

STATE OF UTAH

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UTAH SENTENCING COMMISSION



2015  
Adult Sentencing & Release Guidelines

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2015

# Adult Sentencing & Release Guidelines

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This manual and interactive forms can be found at [www.sentencing.utah.gov](http://www.sentencing.utah.gov)

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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.

In response to Governor Gary R. Herbert's call for a comprehensive review of the state's criminal justice system in his 2014 State of the State Address, the Sentencing Commission participated with the Commission on Criminal and Juvenile Justice ("CCJJ") in developing the comprehensive reform recommendations contained in the November 2014 *Justice Reinvestment Report*. House Bill 348, *Criminal Justice Programs and Amendments*, sponsored by Representative Eric Hutchings and Senator Stuart Adams, incorporated those recommendations into comprehensive legislation aimed at reducing recidivism, controlling prison costs, and holding offenders accountable. House Bill 348 passed with near unanimous

support during the 2015 General Legislative Session.

Pursuant to House Bill 348, a number of specific directives were added to the Sentencing Commission's statutory charge. Those directives include 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.

## I. 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

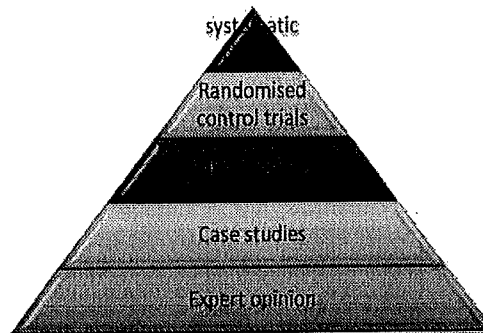
The Sentencing Commission has discussed and advocated the incorporation of what are commonly referred to as “evidence-based practices” into sentencing, supervision, and treatment standards for nearly a decade. Evidence-based practices are also referred to as “principles of effective intervention” or “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.

In 2014, the Sentencing Commission moved beyond the use of the term “evidence-based practices” and sought to establish a meaningful standard. The 2014 guidelines defined evidence-based practices as: practices that have been empirically shown to improve offender outcomes and reduce recidivism through an emphasis on meta-analysis research, control of confounding variables, and cross-site replication of results.

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

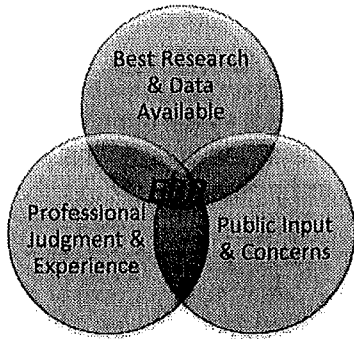
studies, while potentially promising, do not constitute evidence-based practices. A minimum of two or more randomized controlled trials or a systematic review (also known as a “meta-analysis”) constitutes evidence-based practices.



A significant addition to our understanding of evidence-based practices includes the use of validated risk/needs assessments to appropriately identify proper treatment/services and necessary level of offender control.

The 2015 guidelines incorporate the concept of evidence-based practices comprehensively and represent significant revisions to the philosophical approach, revisions to the current forms, the addition of new forms and addenda, and a references section with available digital links. As such, the 2015 guidelines are intended to provide a more comprehensive explanation of evidence-based practices, a framework for implementing them, and tools which may be useful in doing so.

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 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.



A number of significant events and input occurred during 2014 and 2015 which have resulted in the meaningful incorporation of those three factors into the 2105 guidelines:

In his 2014 State of the State Address, Governor Gary R. Herbert called for a “full review of our current system to develop a plan to reduce recidivism, maximize offenders’ success in becoming law abiding citizens, and provide judges with the tools they need to accomplish these goals.” Governor Herbert further noted that the “prison gates through which people re-enter society must be a permanent exit, and not just a revolving door.”

The CCJJ was tasked with developing recommendations thereafter and conducted statewide public hearings. State leaders from all branches of government also joined together to request technical assistance from the Public Safety Performance Project of The Pew Charitable Trusts and the U.S. Department of Justice as part of the Justice Reinvestment Initiative.

The 2015 guidelines additionally incorporate commentary from Utah Supreme Court Justice Matthew B. Durrant in his 2014 State of the Judiciary Address; commentary from the Utah Supreme Court in *State v. LeBeau*; information contained in the *Utah Summit on Justice Reform* held in April 2014, staffed by the National Association of Drug Court Professionals; information contained in the *Smarter Sentencing Workshop* held in September 2014, staffed by the National Center for State Courts and the Utah Administrative Office of the Courts; information contained in the *Justice*

*Reinvestment Report* of the Commission on Criminal and Juvenile Justice in November 2014; testimony provided during the 2015 General Legislative Session; and technical assistance provided by the Crime & Justice Institute at Community Resources for Justice.

### III. STATEMENT OF PURPOSE

Utah law provides the basis for the sentencing and release of criminal offenders. By sound design these statutes allow 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 2015 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 through 5a** 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, 1a, 3, 5 and 5a** create a starting point and reflect a recommendation for a typical case. However, aggravating and mitigating circumstances on **Forms 2 and 4** are 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 through 5a** and the probation and parole violation/revocation guidelines contained in **Forms 6 through 10**. House Bill 348 indicates 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 the following:

- 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, these 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, accounting for less than 25% of the reduction. Numerous other factors have contributed to a nationwide reduction in index crime rates, which do not correlate with increases or decreases in 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.

Approximately two-thirds of all felony sentences are to probation and roughly 95% of all prison admissions are eventually released. Successful discharge rates as of 2013 for probation and parole were 37% and 20% respectively. Moreover, 63% of offenders released from prison on parole supervision returned within three years.

Considering both the significant costs of each prison or jail bed utilized, as well as the impact of continued criminal activity on public safety, 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.

Risk reduction extends beyond the term of incarceration and seeks to reduce the likelihood of future criminal activity through

appropriate programming during incarceration and/or through community-based 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. Unfortunately, actual collection rates are low.

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*

A performance audit of Utah's Adult Probation and Parole ("AP&P") by the Office of the Legislative Auditor General in September 2013 identified many inconsistencies in supervision practices throughout the state. Primary among them was the varied number of violations that trigger a revocation in each AP&P region. The CCJJ confirmed those findings in the *Justice Reinvestment Report* in November 2014 and additionally found regional variation in the types and numbers of violations leading to a revocation.

The University of Utah Criminal Justice Center has provided significant assistance to the Sentencing Commission since the AP&P Legislative Audit, assisting in the identification of other states' models and providing additional research and recommendations which are contained in its June 2014, *Year One Report on the Development of Utah's Incentive & Response Matrix*.

*The Utah Summit on Justice Reform* also highlighted distinctions between Drug Court and the standard violation hearing process to address violations of supervision. When implemented with fidelity, Drug Courts exemplify a nationally recognized model incorporating evidence-based practices. Nevertheless, Drug Courts are intended for a specific subgroup of substance use disordered offenders (high risk/high need on the RANT or a clinical diagnosis of severe substance abuse disorder).

A Performance Audit of Utah's Felony Drug Courts indicates that approximately 1,500

offenders were served in Utah during fiscal year 2014. By contrast, AP&P supervises nearly 18,000 offenders ranging from low to high risk and low to high need. Violations brought before the Court or the Board of Pardons on probation or parole are generally neither swift, certain, consistent, nor proportionate. In general, probation violation hearings are scheduled one to two weeks away from the violation and may be thirty days away for parole violation hearings.

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.

Finally, the proportionality or magnitude of the reinforcer/punisher should 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 revisions to the current grids and matrices, and the addition of new grids, matrices, and assessments 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 1-5a**, 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.

*The Justice Reinvestment Initiative* provided the most comprehensive opportunity to objectively evaluate the proportionality of various crimes statutorily, as well as the impact of the guidelines themselves upon incarceration trends and outcomes.

Criminal history scoring has been revised in all forms consistent with the recommendations of the CCJJ and the directives of House Bill 348. Length of stay recommendations have also been reduced for crime categories G-L on **Form 1** consistent with the recommendations of the CCJJ and the directives from House Bill 348.

#### b. Risk Reduction Forms

Beyond the initial determination that focuses on risk management, these guidelines provide additional forms that are intended to assist in addressing risk reduction. The guidelines have not previously provided

recommendations as to how to weigh, analyze, and incorporate risk reduction in determining an appropriate level of supervision, treatment and responses to offender behavior. **Forms 6 -10** and referenced addenda contained in the 2015 guidelines 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 **Form 6** 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. 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. Well-intentioned sanctions and services can, unfortunately, have unintended negative impacts.

It is important to note that RNA tools were not designed to replace the proportionality and culpability analysis in **Forms 1-5a**. The tools were designed to structure supervision, treatment, and programming.

The only case which has reached a state Supreme Court regarding the use of RNA tools is *Malenchik v. Indiana*, 928 N.E.2d 564 (2010), which indicated that RNA 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." The *Malenchik* Court stated that it was 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."

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 used over the last several years in Corrections has been the LSI-R (Level of Service Inventory Revised) which is a 3<sup>rd</sup> generation assessment tool. The LSI-R evaluates both static and dynamic offender risk factors.

Today, 4<sup>th</sup> generation assessment tools are available that improve upon the 3<sup>rd</sup> generation tools. The 4<sup>th</sup> 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 **Form 6** 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 3<sup>rd</sup> generation assessment tools primarily evaluated an offender's risk to reoffend. The 4<sup>th</sup> generation tools still consider risk, but add targeted service needs and an understanding of how to appropriately deliver the services. Both the 3<sup>rd</sup> and 4<sup>th</sup> 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 will move from the LSI-R (3<sup>rd</sup> generation) to the LS/RNR – or Risk, Need and Responsivity – assessment (4<sup>th</sup> generation). This tool provides additional and relevant information to criminal justice decision makers and service providers.

Although the LSI tools are the primary assessment tools used by the Department of Corrections, other 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**

Ideally, pursuant to best practices, presentence investigations by AP&P would be conducted on offenders convicted of a felony level offense or Class A offense and identified as moderate or high risk to reoffend by a validated screening tool such as the LSI-SV. The presentence investigation would then include administration of a validated risk and needs assessment tool such as the LS-RNR and other assessment(s) as appropriate to assist in structuring supervision and

treatment accordingly. If an offender is identified as low risk on the LSI-SV, a full validated risk assessment is generally not warranted, either by AP&P or another supervising agency (as supervision services should generally not be targeted towards low risk offenders).

All offenders who are identified as moderate or high risk to reoffend on a validated screening tool such as the LSI-SV should receive more comprehensive assessment(s). If a validated screening tool such as the LSI-SV 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.

Presentence investigations are beneficial to the Board of Pardons and Parole as well as to the court and should be completed unless the offender is identified as low risk to reoffend. Presentence investigations should have the applicable guidelines **Forms 1 – 5a** 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. **Forms 6 – 10 and corresponding addenda** may be incorporated into future Presentence Reports and Progress / Violation Reports. **Form 6** may be useful at the time of sentencing with the results of a completed validated risk and needs assessment. **Forms 7-10** are not anticipated to be presented as completed "forms" by AP&P at the time of sentencing.

### 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 1-5a**. 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 be allocated to provide for appropriate supervision and treatment regardless of offense level.

### 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](http://www.bop.utah.gov).

## **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 **Form 6** for a low-risk/low-need offender, county or private probation should not provide supervision services. "Court" supervision refers to a minimal level of supervision, 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.



## Utah Sentencing & Release Guidelines Instructions and Forms

The Adult Guidelines Forms are available in an electronic format. They may be accessed through the Sentencing Commission's website at [www.sentencing.utah.gov](http://www.sentencing.utah.gov).

Under the direction of the Utah Sentencing Commission, these 2015 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. Other major policies are inherent in the revisions to the current forms and the addition of new forms in 2015. 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.

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.

### Form 1 – General Matrix Instructions Criminal History Assessment

The purpose of the Criminal History Assessment is to provide a standard frame of reference to reduce or enhance the severity of the sentence based on the prior criminal 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.

## Prior Felony Convictions

- Only prior adult felony convictions that have already been sentenced are counted.
- Where military records are available, court martial convictions that would be equivalent to a felony offense in Utah are counted.
- If multiple convictions arise from a previous single criminal episode, only one felony conviction from that episode 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 that have already been sentenced are counted.
- Where military records are available, court martial convictions that would be equivalent to a Class A misdemeanor offense in Utah are counted.
- If multiple convictions arise from a previous single criminal episode, only one class A misdemeanor

conviction from that episode 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.

#### *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 both juvenile and adult supervision history.
- Only post-adjudication or post-conviction state, county, or private supervision is counted. Instances of court or bench probation without a supervising entity should not be considered.
- Pre-trial supervision, juvenile detention, or jail is ***not*** counted.
- Points are given if the current offense(s) occurred while the offender was on post-adjudicated or

post-conviction state, county, or private supervision.

- "Successful Completion" includes all forms of probation and is intentionally broader than other categories to incentivize compliance with all forms of supervision.
- "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 juvenile status offenses is ***not*** counted.

#### **Prior Person Crime Convictions**

- Only prior adult or juvenile person crime convictions that have already been sentenced are counted.
- "Person Crime Convictions" include convictions for any offense listed in Utah Code Annotated 76-3-203.5(c), as well as those designated as person crimes in **Addendum B**.
- "Person Crime Convictions" may include misdemeanor offenses not counted in other sections of the criminal history scoring. **See Addendum B**.
- "Person Crime Convictions" may include juvenile dispositions beyond the ten (10) year limitation in the following section. **See Addendum B**.

#### *Information Related to Prior Person Crime 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.

- 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 and Parole.
- Every three (3) juvenile Class A misdemeanor adjudications which result in a finding of delinquency counts 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.

#### **Total Score**

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

#### **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."

#### **General Matrix**

The rows of this matrix represent differing levels of criminal history and correspond with the total score from the criminal history assessment. The columns represent crime categories and correspond with the most serious current offense. The columns list both a felony level and a crime category (murder, death, person, or other). 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 (e.g. prison vs. intermediate sanction), 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 the specific category for every felony offense (murder, death, person, possession only or other).

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.

As indicated earlier, to determine the proper criminal history row, calculate the total criminal history assessment 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 (probation, intermediate sanctions, imprisonment, or mandatory imprisonment).

### **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, **Form 1 – General Matrix** does not indicate all mandatory incarceration sentences. Doing so would unnecessarily complicate the matrix 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. These times apply only if the offender is sentenced to prison and do not apply if the offender is sentenced to an intermediate sanction 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, consider the sentence for the most severe offense to be 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.

### **Conditions of Intermediate Sanctions and Regular Probation**

Intermediate sanctions include any sanction between regular probation and prison. In Utah, courts sometimes attach *special* conditions to a probationary sentence which makes the sentence more than regular probation. For the purpose of the guidelines, typical conditions of probation often include payment of restitution, attendance in counseling, drug testing,

search and seizure clauses, community service, etc. These conditions ordinarily do not rise to the level of being *special*, and therefore do not transform regular probation into an intermediate sanction.

initial condition of Intermediate Sanctions or Regular Probation.

The concept of intermediate sanctions is that the higher the risk an offender poses in the community, the more controls are placed on the offender. These controls are intermediate sanctions. They include such things as electronic monitoring, referral to treatment resource centers, participation in residential treatment programming, intensive supervision, etc. These are the *special* conditions referred to above. These programs always have increased levels of supervision. In addition, because of the increased supervision, these sanctions are more costly than regular probation. As such, these intermediate sanctions should be viewed from the perspective that because they are limited, the court should carefully select those offenders who need them in conjunction with the Department of Corrections.

It is important to note that the higher the risk an offender presents in the community, the more intermediate sanctions an offender may access. For instance, an offender may be on intensive supervision and electronic monitoring and also be attending the treatment resource center. Obviously, because of the cost of these programs, it is important that all the services accessed are necessary. Therefore, the separation of regular probation and intermediate sanctions has to do with cost and level of supervision as indicated by the *special* conditions attached. There is no bright line between regular probation and intermediate sanctions and this fact ought to be considered in sentencing.

### **Jail as a Condition of Probation**

When the recommendation resulting from **Form 1 or Form 3**, is to suspend the prison sentence, **Form 5, Jail as a Condition of Felony Probation Matrix**, should be used to determine if jail should be used as an

# FORM 1 – GENERAL MATRIX

## CRIMINAL HISTORY ASSESSMENT

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. Capital offenses are not considered within the context of the sentencing guidelines.

**PRIOR FELONY CONVICTIONS**  
(SEPARATE ADULT CONVICTIONS)

- 0 NONE
- 2 ONE
- 4 TWO
- 6 THREE
- 8 FOUR +

**PRIOR PERSON CRIME CONVICTIONS**  
(PRIOR ADULT OR JUVENILE CONVICTION)

- 0 NONE
- 2 PERSON CRIME
- 4 PERSON CRIME W/INJURY

**PRIOR CLASS A MISDEMEANOR CONVICTIONS**  
(SEPARATE ADULT CONVICTIONS)

- 0 NONE
- 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 AN ADULT) (THREE CLASS A MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY)

- 0 NONE
- 1 ONE
- 2 TWO - FOUR
- 3 FIVE +

**SUPERVISION HISTORY**  
(ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT COUNT PRETRIAL OR COURT SUPERV.)

- 1 SUCCESSFUL COMPL.
- 0 NO PRIOR SUPERV.
- 2 PRIOR REVOCATION
- 3 CURRENT OFFENSE ON SUPERV.

**TOTAL SCORE:** \_\_\_\_\_

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

### CRIME CATEGORY

CRIMINAL HISTORY	1 <sup>st</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	3 <sup>rd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	3 <sup>rd</sup>
	Degree Murder	Degree Death	Degree Death	Degree Person	Degree Death	Degree Other	Degree Person	Degree Person	Degree Other	Degree Poss.	Degree Other	Degree Poss.
	A	B	C	D	E	F	G	H	I	J	K	L
V	24 YRS	10 YRS	*	10 YRS	48 MOS	84 MOS	54 MOS	32 MOS	26 MOS	16 MOS	16 MOS	14 MOS
IV	22 YRS	9 YRS	*	9 YRS	42 MOS	78 MOS	42 MOS	26 MOS	20 MOS	14 MOS	14 MOS	12 MOS
III	20 YRS	8 YRS	*	8 YRS	36 MOS	72 MOS	30 MOS	20 MOS	16 MOS	12 MOS	8 MOS	8 MOS
II	20 YRS	7 YRS	*	7 YRS	24 MOS	66 MOS	24 MOS	16 MOS	14 MOS	10 MOS	6 MOS	6 MOS
I	20 YRS	6 YRS	*	6 YRS	20 MOS	60 MOS	18 MOS	14 MOS	12 MOS	8 MOS	5 MOS	4 MOS

\*The statutory range is 1-15 years. The Board of Pardons will consider all aggravating and mitigating factors in determining length of stay. Because the facts of the cases in this crime category are widely divergent, and criminal history is less determinative than in other categories, a single guideline recommendation is not helpful in determining length of stay.

Consecutive Enhancements: 40% of the shorter sentence is to be added to the full length of the longer sentence.

Concurrent Enhancements: 10% of the shorter sentence is to be added to the full length of the longer sentence.

# FORM 1a – ATTEMPTED AGG. MURDER WITH SERIOUS BODILY INJURY

## CRIMINAL HISTORY ASSESSMENT

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. Capital offenses are not considered within the context of the sentencing guidelines.

**PRIOR FELONY CONVICTIONS**  
(SEPARATE ADULT CONVICTIONS)

0 NONE  
2 ONE  
4 TWO  
6 THREE  
8 FOUR+

**PRIOR PERSON CRIME CONVICTIONS**  
(PRIOR ADULT OR JUVENILE CONVICTION)

0 NONE  
2 PERSON CRIME  
4 PRSON CRIME W/INJURY

**PRIOR CLASS A MISDEMEANOR CONVICTIONS**  
(SEPARATE ADULT CONVICTIONS)

0 NONE  
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 AN ADULT) (THREE CLASS A MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY)

0 NONE  
1 ONE  
2 TWO - FOUR  
3 FIVE +

**SUPERVISION HISTORY**  
(ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT COUNT PRETRIAL OR COURT SUPERV.)

-1 SUCCESSFUL COMPL.  
0 NO PRIOR SUPERV.  
2 PRIOR REVOCATION  
3 CURRENT OFFENSE ON SUPERV.

**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
		<b>TOTAL:</b>	I	0 - 3

	15 YRS TO LIFE A	10 YRS TO LIFE B	6 YRS TO LIFE C
V	21 YRS	14 YRS	100 MOS
IV	20 YRS	13 YRS	95 MOS
III	18 YRS	12 YRS	90 MOS
II	17 YRS	138 MOS	85 MOS
I	16 YRS	11 YRS	80 MOS

IMPRISONMENT



## **Form 2 - Aggravating and Mitigating Circumstances Instructions**

There are occasionally circumstances that compel deviation from the guidelines. Some of the more common reasons are listed for convenience on **Form 2**. 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 both **Form 1 – General Matrix** and **Form 3 – Sex Offender Matrix**.

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. Also, do not list an aggravating factor in either form if it is already an element of the offense.

Aggravating factor #2 on **Form 2** states "Multiple documented incidents of violence not resulting in conviction." In order for these "documented incidents of violence" to be counted, there must exist a court approved stipulation that such incidents will be considered. The intent of this requirement, along with having a certain standard of verification, is to assure that all are aware at the time of conviction that such

documented incidents will be counted on the guidelines and considered in both the sentencing and release decisions.

### **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) time is spent in custody outside the State of Utah based solely on the Utah warrant; (4) the Board of Pardons and Parole deems such credit just under the circumstances; or (5) 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 documented here.

### **AP&P Recommendations**

The recommendation of Adult Probation and Parole should be documented here.

### **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 2 - AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 4 also for Sex Offenses with Alternative Minimum Lengths of Stay)

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 non-exhaustive and illustrative only.**

**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.**

## Aggravating Circumstances

Only use aggravating circumstances if they are not an element of the offense.

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- \_\_\_ 1. Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.)
- \_\_\_ 2. Offender presents a serious threat of violent behavior.
- \_\_\_ 3. Victim was particularly vulnerable.
- \_\_\_ 4. Injury to person or property loss was unusually extensive.
- \_\_\_ 5. Offense was characterized by extreme cruelty or depravity.
- \_\_\_ 6. There were multiple charges or victims.
- \_\_\_ 7. Offender's attitude is not conducive to supervision in a less restrictive setting.
- \_\_\_ 8. Offender continued criminal activity subsequent to arrest.
- \_\_\_ 9. Sex Offenses: Correction's validated assessment tools classify as a high risk offender.
- \_\_\_ 10. Offender was in position of authority over victim(s).
- \_\_\_ 11. Financial crime or theft crime involved numerous victims, an exploitation of a position of trust, a substantial amount of money, or receipt of money from sources including, but not limited to, equity in a person's home or a person's retirement fund.
- \_\_\_ 12. Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2))
- \_\_\_ 13. Offense constitutes a "hate crime" in that it is likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4)
- \_\_\_ 14. Violence committed in the presence of a child.
- \_\_\_ 15. Other (Specify) \_\_\_\_\_

## Mitigating Circumstances

- \_\_\_ 1. Offender's criminal conduct neither caused nor threatened serious harm.
- \_\_\_ 2. Offender acted under strong provocation.
- \_\_\_ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
- \_\_\_ 4. Offender is young.
- \_\_\_ 5. Offender assisted law enforcement in the resolution of other crimes.
- \_\_\_ 6. Restitution would be severely compromised by incarceration.
- \_\_\_ 7. Offender's attitude suggests amenability to supervision.
- \_\_\_ 8. Offender has exceptionally good employment and/or family relationships.
- \_\_\_ 9. Validated assessment classifies offender as low risk to reoffend.
- \_\_\_ 10. Offender has extended period of arrest-free street time.
- \_\_\_ 11. Offender was less active participant in the crime.
- \_\_\_ 12. All offenses were from a single criminal episode.
- \_\_\_ 13. Offense(s) was "possession only" drug offense. (see "possession only" offenses, Addendum B)
- \_\_\_ 14. Offender has completed or has nearly completed payment of restitution.
- \_\_\_ 15. Other (Specify) \_\_\_\_\_

Days of Jail Credit \_\_\_\_\_  
Guidelines Placement Recommendation \_\_\_\_\_  
AP&P Recommendations \_\_\_\_\_  
Reason for Departure \_\_\_\_\_

OFFENDER NAME: \_\_\_\_\_  
SCORER NAME: \_\_\_\_\_  
DATE SCORED: \_\_\_\_\_

### Form 3 – Sex and Kidnap Offender Matrix Instructions

These are the sentencing and release guidelines to be used for all registerable sex offenses and kidnap 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).

#### Criminal History Assessment

The Criminal History Assessment is slightly different than that used under **Form 1** for all other offenders. One additional category exists on the Criminal History Assessment for sex offenders: Number of Prior

Sex/Kidnap Victims. The factors relate to the likelihood of sex offenders committing additional sex offenses and are specific to a history of sexual deviancy. The added category of Number of Prior Victims is designed to address this factor. Other than this additional category, the Criminal History Assessment for sex offenders should be scored identically to **Form 1**. (See page 11)

In an extensive study on mandatory minimum sentences for sex offenders, the Sentencing Commission found, among other things, that sex offenders were quite different than other offenders. See *Utah Sentencing Commission Annual Report 1995-1996*; Utah Statistical Analysis Center, *Analysis of Utah's Child Kidnapping and Sexual Abuse Act of 1983*. As a result of this study, mandatory imprisonment, lifetime parole, treatment resources, and the separate guidelines matrix were implemented. **Form 3** reflects most of the amended laws mandating imprisonment for certain sex 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 compared to five on the general matrix. This provides the Board of Pardons and Parole with more discretion concerning sex offenders.

#### Number of Prior Victims

This category documents whether the offender had prior victims in any sex/kidnap offense convictions not including the present offense. Zero points are allotted for no prior sex/kidnap victims, three points allotted for one prior sex/kidnap victim, and four points for two or more prior sex/kidnap victims. This victimization does not have to arise out of a single criminal episode. However, before any points are allotted under this section, there must be a specific conviction involving the victim or victims counted.

#### Sex and Kidnap Offense Disposition Matrix

The sex offender matrix on **Form 3** is obviously different than the **Form 1** matrix. However, they both 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**, 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 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 1<sup>st</sup> 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.

# FORM 3 – SEX & KIDNAP OFFENDER MATRIX

## CRIMINAL HISTORY ASSESSMENT

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

- |   |  |   |   |
|---|--|---|---|
| <b>PRIOR FELONY CONVICTIONS</b><br>(SEPARATE ADULT CONVICTIONS)   | 0 NONE<br>2 ONE<br>4 TWO<br>6 THREE<br>8 FOUR+   | <b>PRIOR PERSON CRIME CONVICTIONS</b><br>(PRIOR ADULT OR JUVENILE CONVICTION)   | 0 NONE<br>2 PERSON CRIME<br>4 PERSON CRIME W/INJURY |
| <b>PRIOR CLASS A MISDEMEANOR CONVICTIONS</b><br>(SEPARATE ADULT CONVICTIONS)  | 0 NONE<br>1 ONE OR TWO<br>2 THREE - FIVE<br>3 SIX +  | <b>PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS</b> (OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT) (THREE CLASS A MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY) | 0 NONE<br>1 ONE<br>2 TWO - FOUR<br>3 FIVE +         |
| <b>SUPRVISION HISTORY</b><br>(ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT INCLUDE PRETRIAL OR COURT SUPERV.) | -1 SUCCESSFUL COMPL.<br>0 NO PRIOR SUPERV.<br>2 PRIOR REVOCATION<br>3 CURRENT OFFENSE ON SUPERV. | <b>NUMBER OF PRIOR SEX/KIDNAP VICTIMS</b><br>(EXCLUDING PRESENT VICTIM)   | 0 NO PRIOR VICTIMS<br>3 ONE PRIOR<br>4 TWO +        |

**TOTAL SCORE:** \_\_\_\_\_

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

### CRIME CATEGORY

	1 <sup>st</sup> Degree Mand. Prison 15 - Life <b>A</b>	1 <sup>st</sup> Degree Mand. Prison 10 - Life <b>B</b>	1 <sup>st</sup> Degree Mand. Prison 6 - Life <b>C</b>	1 <sup>st</sup> Degree Mand. Prison 5 - Life <b>D</b>	1 <sup>st</sup> Degree Mand. Prison 3 - Life <b>E</b>	1 <sup>st</sup> Degree 5 - Life <b>F</b>	1 <sup>st</sup> Degree 3 - Life <b>G</b>	2 <sup>nd</sup> Degree 1 - 15 <b>H</b>	3 <sup>rd</sup> Degree 0 - 5 <b>I</b>	Class A Misd. 0 - 1 <b>J</b>
<b>CRIMINAL HISTORY</b>	<b>III</b>	21 YRS	14 YRS	100 MOS	75 MOS	75 MOS	75 MOS	64 MOS	42 MOS	
	<b>MANDATORY IMPRISONMENT</b>									
	<b>II</b>	18 YRS	12 YRS	90 MOS	66 MOS	64 MOS	66 MOS	62 MOS	48 MOS	36 MOS
	<b>IMPRISONMENT</b>									
<b>I</b>	16 YRS	11 YRS	80 MOS	60 MOS	42 MOS	60 MOS	42 MOS	40 MOS	32 MOS	
	<b>INTERMEDIATE</b>									

Consecutive Enhancements: 40% of the shorter sentence is to be added to the full length of the longer sentence.  
 Concurrent Enhancements: 10% of the shorter sentence is to be added to the full length of the longer sentence.

#### **Form 4 - Aggravating and Mitigating Circumstances for Sex Offenses with Alternative Minimum Lengths of Stay Instructions**

As mentioned, certain sex offenses mandate imprisonment. Utah Code Ann. § 76-3-406. "In determining a just sentence, the court shall consider guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission." Utah Code Ann. § 76-3-201(7) (e). In accordance with the above statutory directive, the Sentencing Commission has, in **Form 4**, promulgated aggravating and mitigating circumstances for sex offenses with alternative minimum terms. As listed above, several sex offenses as well as attempts and solicitations carry a presumptive sentence of 15 years to life. If the court finds that, based upon mitigating factors, it is in the interest of justice and states the reasons for this finding on the record, it may sentence a defendant to 10 years to life, 6 years to life, or 3 years to life.

**Form 2** and **Form 4** should be used in determining which of the above terms will be imposed by the court. The Forms are not an exhaustive list.

# FORM 4 - AGGRAVATING & MITIGATING CIRCUMSTANCES FOR SEX OFFENSES WITH ALTERNATIVE MINIMUM LENGTHS OF STAY

(Also use Form 2 for all sex offenses)

Utah law provides alternative indeterminate lengths of stay (6 years to life, 10 years to life, or 15 years to life) for sex offenses represented by columns A, B, and C on Form 3 – Sex & Kidnap Offender Matrix. The court shall order the term of 15 years to life, for offenders convicted of one of these offenses unless mitigating circumstances justify downward departure to an indeterminate term of ten years to life or six years to life. The responsibility to weigh aggravating and mitigating circumstances in each case rests with the court, subject to applicable statutes and relevant case law. The weight given to each factor by the sentencing authority will vary in each case. The pre-sentence investigator should note any aggravating or mitigating circumstance that merits consideration by the court by entering the page number of the presentence report where the court can find supporting information.

**This list of aggravating and mitigating factors is non-exhaustive and illustrative only.**

## Aggravating Circumstances

The following aggravating circumstances should only be considered if they are not an element of the offense.

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- \_\_\_ 1. The victim suffered substantial bodily injury or serious bodily injury.
- \_\_\_ 2. The offense was characterized by extreme cruelty or depravity.
- \_\_\_ 3. The victim was unusually vulnerable.
- \_\_\_ 4. Offender has previously failed to complete treatment or has completed treatment and re-offended.
- \_\_\_ 5. The defendant exhibited grooming, stalking or enticing behaviors.
- \_\_\_ 6. Other (Specify) \_\_\_\_\_

## Mitigating Circumstances

- \_\_\_ 1. The offender was exceptionally cooperative with law enforcement; i.e. self-surrender or confession.
- \_\_\_ 2. Incest offender has strong, supportive family relationships.
- \_\_\_ 3. Offender is a good candidate for an evidence-based treatment program. Substance abuse treatment may be appropriate if the offense was specifically substance related.
- \_\_\_ 4. Developmental disabilities of the offender may be considered in mitigation if highly structured alternatives can be utilized to control the offender's criminal behavior.
- \_\_\_ 5. Other (Specify) \_\_\_\_\_

OFFENDER NAME: \_\_\_\_\_ DATE SCORED: \_\_\_\_\_  
SCORER'S NAME: \_\_\_\_\_

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## **Form 5 - Jail as a Condition of Felony Probation Matrix Instructions**

**Form 5** is to be used in addition to **Form 1** and **Form 3** of the Adult Sentencing Guidelines and should only be used when the recommendation resulting from **Form 1** or **Form 3** is to suspend the prison sentence. When the guidelines indicate that an offender's prison sentence should be suspended, **Form 5** should be used to assist in the determination of whether an offender should serve some time in jail as an initial condition of probation and if so, the length of the jail sentence.

The shaded areas of **Form 5** generally correspond with the shading of **Form 1** and **Form 3**. Columns that require Mandatory Imprisonment are not included on **Form 5**.

**Dark shaded cells:** This area corresponds with the "Imprisonment" recommendation of **Form 1** and **Form 3**. If an offender falls into one of these areas and does not receive a prison recommendation, jail time is generally recommended for these offenses.

**Light shaded cells:** This area corresponds with the "Intermediate Sanctions" area of **Form 1** and **Form 3**. If an offender falls into one of these areas, AP&P may recommend jail as a condition of the offender's probation. Light shaded cells are more indicative of the need for Intensive Supervision, which is recommended for these offenses. Intensive Supervision may include increased monitoring or supervision, electronic monitoring, referral to treatment resource centers, participation in residential programming, special conditions of probation, or other alternatives as available.

**Unshaded cells:** This area corresponds with the "Presumptive Probation" area of **Form 1**. If an offender falls into this area, 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 maximum jail time recommended to the court by the Sentencing Commission at the time of sentencing to address the goal of risk management. 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. Recommendations should generally presume the mid-point between 0 and the number indicated to begin the calculation (for instance, the midpoint of 0-270 = 135). 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 2** and/or **Form 4**, 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 **Forms 6 – 10 and corresponding addenda**.

## FORM 5 – JAIL AS A CONDITION OF 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.

**Lighter shaded cells** are indicative of intermediate sanctions / intensive supervision, which may include increased monitoring or supervision, electronic monitoring, referral to treatment resource centers, participation in residential programming, special conditions of probation, etc.

The **upper number in each cell** is the maximum incarceration period of jail time which should be imposed by the court at the time of sentencing. The mid-point in each cell is generally recommended for the supervising agency to begin the analysis with aggravating/mitigating factors to be considered in addition to validated assessment scores and the impact of incarceration upon risk to reoffend.

These notations apply to both forms 5 and 5a.

### GENERAL MATRIX

(To be used with Form 1)

	2 <sup>nd</sup> Death	1 <sup>st</sup> Person	3 <sup>rd</sup> Death	1 <sup>st</sup> Other	2 <sup>nd</sup> Person	3 <sup>rd</sup> Person	2 <sup>nd</sup> Other	2 <sup>nd</sup> Poss	3 <sup>rd</sup> Other	3 <sup>rd</sup> Poss
<b>V</b>	365	365	365	365	365	300	300	300	270	150
<b>IV</b>	365	365	320	320	320	300	300	270	210	120
<b>III</b>	365	300	270	270	270	180	180	180	150	0-90
<b>II</b>	365	270	240	240	240	150	0-120	0-120	0-90	0-60
<b>I</b>	365	240	210	210	210	120	0-90	0-60	0-60	0-30

**JAIL DAYS** (rows IV, III, II, I)  
**INTERMEDIATE SANCTIONS** (row III)  
**PRESUMPTIVE PROBATION** (rows II, I)

### SEX & KIDNAP OFFENSE MATRIX

(To be used with Form 3)

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>
<b>III</b>	365	320	180
<b>II</b>	365	250	180
<b>I</b>	320	210	120

## FORM 5A - MISDEMEANOR MATRIX

	Class A Person Crime	Class B Person Crime*	Class A Other	Class B DV Other*	Class A POCS	Class B*	Class C and Below
V	0-210 <b>JAIL DAYS</b>	0-180	0-150	0-120	0-90	0-60	
IV	0-180	0-150 <b>INTERMEDIATE</b>	0-120	0-90	0-75	0-45	
III	0-150	0-120	0-90	0-75	0-45	0-30 <b>PRESUMPTIVE PROBATION/ALT. SANCT.</b>	
II	0-120	0-90	0-60	0-45	0-30	0-15	
I	0-90	0-60	0-30	0-30	0-15	0-15	

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\* "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. "Class B" does not include DUI offenses. See DUI Matrix.

### Presumptive Probation / Alternative Sanctions

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 Form 10, 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. Lethality assessments are recommended in domestic violence offenses if available. Consider recommendations for sentencing protective orders, but recognize that protective orders issued by civil courts are broader and offer permanent protections.

The 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. Courts should recognize the statutory presumption for counseling in domestic violence cases, recognizing that current modalities of treatment are directed primarily at intimate partners. As more differentiated treatments become readily available and validated, the statutory requirements and guideline recommendations should be updated accordingly.

See Form 10 for a non-exhaustive list of Non-Incarceration Sanctions currently anticipated within the behavior modification context.

### Forms 6 through 10 Instructions

- **Form 6 - Supervision & Treatment Levels Framework**
- **Form 7 - Decision-Making Authority Matrix**
- **Form 8 - Response Magnitude/ Proportionality Form**
- **Form 9 - Graduated Incentives**
- **Form 10 - Graduated Sanctions**

**Forms 6 through 10** are new additions to the 2015 guidelines in response to the Sentencing Commission's directives from House Bill 348. All five forms are relevant to supervision and to some degree are interconnected. **Forms 6 through 10, as well as referenced Addenda**, should be used in the context of the decision-making process in determining an appropriate response to both accomplishments and violations of supervision.

**Form 6 – 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, 1a, 3, 5 and 5a** calculate a single cell based upon the intersection of the severity of the offense and the culpability of the offender, **Form 6** provides a visual representation of an entire row of the identified dynamic and responsivity factors of an individual offender from a validated screening and risk/needs assessment.

- “Dynamic Factors” referenced on **Form 6** are further explained in **Addendum D, Central Eight Criminal Risk Factors**.
- “Responsivity Factors” referenced on **Form 6** 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.

**Form 6** recommends supervision services to be targeted towards moderate and high risk level offenders. **Form 6** also recommends “criminogenic” treatment services for moderate and high risk level offenders.

- “Criminogenic” treatment services referenced on **Form 6** 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.

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 **Form 6** in Presentence Reports and/or Progress / Violation Reports. **Form 6** is not intended to replace or replicate the LS/RNR reports, which should be deferred to if available. **Form 6** 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, **Form 7 - 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 **Form 7** is determined based upon the results of a validated screening and assessment.

- “Violation Severity Level” referenced on **Form 7** is determined from **Addendum G, Supervision Violation Severity Listing**, 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 **Form 7**, 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 **Form 7**, the Probation or Parole Officer may select from the available responses contained within the corresponding heading on **Form 10**.
- Where “P.O. w/ Supervisor Approval” is designated as the responding entity on **Form 7**, the Probation or Parole Officer must obtain supervisor approval prior to imposing a response contained within the corresponding heading on **Form 10**.

Responses to accomplishments and/or compliant behavior are contained within the corresponding headings on **Form 9**.

Once the appropriate entity for responding to the behavior is determined from **Form 7**, **Form 8 – Response Magnitude/ Proportionality Form** should then be used in determining the proportionality or

magnitude of the response. **Form 8** is a conceptualization of a decision-tree approach in determining the magnitude/proportionality of the response to the underlying behavior.

- “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 modified periodically. If the behavior does not relate to a short or long-term goal, or if such goals are not distinguished, the typical recommendation is for a moderate response.

- “Response Magnitude” in the fifth column applies regardless of the entity responding to the behavior. “Moderate” incarceration sanctions are specified on **Form 10** as the mid-point number indicated. However, the same concept applies to incarceration and non-incarceration sanctions, as well as incentives.

Refer to page 6 for further explanation regarding the proportionality principle as to why a moderate response is generally presumed.

**Form 9 - Graduated Incentives** and **Form 10 - Graduated Sanctions** identify a range of potentially available incentives 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 **Form 9** or **Form 10** 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.

- Where "Court/BOPP" is designated on either **Form 9** or **Form 10**, 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.

- Where a range of incarceration sanctions is indicated on **Form 10** for the "Court/BOPP," the upper number is a cap or maximum amount recommended. Exceptions to the maximum amount recommended are listed specifically and findings should be entered accordingly if exercised.
- Where "Court/BOPP Approved" is designated on **Form 10** for less than five (5) day incarceration sanctions, the standard hearing process is not anticipated. One, two or three day incarceration sanctions are intended to be utilized as swift and certain responses for behavior modification purposes explained previously, but are still subject to Court/BOPP approval. An expedited process for such approval is anticipated in coordination with AP&P, the Administrative Office of the Courts and the Board of Pardons and Parole.

# FORM 6 – SUPERVISION & TREATMENT LEVELS FRAMEWORK

## (Felony & Misdemeanor Offenses)

Form 6 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. It should be noted that supervision services should be targeted towards moderate and high risk level offenders. It should also be noted that criminogenic treatment services are preferred for moderate and high risk level offenders. 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.

		Dynamic Factors										Responsivity Factors									
Risk Level	Need Level	Dynamic Factors								Supervision	Treatment	Responsivity Factors									
		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	
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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## FORM 7 - DECISION-MAKING AUTHORITY MATRIX

Form 7 designates the appropriate responding entity for violations of supervised probation and/or parole and accomplishments. Once the appropriate entity is determined from Form 7, Form 8 should then be used in determining the magnitude or proportionality of the response. Forms 9 & 10 should then be used to select from the range of available sanctions and incentives.

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

**Violation Severity Level** is listed in Addendum G.

**Accomplishment Level** is listed in Addendum H.






**Court/BOPP** designates that notice must be provided to the Court/BOPP of the behavior. The supervising agency may or may not request incarceration as a recommended response.

**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 Forms 9 & 10.

**Probation or Parole Officer** designates the Probation or Parole Officer may select from available responses listed under corresponding headings on Forms 9 & 10.



## FORM 8 – RESPONSE MAGNITUDE/PROPORTIONALITY FORM

<u>Behavior</u>	<u>Offender Risk</u>	<u>Offender Need</u>	<u>Relation to Risk/Need Goal</u>	<u>Response Magnitude/ Proportionality</u>
	High & Moderate = High Low = Low	High & Moderate = High Low = Low	Proximal = Short Term Distal = Long Term	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*
 <i>What is the nature of the behavior?</i>	 <i>How likely were they to reoffend?</i>	 <i>How high are their criminogenic needs?</i>	 <i>Does the behavior relate to short or long term goals?</i>	 <i>What magnitude of response should be imposed?</i>

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Risk and need level 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.

The magnitude of the response is applicable regardless of the entity responding to the behavior. Moderate incarceration sanctions are specified on Form 10 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.

\*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.

# FORM 9 – GRADUATED INCENTIVES

Recommended at a ratio of 4:1 (four incentives to each sanction) for behavior modification purposes.

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.

<b>Court/BOPP</b>	<p style="text-align: center;">402 Reduction Early Termination Fine Reduction Transfer to Court/Lower Probation Any Lower Level Incentive</p>
<b>P.O. with Supervisor Approval</b>	<p style="text-align: center;">Up to 50% Community Service Reduction \$\$ Voucher Recommend Fine Reduction Approval to Serve as Peer Mentor Reduce Substance/Alc. Screening Any Lower Level Incentive</p>
<b>Probation/Parole Officer Incentives</b>	<p style="text-align: center;">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</p>

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# FORM 10 – GRADUATED SANCTIONS

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. Any non-incarceration response is always available to the Court or Board of Pardons and Parole. The inclusion of the graduated incarceration caps is intended as a maximum but should not be the default response.

		Probation	Parole
<b>Graduated Incarceration Caps with Hearing Before Court/BOPP</b>	3	0-90 (45)	0-180 (90)
	2	0-60 (30)	0-120 (60)
	1	0-30 (15)	0-60 (30)
	(Maximum of 5 Days/30 Days) 1-3 Days Jail Per Sanction		
<b>P.O. with Superv. &amp; Expedited Court/BOPP Approval</b>	Hearing Before Court/BOPP Community Correctional Center GPS Electronic Monitoring		
<b>P.O. with Superv. &amp; Court/BOPP Approval</b>	Request Court/BOPP Sanction Up to 90 day Curfew Up to 72 Hours Home Restriction Treatment Resource Center Up to 16 Hours Community Service		
<b>P.O. with Supervisor Approval</b>	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 Payment Schedule Adjustment Verbal Warning		
<b>Probation/Parole Officer Sanctions &amp; Responses</b>			

*Exception(s) exercised by Court or BOPP (circle appropriate responding entity if both Court/BOPP are listed):*

- *Court/BOPP increased or decreased magnitude using Form 8.*

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

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- *Court /BOPP jurisdiction over new criminal conviction.*

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- *Court/BOPP finding that conduct presents a substantial and immediate threat to public safety which cannot be addressed through behavior modification sanctions.*

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- *BOPP revocation for lying or engaging in criminal conduct prior to parole pursuant to 77-27-10(1)(b).*

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- *BOPP GMI compliance pursuant to 77-16a-205.*

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- *BOPP Parole Violation Hearing continued pursuant to Administrative Rule.*

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- *BOPP Rescission pursuant to Administrative Rule.*

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# **ADDENDUM A**

## **Crime Column Severity Listing**

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

# **ADDENDUM B**

## **Crime Categories**

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## **Categorization of Offenses Except Sex Offenses**

### **Form 1 General Offense Matrix**

This list categorizes all felony offenses to help determine the appropriate crime category column on the guidelines matrices. Felony offenses on the **General Matrix (Form 1)**, which does not include sex offenses, are categorized as *murder, death, person, possession only* or *other*. Offenses actually resulting in the death of the victim have been classified as *either murder or death*. The *person* category includes, but is not necessarily limited to, violent offenses, offenses which result in physical injury to the victim, offenses which place the victim in fear, and several offenses involving threats to the victim. Offenses that consist of only the possession of a controlled substance, are categorized as *possession only*. All other offenses including non-possession only drug offenses, property offenses, and offenses against public order have been classified as *other*.

To find the appropriate crime category column on the **General Matrix (Form 1)**, first determine the degree of the offense (1<sup>st</sup>

degree, 2<sup>nd</sup> degree, or 3<sup>rd</sup> degree) by referring to the judgment and commitment order or other official court document. Then, look on this list to determine whether the offense is categorized as *murder, death, person, possession only*, or *other*.

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
4-32-14	Bribery offenses, meat and poultry chapter of agricultural code	Other
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 interests, financial institution	Other
7-5-10	Lending trust funds to trust company, officer, director, empl	Other
9-4-612	Housing assistance fraud	Other
9-9-404	Illegal trafficking in Native American remains	Other
10-3-1310	Municipal Officers' and Employees' Ethics Act violation	Other
13-2-6	Violation of cease and desist order issued by Div. of Consumer Protection	Other
13-10-8	Failure to disclose the origin of a recording	Other
13-23-7	Health Spa Services Protection Act violation	Other
13-26-8	Telephone Fraud Prevention Act violation	Other
17-43-308	Providing prohibited treatments to change patient's concept of God	Other
19-2-115	Air Quality Act violations	Other
19-3-110	Radiation Control Act violations	Other
19-5-115	Water Quality Act violations	Other
19-6-113	Solid and Hazardous Waste Act violations	Other
19-6-822	Waste Tire Recycling Act violations	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	Election 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 election 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 the Medicaid program	Other
26-20-5	False statements or representations relating to qualification of health institution	Other
26-20-9	False Claims Act violation	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 a child to enter a prohibited marriage	Other
30-1-13	Solemnization of marriage without license	Other



<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
30-1-14	Acting without authority to perform marriage; impersonation	Other
30-1-15	Solemnization of prohibited marriage	Other
30-1-16	Issuing a license for a prohibited marriage	Other
31A-16-111	Insurance holding companies violation	Other
31A-16-112(4)	Willfully violating the Insurance Code	Other
31A-16-112(5)	False filing with intent to deceive Insurance Commissioner	Other
32B-4-401	Unlawful sale or furnishing of alcohol	Other
32B-4-503	Tampering with records of the ABC Commission	Other
32B-4-504	Making a false material statement before the ABC	Other
32B-4-505	Obstruction of official proceeding/investigation under ABC	Other
32B-4-508	Offering or soliciting bribes or gifts under the ABC Act	Other
32B-4-509	Forgery under the ABC Act	Other
34-24-2	Blacklisting	Other
34A-2-110	Workers' compensation insurance fraud	Other
41-1a-1313	Possession of vehicle or parts without identification number	Other
41-1a-1314	Unauthorized control of a vehicle for an extended time	Other
41-1a-1315	False evidences of title and registration	Other
41-1a-1316	Possession of, receiving, or 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 a disclosure statement	Other
41-3-703	Forgery or unlawful possession of license, plate, or permit	Other
41-4-9	Financing Dealers and Purchasers violation	Other
41-6a-210	Failure to respond to officer's signal to stop	Other
41-6a-210(2)	Failure to respond to officer's signal to stop and causing serious bodily injury or death	Person, Death
41-6a-503(2)(a)	Driving under the influence and causing ser. bodily injury	Person
41-6a-503(2)(b)	Driving under the influence-third or subsequent conviction	Other
41-6a-503(2)(c)	Driving under the influence following automobile homicide or felony DUI conviction	Other
41-6a-401.3	Failure to stop at an accident involving injury	Other
41-6a-401.5	Failure to stop at an accident involving death	Other
41-6a-502.5	Impaired Driving	Other
41-12a-805	Unauthorized release of information from uninsured motorist identification database	Other
52-1-13	Public officer making a material false statement to secure a bond	Other
58-5a-501	Unlawful conduct under the Podiatric Physician Licensing Act	Other
58-16a-503	Unlawful conduct under the Utah Optometry Practice Act	Other
58-17b-(504)(1)	Possession of prescription drug for any unlawful purpose	Other
58-31b-503	Unlawful conduct under the Nurse Practice Act	Other
58-37-8	Controlled substances violation (other than "possession" offenses designated herein)	Other
58-37-8(2)(a)(i)	Felony possession or use of a controlled substance	Possession
58-37-8(2)(a)(ii)	Allow poss. or use of controlled 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

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
58-37-8(2)(b)(ii)	Felony possession of Schedule I or II	Possession
58-37-8(2)(d)	Felony possession of other controlled substance	Possession
58-37-8(2)(e)	Possession of controlled substance in correctional facility	Possession
58-37-8(2)(g)	Driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death	Person, Death
58-37-8(3)(a)(i)	Felony fictitious use of license to obtain controlled substance	Other
58-37-8(3)(a)(ii)	Felony obtaining or dispensing false prescription	Other
58-37-8(3)(a)(iii)	Felony making/uttering/altering false or forged prescription	Other
58-37a-5(3)	Drug Paraphernalia Act violation	Possession
58-37a-5(2), (4)	Possession or use of drug paraphernalia	Other
58-37c-11	Unlawful conduct under the Controlled Substance Precursor Act	Other
58-37d-4	Clandestine Drug Lab Act violation	Other
58-37d-5	Clandestine Drug Lab Act violation	Other
58-37f-601	Unlawful release or obtaining of information from controlled substances database	Other
58-44a-503	Unlawful conduct under the Nurse Midwife Practice Act	Other
58-55-501(13)	Misuse of funds received by contractor	Other
58-60-111	Unlawful conduct under the Mental Health Professional Practice Act	Other
58-61-503	Unlawful conduct under the Psychologist Licensing Act	Other
58-67-503	Unlawful conduct under the Utah Medical Practice Act	Other
58-68-503	Unlawful conduct under the Utah Osteopathic Medical Practice Act	Other
58-69-503	Unlawful conduct under the Dentist and Dental Hygienist Practice Act	Other
58-70a-504	Unlawful conduct under the Physician Assistant Act	Other
58-71-503	Unlawful conduct under the Naturopathic Physician Practice Act	Other
58-72-502	Unlawful conduct under the Acupuncture Licensing Act	Other
58-73-502	Unlawful conduct under the Chiropractic Physician Practice Act	Other
59-1-401	Failure to file tax return; supplying false information on tax return; evading tax	Other
59-14-209	Cigarettes tax stamp violation	Other
61-1-21	Utah uniform securities act violation	Other
61-2c-405	Division of real estate violation	Other
62A-4a-709	False or fraudulent claim for medical assist. identification	Other
62A-6-116	Unauthorized sterilization	Other
62A-7-402	Harboring or concealing a youth offender	Other
63E-1-404	Unlawful benefit from privatization of independent entity	Other
63G-6-1001	Accepting emolument	Other
63G-6-1002	Offering emolument	Other
63M-7-510	Filing a false claim with Crime Victims Reparations	Other
67-1a-7	Unlawful use of state seal	Other
67-16-12	Ethics Act violation	Other
73-18-7.1	Fraudulent application for registration of a motorboat	Other
73-18-7.2	Altering or forging registration or certificate of title for	Other

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
	motorboat	
73-18-13.2	Accident involving injury—Stop at accident—Penalty	Other
73-18-13.3	Accident involving death---Stop at accident---Penalty	Other
73-18-20.3	Falsified hull identification	Other
73-18-20.7	Unlawful control over a vessel	Other
76-5-102.4	Assault against a peace officer or military service member in uniform	Person
76-5-102.5	Assault by a prisoner	Person
76-5-102.6	Propelling substance or object at a correctional or peace officer	Person
76-5-102.8	Disarming a peace officer	Person
76-5-103	Aggravated assault	Person
76-5-103.5	Aggravated assault by a prisoner	Person
76-5-105	Mayhem	Person
76-5-106.5	Stalking	Person
76-5-107.3	Threat of terrorism	Person
76-5-107.5	Hazing	Person
76-5-109	Child abuse	Person
76-5-109.1	Commission of domestic violence in the presence of a child	Person
76-5-110	Abuse or neglect of disabled child	Person
76-5-111	Abuse, neglect, or exploitation of a disabled or elder adult	Person
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	Person
76-5-203	Murder	Murder
76-5-203	Attempted murder	Person
76-5-205	Manslaughter	Death
76-5-207	Automobile homicide	Death
76-5-207.5	Automobile homicide involving text messaging or electronic 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
76-5-308.5	Human trafficking of a child	Person
76-5-309	Human trafficking and human smuggling -Penalties	Person
76-5-310	Aggravated human trafficking and aggravated human smuggling	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 committed against timber, mining, or 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

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
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
76-6-301	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
76-6-407	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 card	Other
76-6-506.6	Unauthorized factoring of credit card sales drafts	Other
76-6-506.7	Obtaining encoded information on a financial transaction card with the intent to defraud	Other
76-6-509	Bribery of a labor official	Other
76-6-510	Bribe receiving 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	Conveyance of real estate by married man without 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	Obstruction of the leasing of real property for natural resource 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

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
76-6-1002	Damage to a mail receptacle	Other
76-6-1003	Mail theft	Other
76-6-1102	Identity fraud	Other
76-6-1303	Possession, sale, or use of automates sales suppression device unlawful	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 a Board of Pardons' warrant or a probationer order to show cause	Other
76-8-309	Escape	Other
76-8-309(2)	Aggravated escape	Person
76-8-311.1	Transporting firearm, ammunition, or dangerous weapon into a secure area	Other
76-8-311.3	Items prohibited in correctional and mental health facilities	Other
76-8-312	Bail jumping	Other
76-8-315	Assault on an elected official - attempting or causing bodily injury	Person
76-8-316	Influencing, impeding, or retaliating against a judge or member of Board of Pardons	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 or 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 or inconsistent material statement	Other
76-8-508	Tampering with a witness	Other
76-8-808.3	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 and making threat to injure person or property	Person
76-8-509	Bribery to dismiss a criminal proceeding	Other
76-8-510.5	Tampering with evidence	Other
76-8-802	Destruction of property to interfere with preparation for defense or war	Other
76-8-803	Causing or omitting to note defects in articles used in preparation for defense or war	Other
76-8-902	Advocating criminal syndicalism or sabotage	Other

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
76-8-903	Assembly for advocating criminal syndicalism or sabotage	Other
76-8-1101	Failure to file tax return; supplying false information on tax return; 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 regarding unemployment compensation	Other
76-9-101	Riot	Other
76-9-105	Making a 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 a police service animal	Other
76-9-704	Abuse or desecration of a dead human body	Other
76-10-204	Damaging bridge, dam, canal, or other water-related structure	Other
76-10-306	Explosives violations	Other
76-10-307	Delivery of explosive device to common carrier	Other
76-10-402	Manufacture, possession, sale, or use of weapon of mass destruction	Other
76-10-403	Manufacture, possession, sale, or use of hoax weapon of mass destruction	Other
76-10-503	Possession, transfer, or purchase of a dangerous weapon by restricted person	Other
76-10-504(3)	Possession of a short barrel rifle	Other
76-10-504(4)	Possession of concealed firearm in the commission of a violent felony	Person
76-10-508	Discharge of a firearm from a vehicle	Person
76-10-509.4	Possession of sawed-off shotgun or fully automatic weapon by a minor	Other
76-10-509.5	Providing sawed-off shotgun or fully automatic weapon to minor	Other
76-10-509.6	Parent or guardian providing firearm to violent minor	Other
76-10-509.9	Sale of firearm to juvenile	Other
76-10-527(2)	Making false statement in information required for criminal background check	Other
76-10-527(3)	Weapons violation by dealer	Other
76-10-527(4)	Purchasing firearm with the intent to provide firearm to ineligible person	Other
76-10-703	Fraudulent documents relating to organization or increase of 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 a gambling device or record	Other

<b>Code Citation</b>	<b>Description</b>	<b>Category</b>
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(1)	Bus hijacking	Person
76-10-1504(2)	Assault with the intent to commit bus hijacking	Person
76-10-1504(3)	Assault with the intent to commit bus hijacking with dangerous weapon	Person
76-10-1504(4)	Boarding a bus with a concealed dangerous weapon	Other
76-10-1505	Discharging firearms and hurling missiles into buses and terminals	Person
76-10-1507	Carrying a concealed dangerous weapon or hazardous material into a terminal or aboard a bus	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 a 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 as a sex or kidnap offender	Other
77-36-1.1(c)	Repeat violation of a protective order	Person
77-36-2.5	Violation of condition for release after arrest for domestic violence	Person
77-36-2.7	Violation of condition for release	Other
78A-2-203	Possession of firearm, ammunition, or dangerous weapon within a secure area established by the Judicial Council	Other
78B-1-125	Certifying excessive witness or juror fees	Other

# **ADDENDUM C**

## **Categorization of Sex Offenses**

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### Form 3 Sex Offender Matrix

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 (*death, person, possession only or other*). 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., 2<sup>nd</sup> degree felony *Forcible Sexual Abuse* is lowered to 3<sup>rd</sup> 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 1<sup>st</sup> degree felony with mandatory prison of 25 years to life. *Attempted Rape of a Child* is not a 2<sup>nd</sup> degree felony; rather it is a 1<sup>st</sup> 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 1<sup>st</sup> degree felony with no mandatory prison and indeterminate range of 3 years to life while *Solicitation to Commit Rape of a Child* is a 1<sup>st</sup> degree felony with mandatory prison and an indeterminate range of 15 years to life. Due to these distinctions between some sex offenses, regularly refer to the following listing to assure that the correct crime category column is used when calculating the guidelines recommendation.

Code Citation	Description	Matrix Column
76-4-401	Enticing a minor over the internet – first degree felony	E
76-4-401	Enticing a minor over the internet – second degree felony	H
76-4-401	Enticing a minor over the internet – third degree felony	I
76-4-401	Enticing a minor over the internet – class A misdemeanor	J
76-5-301.1	Child kidnapping	A, B, or C
76-5-301.1 <sup>1</sup>	Attempted child kidnapping	G
76-5-301.1 <sup>3</sup>	Conspiracy to commit child kidnapping	G
76-5-301.1	Solicitation to commit child kidnapping	H
76-5-302	Aggravated kidnapping	A, B, or C
76-5-302	Attempt, conspiracy, or solicitation to commit aggravated kidnapping	H
76-5-401	Unlawful sexual activity with a minor	I
76-5-401	Attempt, conspiracy, or solicitation to commit unlawful sexual activity with a minor	J
76-5-401.1	Sexual abuse of a minor	J
76-5-401.1(3)(b)	Sexual abuse of a minor student	I
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old	I
76-5-401.2	Attempt, conspiracy, or solicitation to commit unlawful sexual conduct with a 16 or 17 year old	J
76-5-401.2(5)(b)	Unlawful sexual conduct with a 16 or 17 year old student	I
76-5-402	Rape	F (A, B, or C)
76-5-402 <sup>1</sup>	Attempted rape	G
76-5-402 <sup>3</sup>	Conspiracy to commit rape	G
76-5-402	Solicitation to commit rape	H
76-5-402.1	Rape of a child	25 Years to Life
76-5-402.1 <sup>1,2</sup>	Attempted rape of a child	A, B, C or E
76-5-402.1 <sup>3</sup>	Conspiracy to commit rape of a child	G
76-5-402.1	Solicitation to commit rape of a child	A, B, C, or E
76-5-402.2	Object rape	F (A, B, or C)
76-5-402.2 <sup>1</sup>	Attempted object rape	G
76-5-402.2 <sup>3</sup>	Conspiracy to commit object rape	G
76-5-402.2	Solicitation to commit object rape	H
76-5-402.3	Object rape of a child	25 Years to Life
76-5-402.3 <sup>1,2</sup>	Attempted rape of a child	A, B, C, or E
76-5-402.3 <sup>3</sup>	Conspiracy to commit rape of a child	G
76-5-402.3	Solicitation to commit rape of a child	A, B, C, or E
76-5-403(2)	Forcible sodomy	F (A, B, or C)
76-5-403(2) <sup>1</sup>	Attempted forcible sodomy	G
76-5-403(2) <sup>3</sup>	Conspiracy to commit forcible sodomy	G
76-5-403(2)	Solicitation to commit forcible sodomy	H
76-5-403.1	Sodomy on a child	25 Years to Life
76-5-403.1 <sup>1,2</sup>	Attempted sodomy on a child	A, B, C, or E
76-5-403.1 <sup>3</sup>	Conspiracy to commit sodomy on a child	G

Code Citation	Description	Matrix Column
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 sexual abuse	I
76-5-404.1	Aggravated sexual abuse of a child	A, B, or C
76-5-404.1 <sup>1</sup>	Attempted aggravated sexual abuse of a child	G
76-5-404.1 <sup>3</sup>	Conspiracy to commit aggravated sexual abuse of a child	G
76-5-404.1	Solicitation to commit aggravated sexual abuse of a child	H
76-5-404.1	Sexual abuse of a child	H
76-5-404.1	Attempt, conspiracy, or solicitation to commit sexual abuse of a child	I
76-5-405	Aggravated sexual assault	A, B, or C
76-5-405 <sup>1</sup>	Attempted aggravated sexual assault	G
76-5-405 <sup>3</sup>	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
76-10-1306	Aggravated exploitation of prostitution	F or H
76-10-1306	Attempt, conspiracy, or solicitation to commit aggravated exploitation prostitution	I or H

<sup>1</sup> See 76-4-102(2)

<sup>2</sup> See 76-3-406(10)

<sup>3</sup> See 76-4-202(2)

# **ADDENDUM D**

## **Central Eight Criminal Risk Factors**

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## Central Eight Criminal Risk Factors & Treatment Targets

Criminogenic Need	Treatment Targets
<b>Antisocial Behavior</b> 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.
<b>Antisocial Personality Pattern</b> 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.
<b>Antisocial Cognition</b> 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.
<b>Antisocial Peers</b> 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).
<b>Family</b> 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.
<b>School/Work</b> 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.
<b>Leisure &amp; Recreation</b> 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.
<b>Substance Abuse</b> 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.

BIG FOUR

MOD FOUR

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

# **ADDENDUM E**

## **The Responsivity Principle & Factors**

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## The Responsivity Principle & Factors

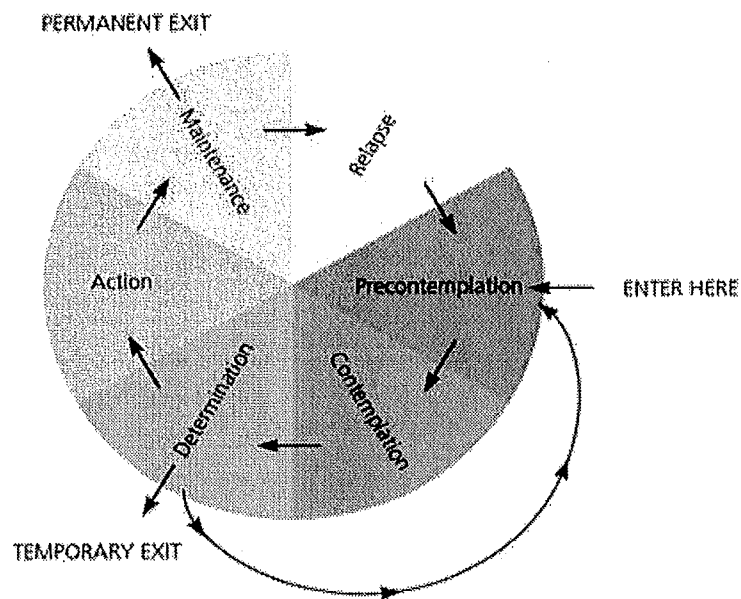
<b>The Responsivity Principle:</b>	
<p>Maximize the offender’s ability to learn from a rehabilitative intervention by providing cognitive behavioral treatment and tailoring the intervention to the learning style, motivation, abilities and strengths of the offender.</p>	
<b>General:</b>	<b>Specific:</b>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

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



# ADDENDUM F

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

Adapted from 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**

## **Supervision Violation Severity Listing**

## Supervision Violation Severity Listing

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

# **ADDENDUM H**

## **Supervision Accomplishment Level Listing**

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## Supervision Accomplishment Level Listing

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

# **ADDENDUM I**

## **2015 Sentencing Guidelines References**

## 2015 Sentencing Guidelines References

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Baradaran, Shima. "Race, Prediction, and Discretion." *George Washington Law Review* 81, no. 1: 157-222. January 2013.

[www.gwlr.org/wp-content/uploads/2013/01/Baradaran\\_81\\_1.pdf](http://www.gwlr.org/wp-content/uploads/2013/01/Baradaran_81_1.pdf)

Durrant, Matthew B. "State of the Judiciary Address." Chief Justice, Utah Supreme Court. 2014.

<http://www.utcourts.gov/resources/reports/statejudiciary/2014-StateOfTheJudiciary.pdf>

Hickert, Audrey O., Kort C. Prince, Erin B. Worwood, and Robert P. Buttars. *Development of Utah's Incentive and Response Matrix*. Salt Lake City: Utah Criminal Justice Center, University of Utah. 2014.

[http://ucjc.utah.edu/wp-content/uploads/ViolMatrix\\_Yr1Report\\_Final1.pdf](http://ucjc.utah.edu/wp-content/uploads/ViolMatrix_Yr1Report_Final1.pdf)

Latessa, E.J. & Lowenkamp, C.T. "What Works in Reducing Recidivism?" *University of St. Thomas Law Journal* Vol3:3 2006, 521-535. 2006.

<http://www.uc.edu/content/dam/uc/ccjr/docs/articles/What Works STLJ.pdf>

Marlowe, Douglas B. "Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs." *Policy and Law, National Association of Drug Court Professionals* 1, no. 1: 173-175. 2009.

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.nadcp.org%2Fsites%2Fdefault%2Ffiles%2Fnadcp%2FEvidence%2520Based%2520Sentencing%2520for%2520Drug%2520Offender.pdf&ei=VPFUVbmeJ46zogTR1oHABQ&usg=AFQjCNEve9orMnfRPu-Ng\\_1qDIIB8f7vng&sig2=NI3vWdbp7aBnozYsEva\\_Q&bvm=bv.93564037,d.cGU](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.nadcp.org%2Fsites%2Fdefault%2Ffiles%2Fnadcp%2FEvidence%2520Based%2520Sentencing%2520for%2520Drug%2520Offender.pdf&ei=VPFUVbmeJ46zogTR1oHABQ&usg=AFQjCNEve9orMnfRPu-Ng_1qDIIB8f7vng&sig2=NI3vWdbp7aBnozYsEva_Q&bvm=bv.93564037,d.cGU)

Nagin, Daniel, Francis T. Cullen, and Cheryl Leo Jonson. "Imprisonment and Reoffending." *The University of Chicago*. 2009.

Nagin et al.; Gendreau, Paul, Claire Goggin, and Francis Cullen. "The Effects of Prison Sentences on Recidivism." Report to the Solicitor General of Canada. 2009.

<http://www.prisonpolicy.org/scans/e199912.htm>

Nagy, Geraldine, and Roger K. Warren. "Evidence-Based Sentencing to Reduce Recidivism and Hold Offenders Accountable." Presentation by National Center for State Courts at Smarter Sentencing Conference, Utah Administrative Office of the Courts, Salt Lake City, UT. 2014.

Center for Sentencing Initiatives. *Evidence-Based Sentencing. Fact Sheet*, Williamsburg: National Center for State Courts. 2014.

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.ncsc.org%2F~%2Fmedia%2FMicrosites%2FFiles%2FCSI%2FEBS%2520Fact%2520Sheet%25208-27-14.ashx&ei=G\\_xUVYLOJtbtoAT2o4HwDg&usg=AFQjCNEWP\\_07cNxonjy8C57IT7rXr8-rgg&sig2=5o9roBhsw0UklzK3UDMCFQ&bvm=bv.93564037,d.cGU](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.ncsc.org%2F~%2Fmedia%2FMicrosites%2FFiles%2FCSI%2FEBS%2520Fact%2520Sheet%25208-27-14.ashx&ei=G_xUVYLOJtbtoAT2o4HwDg&usg=AFQjCNEWP_07cNxonjy8C57IT7rXr8-rgg&sig2=5o9roBhsw0UklzK3UDMCFQ&bvm=bv.93564037,d.cGU)

Office of the Legislative Auditor General, State of Utah, "A Performance Audit of the Division of Adult Probation and Parole." 2013.

[http://le.utah.gov/audit/13\\_08rpt.pdf](http://le.utah.gov/audit/13_08rpt.pdf)



Petrosino Anthony, Carolyn Turpin-Petrosino, James O. Finckenauer. "Wellmeaning programs can have harmful effects!: Lessons from experiments in Scared Straight and other like programs." *Crime & Delinquency* 46: 354 - 379. 2000.

<http://www.d.umn.edu/~jmaahs/Correctional%20Assessment/Articles/petrosino.pdf>

Pew Charitable Trusts, "Factors Contributing to the Crime Decline." September 2014.

<http://www.pewtrusts.org/en/about/news-room/news/2014/09/11/factors-contributing-to-the-crime-decline>.

Roeder, Oliver, Lauren-Brooke Eisen, and Julia Bowling. "What Caused the Crime Decline." New York University School of Law, New York: Brennan Center for Justice, 2015.

<https://www.brennancenter.org/publication/what-caused-crime-decline>

Roth, David. "A Judge's View of Procedural Fairness." *Utah State Bar Journal*, Vol. 28, No. 1, pp. 12-13, Jan. Feb 2015.

[https://www.utahbar.org/wp-content/uploads/2015/01/2015\\_edition\\_01\\_jan\\_feb.pdf](https://www.utahbar.org/wp-content/uploads/2015/01/2015_edition_01_jan_feb.pdf)

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

Starr, Sonja B. "Evidence-Based Sentencing and Scientific Rationalization of Discrimination." *Law and Economics Working Papers: Paper 90*, 2014.

[http://repository.law.umich.edu/law\\_econ\\_current/90](http://repository.law.umich.edu/law_econ_current/90)

Tanana, M.J., Wilson, S., Prospero, M. & Van Vleet, R. "Utah Sentence Inflation." Salt Lake City: Utah Criminal Justice Center, University of Utah, 2008.

<http://ucjc.utah.edu/wp-content/uploads/UtahSentenceInflation.pdf>

Utah Commission on Criminal and Juvenile Justice. (2014) "Justice Reinvestment Report."

[http://justice.utah.gov/Documents/CCJJ/Reports/Justice Reinvestment Report 2014.pdf](http://justice.utah.gov/Documents/CCJJ/Reports/Justice_Reinvestment_Report_2014.pdf)

Villetaz, Patrice, Martin Killias, and Isabel Zoder (2006). "The effects of custodial vs. non-custodial sentences on re-offending: A systematic review of the state of knowledge." *Campbell Systematic Reviews* 2006:13.

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFiAA&url=http%3A%2F%2Fwww.campbellcollaboration.org%2Flib%2Fdownload%2F108%2F&ei=TfRUVZbBFc3GogTL9YDgCg&usg=AFQjCNHWzmb8MlPlz9gFQ7Dra-8NzFwPzQ&sig2=dK4RjEY-YqVSS\\_G6G4xL5w&bvm=bv.93564037,d.cGU](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFiAA&url=http%3A%2F%2Fwww.campbellcollaboration.org%2Flib%2Fdownload%2F108%2F&ei=TfRUVZbBFc3GogTL9YDgCg&usg=AFQjCNHWzmb8MlPlz9gFQ7Dra-8NzFwPzQ&sig2=dK4RjEY-YqVSS_G6G4xL5w&bvm=bv.93564037,d.cGU)