

Effective 7/1/2024

Repealed 5/1/2024

63M-7-404 Purpose -- Duties.

- (1) The purpose of the commission is to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council regarding:
 - (a) the sentencing and release of juvenile and adult offenders in order to:
 - (i) respond to public comment;
 - (ii) relate sentencing practices and correctional resources;
 - (iii) increase equity in criminal sentencing;
 - (iv) better define responsibility in criminal sentencing; and
 - (v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority;
 - (b) the length of supervision of adult offenders on probation or parole in order to:
 - (i) increase equity in criminal supervision lengths;
 - (ii) respond to public comment;
 - (iii) relate the length of supervision to an offender's progress;
 - (iv) take into account an offender's risk of offending again;
 - (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and
 - (vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole; and
 - (c) appropriate, evidence-based probation and parole supervision policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:
 - (i) treatment and intervention completion determinations based on individualized case action plans;
 - (ii) measured and consistent processes for addressing violations of conditions of supervision;
 - (iii) processes that include using positive reinforcement to recognize an individual's progress in supervision;
 - (iv) engaging with social services agencies and other stakeholders who provide services that meet offender needs; and
 - (v) identifying community violations that may not warrant revocation of probation or parole.
- (2)
 - (a) The commission shall modify the sentencing guidelines and supervision length guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.
 - (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.
- (3)
 - (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.
 - (b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.
- (4)
 - (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on probation and:

- (i) who have violated one or more conditions of probation; and
 - (ii) whose probation has been revoked by the court.
 - (b) For a situation described in Subsection (4)(a), the guidelines shall recommend that a court consider:
 - (i) the seriousness of any violation of the condition of probation;
 - (ii) the probationer's conduct while on probation; and
 - (iii) the probationer's criminal history.
- (5)
- (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:
 - (i) who have violated a condition of parole; and
 - (ii) whose parole has been revoked by the Board of Pardons and Parole.
 - (b) For a situation described in Subsection (5)(a), the guidelines shall recommend that the Board of Pardons and Parole consider:
 - (i) the seriousness of any violation of the condition of parole;
 - (ii) the individual's conduct while on parole; and
 - (iii) the individual's criminal history.
- (6) The commission shall establish graduated and evidence-based processes to facilitate the prompt and effective response to an individual's progress in or violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections, or other supervision services provider, to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration, including:
- (a) responses to be used when an individual violates a condition of probation or parole;
 - (b) responses to recognize positive behavior and progress related to an individual's case action plan;
 - (c) when a violation of a condition of probation or parole should be reported to the court or the Board of Pardons and Parole; and
 - (d) a range of sanctions that may not exceed a period of incarceration of more than:
 - (i) three consecutive days; and
 - (ii) a total of five days in a period of 30 days.
- (7) The commission shall establish graduated incentives to facilitate a prompt and effective response by the adult probation and parole section of the Department of Corrections to an offender's:
- (a) compliance with the terms of probation or parole; and
 - (b) positive conduct that exceeds those terms.
- (8)
- (a) The commission shall establish guidelines, including sanctions and incentives, to appropriately respond to negative and positive behavior of juveniles who are:
 - (i) nonjudicially adjusted;
 - (ii) placed on diversion;
 - (iii) placed on probation;
 - (iv) placed on community supervision;
 - (v) placed in an out-of-home placement; or
 - (vi) placed in a secure care facility.
 - (b) In establishing guidelines under this Subsection (8), the commission shall consider:
 - (i) the seriousness of the negative and positive behavior;
 - (ii) the juvenile's conduct post-adjudication; and

- (iii) the delinquency history of the juvenile.
- (c) The guidelines shall include:
 - (i) responses that are swift and certain;
 - (ii) a continuum of community-based options for juveniles living at home;
 - (iii) responses that target the individual's criminogenic risk and needs; and
 - (iv) incentives for compliance, including earned discharge credits.
- (9) The commission shall establish and maintain supervision length guidelines in accordance with this section.
- (10)
 - (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:
 - (i) securities fraud, Sections 61-1-1 and 61-1-21;
 - (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;
 - (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;
 - (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1, Assault and Related Offenses;
 - (v) arson, Section 76-6-102;
 - (vi) burglary, Section 76-6-202;
 - (vii) theft under Title 76, Chapter 6, Part 4, Theft;
 - (viii) forgery, Section 76-6-501;
 - (ix) unlawful dealing of property by a fiduciary, Section 76-6-513;
 - (x) insurance fraud, Section 76-6-521;
 - (xi) computer crimes, Section 76-6-703;
 - (xii) mortgage fraud, Section 76-6-1203;
 - (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;
 - (xiv) communications fraud, Section 76-10-1801;
 - (xv) money laundering, Section 76-10-1904; and
 - (xvi) other offenses in the discretion of the commission.
 - (b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.
 - (c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection (10)(a).
- (11)
 - (a) Before January 1, 2023, the commission shall study the offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor under Sections 76-5b-201 and 76-5b-201.1.
 - (b) The commission shall update sentencing and release guidelines and juvenile disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection (11)(a), including the application of aggravating and mitigating factors specific to the offense.
- (12)
 - (a) Before July 1, 2024, the commission shall review and revise the commission's sentencing guidelines and supervision length guidelines to reflect appropriate penalties for the following offenses:
 - (i) an interlock restricted driver operating a vehicle without an ignition interlock system, Section 41-6a-518.2;
 - (ii) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and

- (iii) negligently operating a vehicle resulting in death, Section 76-5-207.
- (b) The guidelines under Subsection (12)(a) shall consider the following:
 - (i) the current sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both as identified in Section 41-6a-505 when injury or death do not result;
 - (ii) the degree of injury and the number of victims suffering injury or death as a result of the offense;
 - (iii) the offender's number of previous convictions for driving under the influence related offenses including those defined in Subsection 41-6a-501(2)(a); and
 - (iv) whether the offense amounts to extreme DUI, as that term is defined in Section 41-6a-501.