

2015 Utah Adult Sentencing Guidelines

Incorporating the Directives & Principles of the
Justice Reinvestment Initiative



Utah Sentencing Commission

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Sentencing Commission's

Statutory Charge:

Utah Code Ann. §63M-7-404 (2008)

- 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

Statutory Directives added by HB 348:



- **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.

The Revision Process:

(April 1 – August 5, 2015)

- Most comprehensive, transparent & collaborative revision process that has ever occurred to the Adult Sentencing Guidelines.
- Timeline for completion of all revisions established, driven by the effective implementation date in HB 348 of October 1, 2015.
- Three active working groups were formed to address:
 - Revisions to prefatory language (pages 1-12)
 - Revisions to existing forms (forms 1-5a)
 - Development of new forms (6-10)
- Two formal interim meetings added to three regular meetings.
- Coordinated via email, phone and in person.
- Met directly with groups and agencies as requested.
- Tentative draft distributed July 6, 2015 for one month public comment period.

Incorporation of the Work of AP&P Subcommittee:

- Created in October 2013 in response to Legislative Audit of AP&P.
- Ad hoc members added from AP&P (Geri Miller-Fox), Administrative Office of the Courts (Debra Moore) & University of Utah Criminal Justice Center (Christian Sarver).
- A Response & Incentive Matrix “RIM” was developed and then piloted in the Northern Region (Weber & Davis Counties) and Region VI (Roosevelt Office) from April – June, 2015.
- “Implementation Pilot” was not intended to measure outcomes or to simply rubber stamp the RIM, but to identify philosophical and practical issues early and to incorporate feedback.
- University of Utah conducted surveys of agents, judges and additional stakeholders, which were received at our July 20 Interim Meeting.
- Informal feedback and public comment were also received and incorporated until August 5.

The Product:

STATE OF UTAH

UTAH SENTENCING COMMISSION



2015
Adult Sentencing & Release Guidelines



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*Not Retroactive

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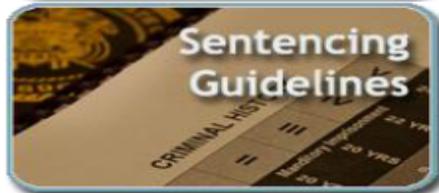
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The Utah State Legislature established the Utah Sentencing Commission in 1993. The Commission has the statutory responsibility to advise the Legislature, the Governor, and the Judicial Council regarding sentencing and release policy for adult and juvenile offenders. The Commission is also responsible to develop sentencing guidelines for adult and juvenile offenders.

The Utah Sentencing Commission:

- Publishes Guidelines
- Advises all three branches of government on sentencing policy
- Conducts research
- Reviews and makes recommendations on legislation
- Tracks legislative changes to sentencing statutes
- Tracks judicial decisions related to sentencing issues
- Assists the legislature in the review and study of sentencing issues
- Conducts training and education throughout the state
- Responds to public comment and inquiries

The Commission promotes evidence-based sentencing policies that effectively address the three separate goals of criminal sentencing: Risk Management, Risk Reduction & Restitution.



[Incorporating the Directives and Principles of the Justice Reinvestment Initiative](#)

[Adult Probation & Parole Response & Incentive Matrix \(RIM\)](#)

[Response & Incentive Matrix](#)

Statutory authority:

[Utah Code, Title 63 M, Chapter 7 \(Creation, Members, Appointment, and Qualifications\)](#)

[Utah Code, Title 63 M, Chapter 7 \(Purpose and Duties\)](#)

Ongoing Training/Presentations:

- Approximately 20 sessions already conducted (2 hours each)
- August 20 through mid-December
 - AP&P (every region statewide, 11 separate trainings)
 - Salt Lake County Probation
 - Salt Lake District Attorneys
 - Salt Lake Legal Defenders
 - Weber County Attorneys
 - Davis County Attorneys
 - Annual Judicial Conference
 - Justice Court Judges Conference
 - Utah County Attorneys
 - Utah Municipal Prosecutors Association
 - Third District Court Bench
 - Second District Court Bench
- National Association of Sentencing Commissions, *Annual Conference, August 2015*
- Robina Institute of Criminal Law and Criminal Justice, *Criminal History Enhancements Conference, October 2015*

Philosophical Approach

- The Sentencing Commission promotes evidence-based sentencing policies that effectively address the three separate goals of criminal sentencing:
 - **Risk Management *Forms 1-5a***
(Impose Punishment, Hold Accountable, Incapacitate)
 - **Risk Reduction *Forms 6-10***
(Reduce Likelihood to Re-offend)
 - **Restitution**
(Repay Damages)

Risk Management

Forms 1 – 5a

- HB348:
 - Eliminate double counting
 - Focus on factors relevant to re-offense
- Additional analysis:
 - Case Law
 - Incorporate statutory changes
 - Disproportionate minority impact
 - Inflation of “criminal” history
 - Provide greater transparency
 - Distinguish person crimes from non-person crimes
 - Standardize criminal history scoring for misdemeanors
 - Ranking of severity of misdemeanor crimes

Addition of New Form 5A

FORM 5A - MISDEMEANOR MATRIX

	Class A Person Crime	Class B Person Crime*	Class A Other	Class B DV Other*	Class A POCS	Class B*	Class C and Below
V	0-210 JAIL DAYS	0-180	0-150	0-120	0-90	0-60	
IV	0-180	0-150 INTERMEDIATE	0-120	0-90	0-75	0-45	
III	0-150	0-120	0-90	0-75	0-45	0-30	
II	0-120	0-90	0-60	0-45	0-30	0-15	
I	0-90	0-60	0-30	0-30	0-15	0-15	

10/2015

* "Class B Person Crime" includes domestic violence offenses involving spouses and/or intimate partners; "Class B DV Other" includes domestic violence offenses involving other cohabitants, property offenses, and other non-person crimes. "Class B" does not include DUI offenses. See DUI Matrix.

Legislation needed to distinguish between intimate partners and other cohabitants.

Risk Reduction

Forms 6 - 10

- Structured decision-making approach to supervision violations & accomplishments
- “Discretion within Limits”
- **Form 6: *Who should supervision services target?***
- **Form 7: *Who should respond?***
 - Addendum G: *Violations Listing*
 - Addendum H: *Accomplishments Listing*
- **Form 8: *What should be the magnitude of response?***
- **Form 9: *Incentives***
- **Form 10: *Sanctions***

Form 6

Supervision & Treatment Levels Framework (Risk/Need/Responsivity Conceptualization)

Risk Level		Need Level	Dynamic Factors							Supervision	Treatment	Responsivity Factors									
			Anti-Social Behaviors	Anti-Social Personality	Anti-Social Cognition	Anti-Social Peers	Family	School/Work	Leisure/Recreation	Substance Abuse		Functional Ability	Language	Motivation Level	Mental Health	Housing	Gender	Physical Health	Transportation	Minimization	
Low	Low										Court	None									
	Moderate										Court	Clinical									
	High										Court	Clinical									
Mod	Low										Supervised	Criminogenic									
	Moderate										Supervised	Criminogenic									
	High										Supervised	Criminogenic									
High	Low										Supervised	Criminogenic									
	Moderate										Supervised	Criminogenic									
	High										Supervised	Criminogenic									

Adapted from Comprehensive Framework to Reduce Recidivism developed by Darin Carver, Weber Human Services, 2015

Form 7

Decision-Making Authority Matrix

	Accomplishment or Violation Level  From Addendum G & H		
Offender Risk Level  From Validated Tool	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

All "high" level accomplishments or violations = must notify Court/BOPP (regardless of risk level)

Addendum G

Supervision Violation Severity Listing

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

- Not ranked by level of importance
- Ranked by nature of violation
- Ranked by who is best situated to respond swiftly, certainly, proportionately, consistently
- Public Safety Conditions Violations may not be amenable to supervision

Addendum H

Supervision Accomplishment Level Listing

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

Form 8 Response Magnitude / Proportionality Form

<u>Behavior</u>	<u>Offender Risk</u> High & Moderate = High Low = Low	<u>Offender Need</u> High & Moderate = High Low = Low	<u>Relation to Risk/Need Goal</u> Proximal = Short Term Distal = Long Term	<u>Response Magnitude/ Proportionality</u> See Forms 9 & 10 for Incentives & Sanctions
Accomplishment/ Compliance	High	High	Proximal	Lower Incentive
			Distal	Higher Incentive
	Low	High	No Distinction	Moderate
			Proximal	Lower Incentive
		Low	Distal	Higher Incentive
			None	None*
Violation	High	High	Proximal	Higher Sanction
			Distal	Lower Sanction
	Low	High	No Distinction	Moderate
			Proximal	Higher Sanction
		Low	Distal	Lower Sanction
			None	None*
↑ What is the nature of the behavior?	↑ How likely were they to reoffend?	↑ How high are their criminogenic needs?	↑ Does the behavior relate to short or long term goals?	↑ What magnitude of response should be imposed?

Form 9

Graduated Incentives

Probation/Parole Officer Incentives	P.O. with Supervisor Approval	Up to 50% Community Service Reduction \$\$ Voucher Recommend Fine Reduction Approval to Serve as Peer Mentor Reduce Substance/Alc. Screening Any Lower Level Incentive
	Court/BOPP	402 Reduction Early Termination Fine Reduction Transfer to Court/Lower Probation Any Lower Level Incentive
		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

- Ranking is “graduated “ from low to high
- Don’t have to “graduate” up
- Use form 8 to determine response level each time

Form 10

Graduated Sanctions

		Probation	Parole
Graduated Incarceration Caps with Hearing Before Court/BOPP		0-90 (45)	0-180 (90)
		0-60 (30)	0-120 (60)
		0-30 (15)	0-60 (30)
P.O. with Superv. & Expedited Court / BOPP Approval	(Maximum of 5 Days/30 Days) 1-3 Days Jail Per Sanction		
P.O. with Superv. & BOPP Approval	Hearing Before Court/BOPP Community Correctional Center GPS Electronic Monitoring		
P.O. with Supervisor Approval	Request Court/BOPP Sanction Up to 90 day Curfew Up to 72 Hours Home Restriction Treatment Resource Center Up to 16 Hours Community Service		
Probation/Parole Officer Sanctions & Responses	Up to 60 Day Curfew Travel Restriction Structured Living Increased Supervision Require Change in Residence Revision of Case Action Plan Increased Reporting/Testing Community Accountability Board Workshops Assignments Family Meeting Problem Solving Report Mentoring Program Develop Risk Avoidance Plan Letter of Apology Thinking Report Payment Schedule Adjustment Verbal Warning		

- Ranking is “graduated” low to high
- Don’t have to “graduate” up
- Use Form 8 to determine response level for each violation
- 3rd level requires written approval of Court/BOPP
- 4th level requires written approval of Court/BOPP through expedited process
- 5th level anticipates standard hearing process before Court/BOPP
- Court/BOPP still may select non-incarceration response.
- Court/BOPP may still deny request for hearing or request for 1-3 days jail.
- Incarceration days listed on 1st, 2nd and 3rd hearing are caps. They should not be viewed as the default response.

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

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

- *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.*

Violation/Revocation process is “shall” not “may” in the statute
Distinct from the advisory nature of Forms 1-5a

Limited list of exceptions:

- Taken from HB348
- Taken from other relevant statutes
- Still allows for independent review of Form 8
- Still allows for sentencing of new crimes
- Limited public safety exception also

Court/BOPP should initial when exercised (not P.O.)

Please include explanation on form or on record if exception exercised

Legislative Items Identified During Revision Process:

- **Risk Management** (coincides with the Indigent Defense Report)
 - Reclassify most traffic and boating offenses as infractions
 - Distinguish Class C's which are regulatory vs public safety threats
 - Eliminate FTA, Bail Jumping, Status Offenses of Minors currently eligible for incarceration sanction
 - Distinguish between intimate partners and other cohabitants (DV)
- **Risk Reduction** (coincides with CPIP grant)
 - Extend supervision standards to county and private providers
 - Clarify modification and revocation process on probation and parole
 - Provide judges greater discretion in ordering evidence-based treatment
- **Restitution**
 - *State v. Robinson* – “criminal activity” does not include traffic offenses
 - *State v. Poole* –jurisdiction for restitution determination of the court is limited to 1 year post sentencing for probationers; whereas BOPP maintains jurisdiction up to 60 days past expiration or termination for parolees.