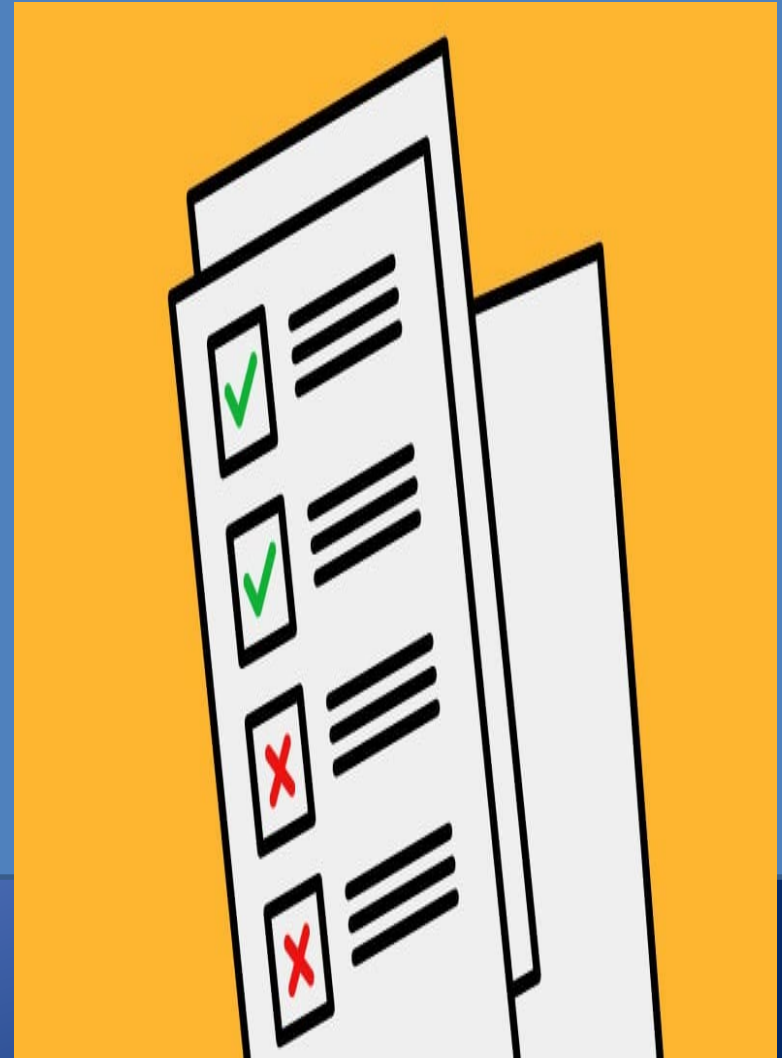
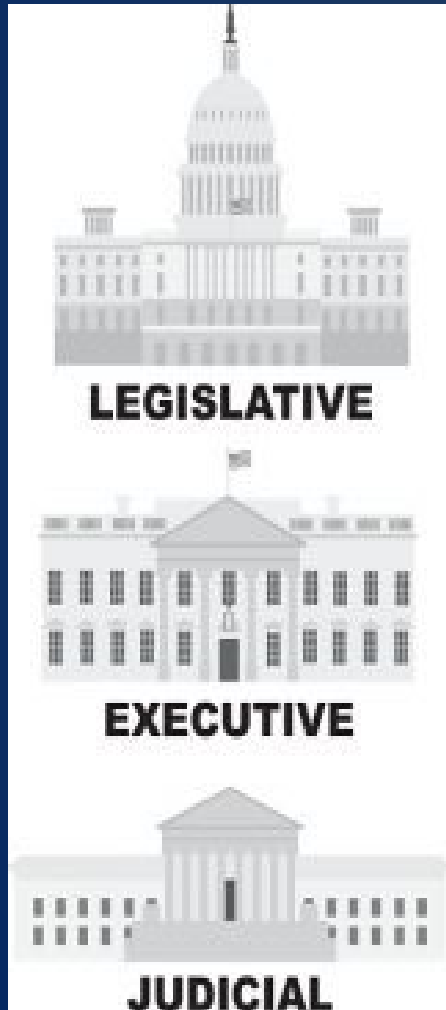


Preparing Your Client for the Sentencing Recommendation:

Explaining the Sentencing & Release Guidelines



Sentencing Commission's Statutory Charge



- 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

Sentencing & Release



- 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

Goals of the Sentencing Commission

- Risk management
- Risk reduction
- Restitution



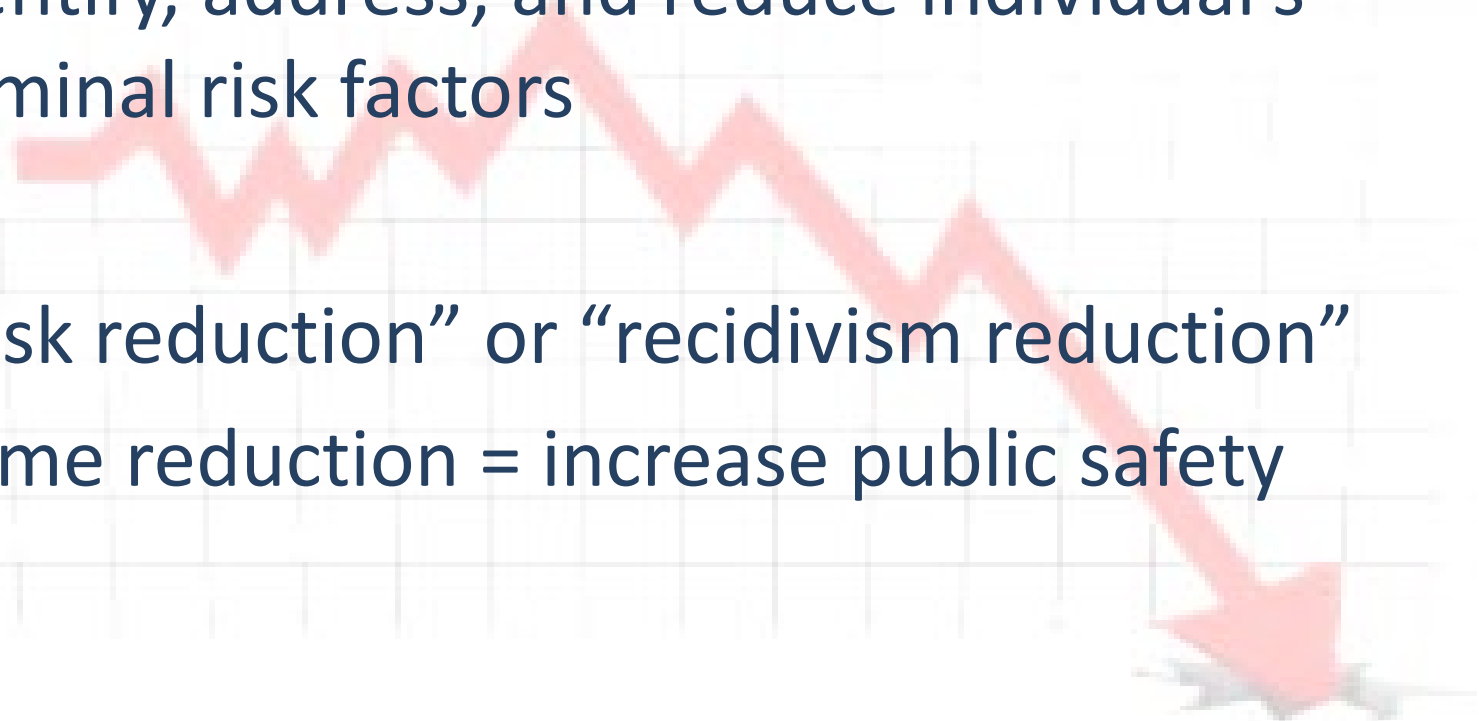
Risk Management



- Impose punishment or penalty proportionate to the gravity of the offense and the culpability of the individual
- Objective:
 - Hold individuals accountable
 - Provide appropriate incapacitation and punishment

Risk Reduction

- Identify, address, and reduce individual's criminal risk factors
- “Risk reduction” or “recidivism reduction”
= crime reduction = increase public safety



Restitution



- Repayment of damages to community or victims
- Community service in lieu of restitution
- Restitution or community service is a fundamental goal of sentencing

Enforcement of Supervision Conditions

- Is individual capable of meeting all goals
- 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



Criminal History Scoring

General Matrix

HISTORY SCORING

ANY CONVICTIONS (Adult case numbers)

CLASS A RANGE CONVICTIONS (Adult case numbers)

VISION HISTORY (Only - Federal, APAR, county problem, court removal)

DATE SCORED

INDIVIDUAL'S NAME

SCORER'S NAME

CRIME CATEGORY

ACTIVE CONVICTIONS (MOST SERIOUS FIRST)

CRIME CATEGORY

1st Degree Person

1st Degree Other

2nd Degree Person

3rd Degree Person

2nd Other Specific 3ds

2nd Pass 3rd Other

3rd Pass Class A+

120 MOS

84 MOS

64 MOS

32 MOS

26 MOS

16 MOS

11 MOS

108 MOS

78 MOS

42 MOS

26 MOS

20 MOS

14 MOS

10 MOS

96 MOS

72 MOS

30 MOS

16 MOS

12 MOS

84 MOS

66 MOS

24 MOS

14 MOS

10 MOS

72 MOS

50 MOS

18 MOS

12 MOS

8 MOS

TOTAL SCORE

CRIMINAL HISTORY RISK

16+

12-15

8-11

4-7

0-3

V

IV

III

II

I

- Prior felony convictions
- Prior class A misdemeanor convictions
- Supervision history
- Prior person or firearm convictions
- Juvenile adjudications (w/in 10 years)
- Crime free gap



What counts as a prior felony
conviction?

Prior Felony Convictions

Counts

- Only prior adult felony convictions with separate case numbers are counted
 - Multiple felonies from single criminal episode only count ONCE unless there are different case numbers
- Case must have been sentenced
- Military, federal, or out-of-state convictions that would be a felony in Utah can count

Doesn't Count

- Current offense
- Dismissed cases, intelligence information, numerous prior arrests



What counts as a prior
misdemeanor conviction?

Prior Class A Misdemeanor Convictions

Counts

- Only prior adult class A misdemeanor convictions with separate case numbers are counted
 - Multiple misdemeanors from single criminal episode only count ONCE unless there are different case numbers
- Case must have been sentenced
- Military, federal, or out-of-state convictions that would be a class A misdemeanor in Utah can count

Doesn't Count

- Current offense
- If already counted a felony from same criminal episode, misdemeanor offense doesn't get counted
- Dismissed cases, intelligence information, numerous prior arrests

A woman with dark, curly hair and round glasses is shown from the chest up. She is looking slightly to her right with a thoughtful expression, her hand resting on her chin. The image has a blue tint and is used as a background for the text.

Supervision history includes
court or bench probation.

Supervision History

Counts

- Only adult supervision
- Only post-adjudication or post-conviction supervision
- OSC w/ revocation and/or removal from problem-solving court
- Offense occurring during current period of post-adjudication supervision

Doesn't Count

- Pre-trial supervision
- Pre-trial jail time
- Court or bench probation
- Problem-solving court or RIM violations
- Supervision for traffic or minor regulatory offenses
- Juvenile Court supervision



**Both juvenile
adjudications and
adult convictions
are counted for
prior person and
firearm convictions.**

Person or Firearm Convictions

Counts

- Adult or juvenile person or firearm convictions that have been sentenced
- Military, federal, or out-of-state convictions that would be equivalent to the Utah penalty for the specific offenses referenced in this section
- Misdemeanor and felony person offenses are designated in addendum B

Person or Firearm Convictions

Counts (cont.)

- Firearm offenses include felony offenses designated in § 76-10-500 et. seq.
- Person of firearm convictions may include offenses not counted in other sections
- May include juvenile adjudications beyond 10 years
- Homicide offenses include offenses designated in § 76-10-201 et. seq.

Person or Firearm Convictions

Doesn't Count

- Current offense

**Only felonies are counted for
juvenile adjudications.**



Prior Juvenile Adjudications

Counts

- Adjudications must have occurred within 10 years of conviction date
- Out of state adjudications count as similar Utah penalty
- Every 3 class A misdemeanor adjudications = 1 felony adjudication

Prior Juvenile Adjudications

Doesn't Count

- Multiple adjudications within single criminal episode
- Status offenses

Prior Juvenile Adjudications

- Juvenile adjudications must be substantiated on the record
- Do NOT round up for misdemeanor adjudications
 - Less than 3 class A misdemeanors = 0 felonies
 - 3 to 5 class A misdemeanors = 1 felony and
 - 6 to 8 class A misdemeanors = 2 felonies





**Juvenile adjudications are not counted
for crime free gap.**

Crime Free Gap

Adult Convictions

- Non-prison case = count from date of sentencing or entry of plea in abeyance
- Prison case = count from date of release from prison

Juvenile Adjudications


- Non-secure care case = count from date of adjudication
- Secure care case = count from release from secure care

Calculation ends at new offense date

Crime Free Gap

Doesn't Count

- Infractions, class C, or class B traffic or other minor regulatory offenses
- Jail time served, jail time ordered, or other jail sentences
- RIM or problem-solving court sanctions
- Detention time or community based placement



Won't be scored if an
individual has no criminal
history or no qualifying
criminal history


Matrices



- Form 1 – General Matrix
- Form 2 – Homicide Matrix
- Form 3 – Sex & Kidnap Matrix
- Form 4 – Jail as Initial Condition of Probation Matrix
- Form 5 – Misdemeanor Matrix



**Aggravating
and
mitigating
factors only
apply to
felony
cases.**

- 
- Aggravating factors not included if:
 - Already included as an element of the offense
 - Is an element of the offense but has not been pled to or otherwise proven beyond a reasonable doubt

Aggravating and Mitigating Factors – Form 6

- Occasionally need to deviate from guidelines
- Form 6 provides more common reasons
- Aggravating and mitigating circumstances should be documented whether or not guideline sentence is recommended
- Reasons should always be specified when the guideline sentence is not recommended




CAUTION

- Factors already considered in risk assessment
- Factors that reflect socio-economic status more than risk
- Factors dealing with sex offenses that may not have a statistical correlation with increased risk to reoffend

Bias as a Mitigating Factor

Racial, ethnic, or other biases in a specific case, whether conscious or unconscious may be a mitigating factor at sentencing.





Defense counsel is strongly urged to make any relevant mitigating factors known to sentencing authority before sentencing

CRIME CATEGORY

	1 st Degree Person	1 st Degree Other	2 nd Degree Person	3 rd Degree Person	2 nd Other Specific 3rds	2 nd Poss 3 rd Other	3 rd 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

CRIMINAL HISTORY

Board of Pardons and Parole



- Once sent to prison BOPP determines when individual will be released
- BOPP will redo sentencing guidelines to include ALL sentenced offenses
- Can determine presumptive prison sentence from Forms 1-3 on guidelines IF this is only crime being sentenced to prison

Jail as Initial Condition of Probation

- Determined by Form 4
- Shaded cells are presumptive probation = NO jail time should be recommended

Form 4 - Jail as Initial Condition of Probation of Felony Probation Matrices

Numbers in shaded cells are presumptive probation sentences, meaning jail time should NOT necessarily be recommended to the court by the supervising agency. Alternative sanctions and/or non-incarceration sanctions are encouraged in these cells. The mid-point is listed above the time range available is listed as an initial period of confinement in the county jail. If no mid-point is listed the presumption is that jail time should NOT be recommended. All numbers listed are in days, not months. Jail days listed should not be considered mandatory sentences.

CRIMINAL HISTORY ROW ☐

Rev. 10/2016

GENERAL MATRIX

	2nd Death	1st Person	3rd Death	1st Other	2nd Person	3rd Person	2nd Other	2nd Poss.	3rd Other*	3rd Poss.
V	180 (0-365)	180 (0-365)	180 (0-365)	180 (0-365)	180 (0-365)	150 (0-300)	150 (0-300)	150 (0-300)	135 (0-270)	75 (0-150)
IV	180 (0-365)	180 (0-365)	160 (0-320)	160 (0-320)	160 (0-320)	150 (0-300)	150 (0-300)	135 (0-270)	105 (0-210)	60 (0-120)
JAIL DAYS										
III	180 (0-365)	150 (0-300)	135 (0-270)	135 (0-270)	135 (0-270)	90 (0-180)	90 (0-180)	90 (0-180)	75 (0-150)	(0-90)
II	180 (0-365)	135 (0-270)	120 (0-240)	120 (0-240)	120 (0-240)	75 (0-150)	(0-120)	(0-120)	(0-90)	(0-60)
PRESUMPTIVE PROBATION										
I	180 (0-365)	120 (0-240)	105 (0-210)	105 (0-210)	105 (0-210)	60 (0-120)	(0-90)	(0-60)	(0-60)	(0-30)

SEX & KIDNAP OFFENSE MATRIX (To be used with Form 3)

	1st	2nd	3rd
III	180 (0-365)	160 (0-320)	90 (0-180)
II	180 (0-365)	125 (0-250)	90 (0-180)
I	160 (0-320)	105 (0-210)	60 (0-120)

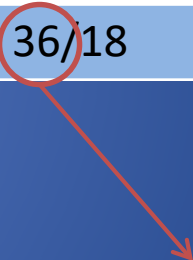
* The 2017 revisions to the Adult Sentencing and Release Guidelines were not intended to alter Form 5 in any substantive way. While the General Matrix in Form 1 was revised to include a category of specific 3rd degree felonies, this should not be viewed as changing the categorization in Form 5. Therefore, what is now categorized as a "Specific 3rd" in Form 1, i.e., DUI, Possession of Firearm by Restricted Person, and Failure to Stop at Command of Law Enforcement Officer, should still be categorized as a "3rd Other" in Form 5 according to Addendum 8.

Probation Supervision

- Length of probation determined by supervision guidelines

1 st Degree Person	2 nd Degree Person	1 st Degree Other	3 rd Degree Person	2 nd Other/ Specific 3 rd	2 nd Poss/ 3 rd Other	3 rd Poss/ Class A (prison)
48/24	48/24	36/18	36/18	36/18	36/18	24/12

- Jail as initial condition of probation
 - Limited to one year
- Other guidelines
 - Homicide
 - Sex/kidnapping offenses
 - Misdemeanor



Mandatory
starting point
for probation

Questions

