DRAFT ADULT SENTENCING GUIDELINE REVISIONS FOR PUBLIC COMMENT

The following are the suggested revisions to the Adult Sentencing Guidelines approved for public comment by the Sentencing Commission on August 21, 2019. The public's input is vital to the improvement of the Sentencing Guidelines and Utah's criminal justice system as a whole.

Please note that the Adult Sentencing Guidelines will be undergoing a total redesign this year to improve usability and clarity. As a result, any comments on the visual aspects of the guidelines would be greatly appreciated in addition to any comments on the actual content.

Changes from the 2017 guidelines are highlighted in yellow. Please read this document carefully and submit your feedback to Marshall Thompson at marshallthompson@utah.gov. The public comment period will close on **Sep. 28, 2019**.

STATE OF UTAH

UTAH SENTENCING COMMISSION

2019
Adult Sentencing & Release Guidelines

2019
Adult Sentencing & Release Guidelines

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

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I. 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 Ann. § 63M-7-404 with developing guidelines and recommendations to all three branches of government regarding the sentencing and release of juvenile and adult offenders 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 offender'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 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 offender's compliance with probation or parole conditions and positive conduct exceeding those terms.

II. PHILOSOPHY STATEMENT

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.

The following diagram 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.

[Graphic removed for formatting]
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. The following diagram 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.
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III. STATEMENT OF PURPOSE

Utah law provides the basis for the sentencing and release of criminal offenders. 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 offender. 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 offender 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.

IV. 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 offender. 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 offenders 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 offender's individual 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 offenders 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 offender, 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 offender'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 offenders for whom risk reduction programming and/or interventions are unnecessary. Supervision and treatment resources should be prioritized for high and moderate risk level offenders, as an offender identified as low risk and low need has no criminogenic risks and needs which can be targeted for reduction. Including low risk and low need offenders in programming with higher risk offenders not only is an inefficient use of limited resources, but can have the unintended consequence of increasing an offender's criminal 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 offender upon release. Incarceration itself may actually increase criminal risk factors, thereby contributing to recidivism rates for lower-risk offenders. To the extent possible, low-risk offenders 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 offender, 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 offender may be insufficient to sustain self-sufficiency and repay restitution.

Sentencing, as well as enforcement of supervision conditions, should consider whether an offender is capable of meeting all of the conditions imposed immediately; or whether prioritization of short-term (proximal) and long-term (distal) 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 offender 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 offender. 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 offender 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 offender 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 offender 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 offender 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:

[Graphic removed for formatting]

Area Under the Curve

		Area
Criterion Grouping	One Timer	.704
	Intermittent	.629
	Continual	.813

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 offender is classified as a potential recidivist, but does not commit a new crime. 2) Type II errors, or false negatives, occur when an offender is not classified as a potential recidivist, but does commit a new crime.

If an offender's risk level is over-estimated and a lower risk offender is included with higher risk offenders in programming, the lower risk offender 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 offender, whether to assign an offender 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 offenders 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 offender 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 offender 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 offender 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 offender 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 offender 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 offender recidivism.

"Needs" evaluates the specific type and level of intervention necessary to improve the likelihood of offender success. "Responsivity" considers individual offender 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 offender population will likely not work with an offender, for example, suffering from a severe mental health disorder.

The 3rd generation assessment tools primarily evaluated an offender'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.

List them 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 offenders presenting with substance use disorders, mental health disorders, and sex offenders.

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.

V. 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.

VI. 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 offender 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

Presentence investigations by AP&P should be conducted on offenders convicted of a felony level offense or Class A offense and identified as moderate or higher 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 offender identified as low risk does not warrant a full validated risk and needs assessment, either by AP&P or another supervising agency, as supervision services should generally not be targeted towards low risk offenders.

The Department of Corrections determines supervision and presentence investigation standards pursuant to Utah Code Section 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. The three official versions include:

1. ***Full-version:*** felony offenses for moderate or higher risk offenders; all sex offenses class A and higher regardless of risk level; applicable guideline forms

2. ***Short-version:*** felony offenses for low risk offenders; class A offenses for moderate or higher risk offenders; applicable guideline forms

3. ***Low-risk memo:*** class A offenses for low risk offenders; excluding sex offenses; guideline forms NOT included

All offenders who are identified as moderate or high risk to reoffend on a validated screening tool should receive more comprehensive assessment(s). If a validated screening tool has identified 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 Ann. § 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 offender in accordance with Utah Code Ann. § 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 offender'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 offenders 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 requires an updated guidelines form to be completed on each offender 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 offender and made available to the public at www.bop.utah.gov. The Board of Pardons and Parole 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 Judgement and Commitment(s) 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, the offense is added to the original sentencing guideline for that prison commitment. The sentencing guideline is then recalculated with the new offense, adjusting as necessary for the longest sentence and for concurrent or consecutive sentences. This does not restart the prison start date.

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 offender, 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 Ann. § 77-18-1 (2)(b)(iv) and (c) pursuant to House Bill 3004 of the 2016 Third Special Session of the Utah Legislature.

Utah Sentencing & Release Guidelines 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/.

Under the direction of the Utah Sentencing Commission, the 2017 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 adult criminal offenders. The dominant underlying philosophy of the guidelines is that criminal sentences should be proportionate to the seriousness of the offense for which the offender 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 offender 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.

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 sex offenders, Utah Code Ann. § 76-3-407, or gang enhancements, Utah Code Ann. §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 offender. 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.

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, 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 Ann. § 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 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 Ann. § 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 offender 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 offender was in a Problem-Solving Court when the offense resulted in actual removal from the Problem-Solving Court.
- "Prior Revocation" includes reinstatement of probation from the courts or a revocation of parole from the Board of Pardons and Parole.
- 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 § 76-10-500 et seq.

- "Homicide Offenses" include offenses specifically designated in § 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 Ann. § 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 sentencing or other case resolution/disposition as substantiated by an actual conviction.

- 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 § 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 offender 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 offenders convicted of murder (Utah Code Ann. § 76-3-406). Thus, the guidelines indicate a mandatory imprisonment sentence for murder, regardless of the criminal history row. Murder, Utah Code Ann. § 76-5-203, is the only offense considered in crime category A. Aggravated murder (Utah Code Ann. § 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 offender is imprisoned at the Utah State Prison. These times apply only if the offender is sentenced to prison and do not apply if the offender 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 Ann. § 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 Ann. § 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 Ann. § 76-3-401(3).

If multiple convictions are ordered to run concurrently, the guidelines add 10% of the recommended length of stay of the shorter sentence to the full recommended length of the longer sentence. For example, consider an offender 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.

For another example, consider an offender convicted of robbery and sentenced to prison with a guidelines recommendation of 48 months. The offender is paroled after 36 months and, while on parole, commits aggravated burglary and is sentenced to prison with a guidelines recommendation of nine years. If the judge orders the sentences to run consecutively, the new guidelines recommended sentence is 9 years, 5 months (40% of 12 mos (which is the time remaining on the original sentence)

= 4.8 mos + nine years = approximately 9 years, 5 months).

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 offender 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 Ann. § 76-3-401.

Sex & Kidnap Offenses Instructions – Form 3

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

- offenses that require registration under Utah Code Ann. § 77-41-106 (except kidnapping, 76-5-301);
- aggravated kidnapping, § 76-5-302;
- 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(3).

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 offenders. One additional category exists on the Criminal History Scoring for sex offenders: 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 offenders 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 offender matrix. This provides the Board of Pardons and Parole with more discretion concerning sex offenders.

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 Ann. § 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 § 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 UCA § 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 Offender Matrix.

A conviction for an Attempt to Commit § 76-4-102 or Solicitation to Commit § 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.

<u>Jail as a Condition of Felony Probation Matrix Instructions – Form 4</u>

If the recommendation resulting from **Form 1, 2 or 3**, is to suspend the prison sentence, **Form 4**, **Jail as a Condition of Felony Probation Matrix**, should then be used. **Form 4** 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.

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.**

Dark shaded cells – Form 4: If an offender falls into one of the dark shaded 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 offender 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.

Unshaded cells: Unshaded cells are considered "Presumptive Probation" cells. If an offender falls into one of the unshaded 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 offender 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 offenders. 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 felony and misdemeanor offenders 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 plead 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 avoided or used only with great caution. They include:

(1) Factors that have already been considered in a risk assessment, if available. This could result in an unintentional double counting.

(2) Factors that reflect socio-economic status more than risk. A person'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 person's sentence.

(3) Factors dealing specifically with sex offenses that do not have a statistical correlation with increased risk to reoffend. These potentially misleading factors could include:
Neglect or abuse during childhood (does not indicate a higher risk to reoffend, but could be a mitigating factor)
Sexual abuse during childhood (does not indicate a higher risk to reoffend, but could be a mitigating factor)
Lack of victim empathy
Denial of sexual crime
Low motivation for treatment at intake
Poor progress in treatment[1]

Aggravating and mitigating factors also present an opportunity to address disparities that exist in the criminal justice system. While no one group is responsible for introducing prejudice and bias into the system, the cumulative effect of unconscious bias can be measured at the sentencing stage. Therefore, under certain circumstances, racial, ethnic, or other unconscious biases in the criminal justice system can be a mitigating factor at sentencing. To successfully argue disparate impact as a mitigating factor, a person must convince the Court that two conditions have been met:

(1) The the offender is part of an identifiable group that is overrepresented in Utah's prison, jail, or probation populations compared to Utah's demographics; AND
(2) There is some reason to believe that bias in the criminal justice system, whether conscious or unconscious, has negatively impacted the offender in the current case.

It is unnecessary and and will often be unhelpful to attempt to prove that one group or another within the criminal justice system

[1] *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.

is overtly and intentionally biased. Absent extraordinary events, all bias should be presumed to be unconscious. In any event, unconscious bias can be just as damaging to the integrity of the criminal justice system as conscious bias and should be treated with the same seriousness.

Presentence Report Recommendations

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

Days of Jail Credit
Time incarcerated under the following circumstances should be 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 while an offender, prior to commitment to prison, is under a civil commitment order or other similar order to remain in the facility; (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. Utah Admin. R671-205-1. ~~No credit is given for time spent in custody at the Utah State Hospital or comparable non-prison psychiatric facility while the offender is judicially declared incompetent.~~

- **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.

FORM 1 – GENERAL MATRIX

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.

PRIOR FELONY CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 2 ONE
- 4 TWO
- 6 THREE
- 8 FOUR+

PRIOR PERSON OR FIREARM CONVICTIONS (ADULT OR JUVENILE)
- 2 MISD. PERSON OFFENSE (AD.B)
- 2 FEL. FIREARM OFFENSE (76-10-5)
- 4 FELONY PERSON OFFENSE (AD.B)
- 6 HOMICIDE OFFENSE (76-5-2)

PRIOR CLASS A MISDEMEANOR CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 1 ONE OR TWO
- 2 THREE - FIVE
- 3 SIX

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 - FOUR
- 3 FIVE+

SUPERVISION HISTORY (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 (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 3+ YEARS
- -2 5+ YEARS
- -3 7+ YEARS
- -4 10+ YEARS

TOTAL SCORE: _____

OFFENDER'S NAME:	**SCORER'S NAME:**	**DATE SCORED:**	**CRIMINAL HISTORY ROW**	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	**CRIME CATEGORY:**	**TIME:**	**V**	**16+**
			IV	**12 – 15**
			III	**8 – 11**
			II	**4 – 7**
		TOTAL:	**I**	**0 – 3**

CRIME CATEGORY

CRIMINAL HISTORY

	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
V	120 MOS	84 MOS	54 MOS	32 MOS	26 MOS	16 MOS	12 MOS
		IMPRISONMENT					
IV	108 MOS	78 MOS	42 MOS	26 MOS	20 MOS	14 MOS	10 MOS
III	96 MOS	72 MOS	30 MOS	20 MOS	16 MOS	12 MOS	8 MOS
			JAIL AS INITIAL CONDITION OF PROB.				
II	84 MOS	66 MOS	24 MOS	16 MOS	14 MOS	10 MOS	6 MOS
I	72 MOS	60 MOS	18 MOS	14 MOS	12 MOS	8 MOS	4 MOS
				PRESUMPTIVE PROBATION			

* 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: 40% of the shorter sentence added to the full length of the longer sentence. (*See* page 40)

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

FORM 2 – CRIMINAL HOMICIDE MATRIX

CRIMINAL HISTORY SCORING

These are guidelines only. They do not create any right or expectation on behalf of the offender. 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.
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.

PRIOR FELONY CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 2 ONE
- 4 TWO
- 6 THREE
- 8 FOUR+

PRIOR PERSON OR FIREARM CONVICTIONS (ADULT OR JUVENILE)
- 2 MISD. PERSON OFFENSE (AD.B)
- 2 FEL. FIREARM OFFENSE (76-10-5)
- 4 FELONY PERSON OFFENSE (AD.B)
- 6 HOMICIDE OFFENSE (76-5-2)

PRIOR CLASS A MISDEMEANOR CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 1 ONE OR TWO
- 2 THREE - FIVE
- 3 SIX

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 - FOUR
- 3 FIVE+

SUPERVISION HISTORY (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 (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 3+ YEARS
- -2 5+ YEARS
- -3 7+ YEARS
- -4 10+ YEARS

TOTAL SCORE: _____

OFFENDER'S NAME:	**SCORER'S NAME:**	**DATE SCORED:**	**CRIMINAL HISTORY ROW**	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	**CRIME CATEGORY:**	**TIME:**	**V**	**16+**
PRESUMPTIVE PROBATION			**IV**	**12 – 15**
			III	**8 – 11**
			II	**4 – 7**
		TOTAL:	**I**	**0 – 3**

CRIME CATEGORY

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

MANDATORY IMPRISONMENT

IMPRISONMENT

JAIL AS COND

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

FORM 3 – SEX & KIDNAP OFFENDER MATRIX

CRIMINAL HISTORY SCORING

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

PRIOR FELONY CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 2 ONE
- 4 TWO
- 6 THREE
- 8 FOUR+

PRIOR CLASS A MISDEMEANOR CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 1 ONE OR TWO
- 2 THREE - FIVE
- 3 SIX

SUPERVISION HISTORY (ADULT ONLY – FEDERAL, AP&P, PRIVATE, COUNTY, PROBLEM SOLVING COURT REMOVAL*)
- 2 PRIOR REVOCATION
- 3 CURRENT OFFENSE ON SUPERVISION

DEGREE OF PRIOR SEX/KIDNAP CONVICTION (OFFENSES LISTED IN ADDENDUM C)
- 2 MISD. OR 3RD DEGREE
- 4 1ST OR 2ND DEGREE

PRIOR PERSON OR FIREARM CONVICTIONS (ADULT OR JUVENILE)
- 2 MISD. PERSON OFFENSE (AD B)
- 2 FEL. FIREARM OFFENSE (76-10-5)
- 4 FELONY PERSON OFFENSE (AD.B)
- 6 HOMICIDE OFFENSE (76-5-2)

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 - FOUR
- 3 FIVE+

MOST RECENT POST-CONVICTION CRIME FREE GAP COUNT FROM DATE OF SENTENCING (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 3+ YEARS
- -2 5+ YEARS
- -3 7+ YEARS
- -4 10+ YEARS

TOTAL SCORE: _____

OFFENDER'S NAME:	SCORER'S NAME:	DATE SCORED:	CRIMINAL HISTORY ROW	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	CRIME CATEGORY:	TIME: TOTAL:	III II I	7+ 4 – 6 0 – 3

CRIME CATEGORY

CRIMINAL HISTORY	1st Degree Mand. Prison (15+) A	1st Degree Mand. Prison (10+) B	1st Degree Mand. Prison (6+) C	1st Degree Mand. Prison (5+) D	1st Degree Mand. Prison (3+) E	1st Degree (5+) F	1st Degree (3+) G	2nd Degree (1-15) H	3rd Degree (0-5) I	Class A Misd. (0-1) J
III	252 MOS	168 MOS	100 MOS	75 MOS	75 MOS	75 MOS	75 MOS	64 MOS	42 MOS	12 MOS
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

MANDATORY IMPRISONMENT

IMPRISONMENT

JAIL AS INITIAL C.O.P

* 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: 40% of the shorter sentence added to the full length of the longer sentence. (*See* page 40)

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

FORM 4 – JAIL AS INITIAL CONDITION OF FELONY PROBATION MATRICES

Numbers in unshaded 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.

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)
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)	**45** (0-90)
II	**180** (0-365)	**135** (0-270)	**120** (0-240)	**120** (0-240)	**120** (0-240)	**75** (0-150)	**60** (0-120)	**60** (0-120)	**45** (0-90)	**30** (0-60)
I	**180** (0-365)	**120** (0-240)	**105** (0-210)	**105** (0-210)	**105** (0-210)	**60** (0-120)	**45** (0-90)	**30** (0-60)	**30** (0-60)	**15** (0-30)

JAIL DAYS

PRESUMPTIVE PROBATION

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)

Rev. 10/2016

* The 2017 revisions to the Adult Sentencing and Release Guidelines were not intended to alter Form 4 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 4. 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 4 according to Addendum B.

FORM 5 – MISDEMEANOR MATRIX

CRIMINAL HISTORY SCORING

These are guidelines only. They do not create any right or expectation on behalf of the offender. 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. 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.

PRIOR FELONY CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 2 ONE
- 4 TWO
- 6 THREE
- 8 FOUR+

PRIOR PERSON OR FIREARM CONVICTIONS (ADULT OR JUVENILE)
- 2 MISD. PERSON OFFENSE (AD.B)
- 2 FEL. FIREARM OFFENSE (76-10-5)
- 4 FELONY PERSON OFFENSE (AD.B)
- 6 HOMICIDE OFFENSE (76-5-2)

PRIOR CLASS A MISDEMEANOR CONVICTIONS (SEPARATE ADULT CASE NUMBERS)
- 1 ONE OR TWO
- 2 THREE - FIVE
- 3 SIX

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 - FOUR
- 3 FIVE+

SUPERVISION HISTORY (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 (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 3+ YEARS
- -2 5+ YEARS
- -3 7+ YEARS
- -4 10+ YEARS

TOTAL SCORE: _____

OFFENDER'S NAME:	**SCORER'S NAME:**	**DATE SCORED:**	**CRIMINAL HISTORY ROW**	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	**CRIME CATEGORY:**	**TIME:**	**V**	**16+**
			IV	**12 – 15**
			III	**8 – 11**
			II	**4 – 7**
		TOTAL:	**I**	**0 – 3**

CRIME CATEGORY

CRIMINAL HISTORY

	Class A Person A	Class B Person B	Class A Other C	Class B DV Other D	Class A POCS E	Class B F	Class C and Below G
V	**105** (0-210)	**90** (0-180)	**75** (0-150)	**60** (0-120)	**45** (0-90)	**30** (0-60)	**15** (0-30)
IV	**90** (0-180)	**75** (0-150)	**60** (0-120)	**45** (0-90)	**37** (0-75)	**22** (0-45)	**15** (0-30)
III	**75** (0-150)	**60** (0-120)	**45** (0-90)	**37** (0-75)	**22** (0-45)	**15** (0-30)	**0** (0-15)
II	**60** (0-120)	**45** (0-90)	**30** (0-60)	**22** (0-45)	**15** (0-30)	**0** (0-15)	**0** (0-7)
I	**45** (0-90)	**30** (0-60)	**15** (0-30)	**15** (0-30)	**0** (0-15)	**0** (0-15)	**0** (0-7)

JAIL DAYS

PRESUMPTIVE PROBATION

* 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: 40% of the shorter sentence added to the full length of the longer sentence. (*See* page 40)

Concurrent Enhancements: 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. 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. Please see page [page number omitted until formatting is complete] for more information on aggravating and mitigating circumstances.

Aggravating Circumstances

PSI Page #

_____1. Offense caused substantial monetary loss.
_____2. Offense caused substantial physical or psychological injury to the victim.
_____3. Offense characterized by extreme cruelty or depravity.
_____4. Offense involved two or more victims.
_____5. Offense involved activity that continued over a significant period of time.
_____6. Other (Specify)_____

Mitigating Circumstances

_____1. Offender has engaged in the voluntary screening process in the county jail (LSI:SV, TCUD & MHS).
_____2. Offender has paid restitution and/or made good faith effort to begin repayment of restitution to the victim.
_____3. Offender has demonstrated compliance with all pre-trial conditions.
_____4. Offender is engaged in community-based supervision and/or treatment services consistent with a validated risk and needs assessment.
_____5. Offender's current living environment is stable and supportive of offense-specific interventions that do not enable continued criminal or unlawful conduct.
_____6. Other (Specify)_____

Days of Jail Credit _____

Guidelines Placement Recommendation_____

AP&P Recommendations_____

Reason for Departure_____

OFFENDER NAME:_____

SCORER NAME: _____

DATE SCORED:_____

Rev. 6/2019

Structured Decision-Making Tools 1 through 6 Instructions

- **Tool 1 - Supervision & Treatment Levels Framework**
- **Tool 2 - Decision-Making Authority Matrix**
- **Tool 2A – Supervision Accomplishments Table**
- **Tool 2B – Supervision Violations Table**
- **Tool 3 - Response Magnitude/ Proportionality Decision-Tree**
- **Tool 4 - Graduated Incentives**
- **Tool 5 - Graduated Responses & Sanctions**
- **Tool 6 – Exceptions to Incarceration Caps**

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** generally describes *who* supervision and treatment resources should target.
- **Tool 2** generally describes *who should respond* to both accomplishments and violations while on supervision.
- **Tool 2A & Tool 2B** describe *what* conduct is considered an accomplishment or violation while on supervision and a ranking by the nature of the conduct.
- **Tool 3** is a step by step sequence to determine *the magnitude* of the accomplishment or violation is for the individual offender.
- **Tool 4 & Tool 5** describe *what* incentives, responses and sanctions are available.
- **Tool 6** describes exceptions to the incarceration caps (previously included as bullet points on Form 10).

Tool 1 – Supervision & Treatment Levels Framework 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 offender, **Tool 1** provides a visual representation of an entire row of the identified dynamic and responsivity factors of an individual offender 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 offenders. **Tool 1** also recommends "criminogenic" treatment services for moderate and high risk level offenders. The LS/RNR utilized by the Department of Corrections may provide a separate graph and/or numerical calculation of risk, need, and responsivity 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.

If an offender is placed on supervised probation or parole, **Tool 2 - Decision-Making Authority Matrix** designates the appropriate responding entity dependent upon the risk level of the offender and the severity of the violation.

"Offender 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 violations 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**.

Once the appropriate entity for responding to the behavior is determined from **Tool 2**, **Tool 3 – Response Magnitude/ Proportionality Decision-Tree** 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 offender.

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. "Offender 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. "Offender 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 offender's short (proximal) and long-term (distal) 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" 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 page 6 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 offender.

Tool 4 - Graduated Incentives and **Tool 5 - Graduated Responses & Sanctions** 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 offender.

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 in 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 a probationer or parolee into the county jail should clearly designate whether the offender is being booked on a "hold" or a "sanction" and include supporting documentation. Specifically, if an offender 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 has been 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 targetted 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 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 probationer's compliance with conditions." "Supervised probation services provided by the department, an agency of local government, or a private organization shall specifically address the offender'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									

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TOOL 2 - DECISION-MAKING AUTHORITY MATRIX

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

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Offender 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	**Reduction of Criminal Risk Factors**
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	**Evidence-Based Programming Targets**
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	**Accountability Targets**
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 for30 days	Low	
Compliance with Community Service	Low	
Compliance with Financial Conditions	Low	
Being Truthful or Cooperative	Low	

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TOOL 2B - Supervision Violations Table

Violation	Severity	Nature of Violation
Felony Person Crime Conduct (see Addendum B)	High	Public Safety Conditions Violations
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	Risk Reduction Conditions Violations
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	Accountability Conditions Violations
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	

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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 proximal and distal 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. Proximal goals are short term goals which an offender can reasonably be expected to achieve in the immediate future. Distal goals are long term goals which an offender 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 page 6 for further explanation regarding the principle of proportionality and why a moderate response is generally presumed.

Behavior	**Offender Risk** High & Moderate = High Low = Low	**Offender Need** High & 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
Accomplishment/ Compliance	High	High	Proximal	Lower Incentive
			Distal	Higher Incentive
		Low	No Distinction	Moderate
	Low	High	Proximal	Lower Incentive
			Distal	Higher Incentive
		Low	None	None*
Violation	High	High	Proximal	Higher Sanction
			Distal	Lower Sanction
		Low	No Distinction	Moderate
	Low	High	Proximal	Higher Sanction
			Distal	Lower Sanction
		Low	None	None*
⇧ ***What is the nature of the behavior?***	⇧ ***How likely were they to reoffend?***	⇧ ***How high are their criminogenic needs?***	⇧ ***Does the behavior relate to short or long term goals?***	⇧ ***What magnitude of response should be imposed?***

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

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TOOL 4 – GRADUATED INCENTIVES

These are guidelines only. They do not create any right or expectation on behalf of the offender. 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.

Court/BOPP	402 Reduction Early Termination Fine Reduction Transfer to Court/Lower Probation Any Lower Level Incentive
P.O. with Supervisor Approval	Up to 50% Community Service Reduction $$ Voucher Recommend Fine Reduction Approval to Serve as Peer Mentor Reduce Substance/Alc. Screening Any Lower Level Incentive
Probation/Parole Officer Incentives	Up to 30% Community Service Reduction Eliminate Curfew Accomplishment Certificate $ Voucher $ Awards Reduce Curfew Length Redeem 5 Success Chips Public Recognition Positive Reports 2 Success Chips 1 Success Chip Written Recognition Verbal Recognition

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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 the offender. 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. 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 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**
3rd & Subseq. Revocation	**45** (0-90)	**90** (0-180)
2nd Revocation	**30** (0-60)	**60** (0-120)
1st Revocation	**15** (0-30)	**30** (0-60)

P.O. with Superv. & Court / BOPP Approval	Hearing Before Court/BOPP (Maximum of 5 days/30 Days) Community Correctional Center 1-3 Days Jail Per Sanction 90+ Days GPS/EM or at offender cost
P.O. with Supervisor Approval	Any Lower Level Response Request Court/BOPP Sanction <90 day Curfew <90 Day GPS/EM or no offender cost <72 Hours Home Restriction Treatment Resource Center <16 Hours Community Service
Probation/Parole Officer Sanctions & Responses	Up to 60 Day Curfew Travel Restriction Structured Living Increased Supervision Require Change in Residence Revision of Case Action Plan Increased Reporting/Testing Community Accountability Board Workshops Assignments Family Meeting Problem Solving Report Mentoring Program Develop Risk Avoidance Plan Letter of Apology Thinking Report Verbal Warning

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	
1	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 offender in cycle, repeat DUI violations, person crime absconder, mental health instability that negatively impacts a criminogenic risk factor, repeat domestic violence offender, serious financial crimes.		**1**
2	Jurisdiction over new criminal conviction with new guideline recommendations from Forms 1-3 attached.		**2**
3	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 offender engaged in criminal conduct prior to release and BOPP was unaware of conduct at the time it made decision to release; or offender lied prior to release and that lie led to BOPP decision to release.	**3**
		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 offender who plead guilty and mentally ill before considering release. The time required to conduct this review could exceed the caps.	**4**
		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 offender; to allow victim participation; or offender requests continuance.	**5**
		Rescission pursuant to Administrative Rule R671-310, including when the BOPP decides to rescind a parole date that was previously granted because offender engaged in major misconduct in prison or was convicted of further criminal conduct.	**6**

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ADDENDUM A

Crime Column Severity Listing

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 26 columns of both 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 Murder	General
2	1st Degree Mandatory Prison 25 to Life	Sex Offense
3	1st Degree Mandatory Prison 15 to Life	Sex Offense
4	1st Degree Prison 15 to Life	Att. Aggravated Murder
5	1st Degree Mandatory Prison 10 to Life	Sex Offense
6	1st Degree Prison 10 to Life	Att. Aggravated Murder
7	1st Degree Mandatory Prison 6 to Life	Sex Offense
8	1st Degree Prison 6 to Life	Att. Aggravated Murder
9	1st Degree Mandatory Prison 5 to Life	Sex Offense
10	1st Degree Mandatory Prison 3 to Life	Sex Offense
11	1st Degree 5 to Life	Sex Offense
12	1st Degree Death	General
13	1st Degree Person	General
14	2nd Degree Death	General
15	1st Degree 3 to Life	Sex Offense
16	1st Degree Other	General
17	2nd Degree 1 to 15	Sex Offense
18	3rd Degree 0 to 5	Sex Offense
19	2nd Degree Person	General
20	3rd Degree Death	General
21	3rd Degree Person	General
22	2nd Degree Other	General
23	2nd Degree Possession	General
24	3rd Degree Other	General
25	Class A Misdemeanor 0 to 1	Sex Offense
26	3rd Degree Possession	General

ADDENDUM B

Crime Categories

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
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
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
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 Offender	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
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
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 Misdelivered 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
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
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
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 Offender	Person
76-10-1504	Bus Hijacking	Person
76-10-1505	Discharge Firearms/Hurl Missiles - Buses & Terminals	Person
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 Offender	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

Categorization of Sex Offenses

Sex Offense Columns

Sex offenses are categorized by a letter, A through J, which corresponds with the appropriate crime category column on the sex offender matrix (Form 3). To find the appropriate crime category column on the sex offender 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 offender 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 Ann. § 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 [1]	Attempted child kidnapping	G
76-5-301.1 [3]	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 [1]	Attempted rape	G
76-5-402 [3]	Conspiracy to commit rape	G
76-5-402	Solicitation to commit rape	H
76-5-402.1	Rape of a child	25 Years- Life
76-5-402.1 [1, 2]	Attempted rape of a child	A, B, C or E
76-5-402.1 [3]	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 [1]	Attempted object rape	G
76-5-402.2 [3]	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 [1, 2]	Attempted rape of a child	A, B, C, or E

76-5-402.3 [3]	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) [1]	Attempted forcible sodomy	G
76-5-403(2) [3]	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 [1, 2]	Attempted sodomy on a child	A, B, C, or E
76-5-403.1 [3]	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 [1]	Attempted aggravated sexual abuse of a child	G
76-5-404.1 [3]	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
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	Lewdness	I
76-9-702(3)	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

[1] See 76-4-102(2)
[2] See 76-3-406(10)
[3] See 76-4-202(2)

ADDENDUM D

Central Eight Criminal Risk Factors

Central Eight Criminal Risk Factors & Treatment Targets

Criminogenic Need	Treatment Targets	
Antisocial Behavior Exploitive, aggressive, or harmful behavior toward others	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.	BIG FOUR
Antisocial Personality Pattern Impulsive, sensation seeking, risk-taking, aggressive, manipulative and exploitive.	Increase self-control and delayed gratification skills, anger and conflict management, problem solving. Reinforce prosocial interpersonal interactions.	
Antisocial Cognition Values, beliefs, feelings, and cognitions (thinking) that contribute to personal identity that favors and reinforces criminal behavior.	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.	
Antisocial Peers Preferring to associate with pro-criminal peers and isolation from anti-criminal peers and social contexts.	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).	
Family Chaotic and poor-quality family relationships that have minimal or no pro-social expectations regarding crime and substance abuse.	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.	MOD FOUR
School/Work Poor performance and limited engagement with school or work resulting in dissatisfaction and avoidance of them.	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.	
Leisure & Recreation Limited involvement in anti-criminal leisure activities.	Expose to a variety of pro-social leisure and recreational activities. Increase opportunities for regular involvement in preferred activities and reward progress.	
Substance Abuse Use and abuse of alcohol and/or drugs.	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.	

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

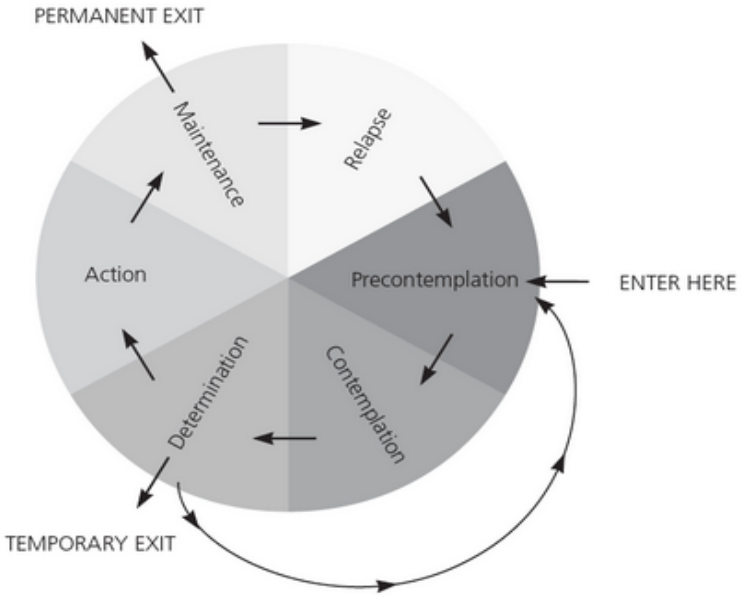
The Responsivity Principle & Factors

The Responsivity Principle:	
Maximize the offender'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 offender.	
General:	**Specific:**
Use cognitive social learning methods to influence behavior.	Use cognitive behavioral interventions that take into account strengths, learning style, personality, motivation, and bio-social characteristics of the individual.
Examples of programming addressing responsivity generally include: • Prosocial modeling • Appropriate use of reinforcement and disapproval • Problem solving • Cognitive Behavioral Therapy	Examples of Responsivity Factors include: • Motivation • Culture • Learning Style • Physical Needs • Gender • Mental Illness • Trauma • Age • Functional Ability • Language • Housing • Physical Health • Transportation • Minimization

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 Change Model



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"	• Validate lack of readiness • Clarify the decision is theirs • Encourage re-evaluation of current behavior • Encourage self-exploration, not action • Explain and personalize the risk
Contemplation	Ambivalent about change Not considering change within the next month "Sitting on the fence"	• Validate lack of readiness • Clarify the decision is theirs • Encourage evaluation of pros and cons of behavior change • Identify and promote new, positive outcome expectations
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	• Identify and assist in problem solving re: obstacles • Help identify social support • Verify they have the underlying skills for behavior change • Encourage small initial steps
Action	Practicing new behavior for 3-6 months	• Focus on restructuring cues and social support • Bolster self-efficacy for dealing with obstacles • Combat feelings of loss and reiterate long-term benefits
Maintenance	Continue commitment to sustaining new behavior post-6 months to 5 years	• Plan for follow-up support • Reinforce internal rewards • Discuss coping with relapse
Relapse	Resumption of old behaviors "Fall from grace"	• Evaluate trigger for relapse • Reassess motivation and barriers • Plan stronger coping strategies

Adapted from Prochaska J.O., DiClemente C.C., Norcross J.C., Velicer W.F., Rossi J.S., Fava, J. L., Norman, G. J., & Redding, C. A. (1983, 1984, 1992, 1994, 1997, 1998, 2002). *The Transtheoretical "Stages of Change" Model*.

ADDENDUM G

PSI Process for Low Risk Offenders

PSI Process for Low Risk Offenders

AP&P will provide a modified PSI (Sentence Memorandum) to the court for certain low risk offenders 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 offender 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 offenders)." 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 person 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

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