

**DRAFT**

# **SUPERVISION LENGTH GUIDELINES**

**AUG. 3, 2018**

**THE FOLLOWING IS A DRAFT OF THE SUPERVISION LENGTH GUIDELINES THAT IS BEING PUBLISHED FOR PUBLIC COMMENT. IT IS SUBJECT TO CHANGE BASED ON THAT PUBLIC COMMENT. AFTER THE PUBLIC COMMENT HAS BEEN ADDRESSED, THE SENTENCING COMMISSION WILL VOTE ON A FINAL VERSION ON SEPTEMBER 13, 2018 AT NOON IN THE LARGE CONFERENCE ROOM OF THE UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE LOCATED IN SUITE 330 OF THE SENATE BUILDING AT THE UTAH CAPITOL COMPLEX. THIS MEETING IS OPEN TO THE PUBLIC.**

## BACKGROUND

During the 2018 Legislative Session, the Utah Legislature passed House Bill 291, directing the Sentencing Commission to create supervision length guidelines. The legislature identified six purposes for the new guidelines: (1) increase equity in criminal supervision lengths, (2) respond to public comment, (3) relate the length of supervision to an offender's progress, (4) take into account an offender's risk of offending again, (5) relate the length of supervision to the amount of time an offender has remained under supervision in the community, and (6) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole.

To accomplish this task, the Sentencing Commission turned to existing resources on the effects of supervision length on public safety, recidivism rates, and restitution recovery. The Sentencing Commission also carefully analyzed historical trends in Utah's supervision lengths to ensure that the guidelines would not be overly disruptive to the status quo.

In general, supervision can do more harm than good if: the supervision is overly focused on deterrence and compliance rather than rehabilitation;<sup>1</sup> the level of intensity is not matched to the risk of recidivism;<sup>2</sup> the release conditions are more restrictive than necessary for public safety;<sup>3</sup> or the lengths of supervision are longer than necessary for public safety.<sup>4</sup> If a person convicted of a crime recidivates, it is most likely to happen within the first two years of supervision in the community.<sup>5</sup>

Using this information and more, the Sentencing Commission worked to balance the statutory goals of H.B. 291 to create an effective and efficient evidence-based system for initiating and terminating supervision.

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<sup>1</sup> See Lowenkamp, C. T., Flores, A. W., Holsinger, A. M., Makarios, M. D., & Latessa, E. J. (2010). *Intensive supervision programs: Does program philosophy and the principles of effective intervention matter?* Journal of Criminal Justice, accessed via: [http://www.d.umn.edu/~jmaahs/Correctional%20Continuum/Online%20Readings/ISP\\_rehab\\_lowenkamp%20and%20friends.pdf](http://www.d.umn.edu/~jmaahs/Correctional%20Continuum/Online%20Readings/ISP_rehab_lowenkamp%20and%20friends.pdf)

<sup>2</sup> Lowenkamp, C. and Latessa, E. (2004). *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low Risk Offenders*. Topics in Community Corrections. 3-8.

<sup>3</sup> See <http://www.pewtrusts.org/~media/assets/2008/12/13strategies.pdf>

<sup>4</sup> See Burke, P., A. Gelb, and J. Horowitz (2007) accessed via: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2007/when20offenders20break20the20rules.pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2007/when20offenders20break20the20rules.pdf.pdf); Wodahl, Boman, and Garland (2015), accessed via: [https://www.researchgate.net/publication/277339977\\_Responding\\_to\\_probation\\_and\\_parole\\_violations\\_Are\\_jail\\_sanctions\\_more\\_effective\\_than\\_community-based\\_graduated\\_sanctions](https://www.researchgate.net/publication/277339977_Responding_to_probation_and_parole_violations_Are_jail_sanctions_more_effective_than_community-based_graduated_sanctions)

<sup>5</sup> See, e.g., U.S. Sentencing Commission, *Recidivism Among Federal Offenders: A Comprehensive Overview* (March 2016), accessed via: [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf)

## INSTRUCTIONS

Courts and the Board of Pardons and Parole shall use the following charts to determine the initial length of supervision. The same charts apply to both probation and parole.<sup>6</sup> The first number in each box represents the presumptive length of supervision and sets the time for the mandatory report submission from the supervision authority. The second number in each box is the early termination date. Supervision length is based on the offense category as determined by the highest offense conviction for the present case or parole. Crime categories are listed in Addendum B of the Adult Sentencing & Release Guidelines.

### General

1 <sup>st</sup> Degree Person	2 <sup>nd</sup> Degree Person	1 <sup>st</sup> Degree Other	3 <sup>rd</sup> Degree Person	2 <sup>nd</sup> Other/ Specific 3 <sup>rd</sup>	2 <sup>nd</sup> Poss/ 3 <sup>rd</sup> Other	3 <sup>rd</sup> Poss/ Class A (prison)
48 / 24	48 / 24	36 / 18	36 / 18	36 / 18	36 / 18	24 / 12

### Sex and Kidnap

1 <sup>st</sup> Degree Mand. Prison	1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree	3 <sup>rd</sup> Degree	Class A
60+	60+	48 / 24	48 / 24	36 / 18

### Homicide

1 <sup>st</sup> Degree Agg. Murder	1 <sup>st</sup> Degree Murder	Attempted Agg. Murder	1 <sup>st</sup> Degree Death	2 <sup>nd</sup> Degree Death	2 <sup>nd</sup> Degree Auto Homicide	3 <sup>rd</sup> Degree Death	Class A Death
84+	84+	84+	84+	60 / 30	60 / 30	60 / 30	36 / 18

<sup>6</sup> The General, Sex and Kidnap, and Homicide charts apply to both probation and parole. The Misdemeanor chart applies only to probation. The Class A column on the General chart applies only to Class A misdemeanors sentenced to prison.

**Misdemeanor (Probation)**

Class A Person / DUI	Class B Person / DUI	Class A Other	Class B DV Other	Class A POCS	Class B	Class C
24 / 12	24 / 12	24 / 12	24 / 12	24 / 12	12 / 6	6 / 0

**Early Termination Criteria**

A person under supervision is eligible for early termination if the following three requirements are met:

**1. Treatment**

- a. Completion of ordered assessments and any recommended treatment or programming by a JRI-certified provider.
- b. For the purposes of this section, persons engaged in ongoing aftercare may be considered as having completed treatment.
- c. If no treatment is ordered, then this requirement has been met.

**2. Risk Reduction**

- a. General Criminogenic Risk
  - i. Risk reduction as indicated by **ANY** of the following:
    - 1. Overall reduction of 5 percent or more on LS/RNR.
    - 2. Reduction by one category on LS/RNR.
    - 3. Reduction in domains that are driving criminogenic risk (“big four”).
    - 4. Maintaining an overall moderate or low risk score on LS/RNR.
    - 5. Earned compliance credits -- reduction credit of 30 days from the offender’s maximum report submission date for each month completed without any violation of supervision conditions.<sup>7</sup>
  - b. Sex Offender Specific Risk<sup>8</sup>
    - i. Risk reduction as indicated by the following:
      - 1. Average or below on sex offender overall risk score using a validated risk assessment or a risk assessment designated by the Utah Department of Corrections Sex Offender Task Force; and

<sup>7</sup> If none of the other avenues for risk reduction has been achieved, it is possible that the earned compliance credit would result in an early termination report at a date later than the early termination date listed in the guidelines. If no other risk reduction qualifies at the time of early termination according to the guidelines, the supervising authority shall submit the early termination report when the earned compliance credits dictate.

<sup>8</sup> This requirement applies only to individuals convicted of a sexual offense as defined in Addendum C of the Adult Sentencing & Release Guidelines. Sex offenders must also meet the Risk Reduction requirement outlined in 2A.

2. If convicted of a sex offense involving a child, the person under supervision must also score 2 or lower on a pedophilic risk assessment tool as identified by the Utah Department of Corrections Sex Offender Task Force.

If the Treatment and Risk Reduction requirements are met, Adult Probation and Parole, or the relevant supervising authority, shall submit notice to the Court for probationers or the Board of Pardons for parolees with supporting rationale for early termination based on the Compliance and Stability requirement not fewer than 30 days prior to the early termination date.

### **3. Compliance and Stability**

- a. The supervising authority shall submit a report with an articulation of whether the person under supervision is stable and compliant that will include:
  - i. Recent Response and Incentive Matrix (RIM) History, including both responses and incentives;
  - ii. Case Action Plan (CAP) progress;
  - iii. Completion of an exit polygraph to determine any inappropriate conduct for individuals convicted of a sexual offense;
  - iv. Any other relevant factors; and
  - v. A recommendation on the termination of supervision.

The Court or Board of Pardons and Parole shall determine, based on the recommendation of the supervising authority, whether the person under supervision has been compliant and stable. Compliance and stability may be found based on success in any one of the categories. Success in all categories is not a requirement for a finding of compliance and stability. If a person is denied early termination based on a failure to meet the compliance and stability requirement, the supervising authority shall submit a new report as soon as the person meets the compliance and stability requirement.

If all three criteria are met, the Court or Board of Pardons and Parole shall terminate supervision early and may only deny early termination if:

1. There is a new criminal conviction or new criminal conduct;
2. The supervising authority has submitted a notice of violations or an order or warrant has been issued for violation proceedings in the present case, or other circumstances exist pursuant to Utah Code sections 76-3-201 or 77-18-1; or
3. The person poses a substantial risk to public safety. Substantial risks to public safety include, but are not limited to:
  - i. Per Se Violation: e.g., dangerous weapons, fleeing via high speed chase, violent arrest behavior, new person crime allegations, high priority CCC walkaways; or
  - ii. Criminal History Dependent: e.g., sex offender in cycle, repeat DUI violations, person crime absconder, mental health stability that negatively impacts a criminogenic risk factor.

If the Board of Pardons and Parole or the Court denies early termination of supervision under these circumstances, it shall articulate its reasons in writing on the record and may explain what is required to be eligible for the next termination request.

### **Mandatory Report Submission**

Within 30 days of the initial term of supervision according to the guidelines, the supervising authority shall submit a report that documents current progress on the three criteria areas of Treatment, Risk Reduction, and Compliance and Stability and makes a recommendation about the termination of supervision. Upon receiving the mandatory report, the Board of Pardons and Parole or the Court shall terminate supervision if the individual has met the three requirements for early termination (Treatment, Risk Reduction, and Compliance and Stability) unless:

1. There is a new criminal conviction or new criminal conduct;
2. The supervising authority has submitted a notice of violations or an order or warrant has been issued for violation proceedings in the present case, or other circumstances exist pursuant to Utah Code sections 76-3-201 or 77-18-1; or
3. The person poses a substantial risk to public safety. Substantial risks to public safety include, but are not limited to:
  - i. Per Se Violation: e.g., dangerous weapons, fleeing via high speed chase, violent arrest behavior, new person crime allegations, high priority CCC walkaways; or
  - ii. Criminal History Dependent: e.g., sex offender in cycle, repeat DUI violations, person crime absconder, mental health stability that negatively impacts a criminogenic risk factor.

If the Board of Pardons and Parole or the Court denies termination of supervision under these circumstances, it shall articulate its reasons in writing on the record and explain what is required to be eligible for the next termination request.

When a person under supervision has reached the mandatory report submission date according to the guidelines, but has not met the three requirements for early termination (Treatment, Risk Reduction, and Compliance and Stability), the Board of Pardons and Parole or the Court may either terminate supervision or extend supervision to allow the person under supervision more time to meet all the criteria. The total length of supervision may not extend beyond the length of the person's maximum sentence. The supervising authority shall submit a new report as soon as the person has met all the criteria.

If the mandatory report submission date has passed there has been no report from the supervising authority and no action from the Court or the Board of Pardons and Parole, then supervision shall be terminated.

### **Requests for Termination Before the Early Termination Date**

Adult Probation and Parole or the relevant supervising authority may submit for termination of supervision at any time, even if it is before the early termination date indicated in the guidelines. The Board of Pardons and Parole or the Court may set individual criteria for a termination that is earlier than the guidelines at the time of probation sentencing or a granting of parole.

### **Restitution**

If the person under supervision has the ability to pay restitution and fails, Adult Probation and Parole or the relevant supervising authority shall respond appropriately according to the Response and Incentive Matrix and may submit a violation report as warranted. Termination may only be denied due to lack of restitution payment if the person under supervision has a clear ability to pay and is not paying any restitution. Restitution may not be considered if it has been assigned to the Office of State Debt Collection. If the Court terminates probation according to the guidelines, but restitution remains unpaid, the Court may order court supervision for the sole purpose of collecting unpaid restitution.

### **The Controlling Version of the Supervision Length Guidelines**

The version of the Supervision Length Guidelines that was effective at the time of sentencing shall govern for probation. If probation is revoked and reinstated in a manner that is consistent with the guidelines and does not exceed the maximum length of a person's sentence, the version of the Supervision Length Guidelines that was effective at the time of the revoking and reinstating shall govern.

The version of the Supervision Length Guidelines that was effective at the time of release from prison to parole shall govern for parole. If a person returns to prison, parole is revoked, and the individual is released again on parole, the version of the guidelines that was effective at the time of the subsequent release shall govern.

If a period of probation is served before a prison sentence, it does not limit the length of time for parole supervision. The controlling version of the Supervision Length Guidelines for parole following a prison sentence that resulted from a probation revocation shall be the version that was in effect at the time of release from prison to parole.

Because the guidelines can change, defendants and their counsel should use caution in relying on the guidelines when determining whether to pursue or accept a plea agreement. The guidelines are not retroactive.

### **Archaic or Unlisted Offenses**

Not all offenses sentenced to prison will be listed on Addendum C of the Adult Sentencing & Release Guidelines or otherwise directly addressed in the Supervision Length Guidelines. For individuals on parole, the Board of Pardons and Parole shall have the authority to determine the

category of offenses that are not listed in the current guidelines. This determination, however, may not have any impact on the individual's maximum sentence length.

### **Scope of the Supervision Length Guidelines**

The guidelines apply whenever the Court or the Board of Pardons and Parole orders supervision. This specifically includes when Adult Probation and Parole, county, or private probation is ordered. The guidelines, however, do not apply to supervision of a person who is participating in a specialty court, problem-solving court, or court probation.

### **Single Supervision Term**

The Court or the Board of Pardons and Parole may not impose consecutive probation or parole terms in a single case where there are multiple criminal charges. Consecutive sentences may increase an individual's maximum sentence length, but the supervision length shall be consolidated under the longest supervision period according to the guidelines. The longest supervision period will be determined based on the maximum report submission date according to the guidelines.

If a person is subject to more than one term of supervision based on separate cases or offenses that are sentenced at the same time, the separate supervision periods shall be consolidated into the longest supervision period.

No person will be under supervision by more than one supervising authority at any time. If a person is ordered to participate in multiple supervision periods with more than one supervising authority, the separate supervision periods shall be consolidated into the longest supervision period.

### **Applicable Risk Assessment**

For determining whether a person on supervision has reduced his or her risk, the most current risk assessment shall be compared to the risk assessment nearest to the time when supervision began. An administrative or judicial override of a risk category or a supervision level override may not be considered for the purposes of risk reduction.

### **Mental Instability Alone is Not a Threat to Public Safety**

Mental instability alone shall not be sufficient cause to identify a public safety risk. However, if mental instability is creating circumstances or exacerbating risk factors that do pose a public safety risk, the Court or Board of Pardons may consider mental instability to the extent it affects those specific criminogenic factors.

### **Tracking Results**

The Sentencing Commission shall request that the Courts and the Board of Pardons provide data and information regarding any deviations from the Supervision Length Guidelines based on the articulated exceptions. The Sentencing Commission shall also request that the Utah Department of Corrections provide data on the length of probation and parole supervision and timelines for submission. The Sentencing Commission shall issue reports as it deems necessary to ensure that the Supervision Length Guidelines are achieving the statutorily defined goals.