

Plea Bargaining and Sentencing

or

What are we doing here, anyway?

2016 Basic Prosecutor Course

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I) Plea Bargaining

- a) The prosecutor's role – not to win or stick it to the defendant, but to be a minister of justice
 - i) Paper files, open files
 - ii) Stay cool
 - iii) Trust but verify

- b) Why do we make offers?

- c) What do you want out of your case?
 - i) Wake up call
 - ii) Future enhancement
 - iii) Treatment (DV, DUI)
 - iv) Protective order / stalking injunction
 - v) Community service
 - vi) Fine
 - vii) Restitution (complete and court ordered, *see State v. Laycock*, 2009 UT 53)
 - viii) Jail/Prison
 - ix) Other considerations?

- d) Fashioning your offer
 - i) Defendant's history (DL, Utah, III)
 - ii) Evidentiary concerns
 - iii) Suppression issues
 - iv) Enhancement
 - v) Fundamental fairness
 - (1) The obstreperous defense attorney
 - (2) Special treatment? Duke skier case
 - vi) So what do you do?
 - (1) Diversion?? Nobody wants to eat a rotten apple
 - (2) PIA, § 77-2a-1 et seq.
 - (a) Duration, § 77-2a-2(5)

- (i) 18 months if to misdemeanor
 - (ii) 36 months if for any class of felony
- (b) Never for DUI's or any sex offenses involving a victim under age 14 (§ 77-2a-3(7), (8))
- (c) Can judge modify? No, only accept or reject
- (d) Ends with dismissal **or** entry of conviction for reduced degree of offense (§ 77-2a-3(2))
- (3) Reduction, § 76-3-402; 1 or 2 step (reduction v. amending down, considerations)
- (4) Plead as charged
- (5) Trial
 - (a) Don't be afraid to try cases
 - (b) New LDA's/defense attorneys
 - (i) Not always the most reasonable, want to try everything
 - (ii) Pick your strongest cases and make them go to trial
- e) Write. It. Down.
- f) Special Considerations
 - i) Office policy/The Boss/Political Landmines (B list actor case)
 - ii) Victims' rights – what does your victim(s) want out of your case?? See (l)(c) above.
 - iii) Pro se Defendants
 - iv) Your credibility and reputation
 - (1) Within your office / other prosecutors
 - (2) With the defense bar
 - (3) With the bench – judges talk!
- g) Ethical, Other Considerations
 - i) Tell the truth
 - ii) The Supreme Court Speaks
 - (1) *Missouri v. Frye* (566 U. S. ____ (2012), 132 S.Ct. 1399) – Defense counsel failed to convey plea offer to defendant, offer lapsed, the defendant pleaded guilty but on more severe terms. “[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” The failure to do so may give rise to an ineffective assistance of counsel claim. To show prejudice from ineffective assistance, “defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law.” Criminal defendant has the right to effective counsel during the plea process.

(2) *Lafler v. Cooper* (566 U. S. ____ (2012), 132 S.Ct. 1376) – Favorable plea offer was conveyed by defense counsel but rejected on counsel’s advice; trial was held and the defendant was sentenced more harshly than would have been under plea offer. This was ineffective assistance. “A defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that in fact were imposed.”

(3) What about talking with pro se defendants?

(4) Concerns offers aren’t conveyed? The record(ing) is your friend.

h) Your colleagues are a resource, use them!

i) Bargaining styles

i) It is what it is

ii) Give and take

iii) Find what works for you

II) Sentencing

- a) The Matrix
- b) DUI Matrix
- c) Statutory considerations, mandatory minimums
- d) Jail as a condition of probation
- e) Suspended jail time, suspended fines
- f) Restitution – complete and court ordered (§ 77-38a-1 et seq.)
- g) Victims’ Rights (Bill of Rights, § 77-37-3; Rights of Crime Victims, § 77-38-1 et seq.)
- h) Rules of Evidence apply at sentencing? No (URE 1101(c)(3))
- i) Come full circle to ... the prosecutor’s role → minister of justice, in *Berger v. U.S.*, 295 U.S. 78, 88 (1935)(emphasis added), Justice Sutherland wrote:

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and **whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.** As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-indeed, he should do so. **But, while he may strike hard blows, he is not at liberty to strike foul ones.** It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

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 ADULT CONVICTIONS)

0 NONE
2 ONE
4 TWO
6 THREE
8 FOUR +

PRIOR PERSON CRIME CONVICTIONS
(PRIOR ADULT OR JUVENILE CONVICTION)

0 NONE
2 PERSON CRIME
4 PERSON CRIME W/INJURY

PRIOR CLASS A MISDEMEANOR CONVICTIONS
(SEPARATE ADULT CONVICTIONS)

0 NONE
1 ONE OR TWO
2 THREE - FIVE
3 SIX +

PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS (OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT) (THREE CLASS A MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY)

0 NONE
1 ONE
2 TWO - FOUR
3 FIVE +

SUPERVISION HISTORY
(ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT COUNT PRETRIAL OR COURT SUPERV.)

-1 SUCCESSFUL COMPL.
0 NO PRIOR SUPERV.
2 PRIOR REVOCATION
3 CURRENT OFFENSE ON SUPERV.

TOTAL SCORE: _____

OFFENDER'S NAME:	SCORER'S NAME:	DATE SCORED:	CRIMINAL HISTORY ROW	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	CRIME CATEGORY:	TIME:	V	16+
			IV	12 – 15
			III	8 – 11
			II	4 – 7
		TOTAL:	I	0 - 3

CRIME CATEGORY

	1 st Degree Murder	1 st Degree Death	2 nd Degree Death	1 st Degree Person	3 rd Degree Death	1 st Degree Other	2 nd Degree Person	3 rd Degree Person	2 nd Degree Other	2 nd Degree Poss.	3 rd Degree Other	3 rd Degree Poss.
	A	B	C	D	E	F	G	H	I	J	K	L
V	24 YRS	10 YRS	*	10 YRS	48 MOS	84 MOS	54 MOS	32 MOS	26 MOS	16 MOS	16 MOS	14 MOS
IV	12 YRS	9 YRS	*	9 YRS	42 MOS	78 MOS	42 MOS	26 MOS	20 MOS	14 MOS	14 MOS	12 MOS
III	8 YRS	8 YRS	*	8 YRS	36 MOS	72 MOS	30 MOS	20 MOS	16 MOS	12 MOS	8 MOS	8 MOS
II	6 YRS	7 YRS	*	7 YRS	24 MOS	66 MOS	24 MOS	16 MOS	14 MOS	10 MOS	6 MOS	6 MOS
I	20 YRS	6 YRS	*	6 YRS	20 MOS	60 MOS	18 MOS	14 MOS	12 MOS	8 MOS	5 MOS	4 MOS

CRIMINAL HISTORY

MANDATORY IMPRISONMENT

IMPRISONMENT

INTERMEDIATE SANCTIONS

PRESUMPTIVE PROBATION

*The statutory range is 1-15 years. The Board of Pardons 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 is not helpful in determining length of stay.

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.

FORM 1a – ATTEMPTED AGG. MURDER WITH SERIOUS BODILY INJURY

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 ADULT CONVICTIONS)

0 NONE
2 ONE
4 TWO
6 THREE
8 FOUR+

PRIOR PERSON CRIME CONVICTIONS
(PRIOR ADULT OR JUVENILE CONVICTION)

0 NONE
2 PERSON CRIME
4 PRSON CRIME W/INJURY

PRIOR CLASS A MISDEMEANOR CONVICTIONS
(SEPARATE ADULT CONVICTIONS)

0 NONE
1 ONE OR TWO
2 THREE - FIVE
3 SIX +

PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS (OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT) (THREE CLASS A MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY)

0 NONE
1 ONE
2 TWO - FOUR
3 FIVE +

SUPERVISION HISTORY
(ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT COUNT PRETRIAL OR COURT SUPERV.)

-1 SUCCESSFUL COMPL.
0 NO PRIOR SUPERV.
2 PRIOR REVOCATION
3 CURRENT OFFENSE ON SUPERV.

TOTAL SCORE: _____

OFFENDER'S NAME:	SCORER'S NAME:	DATE SCORED:	CRIMINAL HISTORY ROW	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	CRIME CATEGORY:	TIME:	V	16+
			IV	12 – 15
			III	8 – 11
			II	4 – 7
			I	0 - 3
		TOTAL:		

	15 YRS TO LIFE A	10 YRS TO LIFE B	6 YRS TO LIFE C
V	21 YRS	14 YRS	100 MOS
IV	20 YRS	13 YRS	95 MOS
III	18 YRS	12 YRS	90 MOS
II	17 YRS	138 MOS	85 MOS
I	16 YRS	11 YRS	80 MOS

IMPRISONMENT

FORM 2 - AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 4 also for Sex Offenses with 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. Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.)
- ____ 2. Offender presents a serious threat of violent behavior.
- ____ 3. Victim was particularly vulnerable.
- ____ 4. Injury to person or property loss was unusually extensive.
- ____ 5. Offense was characterized by extreme cruelty or depravity.
- ____ 6. There were multiple charges or victims.
- ____ 7. Offender's attitude is not conducive to supervision in a less restrictive setting.
- ____ 8. Offender continued criminal activity subsequent to arrest.
- ____ 9. Sex Offenses: Correction's validated assessment tools classify as a high risk offender.
- ____ 10. Offender was in position of authority over victim(s).
- ____ 11. 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.
- ____ 12. Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2))
- ____ 13. 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)
- ____ 14. Violence committed in the presence of a child.
- ____ 15. 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. Validated assessment classifies offender as low risk to reoffend.
- ____ 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: _____

FORM 3 – SEX & KIDNAP OFFENDER 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.

- | | | | |
|---|--|---|--|
| PRIOR FELONY CONVICTIONS
(SEPARATE ADULT CONVICTIONS) | 0 NONE
2 ONE
4 TWO
6 THREE
8 FOUR+ | PRIOR PERSON CRIME CONVICTIONS
(PRIOR ADULT OR JUVENILE CONVICTION) | 0 NONE
2 PERSON CRIME
4 PERSON CRIME
W/INJURY |
| PRIOR CLASS A MISDEMEANOR CONVICTIONS
(SEPARATE ADULT CONVICTIONS) | 0 NONE
1 ONE OR TWO
2 THREE - FIVE
3 SIX + | PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS (OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT) (THREE CLASS A MISDEMEANOR ADJUDICATIONS EQUAL ONE FELONY) | 0 NONE
1 ONE
2 TWO - FOUR
3 FIVE + |
| SUPRVISION HISTORY
(ADULT OR JUVENILE)(SUCCESSFUL INCLUDES ALL FORMS OF PROBATION; OTHERWISE, DO NOT INCLUDE PRETRIAL OR COURT SUPERV.) | -1 SUCCESSFUL COMPL.
0 NO PRIOR SUPERV.
2 PRIOR REVOCATION
3 CURRENT OFFENSE ON SUPERV. | NUMBER OF PRIOR SEX/KIDNAP VICTIMS
(EXCLUDING PRESENT VICTIM) | 0 NO PRIOR VICTIMS
3 ONE PRIOR
4 TWO + |

TOTAL SCORE: _____

OFFENDER'S NAME:	SCORER'S NAME:	DATE SCORED:	CRIMINAL HISTORY ROW	
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	CRIME CATEGORY:	TIME:	III	7+
			II	4 - 6
			I	0 - 3
		TOTAL:		

CRIME CATEGORY

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

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.

FORM 4 - AGGRAVATING & MITIGATING CIRCUMSTANCES FOR SEX 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) for sex offenses represented by columns A, B, and C on Form 3 – Sex & Kidnap Offender Matrix. The court shall order the term of 15 years to life, for offenders convicted of one of these offenses unless mitigating circumstances justify 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, subject to applicable statutes and relevant case law. The weight given to each factor by the sentencing authority will vary in each case. The presentence investigator should note any aggravating or mitigating circumstance that merits consideration by the court by entering the page number of the presentence report where the court can find supporting information.

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

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 offense was characterized by extreme cruelty or depravity.
- ____ 3. The victim was unusually vulnerable.
- ____ 4. Offender has previously failed to complete treatment or has completed treatment and re-offended.
- ____ 5. The defendant exhibited grooming, stalking or enticing behaviors.
- ____ 6. Other (Specify) _____

Mitigating Circumstances

- ____ 1. The offender was exceptionally cooperative with law enforcement; i.e. self-surrender or confession.
- ____ 2. Incest offender has strong, supportive family relationships.
- ____ 3. Offender is a good candidate for an evidence-based treatment program. Substance abuse treatment may be appropriate if the offense was specifically substance related.
- ____ 4. Developmental disabilities of the offender may be considered in mitigation if highly structured alternatives can be utilized to control the offender's criminal behavior.
- ____ 5. Other (Specify) _____

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

Rev. 10/2015

FORM 5 – JAIL AS A CONDITION OF PROBATION MATRICES

Numbers in **unshaded cells** are presumptive probation sentences, meaning jail time should NOT necessarily be recommended to the court by the supervising agency. Alternative sanctions and/or non-incarceration sanctions are encouraged in these cells.

Lighter shaded cells are indicative of intermediate sanctions / intensive supervision, which may include increased monitoring or supervision, electronic monitoring, referral to treatment resource centers, participation in residential programming, special conditions of probation, etc.

The **upper number in each cell** is the maximum incarceration period of jail time which should be imposed by the court at the time of sentencing. The mid-point in each cell is generally recommended for the supervising agency to begin the analysis with aggravating/mitigating factors to be considered in addition to validated assessment scores and the impact of incarceration upon risk to reoffend.

These notations apply to both forms 5 and 5a.

GENERAL MATRIX

(To be used with Form 1)

	2 nd Death	1 st Person	3 rd Death	1 st Other	2 nd Person	3 rd Person	2 nd Other	2 nd Poss	3 rd Other	3 rd Poss
V	365	365	365	365	365	300	300	300	270	150
IV	365	365	320	320	320	300	300	270	210	120
III	365	300	270	270	270	180	180	180	150	0-90
II	365	270	240	240	240	150	0-120	0-120	0-90	0-60
I	365	240	210	210	210	120	0-90	0-60	0-60	0-30

JAIL DAYS

INTERMEDIATE SANCTIONS

PRESUMPTIVE PROBATION

SEX & KIDNAP OFFENSE MATRIX

(To be used with Form 3)

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

FORM 5A - MISDEMEANOR MATRIX

	Class A Person Crime	Class B Person Crime*	Class A Other	Class B DV Other*	Class A POCS	Class B*	Class C and Below
V	0-210 JAIL DAYS	0-180	0-150	0-120	0-90	0-60	
IV	0-180	0-150 INTERMEDIATE	0-120	0-90	0-75	0-45	
III	0-150	0-120	0-90	0-75	0-45	0-30	PRESUMPTIVE PROBATION/ALT. SANCT.
II	0-120	0-90	0-60	0-45	0-30	0-15	
I	0-90	0-60	0-30	0-30	0-15	0-15	

10/2015

* "Class B Person Crime" includes domestic violence offenses involving spouses and/or intimate partners; "Class B DV Other" includes domestic violence offenses involving other cohabitants, property offenses, and other non-person crimes. "Class B" does not include DUI offenses. See DUI Matrix.

Presumptive Probation / Alternative Sanctions

The Sentencing Commission recommends that the court impose the fine appropriate for the most serious offense for which the defendant is convicted. If there are multiple counts, and the court believes a more serious financial penalty is appropriate, the Commission recommends the court impose at most 10% of the recommended fines for each additional count. The Commission does not recommend the imposition of any suspended amount of fine, as violations should be addressed with behavior modification sanctions as identified in Form 10, not financial ones. The Commission encourages courts to allow defendants credits or offsets against ordered fines for completed counseling and other achieved goals (UA's, etc.).

Generally, the Commission recommends that misdemeanor courts faced with sentencing a defendant who is already being supervised for a more serious offense (whether that be recently sentenced, or an earlier grant of probation) consider allowing that grant of probation to provide the programming. However, given the specific safety concerns for identifiable victim(s) in person crimes such as domestic violence offenses, the Commission recognizes the appropriateness of probation terms tailored by each court to maximize victim safety. The protection of victim(s) in such cases is of prime importance. Lethality assessments are recommended in domestic violence offenses if available. Consider recommendations for sentencing protective orders, but recognize that protective orders issued by civil courts are broader and offer permanent protections.

The jail days indicated should not be considered "mandatory minimums" and should not be presumed to ensure the safety of a particular victim. The Commission recognizes that courts must weigh many factors in each case, balancing the core principles of sentencing as outlined previously. Courts should recognize the statutory presumption for counseling in domestic violence cases, recognizing that current modalities of treatment are directed primarily at intimate partners. As more differentiated treatments become readily available and validated, the statutory requirements and guideline recommendations should be updated accordingly.

See Form 10 for a non-exhaustive list of Non-Incarceration Sanctions currently anticipated within the behavior modification context.

UTAH DUI SENTENCING MATRIX

(Current as of May 12, 2015)

Court-Ordered Sentencing	MISDEMEANOR DUI		FELONY DUI
	FIRST OFFENSE	SECOND OFFENSE WITHIN 10 YEARS	
CLASSIFICATION (§41-6a-503)	CLASS B MISDEMEANOR CLASS A MISDEMEANOR: <ul style="list-style-type: none"> if bodily injury¹ if passenger is under 16 if passenger is under 18 and driver is 21 or older 	CLASS B MISDEMEANOR CLASS A MISDEMEANOR: <ul style="list-style-type: none"> if bodily injury¹ if passenger under 16 if passenger is under 18 and driver is 21 or older 	THIRD DEGREE FELONY <ul style="list-style-type: none"> if third or subsequent offense within 10 years if serious bodily injury¹ if any prior felony DUI conviction or automobile homicide¹ conviction
Jail (§41-6a-505)	SHALL order: 48 consecutive hours OR 48 hours compensatory service OR 48 hours electronic home confinement ²	SHALL order: 240 consecutive hours OR 240 hours compensatory service OR 240 hours electronic home confinement ²	SHALL order: 0-5 year prison term OR 1,500 hours jail (62.5 days) OR 1,500 hours electronic home confinement ²
Fine, Surcharge, and Court Security Fee (§41-6a-505) (§51-9-401)	SHALL order: \$700 minimum fine plus a \$630 surcharge plus a \$40 court security fee	SHALL order: \$800 minimum fine plus a \$720 surcharge plus a \$40 court security fee	SHALL order: \$1,500 minimum fine plus a \$1,350 surcharge plus a \$40 court security fee, unless a 0-5 prison term is imposed
Screening, Assessment, Educational Series, Treatment (§41-6a-505)	SHALL order: <ul style="list-style-type: none"> Screening Assessment (if found appropriate by screening) Educational series, unless treatment is ordered MAY order: <ul style="list-style-type: none"> Treatment 	SHALL order: <ul style="list-style-type: none"> Screening Assessment (if found appropriate by screening) Educational series, unless treatment is ordered MAY order: <ul style="list-style-type: none"> Treatment 	SHALL order: <ul style="list-style-type: none"> Screening Assessment Treatment as appropriate, unless 0-5 prison term is imposed
Probation ³ (§41-6a-507)	MAY order supervised probation	SHALL order supervised probation	SHALL order supervised probation if 0-5 prison term is not imposed
Ignition Interlock ⁴ (§41-6a-518) (§41-6a-530)	MAY order: <ul style="list-style-type: none"> Ignition interlock SHALL order: <ul style="list-style-type: none"> Interlock if under 21 Interlock for an ARD⁵ violation OR describe on the record why such order not appropriate 	SHALL order: <ul style="list-style-type: none"> Ignition interlock SHALL order: <ul style="list-style-type: none"> Interlock if under 21 Interlock for an ARD⁵ violation OR describe on the record why such order not appropriate 	SHALL order: <ul style="list-style-type: none"> Ignition interlock SHALL order: <ul style="list-style-type: none"> Interlock if under 21 Interlock for an ARD⁵ violation OR describe on the record why such order not appropriate
High BAC (.16 or higher) (§41-6a-505)	SHALL order: <ul style="list-style-type: none"> Supervised probation³ Treatment and interlock⁴ and/or ankle attached continuous transdermal alcohol monitoring device and/or electronic home confinement² OR describe on the record why such order(s) not appropriate 	SHALL order: <ul style="list-style-type: none"> Supervised probation³ Treatment and interlock⁴ and/or ankle attached continuous transdermal alcohol monitoring device and/or electronic home confinement² OR describe on the record why such order(s) not appropriate 	SHALL order: <ul style="list-style-type: none"> Supervised probation³ if 0-5 prison term is not imposed Treatment and interlock⁴ and/or ankle attached continuous transdermal alcohol monitoring device and/or electronic home confinement² OR describe on the record why such order(s) not appropriate
Driver License Suspension (§41-6a-509)	Court MAY order additional 90 days, 120 days, 180 days, one year or 2 years	Court MAY order additional 90 days, 120 days, 180 days, one year or 2 years	Court MAY order additional 90 days, 120 days, 180 days, one year or 2 years

¹A person is guilty of a separate offense for each victim suffering bodily injury, serious bodily injury or death, whether or not the injuries arise from the same episode of driving.

²See §41-6a-506 for electronic home confinement provisions.

³Supervised probation is also required for all violations of §41-6a-517 (driving with any measurable controlled substance or metabolite in the body).

⁴Adoption of the ignition interlock restricted driver (IRD) provision (§41-6a-518.2) does not change the obligation of judges to impose interlock as a condition of probation.

⁵Alcohol restricted driver

The following statutory provisions also apply to DUI offenders, although they do not require a court order. Failure to comply carries additional criminal sanctions.

Statutory Provisions	FIRST OFFENSE	SECOND OR SUBSEQUENT OFFENSES WITHIN 10 YEARS
Driver License Denial, Suspension, or Revocation		
Driving Under the Influence/ DUI Conviction (§41-6a-509)	<p>If 21 or older: 120 days</p> <p>If 19-20: Longer of one year or until 21st birthday</p> <p>If under 19: Until 21st birthday</p> <p>Early License Reinstatement for Drivers Under 21: Court may order shortening of the suspension period after 6 months if the person completes a screening; completes an assessment if appropriate; completes an education series or substance abuse treatment, as deemed appropriate by the court; has not been convicted of a violation of a motor vehicle law during the suspension period; has complied with all terms of probation or all court orders if not ordered to probation; and provides a sworn statement to the court that the person has not unlawfully consumed alcohol during the suspension period.</p>	<p>If 21 or older: 2 years</p> <p>If 19-20: Longer of 2 years or until 21st birthday</p> <p>If under 19: Until 21st birthday</p>
Driving with Controlled Substance/ Metabolite in Body Conviction (§41-6a-517)	<p>If 21 or older: 120 days</p> <p>If 19-20: Longer of one year or until 21st birthday</p> <p>If under 19: Until 21st birthday</p> <p>Early License Reinstatement for Drivers Under 21: Same as above, but sworn statement must include the person has not consumed a controlled substance not prescribed by a practitioner during the suspension period.</p>	<p>If 21 or older: 2 years</p> <p>If 19-20: Longer of two years or until 21st birthday</p> <p>If under 19: Until 21st birthday</p>
Refusal of Chemical Test (§41-6a-521)	<p>If 21 or older: 18 months</p> <p>If under 21: Longer of 2 years or until 21st birthday</p>	<p>If 21 or older: 36 months</p> <p>If under 21: Longer of 36 months or until 21st birthday</p>
Per se Arrest (§53-3-223) <small>≥ .08 BAC, impaired to degree unsafe to drive, operating with metabolite of drug in system</small>	<p>If 21 or older: 120 days</p> <p>If under 21: 6 months</p>	<p>If 21 or older: 2 years</p> <p>If under 21: Longer of 2 years or until 21st birthday</p>
Not A Drop (§53-3-231) <small>A person under 21 may not operate a vehicle or motorboat with detectable alcohol in body</small>	<p>If under 21: Until successful completion of substance abuse program recommendation, but not less than 6 months</p>	<p>If under 21: Until successful completion of substance abuse program recommendation, and the longer of 2 years or until 21st birthday</p>
Failure to Install or Removal of Ignition Interlock Device (§53-3-1007)	<p>An individual who is an interlock restricted driver (IRD) shall have their driving privilege suspended until they have had an ignition interlock device installed in their vehicle. If the interlock device is removed prior to the ending date of the interlock restriction period, the driver license shall be re-suspended until an ignition interlock device is re-installed. This suspension may be imposed in addition to other license sanctions as listed above.</p>	
Other Sanctions		
IRD – Interlock Restricted Driver (§41-6a-518.2) <small>An "interlock restricted driver" may not operate a motor vehicle without an ignition interlock system.</small>	<ul style="list-style-type: none"> • 18 months IRD for 1st DUI (§41-6a-502) if over 21 • 3 years IRD for 1st Driving Without Ignition Interlock Device if IRD (§41-6a-518.2), Refusal to Submit to Chemical Test (§41-6a-521), or 1st DUI (§41-6a-502) if under 21 • 3 years IRD for a combination of two of the following within 10 years: DUI (§41-6a-502), Refusal to Submit to Chemical Test (§41-6a-521), Controlled Substance/Metabolite (§41-6a-517), Alcohol-Related Reckless (§41-6a-512 – <i>only violations prior to July 1, 2008</i>), Impaired Driving (§41-6a-502.5), Driving with Controlled Substance/Bodily Injury or Death (§58-37-8(2)(g)), or Automobile Homicide (§76-5-207) • 6 years IRD for Felony DUI (§41-6a-502) • 10 years IRD for Automobile Homicide (§76-5-207) <p><small>Note: Abeyances count as convictions, as defined in §41-6a-501; if all offenses are for Controlled Substance/Metabolite convictions, IRD does not apply</small></p>	
ARD – Alcohol Restricted Driver (§41-6a-529) <small>An "alcohol restricted driver" may not operate or be in actual physical control of a vehicle with any measurable or detectable amount of alcohol in the person's body.</small>	<ul style="list-style-type: none"> • 2 years ARD for 1st DUI (§41-6a-502), Alcohol-Related Reckless (<i>only violations prior to July 1, 2008</i>), or Impaired Driving (§41-6a-502.5) • 2 years ARD for any Per se offense (§53-3-223) • 3 years ARD for any driving without an IID if an IRD (§41-6a-518.2) or driving with alcohol in body if an ARD (§41-6a-530) offense • 5 years ARD for 1st Refusal to Submit to Test (§41-6a-521) or Class A misdemeanor DUI (§41-6a-502) • 10 years ARD for 2nd offense, if 2nd offense is DUI (§41-6a-502), Alcohol-Related Reckless (<i>only violations prior to July 1, 2008</i>), Impaired Driving (§41-6a-502.5), or Refusal to Submit to Chemical Test (§41-6a-521); and 1st offense is DUI (§41-6a-502), Alcohol-Related Reckless (<i>only violations prior to July 1, 2008</i>), or Impaired Driving (§41-6a-502.5) • Lifetime ARD for any Felony DUI (§41-6a-502) or Automobile Homicide (§76-5-207) <p><small>Note: Abeyances count as convictions as stated in §53-3-229, excluding ARD and IRD abeyances; if Per se is drug only or metabolite, ARD does not apply.</small></p>	