

1. THE SENTENCING COMMISSION

Q. What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

In 1983 the Utah Commission on Criminal and Juvenile Justice was created and its statutory mandate included the task of developing and evaluating sentencing and release guidelines.¹ The Utah Commission on Criminal and Juvenile Justice continued to manage the guidelines until 1993 when the Utah Sentencing Commission was established.² The Utah Sentencing Commission presently manages the guidelines.³ Since its establishment, eight additional positions on the Commission have been added, most of which are directed at addressing concerns with juvenile sentencing.⁴

Q. Membership: who appoints them, for what terms, with what required qualifications?

The Utah Sentencing Commission is composed of 27 members who are appointed through the following processes:

The Speaker of the House appoints:

- two members of the House of Representative who are not of the same political party.

The President of the Senate appoints:

- two members of the Senate who are not of the same political party.

The Chair of Judicial Council appoints:

- two trial court judges.
- two juvenile court judges.
- one appellate court judge.

The Utah Bar Commission appoints:

- one private practice attorney who is experienced in criminal defense and is a member of the Utah State Bar.
- one attorney who is experienced in the defense of minors in juvenile court and is a member of the Utah State Bar.

The Statewide Association of Public Attorneys appoints:

- one criminal prosecutor.
- one juvenile court prosecutor.

The Governor appoints:

- one representative of Utah Sheriff's Association.
- one Chief of Police.
- one licensed professional who assists in the rehabilitation of adult offenders.
- one licensed professional who assists in the rehabilitation of juvenile offenders.

¹ 1983 Utah Laws ch. 302, § 4.

² 1993 Utah Laws ch. 77, § 1; Utah Code § 63M-7-401 (2019).

³ See Utah Sentencing Commission, <https://justice.utah.gov/Sentencing/> (last visited Mar. 24, 2020).

⁴ Compare 1993 Utah Laws ch. 77, § 1 (the enacting statute which created 19 positions on the commission), with Utah Code § 63M-7-401 (2019) (the current statute which has 27 positions on the commission).

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- two members from the public who exhibit sensitivity to the concerns of victims of crime and to the ethnic composition of the population.
- one member from the public at large.

The following seven positions may be occupied by the individual holding the title or a designee chosen by the holder of that title:

- Executive Director of the Department of Corrections
- Director of the Division of Juvenile Justice Services
- Executive Director of the Commission on Criminal and Juvenile Justice
- Chair of the Board of Pardons and Parole
- Chair of the Youth parole Authority
- Director of Salt Lake Legal Defenders
- Attorney General⁵

Q. Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Sentencing Commission is a subpart of the Commission on Criminal and Juvenile Justice (CCJJ). The CCJJ is Utah's primary organization for coordinating between various branches and levels of government regarding criminal and juvenile justice issues, including with the Sentencing Commission.⁶ For example, the CCJJ distributes grants related to criminal justice, assists in out-of-state felony fugitive extraditions and provides ongoing research assistance to the Sentencing Commission, Utah Board of Juvenile Justice, Utah Substance Abuse Advisory Council, and the Office of Domestic and Sexual Violence.⁷ Although the Sentencing Commission shares resources with the CCJJ, the Sentencing Commission submits reports directly to the legislature, courts and governor.⁸

Q. How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Sentencing Commission presently has one director and one dedicated research staff member. In addition, it receives administrative and financial support from the CCJJ.⁹

Q. What is the commission's current statutory mandate?

The mandated responsibilities of the Sentencing Commission are to develop guidelines and provide recommendations that achieve the following: (1) respond to public comment; (2) relate sentencing practices and correctional resources; (3) increase equity in criminal sentencing; (4) better define responsibility in criminal sentencing; (5) and enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority. The Commission must also (1) modify the guidelines to reduce recidivism; (2) modify criminal history scoring by eliminating double counting and focusing on factors relevant to reoffense; and (3) establish guidelines for incarcerations related to probation and parole condition violations. As of July 1, 2018, the Commission must draft guidelines to address the negative and positive behavior of juveniles who are in a secure care facility or serving a community-based sentence.¹⁰

⁵ Utah Code § 63M-7-401 (2019).

⁶ Utah Code § 63M-7-405(3) (2019).

⁷ Utah Commission on Criminal and Juvenile Justice, *Annual Report* (2016), <https://justice.utah.gov/Documents/CCJJ/Annual%20Reports/CCJJAnnualReport2016.pdf>.

⁸ Utah Code § 63M-7-405(2) (2019).

⁹ Utah Sentencing Commission Contact Page, https://justice.utah.gov/Sentencing/sentencing_contact.html (last visited Mar. 24, 2020); Utah Code § 63M-7-405(3) (2019).

¹⁰ Utah Code § 63M-7-404 (2019); see also 2017 Utah Laws ch. 330, § 41.

Q. Do statutes and/or guidelines identify management of prison and jail resources as a goal?

The enabling statute declares that sentencing guidelines and recommendations are to “relate sentencing practices and correctional resources.”¹¹ In 2012, the Commission released a policy statement indicating its sensitivity to the scarcity of available sanctioning resources.¹² The Commission has also stated that the sentencing guidelines are intended to “provide a means of identifying and allocating required resources.”¹³

Q. Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

The Commission utilizes existing data sets that were compiled by other criminal justice agencies (e.g. Utah Commission on Criminal and Juvenile Justice).¹⁴ There are no regularly published data sets made available for outside research by the Sentencing Commission.

2. THE GUIDELINES

Q. When were the guidelines first implemented?

The first commission-drafted guidelines were published in 1998.¹⁵ An earlier version of the guidelines were developed in 1979 as a joint effort by the Department of Corrections, various Utah Courts, and the Board of Pardons and Parole.¹⁶

Q. In recent years, have they been modified at least once a year?

The Commission provides regular updates to the adult sentencing guidelines, although less frequently than once a year.¹⁷

Q. Do the commission’s recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

The Commission is required to submit recommendations for sentencing guidelines and amendments to the legislature, courts, and governor at least 60 days prior to the annual general session of the legislature, but the statute is silent as to when or how any proposed amendments take effect.¹⁸ The courts have stated that the guidelines “do not have the force and effect of law.”¹⁹

¹¹ Utah Code § 63M-7-404(1)(b) (2019); see also *id.* at (2)(b) (stating that guideline modifications pursuant to “the recommendation[s] of the Commission on Criminal and Juvenile Justice for reducing recidivism” are “for the purposes of protecting the public and ensuring efficient use of state funds.”).

¹² Utah Sentencing Commission, *Adult Sentencing and Release Determinations: Philosophical Approach* at 2 (2012), <https://justice.utah.gov/Sentencing/Policy/Philosophical%20Statement.pdf>.

¹³ Utah Adult Sentencing & Release Guidelines at 2 (2020), <https://justice.utah.gov/Sentencing/Guidelines/Adult/2020%20Adult%20Sentencing%20and%20Release%20Guidelines.pdf>

¹⁴ Utah Code § 63M-7-405(2)(b) (2020).

¹⁵ See National Conference of State Legislatures, *Sentencing and Corrections State Profiles* (2009), <http://www.ncsl.org/documents/cj/pew/UTplan.pdf>.

¹⁶ Richard J. Oldroyd, Utah’s Conjoint Guidelines for Sentencing and Parole, *Overcrowded Times: Solving the Prison Problem*, vol. 5, no. 1, pp. 1, 8-10 (Feb. 1994).

¹⁷ See also Utah Sentencing Commission Archives, https://justice.utah.gov/Sentencing/sentencing_archives.html (last visited Mar. 24, 2020).

¹⁸ Utah Code § 63M-7-405(2)(a) (2020).

¹⁹ *Preece v. House*, 886 P.2d 508, 511 (Utah 1994) (citing *Labrum v. Utah State Bd. Of Pardons*, 870 P.2d 902 (Utah 1993)).

Q. Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The guidelines contain recommendations for both felony and misdemeanor offenses.²⁰ The only crime in Utah punishable by death—aggravated murder—is excluded from the guidelines.²¹

Q. Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

The Utah Sentencing Guidelines are presented in grid format. There are three grids that cover the majority of felony level offenses: a “Sex & Kidnap Offender Matrix” that focuses exclusively on those crimes, a “Criminal Homicide Matrix” that covers crimes involving murder or death, and a “General Matrix” that covers the remaining felony categories. Another matrix covers most misdemeanor crimes. The Sex & Kidnap matrix has ten levels of offense severity, including a column for class A misdemeanor sexual offenses. The Criminal Homicide, General, and Misdemeanor matrices each have seven levels of offense severity.²²

Q. How is the presumptive sentence determined?

The presumptive sentence in months is determined by finding the cell that is at the intersection of the offender’s criminal history score and the severity level of the present offense. On all of the matrices, the horizontal axis contains various offense categories that are arranged from the most severe to the least severe. On the vertical axis of the matrices is a listing of the criminal history categories, which are ordered from the most extensive criminal history to minimal or no criminal history. The General Matrix, Criminal Homicide Matrix, and Misdemeanor Matrix have five possible levels of criminal history (I-V) and the Sex & Kidnap Offender Matrix has three possible levels of criminal history (I-III). It is important to note that none of the matrices except the Misdemeanor Matrix present sentence duration ranges.²³ Instead, the duration in each cell represents the typical length of stay if the offender is imprisoned.²⁴

Q. Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

The General Matrix has three dispositions: imprisonment, jail as a condition of probation, and presumptive probation. The imprisonment disposition (shaded dark grey) comprises: (1) the guidelines recommendation that a prison term be imposed; and (2) the typical length of stay if the offender is sentenced to prison.²⁵

The jail as initial condition of probation disposition (shaded grey) is separated from the imprisonment disposition by a jagged-diagonal line, which begins in the top-right of the matrix and cuts across toward the bottom-left of the matrix. For offenders falling in these cells, the guidelines recommend jail followed by a probation term.²⁶ The guidelines advise the court to use a supplementary form to determine how much

²⁰ Utah Adult Sentencing & Release Guidelines at 24-28 (2020) (sentencing matrices).

²¹ Utah Adult Sentencing & Release Guidelines at 17 (2020); Utah Code § 76-5-202 (2017) (Aggravated Murder statute).

²² Utah Adult Sentencing & Release Guidelines at 24-28 (2020); Utah also has a DUI Matrix, however, it is scarcely referenced in the Utah Adult Sentencing and Release Guidelines. See Utah DUI Sentencing Matrix (2017), <https://le.utah.gov/interim/2017/pdf/00002468.pdf>.

²³ Utah Adult Sentencing & Release Guidelines at 24-28 (2020).

²⁴ Utah Adult Sentencing & Release Guidelines at 17 (2020).

²⁵ Utah Adult Sentencing & Release Guidelines at 17 (2020). In the past, “intermediate sanctions,” was a disposition category between imprisonment and presumptive probation on the matrix and allowed for probation with specific conditions. This is no longer a disposition because supervision conditions are no longer determined on the basis of the offense, but rather on the basis of a validated risk and needs assessment. *Id.* at 21.

²⁶ Utah Adult Sentencing & Release Guidelines at 20-21 (2020).

jail time should be used as a condition of that probation. This supplementary form is labeled “Jail as a Condition of Probation Matrices” and contains criminal history and crime severity axes similar to the General Matrix.²⁷

The presumptive probation disposition (unshaded white) is directed toward the lowest risk offenders. It is separated from the intermediate sanctions disposition by a line that runs from the upper-right of the matrix to the bottom-middle.²⁸

The Sex Offender Matrix format is slightly different than the General Matrix. First, the Sex Offender Matrix does not contain a presumptive probation disposition. It also adds a mandatory imprisonment disposition in addition to the imprisonment and jail as initial condition of probation dispositions. Second, the lines separating the dispositions on the Sex Offender Matrix are more vertical than diagonal. Consequently, the recommended disposition for sex offenders appears to be more dependent on the severity of the present offense than the offender’s criminal history.²⁹

The Criminal Homicide Matrix also contains a mandatory imprisonment disposition and does not contain a presumptive probation disposition. Only “3rd degree death” with a criminal history score of I or II can result in a jail as condition of probation disposition; apart from that, any crime up to 1st degree murder results in imprisonment regardless of criminal history; 1st degree murder results in mandatory imprisonment.³⁰

Q. Are there border boxes or other categories permitting multiple sentence types?

None of the matrices contain any cells that suggest multiple dispositions. Each cell is represented by only one disposition category.³¹

Q. Are the guidelines purely advisory, or are they legally binding?

The guideline recommendations are advisory; sentencing discretion remains with the court and the Board and Pardons and Parole.³² As of 2019 (for probation) and 2018 (for parole), statutes imply that sentencing judges and the parole board must comply with guidelines provisions related to length of probationary supervision and length of incarceration after revocation of parole.³³ Thus far, however, no reported cases have confirmed the binding nature of those guidelines provisions.

²⁷ Utah Adult Sentencing & Release Guidelines at 24, 27. *See also id.* at 20-21 (instructions for the Jail as a Condition of Felony Probation matrix).

²⁸ Utah Adult Sentencing & Release Guidelines at 28 (2020).

²⁹ Utah Adult Sentencing & Release Guidelines at 26 (2020).

³⁰ Utah Adult Sentencing & Release Guidelines at 25 (2020).

³¹ Utah Adult Sentencing & Release Guidelines at 24-28 (2020).

³² Utah Adult Sentencing & Release Guidelines at 5 (2020) (The guidelines “are intended to inform the sentencing authority, but do not dictate their decision”. Moreover, the guidelines “do not create any right, expectation, or liberty interest on behalf of the offender.”).

³³ Utah Code § 77-18-1(10)(a)(i) (2020) (length and termination of probation); *Id.* at 12(a)(i) (modification of probation); Utah Code § 77-27-11(6)(c) (2020) (incarceration after revocation of parole); *see also* Utah Adult Sentencing & Release Guidelines at 30-40 (structured decision-making tools).

3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

Q. What is the overall/general standard for departure?

The Sentencing Commission recognizes that “[t]here are occasionally circumstances that compel deviation from the guidelines” and thus the guidelines establish a procedure for documenting departures based upon aggravating or mitigating circumstances. Additionally, the guidelines strongly encourage decision makers to articulate the deciding factors for a departure on the record.³⁴ However, because the guidelines are advisory,³⁵ the guidelines do not provide a standard for when a departure might be appropriate.

Q. Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

The guidelines contain a supplementary form that provides a non-exhaustive list of aggravating and mitigating circumstances. This form is applicable to departures from all matrices. The guidelines also list several factors that are prohibited or that should be used with caution.³⁶

Q. Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

The guidelines do not expressly mention any of these factors, but they do include related factors. For example, paying restitution and/or making a good-faith effort to begin repayment of restitution is a mitigating factor, as is engaging in the voluntary screening process at the county jail.³⁷

Q. Are there limits on the degree of durational (length-of-custody) departure?

The guidelines do not provide any suggestions for the degree of durational departure.

Q. Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

There are no restrictions on the discretion of the court to depart from a disposition recommended by the guidelines. Dispositional departures are only restricted if a statute with a mandatory disposition for the present offense exists (e.g. requiring imprisonment for murder).³⁸

³⁴ Utah Adult Sentencing & Release Guidelines at 22 (2020).

³⁵ As of 2019 (for probation) and 2018 (for parole), statutes imply that sentencing judges and the parole board must comply with guidelines provisions related to length of probationary supervision and length of incarceration after revocation of parole. See Utah Code § 77-18-1(10)(a)(i) (2020); *Id.* at 12(a)(i); Utah Code § 77-27-11(6)(c) (2020). Thus far, however, no reported cases have confirmed the binding nature of those guidelines’ provisions.

³⁶ Utah Adult Sentencing & Release Guidelines at 22-23 (2020).

³⁷ Utah Adult Sentencing & Release Guidelines at 29 (2020).

³⁸ See Utah Adult Sentencing & Release Guidelines at 17 (2020); Utah Code § 76-3-406 (2020) (“Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.”).

4. PRISON RELEASE DISCRETION

Q. Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

The Board of Pardons and Parole decides when offenders are released from prison and the conditions they will be subject to upon release.³⁹

Q. Does the state have a “truth in sentencing” law, limiting the extent of early release?

Utah does not have a “truth in sentencing” statute. Nonetheless, Utah qualified for federal grant funding (while the grant existed) aimed at promoting truth in sentencing because of its practices, including the use of sentencing guidelines to guide both sentencing and parole release decisions.⁴⁰

Q. Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

The guidelines recommend the disposition – whether the offender should be sentenced to prison or probation – and the typical duration of any incarceration. When sentencing, the judge will first decide about disposition. If the judge chooses a prison disposition, he or she will then impose a term of incarceration equal to the indeterminate range defined in statute (e.g., for a second-degree felony, the law provides for a sentence of not less than one year nor more than 15 years).⁴¹ The duration on the grid, which always falls within the statutory range, represents the typical time served for the defendant’s offense and criminal history score; it, and serves as a recommended duration for the Board of Pardons and Parole. The Board of Pardons and Parole will make the final decision regarding the actual length of incarceration.⁴²

Q. Is the period of post-prison supervision independent of any unserved prison term?

The permissible duration of post-prison supervision is dependent on the amount of remaining time an offender has on his or her indeterminate sentence. Thus, the time an offender served in prison, added with the post-prison supervision period, may not exceed the maximum length of the indeterminate sentence an offender was given. Aside from the maximum sentence limitation, the Board of Pardons and Parole has discretion to determine how long an offender will be supervised once that offender is released on parole.⁴³

Q. What good-time credits do prisoners earn? Is program participation considered?

³⁹ Utah Code § 76-3-202 (2020).

⁴⁰ Utah specifically qualified for the grant under a provision for indeterminate sentencing states that required “[p]ersons convicted of . . . violent crime on average serve not less than 85% of the prison term established under the state’s sentencing and release guidelines.” William J. Sabol et al., The Urban Institute, *The Influences of Truth-in-Sentencing Reforms on Changes in States’ Sentencing Practices and Prison Populations* 5, 11, 20, 22 (2002).

⁴¹ Utah Code § 76-3-203 (2020).

⁴² Utah Adult Sentencing & Release Guidelines at 3 (2020).

⁴³ *Padilla v. Utah Bd. of Pardons & Parole*, 947 P.2d 664, 669 (Utah 1997) (alteration in original) (explaining that “a court *must* set an indeterminate sentence as provided by statute” and that an indeterminate “sentence shall continue until the maximum period expires *unless* the Board, in its discretion, terminates or commutes the punishment or pardons the offender.”); Utah Code § 76-3-202(1) (2020); Ben Peterson et al., Utah Commission on Criminal and Juvenile Justice, *Factors Related to Parole Violations and Revocations: Analysis of the Utah Parole System and Outcomes* 3, available at https://www.jrsa.org/projects/utah_parole_revocation.pdf.

Incarcerated offenders may complete specified programs to reduce their incarceration time. An offender receives, at minimum, a four-month reduction in the total period of incarceration for completion of high priority programs. This time may be forfeited by the Board through the rescission hearing process in response to institutional violations.⁴⁴

Q. Are prisoners subject to exceptional, “second-look” releasing mechanisms?

The Board of Pardons and Parole determines how much time an offender should serve in prison beyond the minimum set by statute. The Board has guidelines for when an offender may request a first appearance before the Board and begin the parole process, however, it is possible for an offender to request an earlier first appearance if “extraordinary circumstances” or other compelling reasons exist. Nonetheless, even if an earlier first appearance date is set, parole may not be granted until the offender has served at least the minimum of his or her indeterminate prison sentence.⁴⁵

5. RELATIONSHIP TO CRIMINAL LAWS

Q. Did the guidelines replace some or all previous statutory maxima?

No. Felony offenses are classified as either capital or first through third degree offenses, and the minimum and maximum terms of punishment are established by statute. Although the guidelines may set forth typical terms of imprisonment that are lower than these statutory terms, the guidelines are advisory, and therefore do not supersede any statutory maximums.⁴⁶

Q. Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and over-ridden whenever a mandatory applies?

The guidelines work within the confines of any existing mandatory minimum, providing that “[i]n cases where the statutory minimum exceeds the typical length of stay provided in the matrix, the typical length of stay should be ignored.”⁴⁷

Q. Are some “mandatory” minima subject to case-specific “departure” or other exception?

Neither the court nor the Board of Pardons and Parole may deviate from statutory minimum sentences.⁴⁸ Nonetheless, Utah law provides judges the option of choosing alternative minimum sentences for some crimes. For example, most of the statutes that apply to grievous sexual offenses have a presumptive sentence of 15 years to life; however, upon finding mitigating evidence, the judge may reduce the sentence to 10 years to life or 6 years to life.⁴⁹

⁴⁴ Utah Code § 77-27-5.4 (2020).

⁴⁶ See Utah Code §§ 76-3-103 (2020) (classifying felonies as capital or first through third degree); 76-3-203 (2020) (establishing the minimum and maximum sentences for first through third degree felony offenses).

⁴⁶ See Utah Code §§ 76-3-103 (2020) (classifying felonies as capital or first through third degree); 76-3-203 (2020) (establishing the minimum and maximum sentences for first through third degree felony offenses).

⁴⁷ Utah Adult Sentencing & Release Guidelines at 17 (2020).

⁴⁸ *Padilla*, 947 P.2d at 669.

⁴⁹ Utah Adult Sentencing & Release Guidelines at 19-20 (2020).

6. CRIMINAL HISTORY SCORING

Q. What are the major components of the criminal history score?

There are five elements of a criminal history score for the General Matrix:

1. Prior felony convictions;
2. Prior class A misdemeanor convictions;
3. Supervision history;
4. Prior person or firearm convictions;
5. Prior juvenile adjudications; and
6. Most recent post-conviction crime-free gap⁵⁰

Utah significantly changed its criminal history score in 2015. Prior to the change, the elements included separate categories for supervision history and supervision risk, resulting in a double counting effect for failure on supervision. The criminal history score also previously included a category for weapons use in the current offense.⁵¹

With regard to the current formulation of criminal history, the prior felony convictions element only counts convictions that were sentenced prior to the sentencing of any current offense(s); all present offenses are explicitly excluded. Additionally, if several prior convictions arose out of a “single criminal episode,” that episode should only be counted as one conviction.⁵² The total number of prior felony convictions corresponds to a category, which has a score attached (e.g., one prior felony is scored as two points; more than three prior felonies is scored as eight points). This prior felony score is added with the scores of the elements described below to determine which criminal history row the offender falls into on the matrix.⁵³

Prior class A misdemeanor convictions are also scored into categories and count a “single criminal episode” as one conviction. If a previous single criminal episode included both felony and misdemeanor offenses, and the felony was already counted in the prior felony convictions category, the misdemeanor conviction from that episode will not be counted. Misdemeanors other than class A are not counted in this category.⁵⁴

An offender’s supervision history includes only adult history. Criminal history points are added for prior revocations of probation or parole and committing the present offense while under supervision or pre-trial release. Pre-trial supervision/jail time and supervision for minor traffic/regulatory offenses are not counted.⁵⁵

The prior person or firearms convictions element adds criminal history points for prior juvenile adjudications or adult convictions that are labeled as “person” crimes in Addendum B of the guidelines,

⁵⁰ Utah Adult Sentencing & Release Guidelines at 12-16 (2020).

⁵¹ See Utah Sentencing Commission, *Incorporating the Directives & Principles of the Justice Reinvestment Initiative* (2015), <https://justice.utah.gov/Sentencing/JRI/2015%20Adult%20Guidelines.pdf>.

⁵² Utah Adult Sentencing & Release Guidelines at 13 (2020); see also Utah Code Ann. § 76-1-401 (2020) (definition of “single criminal episode”).

⁵³ Utah Adult Sentencing & Release Guidelines at 16 (2020).

⁵⁴ Utah Adult Sentencing & Release Guidelines at 13 (2020).

⁵⁵ Utah Adult Sentencing & Release Guidelines at 14 (2020).

labeled as “homicide offenses” by statute, or labeled as “firearm offenses” by statute. Some of these may include offenses not counted in other sections of the criminal history scoring. For example, prior person crime convictions “may include juvenile dispositions beyond the ten (10) year limitation in the [prior juvenile adjudications] section.”⁵⁶

Prior juvenile adjudications are counted only if the offense would constitute a crime if committed by an adult (i.e. not a status offense). Further, the prior adjudication must have resulted in a finding of delinquency and the date of adjudication must have occurred within ten years of the current conviction date. An offender receives criminal history points only if the juvenile adjudications are “equivalent” to a felony. When scoring prior juvenile adjudications, three class A misdemeanors count as one “felony.” The number of juvenile adjudications equivalent to class A misdemeanors are not rounded up. Thus, if an offender only has two prior juvenile adjudications equivalent to class A misdemeanors, the offender will receive no criminal history points from his or her juvenile record.⁵⁷

The “most recent post-conviction crime-free gap” refers to the period starting from the most recent of these events: the date of release from prison or imposition of probation for adults; or the date of adjudication or release from a secure care placement for juveniles. The period ends at the earliest offense date for the instant offense. Traffic offenses and minor regulatory offenses are excluded. One criminal history point is subtracted after 3 or more years crime-free; two points for 5 or more years; three points for 7 or more years; and four points for 10 or more years. This calculation does not apply to those with no qualifying criminal history.⁵⁸

For sex and kidnapping offenses, the Sex & Kidnap Offender Matrix includes all of the General Matrix criminal history elements in addition to a “Degree of Prior Sex/Kidnap Conviction” element.⁵⁹

Q. Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

The guidelines do not provide instructions to limit the use of an offender’s adult criminal history after a specified period of time. Most prior juvenile adjudications washout after ten years, but some juvenile crimes may still be counted as “person crimes convictions” after ten years.⁶⁰

Q. Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

Because the guidelines use a category system to assign points for each element, once an offender is in the highest-point category, subsequent criminal history within that element will have no effect on the number of points that element contributes to the total criminal history score. For example, the highest-point category in the prior felony convictions element (8 points) is assigned to offenders with more than three prior felonies. Even if an offender has six prior felonies, he or she will still only receive 8 points for the element, because that is the number given to the highest-point category. As a consequence, an offender cannot reach the second highest criminal history category (12-15 points) on the General Matrix solely because of prior felony convictions. Therefore, to reach the highest criminal history score category in the General Matrix an offender must be assigned points from at least four elements (the highest-point categories of any three elements will be insufficient). In contrast, on the Sex & Kidnap Offender Matrix it is

⁵⁶ Utah Adult Sentencing & Release Guidelines at 14 (2020)

⁵⁷ Utah Adult Sentencing & Release Guidelines at 15 (2020).

⁵⁸ Utah Adult Sentencing & Release Guidelines at 15-16 (2020).

⁵⁹ Utah Adult Sentencing & Release Guidelines at 26 (2020).

⁶⁰ See Utah Adult Sentencing & Release Guidelines at 12-16 (2020) (detailing criminal history scoring).

possible for an offender to reach the highest criminal history category (7+ points) solely on prior felony convictions.⁶¹

7. MULTIPLE CURRENT OFFENSES

Q. Are consecutive sentences limited? If so, how (e.g. prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

Judges are given the discretion to decide whether an offender should serve concurrent or consecutive sentences. When making this determination judges are to consider “the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.” If an offense is committed while an offender is imprisoned or on parole, the sentence for the new offense is presumptively consecutive. In general, the total duration of the consecutive sentences imposed may not exceed thirty years.⁶²

Q. In consecutive sentencing, how is the offender’s criminal history taken into account?

The criminal history scoring of an offender does not change when imposing multiple sentences. Instead, for the purpose of consecutive sentencing of multiple offenses, the guidelines advise adding 40% of the length of the shortest sentence to the full length of the longest sentence. If there are more than two offenses, the guidelines advise taking the longest sentence and adding 40% of all remaining offenses to the full duration of the longest sentence.⁶³

8. ENFORCEMENT MECHANISMS (LOCATION ON THE “ADVISORY”-TO-“MANDATORY” CONTINUUM)

Q. Are recommended sentences enforced by prosecution and defense sentence appeals?

The guidelines are advisory and “do not create any right, expectation, or liberty interest on behalf of the offender.”⁶⁴ Although a sentence may be appealed, the appeal cannot be on the basis that the sentence deviated from the recommendation of the guidelines.⁶⁵

Q. Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

There are no legally binding enforcement methods for the guidelines. Although the guidelines advise judges to state reasons for any departure, judges are not obligated to do so.⁶⁶

Q. Are some deviations from the guidelines not deemed departures?

⁶¹ Utah Adult Sentencing & Release Guidelines at 24, 26 (2020).

⁶² Utah Code § 76-3-401 (2020); see also Utah Adult Sentencing & Release Guidelines at 17-18 (2020) (describing consecutive and concurrent sentencing).

⁶³ Utah Adult Sentencing & Release Guidelines at 18 (2020). A smaller recommended enhancement applies when multiple convictions are ordered to run concurrently: 10% of the prison stay recommended for each shorter sentence is added to the recommended term for the longest sentence.

⁶⁴ Utah Adult Sentencing & Release Guidelines at 3 (2020).

⁶⁵ *Monson v. Carver*, 928 P.2d 1017, 1024 (Utah 1996).

⁶⁶ See, e.g., Utah Adult Sentencing & Release Guidelines at 11 (2020).

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The guidelines consider any sentence different from that prescribed within the offender's intersection box on the matrix as a departure.⁶⁷

Q. Do some deviations require especially strong justification? Or minimal justification?

The guidelines apply the same standard to all deviations, which is that the aggravating and mitigating factors prompting the departure should be stated in open court and may be included on the judgment and commitment order.⁶⁸

⁶⁷ See Utah Adult Sentencing & Release Guidelines at 22-23 (2020) (describing the recommended procedure for departing from the guidelines).

⁶⁸ Utah Adult Sentencing & Release Guidelines at 11 (2020).