

STATE OF UTAH

UTAH SENTENCING COMMISSION



2015

Adult Sentencing & Release Guidelines

DRAFT

2015 Adult Sentencing & Release Guidelines



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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.

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 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 reference 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.

A number of significant events and input contributed to the revisions. 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 5** 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 and 5** 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 5** and the probation and parole violation/revocation guidelines. 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
 - 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 a legitimate and fundamental goal in ensuring public safety. Risk management includes the broader objective of holding offenders accountable and providing appropriate incapacitation and punishment for the violation of laws.

2. Risk Reduction

Risk reduction is addressed through the appropriate identification and reduction of an offender's individual criminal risk factors. 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. 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 10% 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 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.

Risk reduction is an independent goal of sentencing, which has not been previously structured or examined comprehensively. 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 bed utilized, as well as the impact of continued criminal activity on public safety, risk reduction is a legitimate but less-developed 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 is still a legitimate goal of criminal sentencing, but one which is unfortunately infrequently met.

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

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.

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 Order to Show Cause 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 over 16,000 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.

Finally, the 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 1-5**, 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 1-5**. The tools were designed to structure supervision, treatment, and programming and should not drive the initial incarceration decision.

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 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 3rd generation assessment tool. The LSI-R evaluates both static and dynamic offender risk factors.

Today, 4th generation assessment tools are available that improve upon the 3rd generation tools. The 4th generation assessment tools integrate both general and specific risk and needs components. Additionally, they include specific offender responsivity considerations. **Addendum E, The Responsivity Principle & Factors** provides a complete explanation of this principle, which is also incorporated in **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 3rd generation assessment tools primarily evaluated an offender’s risk to reoffend. The 4th generation tools still consider risk, but add targeted service needs and an understanding of how to appropriately deliver the services. Both the 3rd and 4th generation tools take into consideration the eight (8) criminogenic factors discussed in this manual.

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

Although the LSI tools are the primary assessment tools used by the Department of Corrections, other 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 at minimum every twelve months, 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.

V. ACTION RESEARCH APPROACH

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

VI. POLICY IMPLICIT IN THE GUIDELINES

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

A. Prosecution

Prosecutors may use the guidelines to determine the implications of charging and plea negotiations. The guidelines are intended to make the system predictable by making explicit the sentence an offender with a given background is likely to receive. Prosecutors should make it a policy to explain to the victim the effect of charging and plea negotiations in each individual case.

B. Presentence Investigations

Presentence investigations, including a validated risk and needs assessment and

other appropriate assessments, should be conducted on all felony convictions and class A misdemeanor sex offense convictions. Presentence investigations are beneficial to the Board of Pardons and Parole as well as to the court and should be completed even when the court may not deem it necessary in a particular case. Presentence investigations should have the guidelines forms 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. **Addendum F, Stages of Change Model** is included for informational purposes as one such tool which provides greater context as to where an offender is in the process of behavior modification.

C. Sentencing Judges

Sentencing judges may require that the guidelines forms 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 1-5**. These circumstances should be stated in open court and 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.

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.

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 intense supervision than is recommended for AP&P. For instance, where minimal or no supervision is recommended for a low-risk/low-need offender, county or private probation should not provide supervision services where "compliance calendar" is indicated on **Form 6**. The level of supervision services, regardless of provider, should generally be based upon the results of a validated risk and needs assessment, absent exigent risk or need. The Sentencing Commission recommends that county and private probation providers also utilize the evidence-based practices explained herein.

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.

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 revoked 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**.

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.
- 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.
- “Secure Care” are secure facilities operated by Juvenile Justice Services (JJS) providing long-term, locked confinement under the jurisdiction of the Youth Parole Authority. “Secure Care” is similar to adult prison.

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.
- “Secure Care” does **not** include juvenile detention facilities (similar to adult jails), Observation and Assessment, or similar program.
- 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.

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 a

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 +
- 4 SECURE CARE

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
		TOTAL:	I	0 - 3

CRIME CATEGORY

CRIMINAL HISTORY

	1 st Degree Murder A	1 st Degree Death B	2 nd Degree Death C	1 st Degree Person D	3 rd Degree Death E	1 st Degree Other F	2 nd Degree Person G	3 rd Degree Person H	2 nd Degree Other I	2 nd Degree Poss. J	3 rd Degree Other K	3 rd Degree Poss. L					
V	24 YRS	10 YRS	<i>Imprisonment</i>			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	<i>Intermediate Sanctions</i>			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	<i>Presumptive Probation</i>					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.**

Rev. 10/2015

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
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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 + 4 SECURE CARE
--	---	---	--

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
			I	0 - 3
		TOTAL:		

CRIME CATEGORY

	15 YRS TO LIFE	10 YRS TO LIFE	6 YRS TO LIFE
	A	B	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.

PSI Page #

- ____ 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 the amended laws mandating imprisonment for certain sex offenders in conjunction with differing

indeterminate lengths of stay ranges. 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. Additionally, if the trier of fact finds that in the course of the commission of the crime

the defendant caused serious bodily injury or has been previously convicted of a grievous sexual offense, the court may order a sentence of life without the possibility of parole. 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 trier of fact finds that, at the time of the commission of the crime, the defendant has been previously convicted of a grievous sexual offense, the court may sentence the defendant to LWOP.

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 1st Degree Felony under column A and a minimum sentence of 15 years to life. If the court finds that a lesser sentence is in the interests of justice and states the reasons for this finding on the record it may reduce the sentence to 10 years to life, 6 years to life, or 3 years to life.

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.

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 + 4 SECURE CARE
SUPRVISION HISTORY (ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT INCLUDEPRETRIAL OR COURT SUPERV.)	-1 SUCCESSFUL COMPL. 0 NO PRIOR SUPERV. 2 PRIOR REVOCATION 3 CURRENT OFFENSE ON SUPERV.	NUMBER OF PRIOR SEX/KIDNAP VICTIMS (EXCLUDING PRESENT VICTIM)	0 NO PRIOR VICTIMS 3 ONE PRIOR 4 TWO +

TOTAL SCORE: _____

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

CRIME CATEGORY

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

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. If the trier of fact finds that, at the time of the commission of the crime, the defendant has a prior conviction for a grievous sexual offense, the court may sentence the defendant to LWOP.

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 exclusive 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) in addition to life without the possibility of parole (LWOP) for sex offenses represented by columns A, B, and C on Form 3 – Sex Offender Matrix. The court shall order the term of 15 years to life, for offenders convicted of one of these offenses unless aggravating and mitigating circumstances justify departure. Aggravating circumstances may exist which justify an upward departure to LWOP. Similarly, mitigating circumstances may justify a 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. 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. 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.

PSI Page #

- ____ 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: _____

Rev. 10/2015

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 a condition of that 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 should be 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, a recommendation of jail may be recommended as a condition of

the offender's probation. Intensive Supervision should be recommended for these offenses.

Unshaded cells: This area corresponds with the "Presumptive Probation" area of **Form 1**. If an offender falls into this area, a typical recommendation 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.

The number of days recommended in the individual cells represents a range of potential days which could be ordered by the court. In determining an initial recommendation for the court in this category, the mid-point should generally be presumed. A completed risk and needs assessment, LS/RNR score, compliance with court orders prior to sentencing, the 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.

FORM 5 – JAIL AS A CONDITION OF FELONY PROBATION

GENERAL MATRIX

(To be used with Form 1)

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

**Numbers in unshaded cells are presumptive probation sentences, meaning jail time should NOT necessarily be recommended to the court. The upper number is the maximum incarcerative period of jail time which could be imposed by the court. The mid-point in each cell is generally appropriate to begin the analysis with aggravating/mitigating factors to be considered in addition to the impact of incarceration upon risk to reoffend.*

***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.*

SEX OFFENSE MATRIX

(To be used with Form 3)

	1 st sex	2 nd sex	3 rd sex
III	365	320	180
II	365	250	180
I	320	210	120

Forms 6 through 10 Instructions

- **Form 6 - Supervision & Treatment Levels Framework**
- **Form 7 - Decision-Making Authority Matrix**
- **Form 8 - Response Magnitude 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 assessment. Where **Forms 1, 1a, 3 and 5** 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 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 Pre-Sentence 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 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 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” incarcerative sanctions are specified on **Form 10** as the mid-point number indicated. However, the same concept applies to incarcerative and non-incarcerative 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 Order to Show Cause 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 incarcerative 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 2 and 3 day incarcerative sanctions, the standard Order to Show Cause process is not anticipated. The 2 and 3 day incarcerative sanctions are intended to be utilized as swift and certain responses for behavior modification purposes explained more fully on pages 5 & 6, 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.

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FORM 6 – SUPERVISION & TREATMENT LEVELS FRAMEWORK

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. 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.

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
Low	Low									Compl. Cal.	None								
	Moderate									Compl. Cal.	Clinical								
	High									Compl. Cal.	Clinical								
Mod	Low									Supervised	Criminogenic								
	Moderate									Supervised	Criminogenic								
	High									Supervised	Criminogenic								
High	Low									Supervised	Criminogenic								
	Moderate									Supervised	Criminogenic								
	High									DrCt/MHCt	Criminogenic								

FORM 7 - DECISION-MAKING AUTHORITY MATRIX

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

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

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

Violation Severity is listed in Addendum G.

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 FORM

<u>Behavior</u>	<u>Offender Risk</u>	<u>Offender Need</u>	<u>Relation to Risk/Need Goal</u>	<u>Response Magnitude</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	No Distinction	Moderate
Violation	High	High	Proximal	Higher Sanction
			Distal	Lower Sanction
		Low	No Distinction	Moderate
	Low	High	Proximal	Higher Sanction
			Distal	Lower Sanction
		Low	No Distinction	Moderate
↑	↑	↑	↑	↑
<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>

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 modified therefrom.

The magnitude of the response is applicable regardless of the entity responding to the behavior. Moderate incarcerative sanctions are specified on Form 10 as the midpoint number indicated. However, the same concept applies to incarcerative and non-incarcerative 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.

FORM 9 – GRADUATED INCENTIVES

Court/BOPP	<p style="text-align: center;">402 Reduction Early Termination ← Fine Reduction Transfer to Court/Lower Probation Any Lower Level Incentive</p>
P.O. With Supervisor Approval	<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>
Probation/Parole Officer	<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>

- Month for Month Earned Compliance Credit
- Active Participation in Evidence-Based Programs to Meet Dosage Recommendations
- Improve Assessment Scores/Earn Success Plates
 - Bronze: 5% Improvement
 - Silver: 10% Improvement
 - Gold: 15% Improvement
 - Platinum: 20% Improvement

FORM 10 – GRADUATED SANCTIONS

		Parole	Probation
Incarcerative Sanctions	Revocation/ Modification Sanctions	0-180 (Mid-Point = 90)	0-90 (Mid-Point = 45)
		0-120 (Mid-Point = 60)	0-60 (Mid-Point = 30)
		0-60 (Mid-Point = 30)	0-30 (Mid-Point = 15)
	Court / BOPP Approved	3 days	3 days
		2 days	2 days
Non-Incarcerative Sanctions / Responses	P.O. Supervisor Approved	Order to Show Cause Violator CCC Programs Up to 90 day Curfew GPS Electronic Monitoring Up to 72 Hours Home Restriction Treatment Resource Center Up to 16 Hours Community Service	
	Probation/Parole Officer	Violator CCC Programs Up to 60 Day Curfew GPS/Electronic Monitoring 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	

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

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

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

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

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

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

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

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

- *BOPP Rescission pursuant to Administrative Rule.*

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

ADDENDUM B

Crime Categories

DRAFT

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 (1st

degree, 2nd degree, or 3rd 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*.

Code Citation	Description	Category
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

Code Citation	Description	Category
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

Code Citation	Description	Category
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

Code Citation	Description	Category
	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

Code Citation	Description	Category
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

Code Citation	Description	Category
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

Code Citation	Description	Category
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 of guardian providing firearm to violent minor	Other
76-10-509.9	Sale of firearm to juvenile	Other
76-10-527(2)	Making false statement 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

Code Citation	Description	Category
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., 2nd degree felony *Forcible Sexual Abuse* is lowered to 3rd degree felony *Attempted Forcible Sexual Abuse*. See Utah Code Ann. § 76-4-102. However, within the sex offenses there are a number of exceptions

to this general rule. For example, *Rape of a Child* is a 1st degree felony with mandatory prison of 25 years to life. *Attempted Rape of a Child* is not a 2nd degree felony; rather it is a 1st degree felony with mandatory prison and an indeterminate range of 15 years to life. *Conspiracy to Commit Rape of a Child*, on the other hand, is a 1st degree felony with no mandatory prison and indeterminate range of 3 years to life while *Solicitation to Commit Rape of a Child* is a 1st degree felony with mandatory prison and an indeterminate range of 15 years to life. Due to these distinctions between some sex offenses, regularly refer to the following listing to assure that the correct crime category column is used when calculating the guidelines recommendation.

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

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 ¹	Attempted aggravated sexual abuse of a child	G
76-5-404.1 ³	Conspiracy to commit aggravated sexual abuse of a child	G
76-5-404.1	Solicitation to commit aggravated sexual abuse of a child	H
76-5-404.1	Sexual abuse of a child	H
76-5-404.1	Attempt, conspiracy, or solicitation to commit sexual abuse of a child	I
76-5-405	Aggravated sexual assault	A, B, or C
76-5-405 ¹	Attempted aggravated sexual assault	G
76-5-405 ³	Conspiracy to commit aggravated sexual assault	G
76-5-405	Solicitation to commit aggravated sexual assault	H
76-5-412(2)	Custodial sexual relations (victim is 18 or older)	I
76-5-412(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations (victim is 18 or older)	J
76-5-412(2)	Custodial sexual relations (victim is younger than 18)	H
76-5-412(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations (victim is younger than 18)	I
76-5-412(4)	Custodial sexual misconduct (victim is 18 or older)	J
76-5-412(4)	Custodial sexual misconduct (victim is younger than 18)	I
76-5-412(4)	Attempt, conspiracy, or solicitation to commit custodial sexual misconduct (victim is younger than 18)	J
76-5-413(2)	Custodial sexual relations with a youth receiving state services (victim is 18 or older)	I
76-5-413(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations with a youth receiving state services (victim is 18 or older)	J
76-5-413(2)	Custodial sexual relations with a youth receiving state services (victim is younger than 18)	H
76-5-413(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations with a youth receiving state services (victim is younger than 18)	I
76-5-413(4)	Custodial sexual misconduct with a youth receiving state services (victim is 18 or older)	J
76-5-413(4)	Custodial sexual misconduct with a youth receiving state services (victim is younger than 18)	I
76-5-413(4)	Attempt, conspiracy, or solicitation to commit custodial sexual misconduct with a youth receiving state services (victim is younger than 18)	J
76-5b-201	Sexual exploitation of a minor	H
76-5b-201	Attempt, conspiracy, or solicitation to commit sexual exploitation of a minor	I
76-5b-202	Sexual exploitation of a vulnerable adult	I
76-7-102	Incest	I

76-7-102	Attempt, conspiracy, or solicitation to commit incest	J
76-9-702	Lewdness	I
76-9-702(3)	Sexual battery	J
76-9-702.5	Lewdness involving a child	I or J
76-9-702.7	Voyeurism	I or J
76-10-1306	Aggravated exploitation of prostitution	F or H
76-10-1306	Attempt, conspiracy, or solicitation to commit aggravated exploitation prostitution	I or H

¹ See 76-4-102(2)

² See 76-3-406(10)

³ See 76-4-202(2)

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ADDENDUM D

Central Eight Criminal Risk Factors

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Central Eight Criminal Risk Factors & Treatment Targets

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

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

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

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

ADDENDUM F

Stages of Change Model

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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.

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

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

ADDENDUM G

Supervision Violation Severity Listing

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Supervision Violation Severity Listing.

Violation	Severity	Nature of Violation
Felony Person Crime Conduct (listed in Addendum B)	High	Public Safety Conditions Violations
Misdemeanor Person Crime or DUI Conduct	High	
Unauthorized Contact or Location	High	
Fail to Report for Commitment	High	
Absconding: Warrant Outstanding	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	
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Felony Non-Person Crime Conduct	Medium	Risk Reduction Conditions Violations
Misdemeanor Conviction (Non-Person/Non-DUI)	Medium	
Tampering with Device or Testing (c. subst./alcohol)	Medium	
Possession of Dangerous Weapon – Non Firearm	Medium	
Fail to Submit to Testing (c. subst./alcohol)	Medium	
Unauthorized Electronic Access	Medium	
Fail to Enroll or Participate in Treatment	Medium	
Positive Test Result (c. subst./alcohol)	Medium	
Fail to Comply with Employment Conditions	Medium	
Fail to Comply with Financial Conditions	Medium	
Fail to Comply with Residence, Travel or Reporting Requirements	Medium	
Fail to Comply with Structured Living	Medium	
Non-compliant with Medical Orders/Medication	Medium	
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Infraction Conviction	Low	Accountability Conditions Violations
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

2015 Sentencing Guidelines References

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2015 Sentencing Guidelines References

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