INTRODUCTION

The Utah Sentencing Commission, pursuant to its statutory authority and responsibility, promulgates the following Juvenile Sentencing Guidelines. One of the primary duties of the Sentencing Commission is to develop guidelines and propose recommendations to all three branches of government concerning the sentencing and release of juvenile offenders. Utah Code Ann. § 63-25a-304. In order to assist the development of sound sentencing policy, the Commission recommends that all governmental agencies and private associations coordinate with the Commission regarding sentencing-related concerns.

The following manual is intended to instruct, serve as a resource, and to assist in the on-going use of the Juvenile Sentencing Guidelines.

BACKGROUND

In 1994, the Juvenile Justice Subcommittee of the Utah Sentencing Commission initiated review of sentencing of juvenile offenders. This Subcommittee developed a uniform system of sentencing based upon earlier intervention and more intensive supervision for chronic offenders. This system, titled the Presumptive Standards for Juvenile Sentencing, was widely endorsed but failed to gain funding during the 1996 General Legislative Session.

In 1996, a legislative task force was created to study major issues in the juvenile justice system, including the sentencing of juvenile offenders. Through a wide spread cooperative process, the Presumptive Standards evolved into the current Juvenile Sentencing Guidelines in its matrix format. A unified voice including the Sentencing Commission, juvenile courts, the Division of Youth Corrections (now the Division of Juvenile Justice Services), and Governor's Office recommended these Juvenile Sentencing Guidelines to the legislative task force, which, in turn, adopted them. The 1997 legislature funded these new guidelines by means of passing SB 25 *Sentencing Guidelines* which is codified at Utah Code Ann. § 63-25a-304 and § 78-3a-505.

PHILOSOPHY STATEMENT

Although the foundation of the guidelines is sound, they need to be revisited, monitored, and evaluated on a regular basis. One of the primary directions of the Sentencing Commission is to provide this review, and the following basic philosophies and goals direct this effort. The goal of the guidelines is to bring more objectivity to the sentencing process but to also allow the juvenile court discretion in considering aggravating and mitigating circumstances. The guidelines provide for consideration of the following factors:

- severity of the presenting offense episode;
- Utah penal statutes;
- delinquency history and risk to society;
- judicial discretion; and
- continuum of sanctions.

Sanctions should be proportionate to the severity of the presenting episode. The guidelines should reflect the culpability of the juvenile offender based on the nature of the presenting criminal episode. (The Juvenile Justice Information System defines criminal episode as all offenses occurring on the same calendar day.) In addition, the guidelines should consider the juvenile

offender's role coupled with the relevant criminal episode history. The guidelines are comprised of a scoring system which allows evaluation beyond the presenting episode. Distinctions between person, property, and public order offenses, broader categories paralleling the degrees within the criminal code, and the criminal episode history comprise the foundation of the matrix. The matrix portion of the guidelines includes a variety of dispositions to accommodate a continuum of sanctions which are probation, state supervision, community placement, and secure care.

Juvenile sentencing, among other things, should focus on the particular circumstances of each criminal episode, offender, and victims involved. Guidelines should promote uniformity while, at the same time, afford the juvenile court the flexibility to fashion a specific sentence to an individual juvenile offender. Therefore, aggravating and mitigating circumstances must be factored into the framework of the guidelines. Decision makers are strongly encouraged to abide by the guidelines. Departures from the guidelines may be based upon substantial aggravating or mitigating factors which are strongly encouraged to be articulated on the record. These guidelines are not intended to eliminate but simply structure discretion.

GUIDELINES PREMISE

The primary goal of the guidelines is to better protect society. This is accomplished through two basic approaches: 1) earlier intervention and 2) more intensive supervision. There exists broad agreement that earlier intervention may prevent or disrupt the delinquent careers of most juveniles. Across the entire selection of dispositions, from probation to secure care, the guidelines recommend early intervention. Consequently, these guidelines may have a net widening effect, i.e., more offenders will be brought into the juvenile justice system earlier. The early intervention approach is also intended to a have a long term impact. It is an effort to rehabilitate these younger offenders before they become imbedded in a delinquent lifestyle and before they penetrate the system to the point of long term out-of-home placement.

At the same time, the guidelines provide for more intensive supervision of juvenile offenders. This is particularly true for the chronic juvenile offenders. Although the Serious Youth Offender law, Utah Code Ann. § 78-3a-602, is intended to transfer many of these chronic and serious juvenile offenders into the adult system, there is still a growing need for secure placements in the juvenile system. The guidelines provide for more and earlier incapacitation of chronic and serious juvenile offenders. In short, the guidelines implement a system that will hopefully change juvenile behavior, but one that can lock-up juveniles that refuse to change.

Sentencing guidelines should communicate a general standard to all of those involved in the system: prosecutors, defense attorneys, juvenile offenders, probation officers, case managers, judges, and victims alike. All of these parties should have a general idea of a disposition in a particular case. This fosters equity in the system by promoting the practice of sentencing similarly situated offenders similarly. However, there should be no concrete expectation that a recommended sentence will be the one actually imposed. Guidelines should also assist in managing current and future resources by serving as a predictive

instrument. Guidelines should even further treatment and cognitive restructuring efforts by mapping out the probable dispositions of future criminal activity. This entire approach brings more accountability to the system.

At the same time, sentencing guidelines need to preserve judicial discretion and individualized sentencing. Although all participants involved in the system are encouraged to refer to the guidelines, only the recommending authority, such as juvenile court probation, is mandated by statute to consider them: "When preparing a dispositional report and recommendation in a delinquency action, the probation department or other agency designated by the court shall consider the juvenile sentencing guidelines . . . and any aggravating or mitigating circumstances." Utah Code Ann. § 78-3a-505(2).

As to the actual sentencing, the guidelines are entirely discretionary and do not bind the juvenile court. The guidelines include a non-exhaustive list of aggravating and mitigating factors for consideration when deviation is appropriate.

GUIDELINES AS A TOOL

Utah law provides the basis for the sentencing of juvenile 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, yet still retain the flexibility to deal with atypical cases and the dynamic nature the Juvenile Court. The guidelines also provide a means of determining and allocating required resources. Utah's guidelines are intended to maintain the desirable functions of judicial 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.

POLICY IMPLICIT IN THE GUIDELINES

These guidelines are a cooperative venture. No additional legislation is being proposed to coerce agencies to conform. The effort is to provide a mechanism for communication and improvement of key policy rather than to 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. This makes charging decisions and plea negotiations even more critical. Prosecutors should make it a policy to explain the effect of charging and plea negotiations in each individual case to the victim.

Recommending Authority

The authority that recommends the sentence to the juvenile court, ordinarily juvenile court probation, must consider the sentencing guidelines. The recommending authority should include the guidelines sentence in their pre-sentence report along with their own recommendation which may entail deviation from the guidelines. All this information should be passed on to the sentencing judge, the prosecutor, and the offender. The recommendations made to the judge should conform to the guidelines unless substantial aggravating or mitigating circumstances are documented in the recommendations.

Sentencing Judges

Sentencing judges may require that the guidelines forms be attached to all recommendations. Judges are encouraged to consider the sentencing guidelines when rendering dispositions in delinquency matters. When the disposition is different than what the matrix calls for due to substantial mitigating or aggravating circumstances, these circumstances should be stated in open court and be included on the record.

JUVENILE SENTENCING GUIDELINES INSTRUCTIONS & DEFINITIONS

The guidelines are comprised of three fundamental parts: 1) the criminal episode history assessment, 2) the matrix with its continuum of dispositions, and 3) a list of aggravating and mitigating factors. Observation and assessment is also to be considered in the guidelines as explained below.

All offenses used in the guidelines are convictions grouped into episodes. (The Juvenile Justice Information System defines a criminal episode as all offenses occurring on the same calendar day.) Non- judicial closures or non-petitioned episodes as well as cases dismissed or found not true by the court are not counted toward the guidelines.

CRIMINAL HISTORY ASSESSMENT

The Criminal History Assessment is located at the top of Form 1. It is divided into five levels of severity, rows I - V. This assessment determines the vertical axis (rows) located on the matrix. Ordinarily, when evaluating the criminal episode history, the recommending officer should not include the most severe presenting episode because the presenting episode is counted separately on the horizontal axis of the matrix. To count the presenting episode in the history would be double counting which is not intended by the guidelines. The only instance when a presenting criminal episode is to be counted in the history is a felony offense where the offender had previously been in youth correction's community placement. As stated in Level V, described in detail below, *any felony after community placement, including the presenting offense*, should be counted in the history.

If multiple episodes are being adjudicated at the same hearing, they should be adjudicated in order from least severe to most severe. All except the last episode should be added to the offender's offense history. The last episode should be treated as the presenting episode offense.

Probation violations, contempt, and non-judicial actions are to be considered as aggravating factors within the guidelines but are not to be considered as part of the criminal history assessment.

The five levels of criminal episode history severity are as follows:

Level I - 0 to 3 Misdemeanor Episodes *or* 0 Felony Episodes
Level II - 4 to 5 Misdemeanor Episodes *or* 1 Felony Episode
Level III - 6 to 7 Misdemeanor Episodes *or* 2 to 3 Felony Episodes
Level IV - 8 or More Misdemeanor Episodes *or* 4 Felony Episodes *or* 1 Person Felony Episode *or* 1 Firearm Felony Episode
Level V - 5 or More Felony Episodes *or* 2 or More Person Felony Episodes *or* 2 or More Firearm Felony Episodes *or* Any Felony After Community Placement (Including Presenting Offense)

DISPOSITION ASSESSMENT

The disposition assessment is the matrix located on the bottom of Form 1. It is comprised of 50 cells within varying shaded areas of dispositions, e.g., probation or secure facility. The Criminal Episode History (vertical axis) is explained above.

Presenting Episode Severity

The Presenting Episode Severity determines which column on the matrix should be used. The Presenting Episode Severity is based on the severity of the most serious offense within the presenting episode. The Juvenile Sentencing Guideline Notice (a sample of which is included as Addendum A) identifies the appropriate column. Addendum B explains how to manually determine the Presenting Episode Severity once the most serious offense within the episode has been identified.

All but the most serious presenting criminal episode should be included as part of the criminal episode history. Probation violations and contempt are to be considered as aggravating factors but not to be considered as part of the presenting episode severity analysis.

POSSIBLE DISPOSITIONS

After determining the Level of Criminal Episode History and the Presenting Criminal Episode Severity, the recommending officer should consult the matrix to determine the recommended sentence for a particular offender. The cell where the presenting episode severity and the criminal episode history intersect determines the recommended disposition.

The following describes the available graduated sanctions under the guidelines in order of intensity.

Probation

Under the guidelines, the juvenile court is fundamentally changing probation to be more effective. In the future, each probation officer will carry smaller case loads, yielding more interactions between juvenile offenders and field probation agents. The probation population, in general, will have fewer offenses per offender than in the past and the offenses will be less serious. All of this is an attempt to turn the juvenile offender around before he or she graduates to more serious offenses. As such, probation is key to the earlier intervention premise of the guidelines. The probation agreement will incorporate the balanced approach of restorative justice which focuses on community protection, accountability, and competency development.

To realize the benefits of probation, the following statewide model is provided: probation case loads should not exceed 15 probationers per officer and should last approximately three months; in cases of probation violations, the ratio should not exceed 10 probationers per officer and should last for six months. Again, the probation component of the new guidelines is essential to their success. It is therefore strongly recommended that the various juvenile court districts follow this model.

State Supervision

The state supervision category is a sentencing option on the guidelines that falls between probation and community placement on the continuum of available dispositions. The overriding philosophy of this option is also consistent with the three areas of the balanced approach of restorative justice which are community protection, accountability, and competency development. State supervision is designed to deliver an intensified level of intervention for juveniles who have reached a delinquency level defined by the guidelines and are not yet ready for long term removal from their homes.

State supervision resources should be focused on juveniles who have not penetrated the juvenile justice system beyond probation. Juveniles who have been placed out of their home may qualify for state supervision based on their delinquent record, but should be served through out-of-home placement resources. Those not yet reaching this out-of-home sanction level should also be served through current resources. State supervision was created to provide more intervention while a juvenile is in their own home and to reduce the number of juveniles being placed in the long term custody of the state. The responsibility for state supervision is divided between the juvenile court, Juvenile Justice Services, and to a much smaller extent, the Division of Child and Family Services.

The primary interventions of state supervision will be provided in the juvenile's own home. A smaller portion of this option's population will be placed in an out-of-home placement of limited duration, generally less than 90 days. The majority of the juveniles receiving state supervision will be served by the juvenile court and should first be on probation. Prior to out-of-home state supervision placement, a juvenile should generally receive in-home state supervision through probation. It is anticipated that the juvenile court is the case management agency, whether the placements are in-home or out-of-home. The assigned officer will be the identified worker to coordinate the interventions of state supervision.

Each juvenile receiving this sanction will have a written "correction plan" outlining specific measurable outcomes in each of the three areas of the balanced approach. This plan will be under the direction of the juvenile court while the juvenile is in their own home and modified as appropriate for an out-of-home placement. The modifications will be made in consultation with the agency providing the out-of-home placement. The optimum goal is to coordinate both in-home and out-of-home placements in order to maximize the effects of each.

It is important to note that any juvenile offender sent to Juvenile Justice Services under a state supervision placement, must fall within the statutory age definition of a "youth offender." "'Youth offender' means a person 12 years of age or older and who has not reached 21 years of age." Utah Code Ann. § 62A-7-101.

If a juvenile is currently under community placement supervision or in secure care and commits an offense that would put him or her in state supervision, the placement should stay in the more intensive option. State supervision includes the various wrap-around services and programs. These include day/night reporting centers, electronic monitoring, work camps, and treatment programs.

Community Placement

Community placement involves a continuum of services which are both residential and nonresidential. The appropriate specific placement within this option depends upon the juvenile offender's particular needs balanced with the necessary level of supervision to protect the public. Although it also involves a continuum of services, community placement is distinct from state supervision. Private providers play a large role in community placement and various alternatives include proctor homes, wilderness programs, sex offender treatment group homes, and substance abuse treatment.

Secure Facility

Secure facility placement is the most intrusive sentencing option under the guidelines and should be reserved for the most dangerous or chronic offenders that remain in the juvenile justice system. The guidelines are designed to facilitate this design. These placements are generally long-term and involve behavioral and cognitive restructuring and an emphasis on victim reparation through restitution programming. The Youth Parole Authority, which decides the length of placement in secure facilities, has adopted release guidelines for the length of secure confinement.

Other Sanction

The section shaded "other sanction" includes fines, restitution, and community service and is not necessarily a part of the guidelines. However, these sentences may be imposed in combination to other guidelines dispositions.

OBSERVATION AND ASSESSMENT

Observation and assessment is intended as a diagnostic tool. The guidelines are intended to reemphasize the appropriate role of observation and assessment in assisting the juvenile court in finding the appropriate disposition. Observation and assessment is not intended to be used as a disposition in and of itself nor simply for shock incarceration or time-out for juvenile offenders.

SHORT TERM DETENTION

Juveniles may be committed to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction. This option, although not identified within the context of the guidelines, may be used as a disposition by the juvenile court for any delinquent act, regardless of the criminal history.

AGGRAVATING & MITIGATING FACTORS

As mentioned, it is critical that the guidelines preserve judicial discretion and individualized sentencing. 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. Reasons should always be specified when the guidelines disposition is not recommended. These listed factors are suggestions only, by no means do they constitute all of the justifications for departures, upward or downward. Often, there will be a combination of factors involved in a particular case that justify a departure from the recommended disposition.

OTHER

Juveniles transferred to the adult system either through certification or the Serious Youth Offender process should not be considered within the context of the guidelines, neither should juveniles convicted of aggravated murder or murder. Infractions and status offenses are not within the scope of the guidelines, neither are moving and non-moving traffic violations unless they are drug related.

ACTION RESEARCH APPROACH

The guidelines are not intended to set policy in concrete. The philosophy, functioning, and problems of the juvenile justice system fluctuate constantly. The guidelines should be adaptable to change, and should even encourage such change. Certainly the best policy tools provide feedback and are self-correcting. This entire approach is one of the ongoing goals of the Sentencing Commission.