

1 **CRIMINAL JUSTICE PROGRAMS AND AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Eric K. Hutchings**

5 Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

7 **General Description:**

8 This bill amends Utah Code provisions regarding corrections, sentencing, probation and  
9 parole, controlled substance offenses, substance abuse and mental health treatment, and  
10 related provisions to modify penalties and sentencing guidelines, treatment programs  
11 for persons in the criminal justice system, and probation and parole compliance and  
12 violations to address recidivism.  
13

14 **Highlighted Provisions:**

15 This bill:

16 ▶ reduces penalties for specified offenses involving controlled substances and  
17 provides that specified penalties be increased for subsequent convictions for the  
18 same offenses;

19 ▶ defines criminal risk factors and requires that these factors be considered in  
20 providing mental health and substance abuse treatment through governmental  
21 programs to individuals involved in the criminal justice system;

22 ▶ requires the Division of Substance Abuse and Mental Health to establish standards  
23 for mental health and substance abuse treatment, and for treatment providers,  
24 concerning individuals who are incarcerated or who are required by a court or the  
25 Board of Pardons and Parole to participate in treatment;

26 ▶ requires that the Division of Substance Abuse and Mental Health, working with the  
27 courts and the Department of Corrections, establish performance goals and outcome



- 28 measurements for these treatment programs, including recidivism;
- 29       ▶ requires that the Division of Substance Abuse and Mental Health track the  
30 performance and outcome data and make this information available to the public;
- 31       ▶ requires that the collected data be submitted to the Commission on Criminal and  
32 Juvenile Justice and that the commission compile the data and make it available to  
33 specified legislative interim committees;
- 34       ▶ provides that the Commission on Criminal and Juvenile Justice administer a  
35 performance incentive grant program that allocates funds to counties for programs  
36 and practices that reduce recidivism;
- 37       ▶ requires that the Sentencing Commission modify sentencing guidelines, criminal  
38 history scores, and guidelines for periods of incarceration to implement the  
39 recommendations of the Commission on Criminal and Juvenile Justice regarding  
40 reducing recidivism;
- 41       ▶ requires that the Sentencing Commission establish graduated sanctions to provide  
42 prompt and effective responses to violations of probation or parole;
- 43       ▶ requires that the Sentencing Commission establish graduated incentives to provide  
44 prompt and effective responses to an offender's compliance and positive conduct;
- 45       ▶ requires that the Department of Corrections implement the graduated sanctions and  
46 incentives established by the Sentencing Commission and requires that the  
47 department gather information related to the outcomes and provide the information  
48 to the Commission on Criminal and Juvenile Justice;
- 49       ▶ requires that the Department of Corrections develop case action plans for offenders,  
50 including a risk and needs assessment and treatment priorities;
- 51       ▶ provides that the Department of Corrections may impose a sanction of three to five  
52 days for violations of probation or parole as part of the program of graduated  
53 sanctions;
- 54       ▶ requires that the Department of Corrections evaluate and update inmates' case action  
55 plans, including treatment resources and supervision levels to address reentry of  
56 inmates into the community at the termination of incarceration;
- 57       ▶ requires that the Department of Corrections establish a program allowing offenders  
58 to earn credits of days for compliance with terms of probation or parole, which will

- 59 reduce the time on probation or parole;
- 60       ▶ requires that the Department of Corrections report annually to the Commission on  
61 Criminal and Juvenile Justice the numbers regarding the earned credits program;
- 62       ▶ requires the Department of Corrections to establish standards, including best  
63 practices, for treatment programs provided in county jails;
- 64       ▶ requires the Department of Corrections to establish standards and a certification  
65 program for the public and private providers of the treatment programs;
- 66       ▶ requires the Department of Corrections to establish goals and outcome  
67 measurements regarding the treatment programs, collect related data, and analyze  
68 the data to determine effectiveness;
- 69       ▶ requires that the Department of Corrections provide the data collected regarding the  
70 treatment programs to the Commission on Criminal and Juvenile Justice for the  
71 commission's use in preparing its annual report;
- 72       ▶ requires that the Department of Corrections establish an audit for compliance with  
73 the treatment standards;
- 74       ▶ provides that time served in confinement for a violation of probation is counted as  
75 time served toward any term of incarceration imposed for the violation of probation;
- 76       ▶ requires that the Board of Pardons and Parole establish an earned time program that  
77 reduces the period of incarceration for offenders who successfully complete  
78 programs intended to reduce the risk of recidivism, collect data on the  
79 implementation of the program, and report the data to the Commission on Criminal  
80 and Juvenile Justice; and
- 81       ▶ requires that if the Board of Pardons and Parole orders incarceration for a parole  
82 violation, the board shall impose a period of incarceration that is consistent with the  
83 guidelines established by the Sentencing Commission.

84 **Money Appropriated in this Bill:**

85       None

86 **Other Special Clauses:**

87       None

88 **Utah Code Sections Affected:**

89 AMENDS:

- 90            **58-37-8**, as last amended by Laws of Utah 2014, Chapters 19 and 51
- 91            **58-37c-11**, as last amended by Laws of Utah 2013, Chapters 262 and 413
- 92            **62A-15-102**, as last amended by Laws of Utah 2011, Chapter 342
- 93            **62A-15-103**, as last amended by Laws of Utah 2014, Chapters 119, 205, and 240
- 94            **63M-7-204**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 95            **63M-7-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 96            **64-13-1**, as last amended by Laws of Utah 2003, Chapter 36
- 97            **64-13-6**, as last amended by Laws of Utah 2011, Chapter 51
- 98            **64-13-7.5**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
- 99            **64-13-14.5**, as enacted by Laws of Utah 1987, Chapter 116
- 100           **64-13-21**, as last amended by Laws of Utah 2008, Chapter 382
- 101           **64-13-25**, as last amended by Laws of Utah 2008, Chapter 382
- 102           **64-13-26**, as last amended by Laws of Utah 1989, Chapter 224
- 103           **64-13-29**, as last amended by Laws of Utah 1994, Chapter 13
- 104           **76-3-202**, as last amended by Laws of Utah 2013, Chapter 278
- 105           **77-1-3**, as last amended by Laws of Utah 2008, Chapter 3
- 106           **77-18-1**, as last amended by Laws of Utah 2014, Chapters 120 and 170
- 107           **77-27-1**, as last amended by Laws of Utah 2013, Chapter 41
- 108           **77-27-10**, as last amended by Laws of Utah 2008, Chapters 294 and 382
- 109           **77-27-11**, as last amended by Laws of Utah 2010, Chapter 110
- 110           **78A-5-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3

111 ENACTS:

- 112            **64-13-10.5**, Utah Code Annotated 1953
- 113            **77-27-5.4**, Utah Code Annotated 1953

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115 *Be it enacted by the Legislature of the state of Utah:*

116            Section 1. Section **58-37-8** is amended to read:

117            **58-37-8. Prohibited acts -- Penalties.**

118            (1) Prohibited acts A -- Penalties:

119            (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and  
120 intentionally:

- 121 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
122 manufacture, or dispense, a controlled or counterfeit substance;
- 123 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
124 arrange to distribute a controlled or counterfeit substance;
- 125 (iii) possess a controlled or counterfeit substance with intent to distribute; or  
126 (iv) engage in a continuing criminal enterprise where:
- 127 (A) the person participates, directs, or engages in conduct which results in any  
128 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and  
129 (B) the violation is a part of a continuing series of two or more violations of Title 58,  
130 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with  
131 five or more persons with respect to whom the person occupies a position of organizer,  
132 supervisor, or any other position of management.
- 133 (b) Any person convicted of violating Subsection (1)(a) with respect to:
- 134 (i) a substance or a counterfeit of a substance classified in Schedule I ~~[or]~~, II, III, or IV,  
135 a controlled substance analog~~[, or gammahydroxybutyric acid as listed in Schedule III], or a~~  
136 substance listed in Section 58-37-4.2 is guilty of a ~~[second]~~:  
137 (A) third degree felony, and upon a ~~[second]~~ third or subsequent conviction is guilty of  
138 a ~~[first]~~ second degree felony; and  
139 ~~[(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or~~  
140 ~~marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and~~  
141 ~~upon a second or subsequent conviction is guilty of a second degree felony; or]~~  
142 (B) second degree felony if the offense occurred in a building or structure that has  
143 fortifications or security measures that have the potential to injure any individual;
- 144 ~~[(iii)]~~ (ii) a substance or a counterfeit of a substance classified in Schedule V is guilty  
145 of a class A misdemeanor and upon a ~~[second]~~ third or subsequent conviction is guilty of a  
146 third degree felony.
- 147 (c) Any person who has been convicted of a felony violation of Subsection (1)(a)(ii) or  
148 (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the  
149 trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on  
150 his person or in his immediate possession during the commission or in furtherance of the  
151 offense, the court shall additionally sentence the person convicted for a term of one year to run

152 consecutively and not concurrently; and the court may additionally sentence the person  
153 convicted for an indeterminate term not to exceed five years to run consecutively and not  
154 concurrently.

155 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
156 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
157 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
158 person is not eligible for probation.

159 (2) Prohibited acts B -- Penalties:

160 (a) It is unlawful:

161 (i) for any person knowingly and intentionally to possess or use a controlled substance  
162 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
163 directly from a practitioner while acting in the course of the person's professional practice, or as  
164 otherwise authorized by this chapter;

165 (ii) for any owner, tenant, licensee, or person in control of any building, room,  
166 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to  
167 be occupied by persons unlawfully possessing, using, or distributing controlled substances in  
168 any of those locations; or

169 (iii) for any person knowingly and intentionally to possess an altered or forged  
170 prescription or written order for a controlled substance.

171 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

172 (i) marijuana, if the amount is 100 pounds or more, is guilty of a [~~second~~] third degree  
173 felony;

174 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16  
175 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a [~~third degree~~  
176 ~~felony~~] class A misdemeanor; or

177 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of  
178 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class  
179 [~~A~~] B misdemeanor.

180 (c) (i) Upon a person's conviction of a violation of this Subsection (2) subsequent to [a  
181 ~~conviction~~] two or more convictions under Subsection (1)(a), that person shall be sentenced to  
182 a one degree greater penalty than provided in this Subsection (2).

183 (ii) Upon a person's conviction of a violation of this Subsection (2) subsequent to four  
184 or more prior convictions under Subsection (1)(a), the person shall be sentenced to a one  
185 degree greater penalty than would be imposed under Subsection (2)(c)(i).

186 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
187 substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in  
188 Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor.  
189 Upon a [~~second~~] third conviction the person is guilty of a class A misdemeanor, and upon a  
190 [~~third~~] fourth or subsequent conviction the person is guilty of a third degree felony.

191 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
192 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or  
193 any public jail or other place of confinement shall be sentenced to a penalty one degree greater  
194 than provided in Subsection (2)(b), and if the conviction is with respect to controlled  
195 substances as listed in:

196 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
197 indeterminate term as provided by law, and:

198 (A) the court shall additionally sentence the person convicted to a term of one year to  
199 run consecutively and not concurrently; and

200 (B) the court may additionally sentence the person convicted for an indeterminate term  
201 not to exceed five years to run consecutively and not concurrently; and

202 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
203 indeterminate term as provided by law, and the court shall additionally sentence the person  
204 convicted to a term of six months to run consecutively and not concurrently.

205 (f) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

206 (i) on a first conviction, guilty of a class B misdemeanor;

207 (ii) on a [~~second~~] third or fourth conviction, guilty of a class A misdemeanor; and

208 (iii) on a [~~third~~] fifth or subsequent conviction, guilty of a third degree felony.

209 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
210 amounting to a violation of Section 76-5-207:

211 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
212 body any measurable amount of a controlled substance; and

213 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,

214 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

215 (h) A person who violates Subsection (2)(g) by having in the person's body:

216 (i) a controlled substance classified under Schedule I, other than those described in  
217 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
218 degree felony;

219 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
220 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
221 degree felony; or

222 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
223 A misdemeanor.

224 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
225 injury or death as a result of the person's negligent driving in violation of Subsection  
226 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

227 (3) Prohibited acts C -- Penalties:

228 (a) It is unlawful for any person knowingly and intentionally:

229 (i) to use in the course of the manufacture or distribution of a controlled substance a  
230 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
231 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
232 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
233 person;

234 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
235 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
236 be attempting to acquire or obtain possession of, or to procure the administration of any  
237 controlled substance by misrepresentation or failure by the person to disclose receiving any  
238 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
239 prescription or written order for a controlled substance, or the use of a false name or address;

240 (iii) to make any false or forged prescription or written order for a controlled substance,  
241 or to utter the same, or to alter any prescription or written order issued or written under the  
242 terms of this chapter; or

243 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed  
244 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or



245 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
 246 so as to render any drug a counterfeit controlled substance.

247 (b) Any person convicted of violating Subsection (3)(a) is guilty of a ~~[third degree~~  
 248 ~~felony]~~ class A misdemeanor, except under Subsection (3)(c).

249 (c) A fifth or subsequent conviction under Subsection (3)(a) is a third degree felony.

250 (4) Prohibited acts D -- Penalties:

251 (a) Notwithstanding other provisions of this section, a person not authorized under this  
 252 chapter who commits any act ~~[declared to be]~~ that is unlawful under [this section, Title 58,  
 253 Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation  
 254 Controlled Substances Act,] Subsection (1)(a), Section 58-37a-5, or Section 58-27b-4 is upon  
 255 conviction subject to the penalties and classifications under this Subsection (4) if the trier of  
 256 fact finds the act is committed:

257 (i) in a public or private elementary or secondary school or on the grounds of any of  
 258 those schools during the hours of 6 a.m. through 10 p.m.;

259 (ii) in a public or private vocational school or postsecondary institution or on the  
 260 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

261 ~~[(iii) in those portions of any building, park, stadium, or other structure or grounds~~  
 262 ~~which are, at the time of the act, being used for an activity sponsored by or through a school or~~  
 263 ~~institution under Subsections (4)(a)(i) and (ii);]~~

264 ~~[(iv)]~~ (iii) in or on the grounds of a preschool or child-care facility during its hours of  
 265 operation;

266 ~~[(v)]~~ (iv) in a public park, amusement park, arcade, or recreation center when it is open  
 267 to the public;

268 ~~[(vi)]~~ (v) in or on the grounds of a house of worship as defined in Section 76-10-501;

269 ~~[(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,~~  
 270 ~~playhouse, or parking lot or structure adjacent thereto;]~~

271 ~~[(viii)]~~ (vi) in or on the grounds of a library when it is open to the public;

272 ~~[(ix)]~~ (vii) within any area that is within [~~1,000~~] 100 feet of any structure, facility, or  
 273 grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), and (vi), [and (vii)] except that this  
 274 Subsection (4)(a)(vii) applies to the education facilities referred to in Subsections (4)(a)(i) and  
 275 (ii) only during the hours of 6 a.m. through 10 p.m.;

276            [~~(x)~~] (viii) in the presence of a person younger than 18 years of age, regardless of  
277 where or when the act occurs; or

278            [~~(xi)~~] (ix) for the purpose of facilitating, arranging, or causing the transport, delivery,  
279 or distribution of a substance in violation of this section to an inmate or on the grounds of any  
280 correctional facility as defined in Section 76-8-311.3.

281            (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
282 and shall be imprisoned for a term of not less than five years if the penalty that would  
283 otherwise have been established but for this Subsection (4) would have been a first degree  
284 felony.

285            (ii) Imposition or execution of the sentence may not be suspended, and the person is  
286 not eligible for probation.

287            (c) If the classification that would otherwise have been established would have been  
288 less than a first degree felony but for this Subsection (4), a person convicted under this  
289 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
290 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

291            (d) (i) If the violation is of Subsection (4)(a)[~~(xi)~~](ix):

292            (A) the person may be sentenced to imprisonment for an indeterminate term as  
293 provided by law, and the court shall additionally sentence the person convicted for a term of  
294 one year to run consecutively and not concurrently; and

295            (B) the court may additionally sentence the person convicted for an indeterminate term  
296 not to exceed five years to run consecutively and not concurrently; and

297            (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
298 the mental state required for the commission of an offense, directly or indirectly solicits,  
299 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
300 violation of Subsection (4)(a)[~~(xi)~~](ix).

301            (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
302 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
303 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
304 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
305 the location where the act occurred was as described in Subsection (4)(a).

306            (5) Any violation of this chapter for which no penalty is specified is a class B

307 misdemeanor.

308 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of  
309 guilty or no contest to a violation of this section which is held in abeyance under Title 77,  
310 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been  
311 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

312 (7) A person may be charged and sentenced for a violation of this section,  
313 notwithstanding a charge and sentence for a violation of any other section of this chapter.

314 (8) (a) Any penalty imposed for violation of this section is in addition to, and not in  
315 lieu of, any civil or administrative penalty or sanction authorized by law.

316 (b) Where violation of this chapter violates a federal law or the law of another state,  
317 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
318 prosecution in this state.

319 (9) In any prosecution for a violation of this chapter, evidence or proof which shows a  
320 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
321 substance or substances, is prima facie evidence that the person or persons did so with  
322 knowledge of the character of the substance or substances.

323 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
324 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or  
325 administering controlled substances or from causing the substances to be administered by an  
326 assistant or orderly under the veterinarian's direction and supervision.

327 (11) Civil or criminal liability may not be imposed under this section on:

328 (a) any person registered under this chapter who manufactures, distributes, or possesses  
329 an imitation controlled substance for use as a placebo or investigational new drug by a  
330 registered practitioner in the ordinary course of professional practice or research; or

331 (b) any law enforcement officer acting in the course and legitimate scope of the  
332 officer's employment.

333 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
334 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide  
335 traditional ceremonial purposes in connection with the practice of a traditional Indian religion  
336 as defined in Subsection 58-37-2(1)(w).

337 (b) In a prosecution alleging violation of this section regarding peyote as defined in

338 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,  
339 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in  
340 connection with the practice of a traditional Indian religion.

341 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
342 defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to  
343 trial.

344 (ii) The notice shall include the specific claims of the affirmative defense.

345 (iii) The court may waive the notice requirement in the interest of justice for good  
346 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

347 (d) The defendant shall establish the affirmative defense under this Subsection (12) by  
348 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
349 charges.

350 (13) (a) It is an affirmative defense that the person produced, possessed, or  
351 administered a controlled substance listed in Section 58-37-4.2 if the person:

352 (i) was engaged in medical research; and

353 (ii) was a holder of a valid license to possess controlled substances under Section  
354 58-37-6.

355 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed  
356 a controlled substance listed in Section 58-37-4.2.

357 (14) It is an affirmative defense that the person possessed, in the person's body, a  
358 controlled substance listed in Section 58-37-4.2 if:

359 (a) the person was the subject of medical research conducted by a holder of a valid  
360 license to possess controlled substances under Section 58-37-6; and

361 (b) the substance was administered to the person by the medical researcher.

362 (15) The application of any increase in penalty under this section to a violation of  
363 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
364 Subsection (15) takes precedence over any conflicting provision of this section.

365 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
366 listed in Subsection (16)(b) that the person:

367 (i) reasonably believes that the person or another person is experiencing an overdose  
368 event due to the ingestion, injection, inhalation, or other introduction into the human body of a

369 controlled substance or other substance;

370 (ii) reports in good faith the overdose event to a medical provider, an emergency  
371 medical service provider as defined in Section [26-8a-102](#), a law enforcement officer, a 911  
372 emergency call system, or an emergency dispatch system, or the person is the subject of a  
373 report made under this Subsection (16);

374 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
375 actual location of the overdose event that facilitates responding to the person experiencing the  
376 overdose event;

377 (iv) remains at the location of the person experiencing the overdose event until a  
378 responding law enforcement officer or emergency medical service provider arrives, or remains  
379 at the medical care facility where the person experiencing an overdose event is located until a  
380 responding law enforcement officer arrives;

381 (v) cooperates with the responding medical provider, emergency medical service  
382 provider, and law enforcement officer, including providing information regarding the person  
383 experiencing the overdose event and any substances the person may have injected, inhaled, or  
384 otherwise introduced into the person's body; and

385 (vi) is alleged to have committed the offense in the same course of events from which  
386 the reported overdose arose.

387 (b) The offenses referred to in Subsection (16)(a) are:

388 (i) the possession or use of less than 16 ounces of marijuana;

389 (ii) the possession or use of a scheduled or listed controlled substance other than  
390 marijuana; and

391 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
392 Imitation Controlled Substances Act.

393 (c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not  
394 include seeking medical assistance under this section during the course of a law enforcement  
395 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

396 (17) If any provision of this chapter, or the application of any provision to any person  
397 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
398 invalid provision or application.

399 (18) A legislative body of a political subdivision may not enact an ordinance that is

400 less restrictive than any provision of this chapter.

401 Section 2. Section **58-37c-11** is amended to read:

402 **58-37c-11. Penalty for unlawful conduct.**

403 (1) A person who violates the unlawful conduct provision defined in Subsections  
404 **58-37c-3**(11)(a) through (j) is guilty of a class A misdemeanor.

405 (2) A person who violates the unlawful conduct provisions defined in Subsection  
406 **58-37c-3**(11)(k) is guilty of a ~~second~~ third degree felony.

407 Section 3. Section **62A-15-102** is amended to read:

408 **62A-15-102. Definitions.**

409 As used in this chapter:

410 (1) "Criminal risk factors" means a person's characteristics and behaviors that:

411 (a) affect the person's risk of engaging in criminal behavior; and

412 (b) are diminished when addressed by effective treatment, supervision, and other  
413 support resources, resulting in reduced risk of criminal behavior.

414 ~~(1)~~ (2) "Director" means the director of the Division of Substance Abuse and Mental  
415 Health.

416 ~~(2)~~ (3) "Division" means the Division of Substance Abuse and Mental Health  
417 established in Section **62A-15-103**.

418 ~~(3)~~ (4) "Local mental health authority" means a county legislative body.

419 ~~(4)~~ (5) "Local substance abuse authority" means a county legislative body.

420 ~~(5)~~ (6) (a) "Public funds" means federal money received from the Department of  
421 Human Services or the Department of Health, and state money appropriated by the Legislature  
422 to the Department of Human Services, the Department of Health, a county governing body, or a  
423 local substance abuse authority, or a local mental health authority for the purposes of providing  
424 substance abuse or mental health programs or services.

425 (b) "Public funds" include federal and state money that has been transferred by a local  
426 substance abuse authority or a local mental health authority to a private provider under an  
427 annual or otherwise ongoing contract to provide comprehensive substance abuse or mental  
428 health programs or services for the local substance abuse authority or local mental health  
429 authority. The money maintains the nature of "public funds" while in the possession of the  
430 private entity that has an annual or otherwise ongoing contract with a local substance abuse

431 authority or a local mental health authority to provide comprehensive substance abuse or  
432 mental health programs or services for the local substance abuse authority or local mental  
433 health authority.

434 (c) Public funds received for the provision of services pursuant to substance abuse or  
435 mental health service plans may not be used for any other purpose except those authorized in  
436 the contract between the local mental health or substance abuse authority and provider for the  
437 provision of plan services.

438 [(6)] (7) "Severe mental disorder" means schizophrenia, major depression, bipolar  
439 disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by  
440 the division.

441 Section 4. Section **62A-15-103** is amended to read:

442 **62A-15-103. Division -- Creation -- Responsibilities.**

443 (1) There is created the Division of Substance Abuse and Mental Health within the  
444 department, under the administration and general supervision of the executive director. The  
445 division is the substance abuse authority and the mental health authority for this state.

446 (2) The division shall:

447 (a) (i) educate the general public regarding the nature and consequences of substance  
448 abuse by promoting school and community-based prevention programs;

449 (ii) render support and assistance to public schools through approved school-based  
450 substance abuse education programs aimed at prevention of substance abuse;

451 (iii) promote or establish programs for the prevention of substance abuse within the  
452 community setting through community-based prevention programs;

453 (iv) cooperate with and assist treatment centers, recovery residences, and other  
454 organizations that provide services to individuals recovering from a substance abuse disorder,  
455 by identifying and disseminating information about effective practices and programs;

456 (v) promote integrated programs that address an individual's substance abuse, mental  
457 health, ~~and~~ physical ~~[healthcare needs]~~ health, and criminal risk factors;

458 (vi) establish and promote an evidence-based continuum of screening, assessment,  
459 prevention, treatment, and recovery support services in the community for individuals with  
460 substance abuse and mental illness that addresses criminal risk factors;

461 ~~(vi)~~ (vii) evaluate the effectiveness of programs described in Subsection (2);

462 [~~vii~~] viii consider the impact of the programs described in Subsection (2) on:

463 (A) emergency department utilization;

464 (B) jail and prison populations;

465 (C) the homeless population; and

466 (D) the child welfare system; and

467 [~~viii~~] ix promote or establish programs for education and certification of instructors  
468 to educate persons convicted of driving under the influence of alcohol or drugs or driving with  
469 any measurable controlled substance in the body;

470 (b) (i) collect and disseminate information pertaining to mental health;

471 (ii) provide direction over the state hospital including approval of its budget,  
472 administrative policy, and coordination of services with local service plans;

473 (iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative  
474 Rulemaking Act, to educate families concerning mental illness and promote family  
475 involvement, when appropriate, and with patient consent, in the treatment program of a family  
476 member; and

477 (iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative  
478 Rulemaking Act, to direct that all individuals receiving services through local mental health  
479 authorities or the Utah State Hospital be informed about and, if desired, provided assistance in  
480 completion of a declaration for mental health treatment in accordance with Section  
481 [62A-15-1002](#);

482 (c) (i) consult and coordinate with local substance abuse authorities and local mental  
483 health authorities regarding programs and services;

484 (ii) provide consultation and other assistance to public and private agencies and groups  
485 working on substance abuse and mental health issues;

486 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,  
487 medical and social agencies, public health authorities, law enforcement agencies, education and  
488 research organizations, and other related groups;

489 (iv) promote or conduct research on substance abuse and mental health issues, and  
490 submit to the governor and the Legislature recommendations for changes in policy and  
491 legislation;

492 (v) receive, distribute, and provide direction over public funds for substance abuse and



493 mental health services;

494 (vi) monitor and evaluate programs provided by local substance abuse authorities and  
495 local mental health authorities;

496 (vii) examine expenditures of any local, state, and federal funds;

497 (viii) monitor the expenditure of public funds by:

498 (A) local substance abuse authorities;

499 (B) local mental health authorities; and

500 (C) in counties where they exist, the private contract provider that has an annual or  
501 otherwise ongoing contract to provide comprehensive substance abuse or mental health  
502 programs or services for the local substance abuse authority or local mental health authorities;

503 (ix) contract with local substance abuse authorities and local mental health authorities  
504 to provide a comprehensive continuum of services that includes community-based services for  
505 individuals involved in the criminal justice system, in accordance with division policy, contract  
506 provisions, and the local plan;

507 (x) contract with private and public entities for special statewide or nonclinical  
508 services, or services for individuals involved in the criminal justice system, according to  
509 division rules;

510 (xi) review and approve each local substance abuse authority's plan and each local  
511 mental health authority's plan in order to ensure:

512 (A) a statewide comprehensive continuum of substance abuse services;

513 (B) a statewide comprehensive continuum of mental health services;

514 (C) services result in improved overall health and functioning; [~~and~~]

515 (D) a statewide comprehensive continuum of community-based services designed to  
516 reduce criminal risk factors for individuals who are determined to have substance abuse or  
517 mental illness conditions or both, and who are involved in the criminal justice system;

518 (E) compliance, where appropriate, with the certification requirements in Subsection  
519 (2)(e)(i); and

520 [~~(F)~~] (F) appropriate expenditure of public funds;

521 (xii) review and make recommendations regarding each local substance abuse  
522 authority's contract with its provider of substance abuse programs and services and each local  
523 mental health authority's contract with its provider of mental health programs and services to

524 ensure compliance with state and federal law and policy;  
525 (xiii) monitor and ensure compliance with division rules and contract requirements;  
526 and  
527 (xiv) withhold funds from local substance abuse authorities, local mental health  
528 authorities, and public and private providers for contract noncompliance, failure to comply  
529 with division directives regarding the use of public funds, or for misuse of public funds or  
530 money;  
531 (d) assure that the requirements of this part are met and applied uniformly by local  
532 substance abuse authorities and local mental health authorities across the state;  
533 (e) require each local substance abuse authority and each local mental health authority  
534 to submit its plan to the division by May 1 of each year;  
535 (f) conduct an annual program audit and review of each local substance abuse authority  
536 in the state and its contract provider and each local mental health authority in the state and its  
537 contract provider, including:  
538 (i) a review and determination regarding whether:  
539 (A) public funds allocated to local substance abuse authorities and local mental health  
540 authorities are consistent with services rendered and outcomes reported by them or their  
541 contract providers; and  
542 (B) each local substance abuse authority and each local mental health authority is  
543 exercising sufficient oversight and control over public funds allocated for substance abuse and  
544 mental health programs and services; and  
545 (ii) items determined by the division to be necessary and appropriate; and  
546 (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,  
547 Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account  
548 Act[-];  
549 (h) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative  
550 Rulemaking Act, minimum standards and requirements for the provision of substance abuse  
551 and mental health treatment to individuals who are required to participate in treatment by the  
552 court or the Board of Pardons and Parole, or who are incarcerated, including:  
553 (i) collaboration with the Department of Corrections and the Utah Substance Abuse  
554 Advisory Council to develop and coordinate the standards;

555 (ii) determining that the standards ensure available treatment includes the most current  
556 practices and procedures demonstrated by recognized scientific research to reduce recidivism,  
557 including focus on the individuals criminal risk factors; and

558 (iii) requiring that all public and private treatment programs meet the standards  
559 established under this Subsection (2)(h) in order to receive public funds allocated to the  
560 division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice  
561 for the costs of providing screening, assessment, prevention, treatment, and recovery support;

562 (i) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative  
563 Rulemaking Act, the requirements and procedures for the certification of licensed public and  
564 private providers who provide, as part of their practice, substance abuse and mental health  
565 treatment to individuals involved in the criminal justice system, including:

566 (i) collaboration with the Department of Corrections and the Utah Substance Abuse  
567 Advisory Council to develop, coordinate, and implement the certification process;

568 (ii) basing the certification process on the standards developed under Subsection (2)(h)  
569 for the treatment of individuals involved in the criminal justice system; and

570 (iii) the requirement that all public and private providers of treatment to individuals  
571 involved in the criminal justice system shall obtain certification on or before July 1, 2016, and  
572 shall renew the certification every two years, in order to qualify for funds allocated to the  
573 division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice  
574 on or after July 1, 2016;

575 (j) (i) establish performance goals and outcome measurements for all treatment  
576 programs for which minimum standards are established under Subsection (2)(h), including  
577 recidivism data obtained in collaboration with the Administrative Office of the Courts and the  
578 Department of Corrections; and

579 (ii) collect data to track and determine whether the goals and measurements are being  
580 attained and make this information available to the public;

581 (k) in its discretion, use the data to make decisions regarding the use of funds allocated  
582 to the division, the Administrative Office of the Courts, and the Department of Corrections to  
583 provide treatment for which standards are established under Subsection (2)(h); and

584 (l) annually, on or before August 31, submit the data collected under Subsection (2)(j)  
585 to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings

586 based on the data and provide the report to the legislative Judiciary Interim Committee, Health  
587 and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim  
588 Committee, and the related appropriations subcommittees.

589 (3) (a) The division may refuse to contract with and may pursue its legal remedies  
590 against any local substance abuse authority or local mental health authority that fails, or has  
591 failed, to expend public funds in accordance with state law, division policy, contract  
592 provisions, or directives issued in accordance with state law.

593 (b) The division may withhold funds from a local substance abuse authority or local  
594 mental health authority if the authority's contract with its provider of substance abuse or mental  
595 health programs or services fails to comply with state and federal law or policy.

596 (4) Before reissuing or renewing a contract with any local substance abuse authority or  
597 local mental health authority, the division shall review and determine whether the local  
598 substance abuse authority or local mental health authority is complying with its oversight and  
599 management responsibilities described in Sections [17-43-201](#), [17-43-203](#), [17-43-303](#), and  
600 [17-43-309](#). Nothing in this Subsection (4) may be used as a defense to the responsibility and  
601 liability described in Section [17-43-303](#) and to the responsibility and liability described in  
602 Section [17-43-203](#).

603 (5) In carrying out its duties and responsibilities, the division may not duplicate  
604 treatment or educational facilities that exist in other divisions or departments of the state, but  
605 shall work in conjunction with those divisions and departments in rendering the treatment or  
606 educational services that those divisions and departments are competent and able to provide.

607 (6) The division may accept in the name of and on behalf of the state donations, gifts,  
608 devises, or bequests of real or personal property or services to be used as specified by the  
609 donor.

610 (7) The division shall annually review with each local substance abuse authority and  
611 each local mental health authority the authority's statutory and contract responsibilities  
612 regarding:

613 (a) the use of public funds;

614 (b) oversight responsibilities regarding public funds; and

615 (c) governance of substance abuse and mental health programs and services.

616 (8) The Legislature may refuse to appropriate funds to the division upon the division's

617 failure to comply with the provisions of this part.

618 (9) If a local substance abuse authority contacts the division under Subsection  
619 17-43-201(9) for assistance in providing treatment services to a pregnant woman or pregnant  
620 minor, the division shall:

621 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the  
622 capacity to provide the treatment services; or

623 (b) otherwise ensure that treatment services are made available to the pregnant woman  
624 or pregnant minor.

625 Section 5. Section 63M-7-204 is amended to read:

626 **63M-7-204. Duties of commission.**

627 The State Commission on Criminal and Juvenile Justice administration shall:

628 (1) promote the commission's purposes as enumerated in Section 63M-7-201;

629 (2) promote the communication and coordination of all criminal and juvenile justice  
630 agencies;

631 (3) study, evaluate, and report on the status of crime in the state and on the  
632 effectiveness of criminal justice policies, procedures, and programs that are directed toward the  
633 reduction of crime in the state;

634 (4) study, evaluate, and report on programs initiated by state and local agencies to  
635 address reducing recidivism, including changes in penalties and sentencing guidelines intended  
636 to reduce recidivism, as resources allow;

637 [~~4~~] (5) study, evaluate, and report on policies, procedures, and programs of other  
638 jurisdictions which have effectively reduced crime;

639 [~~5~~] (6) identify and promote the implementation of specific policies and programs the  
640 commission determines will significantly reduce crime in Utah;

641 [~~6~~] (7) provide analysis and recommendations on all criminal and juvenile justice  
642 legislation, state budget, and facility requests, including program and fiscal impact on all  
643 components of the criminal and juvenile justice system;

644 [~~7~~] (8) provide analysis, accountability, recommendations, and supervision for state  
645 and federal criminal justice grant money;

646 [~~8~~] (9) provide public information on the criminal and juvenile justice system and  
647 give technical assistance to agencies or local units of government on methods to promote

648 public awareness;

649 ~~[(9)]~~ (10) promote research and program evaluation as an integral part of the criminal  
650 and juvenile justice system;

651 ~~[(10)]~~ (11) provide a comprehensive criminal justice plan annually;

652 ~~[(11)]~~ (12) review agency forecasts regarding future demands on the criminal and  
653 juvenile justice systems, including specific projections for secure bed space;

654 ~~[(12)]~~ (13) promote the development of criminal and juvenile justice information  
655 systems that are consistent with common standards for data storage and are capable of  
656 appropriately sharing information with other criminal justice information systems by:

657 (a) developing and maintaining common data standards for use by all state criminal  
658 justice agencies;

659 (b) annually performing audits of criminal history record information maintained by  
660 state criminal justice agencies to assess their accuracy, completeness, and adherence to  
661 standards;

662 (c) defining and developing state and local programs and projects associated with the  
663 improvement of information management for law enforcement and the administration of  
664 justice; and

665 (d) establishing general policies concerning criminal and juvenile justice information  
666 systems and making rules as necessary to carry out the duties under this Subsection ~~[(12)]~~ (13)  
667 and Subsection ~~[(10)]~~ (11);

668 ~~[(13)]~~ (14) allocate and administer grants, from money made available, for approved  
669 education programs to help prevent the sexual exploitation of children; ~~[and]~~

670 ~~[(14)]~~ (15) allocate and administer grants funded from money from the Law  
671 Enforcement Operations Account created in Section 51-9-411 for law enforcement operations  
672 and programs related to reducing illegal drug activity and related criminal activity[-];

673 (16) request, receive, and evaluate data and recommendations collected and reported by  
674 agencies and contractors related to policies recommended by the commission regarding  
675 recidivism reduction; and

676 (17) establish and administer a performance incentive grant program that allocates  
677 funds appropriated by the Legislature to programs and practices implemented by counties that  
678 reduce recidivism and reduce the number of offenders per capita who are incarcerated.

679 Section 6. Section **63M-7-404** is amended to read:

680 **63M-7-404. Purpose -- Duties.**

681 (1) The purpose of the commission shall be to develop guidelines and propose  
682 recommendations to the Legislature, the governor, and the Judicial Council about the  
683 sentencing and release of juvenile and adult offenders in order to:

684 ~~[(1)]~~ (a) respond to public comment;

685 ~~[(2)]~~ (b) relate sentencing practices and correctional resources;

686 ~~[(3)]~~ (c) increase equity in criminal sentencing;

687 ~~[(4)]~~ (d) better define responsibility in criminal sentencing; and

688 ~~[(5)]~~ (e) enhance the discretion of sentencing judges while preserving the role of the  
689 Board of Pardons and Parole and the Youth Parole Authority.

690 (2) (a) The commission shall modify the sentencing guidelines for adult offenders to  
691 implement the recommendations of the Commission on Criminal and Juvenile Justice for  
692 reducing recidivism.

693 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting  
694 the public and ensuring efficient use of state funds.

695 (3) (a) The commission shall modify the criminal history score in the sentencing  
696 guidelines for adult offenders to implement the recommendations of the Commission on  
697 Criminal and Juvenile Justice for reducing recidivism.

698 (b) The modifications to the criminal history score under Subsection (3)(a) shall  
699 include factors in an offender's criminal history that are relevant to the accurate determination  
700 of an individual's risk of offending again.

701 (4) (a) The commission shall establish sentencing guidelines for periods of  
702 incarceration for individuals who are on probation and:

703 (i) who have violated one or more conditions of probation; and

704 (ii) whose probation has been revoked by the court.

705 (b) The guidelines shall consider the seriousness of the violation of the conditions of  
706 probation, the probationer's conduct while on probation, and the probationer's criminal history.

707 (5) (a) The commission shall establish sentencing guidelines for periods of  
708 incarceration for individuals who are on parole and:

709 (i) who have violated a condition of parole; and

710 (ii) whose parole has been revoked by the Board of Pardons and Parole.

711 (b) The guidelines shall consider the seriousness of the violation of the conditions of  
712 parole, the individual's conduct while on parole, and the individual's criminal history.

713 (6) The commission shall establish graduated sanctions to facilitate the prompt and  
714 effective response to an individual's violation of the terms of probation or parole by the adult  
715 probation and parole section of the Department of Corrections in order to implement the  
716 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism,  
717 including:

718 (a) sanctions to be used in response to a violation of the terms of probation or parole;

719 (b) when violations should be reported to the court or the Board of Pardons and Parole;

720 and

721 (c) a range of sanctions that may not exceed a period of incarceration of not more than:

722 (i) three consecutive days; and

723 (ii) a total of five days in a period of 30 days.

724 (7) The commission shall establish graduated incentives to facilitate a prompt and  
725 effective response by the adult probation and parole section of the Department of Corrections  
726 to an offender's:

727 (a) compliance with the terms of probation or parole; and

728 (b) positive conduct that exceeds those terms.

729 Section 7. Section **64-13-1** is amended to read:

730 **64-13-1. Definitions.**

731 As used in this chapter:

732 (1) "Case action plan" means a document developed by the Department of Corrections  
733 that identifies the program priorities for the treatment of the offender, including the criminal  
734 risk factors as determined by a risk and needs assessment conducted by the department.

735 ~~[(1)]~~ (2) "Community correctional center" means a nonsecure correctional facility  
736 operated:

737 (a) by the department; or

738 (b) under a contract with the department.

739 ~~[(2)]~~ (3) "Correctional facility" means any facility operated to house offenders, either in  
740 a secure or nonsecure setting:



- 741 (a) by the department; or  
742 (b) under a contract with the department.
- 743 (4) "Criminal risk factors" means a person's characteristics and behaviors that:  
744 (a) affect that person's risk of engaging in criminal behavior; and  
745 (b) are diminished when addressed by effective treatment, supervision, and other  
746 support resources, resulting in a reduced risk of criminal behavior.
- 747 [~~(3)~~] (5) "Department" means the Department of Corrections.
- 748 [~~(4)~~] (6) "Emergency" means any riot, disturbance, homicide, inmate violence  
749 occurring in any correctional facility, or any situation that presents immediate danger to the  
750 safety, security, and control of the department.
- 751 [~~(5)~~] (7) "Executive director" means the executive director of the Department of  
752 Corrections.
- 753 [~~(6)~~] (8) "Inmate" means any person who is committed to the custody of the department  
754 and who is housed at a correctional facility or at a county jail at the request of the department.
- 755 [~~(7)~~] (9) "Offender" means any person who has been convicted of a crime for which he  
756 may be committed to the custody of the department and is at least one of the following:
- 757 (a) committed to the custody of the department;  
758 (b) on probation; or  
759 (c) on parole.
- 760 (10) "Risk and needs assessment" means an actuarial tool validated on criminal  
761 offenders that determines:
- 762 (a) an individual's risk of reoffending; and  
763 (b) the criminal risk factors that, when addressed, reduce the individual's risk of  
764 reoffending.
- 765 [~~(8)~~] (11) "Secure correctional facility" means any prison, penitentiary, or other  
766 institution operated by the department or under contract for the confinement of offenders,  
767 where force may be used to restrain them if they attempt to leave the institution without  
768 authorization.
- 769 Section 8. Section **64-13-6** is amended to read:  
770 **64-13-6. Department duties.**  
771 (1) The department shall:

- 772 (a) protect the public through institutional care and confinement, and supervision in the  
773 community of offenders where appropriate;
- 774 (b) implement court-ordered punishment of offenders;
- 775 (c) provide program opportunities for offenders;
- 776 (d) provide treatment for sex offenders who are found to be treatable based upon  
777 criteria developed by the department;
- 778 (e) provide the results of ongoing assessment of sex offenders and objective diagnostic  
779 testing to sentencing and release authorities;
- 780 (f) manage programs that take into account the needs and interests of victims, where  
781 reasonable;
- 782 (g) supervise probationers and parolees as directed by statute and implemented by the  
783 courts and the Board of Pardons and Parole;
- 784 (h) subject to Subsection (2), investigate criminal conduct involving offenders  
785 incarcerated in a state correctional facility;
- 786 (i) cooperate and exchange information with other state, local, and federal law  
787 enforcement agencies to achieve greater success in prevention and detection of crime and  
788 apprehension of criminals; ~~and~~
- 789 (j) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult  
790 Offender Supervision~~[-]; and~~
- 791 (k) establish a case action plan for each offender as follows:
- 792 (i) if an offender is to be supervised in the community, the case action plan shall be  
793 established for the offender not more than 90 days after supervision by the department begins;  
794 and
- 795 (ii) if the offender is committed to the custody of the department, the case action plan  
796 shall be established for the offender not more than 120 days after the commitment.
- 797 (2) The department may in the course of supervising probationers and parolees:
- 798 (a) impose graduated sanctions, as established by the Utah Sentencing Commission  
799 under Subsection 63M-7-404(5), for an individual's violation of one or more terms of the  
800 probation or parole; and
- 801 (b) upon approval by the court or the Board of Pardons and Parole, impose as a  
802 sanction for an individual's violation of the terms of probation or parole a period of

803 incarceration of not more than three consecutive days and not more than a total of five days  
 804 within a period of 30 days.

805 ~~[(2)]~~ (3) (a) By following the procedures in Subsection ~~[(2)]~~ (3)(b), the department may  
 806 investigate the following occurrences at state correctional facilities:

- 807 (i) criminal conduct of departmental employees;
- 808 (ii) felony crimes resulting in serious bodily injury;
- 809 (iii) death of any person; or
- 810 (iv) aggravated kidnaping.

811 (b) Prior to investigating any occurrence specified in Subsection ~~[(2)]~~ (3)(a), the  
 812 department shall:

- 813 (i) notify the sheriff or other appropriate law enforcement agency promptly after  
 814 ascertaining facts sufficient to believe an occurrence specified in Subsection ~~[(2)]~~ (3)(a) has  
 815 occurred; and
- 816 (ii) obtain consent of the sheriff or other appropriate law enforcement agency to  
 817 conduct an investigation involving an occurrence specified in Subsection ~~[(2)]~~ (3)(a).

818 ~~[(3)]~~ (4) Upon request, the department shall provide copies of investigative reports of  
 819 criminal conduct to the sheriff or other appropriate law enforcement agencies.

820 ~~[(4)]~~ (5) The department shall provide data to the Commission on Criminal and  
 821 Juvenile Justice to show the criteria for determining sex offender treatability, the  
 822 implementation and effectiveness of sex offender treatment, and the results of ongoing  
 823 assessment and objective diagnostic testing. The Commission on Criminal and Juvenile  
 824 Justice shall then report these data in writing to the Judiciary Interim Committee, if requested  
 825 by the committee, and to the appropriate appropriations subcommittee annually.

826 ~~[(5)]~~ (6) The Department of Corrections shall collect accounts receivable ordered by  
 827 the district court as a result of prosecution for a criminal offense according to the requirements  
 828 and during the time periods established in Subsection 77-18-1(9).

829 Section 9. Section **64-13-7.5** is amended to read:

830 **64-13-7.5. Persons in need of mental health services -- Contracts.**

831 (1) Except as provided for in Subsection (2), when the department determines that a  
 832 person in its custody is in need of mental health services, the department shall contract with the  
 833 Division of Substance Abuse and Mental Health, local mental health authorities, or the state

834 hospital to provide mental health services for that person. Those services may be provided at  
835 the Utah State Hospital or in community programs provided by or under contract with the  
836 Division of Substance Abuse and Mental Health, a local mental health authority, or other  
837 public or private mental health care providers.

838 (2) (a) If the Division of Substance Abuse and Mental Health, a local mental health  
839 authority, or the state hospital notifies the department that it is unable to provide mental health  
840 services under Subsection (1), the department may contract with other public or private mental  
841 health care providers to provide mental health services for persons in its custody.

842 (b) The standards established by rule under Section 64-13-25 apply to the public or  
843 private mental health care providers with whom the department contracts under this Subsection  
844 (2).

845 (3) A person who provides mental health services for sex offender treatment as  
846 required in Section 64-13-6 shall be licensed as a mental health professional in accordance with  
847 Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61,  
848 Psychologist Licensing Act, and exhibit competency to practice in the area of sex offender  
849 treatment based on education, training, and practice.

850 Section 10. Section 64-13-10.5 is enacted to read:

851 **64-13-10.5. Transition and reentry of inmates at termination of incarceration.**

852 (1) The department shall evaluate and update the case action plan as necessary to  
853 prepare for the offender's transition from incarceration to release, including:

854 (a) establishing the supervision level and program needs, based on the offender's  
855 criminal risk factors;

856 (b) identifying barriers to the offender's ability to obtain housing, food, clothing, and  
857 transportation;

858 (c) identifying community-based treatment resources that are reasonably accessible to  
859 the offender; and

860 (d) establishing the initial supervision procedures and strategy for the offender's parole  
861 officer.

862 (2) The department shall notify the Board of Pardons and Parole not fewer than 30 days  
863 prior to an offender's release of:

864 (a) the offender's case action plan; and

865 (b) any specific conditions of parole necessary to better facilitate transition to the  
866 community.

867 Section 11. Section **64-13-14.5** is amended to read:

868 **64-13-14.5. Limits of confinement place -- Release status -- Work release.**

869 (1) The department may extend the limits of the place of confinement of an inmate  
870 when, as established by department policies and procedures, there is cause to believe the  
871 inmate will honor [his] the trust, by authorizing [him] the inmate under prescribed conditions:

872 (a) to leave temporarily for purposes specified by department policies and procedures  
873 to visit specifically designated places for a period not to exceed 30 days;

874 (b) to participate in a voluntary training program in the community while housed at a  
875 correctional facility or to work at paid employment;

876 (c) to be housed in a nonsecure community correctional center operated by the  
877 department; or

878 (d) to be housed in any other facility under contract with the department.

879 (2) The department shall establish rules governing offenders on release status. A copy  
880 of the rules shall be furnished to the offender and to any employer or other person participating  
881 in the offender's release program. Any employer or other participating person shall agree in  
882 writing to abide by the rules and to notify the department of the offender's discharge or other  
883 release from a release program activity, or of any violation of the rules governing release status.

884 (3) The willful failure of an inmate to remain within the extended limits of his  
885 confinement or to return within the time prescribed to an institution or facility designated by  
886 the department is an escape from custody.

887 (4) If an offender is arrested for the commission of a crime, the arresting authority shall  
888 immediately notify the department of the arrest.

889 (5) The department may impose appropriate sanctions pursuant to Section 64-13-21  
890 upon offenders who violate [~~rules~~] guidelines established by the Utah Sentencing Commission,  
891 including prosecution for escape under Section 76-8-309 and for unauthorized absence.

892 (6) An inmate who is housed at a nonsecure correctional facility and on work release  
893 may not be required to work for less than the current federally established minimum wage, or  
894 under substandard working conditions.

895 Section 12. Section **64-13-21** is amended to read:

896           **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**  
897 **-- POST certified parole or probation officers and peace officers -- Duties -- Supervision**  
898 **fee.**

899           (1) (a) The department, except as otherwise provided by law, shall supervise sentenced  
900 offenders placed in the community on probation by the courts, on parole by the Board of  
901 Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate  
902 Compact for the Supervision of Parolees and Probationers.

903           (b) Standards for the supervision of offenders shall be established by the department in  
904 accordance with [~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~] sentencing  
905 guidelines, including the graduated sanctions matrix, established by the Utah Sentencing  
906 Commission, giving priority, based on available resources, to felony offenders and offenders  
907 sentenced pursuant to Subsection 58-37-8(2)(b)(ii).

908           (2) The department shall apply graduated sanctions established by the Utah Sentencing  
909 Commission to facilitate a prompt and appropriate response to an individual's violation of the  
910 terms of probation or parole, including:

911           (a) sanctions to be used in response to a violation of the terms of probation or parole;  
912 and

913           (b) requesting approval from the court or Board of Pardons and Parole to impose a  
914 sanction for an individual's violation of the terms of probation or parole a period of  
915 incarceration of not more than three consecutive days and not more than a total of five days  
916 within a period of 30 days.

917           (3) The department shall implement a program of graduated incentives as established  
918 by the Utah Sentencing Commission to facilitate the department's prompt and appropriate  
919 response to an offender's:

920           (a) compliance with the terms of probation or parole; or

921           (b) positive conduct that exceeds those terms.

922           (4) (a) The department shall, in collaboration with the Commission on Criminal and  
923 Juvenile Justice, create standards and procedures for the collection of information related to the  
924 use of the graduated sanctions and incentives, and offenders' outcomes.

925           (b) The collected information shall be provided to the Commission on Criminal and  
926 Juvenile Justice not less frequently than annually on or before August 31.

927           ~~[(2)]~~ (5) Employees of the department who are POST certified as law enforcement  
928 officers or correctional officers and who are designated as parole and probation officers by the  
929 executive director have the following duties:

930           (a) monitoring, investigating, and supervising a parolee's or probationer's compliance  
931 with the conditions of the parole or probation agreement;

932           (b) investigating or apprehending any offender who has escaped from the custody of  
933 the department or absconded from supervision;

934           (c) providing investigative services for the courts, the department, or the Board of  
935 Pardons and Parole;

936           (d) supervising any offender during transportation; or

937           (e) collecting DNA specimens when the specimens are required under Section  
938 [53-10-404](#).

939           ~~[(3)]~~ (6) (a) A monthly supervision fee of \$30 shall be collected from each offender on  
940 probation or parole. The fee may be suspended or waived by the department upon a showing  
941 by the offender that imposition would create a substantial hardship or if the offender owes  
942 restitution to a victim.

943           (b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
944 Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the  
945 supervision fee and the circumstances under which an offender may request a hearing.

946           (ii) In determining whether the imposition of the supervision fee would constitute a  
947 substantial hardship, the department shall consider the financial resources of the offender and  
948 the burden that the fee would impose, with regard to the offender's other obligations.

949           (7) (a) The department shall establish a program allowing an offender on parole under  
950 Subsection [76-3-202\(1\)\(a\)](#) to earn credits for the offender's compliance with the terms of the  
951 offender's probation or parole, which shall be applied to reducing the period of probation or  
952 parole as provided in this Subsection (7).

953           (b) The program shall provide that an offender earns a reduction credit of 30 days from  
954 an offender's period of probation or parole for each month the offender completes without any  
955 violation of the terms of the offender's probation or parole agreement, including the case action  
956 plan.

957           (c) The department shall maintain a record of credits earned by an offender under this

958 Subsection (7) and shall request from the court or the Board of Pardons and Parole the  
959 termination of probation or parole not fewer than 30 days prior to the termination date that  
960 reflects the credits earned under this Subsection (7).

961 (d) This Subsection (7) does not prohibit the department from requesting a termination  
962 date earlier than the termination date established by earned credits under Subsection (7)(c).

963 (e) The court or the Board of Pardons and Parole shall terminate an offender's  
964 probation or parole upon completion of the period of probation or parole accrued by time  
965 served and credits earned under this Subsection (7) unless the court or the Board of Pardons  
966 and Parole find that termination would interrupt the completion of a necessary treatment  
967 program, in which case the termination of probation or parole shall occur when the treatment  
968 program is completed.

969 (f) The department shall report annually to the Commission on Criminal and Juvenile  
970 Justice on or before August 31:

971 (i) the number of offenders who have earned probation or parole credits under this  
972 Subsection (7) in one or more months of the preceding fiscal year and the percentage of the  
973 offenders on probation or parole during that time that this number represents;

974 (ii) the average number of credits earned by those offenders who earned credits; and

975 (iii) the number of offenders who earned credits by county of residence while on  
976 probation or parole.

977 Section 13. Section **64-13-25** is amended to read:

978 **64-13-25. Standards for programs -- Audits.**

979 (1) To promote accountability and to ensure safe and professional operation of  
980 correctional programs, the department shall establish minimum standards for the organization  
981 and operation of its programs, including collaborating with the Department of Human Services  
982 to establish minimum standards for programs providing assistance for individuals involved in  
983 the criminal justice system.

984 (a) The standards shall be promulgated according to state rulemaking provisions.

985 Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter  
986 3, the Utah Administrative Rulemaking Act. Offenders are not a class of persons under that  
987 act.

988 (b) Standards shall provide for inquiring into and processing offender complaints.



989 (c) (i) The department shall establish minimum standards and qualifications for  
990 treatment programs provided in county jails to which persons committed to the state prison are  
991 placed by jail contract under Section [64-13e-103](#).

992 (ii) In establishing the standards and qualifications for the treatment programs, the  
993 department shall:

994 (A) consult and collaborate with the county sheriffs and the Division of Substance  
995 Abuse and Mental Health; and

996 (B) include programs demonstrated by recognized scientific research to reduce  
997 recidivism by addressing an offender's criminal risk factors as determined by a risk and needs  
998 assessment.

999 (iii) All jails contracting to house offenders committed to the state prison shall meet the  
1000 minimum standards for treatment programs as established under this Subsection (1)(c).

1001 (d) (i) The department shall establish minimum standards of treatment for sex  
1002 offenders, which shall include the requirements under Subsection [64-13-7.5\(3\)](#) regarding  
1003 licensure and competency.

1004 (ii) The standards shall require the use of the most current best practices demonstrated  
1005 by recognized scientific research to address an offender's criminal risk factors.

1006 (iii) The department shall collaborate with the Division of Substance Abuse and  
1007 Mental Health to develop and effectively distribute the standards to jails and to mental health  
1008 professionals who desire to provide mental health treatment for sex offenders.

1009 (iv) The department shall establish the standards by administrative rule pursuant to  
1010 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1011 (2) [~~There shall be~~] The department shall establish an audit for compliance with  
1012 standards established under this section according to policies and procedures established by the  
1013 department, for continued operation of correctional and treatment programs provided to  
1014 offenders committed to the department's custody, including inmates housed in county jails by  
1015 contract with the Department of Corrections.

1016 (a) At least every three years, the department shall internally audit all programs for  
1017 compliance with established standards.

1018 (b) All financial statements and accounts of the department shall be reviewed during  
1019 the audit. Written review shall be provided to the managers of the programs and the executive

1020 director of the department.

1021 (c) The reports shall be classified as confidential internal working papers and access is  
1022 available at the discretion of the executive director or the governor, or upon court order.

1023 (3) The department shall establish a certification program for public and private  
1024 providers of treatment for sex offenders on probation or parole that requires the providers' sex  
1025 offender treatment practices meet the standards and practices established under Subsection  
1026 (1)(d) to reduce sex offender recidivism.

1027 (a) The department shall collaborate with the Division of Substance Abuse and Mental  
1028 Health to develop, coordinate, and implement the certification program.

1029 (b) The certification program shall be based on the standards under Subsection (1)(d)  
1030 and shall require renewal of certification every two years.

1031 (c) All public and private providers of sex offender treatment, including those  
1032 providing treatment to offenders housed in county jails by contract under Section [64-13e-103](#),  
1033 shall comply with these standards on and after July 1, 2016, in order to begin receiving or  
1034 continue receiving payment from the department to provide sex offender treatment on or after  
1035 July 1, 2016.

1036 (d) The department shall establish the certification program by administrative rule  
1037 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1038 (4) The department shall establish performance goals and outcome measurements for  
1039 all programs that are subject to the minimum standards established under this section and shall  
1040 collect data to analyze and evaluate whether the goals and measurements are attained.

1041 (a) The department shall collaborate with the Division of Substance Abuse and Mental  
1042 Health to develop and coordinate the performance goals and outcome measurements, including  
1043 recidivism rates.

1044 (b) The department may use these data to make decisions on the use of funds to  
1045 provide treatment for which standards are established under this section.

1046 (c) The department shall annually provide data collected under this Subsection (4) to  
1047 the Commission on Criminal and Juvenile Justice on or before August 31. The commission  
1048 shall compile a written report of the findings based on the data and shall provide the report to  
1049 the legislative Judiciary Interim Committee, the Health and Human Services Interim  
1050 Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related

1051 appropriations subcommittees.

1052 Section 14. Section **64-13-26** is amended to read:

1053 **64-13-26. Private providers of services.**

1054 (1) The department may contract with private providers or other agencies for the  
1055 provision of care, treatment, and supervision of offenders committed to the care and custody of  
1056 the department.

1057 (2) (a) The department shall:

1058 (i) establish standards for the operation of the programs; [~~and~~]

1059 (ii) establish standards pursuant to Section 64-13-25 regarding program standards; and

1060 [~~(ii)~~] (iii) annually review the programs for compliance.

1061 (b) The reviews shall be classified as confidential internal working papers.

1062 (c) Access to records regarding the reviews is available upon the discretion of the  
1063 executive director or the governor, or upon court order.

1064 Section 15. Section **64-13-29** is amended to read:

1065 **64-13-29. Violation of parole or probation -- Detention -- Hearing.**

1066 (1) (a) The department shall ensure that the court is notified of violations of the terms  
1067 and conditions of probation in the case of probationers under the department's supervision, or  
1068 the Board of Pardons and Parole in the case of parolees under the department's supervision[:]  
1069 when:

1070 (i) a sanction of incarceration is recommended; or

1071 (ii) the department determines that a graduated sanction is not an appropriate response  
1072 to the offender's violation and recommends revocation, probation, or parole.

1073 (b) In cases where the department desires to detain an offender alleged to have violated  
1074 his parole or probation and where it is unlikely that the Board of Pardons and Parole or court  
1075 will conduct a hearing within a reasonable time to determine if the offender has violated his  
1076 conditions of parole or probation, the department shall hold an administrative hearing within a  
1077 reasonable time, unless the hearing is waived by the parolee or probationer, to determine if  
1078 there is probable cause to believe that a violation has occurred.

1079 (c) If there is a conviction for a crime based on the same charges as the probation or  
1080 parole violation, or a finding by a federal or state court that there is probable cause to believe  
1081 that an offender has committed a crime based on the same charges as the probation or parole

1082 violation, the department need not hold [its] an administrative hearing.

1083 (2) The appropriate officer or officers of the department shall, as soon as practical  
1084 following the department's administrative hearing, report to the court or the Board of Pardons  
1085 and Parole, furnishing a summary of the hearing, and may make recommendations regarding  
1086 the disposition to be made of the parolee or probationer. Pending any proceeding under this  
1087 section, the department may take custody of and detain the parolee or probationer involved for  
1088 a period not to exceed 72 hours excluding weekends and holidays.

1089 (3) If the hearing officer determines that there is probable cause to believe that the  
1090 offender has violated the conditions of his parole or probation, the department may detain the  
1091 offender for a reasonable period of time after the hearing or waiver, as necessary to arrange for  
1092 the incarceration of the offender. Written order of the department is sufficient authorization for  
1093 any peace officer to incarcerate the offender. The department may promulgate rules for the  
1094 implementation of this section.

1095 Section 16. Section **76-3-202** is amended to read:

1096 **76-3-202. Paroled persons -- Termination or discharge from sentence -- Time**  
1097 **served on parole -- Discretion of Board of Pardons and Parole.**

1098 (1) (a) Except as provided in Subsection (1)(b), every person committed to the state  
1099 prison to serve an indeterminate term and later released on parole shall, upon completion of  
1100 three years on parole outside of confinement and without violation, be terminated from the  
1101 person's sentence unless the parole is earlier terminated by the Board of Pardons and Parole or  
1102 is terminated pursuant to Section [64-13-21](#).

1103 (b) Every person committed to the state prison to serve an indeterminate term and later  
1104 released on parole on or after July 1, 2008, and who was convicted of any felony offense under  
1105 Title 76, Chapter 5, Offenses Against the Person, or any attempt, conspiracy, or solicitation to  
1106 commit any of these felony offenses, shall complete a term of parole that extends through the  
1107 expiration of the person's maximum sentence, unless the parole is earlier terminated by the  
1108 Board of Pardons and Parole.

1109 (2) Every person convicted of a second degree felony for violating Section [76-5-404](#),  
1110 forcible sexual abuse, or [76-5-404.1](#), sexual abuse of a child and aggravated sexual abuse of a  
1111 child, or attempting, conspiring, or soliciting the commission of a violation of any of those  
1112 sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole

1113 outside of confinement and without violation, be terminated from the sentence unless the  
1114 person is earlier terminated by the Board of Pardons and Parole.

1115 (3) (a) Every person convicted of a first degree felony for committing any offense listed  
1116 in Subsection (3)(b), or attempting, conspiring, or soliciting the commission of a violation of  
1117 any of those sections, shall complete a term of lifetime parole outside of confinement and  
1118 without violation unless the person is earlier terminated by the Board of Pardons and Parole.

1119 (b) The offenses referred to in Subsection (3)(a) are:

1120 (i) Section 76-5-301.1, child kidnapping;

1121 (ii) Subsection 76-5-302(1)(b)(vi), aggravated kidnapping involving a sexual offense;

1122 (iii) Section 76-5-402, rape;

1123 (iv) Section 76-5-402.1, rape of a child;

1124 (v) Section 76-5-402.2, object rape;

1125 (vi) Section 76-5-402.3, object rape of a child;

1126 (vii) Subsection 76-5-403(2), forcible sodomy;

1127 (viii) Section 76-5-403.1, sodomy on a child;

1128 (ix) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

1129 or

1130 (x) Section 76-5-405, aggravated sexual assault.

1131 (4) Any person who violates the terms of parole, while serving parole, for any offense  
1132 under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be  
1133 recommitted to prison to serve the portion of the balance of the term as determined by the  
1134 Board of Pardons and Parole, but not to exceed the maximum term.

1135 (5) In order for a parolee convicted on or after May 5, 1997, to be eligible for early  
1136 termination from parole, the parolee must provide to the Board of Pardons and Parole:

1137 (a) evidence that the parolee has completed high school classwork and has obtained a  
1138 high school graduation diploma, a GED certificate, or a vocational certificate; or

1139 (b) documentation of the inability to obtain one of the items listed in Subsection (5)(a)  
1140 because of:

1141 (i) a diagnosed learning disability; or

1142 (ii) other justified cause.

1143 (6) Any person paroled following a former parole revocation may not be discharged

1144 from the person's sentence until:

1145 (a) the person has served the applicable period of parole under this section outside of  
1146 confinement and without violation;

1147 (b) the person's maximum sentence has expired; or

1148 (c) the Board of Pardons and Parole orders the person to be discharged from the  
1149 sentence.

1150 (7) (a) All time served on parole, outside of confinement and without violation,  
1151 constitutes service of the total sentence but does not preclude the requirement of serving the  
1152 applicable period of parole under this section, outside of confinement and without violation.

1153 (b) Any time a person spends outside of confinement after commission of a parole  
1154 violation does not constitute service of the total sentence unless the person is exonerated at a  
1155 parole revocation hearing.

1156 (c) (i) Any time a person spends in confinement awaiting a hearing before the Board of  
1157 Pardons and Parole or a decision by the board concerning revocation of parole constitutes  
1158 service of the sentence.

1159 (ii) In the case of exoneration by the board, the time spent is included in computing the  
1160 total parole term.

1161 (8) When any parolee without authority from the Board of Pardons and Parole absents  
1162 himself from the state or avoids or evades parole supervision, the period of absence, avoidance,  
1163 or evasion tolls the parole period.

1164 (9) (a) While on parole, time spent in confinement outside the state may not be credited  
1165 toward the service of any Utah sentence.

1166 (b) Time in confinement outside the state or in the custody of any tribal authority or the  
1167 United States government for a conviction obtained in another jurisdiction tolls the expiration  
1168 of the Utah sentence.

1169 (10) This section does not preclude the Board of Pardons and Parole from paroling or  
1170 discharging an inmate at any time within the discretion of the Board of Pardons and Parole  
1171 unless otherwise specifically provided by law.

1172 (11) A parolee sentenced to lifetime parole may petition the Board of Pardons and  
1173 Parole for termination of lifetime parole.

1174 Section 17. Section **77-1-3** is amended to read:

1175 **77-1-3. Definitions.**

1176 For the purpose of this act:

1177 (1) "Criminal action" means the proceedings by which a person is charged, accused,  
1178 and brought to trial for a public offense.1179 (2) "Indictment" means an accusation in writing presented by a grand jury to the  
1180 district court charging a person with a public offense.1181 (3) "Information" means an accusation, in writing, charging a person with a public  
1182 offense which is presented, signed, and filed in the office of the clerk where the prosecution is  
1183 commenced pursuant to Section [77-2-1.1](#).1184 (4) "Magistrate" means a justice or judge of a court of record or not of record or a  
1185 commissioner of such a court appointed in accordance with Section [78A-5-107](#), except that the  
1186 authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial  
1187 council. The judicial council rules shall not exceed constitutional limitations upon the  
1188 delegation of judicial authority.1189 (5) "Risk and needs assessment" means an actuarial tool validated on offenders that  
1190 determines:1191 (a) an individual's risk of reoffending; and1192 (b) the criminal risk factors that, when addressed, reduce the individual's risk of  
1193 reoffending.1194 Section 18. Section **77-18-1** is amended to read:1195 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**  
1196 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**  
1197 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
1198 **monitoring.**1199 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea  
1200 in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,  
1201 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.1202 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any  
1203 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence  
1204 and place the defendant on probation. The court may place the defendant:

1205 (i) on probation under the supervision of the Department of Corrections except in cases

1206 of class C misdemeanors or infractions;

1207 (ii) on probation with an agency of local government or with a private organization; or

1208 (iii) on bench probation under the jurisdiction of the sentencing court.

1209 (b) (i) The legal custody of all probationers under the supervision of the department is

1210 with the department.

1211 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court

1212 is vested as ordered by the court.

1213 (iii) The court has continuing jurisdiction over all probationers.

1214 (3) (a) The department shall establish supervision and presentence investigation

1215 standards for all individuals referred to the department. These standards shall be based on:

1216 (i) the type of offense;

1217 (ii) the results of a risk and needs assessment;

1218 [~~(ii)~~] (iii) the demand for services;

1219 [~~(iii)~~] (iv) the availability of agency resources;

1220 [~~(iv) the~~] (v) public safety; and

1221 [~~(v)~~] (vi) other criteria established by the department to determine what level of

1222 services shall be provided.

1223 (b) Proposed supervision and investigation standards shall be submitted to the Judicial

1224 Council and the Board of Pardons and Parole on an annual basis for review and comment prior

1225 to adoption by the department.

1226 (c) The Judicial Council and the department shall establish procedures to implement

1227 the supervision and investigation standards.

1228 (d) The Judicial Council and the department shall annually consider modifications to

1229 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider

1230 appropriate.

1231 (e) The Judicial Council and the department shall annually prepare an impact report

1232 and submit it to the appropriate legislative appropriations subcommittee.

1233 (4) Notwithstanding other provisions of law, the department is not required to

1234 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to

1235 conduct presentence investigation reports on class C misdemeanors or infractions. However,

1236 the department may supervise the probation of class B misdemeanants in accordance with



1237 department standards.

1238 (5) (a) Before the imposition of any sentence, the court may, with the concurrence of  
1239 the defendant, continue the date for the imposition of sentence for a reasonable period of time  
1240 for the purpose of obtaining a presentence investigation report from the department or  
1241 information from other sources about the defendant.

1242 (b) The presentence investigation report shall include:

1243 (i) a victim impact statement according to guidelines set in Section [77-38a-203](#)  
1244 describing the effect of the crime on the victim and the victim's family;

1245 (ii) a specific statement of pecuniary damages, accompanied by a recommendation  
1246 from the department regarding the payment of restitution with interest by the defendant in  
1247 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

1248 (iii) findings from any screening and any assessment of the offender conducted under  
1249 Section [77-18-1.1](#);

1250 (iv) recommendations for treatment of the offender; and

1251 (v) the number of days since the commission of the offense that the offender has spent  
1252 in the custody of the jail and the number of days, if any, the offender was released to a  
1253 supervised release or alternative incarceration program under Section [17-22-5.5](#).

1254 (c) The contents of the presentence investigation report are protected and are not  
1255 available except by court order for purposes of sentencing as provided by rule of the Judicial  
1256 Council or for use by the department.

1257 (6) (a) The department shall provide the presentence investigation report to the  
1258 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the  
1259 court for review, three working days prior to sentencing. Any alleged inaccuracies in the  
1260 presentence investigation report, which have not been resolved by the parties and the  
1261 department prior to sentencing, shall be brought to the attention of the sentencing judge, and  
1262 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the  
1263 report with the department. If after 10 working days the inaccuracies cannot be resolved, the  
1264 court shall make a determination of relevance and accuracy on the record.

1265 (b) If a party fails to challenge the accuracy of the presentence investigation report at  
1266 the time of sentencing, that matter shall be considered to be waived.

1267 (7) At the time of sentence, the court shall receive any testimony, evidence, or

1268 information the defendant or the prosecuting attorney desires to present concerning the  
1269 appropriate sentence. This testimony, evidence, or information shall be presented in open court  
1270 on record and in the presence of the defendant.

1271 (8) While on probation, and as a condition of probation, the court may require that the  
1272 defendant:

1273 (a) perform any or all of the following:

1274 (i) pay, in one or several sums, any fine imposed at the time of being placed on  
1275 probation;

1276 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

1277 (iii) provide for the support of others for whose support the defendant is legally liable;

1278 (iv) participate in available treatment programs, including any treatment program in  
1279 which the defendant is currently participating, if the program is acceptable to the court;

1280 (v) serve a period of time, not to exceed one year, in a county jail designated by the  
1281 department, after considering any recommendation by the court as to which jail the court finds  
1282 most appropriate;

1283 (vi) serve a term of home confinement, which may include the use of electronic  
1284 monitoring;

1285 (vii) participate in compensatory service restitution programs, including the  
1286 compensatory service program provided in Section [76-6-107.1](#);

1287 (viii) pay for the costs of investigation, probation, and treatment services;

1288 (ix) make restitution or reparation to the victim or victims with interest in accordance  
1289 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

1290 (x) comply with other terms and conditions the court considers appropriate; and

1291 (b) if convicted on or after May 5, 1997:

1292 (i) complete high school classwork and obtain a high school graduation diploma, a  
1293 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has  
1294 not received the diploma, GED certificate, or vocational certificate prior to being placed on  
1295 probation; or

1296 (ii) provide documentation of the inability to obtain one of the items listed in  
1297 Subsection (8)(b)(i) because of:

1298 (A) a diagnosed learning disability; or

1299 (B) other justified cause.

1300 (9) The department shall collect and disburse the account receivable as defined by  
1301 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

1302 (a) the parole period and any extension of that period in accordance with Subsection  
1303 77-27-6(4); and

1304 (b) the probation period in cases for which the court orders supervised probation and  
1305 any extension of that period by the department in accordance with Subsection (10).

1306 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or  
1307 upon completion without violation of 36 months probation in felony or class A misdemeanor  
1308 cases, ~~or~~ 12 months in cases of class B or C misdemeanors or infractions, or as allowed  
1309 pursuant to Section 64-13-21 regarding earned credits.

1310 (ii) (A) If, upon expiration or termination of the probation period under Subsection  
1311 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section  
1312 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench  
1313 probation for the limited purpose of enforcing the payment of the account receivable. If the  
1314 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to  
1315 the court the costs associated with continued probation under this Subsection (10).

1316 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil  
1317 judgments any unpaid balance not already recorded and immediately transfer responsibility to  
1318 collect the account to the Office of State Debt Collection.

1319 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its  
1320 own motion, the court may require the defendant to show cause why the defendant's failure to  
1321 pay should not be treated as contempt of court.

1322 (b) (i) The department shall notify the sentencing court, the Office of State Debt  
1323 Collection, and the prosecuting attorney in writing in advance in all cases when termination of  
1324 supervised probation will occur by law.

1325 (ii) The notification shall include a probation progress report and complete report of  
1326 details on outstanding accounts receivable.

1327 (11) (a) (i) Any time served by a probationer outside of confinement after having been  
1328 charged with a probation violation and prior to a hearing to revoke probation does not  
1329 constitute service of time toward the total probation term unless the probationer is exonerated

1330 at a hearing to revoke the probation.

1331 (ii) Any time served in confinement awaiting a hearing or decision concerning  
1332 revocation of probation does not constitute service of time toward the total probation term  
1333 unless the probationer is exonerated at the hearing.

1334 (iii) Any time served in confinement awaiting a hearing or decision concerning  
1335 revocation of probation constitutes service of time toward a term of incarceration imposed as a  
1336 result of the revocation of probation.

1337 (b) The running of the probation period is tolled upon the filing of a violation report  
1338 with the court alleging a violation of the terms and conditions of probation or upon the issuance  
1339 of an order to show cause or warrant by the court.

1340 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing  
1341 by the probationer or upon a hearing and a finding in court that the probationer has violated the  
1342 conditions of probation.

1343 (ii) Probation may not be revoked except upon a hearing in court and a finding that the  
1344 conditions of probation have been violated.

1345 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to  
1346 constitute violation of the conditions of probation, the court that authorized probation shall  
1347 determine if the affidavit establishes probable cause to believe that revocation, modification, or  
1348 extension of probation is justified.

1349 (ii) If the court determines there is probable cause, it shall cause to be served on the  
1350 defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show  
1351 cause why the defendant's probation should not be revoked, modified, or extended.

1352 (c) (i) The order to show cause shall specify a time and place for the hearing and shall  
1353 be served upon the defendant at least five days prior to the hearing.

1354 (ii) The defendant shall show good cause for a continuance.

1355 (iii) The order to show cause shall inform the defendant of a right to be represented by  
1356 counsel at the hearing and to have counsel appointed if the defendant is indigent.

1357 (iv) The order shall also inform the defendant of a right to present evidence.

1358 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

1359 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney  
1360 shall present evidence on the allegations.

1361 (iii) The persons who have given adverse information on which the allegations are  
1362 based shall be presented as witnesses subject to questioning by the defendant unless the court  
1363 for good cause otherwise orders.

1364 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,  
1365 and present evidence.

1366 (e) (i) After the hearing the court shall make findings of fact.

1367 (ii) Upon a finding that the defendant violated the conditions of probation, the court  
1368 may order the probation revoked, modified, continued, or that the entire probation term  
1369 commence anew.

1370 [~~(iii) If probation is revoked, the defendant shall be sentenced or the sentence  
1371 previously imposed shall be executed.~~]

1372 (iii) If a period of incarceration is imposed for a violation, the defendant shall be  
1373 sentenced within the graduated sanctions guidelines established by the Utah Sentencing  
1374 Commission pursuant to Section 63M-7-404, unless the judge determines that:

1375 (A) the defendant needs substance abuse or mental health treatment, as determined by a  
1376 risk and needs assessment, that warrants treatment services that are immediately available in  
1377 the community; or

1378 (B) the sentence previously imposed shall be executed.

1379 (iv) If the defendant had, prior to the imposition of a term of incarceration or the  
1380 execution of the previously imposed sentence under this Subsection (12), served time in jail  
1381 due to a violation of probation under Subsection 77-18-1(12)(e)(iii), the time the probationer  
1382 served in jail constitutes service of time toward the sentence previously imposed.

1383 (13) The court may order the defendant to commit himself or herself to the custody of  
1384 the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as  
1385 a condition of probation or stay of sentence, only after the superintendent of the Utah State  
1386 Hospital or the superintendent's designee has certified to the court that:

1387 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

1388 (b) treatment space at the hospital is available for the defendant; and

1389 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for  
1390 treatment over the defendants described in this Subsection (13).

1391 (14) Presentence investigation reports are classified protected in accordance with Title

1392 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections  
1393 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a  
1394 presentence investigation report. Except for disclosure at the time of sentencing pursuant to  
1395 this section, the department may disclose the presentence investigation only when:

- 1396 (a) ordered by the court pursuant to Subsection 63G-2-202(7);  
1397 (b) requested by a law enforcement agency or other agency approved by the department  
1398 for purposes of supervision, confinement, and treatment of the offender;  
1399 (c) requested by the Board of Pardons and Parole;  
1400 (d) requested by the subject of the presentence investigation report or the subject's  
1401 authorized representative; or  
1402 (e) requested by the victim of the crime discussed in the presentence investigation  
1403 report or the victim's authorized representative, provided that the disclosure to the victim shall  
1404 include only information relating to statements or materials provided by the victim, to the  
1405 circumstances of the crime including statements by the defendant, or to the impact of the crime  
1406 on the victim or the victim's household.

1407 (15) (a) The court shall consider home confinement as a condition of probation under  
1408 the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

1409 (b) The department shall establish procedures and standards for home confinement,  
1410 including electronic monitoring, for all individuals referred to the department in accordance  
1411 with Subsection (16).

1412 (16) (a) If the court places the defendant on probation under this section, it may order  
1413 the defendant to participate in home confinement through the use of electronic monitoring as  
1414 described in this section until further order of the court.

1415 (b) The electronic monitoring shall alert the department and the appropriate law  
1416 enforcement unit of the defendant's whereabouts.

1417 (c) The electronic monitoring device shall be used under conditions which require:

1418 (i) the defendant to wear an electronic monitoring device at all times; and

1419 (ii) that a device be placed in the home of the defendant, so that the defendant's  
1420 compliance with the court's order may be monitored.

1421 (d) If a court orders a defendant to participate in home confinement through electronic  
1422 monitoring as a condition of probation under this section, it shall:

- 1423 (i) place the defendant on probation under the supervision of the Department of  
 1424 Corrections;
- 1425 (ii) order the department to place an electronic monitoring device on the defendant and  
 1426 install electronic monitoring equipment in the residence of the defendant; and
- 1427 (iii) order the defendant to pay the costs associated with home confinement to the  
 1428 department or the program provider.
- 1429 (e) The department shall pay the costs of home confinement through electronic  
 1430 monitoring only for those persons who have been determined to be indigent by the court.
- 1431 (f) The department may provide the electronic monitoring described in this section  
 1432 either directly or by contract with a private provider.
- 1433 Section 19. Section **77-27-1** is amended to read:
- 1434 **77-27-1. Definitions.**
- 1435 As used in this chapter:
- 1436 (1) "Appearance" means any opportunity to address the board, a board member, a  
 1437 panel, or hearing officer, including an interview.
- 1438 (2) "Board" means the Board of Pardons and Parole.
- 1439 (3) "Case action plan" means a document developed by the Department of Corrections  
 1440 that identifies the program priorities for the treatment of the offender, including the criminal  
 1441 risk factors as determined by a risk and needs assessment conducted by the department.
- 1442 [~~3~~] (4) "Commission" means the Commission on Criminal and Juvenile Justice.
- 1443 [~~4~~] (5) "Commutation" is the change from a greater to a lesser punishment after  
 1444 conviction.
- 1445 (6) "Criminal risk factors" means a person's characteristics and behaviors that:  
 1446 (a) affect that person's risk of engaging in criminal behavior; and  
 1447 (b) are diminished when addressed by effective treatment, supervision, and other  
 1448 support resources resulting in reduced risk of criminal behavior.
- 1449 [~~5~~] (7) "Department" means the Department of Corrections.
- 1450 [~~6~~] (8) "Expiration" occurs when the maximum sentence has run.
- 1451 [~~7~~] (9) "Family" means persons related to the victim as a spouse, child, sibling,  
 1452 parent, or grandparent, or the victim's legal guardian.
- 1453 [~~8~~] (10) "Hearing" means an appearance before the board, a panel, a board member or

1454 hearing examiner, at which an offender or inmate is afforded an opportunity to be present and  
1455 address the board, and encompasses the term "full hearing."

1456 ~~[(9)]~~ (11) "Location," in reference to a hearing, means the physical location at which  
1457 the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless  
1458 of the location of any person participating by electronic means.

1459 ~~[(10)]~~ (12) "Open session" means any hearing before the board, a panel, a board  
1460 member, or a hearing examiner which is open to the public, regardless of the location of any  
1461 person participating by electronic means.

1462 ~~[(11)]~~ (13) "Panel" means members of the board assigned by the chairperson to a  
1463 particular case.

1464 ~~[(12)]~~ (14) "Pardon" is an act of grace that forgives a criminal conviction and restores  
1465 the rights and privileges forfeited by or because of the criminal conviction. A pardon releases  
1466 an offender from the entire punishment prescribed for a criminal offense and from disabilities  
1467 that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a  
1468 consequence of conviction or punishment for a criminal offense.

1469 ~~[(13)]~~ (15) "Parole" is a release from imprisonment on prescribed conditions which, if  
1470 satisfactorily performed by the parolee, enables the parolee to obtain a termination of his  
1471 sentence.

1472 ~~[(14)]~~ (16) "Probation" is an act of grace by the court suspending the imposition or  
1473 execution of a convicted offender's sentence upon prescribed conditions.

1474 ~~[(15)]~~ (17) "Reprieve or respite" is the temporary suspension of the execution of the  
1475 sentence.

1476 ~~[(16)]~~ (18) "Termination" is the act of discharging from parole or concluding the  
1477 sentence of imprisonment prior to the expiration of the sentence.

1478 ~~[(17)]~~ (19) "Victim" means:

1479 (a) a person against whom the defendant committed a felony or class A misdemeanor  
1480 offense, and regarding which offense a hearing is held under this chapter; or

1481 (b) the victim's family, if the victim is deceased as a result of the offense for which a  
1482 hearing is held under this chapter.

1483 Section 20. Section ~~77-27-5.4~~ is enacted to read:

1484 77-27-5.4. Earned time program.



- 1485           (1) The board shall establish an earned time program that reduces the period of  
1486 incarceration for offenders who successfully complete specified programs, the purpose of  
1487 which is to reduce the risk of recidivism.
- 1488           (2) The earned time program shall:
- 1489           (a) provide not less than four months of earned time credit for the completion of the  
1490 highest ranked priority in the offender's case action plan;
- 1491           (b) provide not less than four months of earned time credit for completion of one of the  
1492 recommended programs in the offender's case action plan; or
- 1493           (c) allow the board to grant in its discretion earned time credit in addition to the earned  
1494 time credit provided under Subsections (2)(a) and (b).
- 1495           (3) The program may not provide earned time credit for offenders:
- 1496           (a) whose previously ordered release date does not provide enough time for the Board  
1497 of Pardons and Parole to grant the earned time credit;
- 1498           (b) who have been sentenced by the court to a term of life without the possibility of  
1499 parole; or
- 1500           (c) who have been ordered by the Board of Pardons and Parole to serve a life sentence.
- 1501           (4) The board may order the forfeiture of earned time credits under this section if the  
1502 offender commits a major disciplinary infraction.
- 1503           (5) The department shall notify the board not more than 30 days after an offender  
1504 completes a priority in the case action plan.
- 1505           (6) The board shall collect data for the fiscal year regarding the operation of the earned  
1506 time credit program, including:
- 1507           (a) the number of offenders who have earned time credit under this section in the prior  
1508 year;
- 1509           (b) the amount of time credit earned in the prior year;
- 1510           (c) the number of offenders who forfeited earned time credit; and
- 1511           (d) additional related information as requested by the Commission on Criminal and  
1512 Juvenile Justice.
- 1513           (7) The board shall collaborate with the Department of Corrections in the  
1514 establishment of the earned time credit program.
- 1515           (8) To the extent possible programming and hearings shall be provided early enough in

1516 an offender's incarceration to allow the offender to earn time credit.

1517 Section 21. Section **77-27-10** is amended to read:

1518 **77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking --**  
1519 **Intensive early release parole program.**

1520 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall  
1521 issue to the parolee a certificate setting forth the conditions of parole, including the use of  
1522 graduated sanctions pursuant to Section 64-13-21, which the offender shall accept and agree to  
1523 as evidenced by the offender's signature affixed to the agreement.

1524 (b) The parole agreement shall require that the inmate agree in writing that the board  
1525 may issue a warrant and conduct a parole revocation hearing if:

1526 (i) the board determines after the grant of parole that the inmate willfully provided to  
1527 the board false or inaccurate information that the board finds was significant in the board's  
1528 determination to grant parole; or

1529 (ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and

1530 (B) the board did not have information regarding the conduct at the time parole was  
1531 granted.

1532 (c) A copy of the agreement shall be delivered to the Department of Corrections and a  
1533 copy shall be given to the parolee. The original shall remain with the board's file.

1534 (2) (a) If an offender convicted of violating or attempting to violate Section  
1535 [76-5-301.1](#), Subsection [76-5-302\(1\)](#), Section [76-5-402](#), [76-5-402.1](#), [76-5-402.2](#), [76-5-402.3](#),  
1536 [76-5-403](#), [76-5-403.1](#), [76-5-404](#), [76-5-404.1](#), or [76-5-405](#), is released on parole, the board shall  
1537 order outpatient mental health counseling and treatment as a condition of parole.

1538 (b) The board shall develop standards and conditions of parole under this Subsection  
1539 (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1540 (c) This Subsection (2) does not apply to intensive early release parole.

1541 (3) (a) In addition to the conditions set out in Subsection (1), the board may place  
1542 offenders in an intensive early release parole program. The board shall determine the  
1543 conditions of parole which are reasonably necessary to protect the community as well as to  
1544 protect the interests of the offender and to assist the offender to lead a law-abiding life.

1545 (b) The offender is eligible for this program only if the offender:

1546 (i) has not been convicted of a sexual offense; or

- 1547 (ii) has not been sentenced pursuant to Section [76-3-406](#).
- 1548 (c) The department shall:
- 1549 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 1550 Rulemaking Act, for operation of the program;
- 1551 (ii) adopt and implement internal management policies for operation of the program;
- 1552 (iii) determine whether or not to refer an offender into this program within 120 days
- 1553 from the date the offender is committed to prison by the sentencing court; and
- 1554 (iv) make the final recommendation to the board regarding the placement of an
- 1555 offender into the program.
- 1556 (d) The department may not consider credit for time served in a county jail awaiting
- 1557 trial or sentencing when calculating the 120-day period.
- 1558 (e) The prosecuting attorney or sentencing court may refer an offender for
- 1559 consideration by the department for participation in the program.
- 1560 (f) The board shall determine whether or not to place an offender into this program
- 1561 within 30 days of receiving the department's recommendation.
- 1562 (4) This program shall be implemented by the department within the existing budget.
- 1563 (5) During the time the offender is on parole, the department shall collect from the
- 1564 offender the monthly supervision fee authorized by Section [64-13-21](#).
- 1565 (6) When a parolee commits a violation of the parole agreement, the department may:
- 1566 (a) impose a graduated sanction pursuant to Section [64-13-21](#); or
- 1567 (b) when the graduated sanctions matrix under Subsection [63M-7-405\(5\)](#) indicates,
- 1568 refer the parolee to the Board of Pardons and Parole for revocation of parole.
- 1569 Section 22. Section **77-27-11** is amended to read:
- 1570 **77-27-11. Revocation of parole.**
- 1571 (1) The board may revoke the parole of any person who is found to have violated any
- 1572 condition of his parole.
- 1573 (2) (a) If a parolee is [~~detained~~] confined by the Department of Corrections or any law
- 1574 enforcement official for a suspected violation of parole, the Department of Corrections shall
- 1575 immediately report the alleged violation to the board, by means of an incident report, and make
- 1576 any recommendation regarding the incident.
- 1577 (b) No parolee may be held for a period longer than 72 hours, excluding weekends and

1578 holidays, without first obtaining a warrant.

1579           (3) Any member of the board may issue a warrant based upon a certified warrant  
1580 request to a peace officer or other persons authorized to arrest, detain, and return to actual  
1581 custody a parolee, and may upon arrest or otherwise direct the Department of Corrections to  
1582 determine if there is probable cause to believe that the parolee has violated the conditions of his  
1583 parole.

1584           (4) Upon a finding of probable cause, a parolee may be further detained or imprisoned  
1585 again pending a hearing by the board or its appointed examiner.

1586           (5) (a) The board or its appointed examiner shall conduct a hearing on the alleged  
1587 violation, and the parolee shall have written notice of the time and location of the hearing, the  
1588 alleged violation of parole, and a statement of the evidence against him.

1589           (b) The board or its appointed examiner shall provide the parolee the opportunity:

1590           (i) to be present;

1591           (ii) to be heard;

1592           (iii) to present witnesses and documentary evidence;

1593           (iv) to confront and cross-examine adverse witnesses, absent a showing of good cause  
1594 for not allowing the confrontation; and

1595           (v) to be represented by counsel when the parolee is mentally incompetent or pleading  
1596 not guilty.

1597           (c) If heard by an appointed examiner, the examiner shall make a written decision  
1598 which shall include a statement of the facts relied upon by the examiner in determining the  
1599 guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the  
1600 alleged violation occurred. The appointed examiner shall then refer the case to the board for  
1601 disposition.

1602           (d) Final decisions shall be reached by majority vote of the members of the board  
1603 sitting and the parolee shall be promptly notified in writing of the board's findings and  
1604 decision.

1605           (6) (a) Parolees found to have violated the conditions of parole may, at the discretion of  
1606 the board, be returned to parole, have restitution ordered, or be imprisoned again as determined  
1607 by the board, not to exceed the maximum term, or be subject to any other conditions the board  
1608 may impose within its discretion.

1609           **(b) If the board revokes parole for a violation and orders incarceration, the board shall**  
1610 **impose a period of incarceration consistent with the guidelines under Subsection**  
1611 **63M-7-404(5).**

1612           Section 23. Section **78A-5-201** is amended to read:

1613           **78A-5-201. Creation and expansion of existing drug court programs -- Definition**  
1614 **of drug court program -- Criteria for participation in drug court programs -- Reporting**  
1615 **requirements.**

1616           (1) There may be created a drug court program in any judicial district that  
1617 demonstrates:

1618           (a) the need for a drug court program; and

1619           (b) the existence of a collaborative strategy between the court, prosecutors, defense  
1620 counsel, corrections, and substance abuse treatment services to reduce substance abuse by  
1621 offenders.

1622           (2) The collaborative strategy in each drug court program shall:

1623           (a) include monitoring and evaluation components to measure program effectiveness;  
1624 and

1625           (b) be submitted to, for the purpose of coordinating the disbursement of funding, the:

1626           (i) executive director of the Department of Human Services;

1627           (ii) executive director of the Department of Corrections; and

1628           (iii) state court administrator.

1629           (3) (a) Funds disbursed to a drug court program shall be allocated as follows:

1630           (i) 87% to the Department of Human Services for testing, treatment, and case  
1631 management; and

1632           (ii) 13% to the Administrative Office of the Courts for increased judicial and court  
1633 support costs.

1634           (b) This provision does not apply to federal block grant funds.

1635           (4) A drug court program shall include continuous judicial supervision using a  
1636 cooperative approach with prosecutors, defense counsel, corrections, substance abuse treatment  
1637 services, juvenile court probation, and the Division of Child and Family Services as appropriate  
1638 to promote public safety, protect participants' due process rights, and integrate substance abuse  
1639 treatment with justice system case processing.

- 1640 (5) Screening criteria for participation in a drug court program shall include:
- 1641 (a) a plea to, conviction of, or adjudication for a nonviolent drug offense or
- 1642 drug-related offense;
- 1643 (b) an agreement to frequent alcohol and other drug testing;
- 1644 (c) participation in one or more substance abuse treatment programs; and
- 1645 (d) an agreement to submit to sanctions for noncompliance with drug court program
- 1646 requirements.
- 1647 (6) Class A misdemeanor controlled substance possession offenses are eligible for drug
- 1648 court and shall be screened as if the offense were a felony offense.
- 1649 (7) (a) The Judicial Council shall develop rules prescribing eligibility requirements for
- 1650 participation in adult criminal drug courts.
- 1651 (b) Acceptance of an offender into a drug court shall be based on a risk and needs
- 1652 assessment, without regard to the nature of the offense.

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**Legislative Review Note**  
**as of 2-17-15 1:56 PM**

**Office of Legislative Research and General Counsel**