



---

2021

# Adult Sentencing & Release Guidelines



This manual and interactive forms can be found at  
<https://justice.utah.gov/Sentencing/>

## Utah Sentencing Commission

Monica Diaz, Director

Utah State Capitol Complex  
P.O. Box 142330  
Salt Lake City, Utah 84114-2330

Phone: (801) 538-1031  
Fax: (801) 538-1024  
Email: [sentencingcommission@utah.gov](mailto:sentencingcommission@utah.gov)

***Effective April 15, 2021 \*Not Retroactive***

# TABLE OF CONTENTS



<b>I. USER GUIDE</b>	<b>5</b>
<b>II. UTAH SENTENCING &amp; RELEASE GUIDELINES INSTRUCTIONS</b>	<b>13</b>
<b>Risk Management Forms Instructions</b>	<b>13</b>
Criminal History Scoring Instructions – Forms 1, 2 & 5	14
Matrix Calculation – Forms 1, 2 & 5	16
Sex & Kidnap Offenses Criminal History Scoring Instructions – Form 3	18
Sex and Kidnap Offense Matrix Calculation – Form 3	18
Jail as a Condition of Felony Probation Matrix Instructions – Form 4	20
Misdemeanor Matrix - Form 5	21
Aggravating and Mitigating Circumstances Instructions – Form 6	22
<b>Risk Management Forms</b>	<b>24</b>
Form 1 – General Matrix	24
Form 2 – Homicide Matrix	25
Form 3 – Sex & Kidnap Offense Matrix	26
Form 4 – Jail as Initial Condition of Probation of Felony Probation Matrices	27
Form 5 – Misdemeanor Matrix	28
Form 6 – Aggravating and Mitigating Circumstances	29
<b>Risk Reduction Structured Decision-Making Tools Instructions</b>	<b>30</b>
<b>Risk Reduction Structured Decision-Making Tools</b>	<b>33</b>
Tool 1 – Supervision & Treatment Levels Framework	33
Tool 2 – Decision-Making Authority Matrix	34
Tool 2A – Supervision Accomplishments Table	35
Tool 2B – Supervision Violations Table	36
Tool 3 – Response Magnitude/Proportionality Decision-Tree	37
Tool 4 – Graduated Incentives	38
Tool 5 – Graduated Responses & Sanctions	39
Tool 6 – Exceptions to Incarceration Caps	40
<b>III. STATUTORY CHARGE</b>	<b>41</b>
<b>IV. PHILOSOPHY STATEMENT</b>	<b>42</b>
<b>V. STATEMENT OF PURPOSE</b>	<b>43</b>

---

<b>VI. EVIDENCE-BASED SENTENCING FRAMEWORK</b>	<b>44</b>
A. Goals	45
B. Process	46
C. Tools	48
<b>VII. ACTION RESEARCH APPROACH</b>	<b>51</b>
<b>VIII. POLICY IMPLICIT IN THE GUIDELINES</b>	<b>51</b>
A. Prosecution	52
B. Presentence Investigations	52
C. Sentencing Judges	53
D. Board of Pardons and Parole	53
E. Alternate Probation Providers	54
<b>IX. ADDENDA</b>	<b>55</b>
Addendum A: Crime Column Severity Listing	55
Addendum B: Categorization of Crimes	57
Addendum C: Sex Offense Columns	67
Addendum D: Central Eight Criminal Risk Factors & Treatment Targets	71
Addendum E: The Responsivity Principle & Factors	72
Addendum F: Stages of the Change Model	71
Addendum G: PSI Process for Low Risk Individuals	74
Addendum H: Understanding Risk Assessments	75
Addendum I: Frequently Asked Questions	77
Addendum J: Glossary of Terms	80
Addendum K: References	85



### UTILIZING THE SENTENCING AND RELEASE GUIDELINES

The Sentencing and Release Guidelines (Guidelines) are intended to help structure decision making, incorporate a rational criminal justice philosophy, eliminate unwarranted disparity, and provide a tool to match resources with needs while maintaining the discretion of the sentencing authority. The Guidelines do not create any right or expectation on behalf of any individual nor do they create a liberty interest on behalf of an individual convicted of a crime. The following user guide is intended to give a brief overview of how each participant in the criminal justice system can utilize the Guidelines.

#### 1. Defendants

Once you are convicted of a crime (guilty plea or finding of guilt after a trial) a judge may order a presentence investigation. A presentence investigation is used to gather information about you, present it to the judge, as well as make a sentencing recommendation based upon the Guidelines and matrices.

- Presentence investigations should include the applicable guideline Forms 1-6.
- Recommendation made to the judge should conform to the guidelines unless aggravating or mitigating circumstances are documented.

For more information about presentence investigations refer to page 52.

The Guidelines only work as planned when the information used is correct and reliable. Presentence investigators often only have some of the facts that could have an impact on guideline recommendations. The following are ways you can assist the presentence investigation:

- Completely fill out the paperwork provided to you by the agency conducting the presentence investigation;
- Provide information to the investigator that might be helpful including:
  - Proof of attendance or completion of treatment;
  - Proof of employment;
  - Proof of education certificates or diplomas;
  - Letters from treating doctors or therapists; and
  - Names of people who could provide letters of reference.

If you have questions about what information is helpful in regards to sentencing you should contact your attorney. Once the presentence investigation is complete it is important that you thoroughly review the investigative report for accuracy. If you believe there is a mistake or something has not been reported accurately it is important to inform both your attorney and the person preparing the report before sentencing occurs.

As part of a presentence investigation Adult Probation and Parole (AP&P) uses the Level of Services/Risk, Need and Responsivity –Assessment (4th generation) (LS/RNR) to assess an individual’s risk of recidivism and their supervision/ treatment needs. The LS/RNR considers:

- Criminal history;
- Education/employment;

- Family/marital circumstances;
- Leisure and recreation;
- Companions;
- Substance abuse issues; and
- Antisocial pattern.

For more information about why these are the factors considered refer to pages 49-50. While AP&P generally uses the LS/RNR other validated tools may be used including assessments specifically designed to address individuals presenting with substance use disorders, mental health disorders and sex offenses.

While the presentence investigator scores the appropriate matrices and gives them to the judge you may want to do this as well to understand what the sentencing recommendation in your case might be. A step-by-step example of how to score a matrix can be found on pages 12-13 and full instructions are on pages 14-24. Also, electronic forms that help you calculate scores can be found at <https://justice.utah.gov/Sentencing/eForms.html>.

Other important information:

- Forms 1-5 create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances can be taken into consideration by both the sentencing judge and the Board of Pardons and Parole (Board) in making their final decisions.
- Aggravating and mitigating circumstances can be found on Form 6.
- The Guidelines do not create any right or expectation on behalf of any individual nor do they create a liberty interest on behalf of an individual convicted of a crime.
- If you are sent to prison, the Board will recalculate your sentencing matrix and your guidelines may change. For more information on why the Board will recalculate your sentencing matrix see pages 78-79 for more information.
- If you are sent to prison, the presentence investigation report will also be used by the Board.

## 2. Victims

Sentencing guidelines in Utah are aimed at three main factors:

- 1) Risk management;
- 2) Risk reduction; and
- 3) Restitution for victims.

One of the most successful ways to address all three factors is the use of evidence-based sentencing. Evidence-based sentencing uses validated tools and assessments that help identify risk – both risk management and risk reduction – as well as address restitution.

When looking at risk, supervision and treatment resources should be prioritized for those individuals who are high-, moderate-, or intensive-risk levels. An individual who is identified as low-risk and low-need has few criminogenic risks/needs and therefore, there is little that can be targeted for reduction. In addition, including low-risk and low-need individuals in programming with higher risk individuals not only is an inefficient use of limited resources, but can have the unintended consequence of increasing a low-risk individual's criminogenic risk factors.

A presentence investigation is appropriate when an individual convicted of a crime is found to be moderate- or high-risk or is convicted of a felony offense. There are some circumstances when a presentence investigation will be conducted for misdemeanor offenses; for full information regarding presentence investigations see page 52. Presentence investigations may consider:

- Type of offense;
- Risk and needs assessments;
- Demand for service;
- Availability of agency resources;
- Public safety; and
- Any other criteria established by the Utah Department of Corrections.

The recommendation made to the judge should conform to the guidelines unless aggravating or mitigating circumstances are documented.

The Guidelines only work as planned when the information used is correct and reliable. Presentence investigators may only have some of the facts that could have an impact on guideline recommendations. Therefore, you should let the sentencing judge know any information you think is important for him or her to consider at sentencing.

Recommendations on the matrices are determined by factors that might not always be known to victims and therefore recommendations might not always be what is expected or anticipated. If you have questions or concerns with a sentencing recommendation you should discuss them with the prosecutor or victim advocate before the sentencing determination is made.

Other important information:

- Forms 1-5 create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances can be taken into consideration by both the sentencing judge and the Board of Pardons and Parole (Board) in making their final decisions.
- Aggravating and mitigating circumstances can be found on Form 6.
- The Guidelines do not create any right or expectation on behalf of any individual nor do they create a liberty interest on behalf of an individual convicted of a crime.
- If the individual is sent to prison, the Board will recalculate their sentencing matrix and their guidelines may change. For more information on why the Board will recalculate an individual's sentencing matrix see pages 78-79 for more information.

There are many agencies and resources dedicated to victims of crime. Many police departments and prosecuting agencies have victim advocate programs to help you through the criminal justice process. You may contact the agency in which your crime was reported or the agency prosecuting a case for more information. In addition to police department and prosecuting agencies, the following agencies also provide services and resources for victims:

- Utah Office for Victims of Crime: <https://justice.utah.gov/Crime/>
- Utah Department of Corrections, Victim Services: <https://corrections.utah.gov/index.php/victim-resources>
- Utah Board of Pardons and Parole: <https://bop.utah.gov/index.php/victim-info-top-public-menu>
- Utah Crime Victims Legal Clinic: <http://www.utahvictimsclinic.org/>

### 3. Attorneys

Attorneys should use the Sentencing and Release Guidelines to determine the implications of charging and plea negotiations. Attorneys can also score a matrix themselves to check the matrix score/recommendation calculated during the presentence investigation. A step-by-step example of how to calculate a sentencing matrix can be found on pages 12-13 and full instructions are on pages 14-24. Electronic versions of the matrix can be found at <https://justice.utah.gov/Sentencing/eForms.html>. If an attorney believes there has been a miscalculation in the matrix scoring the attorney should contact the presentence investigator to discuss the calculation of the matrix before sentencing occurs.

Presentence investigators often have limited access to facts that could aggravate or mitigate a sentencing recommendation. It is the responsibility of defense counsel and prosecutors to ensure that any relevant aggravating and mitigating factors are known to the sentencing authority at the time of sentencing.

Current research indicates that in order to improve recidivism outcomes, treatment programs must target criminogenic needs. For more in-depth information about criminogenic needs and corresponding treatment targets see pages 49-50. Current risk/needs assessment tools not only identify specific dynamic risk factors (changing and changeable) that identify whether an individual is likely to reoffend but they also identify appropriate targets for intervention which, if effective will reduce the probability for recidivism. For more information about risk/needs assessments see pages 49-51.

The Guidelines also include the Response and Incentive Matrix Tools (RIM). RIM was created to give swift, certain, consistent and proportionate responses to both compliance with, and violations of, the conditions of supervision by integrating behavioral principals into graduated responses. Both individuals under supervision and attorneys can use RIM to anticipate incentives and sanctions. All options within RIM are dependent upon available resources and do not create a right on behalf of an individual convicted of a crime. For further explanation of RIM including incarceration caps see pages 31-33 and 45-48.

## 4. Family Members

Once a person is convicted of a crime (guilty plea or finding of guilt after a trial) a judge may order a presentence investigation. A presentence investigation is used to gather information about an individual convicted of a crime, present that information to a judge as well as make a recommendation for sentencing based upon the Guidelines and matrices. Presentence investigations may consider:

- Type of offense;
- Risk and needs assessments;
- Demand for service;
- Availability of agency resources;
- Public safety; and
- Any other criteria established by the Utah Department of Corrections.

For more information about presentence investigations refer to page 52.

While the presentence investigator scores the applicable matrices and provides them to the judge family members may also want to score a matrix to understand what the sentencing recommendation might be. A step-by-step example of how to score a matrix can be found on pages 12-13 and full instructions are on pages 14-24. Also, electronic forms that help you calculate scores can be found at <https://justice.utah.gov/Sentencing/eForms.html>.

Other important information:

- Forms 1-5 create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances can be taken into consideration by both the sentencing judge and the Board of Pardons and Parole (Board) in making their final decisions.
- Aggravating and mitigating circumstances can be found on Form 6.
- The Guidelines do not create any right or expectation on behalf of any individual nor do they create a liberty interest on behalf of an individual convicted of a crime.
- If an individual is sent to prison, the Board will recalculate their sentencing matrix and their guidelines may change. For more information on why the Board will recalculate an individual's sentencing matrix see pages 78-79 for more information.



Each of the following community partners may have additional information regarding criminal cases and resources for families of individuals convicted of crimes in Utah:

- Utah Courts: <https://www.utcourts.gov/selfhelp/criminal.php>
- Board of Pardons and Parole: <https://bop.utah.gov/index.php/home-top-public-menu>
- Utah Department of Corrections: <https://corrections.utah.gov/>
- Salt Lake County Probation Services: <https://slco.org/criminal-justice/probation-services/>

## 5. AP&P Agents and PSI scorers

Presentence investigations standards are governed by Utah Code § 77-18-1(3) and may consider:

- Type of offense;
- Risk and needs assessments;
- Demand for service;
- Availability of agency resources;
- Public safety; and
- Any other criteria established by the Utah Department of Corrections.

Presentence investigations should include the applicable guideline Forms 1-6. The recommendation made to the judge should conform to the Guidelines unless aggravating or mitigating circumstances are documented. For more information about presentence investigations refer to page 52.

Aggravating or mitigating circumstances may justify departure from the Guidelines. However, Form 6 must be completed and submitted to the sentencing judge. When reporting aggravating or mitigating circumstances on Form 6, list the page number where information about the aggravating or mitigating circumstance(s) can be found in the presentence investigation report. The list of aggravating and mitigating circumstances on Form 6 is illustrative and not exhaustive. Please see pages 23-24 for more information on aggravating and mitigating circumstances.

Sentencing recommendations given to the judge must include a sentencing matrix found in Forms 1-6. A step-by-step example of how to score a matrix can be found on pages 12-13 and full instructions are on pages 14-24. Electronic copies of the forms can be found at <https://justice.utah.gov/Sentencing/eForms.html>. You may also contact the Sentencing Commission if you have questions.

The Guidelines also include the Response and Incentive Matrix Tools (RIM). RIM was created to give swift, certain, consistent and proportionate responses to both compliance with, and violations of, the conditions of supervision by integrating behavioral principals into graduated responses. Positive reinforcements should be provided at a fixed ratio schedule, meaning that after each occurrence of the desired behavior or skill, some reinforcement is provided. In relation to sanctions applied, positive reinforcements should be provided at a ratio of approximately 4:1 (four incentives for every one sanction). For more information on the research of positive reinforcements and sanctions see pages 47-48. All options within RIM are dependent upon available resources and do not create a right on behalf of an individual convicted of a crime. For further explanation of RIM including incarceration caps see pages 31-33.

## 6. Media

Sentencing guidelines in Utah are aimed at three main factors:

- 1) Risk management;
- 2) Risk reduction; and

### 3) Restitution for victims.

One of the most successful ways to address all three factors is the utilization of evidence-based sentencing. Evidence-based sentencing utilizes validated tools and assessments that help identify risk – both risk management and risk reduction – as well as address restitution.

When looking at risk, supervision and treatment resources should be prioritized for those individuals who are high- and moderate-risk level. An individual who is identified as low-risk and low-need has few criminogenic risks/needs and therefore, there is little which can be targeted for reduction. In addition, including low-risk and low-need individuals in programming with higher risk individuals not only is an inefficient use of limited resources, but can have the unintended consequence of increasing a low-risk individual's criminogenic risk factors. A greater explanation of evidence-based sentencing can be found on pages 45-51.

Once an individual is convicted of a crime (guilty plea or finding of guilt after a trial) a judge may order a presentence investigation. A presentence investigation is used to gather information about an individual convicted of a crime and present that information to a judge as well as give a sentencing recommendation based on the Guidelines and matrices. Presentence investigations may consider:

- Type of offense;
- Risk and needs assessments;
- Demand for service;
- Availability of agency resources;
- Public safety; and
- Any other criteria established by the Utah Department of Corrections.

The recommendation made to the judge should conform to the Guidelines unless aggravating or mitigating circumstances are documented. For more information about presentence investigations refer to page 52.

A step-by-step example of how to score a matrix can be found on pages 12-13 and full instructions are on pages 14-24. Also, electronic forms that help you calculate scores can be found at <https://justice.utah.gov/Sentencing/eForms.html>. Recommendations on the matrices are determined by factors that might not always be known to the media or public and therefore recommendations might not always be what is expected or anticipated.

Other important information:

- Forms 1-5 create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances can be taken into consideration by both the sentencing judge and the Board of Pardons and Parole (Board) in making their final decisions.
- Aggravating and mitigating circumstances can be found on Form 6.
- The Guidelines do not create any right or expectation on behalf of any individual nor do they create a liberty interest on behalf of an individual convicted of a crime.
- If an individual is sent to prison, the Board will recalculate their sentencing matrix and their guidelines may change. For more information on why the Board will recalculate an individual's sentencing matrix see pages 78-79 for more information.

For questions regarding the Sentencing and Release Guidelines please contact the Sentencing Commission at 801-538-1031 or [sentencingcommission@utah.gov](mailto:sentencingcommission@utah.gov).

## EXAMPLE SENTENCING DECISION TREE

The following fictional example of a possible presumed sentence decision tree represents an effort to help guideline users familiarize themselves with the process undertaken by presentence investigators and judges. A sentencing decision reflects considerations regarding criminal history and charge categories that are evaluated through a series of steps with corresponding rules. In the example, there are a couple details that highlight how these rules affect a potential presumed sentence. However, the example represents a relatively normal decision-making course without sentencing enhancements or many other potential sentencing departures. In any attempt to determine a real presumed sentence, be sure to consult with attorneys or to direct your questions to experienced sentencing guideline users or the Utah Sentencing Commission itself.

### SCENARIO OVERVIEW

Carl Magnusson - 23 year-old man arrested after a pawn shop owner reports he has suspicions that the set of auto-mechanic tools valued at \$6,000 Magnusson attempted to sell were stolen.

During the course of investigation, detectives discover that Magnusson's co-worker reports the theft of the same auto mechanic tools from his personal vehicle parked on a public street outside his place of business. Magnusson is charged with 2nd Degree Felony theft, and Class A Misdemeanor burglary of a vehicle.

### CRIMINAL HISTORY

Magnusson has three class A misdemeanor thefts as an adult, a conviction for one prior felony person offense and a class A misdemeanor stalking charge, and two felony theft charges from before he was 18.

**The diagram on the following page is how we would determine the presumptive sentence for this crime.**

## STEP 1

### Determining The Criminal History

- + 2 pts for prior felony conviction
- + 2 pts for 3 misdemeanor thefts
- + 4 pts for prior felony person offense\*
- + 2 pts for juvenile felony theft

10 Points = Criminal History Row III

TOTAL SCORE RANGES CRIMINAL HISTORY ROW

16+	→	V
12 – 15	→	IV
8 – 11	→	III
4 – 7	→	II
0 – 3	→	I

\* In prior person convictions category, Magnusson has a felony and a misdemeanor stalking charge from one prior conviction. Count the 4 points for the felony in this category. The felony person offense also counts as a prior felony conviction in the first section.

## MOST SERIOUS CHARGE

### 2nd Degree Felony, Other Category

Determine felony as "other" category (Not a "possession" or "person" crime) with help of Sentencing Guidelines Addendum B Crime categories.

## STEP 2

Determine most serious crime and crime category

## SECONDARY CHARGE

Class A misdemeanor, Other category

FORM 1 (abbreviated matrix)

	3rd Degree Person D	2nd Other Specific 3rds E	2nd Poss 3rd Other F
V	32 MOS	26 MOS	16 MOS
IV	26 MOS	20 MOS JAIL AS CONDITION OF PROBATION	14 MOS
III	20 MOS	16 MOS	12 MOS
II	16 MOS	14 MOS PRESUMPTIVE PROBATION	10 MOS
I	14 MOS	12 MOS	8 MOS

Category and history lead to box III E on Form 1 - General Matrix

## STEP 3

Find sentencing box for all charged crimes based on crime category and criminal history score

FORM 5 (abbreviated matrix)

	Class A Other C	Class B DV Other D	Class A POCs E
V	75 (0-150)	60 (0-120)	45 (0-90)
IV	60 (0-120)	45 (0-90)	37 (0-75)
III	45 (0-90)	37 (0-75)	22 (0-45)
II	30 (0-60)	22 (0-45)	15 (0-30)

Category and history lead to box III C on Form 5 - Misdemeanor Matrix

FORM 4 (abbreviated matrix)

	3rd Person	2nd Other	2nd Poss.	3rd Other*
V	150 (0-300)	150 (0-300)	150 (0-300)	135 (0-270)
IV	150 (0-300)	150 (0-300)	135 (0-270)	105 (0-210)
III	90 (0-180)	90 (0-180)	90 (0-180)	75 (0-150)
II	75 (0-150)	60 (0-120)	60 (0-120)	45 (0-90)

Box is shaded Jail as a Condition of Probation. For presumptive sentence, disregard listed prison months and move to Form 4.

## STEP 4

Determine whether Presumed Imprisonment or Jail as an Initial Condition of Probation or Presumed Probation

Box is shaded Presumptive Probation.

Use same criminal history score and crime category to find box that indicates presumptive jail time in form 4.

Determine if Consecutive Sentence or Concurrent Sentence.

Total range is 0-180 jail days with 90 days as the median incarceration time as presumed sentence in Form 1.

## STEP 5

Calculate Presumed Sentence and Time and Level of Incarceration and Supervision.

**For Consecutive Sentence,** add 40% of presumed sentence to the presumed sentence for the more serious charge. If 45 days is the presumed median sentence that means the consecutive sentence should presume 18 additional days of incarceration.

**For Concurrent Sentence,** add 10% of presumed sentence to the presumed sentence for the more serious charge. If 45 days is presumed median sentence that means concurrent sentence should assume 5 additional days of incarceration.

## STEP 6

As a precaution, consider whether mitigating or aggravating conditions (See Form 6) could lead to departures from Presumed Sentence. If, for example, the judge determines that aggravating circumstances justify a departure, Magnusson could be sentenced to a prison term based on the prison-time box on Form 1. In this case, the presumed sentence would amount to 16 months of prison time.



## II. UTAH SENTENCING & RELEASE GUIDELINES INSTRUCTIONS

### Risk Management Forms Instructions

The Adult Guidelines Forms are available in an electronic format. They may be accessed through the Sentencing Commission's website at <https://justice.utah.gov/Sentencing/>.

Except for consecutive and concurrent enhancements, statutory sentencing enhancements are not included in the context of these guidelines. For example, Utah law concerning repeat and habitual sexual convictions, Utah Code § 76-3-407, or gang enhancements, Utah Code § 76-3-203.1, are to be considered outside of and in addition to these guidelines.

### Criminal History Scoring Instructions – Forms 1, 2 & 5

The purpose of the Criminal History Scoring is to provide a standard frame of reference to reduce or enhance the severity of the sentence based on the prior criminal history and supervision history of the individual. **Only score the single highest point option within a given category.** Do not check multiple scores in a single category and then add them. Any negative points which are deducted for the most recent post-conviction crime-free gap period may not reduce the total score below 0. The term "prior" is used throughout the criminal history scoring. When scoring the Forms, the term prior means a conviction or adjudication sentenced prior to the current offense regardless of date of offense.

#### PRIOR FELONY CONVICTIONS

- Only prior adult felony convictions with separate adult case numbers that have already been sentenced are counted.
- Where military, federal, or other state(s)' records are available, court martial convictions or other convictions that would be equivalent to a felony offense penalty in Utah are counted.
- If multiple convictions arise from a previous single criminal episode, one felony conviction from each separate adult case number is counted.

#### *Information Related to Prior Adult Felony Convictions*

- The current offense(s) are not counted.
- Dismissed cases, intelligence information, numerous prior arrests, etc. are not counted.
- A "single criminal episode" is defined as "all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective." Utah Code § 76-1-401.

#### PRIOR CLASS A MISDEMEANOR CONVICTIONS

- Only prior adult class A misdemeanor convictions with separate adult case numbers that have already been sentenced are counted.
- Where military, federal, or other state(s)' records are available, court martial convictions or other convictions that would be equivalent to a Class A misdemeanor offense penalty (i.e. up to 365 days in jail) in Utah are counted.
- If multiple convictions arise from a previous single criminal episode, one Class A conviction from each separate adult case number is counted.
- If multiple convictions arise from a previous single criminal episode that includes both felony and class A misdemeanor convictions and an adult felony conviction from that episode has already been counted under "Prior Felony Convictions," a misdemeanor conviction from that episode is not counted unless there are separate adult case numbers.

### Information Related to Prior Class A Misdemeanor Convictions

- The current offense(s) is not counted.
- Dismissed cases, intelligence information, numerous prior arrests, etc. are not counted, but may be considered in the aggravating and mitigating circumstances section of the guidelines.
- A “single criminal episode” is defined as “all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.” Utah Code § 76-1-401.

### **SUPERVISION HISTORY**

- This item includes only adult supervision history.
- Only post-adjudication or post-conviction federal, AP&P, private or county supervision is counted.
- Neither pre-trial supervision nor jail time is counted.
- Instances of court or bench probation without a supervising entity should generally not be considered. Removal from a Problem Solving Court is the sole exception.
- Every Problem-Solving Court or “RIM” violation/sanction should not be counted in this section. An Order to Show Cause with revocation and actual removal from the Problem-Solving Court is required in order to count in this section.
- Points are given if the current offense(s) occurred while the individual was on post-adjudicated or post-conviction federal, state, county, or private supervision.
- Points are also given if the current offense(s) occurred while the individual was in a Problem-Solving Court when the offense resulted in actual removal from the Problem-Solving Court.
- “Prior Revocation” includes a revocation and reinstatement of probation from the courts, a revocation of probation and sentence to prison, or a revocation of parole from the Board of Pardons and Parole. A continuation of probation or parole is not counted as a “prior revocation”.
- Supervision for traffic violations and minor regulatory offenses are not counted.
- Instances of supervision as a juvenile are not counted in this section.

### **PRIOR PERSON OR FIREARM CONVICTIONS**

- Only prior adult or juvenile person or firearm convictions that have already been sentenced are counted.
- Where military, federal, or other state(s)’ records are available, court martial convictions or other convictions that would be equivalent to the Utah penalty for the specific offenses referenced in this section are counted.
- “Misdemeanor Person Offenses” include misdemeanor offenses designated in Addendum B specifically as person crimes.
- “Felony Person Offenses” include felony offenses designated in Addendum B specifically as person crimes.
- “Person Crime or Firearm Convictions” may include offenses not counted in other sections of the criminal history scoring.
- “Person Crime Convictions” may include juvenile dispositions beyond the ten (10) year limitation in the following section.
- “Firearm Offenses” include felony offenses specifically designated in Utah Code § 76-10-500 et seq.
- “Homicide Offenses” include offenses specifically designated in Utah Code § 76-5-201 et seq.

### Information Related to Prior Person or Firearm Convictions

- The current offense(s) is not counted.

### **PRIOR JUVENILE ADJUDICATIONS**

- In order to be counted in this section, the date of the juvenile adjudication must have occurred within ten (10) years of the current conviction date.
- Where other state(s)’ records are available, juvenile delinquency adjudications that would be equivalent to the offense

penalty in Utah are counted.

- Juvenile felony adjudications that result in a finding of delinquency are counted and should be substantiated on the record by AP&P for sentencing purposes as well as future recalculation(s) by the Board of Pardons & Parole.
- Every three (3) juvenile Class A misdemeanor adjudications which result in a finding of delinquency count the same as one (1) juvenile felony adjudication.
- If multiple adjudications arise from a previous single criminal episode, only one finding of delinquency from that episode is counted.
- Status offenses committed as a juvenile are not counted.

#### Information Related to Prior Juvenile Adjudications

- A “single criminal episode” is defined as “all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.” Utah Code § 76-1-401.
- Prior Class A misdemeanor adjudications should not be rounded up. For example, less than 3 Class A misdemeanors = 0 felonies, 3 to 5 misdemeanors = 1 felony, and 6 to 8 Class A misdemeanors = 2 felonies.
- Only those cases that resulted in a finding of delinquency should count. In other words, some adjudication of guilt in the juvenile system must be found before points are allotted here. Care must be exercised since not every entry on a juvenile record represents an adjudication.

#### **MOST RECENT POST-CONVICTION CRIME-FREE GAP**

- This section replaces the previous subtraction of one point in the Supervision History section for “successful completion” of supervision.
- Both adult and juvenile offenses with either a conviction or a delinquency adjudication are considered in this section.
- For past probation offenses, the calculation begins at the date of original sentencing or entry of plea in abeyance.
- For past offenses committed to prison, the calculation begins at the date of release from prison.
- For juvenile offenses, the calculation begins at the date of adjudication for offenses that did not result in secure care placement; or from the secure care placement release date for offenses that did result in secure care placement. Neither detention nor community placement is considered secure care.
- The calculation ends at the earliest offense date for which the current guideline is being scored.
- Do not count any infraction, Class C, or Class B traffic and other minor regulatory offenses against the gap, consistent with Utah Code § 77-40-102(10).
- Subtract one point after 3 or more years crime-free (in the most recent post-conviction period).
- Subtract two points after 5 or more years crime-free (in the most recent post-conviction period).
- Subtract three points after 7 or more years crime-free (in the most recent post-conviction period).
- Subtract four points after 10 or more years crime-free (in the most recent post-conviction period).
- Do **not** calculate this section if an individual has no criminal history or no qualifying criminal history.

#### Information Related to Most Recent Post-Conviction Crime-free Gap

- The specific calculation instructions in this section are intended to provide more objective measures of the same general concept previously included under “successful completion.”
- The graduated points which are tied to specific time periods are based on research included in the references section and are consistent with national and state-level recidivism data.
- Do **not** count jail time served, jail time ordered, or other jail sentences in calculating against the crime-free gap.
- Do **not** calculate RIM sanctions or Problem-Solving Court sanctions including jail time against the gap.



## TOTAL SCORE

To arrive at this score, add up the points associated with each category in the Criminal History Score.

A total score with all points counted and subtracted may not result in a score below 0.

## CRIMINAL HISTORY ROW

Using the Total Score, identify the appropriate Criminal History row: I, II, III, IV, or V using the chart labeled “Criminal History Row.”

## Matrix Calculation – Forms 1, 2 & 5

The rows of each matrix represent differing levels of criminal history and correspond with the total score from the criminal history score. The columns represent crime categories and correspond with the most serious current offense. The columns list both an offense level and a crime category. The various levels of shading in the matrix represent suggested dispositions (disregarding aggravating and mitigating circumstances).

The crime category columns generally flow from left to right indicating the most severe sanction to the least severe sanction. However, this does not necessarily indicate which crimes are more severe than others. Some cells recommend a more severe placement than the cell immediately to its right, but the length of stay may actually be shorter than in the cell immediately to the right.

To determine the guidelines’ recommended disposition, locate the cell where the appropriate crime category column and criminal history row intersect. The proper crime category column is based on: (1) the felony level of the most serious presenting offense; and (2) the crime category. **Addendum B, Crime Categories** identifies specific categories for offenses. Crimes categorized as other may not be specifically included in **Addendum B**.

If there are multiple current offenses, refer to **Addendum A, Crime Column Severity Listing**, to determine which offense is the most severe and which column should be used. This listing will also indicate which matrix should be used when current offenses include both sex offenses and non-sex offenses.

In calculating the total guideline time, the crime of conviction that results in the highest guideline time is considered the leading offense, regardless of rank order in **Addendum A** or column order on the matrix forms.

As indicated earlier, to determine the proper criminal history row, calculate the total criminal history score and use the chart labeled “Criminal History Score” to identify the row that corresponds with that score.

After having identified the proper crime category column and criminal history row, locate the cell where the column and row intersect. That cell includes the guidelines’ recommendation regarding sentencing disposition and the typical length of stay if the individual is sentenced to prison. The level of shading in that box identifies the suggested or mandatory sentencing disposition.

## MANDATORY IMPRISONMENT

Utah law mandates imprisonment for all individuals convicted of murder (Utah Code § 76-3-406). Thus, the guidelines indicate a mandatory imprisonment sentence for murder, regardless of the criminal history row. Murder, Utah Code § 76-5-203, is the only offense considered in crime category A. Aggravated murder (Utah Code § 76-5-202) is not considered at all on the Adult Sentencing and Release Guidelines.



Utah law mandates imprisonment for other offenses and mandatory jail for some offenses if the prison sentence is stayed. However, the forms do not indicate all mandatory incarceration sentences. Doing so would unnecessarily complicate the matrices when a review of the applicable statute will suffice.

## TIME ENUMERATED WITHIN INDIVIDUAL CELLS

The length of time enumerated within each cell is the typical length of stay if the individual is imprisoned at the Utah State Prison. *These times apply only if the individual is sentenced to prison and do not apply if the individual is sentenced to jail as an initial term of probation or to regular probation.* If there is only one active sentence, the typical guideline term is determined by simply identifying the cell where the appropriate crime category column intersects with the criminal history row. The times located within cells found in the mandatory imprisonment shaded area are not mandatory minimums.

In rare cases, the statutory minimum length of stay in prison may be higher than the typical length of stay provided in an individual cell. This will happen only when the statutory minimum for a crime is longer than the usual statutory minimum for that felony level. For example, a drive-by shooting is a third degree felony punishable by three to five years in prison. It is possible that the typical prison term indicated in the matrix will be less than three years since most third degree felonies are punishable by zero to five years in prison. In cases where the statutory minimum exceeds the typical length of stay provided in the matrix, the typical length of stay should be ignored.

## CONSECUTIVE OR CONCURRENT

When multiple offenses are before the court, “[t]he court shall state on the record and shall indicate in the order of judgment and commitment: (a) if the sentences imposed are to run concurrently or consecutively to each other; and (b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is currently serving.” Utah Code § 76-3-401(1). State statute requires the court to consider the following factors in determining whether sentences shall run concurrently or consecutively:

- Gravity and circumstances of the offenses
- Number of victims
- History, character, and rehabilitative needs of the defendant.

Utah Code § 76-3-401(2).

“The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.” Utah Code § 76-3-401(3).

If multiple convictions are ordered to run concurrently, the guidelines add 10% of the recommended length of stay for each of the shorter sentence to the full recommended length of the longer sentence. For example, consider an individual convicted of aggravated robbery with a recommended length of stay of 7 years (84 months) and also convicted of aggravated assault with a recommendation of 20 months. If the court orders the sentences to run concurrently, the guidelines recommend a length of stay of 86 months (10% of 20 mos = 2 mos + 84 mos = 86 mos).

If multiple convictions are ordered to run consecutively, the guidelines add 40% of the recommended length of stay of the shorter sentence to the full recommended length of the longer sentence. Using the same example above, if the sentences were consecutive, the guidelines would recommend a length of stay of 92 months (40% of 20 mos = 8 mos + 84 mos = 92 mos). This same approach applies even if there are three or more sentences being considered.

If there are a string of multiple offenses that are running consecutively or concurrently, add the applicable percentage

of all of the shorter sentences to the longest sentence. For example, consider an individual convicted of 1) aggravated assault with a recommendation of 24 months, 2) a drug offense with a recommendation of 20 months, and 3) forgery with a recommendation of 10 months. If the judge orders the sentences to run concurrently, add 10% of both the drug offense and the forgery to the 24 months for the aggravated assault. The guideline recommendation would total 27 months (10% of 20 mos = 2 mos; 10% of 10 mos = 1 mos; 2 mos + 1 mos = 3 mos; 3 mos + 24 mos = 27 mos).

Occasionally, the longer sentence may not be from the most “severe” offense as indicated by the Crime Column Listing (by severity) as explained above. In these exceptional cases, use the longest sentence for purposes of calculating concurrent and consecutive sentences. This is done to preserve consistency in guidelines application.

All guidelines considerations of concurrent and consecutive sentencing should be consistent with the limitations in Utah Code § 76-3-401.

### **SEX & KIDNAP OFFENSES INSTRUCTIONS – FORM 3**

Form 3 should be used for all registerable sex offenses. Specifically, offenses to be considered under this portion of the guidelines include:

- offenses that require registration under Utah Code § 77-41-106;
- custodial sexual relations or misconduct, § 76-5-412;
- custodial sexual relations or misconduct with a youth receiving state services, § 76-5-413; and
- sexual battery, § 76-9-702.1.

Kidnapping under Utah Code § 76-5-301 is considered a person offense for purposes of the Sentencing and Release Guidelines. Form 1 should be used to score the crime of kidnapping. For more information see Addendum B.

### **Sex & Kidnap Offenses Criminal History Scoring Instructions – Form 3**

The Criminal History Scoring for Form 3 is slightly different than that used under Forms 1, 2 & 5 for other individuals convicted of a crime. One additional category exists on the Criminal History Scoring for individuals who commit sexual offenses: Prior Sex/Kidnap Convictions. This section previously counted the number of prior victims. This section is now based upon the degree of the offense and is specific to those offenses listed in Addendum C. Other than this category, the Criminal History Score for Form 3 should be scored identical to Forms 1, 2 & 5.

Form 3 reflects most of the amended laws mandating imprisonment for certain sex and kidnap offenses in conjunction with differing indeterminate lengths of stay ranges. Neither Life Without Parole nor a 25 to life sentence are addressed in Form 3, but are fully delineated in statute. In addition, there are only three criminal history rows on the sex offense matrix. This provides the Board of Pardons and Parole with more discretion concerning individuals convicted of sexual offenses.

### **Sex and Kidnap Offense Matrix Calculation – Form 3**

The Sex & Kidnap Offense Matrix on Form 3 is obviously different than the Form 1, 2 & 5 matrices. However, they all function similarly. Simply identify the appropriate crime category column and intersect it with the appropriate criminal history row to determine the suggested or mandatory disposition. Addendum C lists the crime categories for all sex offenses. Addendum A identifies the appropriate column if more than one sex offense is currently before the court. As with Form 1, 2 & 5, the criminal history row is located by calculating the total criminal history score and using the chart labeled “Criminal History Row.”

Utah law mandates imprisonment for certain sex offenses regardless of the criminal history score. This is reflected in the crime category columns and the disposition shading. In rare cases, Utah law does allow for an alternative sentence to prison

for otherwise mandatory imprisonment sex offenses. However, an arduous list of circumstances must be met before such a deviation is allowed. These circumstances are enumerated under Utah Code § 76-5-406.5.

## **GRIEVOUS SEXUAL OFFENSES**

The Law now identifies and defines “Grievous Sexual Offenses” as:

Rape-§ 76-5-402

Rape of a Child-§ 76-5-402.1

Object Rape-§ 76-5-402.2

Object Rape of a Child-§ 76-5-402.3

Forcible Sodomy-§ 76-5-403(2)

Sodomy on a Child-§ 76-5-403.1

Aggravated Sexual Abuse of a Child-§ 76-5-404.1

Aggravated Sexual Assault-§ 76-5-405

Any felony conviction for an attempt to commit one of the above or an offense committed in another state, territory or district of the U.S. that if committed in Utah would also constitute an offense described above.

Grievous Sexual Offenses are used in the calculation and consideration of enhanced penalties. If during the course of the trial, the trier of fact finds that the defendant has a prior conviction for a Grievous Sexual Offense, the penalty may be life without the possibility of parole (“LWOP”).

## **OFFENSES WITH ALTERNATIVE MINIMUM SENTENCES**

Prior law and instruction directed the court in cases that carried the option of three alternative minimum sentences of 6, 10 or 15 to life to sentence to the middle severity of 10 to life. If the trier of fact found sufficient aggravating circumstances they could enhance the sentence to 15 to life. If the trier of fact found sufficient mitigating circumstances they could reduce the sentence to 6 to life. The law now instructs the court to order 15 to life. If the court finds that it is in the best interest of justice and documents on the record the justification, it can reduce the sentence to 10 to life or 6 to life. The offenses to which these provisions apply are:

Child Kidnapping-§ 76-5-301.1

Aggravated Kidnapping-§ 76-5-302

Rape of a Child-§ 76-5-402.1

Object Rape of a Child-§ 76-5-402.3

Sodomy on a Child-§ 76-5-403.1

Aggravated Sexual Abuse of a Child-§ 76-5-404.1

Aggravated Sexual Assault-§ 76-5-405

The following sexual offenses are first degree felonies and carry a 5 years to life sentence:

Rape-§ 76-5-402

Object Rape-§ 76-5-402.2

Forcible Sodomy-§ 76-5-403

However, if the trier of fact finds that during the course of the commission of the crime the defendant caused serious bodily injury to another (not necessarily the victim), the court may sentence the defendant to a term of 15 years to life.

Additionally, if the court finds that it is in the interest of justice and states the reasons for this finding on the record, the court

may reduce the sentence to 10 years to life or 6 years to life.

Forcible Sexual Abuse Utah Code § 76-5-404 is a [second degree](#) felony with a 1 to 15 year sentence. If the trier of fact finds that during the commission of the crime the defendant caused serious bodily injury, the crime is a first degree felony and the court may sentence the defendant to a term of 15 years to life. If it is found that it is in the interest of justice and the court states the reasons for this finding on the record, the court may reduce the sentence to 10 years to life or 6 years to life.

### **CRIMES FOR WHICH PROBATION, SUSPENSION OF SENTENCE, LOWER CATEGORY OF OFFENSE, OR HOSPITALIZATION MAY NOT BE GRANTED UTAH CODE § 76-3-406**

This category includes:

- Rape-§ 76-5-402
- Object Rape-§ 76-5-402.2
- Forcible Sodomy-§ 76-5-403; and
- Forcible Sexual Abuse-§ 76-5-404
- Enticing a Minor over the Internet (with prior sex offense conviction) - § 76-4-401

### **UTAH'S "JESSICA'S LAW" 25 YEARS TO LIFE**

If the current conviction is for one or more of the following three sex offenses that qualify as "Jessica's Law," the required mandatory sentence is imprisonment of 25 years to life without the possibility of the court suspending or reducing the sentence in consideration of mitigating circumstances.

- Rape of a Child-§ 76-5-402.1
- Object Rape of a Child-§ 76-5-402.3
- Sodomy on a Child-§ 76-5-403.1

**Because of the mandatory nature of this sanction, these crimes are not listed on Form 3 Sex & Kidnap Offense Matrix.**

A conviction for an Attempt to Commit Utah Code § 76-4-102 or Solicitation to Commit Utah Code § 76-4-204 any of the above three offenses is punishable as a 1st Degree Felony under column A and a minimum sentence of 15 years to life. If the court finds that a lesser sentence is in the interests of justice and states the reasons for this finding on the record it may reduce the sentence to 10 years to life, 6 years to life, or 3 years to life.

### **Jail as a Condition of Felony Probation Matrix Instructions – Form 4**

**Form 4, Jail as a Condition of Felony Probation Matrix**, should only be used when the recommendation resulting from **Form 1, 2 or 3** is to suspend the prison sentence and serve jail time as an initial condition of probation. If jail as an initial condition of probation is ordered, Form 4 indicates the recommended length of the jail sentence. Form 4 only applies to sex offenses where the prison sentence has been suspended. Form 5 applies to sentencing of misdemeanor offenses under § 76-3-208 (1) (c).

The shaded areas of Form 4 do not specifically correspond with the shading of **Form 1, 2 or 3**. Jail time as an initial condition of probation may be warranted, even where a prison recommendation may not be. Columns that require Mandatory Imprisonment are not included on Form 4.

**Unshaded cells – Form 4:** If an individual falls into one of the unshaded cells on Form 4 and does not receive a prison recommendation, jail time is generally recommended.

**Light shaded cells have been deleted:** Light shaded cells which were previously labeled “Intermediate Sanctions” have been deleted. The concept of intermediate sanctions should no longer be determined on the basis of the presenting offense. The appropriate level of supervision and treatment for each individual should be determined from the results of a validated risk and needs screening and assessment. Light shaded cells on Form 1 are indicative of those cells for which Form 4 should be consulted.

**Dark shaded cells:** Dark shaded cells are considered “Presumptive Probation” cells. If an individual falls into one of the dark shaded cells, a typical recommendation from the supervising agency would not include jail as a condition of probation. However, these guidelines are not intended to limit judicial discretion: while jail as a condition of probation should not typically be recommended in these cases, the court may sentence an individual to jail as a condition of probation if there are aggravating factors or other circumstances that warrant a jail sentence.

**All cells:** The number of days in the individual cells includes the mid-point as the recommended time period at the top and the range available in parentheses below. Neither the number of days, nor the shading of cells, should be considered mandatory. The maximum should not be presumed to be the starting point in formulating a recommendation to the court. Completed criminogenic risk and needs assessment(s), scores from validated tool(s), compliance with court orders prior to sentencing, aggravating and mitigating factors on Form 6, as well as the impact of incarceration upon risk to reoffend should all then be considered in determining the final recommendation to the court at sentencing. The use of the jail time for behavior modification purposes (risk reduction as opposed to risk management) is addressed in Structured Decision Making Tool 5.

## **Misdemeanor Matrix - Form 5**

**Form 5** was added to the Utah Adult Sentencing & Release Guidelines in 2015 as a result of several years of discussion and development by the Misdemeanor Subcommittee of the Utah Sentencing Commission (previously the Justice Court Subcommittee). The Misdemeanor Matrix is not solely intended for Justice Courts, but for any court sentencing misdemeanor offenses. Criminal History Scoring for Form 5 is the same as Criminal History Scoring for **Form 1**, which is intended to provide greater consistency in Criminal History Scoring between individuals committing felony and misdemeanor offenses statewide. Form 5 also reflects the ranking of severity of misdemeanor offenses, decreasing from left to right.

“Class B Person Crime” includes domestic violence offenses involving spouses and/or intimate partners. “Class B DV Other” includes domestic violence offenses involving other cohabitants, property offenses, and other non-person crimes.

The Sentencing Commission recommends that the court impose the fine appropriate for the most serious offense for which the defendant is convicted. If there are multiple counts, and the court believes a more serious financial penalty is appropriate, the Commission recommends the court impose at most 10% of the recommended fines for each additional count. The Commission does not recommend the imposition of any suspended amount of fine, as violations should be addressed with behavior modification sanctions as identified in Structured Decision-Making Tool 5, not financial ones. The Commission encourages courts to allow defendants credits or offsets against ordered fines for completed counseling and other achieved goals (UA's, etc.).

Generally, the Commission recommends that misdemeanor courts faced with sentencing a defendant who is already being supervised for a more serious offense (whether that be recently sentenced, or an earlier grant of probation) consider allowing that grant of probation to provide the programming. However, given the specific safety concerns for identifiable victim(s) in person crimes such as domestic violence offenses, the Commission recognizes the appropriateness of probation terms tailored by each court to maximize victim safety. The protection of victim(s) in such cases is of prime importance. Consider recommendations for sentencing protective orders, but recognize that protective orders issued by civil courts are broader and offer permanent protections.

Jail days indicated should not be considered “mandatory minimums” and should not be presumed to ensure the safety of a particular victim. The Commission recognizes that courts must weigh many factors in each case, balancing the core principles of sentencing as outlined previously.

## **Aggravating and Mitigating Circumstances Instructions – Form 6**

There are occasionally circumstances that compel deviation from the guidelines. Some of the more common reasons are listed for convenience on Form 6. Other reasons, as they occur, can be specified. Aggravating and mitigating factors should be documented whether or not the guideline sentence is recommended. Reasons should always be specified when the guideline sentence is not recommended. These aggravating and mitigating circumstances should be considered for Forms 1 - 5. Presentence investigators have limited access to facts that could support aggravating or mitigating factors. Therefore, defense counsel and prosecutors are strongly urged to make any relevant aggravating or mitigating factors known to the sentencing authority before sentencing.

In considering all aggravating and mitigating factors in a particular case, the number of each should not merely be added up or otherwise mechanically applied in the balancing process. Rather, the totality of the mitigating factors should be compared against the totality of the aggravating factors. Any one mitigating factor, standing alone, could outweigh some or all of the aggravating circumstances in the case. On the other hand, one aggravating factor, standing alone, could outweigh some or all of the mitigating factors in the case. The guidelines are concerned with the respective substance and persuasiveness of the competing factors, not their relative numbers.

Do not include an aggravating factor if: (1) it is already included as an element of the offense (do not double count) or (2) it is an element of the offense but has not been pled to or otherwise proven beyond a reasonable doubt as required by statute and/or case law (the guidelines are not a means to subvert Constitutional principles).

Some aggravating and mitigating factors should be used with caution. They include:

- (1) Factors that have already been considered in a risk assessment. This could result in an unintentional double counting.
- (2) Factors that reflect socio-economic status more than risk. An individual’s relative abundance of resources or a lack of resources including access to treatment, financial stability, or ability to pay fines and fees, should not unduly affect the individual’s sentence.
- (3) Factors dealing specifically with sex offenses that may not have a statistical correlation with increased risk to reoffend. These factors could include:
  - Neglect or abuse during childhood
  - Sexual abuse during childhood

In line with trauma-informed practices, presentence investigation reports and low-risk memos may include results from an Adverse Childhood Experiences questionnaire (ACEs). The ACEs questionnaire is helpful in understanding and responding to an individual’s circumstances and needs. The ACEs questionnaire, however, is not validated for risk assessment and should not be used as an aggravating factor. If factors in an ACEs questionnaire overlap with factors considered in a validated risk assessment, using the ACEs questionnaire as an aggravating factor would double count what has already been presented through the risk assessment.

### **BIAS AS A MITIGATING FACTOR**

Racial, ethnic, or other biases in a specific case, whether conscious or unconscious, may be a mitigating factor at sentencing.

## PRESENTENCE REPORT RECOMMENDATIONS

The Presentence Investigator should ensure that Presentence Reports are fully completed, including:

According to Utah Admin. R671-205-1, time incarcerated under the following circumstances is counted as time served against the maximum sentence: (1) a conviction is set aside and there is a subsequent commitment for the same criminal conduct; (2) a commitment is made to the Utah State Hospital pursuant to a guilty and mentally ill conviction; (3) a commitment is made to the Utah State Hospital or comparable non-prison psychiatric facility for competency determination or restoration; (4) time is spent in custody outside the State of Utah based solely on the Utah warrant; (5) the Board of Pardons and Parole deems such credit just under the circumstances; or (6) credit is otherwise required by law.

- **Guidelines Recommendations**

The guideline sentence without regard to aggravating or mitigating circumstances should be included in the presentence report.

- **AP&P Recommendations**

The recommendation of Adult Probation and Parole should be included in the presentence report.

- **Reason for Departure**

Any reasons for departure should be documented by the presentence investigator in every case in which the guideline recommendation is not followed.

<sup>1</sup> See R. Karl Hanson and Kelly E. Morton-Bourgon, *The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies*, Journal of Consulting and Clinical Psychology 2005, Vol. 73, No. 6, 1154–1163, 1158.



# Form 1 – General Matrix

Only score the single highest point option within a given category. Do not check multiple scores in a single category and then add them. Any negative points which are deducted for the most recent postconviction crime-free gap period may not reduce the total score below 0.

## CRIMINAL HISTORY SCORING

These guidelines do not create any rights or expectations. Matrix time frames refer to imprisonment only. Refer to the categorization of offenses with the exception of "Specific 3rds," which are the 3rd Degree Offenses of: DUI, Possession of Firearm by Restricted Person, and Failure to Stop at Command of Law Enforcement Officer.

<b>PRIOR FELONY CONVICTIONS</b> (Separate adult case numbers)	2	One
	4	Two
	6	Three
	8	Four or more

<b>PRIOR PERSON OR FIREARM CONVICTIONS</b> (Adult or juvenile)	2	Misdemeanor person offense (AD.B)
	2	Felony firearm offense (76-10-5)
	4	Felony person offense (AD.B)
	6	Homicide offense (76-5-2)

<b>PRIOR CLASS A MISDEMEANOR CONVICTIONS</b> (Separate adult case numbers)	1	One or two
	2	Three to five
	3	Six or more

<b>PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS</b> (Offenses that would have been felonies if committed by adult) (3 class a adjud. = 1 Felony)	1	One
	2	Two to four
	3	Five or more

<b>SUPERVISION HISTORY</b> (Adult only – Federal, AP&P, private, county, problem solving court removal*)	2	Prior revocation
	3	Current offense on supervision

<b>MOST RECENT POST-CONVICTION CRIME-FREE GAP</b> Count from date of sentencing or entry of plea in abeyance (if no prison) or date of release from prison. Gap ends at new offense date. (exclude infr, class C, class B traffic and minor regulatory offenses per § 77-40-102(10))	-1	Three to four years
	-2	Five to six years
	-3	Seven to nine years
	-4	Ten years or more

### TOTAL SCORE

<b>INDIVIDUAL'S NAME</b>	
<b>SCORER'S NAME</b>	<b>DATE SCORED</b>

TOTAL SCORE RANGES	CRIMINAL HISTORY ROW
16+	V
12 – 15	IV
8 – 11	III
4 – 7	II
0 – 3	I

ACTIVE CONVICTIONS (MOST SERIOUS FIRST)	CRIME CATEGORY	TIME
		TOTAL

## CRIME CATEGORY

	1st Degree Person A	1st Degree Other B	2nd Degree Person C	3rd Degree Person D	2nd Other Specific 3rds E	2nd Poss 3rd Other F	3rd Poss Class A** G
<b>V</b>	120 MOS	84 MOS	54 MOS	32 MOS	26 MOS	16 MOS	12 MOS
<b>IV</b>	108 MOS	78 MOS	42 MOS	26 MOS	20 MOS	14 MOS	10 MOS
<b>III</b>	96 MOS	72 MOS	30 MOS	20 MOS	16 MOS	12 MOS	8 MOS
<b>II</b>	84 MOS	66 MOS	24 MOS	16 MOS	14 MOS	10 MOS	6 MOS
<b>I</b>	72 MOS	60 MOS	18 MOS	14 MOS	12 MOS	8 MOS	4 MOS

\* A problem-solving court is a specialized court designated by the Utah Administrative Office of the Court. Every problem-solving court or RIM violation/sanction should not be counted as a revocation. An Order to Show Cause with revocation and actual removal from the problem-solving court is required in order to count as prior revocation of supervised probation. An Order to Show Cause with revocation and actual removal is required to count current offense on supervision.

\*\*Time periods only apply to Class A offenses sentenced to prison under § 76-3-208(1)(b). Form 5 applies to sentencing of misdemeanor offenses under § 76-3-208 (1)(c).

**Consecutive Enhancements (served one after another):** 40% of the shorter sentence added to the full length of the longer sentence. (See page 40)

**Concurrent Enhancements (served at the same time):** 10% of the shorter sentence added to full length of the longer sentence. (See page 40)



# Form 2 – Homicide Matrix

These are guidelines only. They do not create any right or expectation on behalf of the individual. Matrix time frames refer to imprisonment only. Refer to the categorization of offenses. Sentencing Guidelines do not apply to sentences of death. Guidelines in effect at the time of original sentencing are to be used.

## CRIMINAL HISTORY SCORING

Statutes with more specific sentence lengths preempt guideline recommendations. The Criminal Homicide Matrix includes:

Aggravated Murder, Murder, Attempted Aggravated Murder, Manslaughter, Child Abuse Homicide, Homicide by Assault, Negligent Homicide, and Automobile Homicide.

<p><b>PRIOR FELONY CONVICTIONS</b> (Separate adult case numbers)</p> <p>2 One 4 Two 6 Three 8 Four or more</p>	<p><b>PRIOR PERSON OR FIREARM CONVICTIONS</b> (Adult or juvenile)</p> <p>2 Misdemeanor person offense (AD.B) 2 Felony firearm offense (76-10-5) 4 Felony person offense (AD.B) 6 Homicide offense (76-5-2)</p>
<p><b>PRIOR CLASS A MISDEMEANOR CONVICTIONS</b> (Separate adult case numbers)</p> <p>1 One or two 2 Three to five 3 Six or more</p>	<p><b>PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS</b> (Offenses that would have been felonies if committed by adult) (3 class A adjud. = 1 Felony)</p> <p>1 One 2 Two to four 3 Five or more</p>
<p><b>SUPERVISION HISTORY</b> (Adult only – Federal, AP&amp;P, private, county, problem solving court removal*)</p> <p>2 Prior revocation 3 Current offense on supervision</p>	<p><b>MOST RECENT POST-CONVICTION CRIME-FREE GAP</b> Count from date of sentencing or entry of plea in abeyance (if no prison) or date of release from prison. Gap ends at new offense date. (Exclude infr, class C, class B traffic and minor regulatory offenses per § 77-40-102(10))</p> <p>-1 Three to four years -2 Five to six years -3 Seven to nine years -4 Ten years or more</p>

### TOTAL SCORE

<b>INDIVIDUAL'S NAME</b>		<b>TOTAL SCORE RANGES</b>		<b>CRIMINAL HISTORY ROW</b>	
<b>SCORER'S NAME</b>	<b>DATE SCORED</b>	<b>16+</b>	→	<b>V</b>	
		<b>12 – 15</b>	→	<b>IV</b>	
		<b>8 – 11</b>	→	<b>III</b>	
		<b>4 – 7</b>	→	<b>II</b>	
		<b>0 – 3</b>	→	<b>I</b>	

ACTIVE CONVICTIONS (MOST SERIOUS FIRST)	CRIME CATEGORY	TIME
		<b>TOTAL</b>

## CRIMINAL HOMICIDE MATRIX

	1st Degree Aggravated Murder	1st Degree Murder	Attempted Aggravated Murder*	1st Degree Death	2nd Degree Death	2nd Degree Auto Homicide	3rd Degree Death**
	A	B	C	D	E	F	G
<b>V</b>	444 MOS	288 MOS	240 MOS	180 MOS	156 MOS	84 MOS	48 MOS
<b>IV</b>	408 MOS	276 MOS	228 MOS	168 MOS	144 MOS	72 MOS	42 MOS
<b>III</b>	372 MOS	264 MOS	216 MOS	156 MOS	132 MOS	60 MOS	36 MOS
<b>II</b>	336 MOS	252 MOS	204 MOS	144 MOS	120 MOS	48 MOS	30 MOS
<b>I</b>	300 MOS	240 MOS	192 MOS	132 MOS	108 MOS	36 MOS	24 MOS

\*The presumptive sentence for Attempted Aggravated Murder is 15 to life; however, the Board of Pardons & Parole will take into consideration if a judge has found mitigating factors in ordering a sentence of 10 or 6 years to life. \*\*A conviction for a 'Class A Death' with commitment to the Utah State Prison is a 12-month guideline recommended sentence.

**Consecutive Enhancements (served one after another):** 40% of the shorter sentence added to the full length of the longer sentence. (See page 40)

**Concurrent Enhancements (served at the same time):** 10% of the shorter sentence added to full length of the longer sentence. (See page 40)

# Form 3 – Sex & Kidnap Offense Matrix

These are guidelines only. They do not create any right or expectation on behalf of the individual convicted of a crime. Matrix time frames refer to imprisonment only. Refer to the categorization of offenses.

## CRIMINAL HISTORY SCORING

<b>PRIOR FELONY CONVICTIONS</b> (Separate adult case numbers)	2	One
	4	Two
	6	Three
	8	Four or more

<b>PRIOR PERSON OR FIREARM CONVICTIONS</b> (Adult or juvenile)	2	Misdemeanor person offense (AD.B)
	2	Felony firearm offense (76-10-5)
	4	Felony person offense (AD.B)
	6	Homicide offense (76-5-2)

<b>PRIOR CLASS A MISDEMEANOR CONVICTIONS</b> (Separate adult case numbers)	1	One or two
	2	Three to five
	3	Six or more

<b>PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS</b> (Offenses that would have been felonies if committed by adult) (3 class A adjud. = 1 Felony)	1	One
	2	Two to four
	3	Five or more

<b>SUPERVISION HISTORY</b> (Adult only – Federal, AP&P, private, county, problem solving court removal*)	2	Prior revocation
	3	Current offense on supervision

<b>MOST RECENT POST-CONVICTION CRIME-FREE GAP</b> Count from date of sentencing or entry of plea in abeyance (if no prison) or date of release from prison. Gap ends at new offense date. (exclude infr, class C, class B traffic and minor regulatory offenses per § 77-40-102(10))	-1	Three to four years
	-2	Five to six years
	-3	Seven to nine years
	-4	Ten years or more

<b>DEGREE OF PRIOR SEX/KIDNAP CONVICTION</b> (offenses listed in addendum c)	2	Misd. or 3rd degree
	4	1st or 2nd degree

### TOTAL SCORE

<b>INDIVIDUAL'S NAME</b>	
<b>SCORER'S NAME</b>	<b>DATE SCORED</b>

TOTAL SCORE RANGES	CRIMINAL HISTORY ROW
7 or more	III
4 – 6	II
0 – 3	I

ACTIVE CONVICTIONS (MOST SERIOUS FIRST)	CRIME CATEGORY	TIME
		TOTAL

## CRIME CATEGORY & PRISON MATRIX

	1st Degree Mandatory Prison (15+)	1st Degree Mandatory Prison (10+)	1st Degree Mandatory Prison (6+)	1st Degree Mandatory Prison (5+)	1st Degree Mandatory Prison (3+)	1st Degree (5+)	1st Degree (3+)	2nd Degree (1-15)	3rd Degree (0-5)	Class A Misd. (0-1)
	A	B	C	D	E	F	G	H	I	J
III	252 MOS	168 MOS	100 MOS	75 MOS	75 MOS	75 MOS	75 MOS	64 MOS	42 MOS	12 MOS
<b>MANDATORY IMPRISONMENT</b>						<b>IMPRISONMENT</b>				
II	216 MOS	144 MOS	90 MOS	66 MOS	64 MOS	66 MOS	62 MOS	48 MOS	36 MOS	10 MOS
I	192 MOS	132 MOS	80 MOS	60 MOS	42 MOS	60 MOS	42 MOS	40 MOS	32 MOS	8 MOS
								<b>JAIL AS AN INITIAL COND. OF PROBATION</b>		

\* A problem-solving court is a specialized court designated by the Utah Administrative Office of the Court. An Order to Show Cause with revocation and actual removal from the problem-solving court is required in order to count as prior revocation of supervised probation or current offense on supervision.

\*\*Time periods only apply to Class A offenses sentenced to prison under § 76-3-208(1)(b). Form 5 applies to sentencing of misdemeanor offenses under § 76-3-208(1)(c).

**Consecutive Enhancements (served one after another):** 40% of the shorter sentence added to the full length of the longer sentence. (See page 40)

**Concurrent Enhancements (served at the same time):** 10% of the shorter sentence added to full length of the longer sentence. (See page 40)

# Form 4 – Jail as Initial Condition of Probation of Felony Probation Matrices

Numbers in shaded cells are presumptive probation sentences, meaning jail time should NOT necessarily be recommended to the court by the supervising agency. Alternative sanctions and/or non-incarceration sanctions are encouraged in these cells. The mid-point is listed above the time range available is listed as an initial period of confinement in the county jail. All numbers listed are in days, not months. Jail days listed should not be considered mandatory sentences.

\* If no mid-point is listed the presumption is that jail time should NOT be recommended.

CRIMINAL HISTORY ROW

Rev. 10/2016

## GENERAL MATRIX

	2nd Death	1st Person	3rd Death	1st Other	2nd Person	3rd Person	2nd Other	2nd Poss.	3rd Other*	3rd Poss.
V	180 (0-365)	180 (0-365)	180 (0-365)	180 (0-365)	180 (0-365)	150 (0-300)	150 (0-300)	150 (0-300)	135 (0-270)	75 (0-150)
IV	180 (0-365)	180 (0-365)	160 (0-320)	160 (0-320)	160 (0-320)	150 (0-300)	150 (0-300)	135 (0-270)	105 (0-210)	60 (0-120)
<b>JAIL DAYS</b>										
III	180 (0-365)	150 (0-300)	135 (0-270)	135 (0-270)	135 (0-270)	90 (0-180)	90 (0-180)	90 (0-180)	75 (0-150)	* (0-90)
II	180 (0-365)	135 (0-270)	120 (0-240)	120 (0-240)	120 (0-240)	75 (0-150)	* (0-120)	* (0-120)	* (0-90)	* (0-60)
<b>PRESUMPTIVE NO JAIL TIME</b>										
I	180 (0-365)	120 (0-240)	105 (0-210)	105 (0-210)	105 (0-210)	60 (0-120)	* (0-90)	* (0-60)	* (0-60)	* (0-30)

## SEX & KIDNAP OFFENSE MATRIX (To be used with Form 3)

	1st	2nd	3rd
III	180 (0-365)	160 (0-320)	90 (0-180)
II	180 (0-365)	125 (0-250)	90 (0-180)
I	160 (0-320)	105 (0-210)	60 (0-120)

\*\* The 2017 revisions to the Adult Sentencing and Release Guidelines were not intended to alter Form 5 in any substantive way. While the General Matrix in Form 1 was revised to include a category of specific 3rd degree felonies, this should not be viewed as changing the categorization in Form 5. Therefore, what is now categorized as a "Specific 3rd" in Form 1, i.e., DUI, Possession of Firearm by Restricted Person, and Failure to Stop at Command of Law Enforcement Officer, should still be categorized as a "3rd Other" in Form 5 according to Addendum B.

\*\*\*Form 4 only applies to sex offenses where the prison sentence has been suspended. Form 5 applies to sentencing of misdemeanor offenses under § 76-3-208 (1)(c).

# Form 5 – Misdemeanor Matrix

These are guidelines only. They do not create any right or expectation on behalf of the individual convicted of a crime. Matrix time frames refer to jail days served in the county jail. Recommended times should not be considered mandatory. This matrix does not incorporate statutory sentencing requirements for DUI offenses.

## CRIMINAL HISTORY SCORING

\*If no mid-point is listed the presumption is that jail time should NOT be recommended.

Class B Person Crime includes domestic violence offenses involving spouses and/or intimate partners. Class B DV Other includes domestic violence offenses involving other cohabitants, property offenses, and other non-person crimes.

<b>PRIOR FELONY CONVICTIONS</b> (Separate adult case numbers)	2	One
	4	Two
	6	Three
	8	Four or more

**PRIOR PERSON OR FIREARM CONVICTIONS**  
(Adult or juvenile)

2	Misdemeanor person offense (AD.B)
2	Felony firearm offense (76-10-5)
4	Felony person offense (AD.B)
6	Homicide offense (76-5-2)

<b>PRIOR CLASS A MISDEMEANOR CONVICTIONS</b> (Separate adult case numbers)	1	One or two
	2	Three to five
	3	Six or more

**PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS** (Offenses that would have been felonies if committed by adult) (3 class A adjud. = 1 Felony)

1	One
2	Two to four
3	Five or more

<b>SUPERVISION HISTORY</b> (Adult only – Federal, AP&P, private, county, problem solving court removal*)	2	Prior revocation
	3	Current offense on supervision

**MOST RECENT POST-CONVICTION CRIME-FREE GAP**  
Count from date of sentencing or entry of plea in abeyance (if no prison) or date of release from prison. Gap ends at new offense date. (exclude infr, class C, class B traffic and minor regulatory offenses per § 77-40-102(10))

-1	Three to four years
-2	Five to six years
-3	Seven to nine years
-4	Ten years or more

### TOTAL SCORE

<b>INDIVIDUAL'S NAME</b>	
<b>SCORER'S NAME</b>	<b>DATE SCORED</b>

TOTAL SCORE RANGES	CRIMINAL HISTORY ROW
16+	V
12 – 15	IV
8 – 11	III
4 – 7	II
0 – 3	I

ACTIVE CONVICTIONS (MOST SERIOUS FIRST)	CRIME CATEGORY	TIME
		TOTAL

## CRIME CATEGORY

	Class A Person	Class B Person	Class A Other	Class B DV Other	Class A POCS	Class B	Class C and below
	A	B	C	D	E	F	G
<b>V</b>	105 (0-120)	90 (0-180)	75 (0-150)	60 (0-120)	45 (0-90)	30 (0-60)	15 (0-30)
<b>JAIL DAYS</b>							
<b>IV</b>	90 (0-180)	75 (0-150)	60 (0-120)	45 (0-90)	37 (0-75)	22 (0-45)	15 (0-30)
<b>III</b>	75 (0-150)	60 (0-120)	45 (0-90)	37 (0-75)	22 (0-45)	15 (0-30)	* (0-15)
<b>PRESUMPTIVE PROBATION</b>							
<b>II</b>	60 (0-120)	45 (0-90)	30 (0-60)	22 (0-45)	15 (0-30)	* (0-15)	* (0-7)
<b>I</b>	45 (0-90)	30 (0-60)	15 (0-30)	15 (0-30)	* (0-15)	* (0-15)	* (0-7)

\*\* A problem-solving court is a specialized court designated by the Utah Administrative Office of the Court. An Order to Show Cause with revocation and actual removal from the problem-solving court is required in order to count as prior revocation of supervised probation or current offense on supervision.

**Consecutive Enhancements (served one after another):** 40% of the shorter sentence added to the full length of the longer sentence. (See page 40)

**Concurrent Enhancements (served at the same time):** 10% of the shorter sentence added to full length of the longer sentence. (See page 40)

# Form 6 – Aggravating and Mitigating Circumstances

Note any aggravating or mitigating circumstances that may justify departure from the guidelines by entering the page number of the presentence report where the court can find supporting information. This list of aggravating and mitigating factors is illustrative. The weight given to each factor by the sentencing authority will vary in each case. Any one factor could outweigh some or all other factors. If aggravating factors are used to increase the length of stay beyond the guideline range, the sentencing authority should consider all relevant case law. Please see page [page number omitted until formatting is complete] for more information on aggravating and mitigating circumstances.

Presentence investigators have limited access to facts that could support aggravating or mitigating factors. Therefore, defense counsel and prosecutors are strongly urged to make any relevant aggravating and mitigating factors known to the sentencing authority before sentencing.

## PSI Page # AGGRAVATING CIRCUMSTANCES

- Pg#  Offense caused substantial monetary loss.
- Pg#  Offense caused substantial physical or psychological injury to the victim.
- Pg#  Offense characterized by extreme cruelty or depravity.
- Pg#  Offense involved two or more victims.
- Pg#  Offense involved activity that continued over a significant period of time.
- Pg#  Other (Specify)

## PSI Page # MITIGATING CIRCUMSTANCES

- Pg#  Individual has engaged in the voluntary screening process in the county jail (LSI:SV, TCUD & MHS).
- Pg#  Individual has paid restitution and/or made good faith effort to begin repayment of restitution to the victim.
- Pg#  Individual has demonstrated compliance with all pre-trial conditions.
- Pg#  Individual is engaged in community-based supervision and/or treatment services consistent with a validated risk and needs assessment.
- Pg#  Individual's current living environment is stable and supportive of offense-specific interventions that do not enable continued criminal or unlawful conduct.
- Pg#  Other (Specify)

<b>DAYS OF JAIL CREDIT</b>
<b>GUIDELINES PLACEMENT RECOMMENDATION</b>
<b>AP&amp;P RECOMMENDATIONS</b>
<b>REASONS FOR DEPARTURE</b>

<b>INDIVIDUAL'S NAME</b>	
<b>SCORER'S NAME</b>	<b>DATE SCORED</b>

Rev. 10/2016

---

## RISK REDUCTION STRUCTURED DECISION-MAKING TOOLS INSTRUCTIONS

Tools 1 through 6 are relevant to supervision and are interconnected. Tools 1 through 6, as well as referenced Addenda, should be used in the context of the structured decision-making process to determine an appropriate response to both accomplishments and violations while on supervision.

### **Tool 1 - Supervision & Treatment Levels Framework**

Generally describes *whom* supervision and treatment resources should target.

### **Tool 2 - Decision-Making Authority Matrix**

Generally describes *who should respond* to both accomplishments and violations while on supervision.

### **Tool 2A – Supervision Accomplishments Table**

### **Tool 2B – Supervision Violations Table**

Describe *what* conduct is considered an accomplishment or violation while on supervision and a ranking by the nature of the conduct.

### **Tool 3 - Response Magnitude/ Proportionality Decision-Tree**

A step by step sequence to determine *the magnitude* of the accomplishment or violation is for the individual.

### **Tool 4 - Graduated Incentives**

### **Tool 5 - Graduated Responses & Sanctions**

Describe *which* incentives, responses and sanctions are available.

### **Tool 6 – Exceptions to Incarceration Caps**

Describes *exceptions* to the incarceration caps (previously included as bullet points on Form 10).

## **Tool 1 – Supervision & Treatment Levels Framework**

This is a comprehensive conceptual framework of the risk, need, responsivity principles to assist in determining the appropriate level of supervision and treatment based upon the results of a validated screening and risk/needs assessment.

Where Forms 1 through 5 calculate a single cell based upon the intersection of the severity of the offense and the culpability of the individual, Tool 1 provides a visual representation of an entire row of the identified dynamic and responsivity factors of an individual which should be derived from a validated screening and risk/needs assessment.

“Dynamic Factors” referenced on Tool 1 are further explained in **Addendum D, Central Eight Criminal Risk Factors**.

“Responsivity Factors” referenced on Tool 1 are further explained in **Addendum E, The Responsivity Principle and Factors**.

“Responsivity Factors” are identified potential barriers which, if addressed, will increase the likelihood of reducing the dynamic criminal risk factors. Responsivity factors should be used to tailor appropriate services and interventions to maximize their effectiveness. However, responsivity factors should not be used punitively. “Criminogenic” treatment services referenced on Tool 1 are those programs which address the eight identified dynamic factors, which utilize cognitive behavioral therapy, pro-social modeling, and preferably have been evaluated pursuant to the Correctional Program Checklist.

It should be noted that Tool 1 recommends supervision services be targeted towards moderate- and high-risk individuals. Tool 1 also recommends “criminogenic” treatment services for moderate- and high-risk level individuals. The LS/RNR utilized

by the Department of Corrections may provide a separate graph and/or numerical calculation of risk, need, and responsibility than that depicted in Tool 1 in Presentence Reports and/or Progress / Violation Reports. Tool 1 is not intended to replace or replicate the LS/RNR reports, which should be deferred to if available. Tool 1 is a general conceptualization which may be useful if the LS/RNR is not available or is not utilized.

## **Tool 2 - Decision-Making Authority Matrix**

### **Tool 2A – Supervision Accomplishments Table**

### **Tool 2B – Supervision Violations Table**

This is used if an individual is placed on supervised probation or parole, designates the appropriate responding entity dependent upon the risk level of the individual and the severity of the violation.

“Individual Risk” level referenced on Tool 2 is determined based upon the results of a validated screening and assessment. “Accomplishment Severity Level” on Tool 2 is determined using Tool 2A, Supervision Accomplishments Table, which lists in categories of high, medium, and low and also includes general categorization of the nature of each level of accomplishment. Responses to accomplishments and/or compliant behavior are contained within the corresponding headings on Tool 4 – Graduated Incentives.

“Violation Severity” level on Tool 2 is determined using Tool 2B, Supervision Violations Table, which lists violations in categories of high, medium, and low and also includes general categorization of the nature of each level of violation. “High” level violations are generally those for which public safety considerations are paramount. “Medium” level violations are generally those which are targeted towards risk/need reduction conditions. “Low” level violations are generally those which are accountability-based conditions.

Where “Court/BOPP” is designated as the responding entity on Tool 2, notice must be provided to the Court or Board of Pardons and Parole of the conduct. The supervising agency may or may not request incarceration as a recommended response.

Where “Probation or Parole Officer” is designated as the responding entity on Tool 2, the Probation or Parole Officer may select from the available responses contained within the corresponding heading on Tool 4 or Tool 5. Where “P.O. w/ Supervisor Approval” is designated as the responding entity on Tool 2, the Probation or Parole Officer must obtain supervisor approval prior to imposing a response contained within the corresponding heading on Tool 4 or Tool 5.

## **Tool 3 – Response Magnitude/ Proportionality Decision-Tree**

Once the appropriate entity for responding to the behavior is determined from Tool 2, Tool 3 should then be used to determine whether to deviate from a moderate response, which is the presumed default. The use of Tool 3 is intended to provide a response to the underlying behavior which is most appropriate for the individual.

“Accomplishment / Compliance” and “Violation” in the first column are determined from the terms of supervision established by the Court or Board of Pardons and Parole. “Individual Risk” level in the second column is determined from the results of a validated screening and assessment at the time supervision terms are established and/or modified. “Individual Need” level in the third column is determined from the results of a validated screening and assessment at the time supervision terms are established and/or modified.

“Relation to Risk/Need Goal” in the fourth column is specific to the individual’s short- and long-term goals. Where possible, short and long-term goals should be identified in a Case Action Plan and should be updated periodically to reflect progress towards the long-term goals. While “commit no new crimes” and “repay complete restitution” are fairly standard terms of probation, they are typically long-term goals. It is generally more helpful to long-term behavior modification to establish a

sequence and timeline for specific goals and to recognize each short term goal as it is achieved.

“Response Magnitude/Proportionality” in the fifth column applies regardless of the entity responding to the behavior. “Moderate” incarceration sanctions are specified on Tool 5 as the mid-point number indicated. However, the same concept applies to incarceration and non-incarceration sanctions, as well as incentives. See pages 47-48 for further explanation regarding the proportionality principle as to why a moderate response is generally presumed.

The general concept is that short term goals should be rewarded low and short term violations should be sanctioned higher. Conversely, long term goals should be rewarded high and long term violations should be sanctioned lower. Tool 3 attempts to illustrate what may seem somewhat counterintuitive at first and breaks down the analysis in a step by step process by which a proportionate response can be selected from a range of available options for each individual.

## **Tool 4 - Graduated Incentives**

## **Tool 5 - Graduated Responses & Sanctions**

These two tools identify a range of potentially available incentives, responses and sanctions at both the administrative and Court/Board of Pardons and Parole level. The incentives and sanctions listed with “Probation Officer” or “P.O. With Supervisor Approval” on either Tool 4 or Tool 5 were developed in coordination with AP&P in a pilot project and are subject to change. County or private probation agencies may or may not have the same available options. All options are dependent upon available resources and do not create a right on behalf of the individual.

In the area designated above the solid black line on either Tool 4 or Tool 5, the standard hearing process is anticipated. The supervising agency may still make a recommendation, but the ultimate decision rests with the Court or the Board of Pardons and Parole.

Tool 5 lists the mid-range number at the top and the range of incarceration days in parentheses below it. The upper number should not be the default, but is a cap or maximum amount. The number of revocations will be counted continuously during the current period of court or BOPP jurisdiction. Probation revocation to prison, or discharge from probation or parole supervision, resets the revocation count. Exceptions to the maximum amount were previously listed on Form 10 as bullet points, and are now listed separately on Tool 6.

In the area designated just below the solid black line on Tool 5, the standard hearing process is NOT anticipated. An expedited written process for approval is available and should be utilized to impose a maximum of 5 days every 30 days as a sanction. The “72-hour hold” process should not be utilized in place of the expedited sanction process. Any booking of an individual on probation or parole into the county jail should clearly designate whether the individual is being booked on a “hold” or a “sanction” and include supporting documentation. Specifically, if an individual is booked into jail on an expedited sanction, the signed order of the Court or BOPP authorizing the imposition of the sanction should be provided to jail staff upon booking and recorded by jail staff accordingly.

## **Tool 6 – Exceptions to Incarceration Caps**

This tool was added in 2016 for greater transparency and understanding of the instances where exceptions to the incarceration caps may be exercised by the Court or BOPP. Aside from the deletion of the word “immediate” from the public safety exception, the substance of the exceptions have not changed. Rather, further explanation has been added for illustrative purposes consistent with the original intent.



# Tool 1 – Supervision & Treatment Levels Framework (Felony & Misdemeanor Offenses)

Tool 1 incorporates the risk, need, responsivity research principles into a comprehensive framework to assist in determining the appropriate level of supervision and treatment based upon the results of a validated screening and assessment.

See Addendum D for further explanation of the Central Eight Criminogenic Factors and Addendum E for further explanation of Responsivity Factors. Criminogenic treatment services refer to those programs which address the eight dynamic factors, which utilize cognitive behavioral therapy, pro-social modeling, and preferably have been evaluated pursuant to the Correctional Program Checklist.

Clinical treatment refers to clinical evidence-based treatment modalities generally targeted at symptom-specific behavior (which may not address the eight criminogenic risk and need factors). Responsivity factors are identified potential barriers which, if addressed, will increase the likelihood of reducing the dynamic criminal risk factors. Responsivity factors should be used to tailor appropriate services and interventions, but should not be used punitively. Statutory definitions of “court” and “supervised” supervision services are now included in Utah Code § 77-18-1 (2)(b)(iv) and (2)(c) pursuant to House Bill 3004 from the Third Special Session of the 2016 Legislature, including that: “[c]ourt probation may include an administrative level of services, including notification to the court of scheduled periodic reviews of the individual’s compliance with conditions.” “Supervised probation services provided by the department, an agency of local government, or a private organization shall specifically address the individual’s risk of reoffending as identified by a validated risk and needs screening or assessment.”

		Anti-Social Behaviors	Anti-Social Personality	Anti-Social Cognition	Anti-Social Peers	Family	School / Work	Leisure / Recreation	Substance Abuse										
									Functional Ability	Language	Motivation Level	Mental Health	Housing	Gender	Physical Health	Transportation	Minimization		
Risk Level	Need Level	Dynamic Factors							Supervision	Treatment	Responsivity Factors								
LOW	Low									Court	None								
	Moderate									Court	Clinical								
	High									Court	Clinical								
MOD	Low									Supervised	Criminogenic								
	Moderate									Supervised	Criminogenic								
	High									Supervised	Criminogenic								
HIGH	Low									Supervised	Criminogenic								
	Moderate									Supervised	Criminogenic								
	High									Supervised	Criminogenic								

Rev. 10/2016

## Tool 2 – Decision-Making Authority Matrix

Tool 2 designates the appropriate responding entity for violations of supervised probation and/or parole.

Once the appropriate entity is determined from Tool 2, Tool 3 should then be used in determining the magnitude or proportionality of the response. Tools 4 & 5 should then be used to select from the range of available sanctions and incentives. Supervisor approval is not necessary in order to impose a lower level sanction, response or incentive if indicated by Tool 3.

	Accomplishment or Violation Level		
Individual Risk Level	High	Medium	Low
High/Intensive	Court/BOPP	P.O. w/Supervisor Approval	P.O. w/Supervisor Approval
Moderate	Court/BOPP	P.O. w/Supervisor Approval	Probation or Parole Officer
Low	Court/BOPP	Probation or Parole Officer	Probation or Parole Officer

Rev. 10/2016

**Individual Risk Level** is determined from the results of a validated screening and assessment.

**Accomplishment Level** is listed in Tool 2A.

**Violation Level** is listed in Tool 2B.

**Court/BOPP** designates that notice must be provided to the Court/BOPP of the behavior. Lower level responses are always available to the Court/BOPP. Given the nature of public safety conditions violations, notification to the Court/BOPP is always required.

**P.O. w/Supervisor Approval** designates that the Probation or Parole Officer must obtain supervisor approval prior to imposing a response to the behavior. Potentially available responses are listed under corresponding headings on Tools 4 & 5. However, supervisor approval is not necessary in order to impose a lower level sanction, response or incentive if indicated by Tool 3.

**Probation or Parole Officer** designates the Probation or Parole Officer may select from available responses listed under corresponding headings on Tools 4 & 5.

## Tool 2A – Supervision Accomplishments Table

Accomplishment/Compliance	Level	Nature of Accomplishment
Platinum Success Risk Reduction (20% Improvement)	High	<b>Reduction of Criminal Risk Factors</b>
Gold Success Risk Reduction (15% Improvement)	High	
Silver Success Risk Reduction (10% Improvement)	High	
Bronze Success Risk Reduction (5% Improvement)	High	
Completion of All Special Conditions of Probation/Parole	High	
Completion of All Special and Standard Conditions of Probation/Parole	High	
Earned Compliance Credits	High	
Active Participation in Programming/Aftercare for “big four” 90 days+	Medium	<b>Evidence-Based Programming Targets</b>
Active Participation in Programming/Aftercare for “big four” for 60 days	Medium	
Active Participation in Programming/Aftercare for “big four” for 30 days	Medium	
Active Participation in Programming/Aftercare for “mod four” for 90 days+	Medium	
Active Participation in Programming/Aftercare for “mod four” for 60 days	Medium	
Active Participation in Programming/Aftercare for “mod four” for 30 days	Medium	
Negative Test Result for 90+ days (controlled substance/alcohol)	Medium	
Negative Test Result for 60 days (controlled substance/alcohol)	Medium	
Negative Test Result for 30 days (controlled substance/alcohol)	Medium	
Enrollment in Programming/Aftercare for identified Criminal Risk Factors	Medium	
Progress on Dynamic Responsivity Factors	Medium	
Compliant with Medical Orders/Medication	Medium	
Compliant with Structured Living, Residence, Travel or Reporting	Medium	
Compliant with Testing Requirements	Medium	
Responsive to PO Contacts Despite Lack of Full Compliance	Medium	
Prioritization of short and long term goals (maximum of 3 short term goals)	Low	<b>Accountability Targets</b>
Development of Case Action Plan/Success Plan	Low	
No Violations/Compliant with standard conditions for 90+ days	Low	
No Violations/Compliant with standard conditions for 60 days	Low	
No Violations/Compliant with standard conditions for 30 days	Low	
Compliance with Community Service	Low	
Compliance with Financial Conditions	Low	
Being Truthful or Cooperative	Low	

## Tool 2B – Supervision Violations Table

Violation	Severity	Nature of Violation
Felony Person Crime Conduct (see Addendum B)	High	<b>Public Safety Conditions Violations</b>
Misdemeanor Person Crime or DUI Conduct	High	
Unauthorized Contact or Location	High	
Fail to Report for Commitment	High	
Absconding: Residence, Travel or Reporting – PO Contact Unsuccessful	High	
Special Conditions Violations: Sex, Gang, DV, DUI, ICE	High	
Possession of Dangerous Weapon – Firearm	High	
Damaging/Tampering/Removing GPS	High	
Public Safety Conduct: Substantial Threat	High	
Felony Non-Person Crime Conduct	Medium	<b>Risk Reduction Conditions Violations</b>
Misdemeanor Conviction (Non-Person/Non-DUI)	Medium	
Tampering with Device or Testing (controlled substance/alcohol)	Medium	
Possession of Dangerous Weapon – Non Firearm	Medium	
Unauthorized Electronic Access	Medium	
Positive Test Result (controlled substance/alcohol)	Medium	
Fail to Enroll or Participate in Treatment	Medium	
Fail to Submit to Testing (controlled substance/alcohol)	Medium	
Repeated Accountability Conditions Violations (3+ of same condition)	Medium	
Cumulative Accountability Conditions Violations (3+ of any conditions)	Medium	
Fail to Comply with Employment Conditions	Low	<b>Accountability Conditions Violations</b>
Fail to Comply with Financial Conditions	Low	
Fail to Comply with Residence, Travel or Reporting (with PO Contact)	Low	
Fail to Comply with Structured Living	Low	
Non-compliant with Medical Orders/Medication	Low	
Infraction Conviction	Low	
Fail to Comply during Field Visit	Low	
Fail to Comply with Curfew	Low	
Fail to Notify of Police Contact	Low	
Fail to Participate in CAB	Low	
Fail to Pay Criminal Accounts Receivable	Low	
Fail to Complete Community Service	Low	

Rev. 10/2017

## Tool 3 – Response Magnitude/Proportionality Decision-Tree

The risk and need level below is determined from the results of a validated screening and assessment. The prioritization of short and long-term goals should be addressed and modified/updated according to the results of a validated screening and assessment and any Case Action Plan developed and/or modified therefrom.

Short-term goals refer to what an individual can reasonably be expected to achieve in the immediate future. Long-term goals refer to what an individual can reasonably be expected to achieve eventually. Generally, short term goals should be sanctioned high and rewarded low; whereas long term goals should be sanctioned low and rewarded high. The magnitude of the response is applicable regardless of the entity responding to the behavior. Moderate incarceration sanctions are specified on Tool 5 as the midpoint number indicated. However, the same concept applies to incarceration and non-incarceration sanctions, as well as graduated incentives. See pages 47-48 for further explanation regarding the principle of proportionality and why a moderate response is generally presumed.

Behavior	Individual Risk High or Moderate = High Low = Low	Individual Need High or Moderate = High Low = Low	Relation to Risk/Need Goal Proximal = Short Term Distal = Long Term	Response Magnitude/Proportionality See Forms 9 & 10 for Incentives & Sanctions
<b>Accomplishment/ Compliance</b>	High	High	Short-term	Lower incentive
			Long-term	Higher incentive
		Low	No distinction	Moderate
	Low	High	Short-term	Lower incentive
			Long-term	Higher incentive
		Low	None	None*
<b>Violation</b>	High	High	Short-term	Higher sanction
			Long-term	Lower sanction
		Low	No distinction	Moderate
	Low	High	Short-term	Higher sanction
			Long-term	Lower sanction
		Low	None	None*
<b>What is the nature of the behavior?</b>	<b>How likely were they to reoffend?</b>	<b>How high are their criminogenic needs?</b>	<b>Does the behavior relate to short or long term goals?</b>	<b>What magnitude of response should be imposed?</b>

\* Resources should generally not be utilized for low-risk and low-need individuals. If resources are utilized, low-risk individuals should not be mixed with higher risk populations.

## Tool 4 – Graduated Incentives

These are guidelines only. They do not create any right or expectation on behalf of the individual convicted of a crime. This is a non-exhaustive list of options which may or may not be available dependent upon resources. Available incentives below the solid black line are cumulative maximum total incentives which may be awarded without Court or BOPP approval. Specifically, Court/BOPP approval should be obtained for community service reductions exceeding 50% of the total amount ordered.

<p><b>Court/BOPP</b></p>	<ul style="list-style-type: none"> <li>• 402 Reduction</li> <li>• Early Termination</li> <li>• Fine Reduction</li> <li>• Transfer to Court/Lower Probation</li> <li>• Any Lower Level Incentive</li> </ul>
<p><b>P.O. with Supervisor Approval</b></p>	<ul style="list-style-type: none"> <li>• Up to 50% Community Service Reduction</li> <li>• Voucher</li> <li>• Recommend Fine Reduction</li> <li>• Approval to Serve as Peer Mentor</li> <li>• Reduce Substance/Alc. Screening</li> <li>• Any Lower Level Incentive</li> </ul>
<p><b>Probation/Parole Officer Incentives</b></p>	<ul style="list-style-type: none"> <li>• Up to 30% Community Service Reduction</li> <li>• Eliminate Curfew</li> <li>• Accomplishment Certificate</li> <li>• Voucher</li> <li>• Awards</li> <li>• Reduce Curfew Length</li> <li>• Redeem 5 Success Chips</li> <li>• Public Recognition</li> <li>• Positive Reports</li> <li>• 2 Success Chips</li> <li>• 1 Success Chip</li> <li>• Written Recognition</li> <li>• Verbal Recognition</li> </ul>

## Tool 5 – Graduated Responses & Sanctions

These are guidelines only. Except as provided in Utah Code § 77-18-1 and 77-27-11 (incarceration time for probation and parole violations) they do not create any right or expectation on behalf of any individual. This is a non-exhaustive list of options which may or may not be available dependent upon resources. Any lower response is always available to the Court or BOPP. While AP&P may only give or request one sanction may be given per violation episode, a behavioral intervention response targeting an individual's noncompliant behavior should be administered where appropriate. The inclusion of the graduated incarceration caps is intended as a maximum on the first, second, third and subsequent revocations. The number of revocations will be counted continuously during the current period of court or BOPP jurisdiction. Probation revocation to prison, or discharge from probation or parole supervision, resets the revocation count. Tool 3 may be used to increase or decrease the magnitude of the response within the guideline range, for the indicated decision making authority (court/BOPP, P.O. w/Supervisor, or P.O.), and should be reviewed for each violation. Tool 6 should be used for any time period imposed beyond the caps listed herein. 72 hour holds are not to be used as a means to avoid the sanction process listed herein. Any booking into the county jail for sanction days should be clearly designated as such and should include the signed order of the Court/BOPP approving the sanction days.

	INCARCERATION CAPS	
	PROBATION	PAROLE
<b>3RD &amp; SUBSEQUENT REVOCATION</b>	45 (0-90)	90 (0-180)
<b>2ND REVOCATION</b>	30 (0-60)	60 (0-120)
<b>1ST REVOCATION</b>	15 (0-30)	30 (0-60)
<b>P.O. with Superv. &amp; Court / BOPP Approval</b>	<ul style="list-style-type: none"> <li>• Hearing Before Court/BOPP</li> <li>• Community Correctional Center</li> <li>• 1-3 Days Jail Per Sanction (Maximum of 5 days/30 Days)</li> <li>• 90+ Days GPS/EM or at individual's cost</li> </ul>	
<b>P.O. with Supervisor Approval</b>	<ul style="list-style-type: none"> <li>• Any Lower Level Response</li> <li>• Request Court/BOPP Sanction</li> <li>• &lt;90 day Curfew</li> <li>• &lt;90 Day GPS/EM or no individual cost</li> <li>• &lt;72 Hours Home Restriction</li> <li>• Treatment Resource Center</li> <li>• &lt;16 Hours Community Service</li> </ul>	
<b>Probation/Parole Officer Sanctions &amp; Responses</b>	<ul style="list-style-type: none"> <li>• Up to 60 Day Curfew</li> <li>• Travel Restriction</li> <li>• Structured Living</li> <li>• Increased Supervision</li> <li>• Require Change in Residence</li> <li>• Revision of Case Action Plan</li> <li>• Increased Reporting/Testing</li> <li>• Community Accountability Board</li> <li>• Workshops</li> <li>• Assignments</li> <li>• Family Meeting</li> <li>• Intervention Assignment</li> <li>• Mentoring Program</li> <li>• Develop Risk Avoidance Plan</li> <li>• Letter of Apology</li> <li>• Verbal Warning</li> </ul>	

Rev. 10/2016

## Tool 6 – Exceptions to Incarceration Caps

To be exercised by the Court or BOPP only with a hearing and upon entry of appropriate findings. The use of exceptions are dependent upon the nature of each violation, not the number of hearings.

### PROBATION

### PAROLE

**Finding that conduct presents a substantial risk to public safety that cannot be addressed through behavior modification sanctions. Substantial risks to public safety include, but are not limited to:**

**A. “Per Se” Violations:** e.g. dangerous weapons, fleeing via high speed chase, violent arrest behavior, new person crime allegations, high priority CCC walkways; or

**B. “Crime of Commitment Dependent” Violations:** e.g. sex offense in cycle, repeat DUI violations, person crime absconder, mental health instability that negatively impacts a criminogenic risk factor, repeat domestic violence offenses, serious financial crimes.

**Jurisdiction over new criminal conviction with new guideline recommendations from Forms 1-3 attached.**

**Finding that execution of sentence previously imposed is warranted pursuant to 77-18-1(12)(e)(iii)(B).**

**Revocation of parole for lying or engaging in criminal conduct prior to parole pursuant to 77-27-10(1)(b),**

including when individual engaged in criminal conduct prior to release and BOPP was unaware of conduct at the time it made decision to release; or individual lied prior to release and that lie led to BOPP decision to release.

**Guilty and Mentally Ill compliance pursuant to 77-16a-205,**

including when the BOPP is required by statute to conduct a formal review of an individual who plead guilty and mentally ill before considering release. The time required to conduct this review could exceed the caps.

**Parole Violation Hearing continued pursuant to Admin. Rule R671-204,**

including when new charges are pending; an evidentiary hearing is required; competency or mental illness needs of the individual; to allow victim participation; or individual requests continuance.

**Rescission pursuant to Administrative Rule R671-310,**

including when the BOPP decides to rescind a parole date that was previously granted because individual engaged in major misconduct in prison or was convicted of further criminal conduct.





### III. STATUTORY CHARGE

The Utah Sentencing Commission consists of twenty-seven statutorily delegated and appointed members representing all facets of the criminal justice system including: judges, prosecutors, defense attorneys, legislators, victim advocates, law enforcement, treatment specialists, ethnic minorities, corrections, parole authorities, juvenile justice representatives, citizen representatives, and others.

The Sentencing Commission is charged pursuant to Utah Code § 63M-7-404 with developing guidelines and recommendations to all three branches of government regarding the sentencing and release of juvenile and adult individuals who commit delinquent or criminal offenses which:

- respond to public comment;
- relate sentencing practices and correctional resources;
- increase equity in criminal sentencing;
- better define responsibility in criminal sentencing; and
- enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and Youth Parole Authority.

Pursuant to House Bill 348 in the 2015 General Legislative Session, a number of specific directives were added to the Sentencing Commission's statutory charge. Those directives include and the Sentencing Commission has fully incorporated the following:

- modify the guidelines to implement the recommendations of the CCJJ for reducing recidivism for the purposes of protecting the public and ensuring efficient use of state funds;
- modify criminal history scoring in the guidelines, including eliminating double-counting and focusing on factors relevant to the accurate determination of risk to re-offend;
- establish guidelines for incarceration for probation and parole conditions violations and revocations, including: the seriousness of the violation, conduct while on probation or parole, and criminal history;
- establish graduated sanctions to facilitate the prompt and effective response to an individual's conduct while on probation or parole, including: sanctions in response to probation or parole conditions violations, when violations should be reported to the Court or Board of Pardons and Parole, and a range of sanctions not exceeding three consecutive days incarceration and a total of five days in a 30 day period;
- establish graduated incentives to facilitate a prompt and effective response to an individual's compliance with probation or parole conditions and positive conduct exceeding those terms.



## IV. PHILOSOPHY STATEMENT

Under the direction of the Utah Sentencing Commission, the 2021 Adult Sentencing and Release Guidelines represent a cooperative effort by all the components of the Utah criminal justice system to make a unified statement of policy regarding the sentencing and release of adults convicted of committing a crime. The dominant underlying philosophy of the guidelines is that criminal sentences should be proportionate to the seriousness of the offense for which the individual was convicted. The guidelines provide predictability by communicating a standard in sentencing and releasing and thereby allow all parts of the system to have a good idea of the disposition and penalty associated with the conviction.

Finally, the guidelines provide a mechanism by which various sentencing policies can be analyzed from a fiscal perspective. The Sentencing Commission recognizes that statutory lengths of stay available to the sentencing authorities far exceed guideline ranges and recommendations. The Commission also recognizes that if every individual served the full statutory term of his or her sentence, the fiscal impact alone would be more than **23 times** the current budget. Corrections budget alone of roughly \$300,000,000 (**\$300M**) annually would skyrocket to \$7,000,000,000 (**\$7B**) annually.

The Commission also recognizes the fiscal impact any adjustment to the guidelines could have on state and local corrections budgets. Tracking, analyzing, and reporting the consistency and use of the guidelines would assist in the further development of effective and efficient sentencing policies.

The Sentencing Commission promotes evidence-based sentencing policies that effectively address the three separate goals of criminal sentencing:

- Risk Management
- Risk Reduction
- Restitution

The Sentencing Commission has discussed and advocated the incorporation of what are commonly referred to as “evidence-based practices” into sentencing, supervision, and treatment standards for nearly a decade. Evidence-based practices are also referred to as “principles of effective intervention” or “what works in corrections.” It is not a specific program or intervention, but a body of knowledge based on over thirty years of research conducted by numerous scholars in North America and Europe. Such research has demonstrated empirically that theoretically sound, well-designed programs implemented with fidelity can appreciably reduce recidivism.

The advocacy of risk reduction as a separate and legitimate goal of sentencing should not be presumed to ignore or supersede the other two legitimate goals of sentencing. Nevertheless, it may not be realistic to address all three goals of sentencing simultaneously, as the three goals may at times conflict with one another. The Sentencing Commission recognizes that the appropriate balancing and prioritization of the three goals of sentencing in any given case is a difficult and heavy task for the sentencing authority.

FIGURE 1



Figure 1 illustrates that the term “evidence-based” refers to the strength of research, not simply the existence of opinions, studies or research.

Expert opinion, individual case studies, and cohort studies, while potentially promising, do not constitute evidence-based practices.

A minimum of two or more randomized controlled trials or a systematic review (also known as a “meta-analysis”) constitutes evidence-based practices.

The guidelines incorporate the concept of evidence-based practices comprehensively. It should be noted that evidence-based practices does not refer to a simple formulaic calculation, nor is it a synonym for the replacement of professional judgment and experience with research.

Figure 2 illustrates that evidence-based practices refers to the confluence and continual interaction of three key factors in the development of best policies and practices: public input and concerns; professional judgment and experience; and the best research and data available.



FIGURE 2



## V. STATEMENT OF PURPOSE

Utah law provides the basis for the sentencing and release of criminal individuals convicted of a crime. Statutes provide significant latitude in decision-making. The guidelines are an attempt to further structure decision-making relative to sentencing and release, yet still retain the flexibility to deal with individual cases.

The guidelines also provide a means of identifying and allocating required resources. Utah’s guidelines are intended to maintain judicial and parole board discretion, and at the same time incorporate a rational criminal justice philosophy, eliminate unwarranted disparity, and provide a tool to match resources with needs.

While the elimination of unwarranted disparity has long been one of the purposes of the guidelines, the Sentencing Commission recognizes the over-representation of minorities in our criminal justice system. The guidelines do not attempt to determine where, why, or whether discrimination exists. Rather, they provide an objective method of decision-making aimed at achieving the goals of sentencing through the most current research and data available. Examining the effect of such practices in the future should improve our ability to formulate policy and avoid potentially discriminatory practices.

The guidelines, as structured, provide a forum for discussion regarding sentencing and a common frame of reference on which to base discussion. Equally important, they provide a means to assess the demand for resources based on policy changes.

## **It is important to note that Forms 1-6 are guidelines only. They are intended to inform the sentencing authority, but do not dictate their decision.**

They do not create any right, expectation, or liberty interest on behalf of the individual convicted of a crime. The calculated matrix recommendation on [Forms 1 - 5](#) create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances on [Form 6](#) can be taken into consideration by both the sentencing judge and the Board of Pardons and Parole in making their final decisions. An individual sentenced to prison is legally subject to the full length of the sentence pronounced by the sentencing judge. Ultimately, the final decision regarding the actual length of incarceration is the responsibility of the Board of Pardons and Parole: that decision may, or may not, reflect the guideline recommendation, and may be up to the full length of the indeterminate range pronounced by the sentencing judge.

A distinction exists between the advisory nature of [Forms 1 - 6](#) and the probation and parole violation/revocation guidelines contained in [Structured Decision-Making Tools 1 - 6](#). House Bill 348 indicated that the Court and the Board of Pardons “shall” impose a period of incarceration consistent with the probation and parole violation/revocation guidelines established by the Sentencing Commission. The distinct nature of the probation and parole violation/revocation guidelines is intended to address statewide disparity of responses to violations, to incorporate an evidence-based response to violations, to improve outcomes, and to address an identified driver of the prison population.



## **VI. EVIDENCE-BASED SENTENCING FRAMEWORK**

Broadly speaking, an evidence-based sentencing framework includes:

### **Goals**

- Risk Management
- Risk Reduction
- Restitution

### **Process**

- Swift
- Certain
- Consistent
- Proportionate
- Fundamentally Fair

### **Tools**

- Policies, Grids & Guidelines
- Risk & Needs Assessments
- Graduated Continuum of Rewards, Incentives, Services & Sanctions

## A. Goals

### 1. RISK MANAGEMENT

The goal of risk management is addressed by imposing a punishment or penalty that is proportionate to the gravity of the offense and the culpability of the individual. This goal has largely been the focus of our criminal justice system and is still fundamental to ensuring public safety. Risk management includes the broader objective of holding individuals accountable and providing appropriate incapacitation and punishment for the violation of laws.

The brevity of explanation of this goal should not be viewed as minimizing its importance. Risk Management continues to be a legitimate goal of sentencing.

### 2. RISK REDUCTION

Risk reduction is addressed through the appropriate identification and reduction of an individual's criminal risk factors. Because this goal has not been addressed comprehensively or structured previously, the guidelines provide greater detail and explanation of this goal than the other two.

It is important to note that the term "rehabilitation" is not entirely interchangeable with "risk reduction," because it incorrectly suggests that most individuals were once pro-social or "habilitated" and simply need to be restored to that pre-existing condition. "Risk reduction" or "recidivism reduction" more appropriately identifies that crime reduction is the objective in this context. As such, risk reduction not only includes objectives which increase the functioning of an individual, but also increase public safety by reducing the likelihood of ongoing criminal activity.

Criminal risk factors are identified through the use of validated risk and needs assessments. Validated assessments identify the individual's level of criminogenic risk and criminogenic need.

### Supervision and treatment resources should then be tailored based on the risk and needs assessment, not the presenting offense.

Of particular importance is identifying those individuals for whom risk reduction programming and/or interventions are unnecessary. Supervision and treatment resources should be prioritized for high- and moderate-risk level individuals, as an individual identified as low-risk and low-need has few criminogenic risks and needs which can be targeted for reduction. Including low-risk and low-need individuals in programming with higher risk individuals not only is an inefficient use of limited resources, but can have the unintended consequence of increasing low-risk individual's criminogenic risk factors.

Responsivity factors should also be identified and considered in tailoring available services, as *how* the programming is delivered is of significant importance in improving outcomes.

Effective programming must then address the identified individual criminal risk factors and incorporate a cognitive behavioral approach. Program integrity should be regularly monitored to ensure quality implementation and improvement as well. The use of the Correctional Program Checklist to evaluate implementation of evidence-based practices in programs provided in connection with the criminal justice system is recommended.

The goal of risk reduction was previously assumed to occur through the philosophy of general and/or specific deterrence through the use of incarceration. Research does not support commonly-held assumptions regarding deterrence. The impact that incarceration has had upon the reduction in index crime rates since 1990 has been modest at best. Numerous other factors contributed to a nationwide reduction in index crime rates, which do not correlate with incarceration trends.

Moreover, while incarceration has demonstrable incapacitation effects during the period of incarceration, it has minimal specific deterrence effects on the individual upon release. Incarceration itself may actually increase criminal risk factors, thereby contributing to recidivism rates for lower-risk individuals. To the extent possible, low-risk individuals should be excluded from higher-risk populations, both in an incarcerated setting as well as in supervision and treatment settings.

Risk reduction is a legitimate but somewhat overlooked goal of sentencing. Where incarceration is not warranted based on the severity of the offense and the culpability of the individual, incarceration should not be viewed as a risk reduction tool. Where incarceration is warranted, programming should target criminogenic factors.

The goal of risk reduction extends beyond the limited term of incarceration and seeks to reduce the likelihood of future criminal activity through appropriate programming.

### **3. RESTITUTION**

Restitution is addressed through the repayment of damages to the community or to victims resulting from an offense. Community service is often appropriately ordered in lieu of restitution. Restitution or community service continues to be a fundamental goal of sentencing. In some instances, the other two goals of sentencing may operate in conflict with the goal of obtaining restitution:

- the imposition of incarceration itself can prevent employment, which could impact the payment of restitution;
- a felony conviction itself can prohibit obtaining both employment and housing;
- the amount of income available to an individual may be insufficient to sustain self-sufficiency and repay restitution.

Sentencing, as well as enforcement of supervision conditions, should consider whether an individual is capable of meeting all of the conditions imposed immediately; or whether prioritization of short-term and long-term goals should be distinguished.

Concepts of “learned helplessness” and “ratio burdens” should be considered in the development of realistic goals for supervision conditions. Imposing more conditions than can realistically be addressed in the short term may mean that long-term goals are never met.

The brevity of explanation of this goal as well as the recognition that restitution may be a long-term goal should not be viewed as minimizing its importance. Rather, the Sentencing Commission emphasizes the importance of structuring sentencing and supervision terms in such a manner that each goal is meaningfully addressed.

## **B. Process**

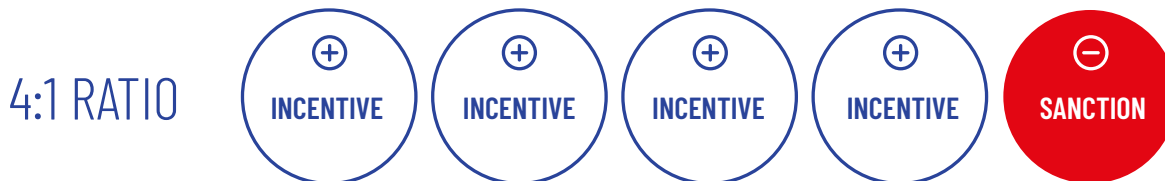
An evidence-based approach to violations of supervision conditions provides a response that is swift, certain, consistent, proportionate, and fundamentally fair.

### **1. SWIFT, CERTAIN, CONSISTENT, PROPORTIONATE**

Behavior modification research clearly indicates that the effectiveness of a reward or a sanction decreases exponentially as more time passes following the behavior. Behavior modification research also clearly indicates that both rewards and sanctions should be certain. The certainty

of a sanction establishes a credible and consistent threat, creating a clear deterrent due to the definite nature of the response.

The certainty of reinforcements for positive behavior is equally important. Positive reinforcements should be provided at a Fixed Ratio 1 (FR1) schedule, meaning that after each occurrence of the desired behavior or skill, some reinforcement (even verbal praise) is provided. In relation to sanctions applied, positive reinforcements should be provided at a ratio of approximately 4:1 (four incentives for every one sanction). It may seem counterintuitive to impose a sanction and provide a reward simultaneously. However, for behavior modification purposes, positive behavior should actually be monitored and rewarded four times as much as negative behavior.



The proportionality or magnitude of the reinforcer/punisher should also be commensurate to the precipitating behavior. The general rule is that moderate responses are best. If a sanction is too weak, the individual may habituate to that sanction and it will never produce the desired effect of reducing the precipitating behavior. If a sanction is too severe, there is a “ceiling effect,” as there is no room to graduate the sanction in the future if violations escalate.

It is the recommendation of the Sentencing Commission that the use of practices which do not incorporate these basic principles of evidence-based practices be discontinued.

## 2. FUNDAMENTAL FAIRNESS

Beyond the basic concepts of swift, certain, and proportionate responses is the goal that both sentencing and enforcement of supervision terms should be imposed through a process which is fundamentally fair. Utah Supreme Court Justice Matthew B. Durrant explained the concept of “Procedural Fairness” in his 2014 State of the Judiciary Address:

“The elements of procedural fairness are voice, neutrality, and respect. Voice means the ability of court participants to express their viewpoints. In other words, the judge asks for input and actively listens. Neutrality means just that – consistently applied legal principles, unbiased decision makers, and a ‘transparency’ in how decisions are made. Lastly, respect, meaning individuals are treated with dignity and their rights are affirmatively protected. It means that judges not only protect the rights of litigants, but explain that is what they are doing. It makes a difference.”

Extensive research confirms that how people are treated in court affects not only attitudes about the court experience but also their willingness to comply with court orders. People who perceive they have been treated in procedurally fair ways demonstrate significantly higher levels of compliance with court orders.

These principles apply equally to anyone in a position of authority, whether a Judge, the Board of Pardons and Parole, probation and parole officers, or others seeking compliance with orders or laws.

## C. Tools

### 1. POLICIES

The policies contained in these guidelines, in conjunction with the current grids and matrices are intended to provide a broader set of tools for use by the sentencing authority. Such tools are intended to provide a higher degree of transparency, greater clarity as to the sentencing process, and better informed decision-making.

### 2. GRIDS & GUIDELINES

#### a. Risk Management Forms

The goal of risk management is addressed in Forms 1 - 6, which provide an objective analysis of the severity of the offense and the culpability of the individual. The forms provide an initial recommendation at the point of intersection for imprisonment, intermediate sanction, or regular probation. The length of stay indicated in each box is an initial recommendation.

#### b. Risk Reduction Tools

Beyond the initial determination that focuses on risk management, these guidelines also provide Structured Decision-Making Tools that are intended to assist in reducing risk. The guidelines incorporate risk reduction in determining an appropriate level of supervision, treatment and responses to individual behavior. Structured Decision-Making Tools 1 - 6 and referenced addenda are intended to assist in that analysis, while still assuring sufficient discretion in fashioning an appropriate sentence and an appropriate response to individual's behavior.

### 3. RISK & NEEDS ASSESSMENTS

Current research indicates that in order to improve recidivism outcomes, treatment programs must target criminogenic needs. Eight criminogenic risks and needs, often referred to as "The Central Eight," must be considered in order to improve outcomes. Addendum D, Central Eight Criminal Risk Factors, provides a summary of both the criminogenic needs and corresponding treatment targets. The Central Eight are also incorporated in Tool 1 under the label "Dynamic Factors." Of these eight risk and need factors, the first four, often referred to as the "Big Four," will have the greatest impact on individual recidivism. The eight criminogenic risk and need factors include:

#### a. The Big Four

1. History of antisocial behavior (behavior that harms others, often with a lack of empathy for those harmed)
2. Antisocial personality pattern (impulsive and adventurous, pleasure seeking)
3. Antisocial cognition (attitudes, values and beliefs favorable towards crime)
4. Antisocial associates (association with pro-criminal peers)

#### b. The Moderate Four

5. Family/marital circumstances (poor quality relationships)
6. School/work (low levels of performance and involvement in school or at work)
7. Leisure/recreation (low involvement and satisfaction in anti-criminal leisure activities)
8. Substance abuse (problems with alcohol and/or other drugs)



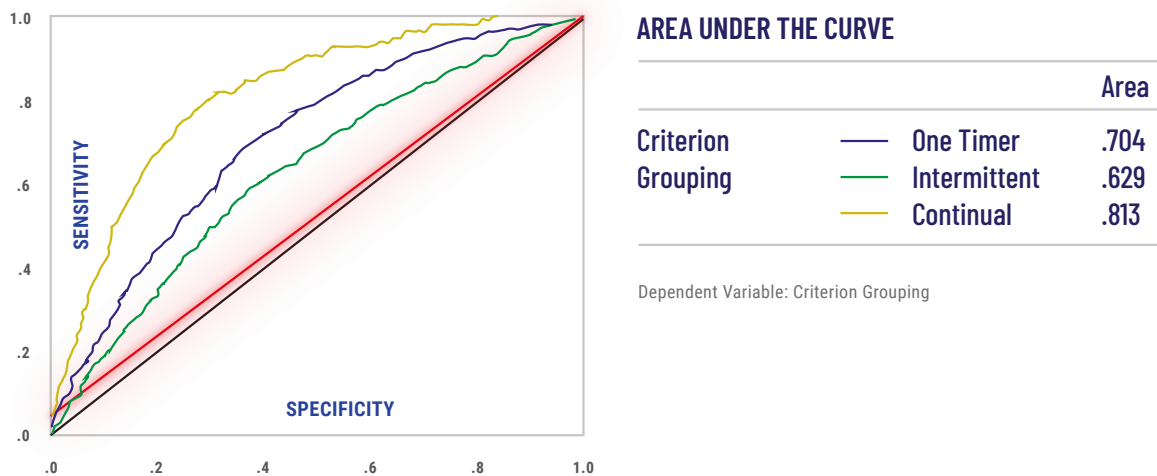
c. Appropriate Use of Risk and Need Assessment Tools

While actuarial risk assessment tools have been in use for risk classification and management purposes since the 1970s, risk/needs assessment tools (“RNA”) did not begin to emerge until the 1990s. The critical distinction is that current RNA tools can identify the specific dynamic risk factors (changing and changeable) that influence whether a particular individual is likely to reoffend. They identify the appropriate targets for interventions which, if effective, will reduce the probability of recidivism.

Such tools are not intended to completely replace professional judgment, but to better inform decision-making.

Research has consistently confirmed that current RNA tools are more accurate than professional judgment alone in predicting risk of recidivism. Professional judgment alone tends to over-estimate risk and is especially prone to the use of heuristics and bias.

The diagram below is illustrative of the “Receiver Operating Curve,” generally considered the best statistical procedure for interpreting risk:



An AUC of .50 or less represents the 50/50 chance that one could accurately predict risk to reoffend using gut instinct alone. An AUC of .50 is illustrated by the straight diagonal line (red). An AUC of under .50 would be to the right of and below the diagonal line. An AUC of over .50 would be to the left of and above the diagonal line. An AUC of 1.00 represents accurate prediction 100% of the time and is illustrated by the horizontal and vertical lines on the top and left side of the square (blue). “Expert” opinion is generally accurate 51% of the time, meaning it is only marginally better than flipping a coin. While no tool nor human judgment is accurate 100% of the time, validated tools with illustrated AUC’s above of .629, .704, and .813 significantly outperform the flip of a coin, gut instinct, and even “expert” opinion.

Two types of errors are relevant to risk assessment prediction: 1) Type I errors, or false positives, occur when an individual is classified as a potential recidivist, but does not commit a new crime. 2) Type II errors, or false negatives, occur when an individual is not classified as a potential recidivist, but does commit a new crime.

If an individual’s risk level is over-estimated and a lower-risk individual is included with higher-risk individuals in programming, the lower-risk individual is more likely to emerge with greater risk factors than if they were left alone. The Sentencing Commission emphasizes again that well-intentioned sanctions and services can have unintended negative impacts.

The following statement reflects the Sentencing Commission’s position regarding the use of validated tools to guide decision-

making regarding risk reduction: “[g]iven the convergence between our meta-analysis and the work of Grove et al. (2000), statistical rules ought to be employed when feasible. This is especially true for critical decisions in which false-negative judgments can be costly. Even a small increase in accuracy is important if one is predicting suicide, domestic violence, or post-parole adjustment.” White, J.M., et. al. (2006). “The Meta-Analysis of Clinical Judgment Project: Fifty-Six Years of Accumulated Research on Clinical Versus Statistical Prediction.”

It is equally important to note that RNA tools were not designed to replace the proportionality and culpability analysis in Forms 1 - 6. The tools were designed to structure supervision, treatment, and programming.

The Indiana Supreme Court case of Malenchik v. Indiana, 928 N.E.2d 564 (2010) and the Wisconsin Supreme Court case of Wisconsin v. Loomis, 2016 WI 68 (2016) are the two cases which have addressed the appropriate use of RNA tools. Such tools “can be significant sources of valuable information for judicial consideration in deciding whether to suspend all or part of a sentence, how to design a probation program for the individual, whether to assign an individual to alternative treatment facilities or programs, and other such corollary sentencing matters.” Further, RNA tools were designed to “identify dynamic areas of risk/needs that may be addressed by programming in order to reduce risk... but it was never designed to assist in establishing the just penalty.”

The Loomis court further clarified the context of risk reduction as one of several goals at sentencing, stating that “[b]ecause of these disparate goals, using a risk assessment tool to determine the length and severity of a sentence is a poor fit. As scholars have observed, “[a]ssessing the risk of future crime plays no role in sentencing decisions based solely on backward-looking perceptions of blameworthiness, . . . is not relevant to deterrence, . . . and should not be used to sentence individuals to more time than they morally deserve.” The Loomis court further stated that “a sentencing court may consider a [...] risk assessment at sentencing subject to the following limitations. As recognized by the Department of Corrections, the PSI instructs that risk scores may not be used: (1) to determine whether an individual is incarcerated; or (2) to determine the severity of the sentence. Additionally, risk scores may not be used as the determinative factor in deciding whether an individual can be supervised safely and effectively in the community.”

#### d. Validated Tools in Use in Utah

Offender Criminogenic assessment tools have evolved and matured over time as research provides additional insight into individual behavior. These tools have passed through several generations, with the first generation being simply subjective judgment or professional gut instinct. The assessment tool previously used in Corrections has been the LSI-R (Level of Service Inventory Revised), which is a 3rd generation assessment tool. The LSI-R evaluates both static and dynamic risk factors.

Today, 4th generation assessment tools are available that improve upon the 3rd generation tools. The 4th generation assessment tools integrate both general and specific risk and needs components. Additionally, they include specific individual responsivity considerations. Addendum E, The Responsivity Principle & Factors provides a complete explanation of this principle, which is also incorporated in Tool 1 under the label “Responsivity Factors.” The addition of needs and responsivity provides significant improvements in addressing individual recidivism.

“Needs” evaluates the specific type and level of intervention necessary to improve the likelihood of individual success. “Responsivity” considers individual barriers to appropriate intervention that must be considered in relation to program delivery. Examples include mental health disorders or low reading levels. These are issues that must be considered in the delivery of services. In short, the way a program is delivered to a general population will likely not work with an individual, for example, suffering from a severe mental health disorder.

The 3rd generation assessment tools primarily evaluated an individual's risk to reoffend. The 4th generation tools still consider risk, but add targeted service needs and an understanding of how to appropriately deliver the services. Both the 3rd and 4th generation tools take into consideration the eight (8) criminogenic factors discussed in this manual.

With these improved assessment instruments available and validated, the Department of Corrections has moved from the LSI-R (3rd generation) to the LS/RNR – or Risk, Need and Responsivity – assessment (4th generation). This tool provides additional and relevant information to criminal justice decision makers and service providers.

Although the LSI tools are the primary assessment tools used by the Department of Corrections, other validated tools may be used to improve service delivery to individuals presenting with substance use disorders, mental health disorders, and sexual offenses.

#### e. Re-assessment

Re-assessments should be done following a significant success or failure or major life-changing event. Re-assessment can provide an opportunity to evaluate any progress achieved. Criminal justice and corrections agencies should continue to emphasize risk-reduction during supervision for maximum benefit to public safety.

Case Action Plans or other programming should not be determined upon assessments which are more than twelve (12) months old.



## VII. ACTION RESEARCH APPROACH

Although the foundation of the guidelines is sound, they need to be revisited, monitored, and evaluated on a regular basis. One of the primary directives of the Utah Sentencing Commission is to provide this review. The guidelines are not intended to set policy in concrete. Because the philosophy, functioning, and problems of the criminal justice system fluctuate constantly, the guidelines should be adaptable to change, and should even encourage such change. Through monitoring of how the guidelines are used, they can be modified to accommodate changes in policy or practice.



## VIII. POLICY IMPLICIT IN THE GUIDELINES

These guidelines are a cooperative venture. The effort is to provide a mechanism for communication and improvement of key policy rather than to dictate practice by statute or rule. For the guidelines to function well, several policies are important. The policies need not be implemented exactly as stated, but their intent is critical.

### **A. Prosecution**

Prosecutors may use the guidelines to determine the implications of charging and plea negotiations. The guidelines are intended to make the system predictable by making explicit the sentence an individual with a given background is likely to

receive. Prosecutors should make it a policy to explain to the victim the effect of charging and plea negotiations in each individual case.

## B. Presentence Investigations

The Department of Corrections determines supervision and presentence investigation standards pursuant to Utah Code § 77-18-1(3) and may consider type of offense, risk and needs assessment, demand for service, the availability of agency resources, public safety, and other criteria established by the department.

The Department of Corrections revised presentence investigation standards and report formats during 2019. The formats and eligibility criteria are intended to produce reports in a more evidenced-based and objective approach, and to better meet demand for services through prioritization of referral criteria. These formats include:

1. **Full-version:** felony offenses for moderate- or higher-risk individuals; all sex offenses class A and higher regardless of risk level; applicable guideline forms
2. **Short-version:** felony offenses for low-risk individuals; class A offenses for moderate- or higher-risk individuals; applicable guideline forms
3. **Low-risk memo:** class A offenses for low-risk individuals; excluding sex offenses; guideline forms NOT included; a low-risk memo is not a presentence investigation report

Presentence investigations by AP&P are conducted on individuals convicted of a felony level offense or Class A offense and identified as moderate- or high-risk to reoffend by a validated screening or assessment tool such as the LSI-SV or LS/RNR. The presentence investigation should include a summary of the validated risk and needs assessment tool and other assessment(s) as appropriate to assist in structuring supervision and treatment accordingly.

An individual identified as low-risk will not normally receive a full validated risk and needs assessment, either by AP&P or another supervising agency, as supervision services are generally not targeted towards low-risk individuals.

All individuals who are identified as moderate- or high-risk to reoffend on a validated screening tool receive more comprehensive assessment(s). If a validated screening tool has identified an individual convicted of a Class B misdemeanor offender as moderate- or high-risk to reoffend who is not eligible for supervision by AP&P, courts may request additional assessments from county or private agencies. All recommendations included in these guidelines with specific reference to AP&P apply equally to state, county or private probation agencies. This policy is now explicitly stated and further clarified in Utah Code § 77-18-1 (2)(b)(iv) and (2)(c) pursuant to House Bill 3004 of the 2016 Third Special Session of the Utah Legislature.

Presentence investigations should have the applicable guidelines Forms 1 – 6 attached when they are sent to the sentencing judge, the prosecutor, and the individual convicted of a crime in accordance with Utah Code § 77-18-1 and Utah Code Jud. Admin. Rule 4-203. The recommendations made to the judge should conform to the guidelines unless aggravating or mitigating circumstances are documented.

Presentence Reports and Progress/Violation Reports may contain the results of additional assessments and/or tools utilized by AP&P in developing and updating an individual's Case Action Plan. The concepts outlined in Structured Decision-Making Tools 1 - 6 may be incorporated into future Presentence Reports and Progress/Violation Reports as appropriate. Tool 1 concepts are reflected in the Evaluative Summary section of the PSI. Tools 2 - 6 are not anticipated to be presented at the time of sentencing, but may be included in Progress/Violation Reports.

## C. Sentencing Judges

Sentencing judges may require that guidelines Forms 1 - 6 be attached to all district court presentence investigations. Judges are encouraged to sentence within the guidelines unless they find aggravating or mitigating circumstances justifying departure from Forms 1 - 6. These circumstances should be stated in open court and may be included on the judgment and commitment order.

Sentencing of misdemeanor offenses should consider the seriousness and proportionality of misdemeanor offenses in relation to felony offenses. Generally, a sentence for a misdemeanor offense should be less severe than that which is recommended for a felony offense. Supervision and treatment resources should then be prioritized based upon the results of a validated criminogenic risk and needs assessment, not the presenting offense.

The Commission recommends that future resources appropriated for supervision and treatment be allocated using a data-driven, evidence-based, and comprehensive approach.

## D. Board of Pardons and Parole

The Board of Pardons and Parole Board requires an updated guidelines form to be completed on each individual appearing for an original hearing. In many cases, additional events have occurred between the time of the court's first sentencing decision and the first appearance before the Board (e.g., new convictions, program successes or failures, escapes, etc.). Except where there are aggravating or mitigating factors, the Board is encouraged to make decisions compatible with the guidelines.

A statement of general rationale for Board decisions is provided to the individual and made available to the public at [www.bop.utah.gov](http://www.bop.utah.gov). The Board is currently in the process of developing a structured decision making tool and adopting the ten practice targets identified by the National Parole Resource Center. As Board practices are further developed and delineated, the guidelines should be updated to reflect practices accordingly.

If an individual was sentenced prior to October 1, 2015, the 2014 Utah Sentencing Guideline matrix will be used. If an individual was sentenced on or after October 1, 2015, the guideline calculation will be based on the version of the Utah Sentencing Guidelines in effect on the original court sentencing date.

An individual's guideline calculations will be based on the version of the sentencing guidelines that govern on the date the individual was sentenced. If multiple sentencing dates are associated with the Judgment and Commitment(s) (J&C) received by the Board on the same day, the last case sentencing date associated with the J&C will be used. This calculation will remain in force unless or until a new J&C is received for an offense under Board jurisdiction.

An original court sentencing date is either the date an individual is initially sentenced directly to prison or the date an individual receives a suspended sentence to prison and is granted probation.

For those who have a hearing on or after January 1, 2017, the Board will use the guideline based on the protocol outlined above. If multiple Judgment & Commitments are associated with the prison commitment, the most recent sentencing date will govern for all offenses associated with the current prison commitment unless the offense was committed while the individual was in prison.

If the individual committed the offense while in prison, a new, separate guideline is calculated for the new prison commitment. The new offense is classified as an additional primary offense without changing the adjusted commitment date. The new offense guideline is added to the individual's prior guideline, resulting in a single, combined guideline.

If the individual's guideline from the prior offense has passed, the new offense guideline will start on the date the new sentence occurred.

## E. Alternate Probation Providers

In addition to AP&P, county and private probation providers also provide supervision services through the courts. Neither county nor private probation services should be utilized to provide more intensive supervision than is recommended for AP&P. For instance, where “court” supervision is recommended on **Structured Decision-Making Tool 1** for a low-risk/low-need individual, county or private probation should not provide supervision services. “Court” supervision refers to a minimal level of administrative supervision services, which generally involves the setting of a review hearing on a compliance calendar. Where “supervised” probation is indicated, the supervision services may be provided by AP&P, county or private probation providers.

The recommendations for AP&P specifically referenced in the guidelines apply equally regardless of the agency providing supervision services. *This policy is now explicitly stated and further clarified in Utah Code § 77-18-1 (2)(b)(iv) and (c) pursuant to House Bill 3004 of the 2016 Third Special Session of the Utah Legislature.*



## IX. ADDENDA

### Addendum A: Crime Column Severity Listing

In cases involving multiple current offenses, it may not be clear from the matrices, which is the most severe offense. The following chart lists the 25 columns of the matrices in order of severity for purposes of identifying the correct column to use to intersect with the criminal history row in order to arrive at a guidelines recommendation. The chart will also identify which matrix to use if the current offenses include both sex offenses and non-sex offenses. This chart does not attempt to comment on the egregiousness or victimization of a particular offense or category of offenses. It simply lists a hierarchy of guidelines severity when considering both disposition and length of stay.

Rank	Crime Category	Matrix
1	1st Degree Aggravated Murder	Homicide
2	1st Degree Murder	Homicide
3	1st Degree Mandatory Prison 25 to Life	Sex Offense
4	1st Degree Mandatory Prison 15 to Life	Sex Offense
5	Attempted Aggravated Murder	Homicide
6	1st Degree Mandatory Prison 10 to Life	Sex Offense
7	1st Degree Mandatory Prison 6 to Life	Sex Offense
8	1st Degree Mandatory Prison 5 to Life	Sex Offense
9	1st Degree Mandatory Prison 3 to Life	Sex Offense
10	1st Degree 5 to Life	Sex Offense
11	1st Degree Death	Homicide
12	1st Degree Person	General
13	2nd Degree Death	Homicide
14	1st Degree 3 to Life	Sex Offense
15	1st Degree Other	General
16	2nd Degree 1 to 15	Sex Offense
17	3rd Degree 0 to 5	Sex Offense
18	2nd Degree Person	General
19	3rd Degree Death	Homicide
20	3rd Degree Person	General
21	2nd Degree Other	General
22	2nd Degree Possession	General
23	3rd Degree Other	General
24	Class A Misdemeanor 0 to 1	Sex Offense
25	3rd Degree Possession	General

## Addendum B: Categorization of Crimes

This list categorizes Murder, Death, Person, Possession Only and Other offenses to help determine the appropriate crime category column on the guidelines matrices. Offenses actually resulting in the death of the victim have been classified as either Murder or Death. The Person category is meant to be a comprehensive list of all person crimes, felony and misdemeanor, to be used for crime category columns and for crimes counted in criminal history scoring on Forms 1-5. The sentencing authority may count additional crime(s) as person crime(s) upon entering findings consistent with relevant caselaw, including *State v. Waterfield*, 2014 UT App 67 and *State v. Sandridge*, 2015 UT App 297. Offenses that consist of only the possession of a controlled substance, are categorized as Possession Only. Any inchoate offenses not specifically listed herein (“attempt”, “conspiracy”, or “solicitation”) should be categorized based upon the underlying offense (e.g. an attempt, conspiracy, or solicitation to commit a person crime is categorized as a person crime). Other offenses include felony level offenses including drug offenses that are not “possession only”, property offenses, and offenses against public order.

To find the appropriate crime category column on the General Matrix (Form 1), first determine the degree of the offense (1st degree, 2nd degree, or 3rd degree) by referring to the judgment and commitment order or other official court document. Then, determine whether the offense is categorized as murder, attempted murder, death, person, possession only, or other.

Code Citation	Description	Category
4-32-14(1)	Bribery Offenses, Meat/Poultry Chapter - Agricultural Code	Other
4-32-14(2)	Interference, Meat/Poultry Chapter – Agricultural Code	Person, Death
4-38-12	Bribery, Utah Horse Regulation Act	Other
7-1-318	False Statement or Entry by Financial Institution	Other
7-1-803	Conflicts of Interest, Financial Institution	Other
7-5-10	Lending Trust Funds to Trust Company, Off., Dir., Empl.	Other
9-4-612	Housing Assistance Fraud	Other
9-9-404	Illegal Trafficking Native American Remains	Other
10-3-1310	Municipal Officers’ & Employees’ Ethics Act Violation	Other
13-2-6	Violation of Cease & Desist Order – Div. Consumer Prot.	Other
13-10-8	Failure to Disclose Origin of a Recording	Other
13-23-7	Violation of Health Spa Services Protection Act	Other
13-26-8	Violation of Telephone Fraud Prevention Act	Other
17-43-308	Prohibited Treatment to Change Patient’s Concept of God	Other
19-2-115	Violation of Air Quality Act	Other
19-3-110	Violation of Radiation Control Act	Other
19-5-115	Violation of Water Quality Act	Other
19-6-113	Violation of Solid & Hazardous Waste Act	Other
19-6-822	Violation of Waste Tire Recycling Act	Other
20A-1-601	Bribery in Elections	Other
20A-1-602	Receiving Bribe in Elections	Other
20A-1-603	Voting Fraud, Tampering with Ballots or Records	Other
20A-1-606	Wagering on Elections	Other
20A-3-201	Unlawful Conduct by Counting Poll Watcher	Other



Code Citation	Description	Category
20A-3-505	False Impersonation to Vote, Double Voting	Other
20A-4-501	Elections Returns Forgery	Other
20A-4-502	Altering Vote Count or Returns	Other
20A-4-503	Abetting Forgery or Alteration	Other
20A-4-504	Interfering with Count	Other
20A-4-505	Unlawful Communication About Count	Other
20A-5-701	Willful Neglect of Duty or Corrupt Conduct by Elec. Judge	Other
20A-5-702	Destroying or Concealing Ballots	Other
20A-17-101	Violation of Delegate Responsibilities	Other
23-13-14(3)	Unlawful Release of Wildlife	Other
23-20-4	Wanton Destruction of Protected Wildlife	Other
23-20-4.7	Habitual Wanton Destruction of Protected Wildlife	Other
26-18-4	Performing Abortion Under Auspices of Medicaid Program	Other
26-20-5	False Statements Relating to Qualification of Health Inst.	Other
26-20-9	Violations of False Claims Act	Other
26-23-5.5	Illegal Use of Birth Certificate	Other
26-28-10	Sale or Use of Body Parts Prohibited	Other
26-28-117	Falsification of Documents Related to Organ Donation	Other
30-1-9.1	Providing Consent for Child to Enter Prohibited Marriage	Other
30-1-13	Solemnization of Marriage Without License	Other
30-1-14	Acting Without Authority to Perf. Marriage; Impersonation	Other
30-1-15(1)	Solemnization of Prohibited Marriage of Minor	Other
31A-16-111	Insurance Holding Companies Violation	Other
31A-16-112(4)	Willful Violation of Insurance Code	Other
31A-16-112(5)	False Filing - Intent to Deceive Insurance Commissioner	Other
32B-4-401	Unlawful Sale or Furnishing of Alcohol	Other
32B-4-503	Tampering With Records of ABC Commission	Other
32B-4-504	Making False Material Statement Before ABC Commission	Other
32B-4-505	Obstructing Official Proceed./Investig. Under ABC Act	Other
32B-4-508	Offering or Soliciting Bribes or Gifts Under ABC Act	Other
32B-4-509	Forgery Under ABC Act	Other
34A-2-110	Workers' Compensation Insurance Fraud	Other
41-1a-1313	Poss. of Vehicle or Parts Without Identification Number	Other
41-1a-1314	Unauthorized Control of Vehicle for Extended Time	Other
41-1a-1315	False Evidences of Title and Registration	Other
41-1a-1316	Possession of, Receiving, Transferring Stolen Vehicle	Other
41-1a-1317	Selling or Buying Vehicle Without Identification Number	Other
41-1a-1318	Fraudulent Alteration of Identification Number	Other
41-1a-1319	Odometer Violation	Other

Code Citation	Description	Category
41-3-413	Alteration of Disclosure Statement	Other
41-4-9	Financing Dealers and Purchasers Violation	Other
41-6a-210	Fail to Respond to Officer's Signal to Stop	Other
41-6a-210(2)	Fail to Respond Causing Ser. Bodily Injury or Death	Person, Death
41-6a-401.3	Fail to Stop - Accident Involving Injury	Person
41-6a-401.5	Fail to Stop - Accident Involving Death	Death
41-6a-502.5	Impaired Driving	Other
41-6a-503(1)(b)	DUI Causing Injury; Passenger Under 16 or 18 if Over 21	Person
41-6a-503(2)(a)	Driving Under the Influence and Causing Ser. Bodily Injury	Person
41-6a-503(2)(b)	Driving Under the Influence – 3rd or Subsequent Conv.	Other
41-6a-503(2)(c)	Driving Under the Infl. – Post Auto Homicide or Felony DUI	Other
41-6a-1716(4)	Inflict Ser. Bod. Injury – Driving & Using Handh. Wirel. Dev.	Person
41-12a-805	Unauth. Rel. of Info. From Uninsured Motorist ID Database	Other
52-1-13	Public Officer Making False Material Stmt. to Secure Bond	Other
58-5a-501	Unlawful Conduct – Podiatric Physician Licensing Act	Other
58-16a-503	Unlawful Conduct – Utah Optometry Practice Act	Other
58-17b-504(1)	Unlawful Conduct – Pharmacy Practice Act	Other
58-31b-503	Unlawful Conduct – Nurse Practice Act	Other
58-37-8	Controlled Substance Viol. (not designated as poss. herein)	Other
58-37-8(2)(a)(i)	Felony Possession/Use of Controlled Substance	Possession
58-37-8(2)(a)(ii)	Allow Possession/Use of Contr. Substance on Premises	Possession
58-37-8(2)(a)(iii)	Felony Possession of Altered or Forged Prescription	Possession
58-37-8(2)(b)(i)	Possession of Marijuana > 100 lbs	Other
58-37-8(2)(b)(ii)	Felony Possession Schedule I or II	Possession
58-37-8(2)(d)	Felony Possession/Use of Other Controlled Substance	Possession
58-37-8(2)(e)	Possession/Use of Controlled Subst. in Correctional Facility	Possession
58-37-8(2)(g)	Driving - Contr. Subst. in Body Causing Ser. Bod. Inj./Death	Person, Death
58-37-8(3)(a)(i)	Felony Fictitious Use of License to Obtain Contr. Subst.	Other
58-37-8(3)(a)(ii)	Felony Obtaining/Dispensing False Prescription	Other
58-37-8(3)(a)(iii)	Felony Making/Uttering/Altering False or Forged Prescrip.	Other
58-37a-5(3)	Violation of Drug Paraphernalia Act	Possession
58-37a-5(2),(4)	Possession/Use of Drug Paraphernalia	Other
58-37c-11	Unlawful Conduct – Controlled Substances Precursor Act	Other
58-37d-4	Violation of Clandestine Drug Lab Act	Other
58-37d-5	Violation of Clandestine Drug Lab Act	Other
58-37f-601	Unlawful Release/Obtain. Info. - Contr. Subst. Database	Other
58-44a-503	Unlawful Conduct – Nurse Midwife Practice Act	Other
58-55-501(13)	Misuse of Funds Received by Contractor	Other
58-60-111	Unlawful Conduct – Mental Health Professional Pract. Act	Other

Code Citation	Description	Category
58-61-503	Unlawful Conduct – Psychologist Licensing Act	Other
58-68-503	Unlawful Conduct – Utah Osteopathic Medical Pract. Act	Other
58-69-503	Unlawful Conduct – Dentist & Dental Hygienist Pract. Act	Other
58-70a-504	Unlawful Conduct – Physician Assistant Act	Other
58-71-503	Unlawful Conduct – Naturopathic Physician Pract. Act	Other
58-72-502	Unlawful Conduct – Acupuncture Licensing Act	Other
58-73-502	Unlawful Conduct – Chiropractic Physician Pract. Act	Other
59-10-541	Failure to File Tax Return; False Info.; Evading Tax	Other
59-14-209	Violation of Cigarette Tax Stamp	Other
61-1-21	Violation of Utah Uniform Securities Act	Other
61-2c-405	Division of Real Estate Violation	Other
62A-4a-709	False/Fraudulent Claim for Medical Assist. Identification	Other
62A-6-116	Unauthorized Sterilization	Other
62A-7-402	Harboring/Concealing Youth Offense	Other
63E-1-404	Unlawful Benefit From Privatization of Independent Entity	Other
63G-6a-2404	Unlawful Conduct – Utah Procurement Code	Other
63M-7-510	Filing False Claim with Crime Victims Reparations	Other
65A-3-2.5(3)(c)	Reckl. Op. Unmanned Aircr.- Direct Physical Contact	Person
65A-3-2.5(3)(d)	Reckl. Op. Unmanned Aircr.- Prox. Cause Collision	Person
67-1a-7	Unlawful Use of State Seal	Other
67-16-12	Violation of Ethics Act	Other
73-18-7.1	Fraudulent Application – Register Motorboat	Other
73-18-7.2	Altering/Forging Registration or Certificate- Motorboat Title	Other
73-18-13.2(3)(b)	Fail to Stop – Boating Accident Involving Ser. Bodily Injury	Person
73-18-13.3	Fail to Stop – Boating Accident Involving Death	Death
73-18-20.3	Falsified Hull Identification	Other
73-18-20.7	Unlawful Control Over Vessel	Other
76-5-102	Assault	Person
76-5-102.3	Assault Against School Employees	Person
76-5-102.4	Assault Against a Peace Off./Military Serv. Memb. -Uniform	Person
76-5-102.5	Assault by a Prisoner	Person
76-5-102.6	Propelling Substance/Object at Correct. or Peace Officer	Person
76-5-102.7	Assault Against Health Care Prov./Emer. Med. Serv. Prov.	Person
76-5-102.8	Disarming Peace Officer	Person
76-5-102.9	Propelling Bodily Substance	Person
76-5-103	Aggravated Assault	Person
76-5-103.5	Aggravated Assault by Prisoner	Person
76-5-105	Mayhem	Person
76-5-106	Harassment	Person

Code Citation	Description	Category
76-5-106.5(2)	Stalking	Person
76-5-106.5(3)	Violation of Stalking Injunction	Person
76-5-107	Threat of Violence	Person
76-5-107.3	Threat of Terrorism	Person
76-5-107.5	Hazing	Person
76-5-108	Violation of Criminal Protective Order	Person
76-5-109(2,3,4)	Child Abuse – Ser. Phys. Injury/Phys. Injury/Abandonment	Person
76-5-109.1	Commission of Domestic Violence in the Presence of Child	Person
76-5-110	Abuse or Neglect of Disabled Child	Person
76-5-111(2,3)	Abuse or Neglect of a Disabled or Elder Adult	Person
76-5-111(4)	Exploitation of a Disabled or Elder Adult	Other
76-5-112.5	Endangerment of Child or Elder Adult	Person, Death
76-5-113	Surreptitious Administration of a Substance	Person
76-5-202	Attempted Aggravated Murder	Murder
76-5-203	Murder	Murder
76-5-203	Attempted Murder	Person
76-5-205	Manslaughter	Death
76-5-206	Negligent Homicide	Death
76-5-207	Automobile Homicide	Death
76-5-207.5	Automobile Homicide Involving Text Messaging/Elect. Mail	Death
76-5-208	Child Abuse Homicide	Death
76-5-209	Homicide by Assault	Death
76-5-301	Kidnapping	Person
76-5-303	Custodial Interference	Person
76-5-308	Human Trafficking – Human Smuggling	Person
76-5-308.5	Human Trafficking of a Child	Person
76-5-309	Human Trafficking and Human Smuggling	Person
76-5-310	Agg. Human Trafficking/Agg. Human Smuggling	Person
76-5-401	Unlawful Sexual Activity with a Minor	Person
76-5-401.1	Sexual Abuse of a Minor	Person
76-5-401.2	Unlawful Sexual Conduct with 16 or 17 year old	Person
76-5-402	Rape	Person
76-5-402.1	Rape of a Child	Person
76-5-402.2	Object Rape	Person
76-5-402.3	Object Rape of a Child	Person
76-5-403	Sodomy	Person
76-5-403.1	Sodomy on a Child	Person
76-5-404	Sexual Abuse	Person
76-5-404.1	Sexual Abuse of a Child	Person

Code Citation	Description	Category
76-5-405	Aggravated Sexual Assault	Person
76-5-412	Custodial Sexual Relations	Person
76-5-413	Custodial Sexual Relations-Youth Receiving State Services	Person
76-5b-201	Sexual Exploitation of a Minor	Person
76-5b-202	Sexual Exploitation of a Vulnerable Adult	Person
76-6-102	Arson	Other
76-6-103	Aggravated Arson	Person
76-6-105	Causing a Catastrophe	Person
76-6-106	Criminal Mischief	Other
76-6-107	Graffiti	Other
76-6-109	Offenses Against Timber, Mining, Agricultural Industries	Other
76-6-110	Offenses Committed Against Animal Enterprise	Other
76-6-111	Wanton Destruction of Livestock	Other
76-6-202	Burglary of a Dwelling	Person
76-6-202	Burglary of a Non-Dwelling	Other
76-6-203	Aggravated burglary	Person
76-6-204.5	Burglary of a Railroad Car	Other
76-6-206	Criminal Trespass	Other
76-6-206	Domestic Violence Criminal Trespass (77-36-1(4)(m))	Person
76-6-301	Robbery	Person
76-6-302	Aggravated robbery	Person
76-6-404	Theft	Other
76-6-404.5	Wrongful Appropriation	Other
76-6-405	Theft by Deception	Other
76-6-406	Theft by Extortion	Other
76-6-406(2)(a)	Theft by Extortion Causing Harm	Person
76-6-406(2)(b)	Theft by Extortion Involving Physical Restraint	Person
76-6-407	Theft of Lost or Misdemeanor Property	Other
76-6-408	Theft by Receiving Stolen Property	Other
76-6-409	Theft of Services	Other
76-6-409.3	Theft of Utility or Cable Television Services	Other
76-6-409.6	Telecommunications Fraud	Other
76-6-409.7	Possession of Unlawful Telecommunication Device	Other
76-6-409.8	Sale of Unlawful Telecommunication Device	Other
76-6-409.9	Manufacture of Unlawful Telecommunication Device	Other
76-6-410(1)	Theft by Executory Use	Other
76-6-410(2)	Theft Pursuant to a Rental Agreement	Other
76-6-410.5	Theft of a Rental Vehicle	Other
76-6-413	Release of Fur-Bearing Animals	Other

Code Citation	Description	Category
76-6-501	Forgery	Other
76-6-502	Possession of a Forged Writing or Forged Device	Other
76-6-503	Fraudulent Handling or Recordable Writings	Other
76-6-503.7(2)(b)	Filing a Record With Intent to Defraud	Other
76-6-505	Issuing a Bad Check or Draft	Other
76-6-506.2	Unlawful Use of a Financial Transaction Card	Other
76-6-506.3	Unlawful Acquisition, Possession or Transfer of FTC	Other
76-6-506.6	Unauthorized Factoring of Credit Card Sales Drafts	Other
76-6-506.7	Obtaining Encoded Info. on FTC With Intent to Defraud	Other
76-6-509	Bribery of a Labor Official	Other
76-6-510	Bribe Received by a Labor Official	Other
76-6-512	Acceptance of Deposit by Insolvent Financial Institution	Other
76-6-513	Unlawful Dealing of Property by a Fiduciary	Other
76-6-514	Bribery or Threat to Influence Contest	Other
76-6-516	Convey Real Estate by Married Man w/o Wife's Consent	Other
76-6-518	Criminal Simulation	Other
76-6-520	Criminal Usury	Other
76-6-521	False or Fraudulent Insurance Act	Other
76-6-522	Equity Skimming of a Vehicle	Other
76-6-523	Obstructing Leasing Real Property for Nat. Res. Production	Other
76-6-602	Retail Theft	Other
76-6-703(1)	Computer Crime	Other
76-6-703(3)	Computer Fraud	Other
76-6-903	Cultural Sites Protection Violation	Other
76-6-1002	Damage to a Mail Receptacle	Other
76-6-1003	Mail Theft	Other
76-6-1102	Identity Fraud	Other
76-6-1303	Unlawful Poss/Sale/Use of Autom. Sales Suppress. Device	Other
76-6a-4	Pyramid Scheme	Other
76-7-101	Bigamy	Other
76-7-101.5	Child Bigamy	Person
76-7-201	Criminal Nonsupport	Other
76-7-203	Sale of a Child	Person
76-7-310.5	Performing Abortion Using Prohibited Procedures	Other
76-7-314	Performing Unlawful Abortion	Other
76-8-103	Bribery to Influence Official or Political Actions	Other
76-8-105	Receiving or Soliciting a Bribe	Other
76-8-107	Alteration of Proposed Legislative Bill or Resolution	Other
76-8-108	Alteration of Enrolled Legislative Bill or Resolution	Other

Code Citation	Description	Category
76-8-303	Prevention of Legislature or Public Servants from Meeting	Other
76-8-306	Obstruction of Justice	Other
76-8-306.5	Obstructing Service of BOPP Warrant or OSC	Other
76-8-309	Escape	Other
76-8-309(2)	Aggravated Escape	Person
76-8-311.1	Transp. Firearm, Ammun., Dang. Weapon in Secure Area	Other
76-8-311.3	Items Prohibited in Correctional & Mental Health Facilities	Other
76-8-312	Bail Jumping	Other
76-8-315	Assault on Elected Official – Attempt/Cause Bodily Injury	Person
76-8-316	Influence/Impede/Retaliate Against Judge or BOPP Memb.	Person
76-8-402	Misusing Public Monies	Other
76-8-403	Failure to Keep and Pay Over Public Monies	Other
76-8-404	Making Profit Public Monies	Other
76-8-412	Stealing/Destroying/Mutilating Public Records	Other
76-8-414	Recording False or Forged Instruments	Other
76-8-418	Damaging a Jail	Other
76-8-502	Making False/Inconsistent Material Statement	Other
76-8-508	Tampering with a Witness	Other
76-8-508.3	Retaliation Against a Witness, Victim or Informant	Person
76-8-508.5	Tampering with a Juror	Other
76-8-508.5(2)(c)	Tampering with a Juror – Threat to Injure Person or Prop.	Person
76-8-509	Bribery to Dismiss Criminal Proceeding	Other
76-8-509	Extortion to Dismiss Criminal Proceeding – Force or Threat	Person
76-8-510.5	Tampering with Evidence	Other
76-8-802	Destruction of Prop.- Interfere Prep. for Defense/War	Other
76-8-803	Causing/Omitting to Note Defects- Articles for Defense/War	Other
76-8-902	Advocating Criminal Syndicalism or Sabotage	Other
76-8-903	Assemble Advocating Criminal Syndicalism or Sabotage	Other
76-8-1101	Failure to File Tax Return False Info; Evading Tax	Other
76-8-1203	Public Assistance Fraud	Other
76-8-1204	Public Assistance Fraud	Other
76-8-1205	Public Assistance Fraud	Other
76-8-1301	False Statements – Unemployment Compensation	Other
76-9-101	Riot	Other
76-9-101(3)	Felony Riot	Person
76-9-105	Making False Alarm	Other
76-9-201	Electronic Communication Harassment	Person
76-9-202	Emergency Reporting Abuse	Other
76-9-301	Animal Cruelty	Other

Code Citation	Description	Category
76-9-301.1	Dog Fighting	Other
76-9-301.3	Game Fowl Fighting	Other
76-9-304	Human Death by Vicious Animal	Death
76-9-306	Causing Injury or Death to Police Service Animal	Other
76-9-704	Abuse or Desecration of Dead Human Body	Other
76-10-204	Damaging Bridge, Dam, Canal, or Water-Related Structure	Other
76-10-306	Explosives Violation	Other
76-10-306(4)	First Degree Explosives Violation	Person
76-10-307	Unlawful Delivery of Explosive Device to Common Carrier	Other
76-10-402	Manufacture, Poss., Sale, Use of Weapon Mass Destr.	Other
76-10-403	Manufacture, Poss., Sale, Use of Hoax Weapon Mass Des.	Other
76-10-503	Poss./Transfer/Purch. Dang. Weapon by Restr. Person	Other
76-10-504(3)	Poss. Short Barrel Rifle	Other
76-10-504(4)	Poss. Concealed Firearm- Commission of Violent Felony	Person
76-10-506	Threatening/Using Dangerous Weapon in a Fight/Quarrel	Person
76-10-508	Discharge of Firearm From Vehicle	Person
76-10-509.4	Poss. Sawed-off Shotgun/Fully Automatic Weap. by Minor	Other
76-10-509.5	Providing Sawed-off Shotgun/Fully Automatic to Minor	Other
76-10-509.6	Parent of Guardian Providing Firearm to Violent Minor	Other
76-10-509.9	Sale of Firearm to Juvenile	Other
76-10-527(2)	Making False Statement – Criminal Background Check	Other
76-10-527(3)	Weapons Violation by Dealer	Other
76-10-527(4)	Purchase Firearm – Intent to Provide to Ineligible Person	Other
76-10-703	Fraudulent Documents – Organization/Incr. Capital Stock	Other
76-10-706	Unlawful Acts by Director, Officer or Agent	Other
76-10-920	Illegal Anticompetitive Activities	Other
76-10-1103	Gambling Fraud	Other
76-10-1104	Gambling Promotion	Other
76-10-1105	Possessing Gambling Device or Record	Other
76-10-1109	Confidence Game Violation	Other
76-10-1204	Distributing Pornographic Material	Other
76-10-1205	Inducing Acceptance of Pornographic Material	Other
76-10-1206	Dealing in Material Harmful to a Minor	Person
76-10-1214	Conspiracy to Commit Pornographic and Harmful Materials	Other
76-10-1222	Distribution of Pornographic Film	Other
76-10-1305	Exploiting Prostitution	Person
76-10-1309	Prostitution Offense by HIV Positive Individual	Person
76-10-1504	Bus Hijacking	Person
76-10-1505	Discharge Firearms/Hurl Missiles - Buses & Terminals	Person



Code Citation	Description	Category
76-10-1507	Carry Concealed Dang. Weap./Haz. Mat. - Buses & Term.	Other
76-10-1508	Theft of Baggage or Cargo	Other
76-10-1603	Pattern of Unlawful Activity	Other
76-10-1801	Communications Fraud	Other
76-10-1903	Money Laundering	Other
76-10-1906	Failure to Report by Financial Institution	Other
76-10-2002	Burglary of Research Facility	Other
76-10-2402	Commercial Terrorism	Other
76-10-2801	Vehicle Compartment for Contraband	Other
76-10-2901	Transporting or Harboring Aliens	Other
77-23a-4	Interception of Communication	Other
77-23a-5	Traffic in Intercepting Devices	Other
77-23b-2	Interference with Access to Stored Communication	Other
77-27-21.5	Failure to Register – Sex or Kidnap Offenses	Other
77-36-1(4)(m)	Domestic Violence Criminal Trespass (77-6-206)	Person
77-36-2.4(2)	Violation of a Protective Order (Domestic Violence)	Person
77-36-2.5	Violation of Condition for Release After Domestic Violence	Person
77-36-2.7	Violation of Condition for Release	Other
78A-2-203	Poss. Dang. Weap. in Secure Area est. by Jud. Council	Other
78B-1-125	Certifying Excessive Witness or Juror Fees	Other

## Addendum C: Sex Offense Columns

Sex offenses are categorized by a letter, A through J, which corresponds with the appropriate crime category column on the sex offense matrix (Form 3). To find the appropriate crime category column on the sex offense matrix, simply find the column letter matching the letter indicated on this list. Unlike the categorization listing for general offenses, the sex offense category listing provides the specific column on the matrix, not simply the general category (murder, death, person, possession only). Therefore, the sex offense category listing is more specific than the general listing and includes inchoate offenses: attempt, conspiracy, and solicitation.

Ordinarily, inchoate offenses are penalized at one level lower than the completed offense, e.g., 2nd degree felony Forcible Sexual Abuse is lowered to 3rd degree felony Attempted Forcible Sexual Abuse. See Utah Code § 76-4-102. However, within the sex offenses there are a number of exceptions to this general rule. For example, Rape of a Child is a 1st degree felony with mandatory prison of 25 years to life. Attempted Rape of a Child is not a 2nd degree felony; rather it is a 1st degree felony with mandatory prison and an indeterminate range of 15 years to life. Conspiracy to Commit Rape of a Child, on the other hand, is a 1st degree felony with no mandatory prison and indeterminate range of 3 years to life while Solicitation to Commit Rape of a Child is a 1st degree felony with mandatory prison and an indeterminate range of 15 years to life. Due to these distinctions between some sex offenses, regularly refer to the following listing to assure that the correct crime category column is used when calculating the guidelines recommendation

Code Citation	Description	Matrix Column
76-4-401	Enticing a minor over the internet – first degree felony	E
76-4-401	Enticing a minor over the internet – second degree felony	H
76-4-401	Enticing a minor over the internet – third degree felony	I
76-4-401	Enticing a minor over the internet – class A misdemeanor	J
76-5-301.1	Child kidnapping	A, B, or C
76-5-301.1 <sup>1</sup>	Attempted child kidnapping	G
76-5-301.1 <sup>3</sup>	Conspiracy to commit child kidnapping	G
76-5-301.1	Solicitation to commit child kidnapping	H
76-5-302	Aggravated kidnapping	A, B, or C
76-5-302	Attempt, conspiracy, or solicitation to commit aggravated kidnapping	H
76-5-401	Unlawful sexual activity with a minor	I
76-5-401	Attempt, conspiracy, or solicitation to commit unlawful sexual activity with a minor	J
76-5-401.1	Sexual abuse of a minor	J
76-5-401.1(3)(b)	Sexual abuse of a minor student	I
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old	I
76-5-401.2	Attempt, conspiracy, or solicitation to commit unlawful sexual conduct with a 16 or 17 year old	J
76-5-401.2(5)(b)	Unlawful sexual conduct with a 16 or 17 year old student	I
76-5-402	Rape	F (A, B, or C)
76-5-402 <sup>1</sup>	Attempted rape	G
76-5-402 <sup>3</sup>	Conspiracy to commit rape	G
76-5-402	Solicitation to commit rape	H

Code Citation	Description	Matrix Column
76-5-402.1	Rape of a child	25 Years- Life
76-5-402.1 <sup>1,2</sup>	Attempted rape of a child	A, B, C or E
76-5-402.1 <sup>3</sup>	Conspiracy to commit rape of a child	G
76-5-402.1	Solicitation to commit rape of a child	A, B, C, or E
76-5-402.2	Object rape	F (A, B, or C)
76-5-402.2 <sup>1</sup>	Attempted object rape	G
76-5-402.2 <sup>3</sup>	Conspiracy to commit object rape	G
76-5-402.2	Solicitation to commit object rape	H
76-5-402.3	Object rape of a child	25 Years- Life
76-5-402.3 <sup>1,2</sup>	Attempted rape of a child	A, B, C, or E
76-5-402.3 <sup>3</sup>	Conspiracy to commit rape of a child	G
76-5-402.3	Solicitation to commit rape of a child	A, B, C, or E
76-5-403(2)	Forcible sodomy	F (A, B, or C)
76-5-403(2) <sup>1</sup>	Attempted forcible sodomy	G
76-5-403(2) <sup>3</sup>	Conspiracy to commit forcible sodomy	G
76-5-403(2)	Solicitation to commit forcible sodomy	H
76-5-403.1	Sodomy on a child	25 Years- Life
76-5-403.1 <sup>1,2</sup>	Attempted sodomy on a child	A, B, C, or E
76-5-403.1 <sup>3</sup>	Conspiracy to commit sodomy on a child	G
76-5-403.1	Solicitation to commit sodomy on a child	A, B, C, or E
76-5-404	Forcible sexual abuse	A, H
76-5-404	Attempt, conspiracy, or solicitation to commit forcible sex. abuse	I
76-5-404.1	Aggravated sexual abuse of a child	A, B, or C
76-5-404.1 <sup>1</sup>	Attempted aggravated sexual abuse of a child	G
76-5-404.1 <sup>3</sup>	Conspiracy to commit aggravated sexual abuse of a child	G
76-5-404.1	Solicitation to commit aggravated sexual abuse of a child	H
76-5-404.1	Sexual abuse of a child	H
76-5-404.1	Attempt, conspiracy, or solicitation to commit sex. abuse of child	I
76-5-405	Aggravated sexual assault	A, B, or C
76-5-405 1	Attempted aggravated sexual assault	G
76-5-405 3	Conspiracy to commit aggravated sexual assault	G
76-5-405	Solicitation to commit aggravated sexual assault	H
76-5-412(2)	Custodial sexual relations (victim is 18 or older)	I
76-5-412(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations (victim is 18 or older)	J
76-5-412(2)	Custodial sexual relations (victim is younger than 18)	H
76-5-412(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations (victim is younger than 18)	I
76-5-412(4)	Custodial sexual misconduct (victim is 18 or older)	J
76-5-412(4)	Custodial sexual misconduct (victim is younger than 18)	I

Code Citation	Description	Matrix Column
76-5-412(4)	Attempt, conspiracy, or solicitation to commit custodial sexual misconduct (victim is younger than 18)	J
76-5-413(2)	Custodial sexual relations with a youth receiving state services (victim is 18 or older)	I
76-5-413(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations with a youth receiving state services (victim is 18 or older)	J
76-5-413(2)	Custodial sexual relations with a youth receiving state services (victim is younger than 18)	H
76-5-413(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations with a youth receiving state services (victim is younger than 18)	I
76-5-413(4)	Custodial sexual misconduct with a youth receiving state services (victim is 18 or older)	J
76-5-413(4)	Custodial sexual misconduct with a youth receiving state services (victim is younger than 18)	I
76-5-413(4)	Attempt, conspiracy, or solicitation to commit custodial sexual misconduct with a youth receiving state services (victim is younger than 18)	J
76-5b-201	Sexual exploitation of a minor	H
76-5b-201	Attempt, conspiracy, or solicitation to commit sexual exploitation of a minor	I
76-5b-202	Sexual exploitation of a vulnerable adult	I
76-7-102	Incest	I
76-7-102	Attempt, conspiracy, or solicitation to commit incest	J
76-9-702	Third degree lewdness <sup>4</sup>	I
76-9-702.1	Sexual battery	J
76-9-702.5	Lewdness involving a child	I or J
76-9-702.7	Voyeurism	I or J
76-10-1206	Dealing in Materials Harmful to Minor by Person 18+	I or J
76-10-1306	Aggravated exploitation of prostitution	F or H
76-10-1306	Attempt, conspiracy, or solicitation to commit aggravated exploitation prostitution	I or H

<sup>1</sup> See Utah Code § 76-4-102(2) <sup>2</sup> See Utah Code § 76-3-406(10) <sup>3</sup> See Utah Code § 76-4-202(2)

<sup>4</sup> If an individual is convicted for an offense of Lewdness, a class B misdemeanor, Form 5 - The Misdemeanor Matrix should be used.

## Addendum D: Central Eight Criminal Risk Factors & Treatment Targets

CRIMINOGENIC NEED	TREATMENT TARGETS
<p><b>Antisocial Behavior</b> Exploitive, aggressive, or harmful behavior toward others</p>	<p>Increase pro-social behaviors, reinforce prosocial beliefs, support crime-free lifestyle. Develop clear, consistent, and proximate reward and consequences for behavior. Teach, model, and reinforce pro-social skills in high-risk situations.</p>
<p><b>Antisocial Personality Pattern</b> Impulsive, sensation seeking, risk-taking, aggressive, manipulative and exploitive.</p>	<p>Increase self-control and delayed gratification skills, anger and conflict management, problem solving. Reinforce prosocial interpersonal interactions.</p>
<p><b>Antisocial Cognition</b> Values, beliefs, feelings, and cognitions (thinking) that contribute to personal identity that favors and reinforces criminal behavior.</p>	<p>Address cognitive distortions and rationalizations that maintain a criminal identity. Build, practice, and reinforce new cognitions and attributions through cognitive restructuring and cognitive-behavior therapies.</p>
<p><b>Antisocial Peers</b> Preferring to associate with pro-criminal peers and isolation from anti-criminal peers and social contexts.</p>	<p>Reduce and eliminate association with delinquent peers and increase opportunities for regular association with anti-criminal peers and institutions (school, church, clubs, sports teams, and other structured and supervised activities).</p>
<p><b>Family</b> Chaotic and poor-quality family relationships that have minimal or no pro-social expectations regarding crime and substance abuse.</p>	<p>Increase pro-social communication, nurturance, structure, supervision, and monitoring in the family. Address dysfunctional boundaries and role confusion. Provides for consistent rewards for pro-social family interactions.</p>
<p><b>School/Work</b> Poor performance and limited engagement with school or work resulting in dissatisfaction and avoidance of them.</p>	<p>Increase school and/ or work performance through education, vocational training, or alternative placement. Provide rewards and consequences to increase consistent attendance and progress at school and/or work.</p>
<p><b>Leisure &amp; Recreation</b> Limited involvement in anti-criminal leisure activities.</p>	<p>Expose to a variety of pro-social leisure and recreational activities. Increase opportunities for regular involvement in preferred activities and reward progress.</p>
<p><b>Substance Abuse</b> Use and abuse of alcohol and/or drugs.</p>	<p>Reduce substance use through targeted treatment, supervision and access. Reduce exposure to substance abusing peers. Increase capacity to cope with stressors through lifestyle changes in exercise, sleep, and nutrition.</p>

BIG FOUR

MODERATE FOUR

Adapted from Butters, R.P. (2014) Community Based Treatment Interventions. W. Church & D. Springer (Eds.), Juvenile Justice Sourcebook. New York, NY: Oxford University Press 2014.

## Addendum E: The Responsivity Principle & Factors

### The Responsivity Principle

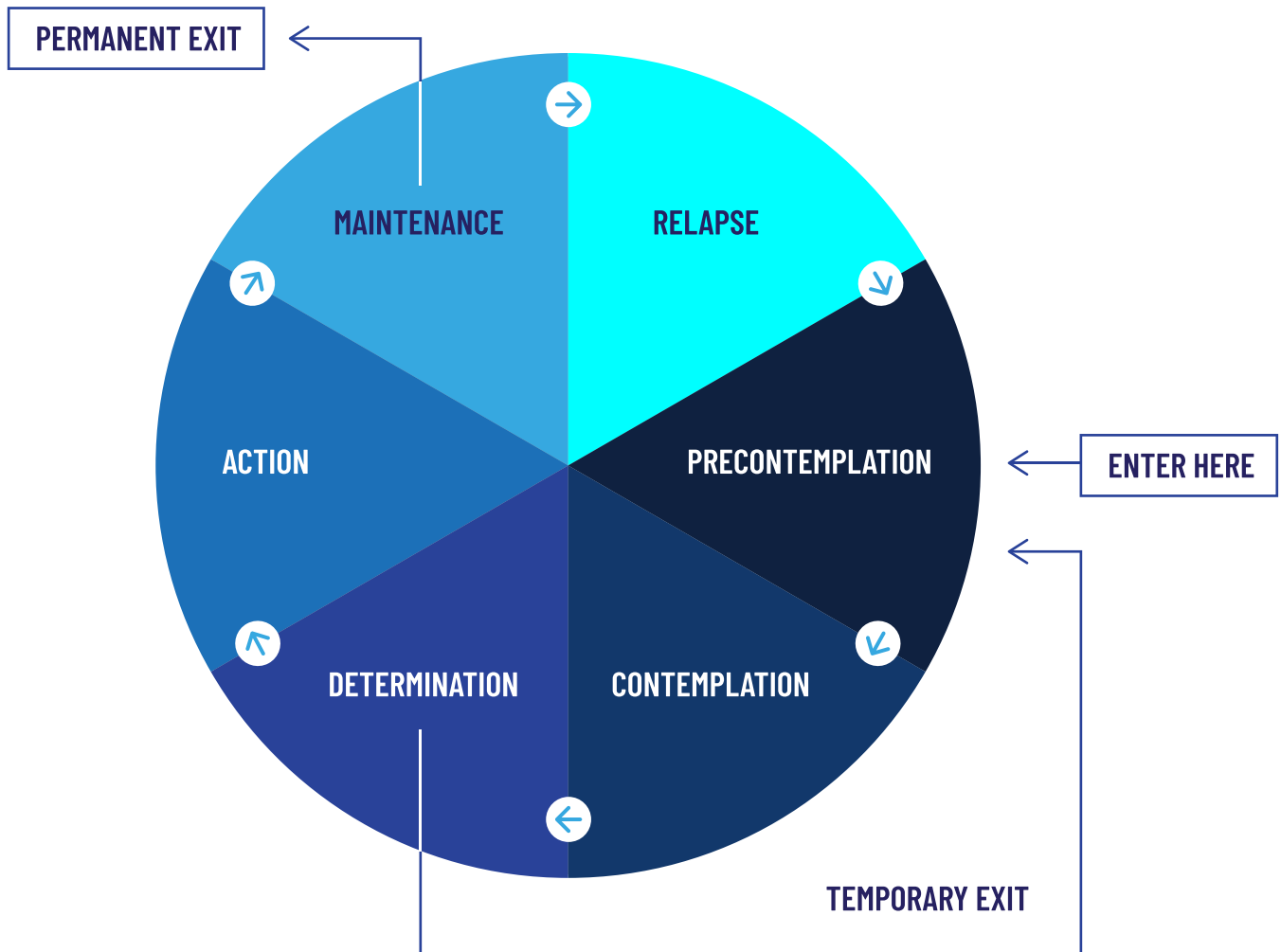
Maximize the individual’s ability to learn from a rehabilitative intervention by providing cognitive behavioral treatment and tailoring the intervention to the learning style, motivation, abilities and strengths of the individual.

General	Specific
<p>Use cognitive social learning methods to influence behavior.</p>	<p>Use cognitive behavioral interventions that take into account strengths, learning style, personality, motivation, and bio-social characteristics of the individual.</p>
<p>Examples of programming addressing responsivity generally include:</p> <ul style="list-style-type: none"> <li>• Prosocial modeling</li> <li>• Appropriate use of reinforcement and disapproval</li> <li>• Problem solving</li> <li>• Cognitive Behavioral Therapy</li> </ul>	<p>Examples of Responsivity Factors include:</p> <ul style="list-style-type: none"> <li>• Motivation</li> <li>• Culture</li> <li>• Learning Style</li> <li>• Physical Needs</li> <li>• Gender</li> <li>• Mental Illness</li> <li>• Trauma</li> <li>• Age</li> <li>• Functional Ability</li> <li>• Language</li> <li>• Housing</li> <li>• Physical Health</li> <li>• Transportation</li> <li>• Minimization</li> </ul>

Adapted from Andrews, D.A. & Bonta, J. (2007) Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation. Cat. No.: PS3-1/2007-6 ISBN No.: 978-0-662-05049-0. Public Safety Canada: Her Majesty the Queen in Right of Canada, 2007

## Addendum F: Stages of the Change Model

---



Stages of Change Model

## Addendum F: Stages Of Change Model

The Stages of Change Model is generally utilized by treatment and/or supervision providers. The inclusion of the model herein is intended to provide a general explanation only. The graph on the previous page illustrates that behavioral modification is rarely a linear path.

Stage of Change	Characteristics	Techniques
Precontemplation	Not currently considering change "Ignorance is bliss"	<ul style="list-style-type: none"> <li>• Validate lack of readiness</li> <li>• Clarify the decision is theirs</li> <li>• Encourage re-evaluation of current behavior</li> <li>• Encourage self-exploration, not action</li> <li>• Explain and personalize the risk</li> </ul>
Contemplation	Ambivalent about change Not considering change within the next month "Sitting on the fence"	<ul style="list-style-type: none"> <li>• Validate lack of readiness</li> <li>• Clarify the decision is theirs</li> <li>• Encourage evaluation of pros and cons of behavior change</li> <li>• Identify and promote new, positive outcome expectations</li> </ul>
Preparation	Some experience with change and are trying to change Planning to act within one month "Testing the waters" Planning to act within one month	<ul style="list-style-type: none"> <li>• Identify and assist in problem solving re: obstacles</li> <li>• Help identify social support</li> <li>• Verify they have the underlying skills for behavior change</li> <li>• Encourage small initial steps</li> </ul>
Action	Practicing new behavior for 3-6 months	<ul style="list-style-type: none"> <li>• Focus on restructuring cues and social support</li> <li>• Bolster self-efficacy for dealing with obstacles</li> <li>• Combat feelings of loss and reiterate long-term benefits</li> </ul>
Maintenance	Continue commitment to sustaining new behavior post-6 months to 5 years	<ul style="list-style-type: none"> <li>• Plan for follow-up support</li> <li>• Reinforce internal rewards</li> <li>• Discuss coping with relapse</li> </ul>
Relapse	Resumption of old behaviors "Fall from grace"	<ul style="list-style-type: none"> <li>• Evaluate trigger for relapse</li> <li>• Reassess motivation and barriers</li> <li>• Plan stronger coping strategies</li> </ul>

Adapted from Andrews, D.A. & Bonta, J. (2007) Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation. Cat. No.: PS3-1/2007-6 ISBN No.: 978-0-662-05049-0. Public Safety Canada: Her Majesty the Queen in Right of Canada, 2007



## Addendum G: PSI Process for Low-Risk Individuals

AP&P will provide a modified PSI (Sentence Memorandum) to the court for certain low-risk individuals prior to sentencing in the following circumstances:

1. Class A and above person offenses listed in Addendum B to the Sentencing Guidelines, except that sex offenses will continue to receive a full PSI;
2. DUI offenses within the scope of UCA 41-6a-505 (felony & class A);
3. When the court determines a PSI is warranted for reasons stated on the record, taking into account that, “[i]f an [individual] is identified as low risk on the LSI-SV, a full risk assessment is generally not warranted . . . as supervision services should generally not be targeted towards low risk [individuals].” 2015 Adult Sentencing & Release Guidelines, p. 11.

### PROCEDURE

---

1. The LSI-SV should be administered as soon as possible after the court submits a referral to AP&P, until the counties begin administering the screening and reporting the results to the court.
2. If the individual is screened or assessed as low AND meets one of the above criteria (person offense; DUI; or other reason stated on the record) AP&P will prepare the Sentencing Memorandum.
3. If AP&P recommends that a PSI or supervision is not warranted because of a low risk screen that does not meet one of the above criteria, it should notify the court promptly after the screen is administered.
4. If the court determines that a PSI is needed, it will notify AP&P.
5. If a judge has a concern regarding a PSI report prepared by AP&P based on either the judge’s review of the report or a concern raised by the prosecution or defense, the court should notify AP&P of the concern. AP&P should promptly provide a response.
6. If AP&P determines that the original report is correct and complies with the guidelines, AP&P will explain its reasons to the judge and no further reports will be provided.

## Addendum H: Understanding Risk Assessments

To properly respond to individual who has committed a crime, it is important to be able to fairly assess the individual's risk to reoffend. Assessing risk dates back to the 1900s. At that time those in the criminal justice system relied upon their own professional judgment to try and assess whether someone was likely to comply with court orders or reoffend. However, research has shown that humans are not always the best predictors of risk. Since then risk assessments have evolved from professional judgments to actuarial assessments that look at both static and dynamic factors to not only assess an individual's risk to reoffend but to also help create case plans in order to reduce an individual's risk. For a more in-depth history of risk assessments go to: <https://psrac.bja.ojp.gov/basics/history>.

Validated risk assessments are tools that are checked against actual results to determine the statistical accuracy of the tool. These tools help decisions within the criminal justice system be data-driven and can increase the reliability of the decisions made.

### VALIDATED RISK ASSESSMENTS DO NOT ALWAYS SAY WHAT WE EXPECT

Sometimes the risk assessment results may not match human perceptions. Because a validated risk assessment is a better predictor of risk than human intuition, even when that intuition is informed by significant experience, there are times when the risk assessment will indicate a different level of risk than an expert or a lay person expects. It may seem counterintuitive or wrong. This, however, is to be expected because validated risk assessments are better at predicting risk than we are. If it seems off, it's most likely that the human assessment is in error.

### VALIDATED RISK ASSESSMENTS HAVE LIMITS

Even though risk assessments are better at judging risk than humans, that does not mean they will always be correct. Sometimes incomplete information can skew the results, especially when it comes to data-sensitive factors such as criminal history. If you feel that the individual conducting the risk assessment tool did not have all the relevant information, then you should inform your attorney, your victim advocate, or the individual conducting the assessment. It may not change the results, but it is always helpful to have complete and accurate information. While all the risk assessments used in Utah are statistically better than human assessments, some of the risk assessments work better under different circumstances. To learn more about the strengths and weaknesses of a specific risk assessment tool, go to: <https://www.rma.scot/research/rated/>

### RISK ASSESSMENTS DO NOT DEFINE AN INDIVIDUAL

Risk assessments are statistically accurate over large numbers of individuals, but they do not define individuals as persons. They do not equate to any kind of a moral judgment of an individual and they do not define worth. When someone scores low on a risk assessment, it does not mean that the individual is fine or has no need to change behaviors or attitudes. On the other hand, when someone scores high-risk on an assessment, it does not mean that there is no hope for that person to change. Most risk assessments involve dynamic factors as well as static factors. Individuals may not be able to change the static factors in their past, but they can change the dynamic factors that are based on their behavior and attitudes. Getting an education, maintaining steady employment, engaging in pro-social activities, and avoiding contact with antisocial people are just a few ways that an individual can decrease their statistical risk to reoffend.

### THE TWO GREAT DANGERS OF RISK ASSESSMENTS

The first danger of risk assessments is ignoring them every time they do not reinforce a decision maker's personal assessment. If a decision maker only uses the tools when they validate a preconceived idea, then the tools provide little benefit.

The second danger is relying on the risk assessments without understanding their limitations. Everyone working in the

criminal justice system should strive for technical literacy with risk assessments, understanding how they work, what their limitations are, and when it is appropriate to deviate.

For more information, go to: <https://psrac.bja.ojp.gov>

# Addendum I: Frequently Asked Questions

## 1. Why isn't the sentence what I expected (too harsh, too light)?

Each case is unique. While the Sentencing & Release Guidelines are intended to inform the sentencing authority they do not dictate their decision. The calculated matrix on Forms 1-5 create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances can be taken into consideration by both the sentencing judge and the Board of Pardons and Parole in making their final decisions. See Form 6. The law plus the individual facts of each case will determine whether the sentencing authority chooses to follow the guidelines or deviate from them. The sentence determination is solely the discretion of the sentencing authority.

## 2. What decisions will the judge make at the sentencing hearing?

At the sentencing hearing the judge will determine whether to impose the recommended sentence, deviate from the recommended sentence based on aggravating or mitigating circumstances, suspend a sentence, and/or determine the imposition of any fines or restitution. If an individual is sentenced to jail or probation the sentencing judge will also determine the amount of jail time that is served and/or the amount of time served on probation. If an individual is sent to prison, the Board of Pardons and Parole will determine the actual length of time the individual spends in prison. See question 6 for further discussion about the calculation of prison time.

## 3. What does "indeterminate sentencing" mean?

Indeterminate sentencing means that the imposed sentence has a range of time rather than a specific period of time which includes a minimum amount and maximum amount. For example, a 3rd degree felony carries an indeterminate sentence of 0-5 years; meaning an individual may spend no time in prison but can also spend up to five years in prison or any time in between.

## 4. If the judge imposes prison time, how is the indeterminate sentence determined?

The legislature specifies the severity and an indeterminate time frame for each crime. Currently, the standard indeterminate sentences in Utah are: 0-5 years for a 3rd degree felony, 1-15 years for a 2nd degree felony, and 5 years to life for a 1st degree felony. Other time penalties may apply based on a specific law or a sentencing enhancement (extra time in prison for certain characteristics in a crime). For example, the indeterminate sentence for rape of child, a 1st degree felony, is 25 years to life but can be enhanced to life without parole based on criteria outlined in statute.

## 5. Does the judge have discretion to impose a different indeterminate sentence than specified by statute?

No. Utah law requires a judge to impose the sentence specified by the law. However, a judge may suspend a sentence which allows an individual convicted of a crime the opportunity to serve jail time rather than prison or serve a period of probation.

## 6. If the judge imposes an indeterminate prison sentence, who determines the amount of time that person actually serves and how is that determination made?

Once an individual is sentenced to prison the Board of Pardons and Parole (Board) gains jurisdiction over that individual's sentence. It will be up to the Board when each individual is released from prison. Each individual must serve the entire sentence unless the Board acts to release the individual before their sentence has expired. For example, an individual convicted of a 2nd degree felony who is sent to prison must serve the entire 15 years in prison unless the Board acts to release them.

The Utah Sentencing & Release Guidelines (Guidelines) specify the amount of time that is recommended for an individual convicted of a crime to spend in prison. However, the guidelines are reviewed and recalculated by the Board. Guidelines completed by AP&P and the Board measure different things. AP&P guidelines are completed prior to sentencing and cannot include consecutive and concurrent calculations because the judge has not yet determined this. In contrast, Board sentencing guidelines are completed after sentencing and include calculations for consecutive and concurrent sentences based on the judge's determination. In addition, AP&P sentencing guidelines include offenses before a specific judge on a specific sentencing date while the sentencing guidelines completed by the Board include all offenses for an individual that are committed to prison as part of a prison commitment. For example, if an individual has one case pending before a judge in Weber County, one case pending before a separate judge in Salt Lake County, and a third case pending before a third judge in Utah County, the individual would have three separate AP&P sentencing guidelines. However, if these three offenses were committed to prison, the individual would have one Board sentencing guideline that included the cases from Weber County, Salt Lake County, and Utah County.

The recommendations of the Guidelines are advisory only, they are not mandatory. The Board uses the Guidelines to make more consistent and uniform decisions. However, the Guidelines do not create any right on behalf of an individual who has been sentenced to prison and the Board has the discretion to deviate from the guidelines, and will do so based on aggravating or mitigating circumstances. The Board makes its decisions on the individual merits of each case. Visit [https://bop.utah.gov/index.php/for-offenders-families/how-the-board-works#how\\_original\\_dates\\_are\\_set](https://bop.utah.gov/index.php/for-offenders-families/how-the-board-works#how_original_dates_are_set) for more information.

### **7. Can a judge impose prison if it is not recommended by the guidelines?**

Yes. The Department of Corrections, Adult Probation & Parole should make recommendations consistent with the Guidelines. However, the Guidelines are a starting point and reflect a recommendation for a typical case. The Guidelines do not limit attorneys from arguing the merits of the case, nor do they limit judicial discretion.

### **8. What does it mean when the judge suspends the sentence?**

When a judge suspends a sentence it means the sentence (prison or jail time) has been delayed so that the individual convicted of a crime may serve an alternative form of punishment (i.e. jail instead of prison) or is allowed to serve a period of probation. If the individual does not comply with the alternate sentence or the conditions of probation the original sentence may be imposed.

### **9. If the judge imposes probation, what happens if the defendant doesn't follow the conditions of probation?**

The response to an individual not complying with a condition of probation is determined based upon the severity of the condition that is not being followed. For example, public safety condition violations (i.e. failure to report for commitment) are sanctioned more severely than accountability condition violations (i.e. not complying with curfew). A list of violations and severity level can be found in Tool 2B. Tool 2 determines whether the violation is addressed by a probation/parole officer, probation/parole office and their supervisor, or the court/Board of Pardons and Parole. Depending on the type of non-compliance sanctions can range from mentoring programs or increased supervision to incarceration. Research indicates that responses to violations should be swift, certain, consistent, and proportionate. If a sanction is too weak, an individual may habituate to that sanction and it will never produce the effect of reducing that behavior. If a sanction is too severe, there is a "ceiling effect," as there is no room to graduate the sanction in the future if violations continue or escalate. Tools 1-6 are intended to create a structured decision-making process to determine an appropriate response to both accomplishments and violations while on supervision. Tool 5 gives examples of graduated sanctions after determining which authority should address the violation.

## **10. Will the sentencing guidelines completed by AP&P and the sentencing guidelines completed by the Board of Pardons and Parole be the same?**

In many situations, the sentencing guidelines completed by the Board of Pardons and Parole (Board) will not be the same as the sentencing guidelines completed by Adult Probation & Parole (AP&P) because they measure different things. AP&P guidelines are completed prior to sentencing and cannot include consecutive and concurrent calculations because the judge has not yet determined this. In contrast, Board sentencing guidelines are completed after sentencing and include calculations for consecutive and concurrent based on the judge's determination. In addition, AP&P sentencing guidelines include offenses before a specific judge on a specific sentencing date while the sentencing guidelines completed by the Board include all offenses for an individual that are committed to prison as part of a prison commitment. For example, if an individual has one case pending before a judge in Weber County, one case pending before a separate judge in Salt Lake County, and a third case pending before a third judge in Utah County, the individual would have three separate AP&P sentencing guidelines. However, if these three offenses were committed to prison, the individual would have one Board sentencing guideline that included the cases from Weber County, Salt Lake County, and Utah County.

## **11. If the Guidelines are not mandatory, how will they have an impact?**

After two 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.

## Addendum J: Glossary of Terms

**402 Reduction:** Reduction of degree of conviction generally by one or two degrees. See Utah Code 76-3-402.

**ACES:** Adverse Childhood Experiences, or ACEs, are potentially traumatic events that occur in childhood (0-17 years) such as experiencing violence, abuse, or neglect; witnessing violence in the home; and having a family member attempt or die by suicide. Also included are aspects of the child's environment that can undermine their sense of safety, stability, and bonding such as growing up in a household with substance misuse, mental health problems, or instability due to parental separation or incarceration of a parent, sibling or other member of the household. ACEs can have negative, lasting effects on health, wellbeing, education, employment, and earnings potential. See <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

**Adult Probation and Parole (AP&P):** Community-based supervision provided by a state agency for individuals on probation and/or parole.

**Adult Sentencing:** The punishment given to an individual after finding of guilt at trial or a plea agreement.

**Aggravating Circumstances:** Factors that increase the severity or culpability of a criminal act.

**Alternate Probation Providers:** County or private probation providers; not AP&P.

**Antisocial Associations:** Socializing with friends, family, and associates who have positive attitudes about crime and encourage criminal antisocial behavior.

**Antisocial Behavior:** Behavior that harms others, often with a lack of empathy for those harmed.

**Antisocial Cognition:** Attitudes, values and beliefs favorable towards crime.

**Antisocial Personality:** Impulsive, pleasure seeking behavior.

**Bias:** prejudice in favor or against a particular thing, person, or group compared with another, usually in a way considered to be unfair.

**Big Four (risk factors):** The four main factors that affect recidivism. They are: 1) History of Antisocial Behavior; 2) Antisocial Personality Pattern; 3) Antisocial Cognition; and 4) Antisocial Associates. See Addendum D.

**Board of Pardons and Parole (BOPP):** Part of the Executive Branch of the Utah Government. The Board may grant parole, remit fines, forfeitures, and restitution orders, commute punishments, and grant pardons after convictions, in all cases except treason and impeachments. See Utah Const. Art. VII Sec. 12.

**Board:** Often used as a short term for the Board of Pardons and Parole. See Board of Pardons and Parole.

**Case Action Plan (CAP):** A plan for inmates at the Utah State Prison, based on various assessments, that outlines an inmate's educational, program and treatment needs and to set goals for the inmate during his or her incarceration.

**Central Eight (risk factors):** The eight main factors that affect criminogenic risk. They include: 1) History of Antisocial Behavior; 2) Antisocial Personality Pattern; 3) Antisocial Cognition; 4) Antisocial Associates; 5) Family/Marital Circumstances; 6) School/Work Performance; 7) Leisure and Recreation; and 8) Substance Use. See Addendum D.

**Cognitive Behavioral Treatment/Therapy (CBT):** Behavioral treatment/therapy that focuses on addressing criminogenic risk factors (identified by the LS/RNR) and thought processes as well as skill practice in order to reduce risk.

**Cohabitant:** An individual is considered a cohabitant if they and the other party are a spouse, parent, grandparent, sibling, related by consanguinity or affinity to the second degree, has or had children together, is a biological parent to an unborn child, resides or has resided together, or is/was in a consensual sexual relationship together. Cohabitant does not mean parent, adoptive parent, or step-parent to a minor or natural, adoptive, step, or foster siblings who are under the age of 18.

**Community Accountability Board:** Models for improving outcomes for minor offenses through a victim/offender restorative model.

**Community Correctional Center (CCC):** Residences or "halfway" houses operated by the Utah Department of Corrections designed to help individuals who may not have a place to go upon release from prison.

**Community Service:** A restorative sanction intended to benefit the community that has been harmed by an individual's criminal conduct such as volunteering or working for a nonprofit organization without pay.

**Concurrent:** Two or more sentences that are served at the same time.

**Consecutive:** Two or more sentences that are served in sequence i.e. one after the other.

**Conviction:** A verdict or finding of guilty in a criminal court after a trial or plea.

**COP/Jail as a Condition of Probation/Jail as an Initial Condition of Probation:** A recommendation where a prison sentence is suspended and jail time and probation is imposed.

**Correctional Program Checklist (CPC):** A tool developed to assess correctional intervention programs, and is used to ascertain



how closely correctional programs meet known principles of effective intervention. See <https://www.uc.edu/content/dam/uc/gencounsel/docs/CPC%20Training%20MOU%2011.12.14.pdf>.

**County Probation:** Probation supervision provided by a county provider to individuals convicted of misdemeanor criminal offenses.

**Court Probation:** Monitoring by the court of an individual's compliance with conditions and court orders.

**Crime Category:** The category an individual is placed in based on degree of offense and type of crime.

**Crime-Free Gap:** Period of time in which an individual has committed a crime has gone without further criminal incidents.

**Crime of Commitment Dependent Violations:** One of the two ways that the Court or the Board can find a substantial public safety exception to the probation and parole violation caps or the Supervision Length Guidelines. Some behavior, like carrying a gun, is inherently, or per se, dangerous. Other behavior poses a substantial public safety risk because of its relation to the underlying offense or the crime of commitment. For example, an individual drinking alcohol is not a per se substantial public safety concern. However, a person drinking alcohol whose crime of commitment was driving under the influence could be considered a substantial public safety risk.

**Crime Severity:** The hierarchy of crimes, in terms of seriousness, based on offense level. See Addendum A.

**Criminal Conduct:** Illegal behaviors.

**Criminal History Score:** A standard frame of reference to reduce or enhance the severity of a sentence based on the prior criminal history and supervision history of the an individual. For example, there are eight risk and need ("The Central Eight") areas that need to be considered in order to improve outcomes for individuals who have committed a criminal offense. See Risk & Needs Assessments on page 48 for more information about The Central Eight. Contrastingly,

**Criminogenic:** Dealing with criminal activity. Often used to describe risk factors that are statistically linked with criminal activity. Example: "ACES scores (see ACES), are not statistically linked to a higher or lower probability of criminal activity. Therefore, an ACES score is not a criminogenic risk factor."

**Curfew:** A regulation specifying a time in which an individual on probation or parole must return and remain in their place of residence.

**Defendant:** An individual who has been accused of a crime, but has not been convicted.

**Department of Corrections (DOC):** State agency tasked with the responsibility of overseeing the individuals on AP&P probation as well as the incarceration of persons convicted of crimes.

**Departure:** Any sentence outside the guideline recommendation.

**Domestic Violence (DV):** A criminal offense (or attempt, conspiracy, or solicitation) involving violence or physical harm or threat of violence or physical harm when committed by one cohabitant against another.

**Drug Court:** A problem-solving specialty court that focuses on drug or alcohol substance disorders contributing to underlying criminal behavior.

**DUI:** Driving Under the Influence.

**Dynamic Risk Factors:** This refers to risk factors on a risk assessment that an individual can change by changing his or her behavior.

**Early Termination:** A graduated probation or parole incentive, that can only be granted by the court or Board of Pardons, wherein an individual's probation or parole term is ended early after meeting standards in three areas: 1) treatment; 2) risk reductions; and compliance and stability. See Supervision Length Guidelines.

**Felony:** Any violation of a criminal statute for which the maximum punishment the individual may be subjected to exceeds one year.

**Fine Reduction:** A graduated probation or parole incentive, which can only be granted by the court or Board of Pardons, wherein an individual's fine is reduced or forgiven in part due to successful completion of other probation or parole conditions.

**Full Version PSI:** Presentence investigative report for individuals convicted of felony offenses who are moderate- or high-risk individuals or any sex offense class A and higher regardless of risk level.

**GPS/EM/Electronic Monitoring:** A tracking device that is worn or carried 24-hours-a-day which allows monitoring and is used to help enforce imposed conditions.

**Graduated Incentives:** Structured, incremental responses used to encourage continued positive behavior for individuals on probation or parole.

**Graduated Responses and Sanctions:** Structured, incremental responses to non-compliant behavior while under probation or parole.

**Grievous Sexual Offenses:** means rape; rape of a child; object rape; object rape of a child; forcible sodomy; sodomy on a child; aggravated sexual abuse of a child; aggravated sexual assault; any felony attempt to commit one of the above offenses; or an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute one of the above offenses. See Utah Code § 76-1-601(8).



**Guideline:** A statement attempting to further structure decision-making relative to sentencing and release.

**Guilty but Mentally Ill/GMI:** This is a special type of guilty plea that indicates that the individual was found guilty of the crime but was mentally ill at the time and may still be mentally ill. Utah Code § 76-2-3 defines mentally ill as: “a mental disease or defect that substantially impairs [an individual’s] mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, intellectual disability.”

**Habitual Sex Offender:** An individual convicted of a sexual offense who has previously been convicted of a felony offense defined in statute.

**Incarceration Cap:** The maximum amount of time an individual can spend incarcerated for a given offense or violation.

**Intervention Assignment (Problem Solving Report/Thinking Report):** A report authored by an individual to help them identify the root causes of an issue and strategies to approach or avoid the problematic thoughts and behaviors. May include worksheets or tools to address specific risk/need factors identified through assessment and current behaviors. Carey BITS and Carey Guides are both examples of an intervention assignment. See <https://careygroupublishing.com/FAQ-About-the-Carey-Guides-and-BITS.pdf> for more information about Carey BITS and Guides.

**Jail:** A facility of confinement for pretrial holds or convictions under one year.

**Jessica’s Law:** The informal name given to Utah’s law, which increased the maximum penalty for rape of a child, object rape of a child, and sodomy on a child convictions.

**Jurisdiction:** The court or legal authority that has the ability to govern over a case based on offense level or location of the issue.

**Juvenile Adjudication:** Findings by a juvenile court that facts alleged in a juvenile petition are true after a trial or plea.

**Low-risk Memo:** Sentencing memorandum for class A misdemeanor low-risk individuals; excluding sex offenses.

**LS/RNR:** Level of Services/Risk Needs Responsivity. A risk assessment tool combined with a survey of needs used for development of a case action plan. (See Case Action Plan). Currently, the LS/RNR is the primary tool for general risk assessment in Utah.

**LSI:** Level of Service Inventory. A screening tool used to determine placement if incarcerated and used to determine if more robust assessments are needed.

**LSI:SV:** A risk/needs assessment tool encompassing seven key risk factors: criminal history, criminal attitudes, criminal associates, personal/emotional, employment, family and substance abuse.

**LSI-R:** Level of Service Inventory-Revised. See LSI.

**Matrix:** A grid of recommendations and starting points for sentencing for a typical case.

**Mental Health Court:** A problem-solving specialty court that focuses on mental health disorders contributing to underlying criminal behavior.

**MHS:** Mental Health Services.

**Minimum Sentences:** A classification of crimes where a prison sentence must be served and the sentencing authority may not suspend the sentence or lower the category of offense. The offenses are aggravated murder, murder, child kidnapping, aggravated kidnapping, rape – if the individual is sentenced under Utah Code § 76-5-402(3)(b), 3(c), or (4), rape of a child, object rape – if the individual is sentenced under Utah Code § 76-5-402.1(1)(b), (1)(c), or (2), object rape of a child, forcible sodomy – if the individual is sentenced under Utah Code § 76-5-403(3)(b), (3)(c), or (4), sodomy on a child, forcible sex abuse – if the individual is sentenced under § 76-5-404(2)(b) or (3), aggravated sex abuse of a child, aggravated sexual assault, or any attempt to commit rape of a child, object rape of a child, or sodomy on a child.

**Misdemeanor:** Any violation of a criminal statute for which the maximum punishment an individual may be subjected to is less than one year.

**Mitigating Circumstances:** Factors that decrease the severity or culpability of a criminal act.

**Offender:** An individual who has been convicted or has pleaded guilty to a crime. This is a disfavored term. Please consider “an individual who has committed a crime.”

**Other Crime:** A crime that does not fall into the category of murder, death, person or possession only crime to help determine the appropriate crime category column on the guidelines matrices. See Addendum B.

**Parole Violation Hearing:** A hearing, held by BOPP, after an individual is alleged to have violated the terms or conditions of the parole agreement.

**Parole:** State supervision for individuals who have been released to the community prior to the expiration of their prison sentences.

**Parolee:** An individual who was released from prison before the termination of their sentence and is supervised by the state. This is a disfavored term. Please consider “a person or individual on parole.”

**Peer Mentor:** An individual who has lived through a specific experience who then mentors an individual who is new to that experience.

**Per Se Violations:** An act that by itself that is a violation of probation or parole. In other words, no other proof is required to prove the violation other than the behavior itself. Examples include possessing a dangerous weapon, being involved in a high speed chase, no longer checking in with probation/parole officer.

**Person Crime:** Category of crime committed against a person such assault, sexual offenses, robbery, etc. which helps determine the appropriate crime category column on the guidelines matrices. See Addendum B.

**Plea Bargain/Plea Agreement/Plea Offer:** An agreement between a prosecutor and the defendant whereby the defendant pleads guilty and in exchange the prosecutor agrees to reduce the degree of charges, dismiss charges, recommend a particular sentence, or any combination of the three.

**Plea in Abeyance:** An agreement between an individual convicted of a crime and the court, after a plea of guilty or no contest, that a charge(s) will be dismissed upon successful completion of court orders.

**Poss (Possession):** The joint or individual ownership, control, control, occupancy, holding, retaining belonging, or maintaining a controlled substance.

**Possession Only Crime:** Offenses that consist solely of the possession of a controlled substance. See Addendum B.

**Presentence Investigation Report (PSI or PSR):** A report prepared for a judge, sentencing authority, or supervising authority that contains information about an individual convicted of a crime including personal history, criminal history, gang affiliation, and performance on any past probationary or parole periods, findings from any screenings and assessments, recommendations for treatment, as well as any victim impact statements and any recommendations regarding restitution.

**Presumption/Presumptive:** The assumption that an individual receive a given sentence based on their criminal history matrix.

**Prison:** A facility of confinement for periods over one year.

**Prisoner:** An individual who is currently incarcerated under the jurisdiction of the Utah Department of Corrections. This is a disfavored term. Please consider "person or individual in prison."

**Private Probation:** Probation supervision provided by a private service provider.

**Probation:** State, county, or private supervision for people who have had their prison or jail sentence suspended under certain conditions.

**Probationer:** This is a disfavored term. Please consider "a person or individual on probation." A person whose jail or prison sentence has been suspended and is instead being supervised by state, county, or private probation.

**Problem Solving Court:** A specialty court that provides court-supervised probation and mandated treatment in regards to identified issues that contribute to underlying criminal behavior.

**Property Crime:** Category of crime involving property such as theft, trespassing, vandalism, etc.

**Proportionality:** The idea that the punishment of a crime or probation/parole violation should be comparable to the severity of the crime. Or the idea that similar punishments should be imposed on individuals committing similar offenses.

Prosocial modeling: Showing, by example, how to engage in healthy and helpful behaviors.

**PV (Parole Violation or Probation Violation):** Non-compliance with a term or condition of an individual's probation or parole.

**Rescission Hearing:** A hearing, after BOPP has granted a future release date, for a review of that decision due to violations of prison regulations, new criminal convictions, or other issues.

**Response Magnitude:** The level of response given to behaviors, both positive and negative, to either reinforce or eliminate a specific behavior.

**Responsivity Factors:** This refers to factors that take into account an individual's strengths, learning style, personality, motivation, and bio-social characteristics to develop cognitive behavioral interventions. See Addendum E

**Revocation:** A decision by a judge to take someone off of probation and impose the originally suspended sentence, or a decision by the Board of Pardons to end parole and return an individual to prison.

**RIM:** Response/Incentive Matrix. This is a tool used by the Courts, the Board, and Adult Probation and Parole to determine an appropriate response to positive behavior while under supervision or a violation of probation or parole terms.

**Risk and Needs Assessment:** A risk assessment combined with an assessment of an individual's needs. These needs could include things like education, substance use treatment, and employment training.

**Risk Assessment:** A statistical tool used to estimate the probability that an individual will reoffend.

**Risk Avoidance Plan:** A plan authored by the individual, and approved by the agent, to assist the person in avoiding, confronting, and ultimately eliminating obstacles, hazards, triggers, and exposures that may negatively affect their success.

**Rule:** A regulation governing a court's or an agency's internal procedures.

**Screening:** A tool or short questionnaire designed to determine if an individual needs a more thorough assessment or additional resources or referrals to treatment.

**Sentencing Enhancements:** Allow - and sometimes require - a judge to increase an individual's sentence beyond the normal range.

**Sentencing Judge/Sentencing Authority:** The person or group with the power to sanction an individual convicted of a crime.

**Sex Offender in Cycle:** The offense cycle for sexual offending revolving around the interaction of the individual's thoughts, feelings, and behaviors.

**Short Version PSI:** A shorter version of the presentence investigation report for individuals convicted of felony offenses that are low-risk individuals or convicted of class A offenses and are moderate- or high-risk individuals.

**Specialty Court:** A problem-solving court that provides court-supervised probation and mandated treatment in regards to identified issues that contributes to underlying criminal behavior.

**Specific Third:** A special group of third degree felonies that receive special treatment in the guidelines because of the unique risks they pose for public safety. They are: DUI, Possession of a Firearm by a Restricted Person, and Failure to Stop at the Command of a Law Enforcement Officer. Most crimes fall into the general categories identified in Addendum B, but the specific thirds are enumerated in the top part of Form 1 and are treated in the same category as 2nd degree "other" crimes.

**Statute:** A law passed by the legislature.

**Structured Decision-Making Tool:** A decision making tool that utilizes a structured framework providing guidelines for professional decision makers to help them reach more consistent, transparent, and high-quality conditional release decisions by considering information demonstrated to be linked to post-release performance. Based on source: <https://nicic.gov/analysis-use-structured-decisionmaking-framework-three-states>, retrieved 7/6/2020.

**Structured Living:** A sober program that offers a monitored drug/alcohol free environment.

**Supervision History:** Past times of supervision including probation and parole.

**Suspended Sentence:** The delay of imposing a sentence so that an individual convicted of a crime may serve an alternative form of punishment or allowed a period to serve a probation period.

**TCUD:** A widely used instrument for identifying substance use problems.

**The Moderate Four (risk factors):** The four secondary factors that affect recidivism. They are: 1) Family/Marital Circumstances; 2) School/Work Performance; 3) Leisure and Recreation; and 4) Substance Use. See Addendum D.

**Treatment Resource Center:** Centers which provide treatment and resources to support the long-term success of those under probation supervision.

**Urinalysis (UA or UAs):** A test of an individual's urine to detect the use of alcohol and/or drugs.

**Validated Risk Assessment:** Validated risk assessments are tools, used to identify criminogenic risk factors that are checked against actual results to determine the statistical accuracy of the tool.

**Veterans Court:** A specialty court designed to handle criminal cases involving defendants who have a history of military service.

**Voucher:** A gift certificate or voucher for goods or services at designated locations.

**Walkaway:** An individual who is on probation or parole and has stopped checking in with the supervising authority.

**Warrant:** A document issued by a court or authorized government official authorizing the police or someone to make an arrest, search premises, or carry out some action related to the administration of justice.

## Addendum K: References

- Baradaran, Shima. "Race, Prediction, and Discretion." *George Washington Law Review* 81, no. 1 (January 2013): 157-222. [www.gwlr.org/wp-content/uploads/2013/01/Baradaran\\_81\\_1.pdf](http://www.gwlr.org/wp-content/uploads/2013/01/Baradaran_81_1.pdf)
- Durose, Matthew R., Alexia D. Cooper, Howard N. Snyder. "Recidivism of Prisoners Released In 30 States In 2005: Patterns From 2005 To 2010 – Update," *Bureau of Justice Statistics*. (April 2014). <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>
- Durrant, Matthew B. "State of the Judiciary Address." Chief Justice, Utah Supreme Court. 2014. [http://digitallibrary.utah.gov/awweb/guest.jsp?smd=1&cl=all\\_lib&lb\\_document\\_id=68277](http://digitallibrary.utah.gov/awweb/guest.jsp?smd=1&cl=all_lib&lb_document_id=68277)
- Flores, Anthony W., Christopher T. Lowenkamp, and Kristin Bechtel. "False Positives, False Negatives, and False Analyses: A Rejoinder to 'Machine Bias: There's Software Used Across the Country to Predict Future Criminals. And it's Biased Against Blacks.'" Community Resources for Justice: Crime & Justice Institute. July 11, 2016 <http://www.crj.org/page/-/publications/rejoinder7.11.pdf>
- Frase, Richard S., Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell. "Criminal History Enhancements Sourcebook." University of Minnesota, Robina Institute of Criminal Law & Criminal Justice. May 1, 2016 <http://robinainstitute.umn.edu/publications/criminal-history-enhancements-sourcebook>
- Gendreau, Paul, Claire Goggin, and Francis Cullen. "The Effects of Prison Sentences on Recidivism." Report to the Solicitor General of Canada. 2009. <http://www.prisonpolicy.org/scans/e199912.htm>
- Hickert, Audrey O., Kort C. Prince, Erin B. Worwood, and Robert P. Buttar. "Development of Utah's Incentive and Response Matrix." Utah Criminal Justice Center, University of Utah. 2014. [https://socialwork.utah.edu/\\_resources/documents/ViolMatrix\\_Yr1Report\\_Final1.pdf](https://socialwork.utah.edu/_resources/documents/ViolMatrix_Yr1Report_Final1.pdf)
- Latessa, E.J. and C.T. Lowenkamp. "What Works in Reducing Recidivism?" *University of St. Thomas Law Journal* 3:3 (2006): 521-535. [http://www.uc.edu/content/dam/uc/ccjr/docs/articles/What\\_Works\\_STLJ.pdf](http://www.uc.edu/content/dam/uc/ccjr/docs/articles/What_Works_STLJ.pdf)
- Marlowe, Douglas B. "Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs." Policy and Law, *National Association of Drug Court Professionals* 1, no. 1 (2009), 173-175. <https://heinonline.org/HOL/P?h=hein.journals/chapjc1&i=187>
- Nagin, Daniel S., Francis T. Cullen, and Cheryl Lero Jonson, "Imprisonment and Reoffending," *Crime and Justice* 38 (2009): 115-200.
- Nagy, Geraldine, and Roger K. Warren. "Evidence-Based Sentencing to Reduce Recidivism and Hold Offenders Accountable." Presentation by National Center for State Courts at Smarter Sentencing Conference, Utah Administrative Office of the Courts, Salt Lake City, UT. 2014.
- Center for Sentencing Initiatives. "Evidence-Based Sentencing. Fact Sheet." National Center for State Courts. Williamsburg, VA. 2014. [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/25290/eps-fact-sheet-8-27-14.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/25290/eps-fact-sheet-8-27-14.pdf)
- Office of the Legislative Auditor General, State of Utah, "A Performance Audit of the Board of Pardons and Parole." 2016. [https://le.utah.gov/audit/16\\_01rpt.pdf](https://le.utah.gov/audit/16_01rpt.pdf)
- Office of the Legislative Auditor General, State of Utah, "A Performance Audit of the Division of Adult Probation and Parole." 2013. [http://le.utah.gov/audit/13\\_08rpt.pdf](http://le.utah.gov/audit/13_08rpt.pdf)
- Petrosino Anthony, Carolyn Turpin-Petrosino, James O. Finckenauer. "Wellmeaning programs can have harmful effects!: Lessons

from experiments in Scared Straight and other like programs." *Crime & Delinquency* 46 (2000): 354 - 379. <http://www.d.umn.edu/~jmaahs/Correctional%20Assessment/Articles/petrosino.pdf>

Pew Charitable Trusts, "Factors Contributing to the Crime Decline." September 2014. <http://www.pewtrusts.org/en/about/newsroom/news/2014/09/11/factors-contributing-to-the-crime-decline>

Roeder, Oliver, Lauren-Brooke Eisen, and Julia Bowling. "What Caused the Crime Decline." New York University School of Law, Brennan Center for Justice, 2015. <https://www.brennancenter.org/publication/what-caused-crime-decline>

Roth, David. "A Judge's View of Procedural Fairness." *Utah State Bar Journal* 28, No. 1 (Jan-Feb 2015): 12-13. [https://www.utahbar.org/wp-content/uploads/2017/11/2015\\_edition\\_01\\_jan\\_feb.pdf](https://www.utahbar.org/wp-content/uploads/2017/11/2015_edition_01_jan_feb.pdf)

Spohn, Cassia and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders," *Criminology*, 40 (2002): 329–358.

Starr, Sonja B. "Evidence-Based Sentencing and Scientific Rationalization of Discrimination." Law and Economics Working Papers: Paper 90, 2014. [http://repository.law.umich.edu/law\\_econ\\_current/90](http://repository.law.umich.edu/law_econ_current/90)

Tanana, M.J., S. Wilson, M. Prospero, and R. Van Vleet. "Utah Sentence Inflation." Utah Criminal Justice Center, University of Utah, 2008. [https://socialwork.utah.edu/\\_resources/documents/961.pdf](https://socialwork.utah.edu/_resources/documents/961.pdf)

United States Sentencing Commission. "Recidivism Among Federal Offenders: A Comprehensive Overview." (2016) [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf)

Utah Commission on Criminal and Juvenile Justice. "Justice Reinvestment Report." (2014) [http://justice.utah.gov/Documents/CCJJ/Reports/Justice\\_Reinvestment\\_Report\\_2014.pdf](http://justice.utah.gov/Documents/CCJJ/Reports/Justice_Reinvestment_Report_2014.pdf)

Villetaz, Patrice, Martin Killias, and Isabel Zoder (2006). "The effects of custodial vs. non-custodial sentences on re-offending: A systematic review of the state of knowledge." *Campbell Systematic Reviews* 13 (2006). [https://publikationen.uni-tuebingen.de/xmlui/bitstream/handle/10900/64636/Killias\\_Sentencing\\_review%20corrected.pdf?sequence=1&isAllowed=y](https://publikationen.uni-tuebingen.de/xmlui/bitstream/handle/10900/64636/Killias_Sentencing_review%20corrected.pdf?sequence=1&isAllowed=y)

White, J.M., et. al. "The Meta-Analysis of Clinical Judgment Project: Fifty-Six Years of Accumulated Research on Clinical Versus Statistical Prediction." *The Counseling Psychologist* 34, No. 3 (2006): 341-382. <http://tcp.sagepub.com/content/34/3/341>