

STATE OF UTAH

UTAH SENTENCING COMMISSION



2018 Supervision Length Guidelines

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;¹ the level of intensity is not matched to the risk of recidivism;² the release conditions are more restrictive than necessary for public safety;³ or the lengths of supervision are longer than necessary for public safety.⁴ If a person convicted of a crime recidivates, it is most likely to happen within the first two years of supervision in the community.⁵

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.

INSTRUCTIONS

The Court and the Board of Pardons and Parole shall use the following charts to set the initial length of supervision. Whether early termination is warranted or whether

¹ 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

² 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.

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

⁴ See Burke, P., A. Gelb, and J. Horowitz (2007) accessed via: http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2007/when20offenders20break20the20rules.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

⁵ 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

supervision must be continued will ultimately be based on the behavior of the person under supervision and the discretion of the Court or the Board of Pardons and Parole according to these guidelines. The same charts apply to both probation and parole.⁶ The first number in each box represents the number of months for the initial length of supervision and identifies a mandatory review date. The second number in each box is the number of months for the early termination review date. For the purposes of parole, in situations with multiple convictions, the supervision guideline category shall be based on the offense conviction with the longest supervision period.⁷ Crime categories are listed in Addendum B of the Adult Sentencing & Release Guidelines.

General

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

Homicide

1 st Degree Agg. Murder	1 st Degree Murder	Attempted Agg. Murder	1 st Degree Death	2 nd Degree Death	2 nd Degree Auto Homicide	3 rd Degree Death	Class A Death
168 / 84	168 / 84	168 / 84	168 / 84	60 / 30	60 / 30	60 / 30	36 / 18

Sex and Kidnap

1 st Degree Mand. Prison	1 st Degree	2 nd Degree	3 rd Degree	Class A
120 / 60	120 / 60	48 / 24	48 / 24	36 / 18

⁶ 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.

⁷ If the offense with the longest supervision period expires during the parole period, the supervision guideline length does not change.

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 Review

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 voluntarily engaged in ongoing care after having completing ordered treatment shall 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 or other validated risk assessment.
 - 2. Reduction by one level on LS/RNR or other validated risk assessment (e.g., high to moderate).
 - 3. Maintaining an overall risk level of moderate or low on LS/RNR or other validated risk assessment.
 - 4. Earned compliance credits—reduction credit of 30 days from the person’s initial length of supervision for each month completed without any violation of supervision conditions.⁸
- b. Sex Offender Specific Risk⁹

⁸ If no other avenues for risk reduction apply, it is possible that the earned compliance credit would result in an early termination review at a date later than the early termination review date listed in the guidelines. If no other risk reduction qualifies at the time of the early termination review date according to the guidelines, the supervising authority shall submit the early termination report when the earned compliance credits dictate.

⁹ This requirement applies only to individuals convicted of a sexual offense as defined in Addendum C of the Adult Sentencing & Release Guidelines or individuals ordered to comply with sex offender specific conditions. Sex offenders must also meet the Risk Reduction requirement outlined in 2A.

- i. Risk reduction as indicated by an average or below overall score on a validated sex-offender risk assessment or a risk assessment designated by the Utah Department of Corrections Sex Offender Task Force; and
- ii. If ordered by the Court or the Board of Pardons and Parole, completion of an exit polygraph.

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 review date. If either of the first two requirements are not met, the supervising authority is not required to submit an early termination report.

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 shall include:
 - i. Response and Incentive Matrix (RIM) History, including both responses and incentives;
 - ii. Information on any new criminal conduct;
 - iii. Case Action Plan (CAP) or risk reduction progress;
 - iv. Treatment or programming progress;
 - v. Restitution payment history;
 - vi. Employment history, residence, any other relevant factors; and
 - vii. A recommendation on the termination of supervision.

- b. The Court or the Board of Pardons and Parole, taking into consideration the recommendation of the supervising authority, shall determine whether the person under supervision has been compliant and stable. Compliance and stability may be found based on success in any one or more of the compliance and stability sub-categories. 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 within 30 days of the time the person meets the compliance and stability requirement as articulated by the Court or the Board of Pardons and Parole.

If all three criteria are met, the Court or the Board of Pardons and Parole shall terminate supervision 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 issued¹⁰ 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 of Supervision Conditions: 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 instability that negatively impacts a criminogenic risk factor, repeat domestic violence offender, serious financial crimes.

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

Mandatory Review Date

Within 30 days of the mandatory review date 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 provides a recommendation about the termination of supervision or other action. Upon receiving the mandatory review report, the Court or the Board of Pardons and Parole 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 issued¹¹ 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 of Supervision Conditions: 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 instability that

¹⁰ If prior notice of violations or a warrant has been issued, the supervising authority is not required to submit a separate termination report.

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negatively impacts a criminogenic risk factor, repeat domestic violence offender, serious financial crimes.

When a person under supervision has reached the initial length of supervision according to the guidelines, but has not met the three requirements for early termination (Treatment, Risk Reduction, and Compliance and Stability), the Court or the Board of Pardons and Parole may either terminate supervision or continue supervision to allow the person under supervision more time to meet all the criteria.¹² The total length of supervision may not extend beyond the length of the person's maximum sentence in the case of felonies or beyond three years in the case of misdemeanors.

If the Court or the Board of Pardons and Parole denies termination of supervision under these circumstances, it shall articulate its reasons in writing or on the record and explain what is required to be eligible for the next termination request. The supervising authority shall submit a new report within 30 days of the time the person has met all the criteria.

If the Court fails to issue an order or decision about the termination of supervision before the mandatory review date, then supervision shall be terminated on that date.

If the Board of Pardons and Parole has received a mandatory review report and fails to issue a decision about the termination of parole within 30 calendar days of receipt of the report, parole 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 review date indicated in the guidelines. The Court or the Board of Pardons and Parole may set individual criteria for a termination that is earlier than the guidelines at the time of probation sentencing or 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. The Court may deny termination of probation due to lack of restitution payment only if it makes a finding of contempt according to Utah Code section 78B-6-317(4). The Board of Pardons and Parole may deny termination of parole due to lack of restitution payment only if the person under supervision has a clear ability to pay and is

¹² All modifications of probation shall conform with the requirements of Utah Code section 77-18-1. Consistent with Utah Code section 77-18-1(12)(b)(ii), the Court may not continue probation beyond the initial length of supervision "except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation." And, consistent with Utah Code Section 77-18-1(12)(b)(iii), the Court may not revoke probation "except upon a hearing in court and a finding that the conditions of probation have been violated."

not paying any restitution. 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. Non-payment of fines or defense fees may not be considered for termination of supervision.

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 in the case of felonies or three years in the case of misdemeanors, 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. The initial length of supervision is not binding and is subject to change based on the behavior of the person under supervision and the discretion of the Court or the Board of Pardons and Parole according to these guidelines.

Archaic or Unlisted Offenses

Not all offenses sentenced to prison will be listed in 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. For parole, the supervision length shall be consolidated under the longest supervision period according to the guidelines.

Applicable Risk Assessment

For determining whether a person on supervision has reduced risk or maintained a low or moderate risk level, 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 supervision level may not be considered for the purposes of risk reduction.

Mental Health Issues Alone Not a Threat to Public Safety

Mental health issues or concerns alone shall not be sufficient cause to identify a public safety risk. However, if mental health issues are creating circumstances or exacerbating risk factors that do pose a public safety risk, the Court or the Board of Pardons and Parole may consider mental health issues to the extent they affect those specific criminogenic factors.

Tracking Results

The Sentencing Commission shall request that the Courts and the Board of Pardons and Parole 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.