# Administrative Office of the Courts

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## MEMORANDUM

**To:**    SMOT Stakeholders
**From:**  Michael C. Drechsel, Assistant State Court Administrator
**Date:**  Monday, December 12, 2022
**Re:**    Shared Master Offense Table (SMOT) Refinements

## BACKGROUND INFORMATION

Utah's criminal justice system uses the Shared Master Offense Table (SMOT)[1] to standardize the use of offense codes from booking or citation through the end of a criminal case. SMOT is a table that lists active state offense codes, as well as many county and municipal criminal and traffic offense codes.[2]

SMOT entries are initially created by the Administrative Office of the Courts (AOC). Other entities then add additional details to theose entries, such as: NCIC codes and reportable status (BCI); AAMVA / ACD codes and DL reportable status (DLD); and DNA collection status (DPS/crime lab). Originally state offenses in SMOT were to be approved by staff at the Utah Prosecution Council (UPC) for statutory appropriateness and for inclusion in the Prosecution Information Management System (PIMS). At the time, this would have included the charging language for each offense. UPC has replaced PIMS with "eProsecutor." Many prosecuting entities around the state have adopted and use eProsecutor, while other entities have elected to adopt customized / third-party systems.

During the 2022 General Session, the legislature passed SB0123, the first bill in a multi-year effort to recodify Title 76 (the Utah Criminal Code), starting with the offenses in Title 76, Chapters 5 ("Offenses Against the Individual") and 5b ("Sexual Exploitation Act").[3] According to the legislature the primary purpose of this recodification effort is to standardize existing offenses to a set framework that will:

    1)   provide the criminal justice system greater ability to automate processes;

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[1]  SMOT was originally created many years ago through a cooperative effort between the Administrative Office of the Courts, the Utah Prosecution Council, the Bureau of Criminal Identification, and the Driver's License Division. The most recent version of SMOT is currently publicly available online at **https://legacy.utcourts.gov/resources/offense_table.html**

[2]  The most recent version of SMOT contains approximately 14,660 active offense codes (state and local), of which nearly 2,800 are "State of Utah" offenses. SMOT also contains an historical archive of previous versions of offenses that have been modified or repealed and therefore are no longer in effect in that specific formulation. This archive is used to process violations committed while a previous version was in effect as an active offense.

[3]  **https://le.utah.gov/~2022/bills/static/SB0123.html**

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2) create clarity in the law; and

3) improve the ability to collect and report accurate offense-related data.

The standardized statutory framework the legislature established for each offense is:

**Subsection 1** • Definitions
**Subsection 2** • Elements of Offense
**Subsection 3** • Penalties
**Subsection 4** • Limitations / Defenses
**Subsection 5 and beyond** • Additional information related to other subjects, as necessary.

After passage of SB0123, the AOC began work to implement the legislative changes to meet the May 4, 2022 effective date.  The AOC quickly encountered two challenges:

- first, while the primary elements of each offense were now contained in subsection (2) of each recodified statute, many of the statutes describe multiple offenses and include additional elements in subsection (3) that affect the level of offense (e.g., 76-5-102 "Assault"); and

- second, in order to address the legislature's third intention (data collection and reporting) the AOC needed to be able to differentiate between the different offenses in a single statute.

To address these challenges, the AOC unilaterally decided to pivot many of the recodified offenses from referencing the general statute or the general elements subsection (i.e., "76-5-103" or "76-5-103(1)") to using a reference to the penalty subsection for each specific offense (i.e., "76-5-103(3)(a)," "76-5-103(3)(b)(i)," etc.).  This change created consistency and standardization in SMOT entry format, resulted in each offense code pointing to the additional offense-level-differentiating elements in subsection 3, and set the stage for detailed data reporting for each specific offense in the recodified sections of criminal code.  Although this approach solved the AOC's challenges, it resulted in unintended (and understandably frustrating) consequences for other SMOT stakeholders.

## UNDERSTANDING SMOT STAKEHOLDER NEEDS

As the AOC began receiving negative feedback and questions on the implemented changes in June 2022, we realized there was a need for better advance communication and more thorough understanding of how SMOT is used.  The AOC engaged the major stakeholders in meetings to ascertain how SMOT could be improved.[4]  From these meetings we learned that many stakeholders had already modified their systems to fully incorporate the changes the AOC had implemented, making a quick reversal to previous version of SMOT entries unrealistic without yo-yo-ing the entire state.  In the process of meeting with stakeholders and exploring solutions, the following four primary SMOT needs have been identified:

1) to effectively file criminal charges, prosecutors need SMOT entries to directly reference the elements of the offense, which are primarily located in subsection 2 of each recodified statute;

2) to meet the legislature's stated intention to provide improved ability to automate systems, create consistency in the law, and improved the system's ability to deliver detailed criminal

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[4]  The AOC met with representatives from prosecutors (July 6, 2022), BCI (August 2, 2022), SWAP leadership (August 8, 2022), DLD (August 9, 2022), UHP (August 10, 2022), UPC (August 11, 2022), UDC/BOPP (August 31, 2022), SWAP (September 19, 2022), DPS / crime lab (September 28, 2022), and the Judicial Council's Uniform Fine Schedule Committee (October 14, 2022).

offense data, many SMOT entries need to be more specific than a general reference to each criminal statute (e.g., 76-5-102) or the general elements subsection (e.g., 76-5-102(2));

3) to accurately identify which offenses are reportable to state / federal criminal history and drivers license databases, SMOT entries need to be sufficiently granular; and

4) to ensure business rules can operate effectively (i.e., FTA/FTC flags, DNA collection routines, etc.), SMOT entries need to consistently differentiate between various levels of offense (IN, MC, MB, MA, F3, etc.) — manually adjusting the level of a generic offense at booking / charging impedes the proper functioning of these business rules.

## NEW SMOT ENTRY FORMULATION

Having identified these needs, the AOC proposes the following rules for listing SMOT entries:

| **RULE 1** | **For a statute that contains only one offense and one offense level, enter the SMOT offense by reference to the statute generally.** |

| **RULE 2** | **For a statute that contains more than one offense OR that references a separate subsection / statute for additional elements and the related penalty, enter the SMOT offense by reference to the elements in subsection (2) + reference to the additional elements / penalty.** |

As an example, these rules would result in the following SMOT entries for 76-5-102 "Assault":

| OFFENSE CODE | OFFENSE TITLE | LEVEL |
|---|---|---|
| 76-5-102(2)+(3A) | Assault | MB |
| 76-5-102(2)+(3BI) | Assault - Substantial Bodily Injury | MA |
| 76-5-102(2)+(3BII) | Assault - Pregnant Individual | MA |

These revised SMOT entries reliably point to all of the elements for each "assault" offense, while providing the necessary level of detail to serve downstream processes and data collection/reporting improvements. SMOT cannot contain a general reference to "76-5-102" or "76-5-102(2)" because some law enforcement officers / prosecutors will default to using that general entry, even when the underlying case would actually be more appropriately filed under a more specific statutory reference. This will (and does) unintentionally disrupt downstream processes (i.e., statutory DNA collection and testing processes are triggered when a specific SMOT entry is used for booking / filing charges under a class A misdemeanor or felony SMOT entry). Filing under a general class B misdemeanor "assault" SMOT entry also ignores the reality that critical elements of the class A misdemeanor assault offenses are actually located in subsection (3) of the assault statute. Entering offenses in SMOT according to **RULE 1** and **RULE 2** will reduce the frequency of these issues and increase accurate case processing.

# A CONCRETE EXAMPLE OF DATA BENEFITS

Formulating SMOT entries with this increased level of specificity yields immediate data benefits that can assist policymakers, administrators, and practitioners.  For example, consider recent filing data related to a regular topic of conversation at the legislature in recent years — Utah's stalking statute (76-5-106.5).  Before recodification, there were only two SMOT entries for stalking:

1) entries that referred to 76-5-106.5 / 76-5-106.5(2) generally; and
2) an entry that referred to 76-5-106.5(3) (the more specific subsection that previously addressed violation of a stalking injunction).

These entries provided a very limited understanding of what types of stalking were being charged in Utah.  After recodification, it is now clear in the case filing data that — for instance — a significant number of stalking offenses are allegedly committed against a current or former cohabitant and that a greater number of individuals are violating stalking injunctions than was previously indicated.  This is the first time this level of nuanced detail regarding stalking has been available in the case filing data.

| PRE-RECODIFICATION SMOT OFFENSES (Nov. '21 to May. '22) | | POST-RECODIFICATION SMOT OFFENSES (May '22 to Nov. '22) | |
|---|---|---|---|
| Stalking 76-5-106.5 and 76-5-106.5(2) | 283 | Stalking 76-5-106.5(3)(A)(I) | 126[5] |
| Violation of Stalking Injunction 76-5-106.5(3) | 18 | Violation of Civil Stalking Injunction 76-5-106.5(3)(A)(II) | 77 |
| | | Stalking – with a Prior 76-5-106.5(3)(B)(I)-(II) | 12 |
| | | Stalking – Victim/Family Prior Victim 76-5-106.5(3)(B)(III) | 1 |
| | | Violation of Criminal Stalking Injunction 76-5-106.5(3)(B)(IV) | 3 |
| | | Stalking – Cohabitant 76-5-106.5(3)(B)(V) | 91 |
| | | Stalking – Weapon/Force Likely to Cause Death/Serious Injury 76-5-106.5(3)(C)(I) | 6 |
| | | Stalking – Two+ Priors 76-5-106.5(3)(C)(II)-(IV) | 7 |
| | | Stalking – Prior Violate Injunction / Cohabitant 76-5-106.5(3)(C)(VI) | 3 |
| **TOTAL** | **301** | **TOTAL** | **326** |

*Table: Stalking Offenses under Utah Code § 76-5-106.5 from November 2021 through November 2022.*

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[5] Looking at associated level-of-offense data, it is clear that a significant number of these 126 charges should actually have been filed using a more specific SMOT entry than the base "stalking" offense.  The base stalking offense (76-5-106.5(3)(A)(I)) is a **class A misdemeanor**.  Of these 126 filed charges, 31 were filed as **third-degree felony** offenses and one was filed as a **second-degree felony**.  This means over 25% of those 126 stalking offenses were definitely filed using an incorrect SMOT entry, even after the AOC's recodification implementation efforts.

# THE PATH FORWARD

**On January 3, 2023,[6] the AOC will update the recodified SMOT entries that were changed as part of the SB0123 implemention in May 2022 to the new SMOT formulation outlined in RULE 1 and RULE 2 above.  The AOC will also update the SMOT entries for DUI (41-6a-502) and refusal (41-6a-520) offenses at the same time.[7]**

This is intended to address the primary law enforcement / prosecutorial concern of SMOT entries referencing only the penalties subsection of each offense.  The revisions will point these entries back to the elements of the offense, while preserving the enhanced ability to collect detailed data and ensure solid application of business rules and downstream processes.  A spreadsheet detailing the list of all anticipated changes for January 3, 2023, accompanies this memo.

While the AOC has never provided this type of advance notice of the intent to change SMOT entries in the past, this will now be standard practice:

> **When a large number of SMOT entries will be changing at the same time, the AOC will provide advance notice to SMOT stakeholders so that stakeholders will have adequate time to review and to pivot their systems to reflect the new entries.[8]**

We also intend to meet with SMOT stakeholders as needed throughout the year to review new entries and ensure SMOT is an effective, well-structured, and well-maintained tool that serves to enhance Utah's criminal justice system.[9]

If you have any questions or concerns about this memo or the anticipated changes scheduled to go into effect on January 3, 2023, please contact Michael Drechsel at **michaelcd@utcourts.gov** .

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[6] Technically, the old and new SMOT entries will overlap for between 12-24 hours.  The new SMOT entries will be added to the system during the first business hours of January 3, 2023.  The old entries that are being replaced will remain available in the system until 23:59:59 on January 3, 2023.

[7] As part of the AOC's implementation of 2022 legislation, the AOC also had to grapple with HB0137 **https://le.utah.gov/~2022/bills/static/HB0137.html** which pointed "refusal of chemical test" offenses under 41-6a-520 to the same penalty section as DUI offenses.  In our May 2022 implementation, we inadvertently conflated DUI and refusal offenses into unified SMOT entries.  This was clearly a mistake.  In July 2022, we attempted to correct this mistake and, in the process, created confusion and friction for law enforcement officers attempting to book individuals into jail for DUI.  The AOC quickly reversed those problematic corrections with an understanding that we would update the SMOT entries for DUI and refusal offenses at the same time as the SB0123 recodification issues.

[8] Routine SMOT entry maintenance and one-off updates will continue to be handled on an "as needed" basis.  Advance notice will be provided when the number of SMOT entries being updated will require significant stakeholder time and effort to implement.

[9] There are at least two major recodification bills anticipated for the 2023 General Session.  The first bill is part two of the multi-year effort to recodify the criminal code.  This bill will recodify the offenses found in Title 76, Chapter 6 "Offenses Against Property" and 6a "Pyramid Scheme Act."  See **https://le.utah.gov/interim/2022/pdf/00004135.pdf** for specific details.  The second bill is a recodification of the offenses found in Title 23 "Wildlife Resources Code of Utah."  See **https://le.utah.gov/interim/2022/pdf/00003862.pdf**. These two bills will collectively recodify more than 300 existing SMOT entries.  The AOC will convene a SMOT stakeholder meeting in advance of the May 2023 and July 2023 implementation dates, respectively, to help ensure a smoother SMOT experience than resulted after the 2022 session.