



2023 SENTENCING GUIDELINES

2023 Indigent Defense Commission Training

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PRESENTATION OVERVIEW

- 01** Introduction to the Sentencing Commission
- 02** Collateral Consequences Guide
- 03** 2023 Sentencing, Release, and Supervision Guidelines
- 04** Practice Tips
- 05** Q+A / Collaboration Discussion

INTRODUCTION TO THE SENTENCING COMMISSION



2023 SENTENCING GUIDELINES

WHO WROTE THE GUIDELINES?

Utah Sentencing Commission

Created by statute in 1993, the Utah Sentencing Commission is tasked with developing guidelines and recommendations to all three branches of government regarding: the sentencing, release, and supervision of adults and juveniles.



2023 SENTENCING GUIDELINES

WHO WE ARE

28 Members, including:

- House Members (2)
- Senate Members (2)
- UDC 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 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, Release, and Supervision Guidelines

Juvenile Disposition Guidelines

Master Offense List

Collateral Consequences Guide



2023 SENTENCING GUIDELINES

2022
COLLATERAL
CONSEQUENCES
GUIDE



2023 SENTENCING, RELEASE, AND SUPERVISION GUIDELINES



2023 SENTENCING GUIDELINES

WHAT'S NEW FOR 2023?

- 1 Streamlined Format
- 2 Three Stages of Sentencing
- 3 Assessment Tools
- 4 Behavior Management Decision Framework
- 5 Financial Offense Matrix
- 6 Sexual Exploitation - Special Aggravation and Mitigation

PURPOSE OF GUIDELINES

"The Sentencing, Release, and Supervision Guidelines are intended to help **structure decision-making**, incorporate an evidence-based criminal justice philosophy, eliminate unwarranted disparity, and provide a tool to match resources with needs while maintaining the discretion of the sentencing, release, and supervision authority."

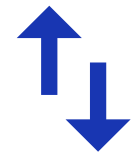
GOALS OF SENTENCING, RELEASE, AND SUPERVISION

An appropriate sentence should serve three main goals:



Risk Management

Imposing a sanction appropriate for the offense, the risk presented by the individual, and any threat to public safety



Risk Reduction

Reducing recidivism risk by targeting resources to the individual's risks and needs



Restitution

Repayment of damages to the victim or community impacted by the offense



THREE STAGES OF SENTENCING

1

Assessment - WHO?

**Understand the risks
and needs of the
individual being
sentenced**

2

Behavior Management- WHAT?

**Direct resources to
manage and reduce
risk over time**

3

Termination- WHEN?

**Determine when and
how to end the
sentence after purpose
has been served**

STAGE 1: ASSESSMENT

RISK ASSESSMENT

- High
- Medium
- Low

ASSESSMENT OVERVIEW

WHAT IS ASSESSMENT?

- DETERMINES UNIQUE RISKS AND NEEDS IMPACTING INDIVIDUAL
- VALIDATED RISK AND NEEDS ASSESSMENT ("RNA TOOLS") ARE INTEGRAL PART OF PROCESS

WHAT ARE RISK ASSESSMENTS?

- ACTUARIAL TOOLS ANALYZING OBJECTIVE FACTORS
- RNA TOOLS + INFORMED DECISION MAKING ARE MORE RELIABLE THAN PROFESSIONAL JUDGEMENT ALONE

HOW SHOULD I USE A RISK ASSESSMENT?

- TO INFORM DECISION-MAKING AND TARGET RESOURCES
- AS ONE PART OF A STRUCTURED DECISION-MAKING PROCESS

WHAT ARE THE LIMITS OF RISK ASSESSMENTS?

- INCOMPLETE INFORMATION CAN SKEW RESULTS
- ACCURATE ACROSS LARGE NUMBERS BUT MAY MISS INDIVIDUALIZED RISK
- DO NOT SPEAK TO PROPORTIONALITY /CULPABILITY

ASSESSMENT TOOLS IN UTAH

For a complete and updated list,
visit: justice.utah.gov/sentencing

To learn more, visit:
rma.scot/research/rated

Type of Tool	RNA Tool	Description
General Risk Screening	LSI-R:SV	Screening instrument used where it may not be feasible to complete a full assessment. Predicts violent recidivism and violations while under community supervision, as well as institutional misconduct. Also indicates which offenders may require a complete assessment. Used in jail, pretrial, or probation intake as a triage tool.
General Risk Assessment	LS/RNR	Measures risk and need factors including the "Central 8" target measures. Assesses rehabilitation needs, risk of recidivism, and other factors relevant to directing supervision and programming. Captures both general and specific risk/need factors. Informs case action plan. General assessment tool used to help inform decision-making during the probation, prison, and parole processes. Reassessments conducted every 12 months during community supervision and every 12 months during institutional supervision or upon significant change to an assessed factor.
Sex Offense Static Risk Assessment	VASOR-2	Static risk tool used to assess risk among adult male sex offenders for most sex offenses. Assesses severity of offense and risk of re-offense. Designed for use by mental health professionals and probation and parole officers. Should be used in conjunction with a dynamic risk measure (SOTIPS).
Sex Offense Dynamic Risk Assessment	SOTIPS	Dynamic risk tool used to assess risk, treatment, supervision needs, and progress among adult male sex offenders for most sex offenses. Designed for use by mental health professionals and probation and parole officers. Should be used in conjunction with a static risk measure (VASOR-2)
Sex Offense Static Risk Assessment	Static 99	Measures static risk factors, or historical risk factors, that have been found in research to predict sexual re-offense. The score on the STATIC-99 can range from 0 to 12 and risk classifications include low, medium-low, medium-high, and high risk. Each risk level is associated with a probability of sexual re-offense for the study sample for 5, 10, and 15 years.
Sexual Exploitation of a Minor (Child Pornography) Offenses	CPORT	Static risk tool used to assess adult males convicted of Sexual Exploitation of a Minor (Child Pornography) offenses. Scores individuals from 1-5 based on validated risk factors. Used to direct treatment resources.
Adverse Childhood Experience Analyss	ACEs	A large body of research links Adverse Childhood Experiences (ACEs) to chronic health problems, mental illness, and substance misuse in adulthood. ACEs can also impact future violence victimization and perpetration. Toxic stress from ACEs can change brain development and affect things such as attention, decision-making, learning, and response to stress. ACEs are not an aggravating factor, but are assessed at corrections intake and as part of presentence investigations to help direct resources and create a trauma-informed case action plan.

STAGE 2: BEHAVIOR MANAGEMENT



BEHAVIOR MANAGEMENT OVERVIEW

WHAT IS BEHAVIOR MANAGEMENT?

- DETERMINES WHAT RESPONSES WILL SERVE THE GOALS OF RISK MANAGEMENT, RISK REDUCTION, AND RESTITUTION FOR THIS INDIVIDUAL.
- CASE ACTION PLAN TO DRIVE THESE RESPONSES

TOOL: BEHAVIOR MANAGEMENT DECISION FRAMEWORK (P. 11)

INCARCERATION AND BEHAVIOR MANAGEMENT

- INCARCERATION CAN INCAPACITATE UNMANAGEABLE RISKS
- ON ITS OWN, DOES NOT REDUCE RISK
- SHOULD BE PAIRED WITH RISK-REDUCTION PROGRAMMING

TOOLS:

- FORMS 1-6 REFLECT TYPICAL SENTENCES, INCLUDING INCARCERATION (P. 26-33)
- FORM 7 SHOWS AGGRAVATION/MITIGATION ANALYSIS

COMMUNITY SUPERVISION AND BEHAVIOR MANAGEMENT

- SERVING GOALS OF SENTENCING THROUGH SUPERVISION REQUIRES:
- MONITORING COMPLIANCE WITH CASE ACTION PLAN, RESPONDING TO POSITIVE AND NEGATIVE BEHAVIOR, REPORTING BACK TO SENTENCING AUTHORITY, AND DETERMINING WHEN TO TERMINATE SUPERVISION

TOOLS: SUPERVISION TOOLS 1-5 (P. 34-42)

BEHAVIOR MANAGEMENT DECISION FRAMEWORK

List of evidence-based factors to consider when crafting a behavior management plan

Risk Assessment - RNA Tool to determine likelihood of reoffense

Offense Violation/Severity - More severe offenses suggest more intensive response (use [Behavior Management Forms 1-6](#) as anchor point).

Criminal History - Number, frequency, severity, escalation, and crime-free periods are relevant predictors (use [Behavior Management Forms 1-6](#))

Institutional/Community Behavior - Behavior during previous incarceration or community supervision.

Ability to Control Behavior - Poor self-regulation--cognitive distortions, entitlement, callousness, and sexual deviance--suggest increased risk.

Risk Reduction Programming / Responsivity - Consider programming available to target the individuals' risks and needs.

Evidence of Change - Completion of programming, significant crime-free periods, reduction in risk scores, ability to articulate insights, and other evidence of real change suggests decreased risk/resources.

Community Supervision Plans - Consider available options to manage risk in the community. Is there a concrete and realistic plan?

Case-Specific Factors - Other factors unique to the case, including offense notoriety or severity of victim/community impact may be relevant considerations.

BEHAVIOR MANAGEMENT FORMS

- **Forms 1 - 6** provide a typical sentence based on offense type and criminal history.
- **Shading** of each matrix denotes probation / probation + jail / prison
- **Number** within each box denotes length of incarceration if imposed
- Form 7 suggests **aggravating and mitigating** factors
- Form scoring is **one part** of sentencing analysis.

STEPS FOR SCORING BEHAVIOR MANAGEMENT FORMS

- **Step 1:** Determine the criminal history score.
- **Step 2:** Determine the most serious offense/crime category
- **Step 3:** Find sentencing box
- **Step 4:** Determine presumptive incarceration shading
- **Step 5:** Calculate presumptive sentence
- **Step 6:** Consider aggravating and mitigating factors

STEP 1: CRIMINAL HISTORY SCORING



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

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

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 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

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

STEP 1: CRIMINAL HISTORY SCORING

- **Convictions:**
 - “Prior” means a conviction or adjudication occurring before the current sentencing, regardless of the date of offense;
- **Supervision:**
 - “Prior revocation” includes revoking and reinstating probation, removal from problem solving court, etc
 - But not “RIM” sanctions
- **“Crime free gap”**
 - Runs from date of last sentencing, release from prison, or entry of PIA

STEP 1: CRIMINAL HISTORY SCORING

TOTAL SCORE

TOTAL SCORE RANGES	CRIMINAL HISTORY ROW
16+	V
12 - 15	IV
8 - 11	III
4 - 7	II
0 - 3	I

STEP 2: DETERMINE OFFENSE CATEGORY



STEP 2: LEAD OFFENSE CATEGORY

Use Addendums B
and C

Code Citation	Description	Category
41-3-413	Alteration of Disclosure Statement	Other
41-4-9	Financing Dealers and Purchasers Violation	Other
41-6a-210	Fail to Respond to Officer's Signal to Stop	Other
41-6a-210(2)	Fail to Respond Causing Ser. Bodily Injury or Death	Person, Death
41-6a-401.3	Fail to Stop - Accident Involving Injury	Person
41-6a-401.5	Fail to Stop - Accident Involving Death	Death
41-6a-502.5	Impaired Driving	Other
41-6a-503(1)(b)	DUI Causing Injury; Passenger Under 16 or 18 if Over 21	Person
41-6a-503(2)(a)	Driving Under the Influence and Causing Ser. Bodily Injury	Person
41-6a-503(2)(b)	Driving Under the Influence - 3rd or Subsequent Conv.	Other
41-6a-503(2)(c)	Driving Under the Infl. - Post Auto Homicide or Felony DUI	Other
41-6a-1716(4)	Inflict Ser. Bod. Injury - Driving & Using Handh. Wirel. Dev.	Person
41-12a-805	Unauth. Rel. of Info. From Uninsured Motorist ID Database	Other
52-1-13	Public Officer Making False Material Stmt. to Secure Bond	Other
58-5a-501	Unlawful Conduct - Podiatric Physician Licensing Act	Other
58-16a-503	Unlawful Conduct - Utah Optometry Practice Act	Other
58-17b-504(1)	Unlawful Conduct - Pharmacy Practice Act	Other
58-31b-503	Unlawful Conduct - Nurse Practice Act	Other
58-37-8	Controlled Substance Viol. (not designated as poss. herein)	Other
58-37-8(2)(a)(i)	Felony Possession/Use of Controlled Substance	Possession
58-37-8(2)(a)(ii)	Allow Possession/Use of Contr. Substance on Premises	Possession
58-37-8(2)(a)(iii)	Felony Possession of Altered or Forged Prescription	Possession

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



FORM 2: HOMICIDE / DEATH OFFENSE MATRIX

CRIMINAL HOMICIDE MATRIX

	1st Degree Aggravated Murder A	1st Degree Murder B	Attempted Aggravated Murder* C	1st Degree Death D	2nd Degree Death E	2nd Degree Auto Homicide F	3rd Degree Death** G
V	444 MOS	288 MOS	240 MOS	180 MOS	156 MOS	84 MOS	48 MOS
IV	408 MOS MANDATORY IMPRISONMENT	276 MOS	228 MOS	168 MOS	144 MOS	72 MOS	42 MOS
III	372 MOS	264 MOS	216 MOS	156 MOS	132 MOS	60 MOS	36 MOS
II	336 MOS	252 MOS	204 MOS	144 MOS	120 MOS	48 MOS	30 MOS JAIL AS COND.
I	300 MOS	240 MOS	192 MOS	132 MOS	108 MOS	36 MOS	24 MOS

*The presumptive sentence for Attempted Aggravated Murder is 15 to life; however, the Board of Pardons & Parole will take into consideration if a judge has found mitigating factors



FORM 3: SEX & KIDNAP OFFENSE MATRIX

CRIME CATEGORY & PRISON MATRIX

	1st Degree Mandatory Prison (15+)	1st Degree Mandatory Prison (10+)	1st Degree Mandatory Prison (6+)	1st Degree Mandatory Prison (5+)	1st Degree Mandatory Prison (3+)	1st Degree (5+)	1st Degree (3+)	2nd Degree (1-15)	3rd Degree (0-5)	Class A Misd. (0-1)
	A	B	C	D	E	F	G	H	I	J
III	252 MOS	168 MOS	100 MOS	75 MOS	75 MOS	75 MOS	75 MOS	64 MOS	42 MOS	12 MOS
		MANDATORY IMPRISONMENT					IMPRISONMENT			
II	216 MOS	144 MOS	90 MOS	66 MOS	64 MOS	66 MOS	62 MOS	48 MOS	36 MOS	10 MOS
I	192 MOS	132 MOS	80 MOS	60 MOS	42 MOS	60 MOS	42 MOS	40 MOS	32 MOS	8 MOS
								JAIL AS AN INITIAL COND. OF PROBATION		



FORM 4: FINANCIAL OFFENSE WITH SERIOUS LOSS MATRIX

- For certain theft and fraud offenses;
- With loss amounts above \$50,000

CRIME CATEGORY & PRISON MATRIX

	2nd Degree - > \$1 Million financial loss	2nd Degree - \$200,000 - \$999,999 financial loss	2nd Degree - \$50,000 - \$199,999 financial loss
III	96 mos	72 mos	40 mos
IMPRISONMENT			
II	84 mos	60 mos	32 mos
I	72 mos	48 mos	24 mos

FORM 6: MISDEMEANOR MATRIX

CRIME CATEGORY

	Class A Person	Class B Person	Class A Other	Class B DV Other	Class A POCS	Class B	Class C and below
	A	B	C	D	E	F	G
V	105 (0-120)	90 (0-180)	75 (0-150)	60 (0-120)	45 (0-90)	30 (0-60)	15 (0-30)
JAIL DAYS							
IV	90 (0-180)	75 (0-150)	60 (0-120)	45 (0-90)	37 (0-75)	22 (0-45)	15 (0-30)
III	75 (0-150)	60 (0-120)	45 (0-90)	37 (0-75)	22 (0-45)	15 (0-30)	* (0-15)
PRESUMPTIVE PROBATION							
II	60 (0-120)	45 (0-90)	30 (0-60)	22 (0-45)	15 (0-30)	* (0-15)	* (0-7)
I	45 (0-90)	30 (0-60)	15 (0-30)	15 (0-30)	* (0-15)	* (0-15)	* (0-7)



JAIL AS A CONDITION OF PROBATION MATRIX

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)
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)	45 (0-90)
II	180 (0-365)	135 (0-270)	120 (0-240)	120 (0-240)	120 (0-240)	75 (0-150)	60 (0-120)	60 (0-120)	45 (0-90)	30 (0-60)
I	180 (0-365)	120 (0-240)	105 (0-210)	105 (0-210)	105 (0-210)	60 (0-120)	45 (0-90)	30 (0-60)	30 (0-60)	15 (0-30)

STEP 3: FIND SENTENCING BOX



3F AGG ASSAULT, CRIM HISTORY CATEGORY IV

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 (applies to rows III, II, and I)

JAIL AS CONDITION OF PROBATION (applies to rows IV and III)

PRESUMPTIVE PROBATION (applies to rows II and I)



STEP 4: DETERMINE INCARCERATION PRESUMPTION



2023 SENTENCING GUIDELINES

3F AGG ASSAULT, CRIM HISTORY CATEGORY IV

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 (applies to rows III, II, I)

JAIL AS CONDITION OF PROBATION (applies to rows IV, III)

PRESUMPTIVE PROBATION (applies to rows II, I)

STEP 4: DETERMINE PRESUMPTIVE INCARCERATION

- White = imprisonment
- Light grey = jail + probation
- Dark grey = probation

Offense	1st Degree Other B	2nd Degree Person C	3rd Degree Person D	2nd Other Specific 3rds E	2nd Poss 3rd Other F
1st Degree	84 MOS	54 MOS	32 MOS	26 MOS	16 MOS
2nd Degree	78 MOS	42 MOS	26 MOS	20 MOS	14 MOS
3rd Degree	72 MOS	30 MOS	20 MOS	16 MOS	12 MOS
4th Degree	66 MOS	24 MOS	16 MOS	14 MOS	10 MOS
5th Degree	60 MOS	18 MOS	14 MOS	12 MOS	8 MOS

IMPRISONMENT

JAIL AS CONDITION OF PROBATION

PRESUMPTIVE PROBATION



STEP 5: CALCULATE PRESUMED SENTENCE



3F AGG ASSAULT, CRIM HISTORY CATEGORY IV

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 (applies to rows IV and III)

JAIL AS CONDITION OF PROBATION (applies to rows IV and III)

PRESUMPTIVE PROBATION (applies to rows II and I)



JAIL AS A CONDITION OF PROBATION MATRIX

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)
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)	45 (0-90)
II	180 (0-365)	135 (0-270)	120 (0-240)	120 (0-240)	120 (0-240)	75 (0-150)	60 (0-120)	60 (0-120)	45 (0-90)	30 (0-60)
I	180 (0-365)	120 (0-240)	105 (0-210)	105 (0-210)	105 (0-210)	60 (0-120)	45 (0-90)	30 (0-60)	30 (0-60)	15 (0-30)

PRESUMED SENTENCE:

- **0-5 YEAR PRISON TERM**
- **PROBATION + 90 DAYS
JAIL**

STEP 6: AGGRAVATING AND MITIGATING FACTORS



“



**IT IS THE RESPONSIBILITY OF
DEFENSE COUNSEL AND
PROSECUTORS TO ENSURE ANY
RELEVANT AGGRAVATING AND
MITIGATING FACTORS ARE
KNOWN TO THE SENTENCING
AUTHORITY AT THE TIME OF
SENTENCING.**

STEP 6: AGGRAVATION AND MITIGATION

PSI Page #

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: AGGRAVATION AND MITIGATION

PSI Page #

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)



STEP 6: AGGRAVATION AND MITIGATION

PSI Page #

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)



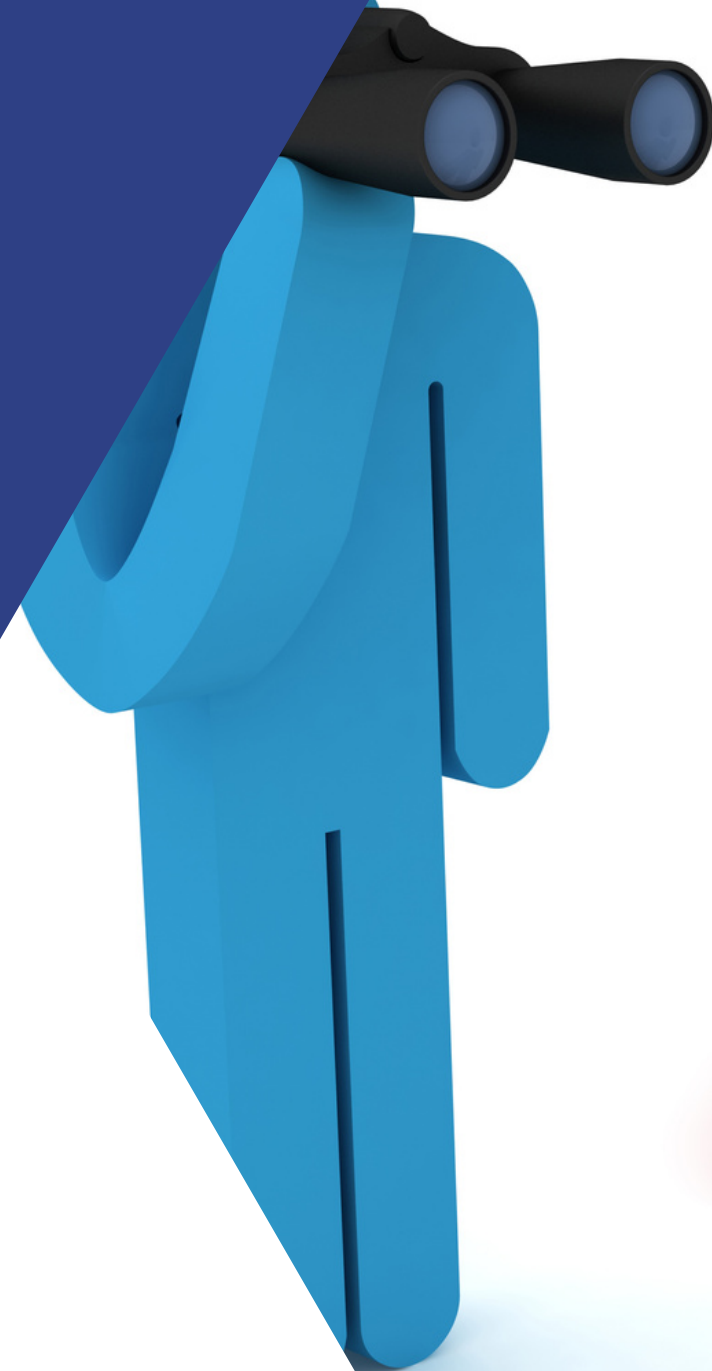
WHO WROTE THE GUIDELINES?

Utah Sentencing Commission

Created by statute in 1993, the Utah Sentencing Commission is tasked with developing guidelines and recommendations to all three branches of government regarding: the sentencing, release, and supervision of adults and juveniles.



SUPERVISION TOOLS



WHAT'S NEW FOR 2023?

- 1 Evidence-Based Practices Tool
- 2 Revised Incarceration Caps
- 3 Removed unusable tools

TOOL 6: EXCEPTIONS TO INCARCERATION CAPS

- **77-18-108: court "may deviate with reasons on the record"**

PROBATION

Finding that conduct presents a substantial risk to public safety that cannot be addressed
Substantial risks to public safety include, but are not limited to:

A. "Per Se" Violations: e.g. dangerous weapons, fleeing via high speed chase, violent and high priority CCC walkways; or

B. "Crime of Commitment Dependent" Violations: e.g. sex offense in cycle, repeat DUI vi health instability that negatively impacts a criminogenic risk factor, repeat domestic violence

Jurisdiction over new criminal conviction with new guideline recommendations from For

Finding that execution of sentence previously imposed is warranted pursuant to 77-18-108(4)(b)(iv)

Revocation of parole prior to parole pursuant

including when individual BOPP was unaware of conviction individual lied prior to release

Guilty and Mentally Ill

including when the BOPP an individual who plead guilty time required to conduct t

STAGE 3: TERMINATION



TERMINATION OVERVIEW

WHAT IS TERMINATION?

- THE "WHEN" OF SENTENCING
- WHEN GOALS HAVE BEEN MET SUCH THAT SUPERVISION, INCARCERATION, OR OTHER INVOLVEMENT WITH THE JUSTICE SYSTEM IS NO LONGER NEEDED, THAT SENTENCE SHOULD TERMINATE

WHY IS TERMINATION IMPORTANT?

- NO ONE CAN SUCCEED WITHOUT CRITERIA FOR SUCCESS
- OPEN-ENDED, OVERLY INTENSIVE, OR UNNECESSARY LENGTHY SUPERVISION TERMS CAN DO MORE HARM THAN GOOD
- THE **SUPERVISION LENGTH GUIDELINES** CREATE GOALS AND BENCHMARKS TO MEASURE PROGRESS

HOW IS TERMINATION DETERMINED?

- THE **SUPERVISION LENGTH GUIDELINES** LAY OUT THE PROCESS FOR TERMINATION EVALUATION OF CRIMINAL SUPERVISION
- REVIEW DATES SHOULD BE SET AT TERMINATION DEADLINES

SUPERVISION LENGTH GUIDELINES

- First number: Mandatory Review deadline
- Second number: Early Review date

GENERAL

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

HOMICIDE

1st Degree Aggravated Murder	1st Degree Murder	Attempted Aggravated Murder	1st Degree Death	2nd Degree Death	2nd Degree Auto Homicide	3rd Degree Death	Class A Death
168 / 84	168 / 84	168 / 84	168 / 84	60 / 30	60 / 30	60 / 30	36 / 18

SEX AND KIDNAP

1st Degree Mandatory Prison	1st Degree	2nd Degree	3rd Degree	Class A
120 / 60	120 / 60	48 / 24	48 / 24	36 / 18

MISDEMEANOR (PROBATION)

Class A Person / DUI	Class B Person / DUI	Class A Other	Class B DV Other	Class A POCS	Class B	Class C
24 / 12	24 / 12	24 / 12	24 / 12	24 / 12	12 / 6	6 / 0

STATUTES IMPACTING TERMINATION

- **77-18-105(7): Probation of an individual:**
 - **May not exceed the individual's max sentence**
 - Or 36 mos for misdemeanors (77-18-108(4)(a))
 - Time tolled for violation reports or warrants (77-18-108(5)(b))
 - **Shall be for a period of time in accordance with supervision length guidelines**
 - **Shall be terminated in accordance with supervision length guidelines**

MANDATORY VS. DISCRETIONARY

Mandatory Process	Discretionary Decision
<p>Initial lengths of supervision shall be set consistent with the supervision length guidelines. See U.C.A. §77-18-105(7)(a)(ii); See also U.C.A. §76-3-202(1) (dealing with parole).</p>	<p>Supervision may be extended, subject to appropriate findings at the review hearings, up to the statutory limits.</p>
<p>Early termination and mandatory termination reviews shall be held in accordance with the supervision length guidelines. The supervising authority shall submit reports prior to the deadlines See U.C.A. §77-18-105(7)(a)(iii); See also U.C.A. §76-3-202(1) (dealing with parole).</p>	<p>Early termination requests may be denied, subject to appropriate findings.</p>
<p>Supervision terms may not extend past the maximum prison sentence for the offense at issue, or 36 months for any misdemeanor (statutory limits). See U.C.A. §77-18-105(7)(a)(i) and (7)(b).</p>	<p>Supervision may be terminated earlier than the deadlines, subject to appropriate findings.</p>



EARLY TERMINATION ELIGIBILITY CRITERIA



Risk Reduction

Validated through risk assessment



Completion of Treatment

If treatment was ordered



Stability and compliance

As reported by the supervising agency

EARLY TERMINATION **INELGIBILITY** CRITERIA



**New Criminal Conviction /
Conduct**



**Notice of Order to Show Cause
or Warrant Issued**



**Substantial Risk to Public
Safety**



“

**“IF THE COURT/BOPP DENIES
EARLY TERMINATION, IT SHALL
ARTICULATE ITS REASONS IN
WRITING OR ON THE RECORD
AND MAY EXPLAIN WHAT IS
REQUIRED TO BE ELIGIBLE AT
THE NEXT TERMINATION
REQUEST”**

TERMINATION ELIGIBILITY CRITERIA



Risk Reduction

Validated through risk assessment



Completion of Treatment

If treatment was ordered



Stability and compliance

As reported by the supervising agency



TERMINATION **INELGIBILITY** CRITERIA



**New Criminal Conviction /
Conduct**



**Notice of Order to Show Cause
or Warrant Issued**



**Substantial Risk to Public
Safety**

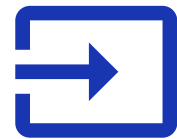


MANDATORY REVIEW DEADLINE

If termination criteria are **not** met, the sentencing or release authority may:



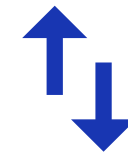
**Terminate
Supervision**



Extend Supervision



**Order appropriate
sanctions**



**Revoke/reinstate
(but not beyond
statutory term)**



MANDATORY REVIEW DEADLINE

Findings required:

- **If termination of supervision is denied, the court shall articulate reasons and explain what is required to be eligible.**
- **The supervising authority shall submit a new report within 30 days of the person meeting requirements.**

“

IF THE COURT FAILS TO ISSUE AN ORDER REGARDING TERMINATION OF SUPERVISION BEFORE THE MANDATORY REVIEW DATE, SUPERVISION IS TERMINATED ON THAT DATE.

PRACTICE TIPS



BE THOUGHTFUL

- **HOW DOES THIS SENTENCE FULFILL THE GOALS OF SENTENCING?**
 - **RISK MANAGEMENT**
 - **RISK REDUCTION**
 - **RESTITUTION**



USE ALL OF THE GUIDELINES

Not just the forms / score...

- Refer to the Behavior Management Decision Framework
- Utilize aggravating/mitigating factors
- Assessment and termination are part of the sentencing hearing

A photograph of three people in Halloween costumes. On the left and right are two individuals dressed as skeletons, wearing black bodysuits with white skeletal patterns and white headbands with spiky hair. In the center is a man with a wide smile, wearing a black shirt with a repeating orange pumpkin pattern. The background is dark and out of focus.

ANY QUESTIONS?

CONTACT INFORMATION



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H.B. 50

WHAT DOES IT DO?

- 1 Clarifies standard restitution determination process
- 2 Creates new process for PIA restitution determination
- 3 Clarifies deadline to resolve restitution disputes
- 4 Clarifies termination process as it relates to restitution
- 5 Creates law enforcement reporting obligations
- 6 Clarifies impact of civil judgements on restitution

STANDARD RESTITUTION DETERMINATION PROCESS

- If a defendant is convicted, the court shall order, as part of the sentence, order:
 - Restitution to all victims for entire amount of pecuniary damage caused to each victim by the criminal conduct of the defendant

STANDARD RESTITUTION DETERMINATION PROCESS

- The court shall:
 - Enter an order to establish a criminal accounts receivable
 - Establish a payment schedule

STANDARD RESTITUTION DETERMINATION PROCESS

- If a defendant objects, the court shall:
 - Allow a restitution hearing.
- At restitution hearing, the court shall consider:
 - All relevant facts to establish amount that fully compensates for all pecuniary damage caused by criminal conduct of the defendant

STANDARD RESTITUTION DETERMINATION PROCESS

- If the court does not order restitution at sentencing, the court shall:
 - **Schedule a restitution hearing, UNLESS:**
 - The court finds, **as a matter of law**, that there is no victim, OR

STANDARD RESTITUTION DETERMINATION PROCESS

- The prosecuting attorney certifies, on the record, that the prosecuting attorney has contacted victims/UOVC and restitution is not being sought
- NOTE: No "waiver of hearing" process
 - No need to set more than one restitution hearing.

PIA RESTITUTION PROCESS

- The terms of a PIA **shall** include:
 - A specific amount of restitution (agreement)
 - A certification that victims/UOVC have been contacted and no restitution is being sought, OR
 - **An agreement between parties that restitution will be determined at a hearing.**

PIA RESTITUTION PROCESS

- At a PIA restitution hearing, the court **shall** order:
 - Restitution for the entire amount of pecuniary damages that are proximately caused by the criminal conduct of the defendant
 - (Same standard as regular restitution hearing)
- Court shall consider all relevant facts
- Court shall enter the amount as a finding on the record

DEADLINES TO RESOLVE RESTITUTION

- A court **shall** enter an order for restitution no later than the earlier of:
 - The **termination of the defendant's sentence**, including early termination, or
 - 1F - 7 years
 - Other felony - 3 years
- A request made within those time periods tolls time for restitution determination (but does not extend probation / incarceration)

DEADLINES TO RESOLVE RESTITUTION

- If restitution is not determined at sentencing or the initial restitution hearing, the prosecuting attorney or victim may file a motion for restitution within those time periods.
- If a defendant objects to motion, the court may schedule a hearing to determine if restitution should be ordered if the prosecuting attorney or victim shows **good cause**.

DEADLINES TO RESOLVE RESTITUTION

- The court may also modify existing restitution orders within those time periods with **good cause** shown

TERMINATION PROCESS

- AP+P shall notify in writing when recommending termination of sentence
- Notification shall include restitution information
- Court shall provide notice to all parties and a reasonable opportunity to respond
- If no restitution claim has been filed, the court may find the defendant does not owe restitution and terminate the sentence.

LAW ENFORCEMENT OBLIGATIONS

- Law Enforcement shall indicate whether a claim for restitution may exist on the investigative report **or citation**;
- **Law Enforcement shall include in investigative report:**
 - The basis for restitution
 - The estimated or actual amount of restitution

IMPACT OF CIVIL JUDGEMENTS

- Civil judgements do not limit or preclude court from entering a restitution order, and vice versa
- **The sentencing court shall credit any payment made to a victim in a civil action for defendant's criminal conduct toward the amount of restitution owed**
- Victim shall provide notice to the court within 30 days after payment is received
- Nothing shall prevent defendant from providing proof of payment

SB 218 - PRIVATE PROBATION AND COURT- ORDERED SERVICES AMENDMENTS

Seeks to reduce perverse incentives in private probation



2023 SENTENCING GUIDELINES

SB 218

WHAT DOES IT DO?

- 1 Coordinating Council List of Providers
- 2 Courts must provide list of options to defendants
- 3 Providers cannot solicit at court
- 4 Providers must notify court if they are providing supervision
- 5 Providers generally must refer out for services

PRIVATE PROBATION SERVICES

- "If, after conducting a screening of a defendant's risk and **needs**, a private probation provider determines that a defendant requires a specific assessment, treatment, or other services, the private probation provider shall:
 - Provide a list of all available licensees;
 - Permit defendant to select from that list

PRIVATE PROBATION SERVICES

- Exception if:
 - Provider is only licensee within 50 miles of defendant's residence, AND
 - Informed written consent
- Consent must include:
 - Procedures for withdrawing consent;
 - Declaration of potential conflict of interest