

JUDICIARY INTERIM COMMITTEE

SENTENCING DISCUSSION



Utah Sentencing Commission

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Highlights from PEW Presentations

Last Decade in Utah :

- Prison population grew 22%
- Length of stay increased 20%
- Reported Index Crimes down 14%
- Felony filings up 16%
- Felony convictions up 29%
- New judicial prison admit rate steady at 20% (2899 to 3846)
- Probation revocations increased 62% (1120 to 1814)
- New 3rd Degree Nonviolent Offenders prison admits up 12%
- 2nd and 3rd Degree Nonviolent Crimes make up 62% of new admits
- Nonviolent offenders represent 41% of total prison population



Current Sentencing Structure

- Implemented in 1998
- Voluntary
- Descriptive as possible (vs. prescriptive)
- Placement matrix and release matrix combined
- “Indeterminate” Structure
- Compliance with guidelines by AP&P, sentencing judges, and Board of Pardons and Parole is strongly encouraged.
- Reasons for departure should be justified and articulated on the record.

PRISON ADMISSIONS

Utah Sentencing and Release Guidelines

- 12 crime categories
 - » By crime degree and type
- 5 criminal history levels
 - » Takes into account prior convictions as well as prior supervision success/failure, and current weapon use
- Each matrix cell provides a recommendation for disposition (prison vs. probation) as well as time to serve in prison
- Sentences by degree:
 - » 1st degree felony: 5 to 100 years
 - » 2nd degree felony: 1 to 15 years
 - » 3rd degree felony: 0 to 5 years
- Consecutive and concurrent enhancements

Crime Column Determination

Death — Person — Other

CRIME CATEGORY

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

IMPRISONMENT

INTERMEDIATE SANCTION

REGULAR PROBATION

* The statutory range for this category is 1 to 15 years. The Board of Pardons and Parole 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, in this category, is not helpful in determining length of stay of an offender.

Guidelines Matrix Calculation

Simply intersect row and column

Crime Category Column

		CRIME CATEGORY										
		A	B	C	D	E	F	G	H	I	J	K
		1st Degree Murder	2nd Degree Death	1st Degree Person	3rd Degree Death	1st Degree Other	2nd Degree Person	3rd Degree Person	2nd Degree Other	2nd Degree Possession	3rd Degree Other	3rd Degree Possession
CRIMINAL HISTORY	V	24 YRS	8 YRS	10 YRS	48 MOS	84 MOS	60 MOS	36 MOS	30 MOS	20 MOS	20 MOS	18 MOS
	IV	22 YRS	7 YRS	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	18 MOS	16 MOS
	III	20 YRS	6 YRS	8 YRS	36 MOS	72 MOS	36 MOS	24 MOS	20 MOS	16 MOS	12 MOS	12 MOS
	II	18 YRS	5 YRS	7 YRS	24 MOS	66 MOS	30 MOS	20 MOS	18 MOS	14 MOS	10 MOS	10 MOS
	I	16 YRS	4 YRS	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS

Imprisonment

Intermediate Sanctions

Regular Probation

Misdemeanors

Criminal History Row

Provides placement recommendation to AP&P and judge and length of stay recommendation to Board of Pardons and Parole

PEW break down by specific grid for changes in Length of Stay Data

PRISON ADMISSIONS

Utah Sentencing and Release Guidelines

		CRIME CATEGORY											
		A	B	C	D	E	F	G	H	I	J	K	L
CRIMINAL HISTORY	V	1st Degree Murder	1st Degree Death	2nd Degree Death	1st Degree Prison	3rd Degree Death	1st Degree Other	2nd Degree Prison	3rd Degree Prison	2nd Degree Other	2nd Degree Possession	3rd Degree Other	3rd Degree Possession
	IV	22 YRS	9 YRS	*	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	18 MOS	16 MOS
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	I	20 YRS	6 YRS	*	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS

Note: A yellow box highlights columns I, J, K, and L in the original image.

May 15, 2014



TIME SERVED

Time Served Growing for Most Nonviolent Offenders

Change in Mean Time Served by Criminal Category
(Offenders with a New Criminal Conviction, 2004-5 to 2012-13)

Criminal History	I	J	K	L
	2nd Degree Other	2nd Degree Possession	3rd Degree Other	3rd Degree Possession
V	22%	8%	2%	7%
IV	46%	16%	27%	-3%
III	42%	43%	17%	1%
II	26%	21%	28%	32%
I	34%	-24%	2%	12%

May 15, 2014

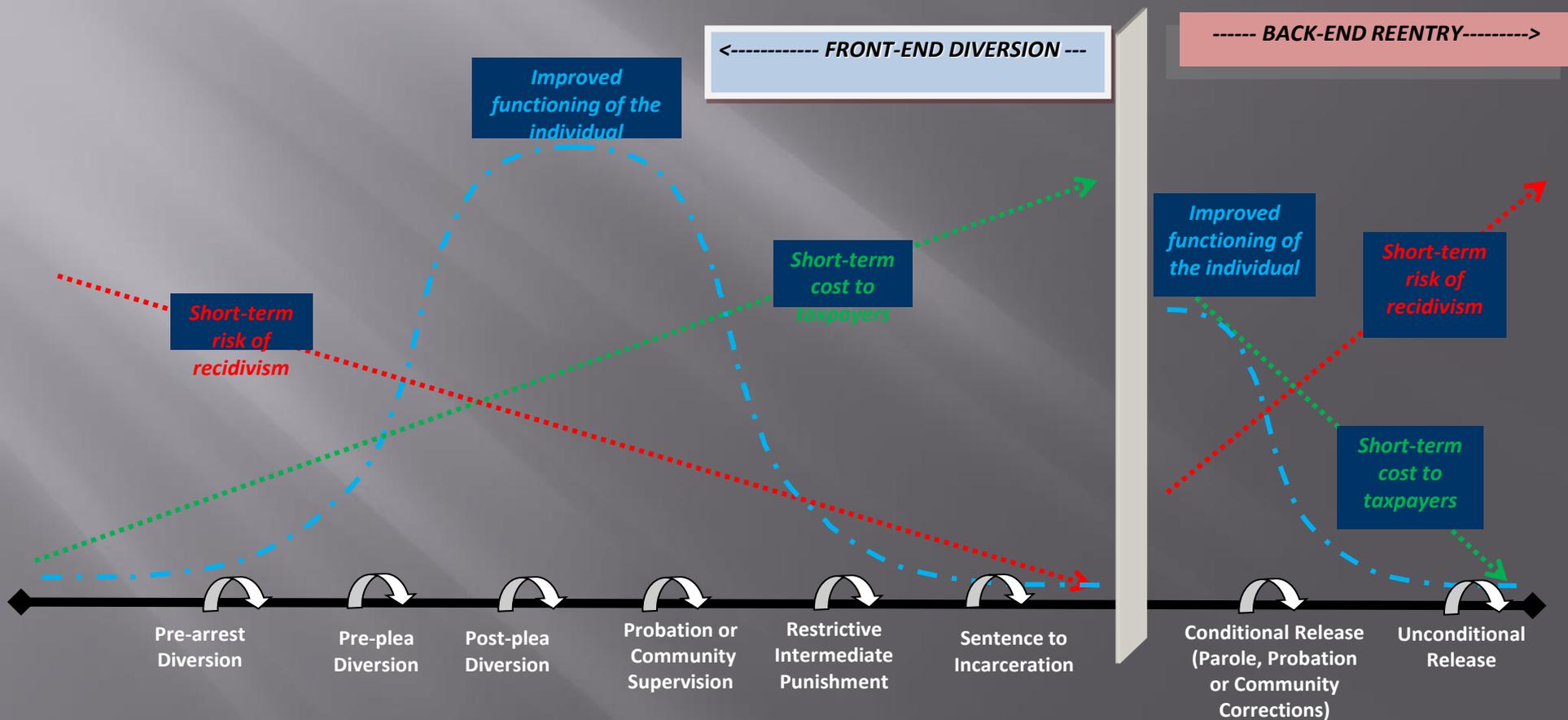
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- Increases in these categories somewhat inconsistent with the basic premise of the guidelines
- Many potential explanations
- Should be addressed through the PEW collaborative process

When to Intervene

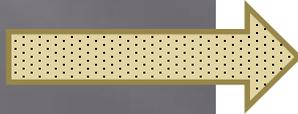
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2014 Amendments to the Sentencing & Release Guidelines

- Updated statutory reference to Sentencing Commission's authority under §63M-7-404
- Enumerated the specific statutory purposes:
 - Public comment
 - Relating sentencing practices to resources
 - Increasing equity
 - Better define responsibility
 - Enhance discretion while preserving BOP/YPA role



2014 Adult Sentencing and Release Guidelines

INTRODUCTION

The Utah Sentencing Commission, pursuant to its statutory authority and responsibility under Utah Code Ann. § 63M-7-404, promulgates the following 2014 Adult Sentencing and Release Guidelines for adult criminal offenders which are statutorily intended to:

- Respond to public comment;
- Relate sentencing practices and correctional resource;
- 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 the Youth Parole Authority.

The Utah Sentencing Commission is charged to recommend and coordinate sentencing and release policy for both juvenile and adult offenders within the state of Utah. It consists of twenty-seven members who represent all facets of the justice systems: judges, prosecutors, defense attorneys, legislators, victims, law enforcement, treatment specialists, ethnic minorities, corrections, parole authorities, and others.

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.

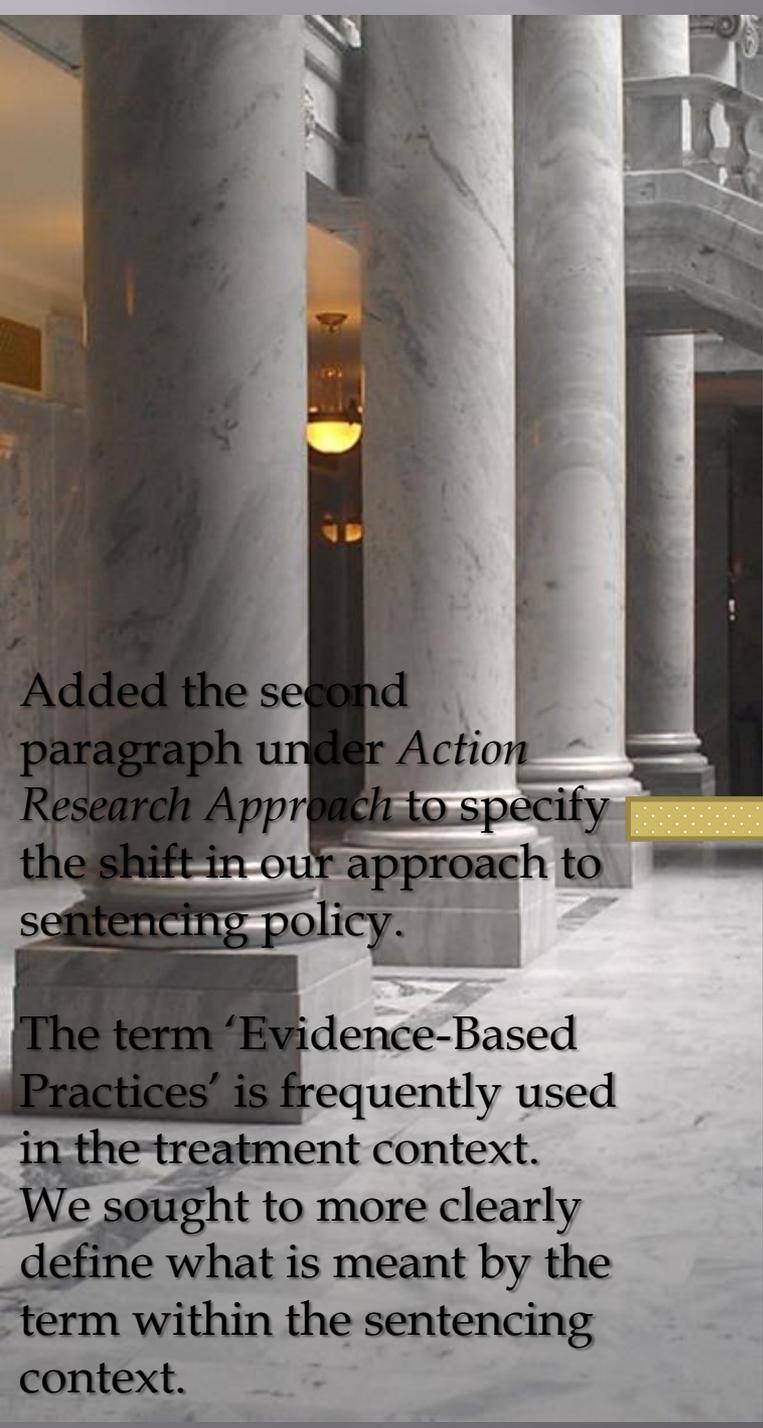
Philosophy Statement

The goal of the guidelines is to bring more objectivity to the sentencing and release process yet also allow the court or the Board of Pardons and Parole discretion in considering aggravating and mitigating circumstances. The guidelines provide for consideration of the following factors:

- Severity of the offense;
- Utah penal statutes;
- Crime history and risk to society;
- Prosecutorial, judicial, and parole board discretion; and
- Continuum of sanctions

Sanctions should be proportionate to the severity of the current offense. Guidelines should reflect the culpability of the offender based on the nature of the current offense and the offender's role coupled with the offender's supervision history and overall likelihood to recidivate as inferred by the

*Remaining question: should recidivism be a specific sentencing goal?



Added the second paragraph under *Action Research Approach* to specify the shift in our approach to sentencing policy.

The term 'Evidence-Based Practices' is frequently used in the treatment context. We sought to more clearly define what is meant by the term within the sentencing context.



victim, and then makes recommendations to the judge concerning the sentence to be imposed and any conditions associated with that sentence. See Utah Code Ann. § 64-13-20. The judge then imposes sentence.

A variety of options are available to the judge including an increasing number of intermediate sanctions. The most severe of all sentencing options involve the Utah Department of Corrections. Correctional resources are severely overtaxed and there has been concern about policy to help allocate those resources. The guidelines assist decision makers in the appropriate allocation of these limited resources. If the judge sentences the offender to prison, custody of the offender transfers to the Utah Department of Corrections, and jurisdiction

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 general monitoring of how the guidelines are used, they can be modified to accommodate changes in policy or practice.

2014 Adult Sentencing and Release Guidelines

Research on reducing offender recidivism has highlighted the need to incorporate evidence-based practices into sentencing policies and practices. Evidence-based practices are those 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.

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.

Prosecution

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.

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. These circumstances should be stated in open court and included on the judgment and commitment order.

Board of Pardons and Parole

The Board of Pardons and Parole

What is an Evidence-Based Approach?

Knowledge based on 30 years of research

Data driven

Continually evolving

Measurable outcomes

Recidivism reduction

“What works”

Scientific/medical model

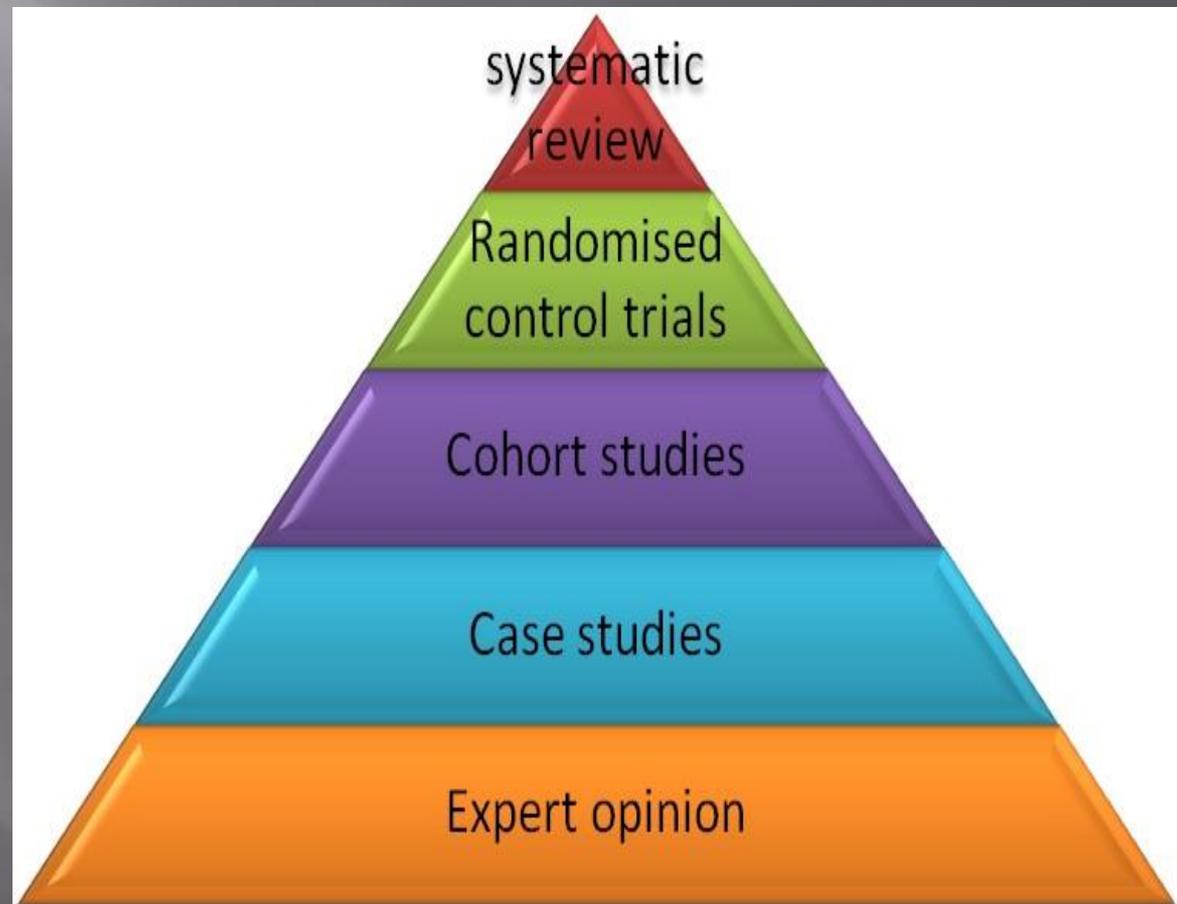
Emphasis is effectiveness

Ex: Antibiotics

None

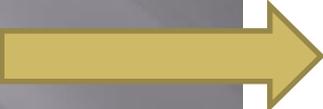
General

Specific





- 2014 Guidelines amended to require a Validated Risk & Criminogenic Needs Assessment in Presentence Investigations



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.

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 the effect of charging and plea negotiations in each individual case to the victim.

Presentence Investigations

Presentence investigations, including a validated Risk and Criminogenic Needs Assessment, 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

guidelines unless they find aggravating or mitigating circumstances justifying departure. These circumstances should be stated in open court and included on the judgment and commitment order.

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 parole grant 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.

Recidivism Reduction Principles

- Focus on high risk offenders and target criminogenic needs
- Incorporate rewards and incentives
- Use swift, certain, and proportionate sanctions for violations
- Frontload resources
- Balance surveillance with treatment

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THE
PEW
CHARITABLE TRUSTS

Utah Criminal Justice System
Assessment

Commission on Criminal and Juvenile Justice
June 12th, 2014
Salt Lake City, UT



□ Criminogenic needs must be addressed

□ Statewide standards for treatment providers needed to fully incorporate an Evidence-Based Approach

□ A more coordinated approach between treatment providers and the courts/probation is still needed.

Top Criminogenic Risk and Need Factors

1. History of anti-social behavior
2. Anti-social personality or temperament
3. Anti-social attitudes, values, or beliefs
4. Anti-social peers or companions
5. Family and/or marital stressors
6. Lack of pro-social leisure and recreation
7. Lack of employment and/or education
8. Substance abuse

Treatment Not Always Incorporating Best Practices to Reduce Recidivism

- Because most substance abuse and mental health services are designed to serve the general population, many treatment programs:
 - » Are not designed to explicitly address criminogenic needs
 - » Mix low/medium/high risk offenders, which can increase recidivism in lower risk offenders
 - » Mix offenders with non-offenders
- State is making efforts to develop guidance for substance abuse, mental health and sex offender treatment, but no statewide standards for offender programming currently exist

Balance Treatment with Surveillance: Research

Surveillance and Treatment Outcomes, 2010

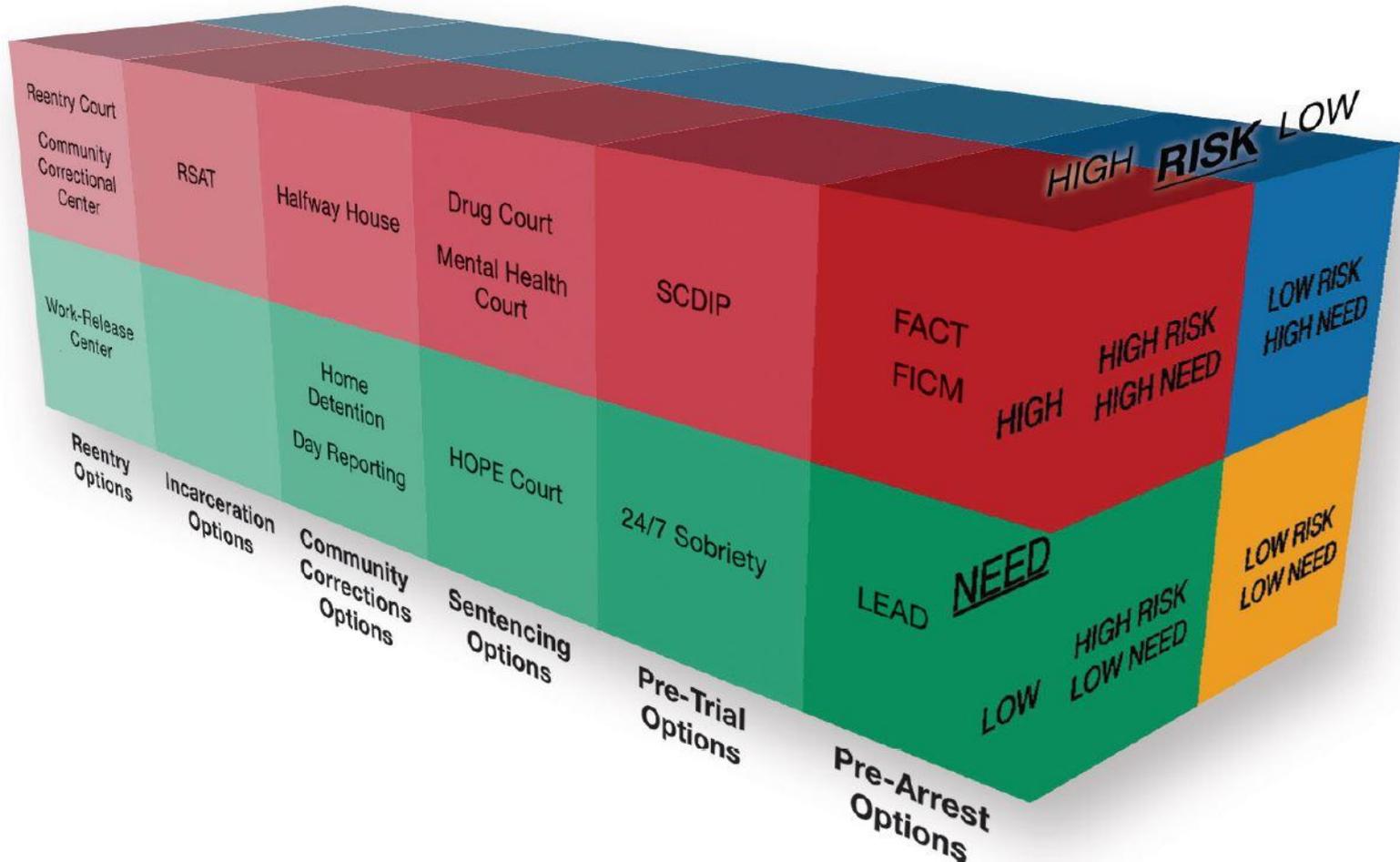
- Washington Institute for Public Policy conducts extensive national meta-analyses of cost-benefit outcomes for criminal justice interventions
 - » A review of the research found that intensive probation supervision with only surveillance reduced crime by 2 percent
 - » However, integrating treatment into that intensive supervision reduced crime by 18 percent
 - » The cost-benefit of intensive supervision was far better for taxpayers when the supervision incorporated treatment

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- Not all programs are as effective for all offenders.
- We have only a limited number of the programs available and in limited areas statewide.



Sentencing Commission

Subcommittees

- ▣ AP&P Subcommittee/Matrix
 - Incentives & Sanctions
 - Address responsivity, then criminogenic needs
 - Separate technical from criminal violations
 - Swift, certain, proportionate sanctions
 - Encourage intrinsic motivation
 - Frontload resources
 - Move from surveillance to behavioral modification
- ▣ Adult Sentencing & Release Guidelines
- ▣ Anomalies (statutory amendments, reclassification)
- ▣ Justice Courts (treatment providers, assessment tools, DV)
- ▣ Juvenile Subcommittee



