

OHIO PAROLE BOARD

GUIDELINES MANUAL

Third Edition

July 1, 2007

Ohio Department of Rehabilitation and Correction

Terry J. Collins, Director

Preface

The purpose of the Ohio Parole Board revised Guidelines Manual is to assist the Parole Board in fulfilling its primary statutory duty to determine whether “there is reasonable ground to believe that... “paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society.”[O.R.C. Section 2967.03] The revised guidelines are newly structured to promote consistent, fair, and equitable decisions in determining the suitability of release of inmates back to the community, without removing the opportunity for individual case consideration.

The revised Guidelines Manual maintains the use of a two-dimensional matrix chart, but only as the structured starting point in the decision making process, not the primary measure in determining release suitability. The offense category is now determined per the offense(s) of conviction only, and only for those convictions wherein an indefinite sentence was imposed. Many offense categories were removed, as they applied to offenses that did not bear indefinite sentences, or which have become extinct as controlling sentences for those inmates subject to release at the discretion of the Parole Board. The four risk of recidivism categories have not been changed. The guideline ranges have been changed to acknowledge statutory eligibility for release upon service of the minimum sentence as indicated by the term “min” at the bottom of each range.

The guideline ranges are a suggestion of time to be served for the typical or average cases and presume good institutional behavior. However, the ranges should not be interpreted as mandating release within the range. The guideline ranges do not usurp the Parole Board’s discretion and authority to release an inmate at any time after service of the minimum sentence prior to the expiration of the maximum sentence. The applicable guideline range is meant solely to suggest an initial threshold (a suggested starting point of analysis) toward making a full and fair assessment of all relevant factors, indicators and other considerations in determining the inmate’s suitability for release.

Additions to the Guidelines Manual include review and assessment of the applicable Mandatory Considerations as listed in Administrative Rule 5120:1-1-07. Most notable is the requirement that the Board give consideration to Senate Bill 2 (SB2) sentencing ranges, when applicable. The Board endeavors to give every possible and appropriate consideration to current sentencing law equivalency, as best as such equivalency can be determined. However, current sentencing law ranges are not a sole determinant in assessing the suitability of release of any inmate.

Beyond the Mandatory Considerations cited in the Administrative Rule, the revised Guidelines Manual requires that additional review and assessment be given to the lists of other considerations, factors and indicators as delineated in Part E of this manual. None of the included lists are meant to be exhaustive of the nature, kind or character of credible, reliable factors or indicators that the Board can weigh in giving meaningful consideration for release. The Board desires to encourage individual case consideration by assessing and weighing the mandated considerations, and additional considerations, factors and indicators to determine if an inmate is suitable for release at initial statutory eligibility and any subsequent hearing, if applicable.

As stated in earlier versions of the Ohio Parole Board Guidelines Manual, revision is part of an ongoing quality improvement process. The current revisions reflect evolution of practical usage, change of Board Member composition and philosophy, current sentencing law considerations, and substantive modifications based on Ohio court decisions in the *Layne* and *Ankrom* cases.

CYNTHIA MAUSSER
Chairperson

Contents

| | |
|--|----------------|
| PART A: PAROLE GUIDELINES CHART | Page 1 |
| PART B: OFFENSE SERIOUSNESS INDEX | Page 2 |
| CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY | Page 2 |
| CHAPTER TWO - OFFENSES AGAINST THE PERSON | Page 3 |
| Subchapter A - Homicide Offenses | Page 3 |
| Subchapter B - Assault and Abuse Offenses | Page 5 |
| Subchapter C - Kidnapping Offenses | Page 7 |
| Subchapter D - Sexual Offenses | Page 8 |
| CHAPTER THREE - OFFENSES AGAINST PROPERTY | Page 11 |
| Subchapter A - Arson Offenses | Page 11 |
| Subchapter B - Criminal Entry Offenses | Page 12 |
| Subchapter C - Robbery and Extortion Offenses | Page 13 |
| Subchapter D - Theft and Related Offenses | Page 15 |
| CHAPTER FOUR - OFFENSES INVOLVING DETENTION FACILITIES | Page 17 |
| CHAPTER FIVE - OFFENSES INVOLVING INDIVIDUAL RIGHTS | Page 18 |
| Subchapter A- Offenses Against the Family | Page 18 |
| CHAPTER SIX - OFFENSES INVOLVING ILLICIT DRUGS | Page 19 |
| CHAPTER SEVEN - OFFENSES INVOLVING DEADLY WEAPONS AND DANGEROUS ORDNANCES | Page 24 |
| CHAPTER EIGHT - OFFENSES INVOLVING ORGANIZED CRIMINAL ACTIVITY, OBSCENITY AND SEXUAL EXPLOITATION OF CHILDREN | Page 26 |
| Subchapter A - Organized Criminal Activity | Page 26 |
| Subchapter B - Obscenity Offenses | Page 26 |
| Subchapter C - Sexual Exploitation of Children | Page 27 |
| CHAPTER NINE – MISCELLANOUS OFFENSES | Page 29 |
| Subchapter A -Listed offenses | Page 29 |
| Subchapter B -Unlisted offenses | Page 29 |

| | |
|--|----------------|
| CHAPTER TEN - ADJUSTMENTS, DEFINITIONS, AND GENERAL NOTES | Page 30 |
| Subchapter A – Adjustments To Offense Category | Page 30 |
| Subchapter B – Definitions | Page 32 |
| Subchapter C - General Notes | Page 34 |
| PART C: CRIMINAL HISTORY / RISK SCORE | Page 36 |
| Criminal History / Risk Scoring Manual | Page 37 |
| Item A – Prior convictions/adjudications (Adult or Juvenile) | Page 37 |
| Item B – Prior commitments of more than one year (Adult or Juvenile) | Page 41 |
| Item C – Recent commitment free period (Three years) | Page 42 |
| Item D - Probation/Parole/Confinement/Escape status violator this time | Page 43 |
| Item E – Prior Probation/Parole Revocations | Page 44 |
| Item F – Older Offenders | Page 44 |
| Special Instructions - Probation Violator This Time | Page 45 |
| Special Instructions - Parole Violator This Time | Page 45 |
| PART D: CURRENT SENTENCING LAW | Page 46 |
| Meaning and Purpose | Page 46 |
| Application | Page 46 |
| PART E: CONSIDERATIONS, FACTORS AND INDICATORS | Page 47 |
| Meaning and Purpose | Page 47 |
| Mandatory Considerations | Page 47 |
| Other Considerations, Factors and Indicators | Page 48 |
| Factors related to the offense | Page 48 |
| Factors related to the offender | Page 50 |
| Sentencing Indicators | Page 51 |
| Other Considerations | Page 51 |
| Rating Disciplinary History and Programming Participation | Page 52 |
| Formulating a Recommendation | Page 53 |
| PART F: GUIDELINE APPLICATION PROCEDURES | Page 54 |
| Completion of the Decision Sheets | Page 54 |
| Calculating Time in Custody | Page 54 |
| Projected Release Dates | Page 55 |
| Continuance Dates | Page 57 |
| APPENDIX | Page 59 |

PART A: PAROLE GUIDELINES CHART

The Parole Guidelines Chart sets forth the applicable guideline range for the typical or “heartland” case based on the seriousness of the inmate’s current offense of conviction and the offender’s Criminal History/Risk Score. The guideline ranges acknowledge statutory eligibility for release upon service of the minimum sentence as indicated by the term “min” at the bottom of each range. The guideline ranges are a suggestion of time to be served in months for the typical or average case. However, the ranges should not be interpreted as mandating release within the range. The guideline ranges are meant to serve as one of the tools in the release decision making process, and do not usurp the Parole Board’s discretion and authority to release an inmate at any time after service of the minimum sentence prior to the expiration of the maximum sentence. The applicable guideline range is meant solely to suggest an initial threshold (a suggested starting point of analysis) toward making a full and fair assessment of all relevant factors, indicators and other considerations in determining the inmate’s suitability for release.

The applicable guideline range presumes good institutional conduct, fulfillment of any special conditions imposed by the Parole Board, and the development of a suitable release plan.

PAROLE GUIDELINES CHART

(Applicable Guideline Range in Months that indicates typical or heartland time to be Served Before Release
By Offense Category and Criminal History/Risk Score)

| OFFENSE CATEGORY | CRIMINAL HISTORY / RISK SCORE | | | |
|---------------------|-------------------------------|--------------|----------|----------|
| | [0 or 1] | [2, 3, or 4] | [5 or 6] | [7 or 8] |
| 1 | min-6 | min-10 | min-14 | min-18 |
| 2 | min-12 | min-16 | min-20 | min-28 |
| 3 | min-18 | min-24 | min-32 | min-40 |
| 4 | min-24 | min-32 | min-44 | min-56 |
| 5 | min-36 | min-48 | min-60 | min-80 |
| 6 | min-48 | min-60 | min-84 | min-108 |
| 7 | min-60 | min-84 | min-108 | min-132 |
| 8 | min-84 | min-108 | min-132 | min-156 |
| 9 | min-120 | min-144 | min-168 | min-192 |
| 10 | min-180 | min-210 | min-240 | min-270 |
| 11 | min-240 | min-270 | min-300 | min-330 |
| 12 | min-300 | min-330 | min-360 | min-390 |
| 13 | min-life | min-life | min-life | min-life |

PART B: OFFENSE SERIOUSNESS INDEX

CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY

101. Conspiracy

Grade conspiracy as two categories lower than the category applicable to the underlying offense (the offense that was the object of the conspiracy), but not greater than Category 10.

Notes and Procedures

In determining the offense category for the underlying offense (the offense that was the object of the conspiracy), consider only those circumstances that are known either to have occurred or to have specifically been intended. Example: In a conspiracy to commit arson, the nature of the structure to be burned and its value, if known, would be taken into account. (Note: An offense category shall not be reduced below a Category 1).

102. Attempt

- (A) Grade an attempt as two categories lower than the category for the underlying offense (the offense that was the object of the attempt), but not greater than Category 10 (Note: An offense category shall not be reduced below a Category 1).
- (B) Exception: If the offense attempted was rape (Offense Guideline 231) or felonious sexual penetration (Offense Guideline 232) grade as one category lower than the category for the underlying offense.

Notes and Procedures

In determining the offense category for the underlying offense, only those circumstances that are known either to have occurred or to have specifically been intended are to be taken into account. Example: In an attempted arson, the nature of the structure to be burned and its value, if known, would be taken into account.

103. Complicity

Grade complicity as the same category as the underlying offense (the principal offense).

CHAPTER TWO - OFFENSES AGAINST THE PERSON

SUBCHAPTER A - HOMICIDE OFFENSES

201. Aggravated Murder and Murder

Category 13.

Notes and Procedures

In previous editions of the Guidelines Manual, these two offenses were assigned separate Offense Categories. Murder was designated as a Category 11 or 12, with a corresponding guideline range reflecting a number of months at the high end of the range, instead of Life. Due to the fact that both offenses require a maximum sentence of Life under criminal sentencing law, the offense of Murder was reassigned an Offense Category 13, which reflects Life at the high end of the ranges. By making this change, any previous impression or presumption that an offender convicted of Murder will be released after serving a definitive amount of time and will not have to serve Life is removed.

The distinctions between the seriousness of the offenses will be addressed by the different minimum sentences required to be served before parole release eligibility, and when determining release suitability. The Board recognizes in making this change that particular care must be given when considering the release of offenders convicted of these most serious offenses in order to be consistent with the welfare and security of society, and to maintain public safety.

202. Voluntary Manslaughter

Category 9.

203. Involuntary Manslaughter

Use the greatest applicable category:

- (A) Category 11 if offender is also convicted of kidnapping, any sex offense, aggravated arson, or an attempt to commit any of these offenses.
- (B) Category 10 if --
 - (1) a firearm is discharged; **or**
 - (2) the offense involved conduct resulting from the offender's voluntary consumption of a drug or alcohol that resulted in an impairment severe enough to preclude the offender from forming an "intent to kill"; **or**

- (3) the offender was convicted of aggravated robbery or aggravated burglary, or an attempt to commit any of these offenses; **or**
 - (4) the victim is less than 13 years of age.
- (C) Category 8 if the offender is also convicted of intentional assault.
- (D) Category 7 if the offender was also convicted of escape or attempt to escape from secure custody and the offender, at the time of the offense was being detained as a sexually violent predator, or for aggravated murder, murder, or a felony of the first or second degree.
- (E) Category 6 in any other case.

204. Aggravated Vehicular Homicide

Use the greatest applicable category:

- (A) Category 8 if the offender --
- (1) is attempting to elude police;
 - (2) has a blood alcohol content of .20 or more;
 - (3) has a prior conviction for aggravated vehicular homicide, vehicular homicide, involuntary manslaughter involving a vehicle, or aggravated vehicular assault;
 - (4) has a prior conviction for driving under the influence within the five years preceding the offense; or
 - (5) is operating without a license or with a revoked or suspended license.
- (B) Category 7 if the offender has accumulated 12 points for driving infractions within the two years preceding the offense.
- (C) Category 4 in any other case.

SUBCHAPTER B - ASSAULT AND ABUSE OFFENSES

211. Felonious Assault

Use the greatest applicable category:

- (A) Category 7 if --
 - (1) serious bodily injury results; **or**
 - (2) a firearm is discharged.
- (B) Category 4 if bodily injury results.
- (C) Category 3 in any other case.
- (D) Exception: If the victim is a peace officer or other criminal justice system employee, the offense category shall be one category greater than that set forth above. This increase shall not apply, however, if it is established that the offense had no connection with the victim's occupation.

212. Aggravated Assault

Use the greatest applicable category:

- (A) Category 5 if --
 - (1) serious bodily injury results; **or**
 - (2) a firearm is discharged.
- (B) Category 2 if bodily injury results.
- (C) Category 1 in any other case.

213. Assault (felony provisions only)

Category 2.

214. Aggravated Vehicular Assault

Use the greatest applicable category:

- (A) Category 5 if the offender --
 - (1) is attempting to elude police;
 - (2) has a blood alcohol content of .20 or more;
 - (3) has a prior conviction for aggravated vehicular homicide, vehicular homicide, involuntary manslaughter involving a vehicle, or aggravated vehicular assault;
 - (4) has a prior conviction for driving under the influence within the five years preceding the offense; or
 - (5) is operating without a license or with a revoked or suspended license.
- (B) Category 4 if the offender has accumulated 12 points for driving infractions within the two years preceding the offense.
- (C) Category 2 in any other case.

215. Gross Patient Abuse

- (A) Category 3 if serious bodily injury results.
- (B) Category 2 in any other case.

SUBCHAPTER C - KIDNAPPING OFFENSES

221. Kidnapping and Child Stealing

Use the greatest applicable category:

- (A) If the kidnapping was committed to facilitate the commission of another felony offense for which the offender is also convicted, use the greatest applicable category, but in no event less than Category 9.
- (B) Category 10 if --
 - (1) for ransom or to force any action or concession on the part of governmental authority;
 - (2) serious bodily injury results; **or**
 - (3) the victim is detained for 24 hours or more.
- (C) Category 9 if --
 - (1) bodily injury results; **or**
 - (2) the victim is detained for 12 hours or more.
- (D) Category 8 in any other case.
- (E) Exception: If the offender is also convicted of rape or a felonious sexual penetration of the victim, score as Category 10 (Offense Guideline 231 [A] [4]). If the offender was convicted of attempt of these offenses (kidnapped and a rape or a felonious sexual penetration was attempted), score as a Category 9 (Offense Guideline 102 [B] and 231 [A] [4], [C]).

222. Abduction

Use the greatest applicable category:

- (A) Category 7 if --
 - (1) serious bodily injury results; **or**
 - (2) the victim is restrained for 24 hours or more.

- (B) Category 5 if --
 - (1) bodily injury results; **or**
 - (2) the victim is restrained for 12 or more hours.
- (C) Category 4 in any other case.

SUBCHAPTER D - SEXUAL OFFENSES

231. Rape

Use the greatest applicable category:

- (A) Category 13 if the inmate is serving a Life sentence for a rape conviction.
- (B) Category 11 if the inmate is convicted of more than one count of rape involving more than one victim under the age of 16.
- (C) Category 10 if --
 - (1) serious bodily injury results;
 - (2) the victim is raped by more than one offender;
 - (3) the victim is less than 16 years of age; **or**
 - (4) the offender is also convicted of kidnapping the victim.
- (D) Category 9 in any other case.
- (E) The offense category for an attempt to commit a rape shall be one category lower than that set forth above.

Notes and Procedures

In previous editions of the Guidelines Manual, no distinction was made between Rape convictions that received Life sentences and Rape convictions that received a definitive number of years as the maximum sentences. To prevent any impression or presumption that an offender convicted of Rape with a Life sentence will be released after a definitive amount of time served, and will not be required to serve Life, Rape with a Life sentence is changed in this edition to an Offense Category 13, which indicates Life as the high end of the guideline ranges.

232. Felonious Sexual Penetration

Grade as if a rape offense (Offense Guideline 231).

233. Sexual Battery

Use the greatest applicable category:

- (A) Category 7 if the inmate is convicted of more than one count of Sexual Battery involving more than one victim.
- (B) Category 6 if the offender knowingly coerced the other person to submit by any means that would prevent resistance by a person of ordinary resolution.
- (C) Category 5 if --
 - (1) the offender is the victim's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the victim;
 - (2) the victim is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the victim;
 - (3) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards (pursuant to O.R.C. 3301.07[D]), the victim is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school;
 - (4) the victim is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution; or
 - (5) the victim is a minor, and the offender is the victim's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.
- (D) Category 4 in any other case.

234. Gross Sexual Imposition

Use the greatest applicable category:

- (A) Category 6 if the offender is convicted of more than one count of GSI involving more than one victim under the age of 13.
- (B) Category 5 if the victim is –
 - (1) compelled to submit by force or fear of force; **or**
 - (2) less than 13 years of age.
- (C) Category 3 in any other case.

235. Corruption of a Minor (felony provisions only)

Category 3.

CHAPTER THREE - OFFENSES AGAINST PROPERTY

SUBCHAPTER A - ARSON OFFENSES

301. Aggravated Arson

Use the greatest applicable category:

- (A) Category 9 if serious bodily injury results.
- (B) Category 8 if a person other than the offender was present in the structure at the time of the arson.
- (C) Category 7 if --
 - (1) bodily injury results; **or**
 - (2) the loss is \$250,000 or more.
- (D) Category 6 in any other case.

302. Arson (felony provisions only)

Use the greatest applicable category:

- (A) Category 8 if the loss is \$500,000 or more.
- (B) Category 7 if the loss is at least \$100,000, but less than \$500,000.
- (C) Category 6 if the loss is at least \$25,000, but less than \$100,000.
- (D) Category 5 if the loss is at least \$5,000, but less than \$25,000.
- (E) Category 4 in any other case.

SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311. Aggravated Burglary

Use the greatest applicable category:

(A) Category 9 if serious bodily injury results.

(B) Category 8 if:

(1) a firearm is discharged;

(2) bodily injury results; **or**

(3) a victim is bound or locked up.

Example: A victim is locked in a closet to facilitate the offender's getaway.

(C) Category 7 if:

(1) a firearm or other deadly weapon is brandished; **or**

(2) the loss is \$250,000 or more.

(D) Category 6 if:

(1) a firearm or other deadly weapon was displayed or possessed; **or**

(2) the loss is at least \$100,000 but not more than \$250,000.

(E) Category 5 if –

(1) a victim is present at the time of the entry; **or**

(2) a victim returns and the offender threatens physical harm to the victim by word or action.

(F) Category 4 if a permanent or temporary habitation, and victim is not present.

(G) Category 3 in any other case.

312. Burglary

- (A) Category 5 if –
 - (1) a victim is present at the time of the entry; or
 - (2) a victim returns and the offender threatens physical harm to the victim by word or action.
- (B) Category 4 if a permanent or temporary habitation, and victim is not present.
- (C) Category 3 in any other case.

SUBCHAPTER C - ROBBERY AND EXTORTION OFFENSES

321. Aggravated Robbery or Robbery

Use the greatest applicable category:

- (A) Category 9 if serious bodily injury results.
- (B) Category 8 if:
 - (1) a firearm is discharged;
 - (2) bodily injury results; **or**
 - (3) a victim is bound or locked up.

Example: A victim is locked in a closet to facilitate the offender's getaway.

- (C) Category 7 if:
 - (1) a firearm or other deadly weapon is brandished or displayed; **or**
 - (2) the loss is \$250,000 or more.

- (D) Category 6 if:
 - (1) a firearm or other deadly weapon is possessed; **or**
 - (2) the loss is at least \$100,000 but not more than \$250,000.

- (E) Category 5 if none of the factors from Subsections (A)-(D) are applicable.

Notes and Procedures

A conviction for Robbery shall be no higher than an offense category 6.

322. Extortion

Category 5.

SUBCHAPTER D - THEFT AND RELATED OFFENSES

331. Theft and Related Offenses (felony provisions only)

Use the greatest applicable category:

- (A) Category 7 if the loss is \$500,000 or more.
- (B) Category 6 if the loss is at least \$250,000, but less than \$500,000.
- (C) Category 5 if the loss is at least \$100,000, but less than \$250,000.
- (D) Category 4 if the loss is at least \$25,000, but less than \$100,000.
- (E) Category 3 if the loss is at least \$10,000 but less than \$25,000.
- (F) Category 2 if the loss is at least \$1,000, but less than \$10,000.
- (G) Category 1 if the loss is less than \$1,000.
- (H) Exceptions:
 - (1) If the offender is part of an organized vehicle theft ring, grade as above, but not less than Category 4.
 - (2) If the property stolen is a motor vehicle, firearm, or dangerous ordnance, grade as set forth above, but not less than Category 3.
 - (3) If the offense involves receiving stolen property with intent to resell (fencing stolen property), grade as set forth above, but not less than Category 3.
 - (4) If the offense involved (A) credit cards or checks stolen from more than one person; or (B) a fraudulently manufactured credit card, grade as set forth above but not less than Category 3.
 - (5) If the property stolen is a dangerous drug, grade as set forth above, but not less than Category 2.
 - (6) If the property stolen is a credit card or blank check, grade as set forth above, but not less than Category 2.

Notes and Procedures

1. Offenses covered by this guideline include theft, theft in office, receiving stolen property, unauthorized use of property, passing bad checks, misuse of a credit card, tampering with records, securing writings by deception, insurance fraud and workers' compensation fraud .
2. Loss is defined as follows:
 - (a) In the case of a theft, loss is the fair-market retail value of the stolen property.
 - (b) In the case of a fraud, loss is the difference between the value of what the offender receives in the transaction and the value (if any) of what the offender gives in return. For example, if an offender fraudulently misrepresents the value of a stock as \$10,000 and sells it at that price when the stock is actually worth \$1,000, the loss to the victim is \$9,000.
 - (c) In the case of a forgery, the loss is the amount that the offender obtained or attempted to obtain for the forged instrument.
 - (d) In the case of property damage or destruction, the loss is the fair-market replacement value of the property.
 - (e) If the offense is not completed, "loss" is the value of the property that the offender attempted to steal or the damage that the offender attempted to cause.
3. In the case of multiple offenses covered by this guideline that are not separated by an intervening arrest (for one of the offenses), determine the offense category by the aggregate loss. In the case of multiple offenses separated by an intervening arrest (for one of the offenses), determine the offense category by the aggregate loss, or the Multiple Separate Offense Rule in Chapter 10, Subchapter A, which ever results in the higher offense category.

CHAPTER FOUR- OFFENSES INVOLVING DETENTION FACILITIES

401. Escape or Attempted Escape (felony provisions only)

- (A) Category 6 if the defendant, at the time of the commission of the offense, is (1) detained as a sexually violent predator, or for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter (first degree felony only), kidnapping, rape, felonious sexual penetration, or aggravated arson, **and** (2) escapes from secure custody.
- (B) Category 3 if --
 - (1) the defendant, at the time of the commission of the offense, is (A) detained for any other felony, **and** (B) escapes from secure custody; **or**
 - (2) the defendant, at the time of the commission of the offense, is (A) detained as a sexually violent predator, or for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter (first degree felony only), kidnapping, rape, felonious sexual penetration, or aggravated arson, **and** (B) escapes from non-secure custody.
- (C) Category 2 in any other case.

Notes and Procedures

1. Secure custody means custody with significant physical restraint. Non-secure custody means custody without any significant physical restraint (*e.g.*, walkaway from unescorted work release, failure to return from an unescorted furlough, escape by stealth from an institution with no physical perimeter barrier).
2. Parole Violators at Large returned as Technical Parole Violators, and Parole Violators at Large admitted for Escape (absconding parole) convictions both are to be treated as Technical Parole Violators (not as escapees under Offense Guideline 401).

CHAPTER FIVE - OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER A - OFFENSES AGAINST THE FAMILY

501. Endangering Children (felony provisions only)

- (A) Category 7 if --
 - (1) the offense involves ---
 - (a) torturing or cruelly abusing the child;
 - (b) administering corporal punishment or another physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, **or**
 - (c) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development; **and**
 - (2) serious bodily injury to the child results.
- (B) Category 5 if --
 - (1) serious bodily injury to the child results; **or**
 - (2) the offense involves ---
 - (a) torturing or cruelly abusing the child;
 - (b) administering corporal punishment or another physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, **or**
 - (c) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.
- (C) Category 3 in any other case.

CHAPTER SIX - OFFENSES INVOLVING ILLICIT DRUGS**601. Trafficking in Drugs, Marijuana, Cocaine, LSD, Heroin, or Hashish**

(felony provisions only)

- (A) Category 9 if the amount is 200,000 drug units or more.
- (B) Category 8 if the amount is at least 100,000 drug units but less than 200,000 drug units.
- (C) Category 7 if the amount is at least 50,000 drug units but less than 100,000 drug units.
- (D) Category 6 if the amount is at least 20,000 drug units but less than 50,000 drug units.
- (E) Category 5 if the amount is at least 5,000 drug units but less than 20,000 drug units.
- (F) Category 4 if the amount is at least 1,000 drug units but less than 5,000 drug units.
- (G) Category 3 if the amount is at least 200 drug units but less than 1,000 drug units.
- (H) Category 2 if the amount is less than 200 drug units.
- (I) Exceptions:
 - (1) If the offense was committed in the vicinity of a school or a juvenile, increase the category determined above by one category.
 - (2) If the offender, or a person under the offender's control, carried or possessed a firearm during and in relation to the offense, increase the category determined above by one category.
 - (3) If more than one of the above exceptions applies, the total adjustment shall be cumulative.
- (J) Drug Units Defined

The following definitions are based on the weight of the compound, mixture, preparation or substance containing the controlled substance:

- (1) Marijuana
 - (a) 1 gram of marijuana = 1 drug unit.

(2) Hashish

- (a) 1 gram of hashish in solid form = 20 drug units.
- (b) 1 gram of hashish in a liquid concentrate, liquid extract, or liquid distillate form = 100 drug units.

(3) Cocaine

- (a) 1 gram of cocaine = 40 drug units.
- (b) 1 gram of crack cocaine = 200 drug units.

(4) LSD

- (a) 1 dosage unit of LSD = 20 drug units.
- (b) 1 gram of LSD in a liquid concentrate, liquid extract, or liquid distillate form = 200 drug units.

(5) Heroin

- (a) 1 gram of heroin = 200 drug units.

(6) Schedule I or II Drugs (except marijuana, cocaine, LSD, heroin, and hashish)

- (a) 1 unit dose of a Schedule I opiate or opium derivative (if in final dosage form) = 40 drug units.
- (b) 1 gram of a Schedule I opiate or opium derivative (if not in final dosage form) = 100 drug units.
- (c) 1 gram of raw or gum opium = 100 drug units.
- (d) 1 unit dose (if in final dosage form) of a Schedule I hallucinogen (other than tetrahydrocannabinol), a Schedule I stimulant, or a Schedule I depressant = 100 drug units.
- (e) 1 gram (if in other than final dosage form) of a Schedule I hallucinogen (other than tetrahydrocannabinol), a Schedule I stimulant, or a Schedule I depressant = 33.33 drug units.
- (f) 1 gram of a Schedule II opiate or opium derivative = 50 drug units.

- (g) 1 unit dose tetrahydrocannabinol (if in final dosage form) = 100 drug units.
- (h) 1 gram of tetrahydrocannabinol (if in other than final dosage form) = 1000 drug units
- (i) 1 unit dose of phencyclidine (if in final dosage form) = 100 drug units.
- (j) 1 gram of phencyclidine (if in other than final dosage form) = 200 drug units.
- (k) 1 gram of a Schedule II depressant or Schedule II hallucinogenic substance = 8.33 drug units
- (l) 1 gram of a Schedule II stimulant (if in final, legitimate pharmaceutical dosage form) = 8.33 drug units.
- (m) 1 gram of a Schedule II stimulant, or any of its salts or isomers, (if in other than final legitimate pharmaceutical dosage form) = 333.3 drug units.

(7) Schedule III, IV, or V Drugs

- (a) 1 gram of a Schedule III or IV substance (other than an anabolic steroid or Schedule III opiate or opium derivative) = 1.66 drug units.
- (b) 1 gram (or 1 milliliter) of a Schedule V substance = 0.8 drug units.
- (c) 1 solid unit dose of an anabolic steroid = 1 drug unit.
- (d) 1 gram (or 1 milliliter) of an anabolic steroid = 12.5 drug units.
- (e) 1 gram of lysergic acid amide (if in final dosage form) = 20 drug units.
- (f) 1 gram of lysergic acid amide (if in other than final dosage form) = 200 drug units.
- (g) 1 gram of a Schedule III opiate or opium derivative = 10 drug units.

Note: The maximum number of drug units to be assigned to any Schedule III, IV, or V Drug, or any combination thereof, shall be 50,000 Drug Units.

Notes and Procedures

1. For purposes of determining the offense category, use the largest amount of controlled substances with which the offender is involved on any one day. This procedure is an exception to the multiple separate offense rule. Examples: (1) The offender sells an undercover agent 10 grams of cocaine; he is arrested and a search of his apartment reveals an additional 200 grams of cocaine. The total amount of cocaine used in determining the offense level is 210 grams. This equals 8400 drug units (210 grams x 40 drug units for each gram of cocaine). (2) The offender sells an undercover agent 50 grams of marijuana on one day and 800 grams of marijuana on another day. The larger quantity (800 grams) is used.

2. If more than one controlled substance is involved in the distribution on a single day, the quantities of controlled substances are to be added together in determining the appropriate offense category. Example: The offender sells an undercover agent 10 grams of cocaine and 15 grams of heroin. The drug units for the cocaine (10 grams x 40 drug units for each gram of cocaine = 400 drug units) and heroin (20 grams x 200 drug units for each gram of heroin = 4000 drug units) are added together (400 drug units [cocaine] + 4000 drug units [heroin] = 4400 drug units).

602. Corrupting Another With Drugs

Use the greatest applicable category:

- (A) Category 7 if serious bodily injury results.
- (B) Category 6 if the offense results in the victim becoming drug dependent.
- (C) Category 5 if --
 - (1) the offense involved administering or furnishing a controlled substance to a juvenile at least two years younger than the offender, or inducing or causing a juvenile who is at least two years younger than the offender to use a controlled substance; **and**
 - (2) the controlled substance is a schedule I or II substance (except marijuana).
- (D) Category 3 if --
 - (1) the offense involved administering or furnishing a controlled substance to a juvenile at least two years younger than the offender, or inducing or causing a juvenile who is at least two years younger than the offender to use a controlled substance and the controlled substance is a schedule II, IV, or V substance or marijuana;

- (2) the offense involved inducing or causing a juvenile who is at least two years younger than the offender to commit a felony drug abuse offense; or
- (3) the offense involved using any juvenile to perform any surveillance activity that is intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or the arrest of the offender or any other person for the commission of a felony drug abuse offense.

603. Drug Abuse

Category 2

604. Offenses Involving Counterfeit Controlled Substances (felony provisions only)

- (A) Category 3 if the offense is committed in the vicinity of a school or in the vicinity of a juvenile.
- (B) Category 2 in any other case.

CHAPTER SEVEN - OFFENSES INVOLVING DEADLY WEAPONS AND DANGEROUS ORDNANCES

701. Carrying Concealed Weapon (felony provisions only)

Use the greatest applicable category:

- (A) Category 7 if the offense is committed aboard an aircraft or with the purpose of carrying the weapon aboard an aircraft.
- (B) Category 5 if --
 - (1) the weapon is a loaded firearm, a firearm with ammunition ready at hand, or a dangerous ordnance; **and**
 - (2) the offender has previously been convicted of a first or second degree felony and the offense is committed within five years of the date of the offender's release from imprisonment or from post release supervision that is imposed for the commission of a first or second degree felony.
- (C) Category 3 if the weapon is a loaded firearm, a firearm with ammunition ready at hand, or a dangerous ordnance.
- (D) Category 2 in any other case.
- (E) Exceptions:
 - (1) If the offense level is determined under Subsection (D) and the weapon is a firearm and the violation is committed at a premise for which a D permit has been issued, the offense category shall be one category greater than that determined above.
 - (2) If the weapon was a firearm equipped with a silencer, the offense category shall be one category greater than that determined above.

702. Having a Weapon (Firearm or Dangerous Ordinance) Under Disability

Use the greatest applicable category:

- (A) Category 4 if --
 - (1) the offender has previously been convicted of aggravated murder, murder, an aggravated first or second degree felony, or a first or second degree felony; and

- (2) the offense is committed within five years of the date of the offender's release from imprisonment or from the post release supervision that is imposed for the commission of a first or second degree felony.
- (B) Category 3 in any other case.
- (C) Exception: If the offender carries the weapon loaded, or with ammunition readily at hand, on his or her person, or in his or her vehicle, the offense category shall be one category higher than that determined above. This exception does not apply if the weapon is carried only on the offender's premises, or if it is established that the carrying of the weapon is solely for a legitimate sporting activity (e.g., the offender is found with the weapon on a target range).

**CHAPTER EIGHT - OFFENSES INVOLVING ORGANIZED CRIMINAL ACTIVITY,
OBSCENITY AND SEXUAL EXPLOITATION OF CHILDREN**

SUBCHAPTER A: ORGANIZED CRIMINAL ACTIVITY

801. Engaging in Pattern of Corrupt Activity

- (A) Category 7 if one of the incidents of corrupt activity is Aggravated Murder or Murder or a first, second or third degree felony.
- (B) Category 6 in any other case.

SUBCHAPTER B - OBSCENITY OFFENSES

811. Pandering Obscenity Involving a Minor

Use the greatest applicable category:

- (A) Category 7 if --
 - (1) The offense involves --
 - (a) creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers;
 - (b) creating, directing, or producing an obscene performance that has a minor as one of its participants; **or**
 - (c) advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants; **and**
 - (2) The minor is --
 - (a) coerced by the offender by force or threat of force; **or**
 - (b) less than 13 years of age.
- (B) Category 5 if the offense involves --
 - (1) creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers;

- (2) creating, directing, or producing an obscene performance that has a minor as one of its participants; **or**
 - (3) advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants.
- (C) Category 3 if the offense involved --
- (1) promoting or advertising for sale or dissemination; selling, delivering, disseminating, displaying, exhibiting, presenting, renting or providing; or offering or agreeing to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers; **or**
 - (2) bringing or causing to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.
- (D) Category 1 in any other case.

SUBCHAPTER C- SEXUAL EXPLOITATION OF CHILDREN

821. Pandering Sexually Oriented Matter Involving a Minor

Use the greatest applicable category:

- (A) Category 10 if the offense involves the creation or production of sexually oriented matter or a sexually oriented performance, and the minor is --
 - (1) coerced by the offender by force or threat of force; or
 - (2) less than 13 years of age,
- (B) Category 7 if the offense involves the creation or production of sexually oriented matter or a sexually oriented performance in any other case.

- (C) Category 5 if --
 - (1) the offense involves advertising for sale or dissemination, selling, distributing, disseminating, exhibiting or displaying sexually oriented matter; **or**
 - (2) transporting (including bringing or causing to be brought into the state) sexually oriented matter.
- (D) Category 2 in any other case.

CHAPTER NINE – MISCELLANEOUS

SUBCHAPTER A-LISTED OFFENSES

901. Aggravated Riot

Use the greatest applicable category:

- (A) Category 7 if serious bodily injury results.
- (B) Category 5 if bodily injury results.
- (C) Category 3 in any other case.

SUBCHAPTER B-UNLISTED OFFENSES

911. Unlisted Offenses

In the case where a felony is not listed in this index, determine the appropriate offense category based on the felony level per the offenses of conviction as follows:

- (A) Offense Category 9 if the conviction is for an Aggravated Felony of the First Degree or a Felony of the First Degree;
- (B) Offense Category 8 if the conviction is for an Aggravated Felony of the Second Degree or a Felony of the Second Degree;
- (C) Offense Category 6 if the conviction is for an Aggravated Felony of the Third Degree or a Felony of the Third Degree;
- (D) Offense Category 4 if the conviction is for a felony of the Fourth Degree.

CHAPTER TEN - ADJUSTMENTS, DEFINITIONS, AND GENERAL NOTES

SUBCHAPTER A - ADJUSTMENTS TO OFFENSE CATEGORY

1. Multiple Separate Offenses

If the offenses of conviction involved multiple separate offenses, the offense category shall be determined as set forth below:

- (a) In certain instances, the offense guideline will specify how multiple separate offenses are to be rated. For example, in theft offenses, the aggregate (total) loss is used to determine the offense rating. In drug offenses, the largest amount of controlled substances with which the offender was involved on any one day is used to determine the offense rating. In some sex offenses (Rape, Sexual Battery & GSI), the number of victims is used to determine the offense rating.
- (b) In other instances, the following chart shall be used in assessing whether the offense category is to be increased.

MULTIPLE SEPARATE OFFENSES

| Seriousness | Points | Seriousness | Points |
|----------------|--------|-------------------|--------|
| Category One | = 1/9 | Category Eight | = 108 |
| Category Two | = 1/3 | Category Nine | = 216 |
| Category Three | = 1 | Category Ten | = 432 |
| Category Four | = 3 | Category Eleven | = 864 |
| Category Five | = 9 | Category Twelve | = 1728 |
| Category Six | = 27 | Category Thirteen | = 3456 |
| Category Seven | = 54 | | |

This chart is to be used in the following manner. First, determine the points for each of the multiple separate offenses from this chart. Second, add these points together to obtain a total score. Third, consult the chart again to determine whether the total score places the offenses of conviction in a higher offense category.

Examples:

- (1) The offender commits three separate Category 4 offenses. Each offense is scored as 3 points. The total score is 9 points. Consulting the chart again, it is noted that a score of 9 points is sufficient to raise the offense behavior to a Category 5 offense. Therefore, the offense category is Category 5.
- (2) The offender commits two separate Category 3 offenses. Each offense is scored as 1 point. The total score is 2 points. Consulting the chart again, it

is noted that a score of 2 points is not sufficient to raise the offense to Category 4. Therefore, the offense category remains a Category 3 offense.

- (c) The term "multiple separate offenses" generally refers to offenses committed at different times. However, offenses that are clearly unrelated are properly considered multiple separate offenses even if they were committed at the same time.

Examples:

- (1) An offender rapes a victim and also robs the victim of \$100. Because the offenses (rape and robbery) occurred at the same time and are related (one incident involving the same victim), grade in the highest applicable category and not as multiple separate offenses.
 - (2) An offender commits a robbery in which shots are fired to scare the bank employees. Because the offenses (robbery and assault) occurred at the same time and are related, grade in the highest applicable category and not as multiple separate offenses.
 - (3) An offender, when arrested at his home for felonious assault, is found in possession of \$8,000 worth of stolen goods. Even though the offenses were discovered at the same time, they are clearly unrelated. Consequently, consideration as multiple separate offenses is appropriate.
 - (4) An offender is arrested for selling cocaine and a search of his residence reveals a quantity of heroin. Although the drugs are different types, the offenses are considered related and the offense category is determined under the rules in the drug offense guideline. The multiple separate offense rule does not apply.
 - (5) An offender forges ten \$1,000 checks for a total of \$10,000, and is then arrested. Grade as a \$10,000 forgery, not ten separate offenses.
 - (6) An offender steals for resale four automobiles worth a total of \$18,000, and is later arrested. Grade as an \$18,000 theft, not four separate offenses.
 - (7) An offender breaks into a store, steals \$18,000 worth of merchandise and does \$4,000 damage to the store. Grade according to the combined property loss.
- (d) Intervening Arrests. Where offenses ordinarily graded by aggregation of value/quantity (*e.g.*, property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in the higher offense category.

Examples:

- (1) An offender commits three larcenies (each \$300). Each time the offender is arrested during the act. Ordinarily, such behavior would be graded according to the combined amount of the theft (theft of \$900). But since the offenses were each separated by intervening arrests, application of the multiple separate offense procedure may result in a greater offense category. In such case, the higher offense category is to be used.
- (2) An offender is arrested for selling cocaine and is released on bond. One week later, the offender is again arrested immediately after another cocaine sale. Ordinarily, the offense would be rated using the largest quantity of cocaine with which the offender was involved on any one day. However, as the offenses were separated by an intervening arrest (for the first offense), the multiple separate offense rule will be used if it results in a higher offense level.

SUBCHAPTER B – DEFINITIONS

1. The definitions of conduct constituting criminal offenses that are used in these guidelines are those that were in effect at the time of the commission of the offense of which the offender is convicted. For example, the term “aggravated burglary” has the meaning that it had at the time the offender committed the offense for which the offender is now being considered for release.
2. “Bodily injury” means physical harm of a type that normally requires professional medical attention (*e.g.*, a laceration requiring stitches). Minor physical harm (*e.g.*, minor bruises, a sprained wrist, a black eye, or a minor cut) is not included in this definition.

Examples: (A) a loss of a tooth or teeth; (B) a concussion; (C) a cut not qualifying as serious bodily injury that results in the use of stitches, staples, or an adhesive compound; or (D) a hairline/stress fracture of a bone.

Note: If the information available is insufficient to make a classification of bodily injury, a referral to the Office of Victim Services may be appropriate to obtain additional information.

3. “Brandish” means to point or wave about (a firearm or other deadly weapon).

Example: An offender who points a firearm at, or in the general direction, of a victim, or waves it about, has brandished a firearm.

4. “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon. A toy firearm would not be considered a deadly weapon, nor would a BB gun unless the BB gun fit the definition of a firearm. Only if these devices were used as bludgeons or clubs and could cause death would they be considered as deadly weapons.

5. “Display” means to show to a victim (a firearm or other deadly weapon).

Example: An offender who lifts his shirt to show a firearm in his belt has displayed the firearm.

6. “Firearm” means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. “Firearm” includes an unloaded firearm and any firearm that is inoperable but that can readily be rendered operable. Toy firearms are not considered firearms and normally a BB gun would not meet the criteria. CO2 propelled BB’s or projectiles would meet the criteria of a firearm.

7. “Permanent bodily injury” means bodily injury that is permanent or likely to be permanent.

Examples: (A) the unlawful termination of another’s pregnancy (B) a loss of a body part (other than teeth); or (C) an injury to a body part (other than teeth) that does not result in a 100% recovery.

8. “Possess” means to have an object or thing (*e.g.*, a firearm or other deadly weapon) under one’s control.

9. “Serious bodily injury” means any of the following --

(a) Any physical harm which carries a substantial risk of death;

(b) Any physical harm which normally requires hospitalization for treatment. “Hospitalization for treatment” means a formal admission to a hospital for treatment. It does not include treatment limited to the emergency room of a hospital;

(c) Any physical harm that involves some prolonged serious incapacity, prolonged serious disfigurement, or prolonged severe pain; or

(d) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

Note: Typically, “serious bodily injury” will involve a hospital admission for treatment, as distinguished from “bodily injury,” which typically will require only out-patient treatment by a physician or treatment at an emergency room of a hospital. However, hospital admission is not the sole guide for determining serious bodily injury.

Examples: (A) a gunshot wound that penetrates the skin; (B) choking/strangling to a point of unconsciousness; (C) a fracture or compound fracture to a bone; (D) a cutting wound which nicks/slices an organ, major blood vessel, ligament, or tendon; (E) a cutting wound that leaves a “substantial” scar (typically in the face or neck region); (F) a stab wound (in contrast to a cutting wound) that penetrates the skin; or (G) a broken nose.

10. “Substantial risk of death or serious bodily injury to any person” means a strong possibility of death or serious bodily injury to any person (as contrasted with a remote or significant possibility that such harm may occur).

SUBCHAPTER C – GENERAL NOTES

1. An offense category assigned will correspond with the offense of conviction only.
2. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense category shall be established that reflects the highest category per offenses of conviction.
3. An offense category will only be applied to convictions that have active indefinite sentences at the time of parole eligibility or a subsequent release consideration hearing. Offense categories will not be assigned to offenses wherein the sentence has expired.
4. Special Circumstances:
 - (a) *Probation Violator This Time.* The offense for which the offender was placed on probation and any offense committed while on probation for which the offender received a prison sentence are considered in determining the offense category, using the Multiple Separate Offense rule. In regards to determining an offense category for the offense for which the offender originally received probation, only those counts for which probation was revoked and a prison sentence imposed shall be utilized. Do not consider any count on which probation was terminated. The offense for which the offender was placed on probation also is considered as prior criminal history; see Part C (Criminal History/Risk Score) Special Instructions, Probation Violator This Time.
 - (b) *Parole Violator Recommissioned.*
 - (i) *Indefinite sentences:* Any convictions received while on parole resulting in a recommitment to the institution on an indefinite sentence for which the Parole Board has releasing authority shall have an offense category (using the multiple separate offense rule as appropriate) assigned. The offense for which the offender was placed on parole is not used in assessing the offense category, but is considered as prior criminal history.

- (ii) *Definite sentences:* Any offense or offenses for which an offender was convicted while on parole and for which an offender received a definite sentence shall not have an offense category assigned. If the conviction is an SB2 definite sentence, the SB2 sentencing range for the felony level of the offense of conviction will be noted in the Decision Sheet. The guideline range will reflect the SB2 equivalent penalty for a post-release violation of 0-9 months.

- (c) *Technical Parole Violator.* An offense category shall not be assigned to technical parole violations. The guideline range will reflect the SB2 equivalent penalty for a post-release violation of 0-9 months.

- (d) *Confinement/Escape Violator This Time.*
 - (i) *Indefinite sentence:* If an offender is convicted of Escape with a corresponding indefinite sentence, the Multiple Separate Offense Rule shall be utilized in regards to the Escape conviction and the offense from which the offender escaped, as well as any crime committed while on escape status, as long as there exists an active indefinite sentence.

 - (ii) *Definite sentence:* A definite sentence for Escape shall not receive an offense category. If the escape occurred while incarcerated in prison, the conviction shall be addressed per Part E of these guidelines.

PART C: CRIMINAL HISTORY/RISK SCORE

- Item A. PRIOR CONVICTION(S)/ADJUDICATION(S) (ADULT OR JUVENILE)
 None = 0; One or Two = 1; Three or More = 2.
- Item B. PRIOR COURT COMMITMENT(S) OF MORE THAN ONE YEAR (ADULT/JUVENILE)
 None = 0; One = 1; Two = 2; Three or More = 3.
- Item C. RECENT COMMITMENT FREE PERIOD (THREE YEARS)
 No prior commitment of 60 days or more (adult or juvenile) or released to the community from last such commitment at least 3 years prior to the commencement of the current offense = 0;
 Released to the community from a commitment of 60 days or more (adult or juvenile) less than 3 years prior to the commencement of the current offense = 1.
- Item D. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME
 Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time = 0;
 On probation, parole, confinement, or escape status at the time of the current offense; or committed as a probation, parole, confinement, or escape status violator this time = 1.
- Item E. PRIOR PROBATION/PAROLE REVOCATIONS
 No prior probation or parole revocation = 0;
 One or more prior probation or parole revocations = 1.
- Item F. OLDER OFFENDERS
 If age 40 or older at the commencement of the current offense (and the total score from Items A - E above is 1 or more) subtract 1 point.
 Otherwise = 0.
- TOTAL SCORE

CRIMINAL HISTORY/RISK SCORING MANUAL

The following instructions apply to the determination of the Criminal History/Risk Score.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE)

A.1. Points Awarded.

Score 0 if no prior convictions/adjudications.

Score 1 if one or two prior convictions/adjudications.

Score 2 if three or more prior convictions/adjudications.

A.2. Prior Convictions.

- (a) Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted.
- (b) Do not count the current offense or other convictions resulting from the current offense (*i.e.*, offenses that are considered in assessing the seriousness of the current offense). Exception: Where the first and last overt acts of the current offense behavior are separated by an intervening conviction (*e.g.*, after conviction for the current offense, the offender commits another offense while on appeal bond), both offenses are counted in assessing offense seriousness; the earlier offense is also counted as a prior conviction in the Criminal History/Risk Score.
- (c) If prior offenses are separated by an intervening arrest (for one of the offenses), count the convictions for those offenses as separate convictions. If prior offenses are not separated by an intervening arrest, count the convictions for those offenses as one prior conviction for purposes of Item A.

Examples: (1) The offender's prior record involves two convictions for larceny. The defendant committed two larcenies and was then arrested and convicted of both charges. Count as one prior conviction. The two convictions are grouped together for purposes of the Criminal History/Risk Score because they were not separated by intervening arrests. (2) The offender's prior record involves two convictions for forgery. The offender committed a forgery, was arrested and released pending trial, and then committed another forgery. The offender was convicted of both charges. Count as two prior convictions. (3) The offender's prior record involves four convictions for larceny. The offender committed three larcenies, was arrested and released pending trial, and then committed an additional larceny. The offender was convicted of all four charges. Count as two prior convictions. The first three larcenies are not separated by an intervening arrest and thus are grouped together. The fourth larceny, which is separated from the first three by an intervening arrest, is counted separately.

A.3. Types of Prior Convictions Counted.

- (a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired, or leaving the scene of an accident involving injury or an attended vehicle are counted. For the purpose of scoring Item A of the Criminal History/Risk Score, use the offense of conviction.
- (b) Convictions for the following offenses are counted only if (1) the sentence resulting was a commitment of 60 days or more (not counting any portion of a sentence that was suspended); or (2) the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):
- | | |
|--|--|
| 1. Contempt of court; | or promotion of or employment in an |
| 2. Disorderly conduct/disorderly person/breach of the peace/disturbing the peace/uttering Loud and abusive language; | unlawful gambling business is not included herein; |
| 3. Driving without a license/with a revoked or suspended license/with a false license; | 7. Loitering; |
| 4. False information to a police officer; | 8. Non-support; |
| 5. Fish and game violations; | 9. Prostitution; |
| 6. Gambling (e.g., betting on dice, sports, cards) <u>Note:</u> Operation | 10. Resisting arrest/evade and elude; |
| | 11. Trespassing; |
| | 12. Reckless driving; |
| | 13. Hindering/failure to obey a police officer; |
| | 14. Leaving the scene of an accident (except as listed under [a]). |
- (c) Convictions for the following minor offenses are not counted, regardless of sentence:
- | | |
|---|--|
| 1. Hitchhiking; | 4. Traffic violations (except as specifically listed); |
| 2. Local regulatory violations; | 5. Vagrancy/vagabond and rogue; |
| 3. Public intoxication/possession of alcohol by a minor/possession of alcohol in an open container; | 6. Civil contempt. |

A.4. Juvenile Offenses. Count juvenile convictions/adjudications except as follows:

- (a) Do not count any status offense (*e.g.*, runaway, truancy, habitual disobedience) unless the behavior included a criminal offense that would otherwise be counted.
- (b) Count only formal convictions/juvenile adjudications for criminal offenses committed at age 17 or younger. Do not count diversionary dispositions for offenses committed at age 17 or younger.

- (c) Do not count any conviction/adjudication for a criminal offense committed at age 15 or younger, unless it resulted in both a formal conviction/adjudication and a commitment of 60 days or more.

A.5. Diversionsary Dispositions.

- (a) Criminal conduct resulting in diversion from the judicial process without a finding of guilt (*e.g.*, deferred prosecution, probation without plea) is not to be counted in scoring this item.
- (b) Criminal conduct at age 18 or older resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.
- (c) Criminal conduct at age 17 or younger resulting in a disposition other than a conviction or formal adjudication of delinquency by a court is not counted in scoring this item.

A.6. Setting Aside of Convictions/Restoration of Civil Rights. Setting aside or pardon of adult or juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions or adjudications are to be counted under Item A for purposes of assessing parole prognosis. Convictions or adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

A.7. Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error. Do not count any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Parole Board's presumption that a conviction/adjudication is valid, except under the limited circumstances described in the first note below. If a prisoner challenges such conviction, he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Parole Board with evidence of such reversal. Note: Occasionally the Presentence Investigation documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel (this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel). In such case, do not count the conviction. Similarly, do not count a conviction if: (1) the offender has petitioned the appropriate court to overturn a felony conviction that occurred prior to 1964, or a misdemeanor/petty offense that occurred prior to 1973 (and the offender claims he served a jail sentence for the non-felony conviction); (2) the offender asserts he was denied his right to counsel in the prior conviction; and (3) the offender provides evidence (*e.g.*, a letter from the court clerk) that the records of the prior conviction are unavailable. Note: If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (*i.e.*, a possible reason for overriding the Criminal History/Risk Score).

A.8. Ancient Prior Record. Do not count the prior convictions if both of the following conditions are met:

- (a) The offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction); **and**
- (b) There is at least a ten-year commitment-free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior.

Note: This provision does not preclude consideration of earlier extremely serious criminal conduct as a possible reason for overriding the Criminal History/Risk Score (e.g., where the current offense is a repetition of an extremely serious offense not counted under this provision). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the Criminal History/Risk Score indicates.

A.9. Military, Foreign, and Tribal Court Convictions.

- (a) Military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft) are counted. Do not count convictions for strictly military offenses (e.g., absence without leave).
- (b) Foreign convictions (for behavior that would be criminal in the United States) are counted.
- (c) Tribal court convictions are counted under the same terms and conditions as any other conviction.

A.10. Forfeiture of Collateral. If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

A.11. Terminology Used in Other States.

- (a) Conditional/Unconditional Discharge (New York State). In N.Y. State, the term "conditional discharge" refers to a conviction with a suspended sentence and unsupervised probation; the term "unconditional discharge" refers to a conviction with suspended sentence. Thus, such N.Y. State dispositions for countable offenses are counted as convictions.
- (b) Adjudication Withheld (Florida). In Florida, the term "adjudication withheld" refers to a disposition in which a formal conviction is not entered at the time of

sentencing, the purpose of which is to allow the defendant to retain his civil rights and not to be classified as a convicted felon. Since the disposition of "adjudication withheld" is characterized by an admission of guilt and/or a finding of guilt before a judicial body, dispositions of "adjudication withheld" are to be counted as convictions for risk scoring purposes.

ITEM B. PRIOR COURT COMMITMENTS OF MORE THAN ONE YEAR (ADULT OR JUVENILE)

B.1. Points Awarded.

Score 0 if no prior commitments of more than one year.

Score 1 if one prior commitment of more than one year.

Score 2 if two prior commitments of more than one year.

Score 3 if three or more prior commitments of more than one year.

B.2. Prior Court Commitment of More Than One Year Defined. Count all prior court commitments of more than one year (adult or juvenile) resulting from a conviction or adjudication for a felony offense that was counted under Item A, except as noted below. Count a commitment of more than one year imposed upon revocation of probation if the original probation resulted from a conviction/adjudication for a felony offense that is counted under Item A. Do not count a commitment of exactly one year, a commitment resulting from a parole revocation, or a commitment of more than one year resulting from multiple sentences for misdemeanor offenses. A permanent commitment to DYS is considered a commitment of more than one year, only when there is information to prove the inmate was incarcerated for over one year.

Count only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted.

B.3. Concurrent or Consecutive Sentences. Concurrent or consecutive sentences (whether imposed at the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than one year imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status, or both, is counted as a separate commitment.

B.4. Definitions.

- (a) This item only includes commitments that were actually imposed. Do not count a suspended sentence (or the portion of a sentence that is suspended) as a commitment. Use the maximum sentence imposed by the court (not time actually served). For example, a six-month to five year sentence of imprisonment is counted as a five-year sentence.

Exceptions: (1) In the case of a sentence reduced under the shock probation statute, use the time served before release (including jail time) as the length of the sentence, provided that the total time served before release is less than six months. If the total time served before release is six months or more, use the maximum sentence length of the original sentence. (2) If a sentence is reduced on appeal, use the length of the reduced sentence.

- (b) This item includes confinement in adult institutions, juvenile institutions, and residential treatment centers. It does not include foster home placement. Count confinement in a community treatment center (halfway house) when part of a committed sentence. Do not count confinement in a community treatment center (halfway house) when imposed as a condition of probation or parole.
- (c) If a committed sentence of more than one year is imposed prior to the current offense but the offender avoids or delays service of the sentence (*e.g.*, by absconding, escaping, bail pending appeal), count as a prior commitment. If the offender unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items C and D. Example: An offender is sentenced to a term of three years confinement, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items C and D. To be considered under Items C and D, the avoidance of sentence must have been unlawful (*e.g.*, escape or failure to report for service of sentence).

ITEM C. RECENT COMMITMENT FREE PERIOD (THREE YEARS)

C.1. Points Awarded.

Score 0 if the subject has no prior commitment of 60 days or more; or if the subject was released to the community from his/her last prior commitment of 60 days or more at least three years prior to commencement of his/her current offense behavior.

Score 1 if the subject's last release to the community from a prior commitment of 60 days or more occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

C.2. Definitions

- (a) Prior commitment of 60 days or more means any commitment of 60 days or more imposed for a conviction counted in Item A. Count original court commitments, probation revocations, and parole revocations under this item. A prior sentence of intermittent confinement (*e.g.*, weekends) totaling 60 days or more qualifies as a prior commitment. Use the maximum term of imprisonment imposed, not the

actual time served. Do not count a suspended sentence (or the portion of a sentence that was suspended).

Time spent in a community corrections center (halfway house) as a condition of probation or post-release supervision does not count as a prior commitment.

- (b) Confinement/escape status is defined under Item D.
- (c) Release to the community means release from confinement status.

ITEM D. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

D.1. Points Awarded.

Score 0 if the offender was not on probation or parole supervision, nor in confinement or escape status, at the time of the current offense; and was not committed as a probation, parole, confinement, or escape status violator this time.

Score 1 if the offender was on probation or parole supervision, or in confinement or escape status at the time of the current offense; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

D.2. Definitions

- (a) The term “probation supervision” refers to a period of supervised probation.
 - (i) Occasionally, a court disposition such as “summary probation,” “good behavior,” “pending no convictions (PNC),” “monitored time,” or “unsupervised probation” will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item.
 - (ii) Do not count a period of supervision that was revoked for an offense that was not counted under Item A of the Criminal History/Risk Score.
- (b) The term "parole supervision" includes parole, mandatory parole, supervised release, conditional release, or mandatory release supervision (*i.e.*, any form of post-imprisonment supervision).
- (c) The term "confinement/escape status" includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

- (d) The term “at the time of the current offense” means at any point during the current offense in the case of a current offense that extends over a period of more than one day.

ITEM E. PRIOR PROBATION OR PAROLE REVOCATION

E.1. Points Awarded.

Score 0 if the offender has no revocation of probation or parole that occurred prior to the current offense behavior.

Score 1 if the offender had at least one revocation of probation or parole that occurred prior to the current offense behavior.

E.2. Definitions.

- (a) For the purposes of this item, probation means any term of probation, whether supervised or unsupervised.
- (b) Parole means any term of parole, mandatory parole, supervised release, conditional release, or mandatory release supervision (*i.e.*, any form of post-imprisonment supervision).
- (c) Revocation means entry of an order of revocation by a court or parole board and imposition of a term of confinement of any length upon a finding of a violation of probation or parole. Exception: An offender who receives a term of imprisonment of more than one year for conduct engaged in while on probation or parole shall be treated as if such term of probation or parole has been revoked for the purposes of this item (regardless of whether an order of revocation has been entered).

ITEM F. OLDER OFFENDERS

F.1. Points Awarded.

Score minus 1 (subtract 1 point) if the offender was 40 years of age or more at the commencement of the current offense and the total score from Items A-F is 1 or more.

Score 0 if the offender was less than 40 years of age at the commencement of the current offense or if the total score from Items A-F is 0.

SPECIAL INSTRUCTIONS - PROBATION VIOLATOR THIS TIME

- Item A. Count the original offense as a prior conviction. Do not count the conduct leading to probation revocation as a prior conviction.
- Item B. Count all prior commitments of more than one year that were imposed prior to the behavior resulting in the current probation revocation.
- Item C. Count backward three years from the commencement of the probation violation.

If the offender is a probation violator on a sentence of probation requiring a period in imprisonment of 60 days or more, this period of imprisonment qualifies as a prior commitment of 60 days or more.
- Item D. By definition, a point is added for this item. Exception: If the violation was on a term of unsupervised probation, a point would not be added for this item.
- Item E. No special instruction.
- Item F. Use the age at commencement of the probation violation, not the original offense.

SPECIAL INSTRUCTIONS - PAROLE VIOLATOR THIS TIME

- Item A. The conviction from which released counts as a prior conviction.
- Item B. The commitment from which released counts as a prior commitment (if it was a sentence of more than one year imposed for felony conduct).
- Item C. Count backward three years from the commencement of the parole violation behavior.
- Item D. By definition, a point is added for this item.
- Item E. No special instructions.
- Item F. Use the age at commencement of the parole violation, not the original offense.

Note: “Parole” includes parole, mandatory parole, supervised release, conditional release, or mandatory release supervision (*i.e.*, any form of post-imprisonment supervision). **A Criminal History Risk Score will only be assigned to those parole violators who were returned to prison for convictions resulting in pre-SB2 indefinite sentences.**

PART D: CURRENT SENTENCING LAW

1. *Meaning and Purpose:*

In fulfilling its duties, the Board recognizes that certain offenders subject to its discretionary release were sentenced to indeterminate sentences that do not reflect current sentencing laws. The Board further recognizes that the interests of justice are better served if its decision making takes into consideration current criminal penalties so that those standards are adequately represented in the process of determining release suitability. However, the Board also recognizes the complexity in determining parity with current law, and also understands that it cannot be assumed that if current penalties existed under previous sentencing schemes, the same decision whether to plead or permit a plea to a certain offense would have resulted.

In regard to Senate Bill 2 (SB2) parity, assessing and weighing parity between pre-Senate Bill 2 (SB2) sentences and SB2 sentences where applicable is an important consideration mandated by AR 5120:1-1-07. For those inmates whose pre-SB2 convictions would be subject to SB2 sentences if convicted today, the Board endeavors to give every possible and appropriate consideration to the SB2 substantially equivalent sentence, as best as such substantial equivalency can be determined. It should be recognized however, that SB2 parity considerations may not always mitigate toward release.

Further, the Board is aware that additional changes in criminal penalties for certain offenses have occurred since the passage of SB2, and that SB2 is no longer the applicable sentencing scheme in those cases. The Board further recognizes that changes in criminal penalties are likely to continue to occur, and will endeavor to keep abreast of future changes so that SB2 parity is determined only when appropriate. Regardless of whether SB2 or a subsequent sentencing scheme is the current applicable law for the same or similar pre-SB2 offense, the current penalty will not constitute the sole determinant factor in parole suitability for inmates convicted under pre-SB2 sentencing law and subject to release at the discretion of the Board.

2. *Application:* After assessing the proper Offense Category of conviction and Criminal History Risk Score, a determination will be made whether the inmate, if convicted of the same or similar offense today, would be subject to sentencing under Senate Bill 2 (SB2) or a subsequent sentencing law.

- (a) *SB2 Equivalent Sentencing Range:* The hearing panel must determine the substantially equivalent SB2 sentencing range by referencing the applicable “old law / new law” comparative charts & other written materials developed and published by the Ohio Criminal Sentencing Commission. The equivalent SB2 sentencing range will be noted in the Decision Sheet.
- (b) *Post SB2 Sentencing Scheme:* The hearing panel will note in the Decision Sheet that SB2 is not applicable per the relevant current sentencing law in effect at the time of the hearing.

PART E: CONSIDERATIONS, FACTORS AND OTHER INDICATORS

1. *Meaning and Purpose:* The determination of the guideline range and substantially equivalent SB2 sentence, when applicable, provide the hearing panel with two suggestions of appropriate ranges of time to be served for the typical or “heartland” offense. However, suitability for release should not only be determined by the guideline range and substantially equivalent SB2 sentence, when applicable, but should also be determined by the assessing, weighing and balancing of considerations, factors and indicators particular to each individual inmate and offense. This process provides a standard or common starting point for suitability determination for all inmates convicted of the same offense, and at the same time provides for weighing and assessing of individual case and inmate characteristics. In no case will a decision to deny release and recommend continued incarceration be made solely on the fact that an inmate has not yet served to a particular time within the guideline range. Recommendations for continued incarceration (and for release) must be based on the individual facts and characteristics of the particular offense and offender.

The following considerations, factors and indicators will permit the hearing panel to weigh the individual characteristics of each case and inmate, and determine if the offense is typical, aggravated or mitigated and whether the inmate is more or less likely to reoffend. These considerations, factors and indicators will assist the panel in concluding and recommending that the inmate is either suitable for release or requires continued incarceration. When formulating decisions regarding release or continued incarceration recommendations, discretion lies solely with the hearing panel to determine how much weight to assign to any individual consideration, factor or indicator. In addition, the following lists of considerations, factors and indicators should not be deemed as exhaustive or all inclusive. Any relevant considerations, factors and indicators should be considered.

2. *Mandatory Considerations:* The following shall be considered when determining the suitability of the release of an inmate. However, the consideration of any single factor or any group of factors shall not create a presumption of release on parole, or the presumption of continued incarceration:
 - (a) Any reports prepared by any institutional staff member relating to the inmate’s personality, social history, and adjustment to institutional programs and assignments.
 - (b) Any official report of the inmate’s prior criminal record, including a report or record of earlier probation or parole.
 - (c) Any presentence or postsentence report.
 - (d) Any recommendations regarding the inmate’s release made at the time of sentencing or at any time thereafter by the sentencing judge, presiding judge, prosecuting attorney, or defense counsel.
 - (e) Any reports of physical, mental or psychiatric examination of the inmate.

- (f) Such other relevant written information concerning the inmate as may be reasonably available, except that no document related to the filing of a grievance under AR 5120-9-31 shall be considered.
- (g) Written or oral statements by the inmate, other than grievances filed under AR 5120-9-31.
- (h) The equivalent sentence range under Senate Bill 2, (effective July 1, 1996) for the same offense of conviction, if applicable.
- (i) The inmate's ability and readiness to assume obligations and undertake responsibilities, as well as the inmate's own goals and needs.
- (j) The inmate's family status, including whether his relatives display an interest in him or whether he has other close and constructive association in the community.
- (k) The type of residence, neighborhood, or community in which the inmate plans to live.
- (l) The inmate's employment history and his occupational skills.
- (m) The inmate's vocational, educational and other training.
- (n) The adequacy of the inmate's plan or prospects on release.
- (o) The availability of community resources to assist the inmate.
- (p) The physical and mental health of the inmate as they reflect upon the inmate's ability to perform his plan of release.
- (q) The presence of outstanding detainers against the inmate.
- (r) Any other factors determined to be relevant, except for documents related to the filing of a grievance under AR 5120-9-31.

3. *Other Considerations, Factors and Indicators:* The following may be considered when determining the suitability of the release of an inmate:

- (a) *Factors related to the conduct of the offender and/or the circumstances surrounding the offense of conviction, including victim impact:*
 - (i) *Aggravating Factors:* Generally demonstrating that the offender's conduct is more serious than conduct normally constituting the offense:
 - The physical or mental injury suffered by the victim due to the conduct of the inmate was exacerbated because of the physical or mental condition or age of the victim.
 - The victim suffered serious and/or permanent physical, psychological or economic harm.
 - The inmate demonstrated extreme brutality or cruelty.
 - More than one victim was killed or sustained serious bodily injury.
 - The inmate held a public office or position of trust in the community and the offense related to that office or position.
 - The inmate's occupation, elected office, or profession obliged he or she to prevent the offense or bring others committing it to justice, and he or she failed to do so.

- The inmate's professional reputation or occupation, elected office or profession was used to facilitate the offense or is likely to influence the future conduct of others.
- The inmate's relationship with the victim facilitated the offense.
- The inmate committed the offense for hire or as part of an organized activity.
- In committing the offense, the inmate was motivated by prejudice based on race, ethnic background, sexual orientation, gender or religion.
- The inmate committed an offense of domestic violence in the vicinity of one or more children who are not the victims of the offense and the inmate or the victim is a parent or guardian of one or more of those children.
- The inmate was responsible for an offense of unusual magnitude.
- The inmate caused the victim to have a miscarriage.
- The inmate's conduct while attempting to evade arrest caused circumstances creating a significant risk of harm to other persons.
- The inmate refused to make restitution, return stolen property or pay an outstanding fine despite the ability to do so.

(ii) *Mitigating Factors:* Generally demonstrating that the inmate's conduct is less serious than conduct normally constituting the offense:

- In committing the offense, the inmate did not cause or expect to cause physical harm to any person or property.
- The inmate did not knowingly contemplate that his or her conduct would result in the harm it did and the harm could not have been reasonably foreseen.
- The victim induced or facilitated the offense.
- In committing the offense, the inmate acted under strong provocation.
- There are substantial grounds to mitigate the inmate's conduct, although the grounds are not enough to constitute a defense.
- The inmate was under duress or coercion to commit the offense.
- The offender attempted corrective measures by either attempting to withdraw prior to completion of the offense, or attempting to make restitution prior to the discovery of the offense.
- The inmate had or believed he had a genuine claim of right to property, although he used an unlawful method to obtain or reclaim said property.
- The inmate provided substantial cooperation to the government in the prosecution of other cases, or in averting a major disturbance.
- The inmate had diminished mental capacity to contemplate the seriousness of the offense (extremely low intelligence or youthfulness).
- The inmate had no substantial decision making authority in the planning or commission of the offense and did not finance the offense.

- The inmate was to receive a fee that was relatively small in comparison to the profit expected by the more culpable offenders in the offense.
- The inmate's role in other than a controlled substance offense facilitated the commission of the offense in some way, but was not essential to the commission of that type of offense.
- In a controlled substance trafficking offense, the inmate did not own any of the controlled substance and did not sell or negotiate to sell any of the controlled substance.

(b) *Factors related to the offender:*

(i) *Aggravating Factors:* Generally demonstrating that the offender is likely to commit future crimes:

- The inmate committed the offense while under a community control sanction, while on probation, while on parole, while on post release control, or while released from custody on a bond or personal recognizance.
- The inmate was previously adjudicated a delinquent child or has a history of criminal convictions.
- The inmate has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child, or the inmate has not responded favorably to sanctions previously imposed for criminal convictions.
- The inmate has demonstrated a pattern of drug and alcohol abuse that is related to the offense and the inmate refuses to acknowledge that he or she has demonstrated the pattern, or the inmate refuses treatment for the drug or alcohol abuse.
- The inmate has demonstrated a history of non-compliance with supervision conditions and/or a disregard for sanctions imposed while under supervision.
- The inmate shows no genuine remorse for the offense.
- The inmate committed the offense while in possession of a firearm.
- The inmate previously served a prison term.
- The inmate has a history of repetitive assaultive behavior.
- The inmate has a history of repetitive sophisticated criminal behavior.
- The inmate has an extensive history of serious offenses.
- The inmate has obtained more than nine (9) prior convictions and/or has obtained more than five (5) prior commitments of more than one year.
- Inmate has a disciplinary history rating of "fair" or "poor".
- Inmate has a programming participation rating of "fair" or "poor".

(ii) *Mitigating factors:* Generally demonstrating that the inmate is not likely to commit future crimes:

- Prior to committing the offense, the inmate had not been adjudicated a delinquent child.
- Prior to committing the offense, the inmate had not been convicted of or pleaded guilty to a criminal offense.
- Prior to committing the offense, the inmate led a law-abiding life for a significant number of years.
- The inmate has a high Criminal History Risk Score that is based on minor offenses.
- The offense was committed under circumstances that are not likely to recur.
- The inmate demonstrates genuine remorse.
- The inmate has strong community resources available that previously were not available.
- The inmate has made substantial efforts to fulfill a restitution obligation.
- The inmate has substantial medical problems, including a poor medical prognosis.
- The inmate has a disciplinary history rating of “superior” or “good”.
- The inmate has a programming participation rating of “superior” or “good”.

(c) *Sentencing Indicators:* Those sentencing options that the trial court chose to impose:

- (i) The sentencing court imposed the high end or maximum minimum sentence(s) and/or consecutive sentences.
- (ii) The sentencing court initially granted probation, or after incarceration granted Shock or Supershock probation, and/or imposed the low end or minimum minimum sentence and/or imposed concurrent sentences.

(d) *Other Considerations:*

- (i) Whether information about possible aggravating or mitigating factors is credible, reliable, and verifiable;
- (ii) Whether the sentencing court and/or prosecutor responded to the most recent hearing notice and whether the responses are form letters or detailed or definitive;
- (iii) Whether the recommendation of the sentencing court and prosecutor are similar to each other or at variance with each other;
- (iv) Whether the statements or information submitted by or on behalf of the victim of an offense is credible;
- (v) Whether the statements or information submitted by or on behalf of the inmate is credible;

- (vi) Whether there are issues related to co-defendant parity.

4. *Rating Disciplinary History and Programming Participation:* In determining whether the inmate's disciplinary history and programming participation are an aggravating or mitigating factor relating to the individual inmate, the following rating system will be utilized:

- (a) *Disciplinary History:* Disciplinary history will be defined by the following categories:

- (i) *Superior:* No conduct violations resulting in segregation.
- (ii) *Good:* Overall acceptable adjustment to the institution with less than five (5) tickets resulting in segregation. This may include an offender who had initial adjustment problems, but who greatly improved his/her conduct over the years and approaching parole eligibility.

An offender's conduct may be rated as "Superior" if the tickets resulting in segregation occurred longer than five (5) years prior to the parole hearing.

- (iii) *Fair:* Some adjustment problems to the institution with several tickets resulting in segregation, which may include a segregation placement close to parole eligibility.
- (iv) *Poor:* Inability to follow institutional rules as demonstrated by a number of continued and excessive tickets resulting in segregation and/or having one major rule infraction or convicted criminal conduct, ie. Escape, Conveyance, Assault.

Major rule infractions include but are not limited to the following: causing or attempting to cause harm to any staff member, threatening harm to any staff member, possession, manufacture or procurement of a weapon, assault on an inmate resulting in serious injury, rioting or inciting others to riot, nonconsensual sexual contact or inappropriate physical contact with another, fire-setting, attempted escape, substance abuse, conduct resulting in an outside court conviction, and/or anything deemed "major" as viewed by the Board.

- (b) *Disciplinary history considered at Statutory First Hearings:* When an inmate is seen for his Statutory First Hearing, all conduct reports resulting in segregation, beginning with the inmate's date of admission and progressing up to and including the date of the inmate's Statutory First Hearing will be considered.
- (c) *Disciplinary history considered after Statutory First Hearings:* If an inmate receives a continuance, the Board will once again examine the inmate's disciplinary history at the inmate's next scheduled hearing. However, the behavior examined

will be retroactive only to the date of the prior hearing. If the inmate receives a Projected Release Date, the disciplinary history will be reviewed when determining if the Projected Release Date will be approved or rescinded. If rescinded the new disciplinary history will be addressed at a hearing.

(d) *Programming participation:* All inmates are strongly encouraged to become involved in educational, vocational, work, and/or counseling program(s) that (A) significantly increase the inmate's likelihood of leading a law-abiding life upon release, or that (B) promote positive behaviors and encourage an inmate to serve as an outstanding example to others as to the constructive use of prison time. Programming participation will be defined by the following categories:

- (i) *Superior-* The inmate has completed all programs suggested in his/her Reentry Accountability Plan (RAP), as well as additional programs.
- (ii) *Good-* The inmate has completed all programs suggested in his/her RAP.
- (iii) *Fair-* The inmate has participated in some of the programs suggested in his/her RAP, but did not complete them.
- (iv) *Poor-* The inmate has made little or no effort to participate in the programs suggested in his/her RAP.

5. *Formulating a Recommendation:* Upon assessing, weighing and balancing all relevant considerations, factors and indicators, as well as the guideline range and SB2 parity, if applicable, a recommendation of parole, projected release date or continued incarceration will be made. The hearing panel will cite the primary considerations, factors and indicators used to formulate the recommendation. If the recommendation is for continued incarceration, the factors, indicators and other considerations must support one or more of the following reasons cited in AR 5120:1-1-07 for continued incarceration:

- (a) There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under AR 5120:1-1-12.
- (b) There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate into society would create undue risk to public safety, or that due to the serious nature of the crime, the release of the inmate would not further the interest of justice nor be consistent with the welfare and security of society.
- (c) There is substantial reason to believe that due to serious infractions of division level 5120:9-06 of the Administrative Code, the release of the inmate would not act as a deterrent to the inmate or to other institutionalized inmates from violating institutional rules.

PART F: GUIDELINE APPLICATION PROCEDURES

1. *Completion of the Decision Sheets:* The *Ohio Parole Board Decision Sheet* shall be completed at all initial parole, shock parole, and non-Senate Bill 2 indefinite transitional control consideration hearings and all subsequent parole proceedings in which the Guidelines Manual has not previously been applied (except in cases in which the offender has previously been granted a projected release date and has fulfilled the conditions of that date).
 - (a) *Information required to be documented on the Decision Sheet:* The Decision Sheet must contain the Offense Category and corresponding section number (when applicable), the SB2 equivalent sentence range (when applicable), the Criminal History Risk Score (when applicable), the corresponding guideline range, and time served in custody separated by jail time and prison time. In addition, the Decision Sheet must clearly indicate a rationale for the recommendation made, prior to the recommendation. The rationale must cite the factors, indicators and considerations justifying a release or continued incarceration recommendation. If the recommendation is for continued incarceration, the cited factors, indicators and considerations must support one or more of the reasons cited in AR 5120:1-1-07:
 - (i) There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under AR 5120:1-1-12.
 - (ii) There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate into society would create undue risk to public safety, or that due to the serious nature of the crime, the release of the inmate would not further the interest of justice nor be consistent with the welfare and security of society.
 - (iii) There is substantial reason to believe that due to serious infractions of division level 5120:9-06 of the Administrative Code, the release of the inmate would not act as a deterrent to the inmate or to other institutionalized inmates from violating institutional rules.

2. *Calculating Time in Custody:* Time in custody means only time in actual physical custody. Time on probation or escape status does not count as time in custody. Moreover, a sentence for contempt of court interrupts the running of the criminal sentence. Thus, any time spent as a result of a sentence of civil contempt is not counted in calculating time in custody.
 - (a) *Original Parole Consideration.*
 - (i) Calculate the number of months in actual physical custody on the present sentence(s). Include jail time credit.
 - (ii) Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing the offense category.

- (b) *Probation Revocation Cases.* Credit any time spent in actual physical custody for any offense considered in assessing the offense category. If a prisoner is received as a probation violator from a “split” sentence, also credit the months spent in custody prior to being placed on probation.
- (c) *Parole Revocation Cases.* In reparole guideline cases, count as time in custody any time spent in actual physical custody of the state of Ohio as a result of the actions leading to the parole violation.
 - (i) *Technical parole violators within the state of Ohio:* Calculate time spent in physical custody from the date of arrest for the violations.
 - (ii) *Technical parole violators returned from outside the state of Ohio:* Calculate time spent in physical custody from the date of return to the state of Ohio.
 - (iii) *Parole violators recommisioned:* Calculate time spent in physical custody from the date of arrest.

3. *Projected Release Dates*

- (a) *Setting of projected release date.*
 - (i) A projected release date onto parole supervision can be recommended for inmates serving indefinite sentences for all crimes except those noted below. A projected release date can only be recommended within five (5) years of the hearing date. If the hearing panel determines that an inmate is not suitable for release onto parole supervision within five (5) years, a future hearing date must be recommended at which time suitability for release onto parole supervision will again be reviewed and assessed.
 - (ii) Each offender given a projected release date shall receive a pre-release record review, and will not be required to again appear at a release consideration hearing, unless the projected release date is rescinded.
 - (iii) Any inmate required per policy to be referred to Central Office Board Review for a majority Parole Board Member vote prior to release shall not receive a projected release date. The institution hearing panel shall either refer the case to COBR when release is recommended, or recommend a future hearing date when release suitability will again be reviewed and assessed. These inmates include any inmate serving a Life sentence, a sentence for any offense under Chapter 2907 of the Ohio Revised Code (pertaining to sex offenses), or any attempt, conspiracy, or complicity to commit these offenses; or any offender with an institutional security status of Level 4 or Level 5. In addition, the Board may decide by majority Board Member vote to preclude other inmates serving certain offenses from receiving projected release dates when it is deemed appropriate.

- (iv) The Parole Board may, in addition, schedule a special interim review upon the request of the warden (*e.g.*, in the case of a serious disciplinary infraction).
- (b) *Pre-release Record Review.*
- (i) The purpose of a pre-release record review shall be to determine whether there have been any changes in circumstances sufficient enough to warrant the rescission of a projected release date, and require that the inmate again appear at a release consideration hearing.
 - (ii) A pre-release record review shall consist of a review of the record by a Hearing Officer nine months prior to the projected release date except in the case of a projected release date set for eighteen months or less from the hearing, in which case the review shall be 120 days prior to the projected release date. The Hearing Officer shall recommend whether to approve the projected release date, modify the projected release date, or rescind the projected release date and schedule the inmate for a release consideration hearing. The recommendation will be reviewed by a Parole Board Member. If the Parole Board Member rejects a Hearing Officer's recommendation to approve a projected release date, the inmate will be scheduled for a release consideration hearing.
 - (iii) Generally, an offender will be released on the projected release date set by the Parole Board if (1) the offender has satisfactorily observed the rules of the institution; (2) the offender has satisfied any special condition set by the Parole Board as part of the grant of the projected release date; (3) the offender has a suitable release plan, and (4) no new and substantial adverse information relative to the prisoner's release on parole has been received by the Parole Board.
 - (iv) If (1) the offender has not satisfactorily observed the rules of the institution; (2) the offender has not satisfied any special condition(s) set by the Parole Board as part of the grant of the projected release date; (3) the offender does not have a suitable release plan; or (4) the Parole Board has received new, substantial and credible adverse information relative to the offender's release on parole, the offender's projected release date may be rescinded.
 - (v) If the Projected Release Date is rescinded, the case shall be scheduled for a hearing with the inmate so that the rescission issue can be addressed. In cases where the projected release date was rescinded due to institutional misconduct, the institutional panel may assess a new projected release date up to nine (9) months beyond the previously imposed projected release date. If the panel determines that nine (9) months is insufficient to address

the misconduct, the recommendation beyond nine (9) months shall be referred to the Decision Review Panel.

- (vi) The Parole Board may advance a projected release date only for (1) superior participation in a work program or other sustained superior program participation; or (2) new and substantial favorable information relative to the offender's release on parole.

4. *Continuance Dates:* Any inmate determined not to be suitable for release onto parole supervision within five (5) years of the hearing date will not receive a projected release date, but will receive a subsequent or future hearing date at which time release suitability will again be reviewed and assessed.

(a) *Setting of future hearing date:*

- (i) *Statutory First Hearings:* At a Statutory First Hearing, the institutional panel may assess a continuance date up to ten (10) years beyond the statutory first hearing date.
- (ii) *Subsequent Hearings:* If an inmate is appearing at a subsequent hearing date beyond his Statutory First Hearing, the institutional panel may assess a future hearing date of no more than five (5) years beyond the date of the current hearing. If the institutional panel determines that the seriousness of the offense behavior and/or the inmate's conduct warrants more than a five (5) year continuance, the panel must refer to the Decision Review Panel (DRP) for consideration any recommendation of a continuance of up to 7 ½ years, or to Central Office Board Review (COBR) for consideration of a recommendation of a continuance of more than 7 ½ to 10 years.
- (iii) *Setting of Projected Release Date at Subsequent Hearing Date:* If at a subsequent hearing the institutional panel determines that the inmate is suitable for release onto parole supervision within five (5) years, a projected release date may be recommended, but only for those inmates not required to be referred to Central Office Board Review for a majority Board Member vote prior to release. As indicated previously, these inmates include any inmate serving a Life sentence, a sentence for any offense under Chapter 2907 of the Ohio Revised Code (pertaining to sex offenses), or any attempt, conspiracy, or complicity to commit these offenses, or any inmate with an institutional security status of Level 4 or Level 5.

APPENDIX 1: STANDARDIZED WORDING ON HEARING DECISIONS

- A. Parole on/after (two months from hearing date).
(Example: POA 4/11/06)
- B. Delayed Parole on/after (up to 6 months from date of hearing).
(Example: DEL POA 9/1/06)
- C. Projected Release Date on/after (up to 5 years from date of hearing).
(Example: PRD o/a 4/1/07)
- D. Referral to Central Office Board Review (cases requiring majority Board Member vote for release).
(Example: COBR)
- E. Referral to Decision Review Panel.
(Example: DRP)
- F. Continue to Maximum Expiration of Sentence.
(Example: Cont. to Max.)
- G. Continue (applies when PRD not established).
(Example: Cont. 2/2009)
- H. Reschedule 90 days for MCE (applies to serious Mental Health offenders only).
(Example: Reschedule 9/06 MCE)
- I. Reschedule two months for Clinical Risk Assessment or for additional information.
(Examples: Reschedule 9/06 CRA; Reschedule 9/06 Invest)

SPECIAL REVIEW HEARINGS

- J. No Change
(Example: No Change, Cont 2/2012)
- K. Change and Parole (Two months from hearing date)
(Example: Change, Parole o/a 9/4/2006)
- L. Change and give Projected Release Date
(Example: Change, PRD o/a 12/1/2006)
- M. Change and reduce continuance
(Example: Change, Cont 5/2009)

* All release decisions will include the phrase “actual release subject to approved placement plan”.

STANDARDIZED WORDING FOR PAROLE BOARD SPECIAL CONDITIONS

The standardized wording for Parole Board Special Conditions are:

- A. Substance Abuse screening and programming if indicated.
(SAS PII)
Includes: All abusive substances

- B. Mental Health screening and programming if indicated.
(MHS PII)
Includes: Stress Management
Anger Management
Domestic Violence
Psychological Counseling
Psychiatric Counseling
Gamblers Anonymous
Shoplifters Anonymous
Etc.

- C. Sex Offender screening and programming if indicated, 2 years Parole Supervision.
(SOS PII; 2Y SUP)

- D. No unsupervised contact with minors.
(NUCWM)

- E. No contact with victim.