1. THE SENTENCING COMMISSION

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

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

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

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

The Speaker of the House appoints:
• two members of the House of Representative who are not of the same political party.

The President of the Senate appoints:
• two members of the Senate who are not of the same political party.
• The Chair of Judicial Council appoints:
  • two trial court judges.
  • two juvenile court judges.
  • one appellate court judge.

The Utah Bar Commission appoints:
• one private practice attorney who is experienced in criminal defense and is a member of the Utah State Bar.
• one attorney who is experienced in the defense of minors in juvenile court and is a member of the Utah State Bar.

The Statewide Association of Public Attorneys appoints:
• one criminal prosecutor.
• one juvenile court prosecutor.

The Governor appoints:
• one representative of Utah Sheriff’s Association.
• one Chief of Police.
• one licensed professional who assists in the rehabilitation of adult offenders.
• one licensed professional who assists in the rehabilitation of juvenile offenders.
• two members from the public who exhibit sensitivity to the concerns of victims of crime and to the ethnic composition of the population.
• one member from the public at large.

The following seven positions may be occupied by the individual holding the title or a designee chosen by the holder of that title:
• Executive Director of the Department of Corrections
• Director of the Division of Juvenile Justice Services
• Executive Director of the Commission on Criminal and Juvenile Justice
• Chair of the Board of Pardons and Parole
• Chair of the Youth Parole Authority
• Director of Salt Lake Legal Defenders
• Attorney General⁴

² 1993 Utah Laws ch. 77, § 1; Utah Code § 63M-7-401 (2015).
³ Compare 1993 Utah Laws ch. 77, § 1 (the enacting statute which created 19 positions on the commission), with Utah Code § 63M-7-401 (2015) (the current statute which has 27 positions on the commission).
⁴ Utah Code § 63M-7-401 (2014).
The Sentencing Commission is a subpart of the Commission on Criminal and Juvenile Justice (CCJJ). The CCJJ is Utah’s primary organization for coordinating between various branches and levels of government regarding criminal and juvenile justice issues. For example, the CCJJ distributes grants related to criminal justice, assists in out-of-state felony fugitive extraditions, and provides ongoing research assistance to the Sentencing Commission, Utah Board of Juvenile Justice, Utah Substance Abuse Advisory Council, and the Office of Domestic and Sexual Violence. Although the Sentencing Commission shares resources with the CCJJ, the Sentencing Commission submits reports directly to the legislature, courts and governor. Additionally, the two commissions are to “[coordinate] on criminal and juvenile justice issues . . .”

The enabling statute declares that sentencing guidelines and recommendations are to “relate sentencing practices and correctional resources.” The Commission released a policy statement indicating its sensitivity to the scarcity of available sanctioning resources. Most recently, the commission has stated that the 2015 sentencing guidelines are intended to “provide a means of identifying and allocating required resources.”

The mandated responsibilities of the Sentencing Commission are to develop guidelines and provide recommendations that achieve the following: (1) respond to public comment; (2) relate sentencing practices and correctional resources; (3) increase equity in criminal sentencing; (4) better define responsibility in criminal sentencing; (5) and enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority. In 2015, the legislature amended the statutory mandate to include several specific directives for the Commission. Among the changes were directives to: (1) modify the guidelines to reduce recidivism; (2) modify criminal history scoring by eliminating double counting and focusing on factors relevant to reoffense; and (3) establish guidelines for incarcerations related to probation and parole condition violations.

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

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3. Utah Code § 63M-7-404(4)(1)(b) (2015); see also Utah Code § 63M-7-404(2)(b) (2015) (stating that guideline modifications pursuant to “the recommendation[s] of the Commission on Criminal and Juvenile Justice for reducing recidivism” are “for the purposes of protecting the public and ensuring efficient use of state funds”).
2. THE GUIDELINES

When were the Guidelines first implemented?
The first guidelines were published in 1979 as a joint effort by the Department of Corrections, various Utah Courts, and the Board of Pardon and Paroles. The first commission-drafted guidelines were published in 1998.

In recent years have they been modified at least once a year?
The Commission provides annual updates to the adult sentencing guidelines.

Do the commission’s recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?
The Commission is required to submit recommendations for sentencing guidelines and amendments to the legislature, courts, and governor at least 60 days prior to the annual general session of the legislature, but the statute is silent as to when or how any proposed amendments take effect. The courts have stated that the guidelines “do not have the force and effect of law.”

Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?
The guidelines contain recommendations for both felony and misdemeanor offenses. The only crime in Utah punishable by death—aggravated murder—is excluded from the guidelines.

Is a grid used? Are there multiple grids? How many severity levels does the grid contain?
The Utah Sentencing Guidelines are presented in grid format. There are two grids that cover the majority of felony level offenses: a “Sex & Kidnap Offender Matrix” that focuses exclusively on sexual and kidnapping offenses and a “General Matrix” that covers the remaining felony categories. The Sex Offender Matrix has ten levels of offense severity, including a column for class A misdemeanor sexual offenses. The General Offense Matrix has twelve levels of offense severity. The “Misdemeanor Matrix” has seven levels of offense severity. This grid is used for most misdemeanor offenses.

How is the presumptive sentence determined?
The presumptive sentence in months is determined by finding the cell that is at the intersection of the offender’s criminal history score and the severity level of the present offense. On both the Sex & Kidnap Offender Matrix and the General Matrix, the horizontal axis contains various offense categories that are predominantly arranged from the most severe to the least severe, with the exceptions of columns E and F. On the vertical axis of both matrices is a listing of the criminal history categories, which are ordered from the most extensive criminal history to minimal or no criminal history. The General Matrix has five possible levels of criminal history (I-V) and the Sex & Kidnap Offender Matrix has three possible levels of criminal history (I-III). It is important to note that neither matrix presents sentence duration ranges. Instead, the duration in each cell represents the typical length of stay if the offender is imprisoned.

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22 Utah Code § 63M-7-405(2) (2015).
Jurisdiction Profile: Utah

The General Matrix has four dispositions: mandatory imprisonment, imprisonment, intermediate sanctions, and presumptive probation. The mandatory imprisonment disposition (shaded dark grey) comprises: (1) the guidelines recommendation that a prison term be imposed; and (2) the typical length of stay if the offender is sentenced to prison.24

The intermediate sanctions disposition (shaded light grey) is separated from the imprisonment disposition by a jagged-diagonal line, which begins in the top-right of the matrix and cuts across toward the bottom-left of the matrix. For offenders falling in the cells designated as intermediate sanctions, the guidelines recommend probation with special conditions. These special conditions (e.g. electronic monitoring) are directed toward offenders that are a higher risk to the community than offenders for whom regular probation is recommended. The guidelines also emphasize that “[t]here is no bright line between regular probation and intermediate sanctions” and that the court should carefully consider the impact on correctional resources before ordering intermediate sanctions.25

The presumptive probation disposition (unshaded white) is directed toward the lowest risk offenders. It is separated from the intermediate sanctions disposition by a line that runs from the upper-right of the matrix to the bottom-middle. If regular probation or an intermediate sanction is ordered, the guidelines advise the sentencing judge to use a supplementary form to determine how much jail time should be used as a condition of that probation. This supplementary form is labeled “Jail as a Condition of Probation Matrices” and contains criminal history and crime severity axes similar to the General Matrix. Both the intermediate sanctions and presumptive probation dispositions recommend a suspended execution of the sentence.26

The Sex Offender Matrix format is slightly different than the General Matrix. First, the Sex Offender Matrix does not contain a presumptive probation disposition. It only contains mandatory imprisonment, imprisonment, and intermediate sanctions dispositions. Second, the lines separating the dispositions on the Sex Offender Matrix are more vertical than diagonal. Consequently, the recommended disposition for sex offenders appears to be more dependent on the severity of the present offense than the offender’s criminal history.27

None of the matrices contain any cells that suggest multiple dispositions. Each cell is represented by only one disposition category.28

The guideline recommendations are advisory for all initial sentencing decisions. When using these matrices, sentencing discretion remains with the court and the Board and Pardons and Parole.29

In 2015 the Utah Legislature passed a bill making the guidelines binding for decisions related to violations and revocations of probation or parole. Thus, graduated sanctions and other punishments derived from these guidelines and matrices are not discretionary.30

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24 On the General Matrix, Column E corresponds to 3rd degree “Death” crimes and Column F corresponds to 1st degree “Other” crimes. The decision to place 1st degree “Other” crimes on the less severe end of the spectrum than “Death” crimes likely reflects the position that “Death” crimes are viewed as more severe, despite the fact that the recommended sentences for 1st degree “Other” crimes are longer than those for 3rd degree “Death” crimes. On the Sex & Kidnap Offender Matrix, Column E corresponds to sex crimes that have a statute mandating a prison disposition and Column F corresponds to the most severe sex crime category that the court has discretion regarding which disposition is imposed. Regardless of whether there is a statutorily mandated prison sentence, the guidelines recommend the same sentence lengths for comparable offenses (e.g. Column F “5 years to Life” recommends to same sentence length as Column D “Mandatory Prison 5 to Life”). Therefore, the exceptions of Column E and F likely reflect the position of the state legislator on the severity of certain sex crimes and not necessarily the position of the sentencing commission. Utah Adult Sentencing & Release Guidelines at 19, 26 (2015).


26 Utah Adult Sentencing & Release Guidelines at 3–4 (2015) (The guidelines “are intended to inform the sentencing authority, but do not dictate their decision”).
3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

What is the overall/general standard for departure?

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

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

The guidelines contain a supplementary form that provides a non-exhaustive list of aggravating and mitigating circumstances. This form is applicable to departures from both the General and Sex & Kidnap Offender matrices. The Sex & Kidnap Offender Matrix also has an additional form specific to sex offenses with alternative minimum lengths of stay. Neither form provides prohibited factors.

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

Assisting law enforcement in the resolution of other crimes and having an attitude that “suggests amenability to supervision” are both listed as mitigating circumstances on the supplementary form used for both the General Matrix and the Sex & Kidnap Matrix. The supplementary form specific to “sex offenses with alternative minimum lengths of stay” lists exceptional cooperation with law enforcement as a mitigating factor. Neither form suggests treating a guilty plea as a mitigating factor during sentencing.

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

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

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

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

4. PRISON RELEASE DISCRETION

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

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

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

Utah does not have a “truth in sentencing” statute. Nonetheless, Utah qualified for federal grant funding (while the grant existed) aimed at promoting truth in sentencing because of its practices, including the use of sentencing guidelines to guide both sentencing and parole release decisions.
Do sentencing guidelines set the minimum time to serve in prison, the maximum, both minimum and maximum, a target/recommended prison duration, or some other combination of these sentence conditions?

The guidelines recommend the disposition – whether the offender should be sentenced to prison or probation – and the typical duration of any incarceration. When sentencing, the judge will pronounce the disposition. If the judge pronounces a prison disposition, the pronounced length of incarceration will equal the indeterminate range defined in statute (e.g., for a second-degree felony, the law provides for a sentence of 1 to 15 years). The duration on the grid, which falls within the statutory range, represents the typical time served for that offense, and serves as a recommended duration for the Board of Pardons and Parole. The Board of Pardons and Parole will make the final decision regarding the actual length of incarceration.

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

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

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

Incarcerated offenders may complete specified programs to reduce their incarceration time. An offender receives, at minimum, a four month reduction in the total period of incarceration for completion of high-priority programs. The time reduction from completing programs may be forfeited if an “offender commits a major disciplinary infraction.”

Offenders serving time on probation or parole can earn a reduction credit of 30 days for each month of probation or parole completed without a violation. Note, however, that in order for an offender to be eligible for early parole termination, the offender must possess a high school diploma, GED, or vocational certificate, or have a valid excuse for failure to obtain one of these documents.

Are prison terms subject to exceptional, “second-look” releasing mechanisms?

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

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

Did the guidelines replace some or all previous statutory maxima?

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

Did the guidelines replace some or all mandatory-minimum statutes?

Due to the advisory nature of the guidelines, no mandatory statutory minimums have been replaced.

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

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

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

Neither the court nor the Board of Pardons and Parole may deviate from statutory minimum sentences.48 Nonetheless, Utah law provides judges the option of choosing alternative minimum sentences for some crimes. For example, most of the statutes that apply to grievous sexual offenses have a presumptive sentence of 16 years to life; however, upon finding mitigating evidence, the judge may reduce the sentence to 10 years to life or 6 years to life.49

6. CRIMINAL HISTORY SCORING

What are the major components of the criminal history score?

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

1. Prior felony convictions;
2. Prior class A misdemeanor convictions;
3. Prior juvenile adjudications;
4. Supervision history; and
5. Prior person crime convictions.50

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

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

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

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46 See Utah Code §§ 76-3-103 (2015) (classifying felonies as capital or first through third degree), 76-3-203 (2015) (establishing the minimum and maximum sentences for first through third degree felony offenses).
Prior juvenile adjudications are counted only if the offense would constitute a crime if committed by an adult (i.e., not a status offense). Further, the prior adjudication must have resulted in a finding of delinquency and the date of adjudication must have occurred within ten years of the current conviction date. An offender receives criminal history points only if the juvenile adjudications are “equivalent” to a felony. When scoring prior juvenile adjudications, three class A misdemeanors count as one “felony.” The number of juvenile adjudications equivalent to class A misdemeanors are not rounded up. Thus, if an offender only has two prior juvenile adjudications equivalent to class A misdemeanors, the offender will receive no criminal history points from his or her juvenile record.55

An offender’s supervision history includes both juvenile and adult history. Criminal history points are added for prior revocations of probation or parole and committing the present offense while under supervision or pre-trial release. A criminal history point may be subtracted for successful completion of supervision.56

The prior person crime convictions element adds criminal history points for prior juvenile adjudications or adult convictions that are labeled as “person” crimes in Addendum B of the guidelines or labeled as a “violent felony” by statute. Some of the offenses that are excluded from the prior adult convictions and prior juvenile adjudications elements are counted as prior person crime convictions. For example, prior person crime convictions “may include juvenile dispositions beyond the ten (10) year limitation in the . . . [prior juvenile adjudications] section.”57

The Sex & Kidnap Offender Matrix includes all of the General Matrix criminal history elements in addition to a “Number of Prior Sex/Kidnap Victims” element. The number of prior victims element adds criminal history points if the offender has previously been convicted of a sexual or kidnapping offense involving a specific victim, excluding the present victim.58

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7. MULTIPLE CURRENT OFFENSES

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

Judges are given the discretion to decide whether an offender should serve concurrent or consecutive sentences. When making this determination judges are to consider “the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.” If an offense is committed while an offender is imprisoned or on parole, the sentence for the new offense is presumptively consecutive. In general the total duration of the consecutive sentences imposed may not exceed thirty years.61

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

The criminal history scoring of an offender does not change when imposing multiple sentences. Instead, for the purpose of consecutive sentencing of multiple offenses, the guidelines advise adding 40% of the length of the shortest sentence to the full length of the longest sentence. If there are more than two offenses, the guidelines advise taking the longest sentence and adding 40% of all remaining offenses to the full duration of the longest sentence.62

8. ENFORCEMENT MECHANISMS

Are recommended sentences enforced by prosecution and defense sentence appeals?

The guidelines are advisory and “do not create any right, expectation, or liberty interest on behalf of the offender.”63 Although a sentence may be appealed, the appeal cannot be on the basis that the sentence deviated from the recommendation of the guidelines.64

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

There are no legally binding enforcement methods for the guidelines. Although the guidelines advise judges to state reasons for any departure, judges are not obligated to do so.65

Are some deviations from the guidelines not deemed departures?

The guidelines consider any sentence different from that prescribed within the offender’s intersection box on the matrix as a departure.66

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

The guidelines request the same standard for all deviations, which is that the aggravating and mitigating factors prompting the departure must be noted on the record.67

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62 Utah Adult Sentencing & Release Guidelines at 17 (2015). A smaller recommend enhancement applies when multiple convictions are ordered to run concurrently: 10% of the prison stay recommended for each shorter sentence is added to the recommended term for the longest sentence. Id. at 17.