



Utah Sentencing Commission

White Collar Fraud Subcommittee Report

Subcommittee members

Scott Reed (Chair)
Clark Harms

Mike Haddon
Mark Moffat

Judge Kevin Allen
Rick VanWagoner

Paul Boyden
Matthew Bates

The Sentencing Commission initially charged the Subcommittee with determining if the current laws related to fraud crimes have appropriate penalties, and if the Utah Sentencing Guidelines adequately deal with the same crimes.

Subcommittee Actions:

The Committee began by evaluating what they felt should be happening in these cases, the common problems with prosecuting these cases and the complications related to restitution.

They then looked individually at the convictions from the last 10 years. They reviewed the disposition, the restitution ordered and collected, if the offender was placed on probation, whether they were successful.

They also looked at average length of stay information for the most common types of cases.

Length of stay in White Collar fraud related cases

Offense	Degree	Mean LOS	Minimum LOS	Maximum LOS	Time to release, if date
Securities Fraud	3 rd	42.25	17.7	85.13	46.03
Securities Fraud	2 nd	41.2	7.4	158	72.4
Communications Fraud	3 rd	15.03	6.03	30.53	13.78
Communications Fraud	2 nd	28.18	2.03	85.13	55.43
Abuse/neglect/exploitation of a vulnerable or elderly adult	3 rd	21.93	4.9	16.02	53.78
Abuse/neglect/exploitation of a vulnerable or elderly adult	2 nd				37.64
Theft by Deception	3 rd	17.38	9.5	5.53	
Theft by Deception	2 nd	28.58	11.53	94.4	

The Subcommittee reviewed many possible options including:

- The addition of new categories to the criminal history assessment of the guidelines
- A new “financial crimes” column on the guidelines
- A new offense, or increased penalties for financial crimes where restitution exceeds a certain amount

The Subcommittee concluded that the current penalties and current guidelines allow for an appropriate response in each case and that the cases are being handled as we expect that they would be, and as they should be.

However, because these cases often involve many aggravating factors, when the offender is sent to prison, their length of stay is typically much longer than they guidelines would suggest. Accordingly, the Subcommittee recommends the following changes in an effort to better explain the purpose of the Guidelines and how specific aggravating factors may affect a potential sentence.

Final Recommendations:

- Amend the instructions of the guidelines and the Aggravating and Mitigating Forms.

INTRODUCTION

It is important to note that these are guidelines only. They are intended to inform the sentencing authority, but do not dictate their decision. They do not create any right, expectation, or liberty interest on behalf of the offender. The calculated matrix recommendation on the Forms creates a starting point and reflects a recommendation for a typical case. However, aggravating and mitigating circumstances are taken into consideration by both the sentencing judge and the Board of Pardons and Parole in making their final decisions. An offender sentenced to prison is legally subject to the full length of the sentence pronounced by the sentencing judge. Ultimately, the final decision regarding the actual length of incarceration is the responsibility of the Board of Pardons and Parole; that decision may, or may not reflect the guideline recommendation, and may be up to the full length of the indeterminate range pronounced by the sentencing judge.

Form 2

This list of aggravating and mitigating factors is non-exhaustive and illustrative only.

The weight given to each factor by the sentencing authority will vary in each case. Any one factor could outweigh some or all other factors.

Form 4

The weight given to each factor by the sentencing authority will vary in each case. Any one factor could outweigh some or all other factors. The presentence investigator should note any aggravating or mitigating circumstance that merits consideration by the court by entering the page number of the presentence report where the court can find supporting information.

- Conform the Rationale sheet used by the Board of Pardons and Parole with the Aggravating and Mitigating Forms 2 and 4 of the Adult Sentencing and Release Guidelines.
- Continue to study issues relating to restitution and how to collect restitution in order to better serve the needs of victims.
- Focus on education regarding the guidelines as they relate to white collar, fraud, and other high dollar crimes.