2015
Adult Sentencing & Release Guidelines
(Excerpt; highlighting added)
I. STATUTORY CHARGE

The Utah Sentencing Commission consists of twenty-seven statutorily delegated and appointed members representing all facets of the criminal justice system including: judges, prosecutors, defense attorneys, legislators, victim advocates, law enforcement, treatment specialists, ethnic minorities, corrections, parole authorities, juvenile justice representatives, citizen representatives, and others.

The Sentencing Commission is charged pursuant to Utah Code Ann. § 63M-7-404 with developing guidelines and recommendations to all three branches of government regarding the sentencing and release of juvenile and adult offenders which:

- respond to public comment;
- relate sentencing practices and correctional resources;
- increase equity in criminal sentencing;
- better define responsibility in criminal sentencing; and
- enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and Youth Parole Authority.

In response to Governor Gary R. Herbert’s call for a comprehensive review of the state’s criminal justice system in his 2014 State of the State Address, the Sentencing Commission participated with the Commission on Criminal and Juvenile Justice (“CCJJ”) in developing the comprehensive reform recommendations contained in the November 2014 Justice Reinvestment Report. House Bill 348, Criminal Justice Programs and Amendments, sponsored by Representative Eric Hutchings and Senator Stuart Adams, incorporated those recommendations into comprehensive legislation aimed at reducing recidivism, controlling prison costs, and holding offenders accountable. House Bill 348 passed with near unanimous support during the 2015 General Legislative Session.

Pursuant to House Bill 348, a number of specific directives were added to the Sentencing Commission’s statutory charge. Those directives include the following:

- modify the guidelines to implement the recommendations of the CCJJ for reducing recidivism for the purposes of protecting the public and ensuring efficient use of state funds;
- modify criminal history scoring in the guidelines, including eliminating double-counting and focusing on factors relevant to the accurate determination of risk to re-offend;
- establish guidelines for incarceration for probation and parole conditions violations and revocations, including: the seriousness of the violation, conduct while on probation or parole, and criminal history;
- establish graduated sanctions to facilitate the prompt and effective response to an offender’s conduct while on probation or parole, including: sanctions in response to probation or parole conditions violations, when violations should be reported to the Court or Board of Pardons, and a range of sanctions not exceeding three consecutive days incarceration and a total of five days in a 30 day period;
- establish graduated incentives to facilitate a prompt and effective response to an offender’s compliance with probation or parole conditions and positive conduct exceeding those terms.

I. PHILOSOPHY STATEMENT

The Sentencing Commission promotes evidence-based sentencing policies that effectively address the three separate goals of criminal sentencing:
The Sentencing Commission has discussed and advocated the incorporation of what are commonly referred to as “evidence-based practices” into sentencing, supervision, and treatment standards for nearly a decade. Evidence-based practices are also referred to as “principles of effective intervention” or “what works in corrections.” It is not a specific program or intervention, but a body of knowledge based on over thirty years of research conducted by numerous scholars in North America and Europe. Such research has demonstrated empirically that theoretically sound, well-designed programs implemented with fidelity can appreciably reduce recidivism.

The advocacy of risk reduction as a separate and legitimate goal of sentencing should not be presumed to ignore or supersede the other two legitimate goals of sentencing. Nevertheless, it may not be realistic to address all three goals of sentencing simultaneously, as the three goals may at times conflict with one another. The Sentencing Commission recognizes that the appropriate balancing and prioritization of the three goals of sentencing in any given case is a difficult and heavy task for the sentencing authority.

In 2014, the Sentencing Commission moved beyond the use of the term “evidence-based practices” and sought to establish a meaningful standard. The 2014 guidelines defined evidence-based practices as: practices that have been empirically shown to improve offender outcomes and reduce recidivism through an emphasis on meta-analysis research, control of cofounding variables, and cross-site replication of results.

The following diagram illustrates that the term “evidence-based” refers to the strength of research, not simply the existence of opinions, studies or research. Expert opinion, individual case studies, and cohort studies, while potentially promising, do not constitute evidence-based practices. A minimum of two or more randomized controlled trials or a systematic review (also known as a “meta-analysis”) constitutes evidence-based practices.

A significant addition to our understanding of evidence-based practices includes the use of validated risk/needs assessments to appropriately identify proper treatment/services and necessary level of offender control.

The 2015 guidelines incorporate the concept of evidence-based practices comprehensively and represent significant revisions to the philosophical approach, revisions to the current forms, the addition of new forms and addenda, and a references section with available digital links. As such, the 2015 guidelines are intended to provide a more comprehensive explanation of evidence-based practices, a framework for implementing them, and tools which may be useful in doing so.

It should be noted that evidence-based practices does not refer to a simple formulaic calculation, nor is it a synonym for the replacement of professional judgment and experience with research. The following diagram illustrates that evidence-based practices refers to the confluence of three key factors in the development of best policies and practices: public input and concerns; professional judgment and experience; and the best research and data available.
A number of significant events and input occurred during 2014 and 2015 which have resulted in the meaningful incorporation of those three factors into the 2105 guidelines:

In his 2014 State of the State Address, Governor Gary R. Herbert called for a “full review of our current system to develop a plan to reduce recidivism, maximize offenders’ success in becoming law abiding citizens, and provide judges with the tools they need to accomplish these goals.” Governor Herbert further noted that the “prison gates through which people re-enter society must be a permanent exit, and not just a revolving door.”

The CCJJ was tasked with developing recommendations thereafter and conducted statewide public hearings. State leaders from all branches of government also joined together to request technical assistance from the Public Safety Performance Project of The Pew Charitable Trusts and the U.S. Department of Justice as part of the Justice Reinvestment Initiative.

The 2015 guidelines additionally incorporate commentary from Utah Supreme Court Justice Matthew B. Durrant in his 2014 State of the Judiciary Address; commentary from the Utah Supreme Court in State v. LeBeau; information contained in the Utah Summit on Justice Reform held in April 2014, staffed by the National Association of Drug Court Professionals; information contained in the Smarter Sentencing Workshop held in September 2014, staffed by the National Center for State Courts and the Utah Administrative Office of the Courts; information contained in the Justice Reinvestment Report of the Commission on Criminal and Juvenile Justice in November 2014; testimony provided during the 2015 General Legislative Session; and technical assistance provided by the Crime & Justice Institute at Community Resources for Justice.

III. STATEMENT OF PURPOSE

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.

While the elimination of unwarranted disparity has long been one of the purposes of the guidelines, the Sentencing Commission recognizes the over-representation of minorities in our criminal justice system. The 2015 guidelines do not attempt to determine where, why, or whether discrimination exists. Rather, they provide an objective method of decision-making aimed at achieving the goals of sentencing through the most current research and data available. Examining the effect of such practices in the future should improve our ability to formulate policy and avoid potentially discriminatory practices.

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 assess the demand for resources based on policy changes.

It is important to note that Forms 1 through 5a are guidelines only. They are intended