. 28% of all cells would not be recommended for prison, but for the criminal history score. By comparison, the U.S. Sentencing Guidelines are the lowest nationwide at 8%. The weight of criminal history in the guidelines is a policy choice and appears to have been inflated above the presenting offense on Form 1.*

Q. If Utah's prison commitment rate is already one of the lowest in the nation, why do we need to reduce the number committed to prison?
A. *The Justice Reinvestment Initiative's objective was to focus prison beds on serious and violent offenders; strengthen probation and parole supervision; improve and expand re-entry and treatment services; support local corrections systems; and ensure oversight and accountability. In addition, while Utah's per capital prison rate was the 7th lowest in the nation (at 252) as of 2005, Utah's black/white incarceration rate was actually the 8th highest in the nation, with a ratio of 11.2 black offenders for every white offender. Criminal history enhancements are correlated in other jurisdictions with disproportionate minority impact. To the extent that reducing criminal history enhancements reduces disproportionate minority impact, the Sentencing Commission seeks to utilize the most objective, racially neutral method of assessing criminal history.*

Q. If the guidelines don't recommend prison, does that mean a judge cannot impose it?
A. *No. The Department of Corrections, Adult Probation & Parole should make recommendations consistent with the guidelines. Forms 1-5a remain advisory in nature. The guidelines do not limit attorneys from arguing the merits of their case, nor do they limit judicial discretion.*

Q. If the guidelines aren't mandatory, how will they have any impact?
A. *Subsequent to Supreme Court decisions in Blakely v. Washington 542 U.S. 296 (2004) and U.S. v. Booker, 543 U.S. 220 (2005), all sentencing guidelines are now advisory in nature nationwide. Utah's guidelines have always been advisory, but both the Judiciary and the Board of Pardons and Parole have historically given them substantial deference. The Sentencing Commission, in coordination with CCJJ, will continue to track the application of the guidelines annually and determine whether further revisions are warranted.*

Q. Criminal history and presenting offense are the two factors in the grids on Forms 1-5a. Why isn't the presenting offense a factor in Forms 6-10?
A. *Risk Management (Forms 1-5a) and Risk Reduction (Forms 6-10) are separate and independent assessments. Forms 1 – 5a are the forms which should be used to impose an appropriate penalty; to incapacitate for a limited period of confinement; and to hold offenders accountable for criminal violations of law. Forms 6-10, by contrast, are a structured decision-making approach to supervision utilizing validated tools and incorporating decades of research for the purpose of long term behavior modification. It is possible for an offender to have committed a very serious offense and still score as low risk to reoffend. Conversely, it is possible for an offender to have committed a minor offense and score as high risk to reoffend.*

Q. Is criminal history being double-counted because it is considered in both Risk Management (Forms 1-5a) and Risk Reduction (Forms 6-10)?
A. *No, criminal history is relevant to both Risk Management and Risk Reduction, but the purposes of Forms 1-5a and 6-10 are distinct. It is possible for an offender to have committed a very serious offense and still score as low risk to reoffend. Conversely, it is possible for an offender to have committed a minor offense and score as high risk to reoffend.*

Q: Why were Supervision Risk and Supervision History categories revised?
A*: Supervision Risk and Supervision History categories under previous guidelines included probation violations which inflated non-criminal conduct to the level of actual criminal convictions, without the corresponding degree of proof. Probation violations could potentially outweigh actual criminal convictions. For instance, an offender initially sentenced to prison for a more serious offense could score lower than an offender who committed a less serious offense, received probation and then committed probation violations. The revised scoring incentivizes compliance with all forms of probation and penalizes only for a revocation or an offense on supervision.*

Q. Can Class B misdemeanor "person" crimes be counted in the Prior Person Crime category?
A. *The instructions on page 14 state: '"Person Crime Convictions" include convictions for any offense listed in Utah Code Annotated 76-3-203.5(c), as well as those designated as person crimes in Addendum B. "Person*

Crime Convictions" may include misdemeanor offenses not counted in other sections of the criminal history scoring. See Addendum B.' Addendum B has been fully updated as of January 6, 2016 and can be located at http://www.sentencing.utah.gov/Guidelines/Adult/2015%20Adult%20Sentencing%20Guidelines%20Updated%20Addendum%20B.pdf.

Q. What degree of injury is required to assess points in the Prior Person Crime category?
A. *The Sentencing Commission has not defined a specific degree of injury required. The Pre-Sentence Report should contain a recommendation as to whether an injury was sustained. Ultimately "the sentencing judge is required to consider the party's objections to the report, make findings on the record as to whether the information objected to is accurate, and determine on the record whether that information is relevant to the issue of sentencing." See, Waterfield 2014 UT App 67, ¶ 30 and Sandridge 2015 UT App 297 ¶ 6.*

Q. Why is "secure care" no longer counted in the Prior Juvenile Adjudications category?
A. *Secure care is a placement option which is not dependent upon the number of priors. An extensive review of disposition histories for juveniles in secure care revealed an average of 2 priors. Assessing the highest point value in this category for placement in secure care is inconsistent with the graduated points for priors.*

Q. Why are Prior Juvenile Adjudications limited to the past 10 years?
A. *Juvenile adjudications in juvenile court are not criminal convictions. The purpose of the Juvenile Court is different than District Court. The Constitutional protections afforded in District Court to defendants, such as the right to counsel and trial by jury, are not as routinely afforded in juvenile proceedings. In addition, at least 9 other states have adopted similar policies which are commonly referred to as a "gap" or "decay" policy. The most common length of time is 10 years and is based upon research that an offender, who remains crime free for a period of 7-10 years, has a risk to reoffend close to that of a person without any criminal record.*

Q. Why do the e-forms contain three drop down menus in the Supervision History category?
A. *The drop down menus were added in order to simplify the method by which this category is scored. The actual calculation should be the same regardless of whether the e-form or the hard form is utilized. The e-form simply provides a more methodical approach for ease of scoring.*

Q. AP&P is not providing Pre-Sentence Reports for offenders who score as low risk to re-offend. Isn't this elevating the Risk Reduction goal of sentencing above Risk Management and Restitution?
A. *The Sentencing Commission views all three goals of sentencing as equally important: Risk Management, Risk Reduction, and Restitution. A process has been approved by the JRI Task Force for an abbreviated "Sentencing Memorandum" to be provided by AP&P for certain low risk offenders.*

Q. The 1-3 day sanctions are not long enough to deter further violations or to ensure compliance. Why aren't the sanctions more severe?
A. *A consistently delivered proportionate response is a more effective deterrent than a severe threat not actually enforced. The 1-3 day sanctions (5 in every 30 days) are one part of the graduated sanctions and incentives which function together for long term behavior modification.*

Q. Why not just impose more intensive supervision?
A. *Not a single reviewer of studies of the effects of official punishment alone (custody, mandatory arrests, increased surveillance, etc.) has found consistent evidence of reduced recidivism (7% increase). Approximately half of the studies of correctional treatment services report reduced recidivism rates relative to various comparison conditions, in every published review (15% decrease). However, utilizing both an appropriate level of supervision and treatment with fidelity, as detailed in Form 6, can reduce recidivism by more than 30%. http://sentencingforms.utah.gov/Guidelines/Jail/Jail%20Guidelines%20form%206.pdf*

Q. Why not just impose "zero tolerance" conditions?
A. *For long term behavior modification purposes, a consistently delivered proportionate response is a more effective deterrent than a severe threat which is not actually enforced. However, Addendum G in coordination with Forms 7 and 10 (incorporated into the Response & Incentive Matrix) still provide a mechanism to address public safety violations to the Court or Board for appropriate action on the first violation. http://www.sentencing.utah.gov/JRI/Response%20&%20Incentive%20Matrix%20User%20Guide%20-%20October%201%202015%20-%20Google%20Docs.pdf*

Q. Why 30, 60, 90 days on probation revocations?
A. *As of 2013, the statewide average time spent in county jails prior to revocation to prison was 5.9 months. The total of 30, 60 and 90 days is 6 months. The time periods are intentionally broken into three separate events to maximize long term behavior modification with minimal additional impact on county jails.*

Q. Why not use 6 months straight jail time to "detox" individuals with substance use disorders?
A. *Neither researchers nor practitioners with extensive experience in severe substance use disorders recommend detoxification in county jails. County jails are not a substitute for appropriate medical services. The National Association of Drug Court Professionals recommends no more than sanctions of 3-5 days in jail. The potential for overdose upon release increases with the length of confinement (the craving remains or increases while the body's tolerance for the substance decreases). As of 2014, Utah's rate of overdose death was 8th in the nation.*