Index

Introduction 2

eForms 4

Instructions for Form 1 5

Form 1 – General Matrix- Criminal History Assessment 11

Instructions for Form 2 12

Form 2 – Aggravating and Mitigating Circumstances 13

Instructions for Form 3 14

Grievous Sex Offenses 15

Jessica's Law 16

Form 3 – Sex Offender Matrix 17

Instructions for Form 4 18

Form 4 – Aggravating and Mitigating Circumstances Associated With Sex Offenses with Alternative Minimum Lengths of Stay 19

Form 5- Jail as a Condition of Probation Matrix 21

Addendum A – Crime Column Listing 22

Addendum B – Categorization of General Offenses 24

Addendum C – Categorization of Sex Offenses 37

Formatted: Numbering: Restart each section

INTRODUCTION

The Utah Sentencing Commission, pursuant to its statutory authority and responsibility under Utah Code Ann. § 63-25a-304, promulgates the following 2012 Adult Sentencing and Release Guidelines for adult criminal offenders.

The Utah Sentencing Commission is charged to recommend and coordinate sentencing and release policy for both juvenile and adult offenders within the state of Utah. It consists of twenty-seven members who represent all facets of the justice systems: judges, prosecutors, defense attorneys, legislators, victims, law enforcement, treatment specialists, ethnic minorities, corrections, parole authorities, and others.

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.

Philosophy Statement

The goal of the guidelines is to bring more objectivity to the sentencing and release process yet also allow the court or the Board of Pardons and Parole discretion in considering aggravating and mitigating circumstances. The guidelines provide for consideration of the following factors:

- Severity of the offense;
- Utah penal statutes;
- Crime history and risk to society;
- Prosecutorial, judicial, and parole board discretion; and
- Continuum of sanctions

Sanctions should be proportionate to the severity of the current offense. Guidelines should reflect the culpability of the offender based on the nature of the current offense and the offender's role coupled with the offender's supervision history and overall likelihood to recidivate as inferred by the offender's "Criminal History Assessment." The Adult Sentencing and Release Guidelines reflect these basic concepts of justice.

Criminal punishment should focus on the particular circumstances of each crime, offender, and victim involved. Guidelines should promote uniformity while, at the same time, afford the sentencing judge and Board of Pardons and Parole the flexibility to fashion a specific sentence to an individual offender. The guidelines facilitate individualized sentences by establishing matrices that include a variety of sentencing options to accommodate a continuum of sanctions such as regular probation, intermediate sanctions, and imprisonment. Aggravating and mitigating circumstances also enhance discretion and encourage individualized sentencing and release decisions.

Formatted: Font: (Default) Arial, 11 pt

Formatted Table

DRAFT

While decision makers are strongly encouraged to abide by the guidelines, departures from the guidelines will sometimes be necessary. These departures should be based upon aggravating or mitigating factors, and the Sentencing Commission strongly encourages decision makers to articulate these factors on the record.

Statement of Purpose

The sentencing of criminal offenders is a complex process with many related decision points. For sentencing purposes, the process starts with the prosecutor's decision regarding the specific charges to be filed and what, if any, plea to negotiate. If the defendant is convicted, the judge typically refers the offender to the Department of Corrections for a presentence investigation. The presentence investigator reviews the background of the offender, documents the nature of the offense and its impact on the victim, and then makes recommendations to the judge concerning the sentence to be imposed and any conditions associated with that sentence. *See* Utah Code Ann. § 64-13-20. The judge then imposes sentence.

A variety of options are available to the judge including an increasing number of intermediate sanctions. The most severe of all sentencing options involve the Utah Department of Corrections. Correctional resources are severely overtaxed and there has been concern about policy to help allocate those resources. The guidelines assist decision makers in the appropriate allocation of these limited resources. If the judge sentences the offender to prison, custody of the offender transfers to the Utah Department of Corrections, and jurisdiction and the decision of how long the offender remains under prison custody transfers to the Board of Pardons and Parole.

Guidelines as a Tool

Utah law provides the basis for the sentencing and release of criminal offenders. By sound design these statutes allow significant latitude in decision-making. The guidelines are an attempt to further structure decision making relative to sentencing and release, yet still retain the flexibility to deal with individual cases. The guidelines also provide a means of identifying and allocating required resources. Utah's guidelines are intended to maintain judicial and parole board discretion, and at the same time incorporate a rational criminal justice philosophy, eliminate unwarranted disparity, and provide a tool to match resources with needs.

The guidelines, as structured, provide a forum for discussion regarding sentencing and a common frame of reference on which to base discussion. Equally important, they provide a means to look into the future and assess the demand for resources based on policy changes.

Action Research Approach

Although the foundation of the guidelines is sound, they need to be revisited, monitored, and evaluated on a regular basis. One of the primary directives of the Utah Sentencing Commission is to provide this review. The guidelines are not intended to set policy in concrete. Because the philosophy, functioning, and problems of the criminal justice system fluctuate constantly, the guidelines should be adaptable to change, and should even encourage such change. Through general monitoring of how the guidelines are used, they can be modified to accommodate changes in policy or practice.

POLICY IMPLICIT IN THE GUIDELINES

These guidelines are a cooperative venture. The effort is to provide a mechanism for communication and improvement of key policy rather than to

Formatted Table

DRAFT

dictate practice by statute or rule. For the guidelines to function well, several policies are important. The policies need not be implemented exactly as stated, but their intent is critical.

Prosecution

Prosecutors may use the guidelines to determine the implications of charging and plea negotiations. The guidelines are intended to make the system predictable by making explicit the sentence an offender with a given background is likely to receive. Prosecutors should make it a policy to explain the effect of charging and plea negotiations in each individual case to the victim.

Presentence Investigations

Presentence investigations should be conducted on all felony convictions and class A misdemeanor sex offense convictions. Presentence investigations are beneficial to the Board of Pardons and Parole as well as to the court and should be completed even when the court may not deem it necessary in a particular case. Presentence investigations should have the guidelines forms attached when they are sent to the sentencing judge, the prosecutor, and the offender in accordance with Utah Code Ann. § 77-18-1 and Utah Code Jud. Admin. Rule 4-203. The recommendations made to the judge should conform to the guidelines unless aggravating or mitigating circumstances are documented.

Sentencing Judges

Sentencing judges may require that the guidelines forms be attached to all district court presentence investigations. Judges are encouraged to sentence within the guidelines unless they find aggravating or mitigating circumstances justifying departure. These circumstances should be stated in open court and included on the judgment and commitment order.

Board of Pardons and Parole

The Board of Pardons and Parole requires an updated guidelines form to be completed on each offender appearing for an original parole grant hearing. In many cases, additional events have occurred between the time of the court's first sentencing decision and the first appearance before the Board (e.g., new convictions, program successes or failures, escapes, etc.). Except where there are aggravating or mitigating factors, the Board is encouraged to make decisions compatible with the guidelines. A statement of general rationale for Board decisions is provided to the offender and made available to the public.

eForms

The five Adult Guidelines Forms are now available in an electronic format. They may be accessed through the Sentencing Commission's website at www.sentencing.utah.gov .

DRAFT

Formatted Table

Utah Sentencing and Release Guidelines Instructions

Under the direction of the Utah Sentencing Commission, these -2012 Adult Sentencing and Release Guidelines represent a cooperative effort by all the components of the Utah criminal justice system to make a unified statement of policy regarding the sentencing and release of adult criminal offenders. The dominant underlying philosophy of the guidelines is that criminal sentences should be proportionate to the seriousness of the offense for which the offender was convicted. Other major policies are inherent in the guidelines. These are the offender's overall culpability based on the nature of the current offense and the offender's role coupled with the supervision history and likelihood to recidivate, as inferred from the offender's criminal history. The guidelines provide predictability by communicating a standard in sentencing and releasing and thereby allow all parts of the system to have a good idea of the disposition and penalty associated with the conviction.

Except for consecutive and concurrent enhancements, *statutory sentencing enhancements are not included in the context of these guidelines.* For example, Utah law concerning repeat and habitual sex offenders, Utah Code Ann. § 76-3-407, or gang enhancements, Utah Code Ann. §76-3-203.1, are to be considered outside of and in addition to these guidelines.

Form 1 – General Matrix

Criminal History Assessment

The purpose of the Criminal History Assessment is to provide a standard frame of reference to reduce or enhance the severity of the sentence based on the prior criminal and supervision history of the offender. Only score the single highest point option within a given category. Do not check multiple scores in a single category and then add them.

Prior Adult Felony Convictions

Only prior felony convictions should be counted.

For purposes of the Guidelines, prior felony convictions are limited to adult convictions that have already been sentenced.

DRAFT

Formatted Table

Do not count the current offense or offenses. Other instances such as dismissed cases, intelligence information, numerous prior arrests, etc. may be considered in the aggravating and mitigating circumstances section but are not quantified in the guidelines. Where military records are available, court martial information should be included if the charges are criminal in nature.

Utah law defines "single criminal episode" as "all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective." Utah Code Ann. § 76-1-401. If multiple convictions arise from a single criminal episode, as statutorily defined, only one conviction should be counted.

Prior Adult Misdemeanor Convictions

This item is scored similarly to the one above. Traffic crimes should be excluded with the exception of DUI and reckless driving convictions.

Prior Juvenile Adjudications

This item specifically scores the juvenile record. Only adjudications that would be criminal convictions if committed by an adult should be counted; *do not count status offenses.* Such adjudications should be calculated in the same manner as generally explained in the Prior Adult Felony Convictions and Prior Adult Misdemeanor Convictions categories. Only those cases that resulted in a finding of delinquency should count. In other words, some adjudication of guilt in the juvenile system must be found before points are allotted here. Care must be exercised since not every entry on a juvenile record represents an adjudication.

For purposes of calculating in this category, three misdemeanor offenses equal one felony. Do not "round up" in these cases, i.e., less than 3 misdemeanors = 0 felonies; 3 – 5 misdemeanors = 1 felony; 6 – 8 misdemeanors = 2 felonies, etc. Status offenses are offenses that would not be illegal if committed by an adult, e.g., truancy or smoking.

The final option in the prior juvenile adjudications category indicates that four points are awarded if the offender experienced a secure placement in the juvenile system. Secure Placement means a transfer of custody to Juvenile Justice Services for secure placement under the jurisdiction of the Youth Parole Authority. Secure P~~p~~lacement does not include a commitment to juvenile detention, jail, Observation and Assessment or similar programs.

Supervision History

This item encompasses both juvenile and adult history. Only post-adjudication or post-conviction supervision should be counted. Instances of state, private, or court supervision are to be counted. Pre-trial supervision, detention or jail, for example, would not constitute supervision history for these purposes. The term "revocation" includes situations where findings of fact hearings have demonstrated that the conditions of supervision had been violated, but the judge or Board of Pardons and Parole chose to continue supervision without revocation. The item entitled "act occurred while under current supervision or pretrial release" refers to the situation at the time the offense occurred, and includes all forms of pretrial release. For points to be assigned in this Supervision History

category, both the prior and present offenses should be criminal in nature. Traffic violations and status offenses for juveniles certified to the adult system should not be counted.

Supervision Risk

This item penalizes those who have absconded or escaped from court ordered supervision in the past, as either a juvenile

Formatted Table

DRAFT

or an adult. The more restrictive the supervision, the greater the penalty. Those who "fail to report" for court, presentence investigation, or supervision receive one point. "Absconding" is when an offender leaves the facility without permission or fails to return at a prescribed time. If an offender is under supervision, absconding occurs when he changes his residence without notifying his parole officer or obtaining permission or when the offender, for the purpose of avoiding supervision, hides at a different location from his reported residence or leaves his reported residence. Absconding receives two points if the placement is non-residential and three points if the supervision is residential in nature. Scoring points for absconding does not require a conviction because absconding is not a crime.

"A prisoner is guilty of escape if he leaves official custody without authorization." Utah Code § 76-8-309(1). If the offender "escapes" from a secure (locked door or secure perimeter) confinement setting, four points are allotted. Only convictions for escape should be counted unless the offender could have been charged with escape or absconding but was, instead, charged or convicted of another crime while on escape status.

~~Violence History~~
Violence History

This category is intended to document any violence that may have accompanied any prior criminal offense(s). Only count prior convictions. The guidelines contain a graduated scale of points to be allotted depending upon the past violent offense. One point is allotted for a misdemeanor, two points for a third degree felony, three points for a second degree felony, and four points for a first degree felony as indicated on Forms 1 and 3. Other incidents of documented violence that are not convictions in and of themselves may be considered under Forms 2 & 4 Aggravating and Mitigating Circumstances.

Weapons Use in Current Offense

In addition to the violence history category of the criminal history assessment, the guidelines emphasize the use of a weapon *in the current offense(s)* as a factor that may increase the criminal history score. Do not consider this category for any prior convictions. This category is also to be considered only when the current conviction does not reflect the use of the weapon or when there is no statutory weapons enhancement involved. For example, if it is apparent that the offender was convicted of first degree felony aggravated robbery instead of second degree robbery because of the use of a weapon; do not additionally consider this category. Likewise, if an offender receives the dangerous weapons enhancement, do not additionally consider this category. The intent is to ensure that the points are given when appropriate but not double counted.

The definition of weapon for inclusion in this category, is the same as "dangerous weapon" in Utah Code Ann. §76-1-601.

The point allocation in this category depends upon the use of the weapon: *Constructive Possession,* for purposes of the guidelines, occurs when the offender has access to the weapon but it is not on his or her person. For example, there was a firearm in the glove compartment or a knife in a gym bag in the vicinity. One point is allotted for constructive possession. *Actual Possession,* for purposes of the guidelines, occurs when the offender has the weapon on his or her person. For example, a handgun in a pocket. Two points are allotted for actual possession. *Weapon displayed or brandished* results in three

Formatted: Normal

Formatted: Font: Not Bold, Italic

Formatted: Normal

Formatted Table

DRAFT

points being allotted. *Weapon actually used* results in four points being allotted. This occurs, for example, when an offender points or fires a gun, uses a knife in close proximity to the victim, or swings a baseball bat. *Weapon used and injury caused* results in six points being allotted, regardless of the seriousness of the injury. (Again, consider this entire category only if the conviction, itself, does not reflect the weapons use or when no dangerous weapons enhancement is being considered.)

As mentioned, this category is the only occasion when the current conviction is considered in the criminal history portion of Forms 1 and 3. Otherwise, current convictions are considered only in determining the appropriate column of the matrix or in aggravating and mitigating factors. Admittedly, considering the current conviction in the criminal history assessment creates an anomaly in the guidelines. However, the Sentencing Commission considers the use of a weapon to be such a significant factor in determining both placement and release decisions in sentencing, it is addressed in the guidelines in this manner.

Total Score

To arrive at this score, add up the points associated with each category in the Criminal History Assessment.

~~**Criminal History Row**~~

Criminal History Row

Using the Total Score, identify the appropriate criminal history row: I, II, III, IV, or V using the chart labeled "Criminal History Row."

General Matrix

The rows of this matrix represent differing levels of criminal history and correspond with the total score from the criminal history assessment. The columns represent crime categories and correspond with the most serious current offense. The columns list both a felony level and a crime category (murder, death, person, or other). The various levels of shading in the matrix represent suggested dispositions (disregarding aggravating and mitigating circumstances).

The crime category columns *generally* flow from left to right indicating the most severe sanction to the least severe sanction. However, this does not necessarily indicate which crimes are more severe than others. Some cells recommend a more severe placement than the cell immediately to its right (e.g. prison vs. intermediate sanction), but the length of stay may actually be shorter than in the cell immediately to the right.

To determine the guidelines' recommended disposition, locate the cell where the appropriate crime category column and criminal history row intersect. The proper crime category column is based on: (1) the felony level of the most serious presenting offense; and (2) the crime category. Addendum B identifies the specific category for every felony offense (murder, death, person, possession only or other).

If there are multiple current offenses, refer to **Addendum A, Crime Column Listing**, to determine which offense is the most severe and which column should be used. This listing will also indicate which matrix should be used when current offenses include both sex offenses and non-sex offenses.

As indicated earlier, to determine the proper criminal history row, calculate the total criminal history assessment score and use the chart labeled "Criminal History Score" to identify the row that corresponds with that score.

Formatted: Font: Not Bold, Italic

Formatted: Normal

Formatted Table

DRAFT

After having identified the proper crime category column and criminal history row, locate the cell where the column and row intersect. That cell includes the guidelines' recommendation regarding sentencing disposition and the typical length of stay if the offender is sentenced to prison. The level of shading in that box identifies the suggested or mandatory sentencing disposition (probation, intermediate sanctions, imprisonment, or mandatory imprisonment). Split cells containing dual shading indicate that the guidelines recommend either placement.

Mandatory Imprisonment

Utah law mandates imprisonment for all offenders convicted of murder (Utah Code Ann. § 76-3-406). Thus, the guidelines indicate a mandatory imprisonment sentence for murder, regardless of the criminal history row. Murder, Utah Code Ann. § 76-5-203, is the only offense considered in crime category A. Aggravated murder (Utah Code Ann. § 76-5-202) is not considered at all on the Adult Sentencing and Release Guidelines.

Utah law mandates imprisonment for other offenses and mandatory jail for some offenses if the prison sentence is stayed. However, **Form 1 – General Matrix** does not indicate all mandatory incarceration sentences. Doing so would unnecessarily complicate the matrix when a review of the applicable statute will suffice.

~~**Time Enumerated within Individual Cells**~~

Time Enumerated within Individual Cells

The length of time enumerated within each cell is the typical length of stay if the offender is imprisoned. These times apply only if the offender is sentenced to prison and do not apply if the offender is sentenced to an intermediate sanction or to regular probation. If there is only one active sentence, the typical guideline term is determined by simply identifying the cell where the appropriate crime category column intersects with the criminal history row. The times located within cells found in the mandatory imprisonment shaded area are not mandatory minimums.

In rare cases, the statutory minimum length of stay in prison may be higher than the typical length of stay provided in an individual cell. This will happen only when the statutory minimum for a crime is longer than the usual statutory minimum for that felony level. For example, a drive-by shooting is a third degree felony punishable by three to five years in prison. It is possible that the typical prison term indicated in the matrix will be less than three years since most third degree felonies are punishable by zero to five years in prison. In cases where the statutory minimum exceeds the typical length of stay provided in the matrix, the typical length of stay should be ignored.

Consecutive or Concurrent

When multiple offenses are before the court, "[t]he court shall state on the record and shall indicate in the order of judgment and commitment: (a) if the sentences imposed are to run concurrently or consecutively to each other; and (b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is currently serving." Utah Code Ann. § 76-3-401(1). State statute requires the court to consider the following factors in determining whether sentences shall run concurrently or consecutively:

- Gravity and circumstances of the offenses
- Number of victims
- History, character, and rehabilitative needs of the defendant.

Utah Code Ann. § 76-3-401(2).

Formatted Table

DRAFT

"The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate." Utah Code Ann. § 76-3-401(3).

If multiple convictions are ordered to run concurrently, the guidelines add 10% of the recommended length of stay of the shorter sentence to the full recommended length of the longer sentence. For example, consider an offender convicted of aggravated robbery with a recommended length of stay of 7 years (84 months) and also convicted of aggravated assault with a recommendation of 20 months. If the court orders the sentences to run concurrently, the guidelines recommend a length of stay of 86 months (10% of 20 mos = 2 mos + 84 mos = 86 mos).

If multiple convictions are ordered to run consecutively, the guidelines add 40% of the recommended length of stay of the shorter sentence to the full recommended length of the longer sentence. Using the same example above, if the sentences were consecutive, the guidelines would recommend a length of stay of 92 months (40% of 20 mos = 8 mos + 84 mos = 92 mos). This same approach applies even if there are three or more sentences being considered.

For another example, consider an offender convicted of robbery and sentenced to prison with a guidelines recommendation of 48 months. The offender is paroled after 36 months and, while on parole, commits aggravated burglary and is sentenced to prison with a guidelines recommendation of nine years. If the judge orders the sentences to run consecutively, the new guidelines recommended sentence is 9 years, 5 months (40% of 12 mos (which is the time remaining on the original sentence) = 4.8 mos + nine years = approximately 9 years, 5 months).

If there are a string of multiple offenses that are running consecutively or concurrently, add the applicable percentage of all of the shorter sentences to the longest sentence. For example, consider an offender convicted of 1) aggravated assault with a recommendation of 24 months, 2) a drug offense with a recommendation of 20 months, and 3) forgery with a recommendation of 10 months. If the judge orders the sentences to run concurrently, add 10% of both the drug offense and the forgery to the 24 months for the aggravated assault. The guideline recommendation would total 27 months (10% of 20 mos = 2 mos; 10% of 10 mos = 1 mos; 2 mos + 1 mos = 3 mos; 3 mos + 24 mos = 27 mos).

Occasionally, the "longer" sentence may not be from the most "severe" offense as indicated by the *Crime Column Listing (by severity)* as explained above. In these exceptional cases, consider the sentence for the most severe offense to be the "longest" sentence for purposes of calculating concurrent and consecutive sentences. This is done to preserve consistency in guidelines application.

All guidelines considerations of concurrent and consecutive sentencing should be consistent with the limitations in Utah Code Ann. § 76-3-401.

Conditions of Intermediate Sanctions and Regular Probation

Intermediate sanctions include any sanction between regular probation and prison. In Utah, courts sometimes attach *special* conditions to a probationary sentence which makes the sentence more than regular probation. For the purpose of the guidelines, typical conditions of probation often include payment of restitution, attendance in counseling, drug testing, search and seizure clauses, community service, etc. These conditions

DRAFT

Formatted Table

ordinarily do not rise to the level of being *special,* and therefore do not transform regular probation into an intermediate sanction.

The concept of intermediate sanctions is that the higher the risk an offender poses in the community, the more controls are placed on the offender. These controls are intermediate sanctions. They include such things as electronic monitoring, referral to day reporting centers, participation in residential treatment programming, intensive supervision, etc. These are the *special* conditions referred to above. These programs always have increased levels of supervision. In addition, because of the increased supervision, these sanctions are more costly than regular probation. As such, these intermediate sanctions should be viewed from the perspective that because they are limited, the court should carefully select those offenders who need them in conjunction with the Department of Corrections.

It is important to note that the higher the risk an offender presents in the community, the more intermediate sanctions an offender may access. For instance, an offender may be on intensive supervision and electronic monitoring and also be attending the day reporting center. Obviously, because of the cost of these programs, it is important that all the services accessed are necessary. Therefore, the separation of regular probation and intermediate sanctions has to do with cost and level of supervision as indicated by the *special* conditions attached. There is no bright line between regular probation and intermediate sanctions and this fact ought to be considered in sentencing.

Jail as a Condition of Probation

When the recommendation resulting from **Form 1 or Form 3**, is to suspend the prison sentence, **Form 5**, **Jail as a Condition of Felony Probation Matrix**, should be used to determine if jail should be used as a condition of Intermediate Sanctions or Regular Probation.

DRAFT

Formatted Table

FORM 1 - GENERAL MATRIX

CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.
Matrix time frames refer to imprisonment only. Refer to the categorization of offenses.
Capital offenses are not considered within the context of the sentencing guidelines.

PRIOR FELONY CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
0 NONE
2 ONE
4 TWO
6 THREE
8 MORE THAN THREE

PRIOR MISDEMEANOR CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)
0 NONE
1 ONE
2 TWO TO FOUR
3 FIVE TO SEVEN
4 MORE THAN SEVEN

PRIOR JUVENILLE ADJUDICATIONS
(ADJUDICATIONS FOR OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT)(THREE MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY ADJUDICATION)
0 NONE
1 ONE
2 TWO TO FOUR
3 MORE THAN FOUR
4 SECURE PLACEMENT

SUPERVISION HISTORY
(ADULT OR JUVENILE)
0 NO PRIOR SUPERVISION
1 PRIOR SUPERVISION
2 PRIOR RESIDENTIAL PLACEMENT
3 PRIOR REVOCATION
4 ACT OCCURED WHILE UNDER CURRENT SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK
(ADULT OR JUVENILE)
0 NO ESCAPES OR ABSCONDINGS
1 FAILURE TO REPORT (ACTIVE OFFENSE) OR OUTSTANDING WARRANT
2 ABSCONDED FROM SUPERVISION
3 ABSCONDED FROM RESIDENTIAL PROGRAM
4 ESCAPED FROM CONFINEMENT

VIOLENCE HISTORY
(PRIOR JUVENILLE OR ADULT CONVICTION FOR AN OFFENSE WHICH INCLUDES USE OF A WEAPON, PHYSICAL FORCE, THREAT OF FORCE, OR SEXUAL ABUSE)
0 NONE
1 MISDEMEANOR
2 3rd DEGREE FELONY
3 2nd DEGREE FELONY
4 1ST DEGREE FELONY

WEAPONS USE IN CURRENT OFFENSE
(ONLY WHEN CURRENT CONVICTION DOES NOT REFLECT WEAPON USE OR WHEN STATUTORY ENHANCEMENT IS NOT INVOLVED)
0 NONE
1 CONSTRUCTIVE POSESSION
2 ACTUAL POSSESSION
3 DISPLAYED OR BRANDISHED
4 ACTUAL USE
6 INJURY CAUSED

TOTAL SCORE: _____

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

CRIME CATEGORY

CRIMINAL HISTORY	A	B	C	D	E	F	G	H	I	J	K	L
	1st Degree Murder	1st Degree Death	2nd Degree Death	1st Degree Person	3rd Degree Death	1st Degree Other	3rd Degree Person	3rd Degree Person	3rd Degree Other	3rd Degree Possession	3rd Degree Other	3rd Degree Possession
V	24 YRS	10 YRS	*	10 YRS	48 MOS	84 MOS	60 MOS	36 MOS	30 MOS	20 MOS	20 MOS	18 MOS
IV	22 YRS	9 YRS	*	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	18 MOS	16 MOS
III	20 YRS	8 YRS	*	8 YRS	36 MOS	72 MOS	36 MOS	24 MOS	20 MOS	16 MOS	12 MOS	12 MOS
II	20 YRS	7 YRS	*	7 YRS	24 MOS	66 MOS	30 MOS	20 MOS	18 MOS	14 MOS	10 MOS	10 MOS
I	20 YRS	6 YRS	*	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS

Mandatory Imprisonment

IMPRISONMENT

INTERMEDIATE SANCTION

REGULAR PROBATION

* The statutory range for this category is 1 to 15 years. The Board of Pardons and Parole will consider all aggravating and mitigating factors in determining length of stay. Because the facts of the cases in this crime category are widely divergent, and criminal history is less determinative than in other categories, a single guideline recommendation, in this category, is not helpful in determining length of stay of an offender.

CONSECUTIVE ENHANCEMENTS: 40% of the shorter sentence is to be added to the full length of the longer sentence.
CONCURRENT ENHANCEMENTS: 10% of the shorter sentence is to be added to the full length of the longer sentence.

	ACTIVE CONVICTIONS	CRIME CATEGORY	TIME
MOST SERIOUS			
NEXT MOST SERIOUS			
OTHER			
OTHER			
		TOTAL:	

OFFENDER'S NAME: _____ DATE SCORED: _____ SCORER'S NAME: _____

Revised: 8/2010

Formatted Table

Form 2 - Aggravating and Mitigating Circumstances

There are occasionally circumstances that compel deviation from the guidelines. Some of the more common reasons are listed for convenience on **Form 2**. Other reasons, as they occur, can be specified. Aggravating and mitigating factors should be documented whether or not the guideline sentence is recommended. Reasons should always be specified when the guideline sentence is not recommended. These aggravating and mitigating circumstances should be considered for both **Form 1 – General Matrix** and **Form 3 – Sex Offender Matrix**.

In considering all aggravating and mitigating factors in a particular case, the number of each should not merely be added up or otherwise mechanically applied in the balancing process. Rather, the totality of the mitigating factors should be compared against the totality of the aggravating factors. Any one mitigating factor, standing alone, could outweigh some or all of the aggravating circumstances in the case. On the other hand, one aggravating factor, standing alone, could outweigh some or all of the mitigating factors in the case. The guidelines are concerned with the respective substance and persuasiveness of the competing factors, not their relative numbers. Also, do not list an aggravating factor in either form if it is already an element of the offense.

Aggravating factor #2 on **Form 2** states "Multiple documented incidents of violence not resulting in conviction." In order for these "documented incidents of violence" to be counted, there must exist a court approved stipulation that such incidents will be considered. The intent of this requirement, along with having a certain standard of verification, is to assure that all are aware at the time of conviction that such documented incidents will be counted on the guidelines and considered in both the sentencing and release decisions.

Days of Jail Credit

Time incarcerated under the following circumstances should be counted as time served against the maximum sentence: (1) a conviction is set aside and there is a subsequent commitment for the same criminal conduct; (2) a commitment is made to the Utah State Hospital pursuant to a guilty and mentally ill conviction; (3) time is spent in custody outside the State of Utah based solely on the Utah warrant; (4) the Board of Pardons and Parole deems such credit just under the circumstances; or (5) credit is otherwise required by law. Utah Admin. R671-205-1. No credit is given for time spent in custody at the Utah State Hospital or comparable non-prison psychiatric facility while the offender is judicially declared incompetent.

Guidelines Recommendations

The guideline sentence without regard to aggravating or mitigating circumstances should be documented here.

AP&P Recommendations

The recommendation of Adult Probation and Parole should be documented here.

Reason for Departure

Any reasons for departure should be documented by the presentence investigator in every case in which the guideline recommendation is not followed.

DRAFT

Formatted Table

~~Form 2~~
~~AGGRAVATING AND MITIGATING CIRCUMSTANCES~~

~~(Use Form 4 also for Sex Offenses with Three Alternative Minimum Lengths of Stay)~~

~~Note any aggravating or mitigating circumstances that may justify departure from the guidelines by entering the page number of the presentence report where the court can find supporting information.~~

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

~~Aggravating Circumstances~~

~~Only use aggravating circumstances if they are not an element of the offense.~~

~~PSI Page #~~

~~1. Established instances of repetitive criminal conduct.~~
~~2. Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.)~~
~~3. Offender presents a serious threat of violent behavior.~~
~~4. Victim was particularly vulnerable.~~
~~5. Injury to person or property loss was unusually extensive.~~
~~6. Offense was characterized by extreme cruelty or depravity.~~
~~7. There were multiple charges or victims.~~
~~8. Offender's attitude is not conducive to supervision in a less restrictive setting.~~
~~9. Offender continued criminal activity subsequent to arrest.~~
~~10. Sex Offenses: Correction's formal assessment procedures classify as a high risk offender.~~
~~11. Offender was in position of authority over victim(s).~~
~~12. Financial crime or theft crime involved numerous victims, an exploitation of a position of trust, a substantial amount of money, or receipt of money from sources including, but not limited to, equity in a person's home or a person's retirement fund.~~
~~13. Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2))~~
~~14. Offense constitutes a "hate crime" in that it is likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4)~~
~~15. Violence committed in the presence of a child.~~
~~16. Other (Specify)_____~~

~~Mitigating Circumstances~~

~~1. Offender's criminal conduct neither caused nor threatened serious harm.~~
~~2. Offender acted under strong provocation.~~
~~3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.~~
~~4. Offender is young.~~
~~5. Offender assisted law enforcement in the resolution of other crimes.~~
~~6. Restitution would be severely compromised by incarceration.~~
~~7. Offender's attitude suggests amenability to supervision.~~
~~8. Offender has exceptionally good employment and/or family relationships.~~
~~9. Imprisonment would entail excessive hardship on offender or dependents.~~
~~10. Offender has extended period of arrest-free street time.~~
~~11. Offender was less active participant in the crime.~~
~~12. All offenses were from a single criminal episode.~~
~~13. Offense(s) was "possession only" drug offense.(see "possession only" offenses, Addendum B)~~
~~14. Offender has completed or has nearly completed payment of restitution.~~
~~15. Other (Specify)_____~~

~~Days of Jail Credit _____~~
~~Guidelines Placement Recommendation _____~~
~~AP&P Recommendations _____~~
~~Reason for Departure _____~~

~~OFFENDER NAME: _____~~
~~SCORER NAME: _____~~
~~DATE SCORED: _____ Rev. 4/2007~~

DRAFT

Formatted Table

Form 2
AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 4 also for Sex Offenses with Three Alternative Minimum Lengths of Stay)

Note any aggravating or mitigating circumstances that may justify departure from the guidelines by entering the page number of the presentence report where the court can find supporting information.

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.

Aggravating Circumstances

Only use aggravating circumstances if they are not an element of the offense.

PSI Page #

1. Established instances of repetitive criminal conduct.
2. Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.)
3. Offender presents a serious threat of violent behavior.
4. Victim was particularly vulnerable.
5. Injury to person or property loss was unusually extensive.
6. Offense was characterized by extreme cruelty or depravity.
7. There were multiple charges or victims.
8. Offender's attitude is not conducive to supervision in a less restrictive setting.
9. Offender continued criminal activity subsequent to arrest.
10. Sex Offenses: Correction's formal assessment procedures classify as a high risk offender.
11. Offender was in position of authority over victim(s).
12. Financial crime or theft crime involved numerous victims, an exploitation of a position of trust, a substantial amount of money, or receipt of money from sources including, but not limited to, equity in a person's home or a person's retirement fund.
13. Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2))
14. Offense constitutes a "hate crime" in that it is likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4)
15. Violence committed in the presence of a child.
16. Other (Specify) _____

Mitigating Circumstances

1. Offender's criminal conduct neither caused nor threatened serious harm.
2. Offender acted under strong provocation.
3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
4. Offender is young.
5. Offender assisted law enforcement in the resolution of other crimes.
6. Restitution would be severely compromised by incarceration.
7. Offender's attitude suggests amenability to supervision.
8. Offender has exceptionally good employment and/or family relationships.
9. Imprisonment would entail excessive hardship on offender or dependents.
10. Offender has extended period of arrest-free street time.
11. Offender was less active participant in the crime.
12. All offenses were from a single criminal episode.
13. Offense(s) was "possession only" drug offense.(see "possession only" offenses, Addendum B)
14. Offender has completed or has nearly completed payment of restitution.
15. Other (Specify) _____

Days of Jail Credit _____
Guidelines Placement Recommendation _____
AP&P Recommendations _____
Reason for Departure _____

OFFENDER NAME: _____
SCORER NAME: _____
DATE SCORED: _____ Rev. 4/2007

DRAFT

Formatted: Number of columns: 1
Formatted: Font: 8 pt
Formatted: Font: 9 pt
Formatted: Centered
Formatted: Font: 8 pt
Formatted Table

Form 3 – Sex Offender Matrix

These are the sentencing and release guidelines to be used for all sex offenders. Specifically, offenses to be considered under this portion of the guidelines include:

- offenses that require registration under Utah Code Ann. § 77-27-21.5(1)(e) (except kidnapping, 76-5-301);
- aggravated kidnapping, § 76-5-302;
- custodial sexual relations or misconduct, § 76-5-412;
- custodial sexual relations or misconduct with a youth receiving state services, § 76-5-413; and
- sexual battery, § 76-9-702(3).

Aggravated kidnapping should be scored on **Form 1** if the offense does not involve a sexual component. (See Addendum C)

Criminal History Assessment

The Criminal History Assessment is only slightly different than that used under Form 1 for all other offenders. Two additional categories exist on the Criminal History Assessment for sex offenders: Number of Prior Victims and Time Range. The factors relate to the likelihood of sex offenders committing additional sex offenses and are specific to a history of sexual deviancy and situations resulting in sexual arousal. The added categories of Number of Prior Victims and Time Range are designed to address these factors. Other than these two additional categories, the Criminal History Assessment for sex offenders should be scored identically to Form 1. (See page 5)

In an extensive study on mandatory minimum sentences for sex offenders, the Sentencing Commission found, among other things, that sex offenders were quite different than other offenders. *See Utah Sentencing Commission Annual Report 1995-1996*; Utah Statistical Analysis Center, *Analysis of Utah's Child Kidnapping and Sexual Abuse Act of 1983*. As a result of this study, mandatory imprisonment, lifetime parole, treatment resources, and the separate guidelines matrix were implemented. **Form 3** reflects the amended laws mandating imprisonment for certain sex offenders in conjunction with differing indeterminate lengths of stay ranges. In addition, there are only three criminal history rows on the sex offender matrix compared to five on the general matrix. This provides the Board of Pardons and Parole with more discretion concerning sex offenders.

Number of Prior Victims

This category documents whether the offender had prior victims in any sex offense convictions not including the present offense. Zero points are allotted for no prior victims, three points allotted for one prior victim, and four points for more than one prior victim in any of these prior sex offense convictions. This victimization does not have to arise out of a single criminal episode. However, before any points are allotted under this section, there must be a specific conviction involving the victim or victims counted.

Time Range

This category quantifies the length of time the offender has been offending sexually and is based on sex offense convictions. If the offender has any sex offense conviction over two years old, four points are allotted. Three points are allotted if the offender has any sex offense conviction more than one year old and less than two years old. Two points are allotted for any conviction within the last year excluding the present offense, and one point for the present offense. The date of conviction is determinative for purposes of this section.

DRAFT

Formatted Table

Sex Offense Disposition Matrix

The sex offender matrix on **Form 3** is obviously different than the **Form 1** matrix. However, they both function similarly. Simply identify the appropriate crime category column and intersect it with the appropriate criminal history row to determine the suggested or mandatory disposition. **Addendum C** lists the crime categories for all sex offenses. **Addendum A** identifies the appropriate column if more than one sex offense is currently before the court. As with **Form 1**, the criminal history row is located by calculating the total criminal history score and using the chart labeled "Criminal History Row."

Utah law mandates imprisonment for certain sex offenses regardless of the criminal history score. This is reflected in the crime category columns and the disposition shading. In rare cases, Utah law does allow for an alternative sentence to prison for otherwise mandatory imprisonment sex offenses. However, an arduous list of circumstances must be met before such a deviation is allowed. These circumstances are enumerated under Utah Code Ann. § 76-5-406.5.

As on **Form 1**, split cells with dual shading indicate the guidelines recommend either placement.

Grievous Sexual Offenses

The Law now identifies and defines "Grievous Sexual Offenses" as:
Rape-§ 76-5-402
Rape of a Child-§ 76-5-402.1
Object Rape-§ 76-5-402.2
Object Rape of a Child-§ 76-5-402.3
Forcible Sodomy-§ 76-5-403(2)
Sodomy on a Child-§ 76-5-403.1
Aggravated Sexual Abuse of a Child-§ 76-5-404.1
Aggravated Sexual Assault-§ 76-5-405

Any felony attempt to commit one of the above or an offense committed in another state, territory or district of the U.S. that if committed in Utah would constitute an offense described above.

Grievous Sexual Offenses are used in the calculation and consideration of enhanced penalties. If during the course of the trial, the trier of fact finds that the defendant has a prior conviction for a Grievous Sexual Offense, the penalty may be life without the possibility of parole (LWOP).

Offenses with Alternative Minimum Sentences

Prior law and instruction directed the court in cases that carried the option of three alternative minimum sentences of 6, 10 or 15 to life to sentence to the middle severity of 10 to life. If the trier of fact found sufficient aggravating circumstances they could enhance the sentence to 15 to life. If the trier of fact found sufficient mitigating circumstances they could reduce the sentence to 6 to life. The law now instructs the court to order 15 to life. If the court finds that it is in the best interest of justice and documents on the record the justification, it can reduce the sentence to 10 to life or 6 to life. Additionally, if the trier of fact finds that in the course of the commission of the crime the defendant caused serious bodily injury or has been previously convicted of a grievous sexual offense, the court may order a sentence of life without the possibility of parole. The offenses to which these provisions apply are:

Child Kidnapping-§ 76-5-301.1
Aggravated Kidnapping-§ 76-5-302
Rape of a Child-§ 76-5-402.1
Object Rape of a Child-§ 76-5-402.3
Sodomy on a Child-§ 76-5-403.1
Aggravated Sexual Abuse of a Child-§ 76-5-404.1
Aggravated Sexual Assault-§ 76-5-405

Formatted Table

DRAFT

The following sexual offenses are first degree felonies and carry a 5 years to life sentence:

Rape-§ 76-5-402
Object Rape-§ 76-5-402.2
Forcible Sodomy-§ 76-5-403

However, if the trier of fact finds that during the course of the commission of the crime the defendant caused serious bodily injury to another (not necessarily the victim), the court may sentence the defendant to a term of 15 years to life. Additionally, if the trier of fact finds that, at the time of the commission of the crime, the defendant has been previously convicted of a grievous sexual offense, the court may sentence the defendant to LWOP.

Additionally, if the court finds that it is in the interest of justice and states the reasons for this finding on the record, the court may reduce the sentence to 10 years to life or 6 years to life.

Forcible Sexual Abuse § 76-5-404 is a second degree felony with a 1 to 15 year sentence. If the trier of fact finds that during the commission of the crime the defendant caused serious bodily injury, the crime is a first degree felony and the court may sentence the defendant to a term of 15 years to life. If it is found that it is in the interest of justice and the court states the reasons for this finding on the record, the court may reduce the sentence to 10 years to life or 6 years to life.

Crimes for Which Probation, Suspension of Sentence, Lower Category of Offense, or Hospitalization May Not be Granted UCA § 76-3-406

This category includes:

Rape-§ 76-5-402
Object Rape-§ 76-5-402.2
Forcible Sodomy-§ 76-5-403; and
Forcible Sexual Abuse-§ 76-5-404
Enticing a Minor over the Internet (with prior sex offense conviction) - §76-4-401

Utah's "Jessica's Law" 25 Years to Life

If the current conviction is for one or more of the following three sex offenses that qualify as "Jessica's Law," the required mandatory sentence is imprisonment of 25 years to life without the possibility of the court suspending or reducing the sentence in consideration of mitigating circumstances.

Rape of a Child-§ 76-5-402.1
Object Rape of a Child-§ 76-5-402.3
Sodomy on a Child-§ 76-5-403.1

Because of the mandatory nature of this sanction, these crimes are not listed on Form 3 Sex Offender Matrix.

A conviction for an Attempt to Commit § 76-4-102 or Solicitation to Commit § 76-4-204 any of the above three offenses is punishable as a 1st Degree Felony under column A and a minimum sentence of 15 years to life. If the court finds that a lesser sentence is in the interests of justice and states the reasons for this finding on the record it may reduce the sentence to 10 years to life, 6 years to life, or 3 years to life.

DRAFT

Formatted Table

FORM 3 - SEX OFFENDER MATRIX

CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.
Matrix timeframes refer to imprisonment only.

PRIOR FELONY CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
0 NONE
2 ONE
4 TWO
6 THREE
8 MORE THAN THREE

PRIOR MISDEMEANOR CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)
0 NONE
1 ONE
2 TWO TO FOUR
3 FIVE TO SEVEN
4 MORE THAN SEVEN

PRIOR JUVENILE ADJUDICATIONS
(ADJUDICATIONS FOR OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT)(THREE MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY ADJUDICATION)
0 NONE
1 ONE
2 TWO TO FOUR
3 MORE THAN FOUR
4 SECURE PLACEMENT

WEAPONS USE IN CURRENT OFFENSE
(ONLY WHEN CURRENT CONVICTION DOES NOT REFLECT WEAPON USE OR WHEN STATUTORY ENHANCEMENT IS NOT INVOLVED)
1 CONSTRUCTIVE POSSESSION
2 ACTUAL POSSESSION
3 DISPLAYED OR BRANDISHED
4 ACTUAL USE
6 INJURY CAUSED

NUMBER OF PRIOR VICTIMS
(PRIOR SEX OFFENSE VICTIMS, NOT INCLUDING PRESENT VICTIM)
0 NO PRIOR VICTIMS
3 ONE PRIOR VICTIM
4 MORE THAN ONE PRIOR VICTIM

TIME RANGE
(NUMBER OF YEARS OFFENDER HAS BEEN OFFENDING SEXUALLY)
1 ONE-TIME INCIDENT
2 WITHIN ONE YEAR
3 WITHIN TWO YEARS
4 TWO YEARS OR OVER

TOTAL SCORE: _____

SUPERVISION HISTORY
(ADULT OR JUVENILE)
0 NO PRIOR SUPERVISION
1 PRIOR SUPERVISION
2 PRIOR RESIDENTIAL PLACEMENT
3 PRIOR REVOCATION
4 ACT OCCURRED WHILE UNDER CURRENT SUPERVISION OR PRE-TRIAL RELEASE

CRIMINAL HISTORY CATEGORY	
III	7+
II	4 - 6
I	0 - 3

SUPERVISION RISK
(ADULT OR JUVENILE)
0 NO ESCAPES OR ABSCONDINGS
1 FAILURE TO REPORT (ACTIVE OFFENSE) OR OUTSTANDING WARRANT
2 ABSCONDED FROM SUPERVISION
3 ABSCONDED FROM RESIDENTIAL PROGRAM OR EXTRADITION REQUIRED
4 ESCAPED FROM CONFINEMENT

VIOLENCE HISTORY
(PRIOR JUVENILE OR ADULT CONVICTION FOR AN OFFENSE WHICH INCLUDES USE OF A WEAPON, PHYSICAL FORCE, THREAT OF FORCE, OR SEXUAL ABUSE)
0 NONE
1 MISDEMEANOR
2 3rd DEGREE FELONY
3 2nd DEGREE FELONY
4 1st DEGREE FELONY

CRIME CATEGORY

CRIMINAL HISTORY	A	B	C	D	E	F	G	H	I	J
			1st Degree					2nd Degree	3rd Degree	Class A Misd
	Mandatory Prison 15 to Life	Mandatory Prison 10 to Life	Mandatory Prison 6 to Life	Mandatory Prison 5 to Life	Mandatory Prison 3 to Life	5 yrs to Life	3 yrs to Life	1 to 15	0 to 5	0 to 1
III	21 YRS	14 YRS	100 MOS	75 MOS	75 MOS	75 MOS	75 MOS	64 MOS	42 MOS	
II	18 YRS	12 YRS	90 MOS	66 MOS	64 MOS	66 MOS	62 MOS	48 MOS	36 MOS	
I	16 YRS	11 YRS	80 MOS	60 MOS	42 MOS	60 MOS	42 MOS	40 MOS	32 MOS	

MANDATORY IMPRISONMENT
IMPRISONMENT
INTERMEDIATE SANCTION

CONSECUTIVE ENHANCEMENTS: 40% of the shorter sentence is to be added to the full length of the longer sentence.

CONCURRENT ENHANCEMENTS: 10% of the shorter sentence is to be added to the full length of the longer sentence.

	ACTIVE CONVICTIONS	CRIME CATEGORY	TIME
MOST SERIOUS			
NEXT MOST SERIOUS			
OTHER			
OTHER			
		TOTAL	

OFFENDER NAME: _____ **DATE SCORED:** _____ **SCORER'S NAME:** _____

Revised: 6/2004

Formatted Table

Form 4 - Aggravating and Mitigating Circumstances Associated with Sex Offenses

As mentioned, certain sex offenses mandate imprisonment. Utah Code Ann. § 76-3-406. "In determining a just sentence, the court shall consider guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission." Utah Code Ann. § 76-3-201(7) (e). In accordance with the above statutory directive, the Sentencing Commission has, in **Form 4**, promulgated aggravating and mitigating circumstances for sex offenses with alternative minimum terms. As listed above, several sex offenses as well as attempts and solicitations carry a presumptive sentence of 15 years to life. If the court finds that, based upon mitigating factors, it is in the interest of justice and states the reasons for this finding on the record, it may sentence a defendant to 10 years to life, 6 years to life, or 3 years to life. If the trier of fact finds that, at the time of the commission of the crime, the defendant has a prior conviction for a grievous sexual offense, the court may sentence the defendant to LWOP.

Form 2 and **Form 4** should be used in determining which of the above terms will be imposed by the court. The Forms are not an exclusive list.

DRAFT

Formatted Table

Form 4
Aggravating and Mitigating Circumstances Associated with Offenses with Alternative Minimum Lengths of Stay

(Also use Form 2 for all sex offenses)

Utah law provides alternative indeterminate lengths of stay (6 years to life, 10 years to life, or 15 years to life) in addition to life without the possibility of parole (LWOP) for sex offenses represented by columns A, B, and C on Form 3 – Sex Offender Matrix. The court shall order the term of 15 years to life, for offenders convicted of one of these offenses unless aggravating and mitigating circumstances justify departure. Aggravating circumstances may exist which justify an upward departure to LWOP. Similarly, mitigating circumstances may justify a downward departure to an indeterminate term of ten years to life or six years to life. The responsibility to weigh aggravating and mitigating circumstances in each case rests with the court. 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 pre-sentence 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.

Formatted: Font: Not Bold

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

DRAFT

Aggravating Circumstances

The following aggravating circumstances should only be considered if they are not an element of the offense.

PSI Page #

_____1. The victim suffered substantial bodily injury or serious bodily injury.
_____2. The offender has a prior history of such offenses. Prior history could be dependent on number of victims, length of involvement, number of incidents, or continued involvement subsequent to arrest.
_____3. The offense was characterized by extreme cruelty or depravity.
_____4. The victim was unusually vulnerable.
_____5. There existed a relationship of special trust or offender was in position of authority over victim(s).
_____6. Offender has previously failed to complete treatment or has completed treatment and re-offended.
_____7. The suspect was not a member of the victim's immediate family.
_____8. The defendant exhibited grooming, stalking or enticing behaviors.
_____9. Other (Specify) _____

Mitigating Circumstances

_____1. The offense represents a single incident with the offender having no prior history of such offenses.
_____2. The offender was exceptionally cooperative with law enforcement.
_____3. Incest offender has strong, supportive family relationships.
_____4. Offender is a good candidate for a recognized treatment program. Substance abuse treatment may be appropriate if the offense was specifically substance related.
_____5. Developmental disabilities of the offender may be considered in mitigation if highly structured alternatives can be utilized to control the offender's criminal behavior.
_____6. Other (Specify) _____

OFFENDER NAME: _____ DATE SCORED: _____

Formatted: Font: 8 pt

Formatted Table

SCORER'S NAME: _____

_____Rev.4 /2007

Formatted: Heading 1

DRAFT

Formatted Table

Form 5- Jail as a Condition of Felony Probation Matrix

Form 5 is to be used in addition to **Form 1** and **Form 3** of the Adult Sentencing Guidelines and should only be used when the recommendation resulting from **Form 1** or **Form 3** is to suspend the prison sentence. When the guidelines indicate that an offender's prison sentence should be suspended, **Form 5** should be used to assist in the determination of whether an offender should serve some time in jail as a condition of that probation and if so, the length of the jail sentence.

The shaded areas of **Form 5** correspond with the shading of ~~the~~ **Form 1** and **Form 3**. Columns that require Mandatory Imprisonment are not included on **Form 5.**

Dark shaded cells: This area corresponds with the "Imprisonment" recommendation of **Form 1** and **Form 3**. If an offender falls into one of these areas and does not receive a prison recommendation, jail time should be recommended for these offenses.

Light shaded cells: This area corresponds with the "Intermediate Sanctions" area of **Form 1** and **Form 3**. If an offender falls into one of these areas, a recommendation of jail may likely be recommended as a condition of the offender's probation.

Unshaded cells: This area corresponds with the "Regular Probation" area of **Form 1**. If an offender falls into this area, a typical recommendation would not include jail as a condition of probation. However, these guidelines are not intended to limit judicial discretion: while jail as a condition of probation should not typically be recommended in these cases, the court may sentence an offender to jail as a condition of probation if there are aggravating factors or other circumstances that warrant a jail sentence.

The number of days recommended in the individual cells represents a typical sentence and should be used as a starting point in determining the length of the recommended jail sentence. The offender's risk to the community, LSI score, compliance with court orders prior to sentencing, the aggravating and mitigating factors on **Form 2** and **Form 4,** as well as other specific needs should be considered in determining the final recommendation.

DRAFT

Formatted Table

FORM 5
Jail as a Condition of Felony Probation Matrix

General Guideline
(To be used with Form 1)

	2nd Death	1st Person	3rd Death	1st Other	2nd Person	3rd Person	2nd Other	2nd Poss	3rd Other	3rd Poss
V	365	365	365	365	365	300	300	300	270	180
IV	365	365	320	320	320	300	300	270	210	180
III	365	300	270	270	270	180	180	180	150	120
II	365	270	240	240	240	120	120	120	90	60
I	365	240	210	210	210	90	90	60	60	30

DRAFT

Sex Offense Guideline
(To be used with Form 3)

	1st sex	2nd sex	3rd sex
III	365	320	180
II	365	250	180
I	320	210	120

210

180

Formatted Table

ADDENDUM A

Crime Column Severity Listing

DRAFT

Formatted Table

Crime Column Severity Listing

In cases involving multiple current offenses, it may not be clear from the matrices, which is the most severe offense. The following chart lists the 21 columns of both matrices in order of severity for purposes of identifying the correct column to use to intersect with the criminal history row in order to arrive at a guidelines recommendation. The chart will also identify which matrix to use if the current offenses include both sex offenses and non-sex offenses. This chart does not attempt to comment on the egregiousness or victimization of a particular offense or category of offenses. It simply lists a hierarchy of guidelines severity when considering both disposition and length of stay.

Rank	Crime Category	Matrix
1	1st Degree Murder	General
2	1st Degree Mandatory Prison 25 to Life	Sex Offense
3	1st Degree Mandatory Prison 15 to Life	Sex Offense
4	1st Degree Mandatory Prison 10 to Life	Sex Offense
5	1st Degree Mandatory Prison 6 to Life	Sex Offense
6	1st Degree Mandatory Prison 5 to Life	Sex Offense
7	1st Degree Mandatory Prison 3 to Life	Sex Offense
8	1st Degree 5 to Life	Sex Offense
9	1st Degree Death	General
10	1st Degree Person	General
11	2nd Degree Death	General
12	1st Degree 3 to Life	Sex Offense
13	1st Degree Other	General
14	2nd Degree 1 to 15	Sex Offense
15	2nd Degree Person	General
16	3rd Degree Death	General
17	3rd Degree 0 to 5	Sex Offense
18	3rd Degree Person	General
19	2nd Degree Other	General
20	2nd Degree Possession	General
21	3rd Degree Other	General
22	Class A Misdemeanor 0 to 1	Sex Offense
23	3rd Degree Possession	General

Formatted Table

Formatted Table

ADDENDUM B

Crime Categories

Formatted Table

Categorization of Offenses Except Sex Offenses

Form 1 General Offense Matrix

This list categorizes all felony offenses to help determine the appropriate crime category column on the guidelines matrices. Felony offenses on the **General Matrix (Form 1**), which does not include sex offenses, are categorized as *murder*, *death, person, possession only* or *other.* Offenses actually resulting in the death of the victim have been classified as *either murder or death*. The *person* category includes, but is not necessarily limited to, violent offenses, offenses which result in physical injury to the victim, offenses which place the victim in fear, and several offenses involving threats to the victim. Offenses that consist of only the possession of a controlled substance, are categorized as *possession only.* All other offenses including non-possession only drug offenses, property offenses, and offenses against public order have been classified as *other*.

To find the appropriate crime category column on the **General Matrix (Form 1)**, first determine the degree of the offense (1st degree, 2nd degree, or 3rd degree) by referring to the judgment and commitment order or other official court document. Then, look on this list to determine whether the offense is categorized as *murder, death, person, possession only* or *other*.

Formatted Table

Crime Categories
Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
4-32-14	Bribery offenses, meat and poultry chapter of agricultural code	Other
4-38-12	Bribery, Utah Horse Regulation Act	Other
7-1-318	False statement or entry by financial institution	Other
7-1-803	Conflicts of interests, financial institution	Other
7-5-10	Lending trust funds to trust company, officer, director or employee	Other
9-4-612	Housing assistance fraud	Other
9-9-404	Illegal trafficking in Native American remains	Other
10-3-1310	Municipal Officers' and Employees' Ethics Act violation	Other
13-2-6	Violation of cease and desist order issued by the Division of Consumer Protection	Other
13-10-8	Failure to disclose the origin of a recording	Other
13-23-7	Health Spa Services Protection Act violation	Other
13-26-8	Telephone Fraud Prevention Act violation	Other
17-43-308	Providing prohibited treatments to change patient's concept of God	Other
19-2-115	Air Quality Act violations	Other
19-3-110	Radiation Control Act violations	Other
19-5-115	Water Quality Act violations	Other
19-6-113	Solid and Hazardous Waste Act violations	Other
19-6-822	Waste Tire Recycling Act violations	Other
20A-1-601	Bribery in elections	Other
20A-1-602	Receiving bribe in elections	Other
20A-1-603	Voting fraud, tampering with ballots or records	Other
20A-1-606	Wagering on elections	Other
20A-3-201	Unlawful conduct by counting poll watcher	Other
20A-3-505	False impersonation to vote, double voting	Other
20A-4-501	Election returns forgery	Other
20A-4-502	Altering vote count or returns	Other
20A-4-503	Abetting forgery or alteration	Other
20A-4-504	Interfering with count	Other
20A-4-505	Unlawful communication about count	Other
20A-5-701	Willful neglect of duty or willful corrupt conduct by election judge	Other
20A-5-702	Destroying or concealing ballots	Other

Crime Categories
Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
23-20-4	Wanton destruction of protected wildlife	Other
23-20-4.7	Habitual wanton destruction of protected wildlife	Other
26-18-4	Performing abortion under auspices of the Medicaid program	Other
26-20-5	False statements or representations relating to qualification of health institution	Other
26-20-9	False Claims Act violation	Other
26-23-5.5	Illegal use of birth certificate	Other
26-28-10	Sale or use of body parts prohibited	Other
26-28-117	Falsification of documents related to organ donation	Other
30-1-9.1	Providing consent for a child to enter a prohibited marriage	Other
30-1-13	Solemnization of marriage without license	Other
30-1-14	Acting without authority to perform marriage; impersonation	Other
30-1-15	Solemnization of prohibited marriage	Other
30-1-16	Issuing a license for a prohibited marriage	Other
31A-16-111	Insurance holding companies violation	Other
32B-4-401	Unlawful sale or furnishing of alcohol	Other
32B-4-503	Tampering with records of the ABC Commission	Other
32B-4-504	Making a false material statement before the ABC Commission	Other
32B-4-505	Obstruction of official proceeding or investigation under ABC Act	Other
32B-4-508	Offering or soliciting bribes or gifts under the ABC Act	Other
32B-4-509	Forgery under the ABC Act	Other
34-24-2	Blacklisting	Other
34A-2-110	Workers' compensation insurance fraud	Other
41-1a-1313	Possession of vehicle or parts without identification number	Other
41-1a-1314	Unauthorized control of a vehicle for an extended time	Other
41-1a-1315	False evidences of title and registration	Other
41-1a-1316	Possession of, receiving, or transferring stolen vehicle	Other
41-1a-1317	Selling or buying vehicle without identification number	Other
41-1a-1318	Fraudulent alteration of identification number	Other
41-1a-1319	Odometer violation	Other
41-3-413	Alteration of a disclosure statement	Other
41-3-703	Forgery or unlawful possession of license, plate, or permit	Other

Crime Categories

Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
41-4-9	Financing Dealers and Purchasers violation	Other
41-6a-210	Failure to respond to officer's signal to stop	Other
41-6a-210(2)	Failure to respond to officer's signal to stop and causing serious bodily injury or death	Person
41-6a-503(2)(a)	Driving under the influence and causing serious bodily injury	Person
41-6a-503(2)(b)	Driving under the influence-third or subsequent conviction	Other
41-6a-503(2)(c)	Driving under the influence following automobile homicide or felony DUI conviction	Other
41-6a-401.3	Failure to stop at an accident involving injury	Other
41-6a-401.5	Failure to stop at an accident involving death	Other
41-6a-502.5	Impaired Driving	Other
41-12a-805	Unauthorized release of information from uninsured motorist identification database	Other
52-1-13	Public officer making a material false statement to secure a bond	Other
58-5a-501	Unlawful conduct under the Podiatric Physician Licensing Act	Other
58-16a-503	Unlawful conduct under the Utah Optometry Practice Act	Other
58-17b-(504)(1)	Possession of prescription drug for any unlawful purpose	-Other
58-31b-503	Unlawful conduct under the Nurse Practice Act	Other
58-37-8	Controlled substances violation (other than "possession only" offenses designated herein)	Other
58-37-8(2)(a)(i)	Possession or use of a controlled substance	Possession Only
58-37-8(2)(a)(ii)	Allow possession or use of controlled substance on premises	Possession Only
58-37-8(2)(a)(iii)	Possession of altered or forged prescription	Possession Only
58-37-8(2)(b)(i)	Possession of Marijuana > 100 lbs	Other
58-37-8(2)(b)(ii)	Possession of Marijuana > 16 oz, < 100 lbs	Possession Only
58-37-8(2)(b)(iii)	Possession of Marijuana > 1 oz, < 16 oz	Possession Only
58-37-8(2)(e)	Possession of controlled substance in correctional facility	Possession Only
58-37-8(2)(g)	Driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death	Person
58-37-8(3)(a)(ii)	Falsely obtaining or dispensing prescription	Other
58-37-8(3)(a)(iii)	Make/utter/alter false or forged prescription	Other

Crime Categories

Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
58-37a-5(3)	Drug Paraphernalia Act violation	Possession Only
58-37a-5(2),(4)	-Possession or use of drug paraphernalia	Other
58-37c-11	Unlawful conduct under the Controlled Substance Precursor Act	Other
58-37d-4	Clandestine Drug Lab Act violation	Other
58-37d-5	Clandestine Drug Lab Act violation	Other
58-37f-601	Unlawful release or obtaining of information from controlled substances database	Other
58-44a-503	Unlawful conduct under the Nurse Midwife Practice Act	Other
58-55-501(13)	Misuse of funds received by contractor	Other
58-60-111	Unlawful conduct under the Mental Health Professional Practice Act	Other
58-61-503	Unlawful conduct under the Psychologist Licensing Act	Other
58-67-503	Unlawful conduct under the Utah Medical Practice Act	Other
58-68-503	Unlawful conduct under the Utah Osteopathic Medical Practice Act	Other
58-69-503	Unlawful conduct under the Dentist and Dental Hygienist Practice Act	Other
58-70a-504	Unlawful conduct under the Physician Assistant Act	Other
58-71-503	Unlawful conduct under the Naturopathic Physician Practice Act	Other
58-72-502	Unlawful conduct under the Acupuncture Licensing Act	Other
58-73-502	Unlawful conduct under the Chiropractic Physician Practice Act	Other
59-1-401	Failure to file tax return; supplying false information on tax return; evading tax	Other
59-14-209	Cigarettes tax stamp violation	Other
61-1-21	Utah uniform securities act violation	Other
61-2c-405	Division of real estate violation	Other
62A-4a-709	False or fraudulent claim for medical assistance identification	Other
62A-6-116	Unauthorized sterilization	Other
62A-7- 402	Harboring or concealing a youth offender	Other
63E-1-404	Unlawful benefit from privatization of independent entity	Other
63G-6-1001	Accepting emolument	Other
63G-6-1002	Offering emolument	Other
63M-7-510	Filing a false claim with Crime Victims Reparations	Other
67-1a-7	Unlawful use of state seal	Other
67-16-12	Ethics Act violation	Other
73-18-7.1	Fraudulent application for registration of a motorboat	Other

Crime Categories
Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
73-18-7.2	Altering or forging registration or certificate of title for motorboat	Other
73-18-13.2	Accident involving injury—Stop at accident—Penalty	Other
73-18-13.3	Accident involving death-----Stop at accident----Penalty	Other
73-18-20.3	Falsified hull identification	Other
73-18-20.7	Unlawful control over a vessel	Other
76-5-102.4	Assault against a peace officer or military service member in uniform	Person
76-5-102.5	Assault by a prisoner	Person
76-5-102.6	Propelling substance or object at a correctional or peace officer	Person
76-5-102.8	Disarming a peace officer	Person
76-5-103	Aggravated assault	Person
76-5-103.5	Aggravated assault by a prisoner	Person
76-5-105	Mayhem	Person
76-5-106.5	Stalking	Person
76-5-107.3	Threat of terrorism	Person
76-5-107.5	Hazing	Person
76-5-109	Child abuse	Person
76-5-109.1	Commission of domestic violence in the presence of a child	Person
76-5-110	Abuse or neglect of disabled child	Person
76-5-111	Abuse, neglect, or exploitation of a disabled or elder adult	Person
76-5-112.5	Endangerment of child or elder adult	Person, Death
76-5-113	Surreptitious administration of a substance	Person
76-5-202	Attempted aggravated murder	Person
76-5-203	Murder	Murder
76-5-203	Attempted murder	Person
76-5-205	Manslaughter	Death
76-5-207	Automobile homicide	Death
76-5-207.5	Automobile homicide involving text messaging or electronic mail	Death
76-5-208	Child abuse homicide	Death
76-5-209	Homicide by assault	Death
76-5-301	Kidnapping	Person
76-5-303	Custodial interference	Person

Formatted: Font color: Red

Crime Categories

Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
76-5-309	Human trafficking and human smuggling -Penalties	Person
76-5-310	Aggravated human trafficking and aggravated human smuggling	Person
76-6-102	Arson	Other
76-6-103	Aggravated arson	Person
76-6-105	Causing a catastrophe	Person
76-6-106	Criminal mischief	Other
76-6-107	Graffiti	Other
76-6-109	Offenses committed against timber, mining, or agricultural industries	Other~~?~~
76-6-110	Offenses committed against animal enterprise	Other~~?~~
76-6-111	Wanton destruction of livestock	Other~~?~~
76-6-202	Burglary of a dwelling	Person
76-6-202	Burglary of a non-dwelling	Other
76-6-203	Aggravated burglary	Person
76-6-204.5	Burglary of a Railroad Car	Other
76-6-301	Robbery	Person
76-6-302	Aggravated robbery	Person
76-6-404	Theft	Other
76-6-404.5	Wrongful appropriation	Other
76-6-405	Theft by deception	Other
76-6-406	Theft by extortion	Other
76-6-407	Theft of lost or misdelivered property	Other
76-6-408	Theft by receiving stolen property	Other
76-6-409	Theft of services	Other
76-6-409.3	Theft of utility or cable television services	Other
76-6-409.6	Telecommunications fraud	Other
76-6-409.7	Possession of unlawful telecommunication device	Other
76-6-409.8	Sale of unlawful telecommunication device	Other
76-6-409.9	Manufacture of unlawful telecommunication device	Other
76-6-410(1)	Theft by executory use	Other
76-6-410(2)	Theft pursuant to a rental agreement	Other
76-6-410.5	Theft of a rental vehicle	Other

Formatted: Font color: Red

Formatted: Font color: Red

Crime Categories
Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
76-6-413	Release of fur-bearing animals	Other
76-6-501	Forgery	Other
76-6-502	Possession of a forged writing or forged device	Other
76-6-503	Fraudulent handling or recordable writings	Other
76-6-505	Issuing a bad check or draft	Other
76-6-506.2	Unlawful use of a financial transaction card	Other
76-6-506.3	Unlawful acquisition, possession, or transfer of card	Other
76-6-506.6	Unauthorized factoring of credit card sales drafts	Other
76-6-506.7	Obtaining encoded information on a financial transaction card with the intent to defraud	Other
76-6-509	Bribery of a labor official	Other
76-6-510	Bribe receiving by a labor official	Other
76-6-512	Acceptance of deposit by insolvent financial institution	Other
76-6-513	Unlawful dealing of property by a fiduciary	Other
76-6-514	Bribery or threat to influence contest	Other
76-6-516	Conveyance of real estate by married man without wife's consent	Other
76-6-518	Criminal simulation	Other
76-6-520	Criminal usury	Other
76-6-521	False or fraudulent insurance act	Other
76-6-522	Equity skimming of a vehicle	Other
76-6-523	Obstruction of the leasing of real property for natural resource production	Other
76-6-602	Retail theft	Other
76-6-703(1)	Computer crime	Other
76-6-703(3)	Computer fraud	Other
76-6-903	Cultural sites protection violation	Other
76-6-1002	Damage to a mail receptacle	Other
76-6-1003	Mail theft	Other
76-6-1102	Identity fraud	Other
76-6-1303	Possession, sale, or use of automates sales suppression device unlawful	Other
76-6a-4	Pyramid scheme	Other
76-7-101	Bigamy	Other

Crime Categories

Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
76-7-101.5	Child bigamy	Person
76-7-201	Criminal nonsupport	Other
76-7-203	Sale of a child	Person~~Other~~
76-7-310.5	Performing abortion using prohibited procedures	Other
76-7-314	Performing unlawful abortion	Other
76-8-103	Bribery to influence official or political actions	Other
76-8-105	Receiving or soliciting a bribe	Other
76-8-107	Alteration of proposed legislative bill or resolution	Other
76-8-108	Alteration of enrolled legislative bill or resolution	Other
76-8-303	Prevention of legislature or public servants from meeting	Other
76-8-306	Obstruction of justice	Other
76-8-306.5	Obstructing service of a Board of Pardons' warrant or a probationer order to show cause	Other
76-8-309	Escape	Other
76-8-309(2)	Aggravated escape	Person
76-8-311.1	Transporting firearm, ammunition, or dangerous weapon into a secure area	Other
76-8-311.3	Items prohibited in correctional and mental health facilities	Other
76-8-312	Bail jumping	Other
76-8-315	Assault on an elected official - attempting or causing bodily injury	Person
76-8-316	Influencing, impeding, or retaliating against a judge or member of Board of Pardons	Person
76-8-402	Misusing public monies	Other
76-8-403	Failure to keep and pay over public monies	Other
76-8-404	Making profit public monies	Other
76-8-412	Stealing, destroying or mutilating public records	Other
76-8-414	Recording false or forged instruments	Other
76-8-418	Damaging a jail	Other
76-8-502	Making false or inconsistent material statement	Other
76-8-508	Tampering with a witness	Other
76-8-808.3	-Retaliation against a witness, victim or informant	Person
76-8-508.5	Tampering with a juror	Other

Crime Categories
Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
76-8-508.5(2)(c)	Tampering with a juror and making threat to injure person or property	Person
76-8-509	Bribery to dismiss a criminal proceeding	Other
76-8-510.5	Tampering with evidence	Other
76-8-802	Destruction of property to interfere with preparation for defense or war	Other
76-8-803	Causing or omitting to note defects in articles used in preparation for defense or war	Other
76-8-902	Advocating criminal syndicalism or sabotage	Other
76-8-903	Assembly for advocating criminal syndicalism or sabotage	Other
76-8-1101	Failure to file tax return; supplying false information on tax return; evading tax	Other
76-8-1203	Public assistance fraud	Other
76-8-1204	Public assistance fraud	Other
76-8-1205	Public assistance fraud	Other
76-8-1301	False statements regarding unemployment compensation	Other
76-9-101	Riot	Other
76-9-105	Making a false alarm	Other
76-9-201	Electronic communication harassment	Person
76-9-202	Emergency reporting abuse	Other
76-9-301	Animal Cruelty	Other
76-9-301.1	Dog fighting	Other
76-9-304	Human death by vicious animal	Death
76-9-306	Causing injury or death to a police service animal	Other
76-9-702.7	Voyeurism	Person
76-9-704	Abuse or desecration of a dead human body	Other
76-10-204	Damaging bridge, dam, canal, or other water-related structure	Other
76-10-306	Explosives violations	Other
76-10-307	Delivery of explosive device to common carrier	Other
76-10-402	Manufacture, possession, sale, or use of weapon of mass destruction	Other
76-10-403	Manufacture, possession, sale, or use of hoax weapon of mass destruction	Other
76-10-503	Possession, transfer, or purchase of a dangerous weapon by restricted person	Other
76-10-504(3)	Possession of a short barrel rifle	Other
76-10-504(4)	Possession of concealed firearm in the commission of a violent felony	Person

Crime Categories
Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
76-10-508	Discharge of a firearm from a vehicle	Person
76-10-509.4	Possession of sawed-off shotgun or fully automatic weapon by a minor	Other
76-10-509.5	Providing sawed-off shotgun or fully automatic weapon to minor	Other
76-10-509.6	Parent of guardian providing firearm to violent minor	Other
76-10-509.9	Sale of firearm to juvenile	Other
76-10-527(2)	Making false statement in information required for criminal background check	Other
76-10-527(3)	Weapons violation by dealer	Other
76-10-527(4)	Purchasing firearm with the intent to provide firearm to ineligible person	Other
76-10-703	Fraudulent documents relating to organization or increase of capital stock	Other
76-10-706	Unlawful acts by director, officer, or agent	Other
76-10-920	Illegal anticompetitive activities	Other
76-10-1103	Gambling fraud	Other
76-10-1104	Gambling promotion	Other
76-10-1105	Possessing a gambling device or record	Other
76-10-1109	Confidence game violation	Other
76-10-1204	Distributing pornographic material	Other
76-10-1205	Inducing acceptance of pornographic material	Other
76-10-1206	Dealing in material harmful to a minor	Person
76-10-1214	Conspiracy to commit pornographic and harmful materials offense	Other
76-10-1222	Distribution of pornographic film	Other
76-10-1305	Exploiting prostitution	Other
76-10-1309	Prostitution offense by HIV positive offender	Person~~Other~~
76-10-1504(1)	Bus hijacking	Person
76-10-1504(2)	Assault with the intent to commit bus hijacking	Person
76-10-1504(3)	Assault with the intent to commit bus hijacking with dangerous weapon	Person
76-10-1504(4)	Boarding a bus with a concealed dangerous weapon	Other
76-10-1505	Discharging firearms and hurling missiles into buses and terminals	Person
76-10-1507	Carrying a concealed dangerous weapon or hazardous material into a terminal or aboard a bus	Other
76-10-1508	Theft of baggage or cargo	Other
76-10-1603	Pattern of unlawful activity	Other

Crime Categories

Criminal Offenses, Sorted by Statute

Code Citation	Description	Category
76-10-1801	Communications fraud	Other
76-10-1903	Money laundering	Other
76-10-1906	Failure to report by financial institution	Other
76-10-2002	Burglary of a research facility	Other
76-10-2402	Commercial terrorism	Other
76-10-2801	Vehicle compartment for contraband	Other
76-10-2901	Transporting or harboring aliens	Other
77-23a-4	Interception of communication	Other
77-23a-5	Traffic in intercepting devices	Other
77-23b-2	Interference with access to stored communication	Other
77-27-21.5	Failure to register as a sex or kidnap offender	Other
77-36-1.1(c)	Repeat violation of a protective order	Person
77-36-2.5	Violation of condition for release after arrest for domestic violence	Person
77-36-2.7	Violation of condition for release	Person
78A-2-203	Possession of firearm, ammunition, or dangerous weapon within a secure area established by the Judicial Council	Other
78B-1-125	Certifying excessive witness or juror fees	Other

Crime Categories
Criminal Offenses, Sorted by Statute

Formatted: Section start: New page, Width: 8.5", Height: 11", Col #1 width: 6.5", Not Force equal column width

Formatted: Section start: Continuous, Number of columns: 1

Formatted: Font: (Default) Arial, 11 pt

ADDENDUM C

Categorization of Sex Offenses

Formatted Table

Categorization of Sex Offenses

Form 3 Sex Offender Matrix

Sex offenses are categorized by a letter, A through J, which corresponds with the appropriate crime category column on the sex offender matrix (**Form 3**). To find the appropriate crime category column on the sex offender matrix, simply find the column letter matching the letter indicated on this list.

Unlike the categorization listing for general offenses, the sex offense category listing provides the specific column on the matrix, not simply the general category (*death, person, possession only* or *other*). Therefore, the sex offender category listing is more specific than the general listing and includes inchoate offenses: attempt, conspiracy, and solicitation. Ordinarily, inchoate offenses are penalized at one level lower than the completed offense, e.g., 2nd degree felony *Forcible Sexual Abuse* is lowered to 3rd degree felony *Attempted Forcible Sexual Abuse.* See Utah Code Ann. § 76-4-102. However, within the sex offenses there are a number of exceptions to this general rule. For example, *Rape of a Child* is a 1st degree felony with mandatory prison of 25 years to life. *Attempted Rape of a Child* is not a 2nd degree felony; rather it is a 1st degree felony with mandatory prison and an indeterminate range of 15 years to life. *Conspiracy to Commit Rape of a Child*, on the other hand, is a 1st degree felony with no mandatory prison and indeterminate range of 3 years to life while *Solicitation to Commit Rape of a Child* is a 1st degree felony with mandatory prison and an indeterminate range of 15 years to life. Due to these distinctions between some sex offenses, regularly refer to the following listing to assure that the correct crime category column is used when calculating the guidelines recommendation.

Crime Categories
Sex Offenses, Sorted by Statute

Code Citation	Description	Matrix Column
76-4-401	Enticing a minor over the internet – first degree felony	E
76-4-401	Enticing a minor over the internet – second degree felony	H
76-4-401	Enticing a minor over the internet – third degree felony	I
76-4-401	Enticing a minor over the internet – class A misdemeanor	J
76-5-301.1	Child kidnapping	A, B, or C
76-5-301.1 [1]	Attempted child kidnapping	G
76-5-301.1 [3]	Conspiracy to commit child kidnapping	G
76-5-301.1	Solicitation to commit child kidnapping	H
76-5-302	Aggravated kidnapping	A, B, or C
76-5-302	Attempt, conspiracy, or solicitation to commit aggravated kidnapping	H
76-5-401	Unlawful sexual activity with a minor	I
76-5-401	Attempt, conspiracy, or solicitation to commit unlawful sexual activity with a minor	J
76-5-401.1	Sexual abuse of a minor	J
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old	I
76-5-401.2	Attempt, conspiracy, or solicitation to commit unlawful sexual conduct with a 16 or 17 year old	J
76-5-402	Rape	F (A, B, or C)
76-5-402 [1]	Attempted rape	G
76-5-402 [3]	Conspiracy to commit rape	G
76-5-402	Solicitation to commit rape	H
76-5-402.1	Rape of a child	25 Years to Life
76-5-402.1 [1, 2]	Attempted rape of a child	A, B, C or E
76-5-402.1 [3]	Conspiracy to commit rape of a child	G
76-5-402.1	Solicitation to commit rape of a child	A, B, C, or E
76-5-402.2	Object rape	F (A, B, or C)
76-5-402.2 [1]	Attempted object rape	G
76-5-402.2 [3]	Conspiracy to commit object rape	G
76-5-402.2	Solicitation to commit object rape	H
76-5-402.3	Object rape of a child	25 Years to Life

Crime Categories

Sex Offenses, Sorted by Statute

Code Citation	Description	Matrix Column
76-5-402.3 [1, 2]	Attempted rape of a child	A, B, C, or E
76-5-402.3 [3]	Conspiracy to commit rape of a child	G
76-5-402.3	Solicitation to commit rape of a child	A, B, C, or E
76-5-403(2)	Forcible sodomy	F (A, B, or C)
76-5-403(2) [1]	Attempted forcible sodomy	G
76-5-403(2) [3]	Conspiracy to commit forcible sodomy	G
76-5-403(2)	Solicitation to commit forcible sodomy	H
76-5-403.1	Sodomy on a child	25 Years to Life
76-5-403.1 [1, 2]	Attempted sodomy on a child	A, B, C, or E
76-5-403.1 [3]	Conspiracy to commit sodomy on a child	G
76-5-403.1	Solicitation to commit sodomy on a child	A, B, C, or E
76-5-404	Forcible sexual abuse	A, H
76-5-404	Attempt, conspiracy, or solicitation to commit forcible sexual abuse	I
76-5-404.1	Aggravated sexual abuse of a child	A, B, or C
76-5-404.1 [1]	Attempted aggravated sexual abuse of a child	G
76-5-404.1 [3]	Conspiracy to commit aggravated sexual abuse of a child	G
76-5-404.1	Solicitation to commit aggravated sexual abuse of a child	H
76-5-404.1	Sexual abuse of a child	H
76-5-404.1	Attempt, conspiracy, or solicitation to commit sexual abuse of a child	I
76-5-405	Aggravated sexual assault	A, B, or C
76-5-405 [1]	Attempted aggravated sexual assault	G
76-5-405 [3]	Conspiracy to commit aggravated sexual assault	G
76-5-405	Solicitation to commit aggravated sexual assault	H
76-5-412(2)	Custodial sexual relations (victim is 18 or older)	I
76-5-412(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations (victim is 18 or older)	J
76-5-412(2)	Custodial sexual relations (victim is younger than 18)	H
76-5-412(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations (victim is younger than 18)	I

[1] ~~See 76-4-102(2)~~
[2] ~~See 76-3-406(10)~~

Crime Categories
Sex Offenses, Sorted by Statute

[3] ~~See 76-4-202(2)~~

Crime Categories
Sex Offenses, Sorted by Statute

76-5-412(4)	Custodial sexual misconduct (victim is 18 or older)	J
76-5-412(4)	Custodial sexual misconduct (victim is younger than 18)	I
76-5-412(4)	Attempt, conspiracy, or solicitation to commit custodial sexual misconduct (victim is younger than 18)	J
76-5-413(2)	Custodial sexual relations with a youth receiving state services (victim is 18 or older)	I
76-5-413(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations with a youth receiving state services (victim is 18 or older)	J
76-5-413(2)	Custodial sexual relations with a youth receiving state services (victim is younger than 18)	H
76-5-413(2)	Attempt, conspiracy, or solicitation to commit custodial sexual relations with a youth receiving state services (victim is younger than 18)	I
76-5-413(4)	Custodial sexual misconduct with a youth receiving state services (victim is 18 or older)	J
76-5-413(4)	Custodial sexual misconduct with a youth receiving state services (victim is younger than 18)	I
76-5-413(4)	Attempt, conspiracy, or solicitation to commit custodial sexual misconduct with a youth receiving state services (victim is younger than 18)	J
76-5b-201	Sexual exploitation of a minor	H
76-5b-201	Attempt, conspiracy, or solicitation to commit sexual exploitation of a minor	I
76-5b-202	Sexual exploitation of a vulnerable adult	I
76-7-102	Incest	I
76-7-102	Attempt, conspiracy, or solicitation to commit incest	J
76-9-702	Lewdness	I
76-9-702(3)	Sexual battery	J
76-9-702.5	Lewdness involving a child	I or J
76-9-702.7	Voyeurism	I or J
76-10-1306	Aggravated exploitation of prostitution	F or H
76-10-1306	Attempt, conspiracy, or solicitation to commit aggravated exploitation prostitution	I or H

[1] See 76-4-102(2)
[2] See 76-3-406(10)
[3] See 76-4-202(2)

Formatted: Font: 12 pt
Formatted: Font: 12 pt
Formatted: Font: 12 pt

Crime Categories
Sex Offenses, Sorted by Statute