



Law Enforcement and Criminal Justice Interim Committee, 2022

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PRESENTATION OVERVIEW

- Overview of Sentencing Commission and Processes
- Sentencing Guidelines' Interaction with Statute
- Recent examples of legislative collaboration with sentencing commission
- Q+A



Utah Sentencing Commission: **An Introduction**



28 Member body appointed by the Governor to four year terms. Tasked by statute with advising the Governor, the legislative branch, and the courts on policies affecting criminal sentencing. Also create and maintain the Sentencing Guidelines

- House Members (2)
- Senate Members (2)
- DOC Director
- JJS Director
- CCJJ Director
- BOPP Chair
- YPA Chair
- Trial Judges (2)
- Appellate Judge
- Juvenile Court Judges (2)
- Private Defense Atty (adult)
- Private Defense Atty (juvenile)
- Director of LDA
- AG or Designee
- SWAP Adult Prosecutor
- SWAP Juvenile Prosecutor
- Sheriff's Association Representative
- Chief of Police
- Adult Rehabilitation Professional
- Juvenile Rehabilitation Professional
- Victim and Minority Population Advocate (2)
- Member of Public
- Civil Rights Rep



What we make:

Sentencing and Release Guidelines: A comprehensive guide to criminal sentencing for all offenses, including discretionary sentencing recommendations, supervision terms, etc.

Supervision Length Guidelines: A guide to supervision terms and procedures for terminating supervision.

Collateral Consequences Guide: A guide to all consequences of criminal convictions, including administrative and statutory consequences unrelated to the sentence.

Master Offense List: A list of all criminal offenses in state code and their corresponding penalties, plus a report on how many offenses were added, removed, or changed each year.



How we work:

Interim Meetings: Meet the first Wednesday of every other month, from 12:00 - 2:00 PM, April - December. Hear presentations on policy topics, review research and data, revise guidelines and other documents, prepare to advance policy goals.

Legislative Session Meetings: Meet weekly on Thursdays from 12:00 - 2:00 PM. Review and discuss legislation.

Subcommittees and Working Groups: Review and discuss public policy on specific topics, prepare proposals for the larger commission.

All meetings of the Sentencing Commission are public, and we seek input from all stakeholders.





“None of us is as smart as all of us.” - Kenneth H. Blanchard



Adult Sentencing and Release Guidelines

An Introduction



Statutory charge (63M-7-404):

- Develop guidelines and propose recommendations to all three branches of government regarding:
 - The sentencing and release of individuals convicted of a crime;
 - The length of supervision of individuals on probation and parole
 - Appropriate, evidence based policies that assist individuals in successful completion and reduce incarceration while ensuring public safety



Statutory charge (63M-7-404):

- Respond to public comment;
- Relate sentencing practices and correctional resources;
- Increase equity in criminal sentencing;
- Better define responsibility in criminal sentencing;
- Enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and Youth Parole Authority





The Sentencing and Release Guidelines are intended to help structure decision-making, incorporate a rational criminal justice philosophy, eliminate unwarranted disparity, and provide a tool to match resources with need while maintaining the discretion of the sentencing authority.



Guidelines Philosophy

- ▷ Sentences should be proportionate to the seriousness of the offense;
- ▷ The guidelines should provide predictability while preserving discretion;
- ▷ The guidelines should allow corrections to operate within its resource constraints
 - \$300M budget v. \$7 Billion potential



Evidence-Based Sentencing Framework

Goals

Risk Management

Risk Reduction

Restitution

Process

Swift

Certain

Consistent

Proportionate

Fundamentally Fair

Tools

Policies, Grids, and
Guidelines

Risk & Needs
Assessments

Graduated continuum
of Rewards, Incentives,
Services, and
Sanctions



Goal 1: Risk Management

- ▷ A penalty proportionate to the crime
 - Both the gravity of the offense and the culpability of the individual
- ▷ Holding individuals accountable;
- ▷ Providing appropriate incapacitation where risk of harm is severe;



Goal 2: Risk Reduction

- ▷ Identifying a person's risk factors and needs, and addressing them in a way that reduces risk;
- ▷ Increases functioning of the individual to reduce threat to public safety
- ▷ Validated risk assessments and evidence-based risk reduction tools are key;





The goal of risk reduction is to look beyond a term of incarceration and reduce the risk of future criminal activity through appropriate programming.



Goal 3: Restitution

- ▷ Repayment of damages to the community and victims of the offense;
- ▷ Includes meaningful community service;
- ▷ Must be balanced with the need for reasonable, attainable supervision goals to avoid “learned helplessness”
- ▷ May necessarily be a longer-term goal.





Sentencing should be structured so that each goal is meaningfully addressed.



Evidence-based responses

- ▷ Responses should be swift, certain, consistent, and proportionate;
- ▷ Every relevant behavior—positive or negative—should provoke a response;
- ▷ Responses should be fundamentally fair.





“

People who perceive that they have been treated fairly by the justice system demonstrate significantly higher levels of compliance with court orders.



Sentencing Matrices

- ▶ **What they are:**
 - Charts reflecting historical incarceration terms for various types of offenses;
 - Tweaked over time in response to JRI and various other policies
- ▶ **What they are NOT:**
 - An easy comprehensive guide to plugging-in the perfect sentence for any crime.



Criminal History Scoring

Form 1 – General Matrix

Only score the single highest point option within a given category. Do not check multiple scores in a single category and then add them. Any negative points which are deducted for the most recent postconviction crime-free gap period may not reduce the total score below 0.

CRIMINAL HISTORY SCORING

These guidelines do not create any rights or expectations. Matrix time frames refer to imprisonment only. Refer to the categorization of offenses with the exception of "Specific 3rds," which are the 3rd Degree Offenses of: DUI, Possession of Firearm by Restricted Person, and Failure to Stop at Command of Law Enforcement Officer.

PRIOR FELONY CONVICTIONS (Separate adult case numbers)	2	One
	4	Two
	6	Three
	8	Four or more

PRIOR PERSON OR FIREARM CONVICTIONS (Adult or juvenile)

2	Misdemeanor person offense (AD.B)
2	Felony firearm offense (76-10-5)
4	Felony person offense (AD.B)
6	Homicide offense (76-5-2)

PRIOR CLASS A MISDEMEANOR CONVICTIONS (Separate adult case numbers)	1	One or two
	2	Three to five
	3	Six or more

PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS (Offenses that would have been felonies if committed by adult) (3 class a adjud. = 1 Felony)

1	One
2	Two to four
3	Five or more

SUPERVISION HISTORY (Adult only – Federal, AP&P, private, county, problem solving court removal*)	2	Prior revocation
	3	Current offense on supervision

MOST RECENT POST-CONVICTION CRIME-FREE GAP Count from date of sentencing or entry of plea in abeyance (if no prison) or date of release from prison. Gap ends at new offense date. (exclude infr, class C, class B traffic and minor regulatory offenses per § 77-40-102(10))

-1	Three to four years
-2	Five to six years
-3	Seven to nine years
-4	Ten years or more

TOTAL SCORE

Form 1: General Offense Matrix

CRIME CATEGORY

	1st Degree Person	1st Degree Other	2nd Degree Person	3rd Degree Person	2nd Other Specific 3rds	2nd Poss 3rd Other	3rd Poss Class A**
	A	B	C	D	E	F	G
V	120 MOS	84 MOS	54 MOS	32 MOS	26 MOS	16 MOS	12 MOS
IV	108 MOS	78 MOS	42 MOS	26 MOS	20 MOS	14 MOS	10 MOS
III	96 MOS	72 MOS	30 MOS	20 MOS	16 MOS	12 MOS	8 MOS
II	84 MOS	66 MOS	24 MOS	16 MOS	14 MOS	10 MOS	6 MOS
I	72 MOS	60 MOS	18 MOS	14 MOS	12 MOS	8 MOS	4 MOS

IMPRISONMENT

JAIL AS CONDITION OF PROBATION

PRESUMPTIVE PROBATION

Aggravating and Mitigating Factors

Step 6: Aggravating and Mitigating Factors

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AGGRAVATING CIRCUMSTANCES

Pg#

Offense caused substantial monetary loss.

Pg#

Offense caused substantial physical or psychological injury to the victim.

Pg#

Offense characterized by extreme cruelty or depravity.

Pg#

Offense involved two or more victims.

Pg#

Offense involved activity that continued over a significant period of time.

Pg#

Other (Specify)



Step 6: Aggravating and Mitigating Factors

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MITIGATING CIRCUMSTANCES

Pg# Individual has engaged in the voluntary screening process in the county jail (LSI:SV, TCUD & MHS).

Pg# Individual has paid restitution and/or made good faith effort to begin repayment of restitution to the victim.

Pg# Individual has demonstrated compliance with all pre-trial conditions.

Pg# Individual is engaged in community-based supervision and/or treatment services consistent with a validated risk and needs assessment.

Pg# Individual's current living environment is stable and supportive of offense-specific interventions that do not enable continued criminal or unlawful conduct.

Pg# Other (Specify)



Sentencing Guidelines

Interaction with Statutes



Sentencing Commission Statutes

- ▶ U.C.A. 63M-7-401
 - Creates the sentencing commission
 - Has added members over time to reflect new constituencies
- ▶ U.C.A. 63M-7-404
 - Creates mandate for commission to produce sentencing guidelines
 - Has added more types of guidelines over time
 - Juvenile guidelines, supervision length guidelines, etc
 - JRI added more guidance toward evidence-based practices and reduced incarceration rates (while ensuring public safety)



Sentencing Commission Statutes

- ▷ U.C.A. 63M-7-405
 - Requires reports and recommendations for guidelines changes to be submitted to the legislature 60 days prior to the session
 - Mandates creation of a collateral consequence guide (in progress)



Department of Corrections Statutes

- ▷ U.C.A. 64-13-21
 - Requires department to implement graduated and evidence-based responses created by the sentencing commission (part of JRI)
 - Mandates creation of a collateral consequence guide (in progress)



Courts Statutes

- ▷ U.C.A. 77-18-105
 - Requires supervision lengths to be set in accordance with the supervision length guidelines
 - As of 2022, this is the only mandatory part of the sentencing guidelines
- ▷ U.C.A. 77-18-108
 - Directs courts to incarceration terms in guidelines for probation violations
 - Intended to increase equity in sentencing
 - Now discretionary after 2022



2022 Legislative Session

Sentencing Commission Collaboration



Offender Supervision Modifications

Sponsored by Rep. Karianne Lisonbee and Sen. Mike Kennedy

Creates stronger reporting and detention requirements for offenders under supervision who are arrested/charged with a new felony.

- ❖ Sentencing Commission made changes to incarceration caps for probation/parole violations:
 - Removed lockstep increases from 30/60/90 (probation) and 60/90/120 (parole)
 - Instead imposed caps of 90/180 for any violation
 - Also returned discretion to courts/BOPP to deviate from these caps

Sexual Exploitation of a Minor Amendments

Sponsored by Sen. Chris Wilson and Rep. Karianne Lisonbee

Creates a new first degree felony offense for Aggravated Sexual Exploitation of a Minor and directs the Sentencing Commission to revise its guidelines for other Sexual Exploitation of a Minor offenses

- ❖ Sentencing Commission agreed to revise its matrix for these offenses to better reflect the range of conduct at issue and suggest stronger sentences for more serious offenses.

Property and Financial Offense
Amendments

Sponsored by Rep. Brady Brammer

This bill directs the Sentencing Commission to create a new matrix for financial offenses with substantial monetary loss.

- ❖ Original bill sought to create strong prison presumptions in code;

- ❖ Sentencing Commission suggested allowing us to make similar changes in the guidelines
 - Preserves discretion for outlier cases
 - Allows us time to engage with stakeholders and assess impacts

- ❖ 2022 Guidelines include a new Form 4 - Financial Offenses with Serious Loss Matrix
 - Prison presumptions higher than those that were in the original bill
 - Offense list more targeted to true white collar offenses
 - Approved unanimously at the last Commission meeting

2022 Ongoing Projects

Subcommittees and Working Groups



Subcommittees / Working Groups

- **Sex Offense Subcommittee**
 - Studying sex offender registry, preparing to present recommendations to this committee
- **Restitution Working Group**
 - Resolving lingering issues with 2021 restitution changes
- **Adult Guidelines Subcommittee**
 - Working on a number of Guideline updates, including SB 167 changes to sex offense matrix
- **Violent Crimes Working Group (joint with CCJJ)**
 - Studying proposals to address rise in violent crime and gun violence



Questions?



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