

III. GENERAL INSTRUCTIONS - Completing the Worksheets

When to use the Voluntary Sentencing Standards

Covered Offenses

The following offenses are covered by the Voluntary Sentencing Standards and Worksheets.

Personal Worksheets	Property Worksheets	Drug Worksheets
Assault I § 13A-6-20	Burglary I § 13A-7-5	Felony DUI § 32-5a-191(h)
Assault II § 13A-6-21	Burglary II § 13A-7-6	Possession of Marihuana I § 13A-12-213
Manslaughter § 13A-6-3	Burglary III § 13A-7-7	Unlawful Possession of a Controlled Substance § 13A-12-212
Murder § 13A-6-2	Forgery II § 13A-9-3	Sale/Distribution of Marihuana (other than to a minor) § 13A-12-211
Rape I § 13A-6-61	Possession Forged Instrument II § 13A-9-6	Sale/Distribution of Schedule I-V (other than to a minor) § 13A-12-211
Rape II § 13A-6-62	Theft of Property I § 13A-8-3	
Robbery I § 13A-8-41	Theft of Property II § 13A-8-4	
Robbery II § 13A-8-42	Receiving Stolen Property I § 13A-8-17	
Robbery III § 13A-8-43	Receiving Stolen Property II § 13A-8-18	
Sodomy I § 13A-6-63	Unauthorized Use/B&E Vehicle § 13A-8-11(a)(4) & (b)	
Sodomy II § 13A-6-64	Unlawful Possession/Use Credit/Debit Card § 13A-9-14	

Worksheets are Offense Specific

Worksheets are intended for use only when the offense sentenced is a worksheet offense. They are not intended to provide guidance when sentencing similar crimes. The factors on the worksheets have been statistically derived specifically for the listed offenses and may or may not be statistically significant in predicting sentencing outcomes for other offenses.

The Most Serious Offense

Worksheets must be completed and considered when the “most serious offense” at a sentencing event is a worksheet offense.

Sentencing Event

A sentencing event includes all convictions sentenced at the same time whether included as counts in one case or in several different cases.

Determining the Most Serious Offense at a Sentencing Event

Rule 1. Where two or more offenses at the same sentencing event are the same crime type (covered by the same worksheet), the most serious offense is the offense with the highest number of points shown on the corresponding Prison Sentence Length Worksheet.

Rule 2. Where two or more offenses at the same sentencing event are different crime types (covered by different worksheets), the most serious offense is the offense with the highest number of points shown on the Prison Sentence Length worksheets. The preparer may complete both worksheets and select the offense that results in the most severe penalty.

Example:

- If a defendant is being sentenced for Assault II (72 points) and Burglary II (70 points) at the same sentencing event, the worksheet preparer should first complete the Personal Sentencing Worksheets to determine the recommended sentencing outcome. This is because Assault II

has the highest point value in the first section of the “personal” sentence length worksheet. Then, the preparer could elect to score Burglary II as the primary offense on the worksheets to determine which sentencing outcome would be most appropriate in this particular case.

Rule 3. Where a sentencing event includes both a worksheet offense and a non-worksheet offense and both carry the same statutory maximum penalty, the worksheet offense is the most serious offense. The other offense should be scored as an additional offense where appropriate.

Example:

- The maximum statutory penalty for Criminal Mischief I (with no prior felony convictions) is 10 years and the maximum statutory penalty for Assault II (with no prior felony convictions) is 10 years. If both are being sentenced at the same event, the worksheet preparer should score the personal worksheets for Assault II. This is because Assault II is covered by the worksheets and Criminal Mischief I is not.
- In the above scenario, if worksheet offense was a drug or property offense, the non-worksheet offense(s) should be scored under the “Number of Additional Felony Convictions (Including Counts)” section of the Sentence Length Worksheets.

Rule 4. Where a sentencing event includes both a worksheet offense and a non-worksheet offense and the non-worksheet offense has a higher statutory maximum penalty, the non-worksheet offense is the most serious offense and the voluntary Sentencing Standards are not applicable.

Completing the In/Out Worksheet and the Prison Sentence Length Worksheet

Both the In/Out Worksheet and the Prison Sentence Length Worksheet applicable to the sentencing event must be completed even in the recommendation is “non-prison.”

Rules for Scoring Prior Records

Date of Prior Records - Prior records are to be scored based on convictions, juvenile delinquency and/or youthful offender adjudications occurring before the arrest date(s) of the offense(s) sentenced.

Ambiguous Prior Records - If an ambiguous entry on a prior record document cannot be resolved, the worksheet preparer should treat the information in a way that gives the benefit of the doubt to the offender. If any prior record disposition information is missing, the worksheet preparer should assume that no conviction occurred.

Burden and Manner of Proving Prior Records - In the event of a dispute, the burden of proving the prior record is on the prosecutor. For purposes of proving in-state prior convictions, any official court document – whether automated or hard copy – shall be sufficient for meeting the burden or proof requirement. When meeting the burden or proof for out of state convictions, certified copies of official court records shall be sufficient evidence. Out of state records need not be exemplified.

Prior Nolo Contendere Dispositions – Matters disposed of by pleas of *nolo contendere* or “no-contest” should be counted as prior convictions for worksheet purposes. In addition, any incarceration resulting from a plea of *nolo contendere* should be counted in the appropriate places on the worksheets.

Effect of Pardons – In the event a defendant has received a pardon for innocence, the conviction for which he or she received the pardon should be excluded when scoring prior convictions. All other pardons – e.g. those to restore voting rights – should not be excluded.

Prior Misdemeanor or violation convictions – All *criminal* convictions should be counted. Traffic convictions do not count except: Driving Under the Influence, Boating Under the Influence, Leaving the Scene of an Accident, Attempting to Elude Law

Enforcement, Driving Without a License, and Driving While license is Suspended or Revoked.

Prior DUI convictions – All misdemeanor DUI convictions occurring before the arrest date for the current offense should be counted as priors, even when the worksheets are being completed for Felony DUI.

Time for Completing Worksheets and Determining Recommendations

Worksheets must be completed prior to the imposition of sentence in sufficient time for review by all parties and the sentencing judge.

In pre-trial diversion cases and drug court cases, worksheets are not required until a sentence is imposed. Some courts impose a sentence as soon as an offender enters drug court. In these courts, worksheets are required to be completed “up front.” In other courts, sentencing does not occur unless the offender “flunks out” of the drug court program. In these courts, the worksheets may be filled out any time prior to sentencing, giving sufficient notice to all parties and the judge.

Sentence Lengths

Where Prison is the sentence disposition on the In/Out Worksheet, the prison sentence must be chosen from within the recommended range for the corresponding score on the Prison Sentence Length Ranges Table for the most serious offense worksheet offense type.

If a score on the Prison Sentence Length Worksheet falls between two scores listed on the Sentence Length Ranges Table, select the lower of the two scores to determine the recommended sentence range.

When choosing a sentence from the recommended sentence range, the sentence chosen must not be less than the statutory sentences specified in Section 13A-5-6(a)(1)-(3), provided, however, the

minimum sentence may still be “split” pursuant to Section 15-18-8.

1. For a Class A felony, the minimum sentence imposed must be at least 120 months.
2. For a Class B felony, the minimum sentence imposed must be at least 24 months.
3. For a Class C felony, the minimum sentence imposed must be at least 12 months and 1 day.

A recommended sentence of 13 months includes any portion of the 13th month, i.e. 12 months and 1 day.

Sentence lengths recommended on the worksheets are intended to give guidance in imposing prison sentences. They are not intended to suggest terms of probation. Compliance with the Voluntary Sentencing Standards occurs when the sentence conforms to the recommendation on the In/Out Worksheet and,

where prison is recommended, the prison sentence length conforms to the recommended sentence range on the Prison Sentence Length Worksheet, or

where non-prison is recommended, the total suspended sentence length conforms to either the recommended sentence range on the Prison Sentence Length Worksheet or any other sentence length authorized by law.

In other words, where the In/Out Worksheet recommendation is non-prison, the total suspended sentence need not conform to the prison sentence length recommendation. The length of probation terms authorized by law is not affected by the Voluntary Sentencing Standards.

Judge’s Colloquy in Guilty Pleas

The court’s obligation to advise the defendant as to the statutory range of punishment prior to accepting a guilty plea is not affected by the voluntary sentencing standards.

Imposition of Sentence

Once a sentence has been selected from the recommended Prison Sentence Length Range Table, the sentencing judge may determine how that sentence shall be imposed for that sentencing event.

Example:

If a defendant is sentenced for three felonies at one sentencing event and the chosen sentence is 360 months (30 years) the judge may impose the sentence as:

- 360 months for each conviction to run concurrently;
- 120 months for each conviction to run consecutively; or
- one 240 month sentence and two 60 month sentences to run consecutively.