

## **Chapter 13**

### **Department of Corrections - State Prison**

#### **64-13-1 Definitions.**

As used in this chapter:

- (1) "Case action plan" means a document developed by the Department of Corrections that identifies the program priorities for the treatment of the offender, including the criminal risk factors as determined by a risk and needs assessment conducted by the department.
- (2) "Community correctional center" means a nonsecure correctional facility operated by the department.
- (3) "Correctional facility" means any facility operated to house offenders, either in a secure or nonsecure setting:
  - (a) by the department; or
  - (b) under a contract with the department.
- (4) "Criminal risk factors" means a person's characteristics and behaviors that:
  - (a) affect that person's risk of engaging in criminal behavior; and
  - (b) are diminished when addressed by effective treatment, supervision, and other support resources, resulting in a reduced risk of criminal behavior.
- (5) "Department" means the Department of Corrections.
- (6) "Emergency" means any riot, disturbance, homicide, inmate violence occurring in any correctional facility, or any situation that presents immediate danger to the safety, security, and control of the department.
- (7) "Executive director" means the executive director of the Department of Corrections.
- (8) "Inmate" means any person who is committed to the custody of the department and who is housed at a correctional facility or at a county jail at the request of the department.
- (9) "Offender" means any person who has been convicted of a crime for which he may be committed to the custody of the department and is at least one of the following:
  - (a) committed to the custody of the department;
  - (b) on probation; or
  - (c) on parole.
- (10) "Risk and needs assessment" means an actuarial tool validated on criminal offenders that determines:
  - (a) an individual's risk of reoffending; and
  - (b) the criminal risk factors that, when addressed, reduce the individual's risk of reoffending.
- (11) "Secure correctional facility" means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain them if they attempt to leave the institution without authorization.

Amended by Chapter 243, 2016 General Session

#### **64-13-2 Creation of department.**

There is created a Department of Corrections, under the general supervision of the executive director of the department. The department is the state authority for corrections.

Amended by Chapter 243, 2016 General Session

#### **64-13-3 Executive director.**

- (1) The executive director shall be appointed by the governor with the advice and consent of the Senate.
- (2) The executive director shall be experienced and knowledgeable in the field of corrections and shall have training in criminology and penology.
- (3) The governor shall establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 352, 2020 General Session

**64-13-6 Department duties.**

- (1) The department shall:
  - (a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;
  - (b) implement court-ordered punishment of offenders;
  - (c) provide program opportunities for offenders;
  - (d) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;
  - (e) provide the results of ongoing assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;
  - (f) manage programs that take into account the needs and interests of victims, where reasonable;
  - (g) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;
  - (h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;
  - (i) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals;
  - (j) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision;
  - (k) establish a case action plan for each offender as follows:
    - (i) if an offender is to be supervised in the community, the case action plan shall be established for the offender not more than 90 days after supervision by the department begins; and
    - (ii) if the offender is committed to the custody of the department, the case action plan shall be established for the offender not more than 120 days after the commitment; and
  - (l) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:
    - (i) under this title;
    - (ii) by the department; or
    - (iii) by an agency or division within the department.
- (2) The department may in the course of supervising probationers and parolees:
  - (a) impose graduated sanctions, as established by the Utah Sentencing Commission under Subsection 63M-7-404(6), for an individual's violation of one or more terms of the probation or parole; and
  - (b) upon approval by the court or the Board of Pardons and Parole, impose as a sanction for an individual's violation of the terms of probation or parole a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.
- (3)

- (a) By following the procedures in Subsection (3)(b), the department may investigate the following occurrences at state correctional facilities:
  - (i) criminal conduct of departmental employees;
  - (ii) felony crimes resulting in serious bodily injury;
  - (iii) death of any person; or
  - (iv) aggravated kidnaping.
- (b) Prior to investigating any occurrence specified in Subsection (3)(a), the department shall:
  - (i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (3)(a) has occurred; and
  - (ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (3)(a).
- (4) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.
- (5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).

Amended by Chapter 200, 2018 General Session

**64-13-7 Offenders in custody of department.**

All offenders committed for incarceration in a state correctional facility or for supervision on probation or parole, shall be placed in the custody of the department. The department shall establish procedures and is responsible for the appropriate assignment or transfer of public offenders to facilities or programs.

Amended by Chapter 243, 2016 General Session

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

- (1) Except as provided for in Subsection (2), when the department determines that a person in its custody is in need of mental health services, the department shall contract with the Division of Substance Abuse and Mental Health, local mental health authorities, or the state hospital to provide mental health services for that person. Those services may be provided at the Utah State Hospital or in community programs provided by or under contract with the Division of Substance Abuse and Mental Health, a local mental health authority, or other public or private mental health care providers.
- (2)
  - (a) If the Division of Substance Abuse and Mental Health, a local mental health authority, or the state hospital notifies the department that it is unable to provide mental health services under Subsection (1), the department may contract with other public or private mental health care providers to provide mental health services for persons in its custody.
  - (b) The standards established by rule under Section 64-13-25 apply to the public or private mental health care providers with whom the department contracts under this Subsection (2).
- (3) A person who provides mental health services for sex offender treatment as required in Section 64-13-6 shall be licensed as a mental health professional in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act, and exhibit competency to practice in the area of sex offender treatment based on education, training, and practice.

Amended by Chapter 412, 2015 General Session

**64-13-8 Designation of employee powers.**

The department shall designate by policy which of its employees have the authority and powers of peace officers, the power to administer oaths, and other powers the department considers appropriate, including but not limited to the responsibility to bear firearms.

Amended by Chapter 116, 1987 General Session

**64-13-10 Department duties -- Rulemaking authority.**

- (1) The department shall provide probation supervision programs, parole supervision programs, correctional facilities, community correctional centers, and other programs or facilities as necessary and as required to accomplish its purposes.
- (2) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this chapter.

Amended by Chapter 382, 2008 General Session

**64-13-10.6 Transition and reentry of inmates at termination of incarceration.**

- (1) The department shall evaluate the case action plan and update the case action plan as necessary to prepare for the offender's transition from incarceration to release, including:
  - (a) establishing the supervision level and program needs, based on the offender's criminal risk factors;
  - (b) identifying barriers to the offender's ability to obtain housing, food, clothing, and transportation;
  - (c) identifying community-based treatment resources that are reasonably accessible to the offender; and
  - (d) establishing the initial supervision procedures and strategy for the offender's parole officer.
- (2) The department shall notify the Board of Pardons and Parole not fewer than 30 days prior to an offender's release of:
  - (a) the offender's case action plan; and
  - (b) any specific conditions of parole necessary to better facilitate transition to the community.

Enacted by Chapter 412, 2015 General Session

**64-13-12 Assistance to sheriffs.**

Where resources permit, the department may assist county sheriffs in the development of jail standards, in the review of jail facilities, and shall provide other services as requested by the sheriffs.

Amended by Chapter 100, 1988 General Session

**64-13-13 Administrators.**

The executive director shall appoint deputy directors, wardens, regional administrators, and other administrators as necessary to administer correctional programs. Deputy directors, wardens, and regional administrators shall have experience in corrections, related criminal justice fields, law, or criminology, and experience in administration.

Amended by Chapter 116, 1987 General Session

**64-13-14 Secure correctional facilities.**

- (1) The department shall maintain and operate secure correctional facilities for the incarceration of offenders.
- (2) For each compound of secure correctional facilities, as established by the executive director, wardens shall be appointed as the chief administrative officers by the executive director.
- (3) The department may transfer offenders from one correctional facility to another and may, with the consent of the sheriff, transfer any offender to a county jail.

Amended by Chapter 306, 2007 General Session

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

- (1) The department may extend the limits of the place of confinement of an inmate when, as established by department policies and procedures, there is cause to believe the inmate will honor the trust, by authorizing the inmate under prescribed conditions:
  - (a) to leave temporarily for purposes specified by department policies and procedures to visit specifically designated places for a period not to exceed 30 days;
  - (b) to participate in a voluntary training program in the community while housed at a correctional facility or to work at paid employment;
  - (c) to be housed in a nonsecure community correctional center operated by the department; or
  - (d) to be housed in any other facility under contract with the department.
- (2) The department shall establish rules governing offenders on release status. A copy of the rules shall be furnished to the offender and to any employer or other person participating in the offender's release program. Any employer or other participating person shall agree in writing to abide by the rules and to notify the department of the offender's discharge or other release from a release program activity, or of any violation of the rules governing release status.
- (3) The willful failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed to an institution or facility designated by the department is an escape from custody.
- (4) If an offender is arrested for the commission of a crime, the arresting authority shall immediately notify the department of the arrest.
- (5) The department may impose appropriate sanctions pursuant to Section 64-13-21 upon offenders who violate guidelines established by the Utah Sentencing Commission, including prosecution for escape under Section 76-8-309 and for unauthorized absence.
- (6) An inmate who is housed at a nonsecure correctional facility and on work release may not be required to work for less than the current federally established minimum wage, or under substandard working conditions.

Amended by Chapter 412, 2015 General Session

**64-13-14.7 Victim notification of offender's release.**

- (1) As used in this section:
  - (a) "Offender" means a person who committed an act of criminally injurious conduct against the victim and has been sentenced to incarceration in the custody of the department.
  - (b) "Victim" means a person against whom an offender committed criminally injurious conduct as defined in Section 63M-7-502, and who is entitled to notice of hearings regarding the

offender's parole under Section 77-27-9.5. "Victim" includes the legal guardian of a victim, or the representative of the family of a victim who is deceased.

- (2)
  - (a) A victim shall be notified of an offender's release under Sections 64-13-14.5 and 64-13-14.7, or any other release to or from a half-way house, to a program outside of the prison such as a rehabilitation program, state hospital, community center other than a release on parole, commutation or termination for which notice is provided under Sections 77-27-9.5 and 77-27-9.7, transfer of the offender to an out-of-state facility, or an offender's escape, upon submitting a signed written request of notification to the Department of Corrections. The request shall include a current mailing address and may include current telephone numbers if the victim chooses.
  - (b) The department shall advise the victim of an offender's release or escape under Subsection (2)(a), in writing. However, if written notice is not feasible because the release is immediate or the offender escapes, the department shall make a reasonable attempt to notify the victim by telephone if the victim has provided a telephone number under Subsection (2)(a) and shall follow up with a written notice.
- (3) Notice of victim rights under this section shall be provided to the victim in the notice of hearings regarding parole under Section 77-27-9.5. The department shall coordinate with the Board of Pardons and Parole to ensure the notice is implemented.
- (4) A victim's request for notification under this section and any notification to a victim under this section is private information that the department may not release:
  - (a) to the offender under any circumstances; or
  - (b) to any other party without the written consent of the victim.
- (5) The department may make rules as necessary to implement this section.
- (6) The department or its employees acting within the scope of their employment are not civilly or criminally liable for failure to provide notice or improper notice under this section unless the failure or impropriety is willful or grossly negligent.

Amended by Chapter 382, 2008 General Session

**64-13-15 Property of offender -- Storage and disposal.**

- (1)
  - (a) Offenders may retain personal property at correctional facilities only as authorized by the department. An offender's property which is retained by the department shall be inventoried and placed in storage by the department and a receipt for the property shall be issued to the offender. Offenders shall be required to arrange for disposal of property retained by the department within a reasonable time under department rules. Property retained by the department shall be returned to the offender at discharge, or in accordance with Title 75, Utah Uniform Probate Code, in the case of death prior to discharge.
  - (b) If property is not claimed within one year of discharge, or it is not disposed of by the offender within a reasonable time after the department's order to arrange for disposal, it becomes property of the state and may be used for correctional purposes or donated to a charity within the state.
  - (c) If an inmate's property is not claimed within one year of his death, it becomes the property of the state in accordance with Section 75-2-105.
  - (d) Funds which are contraband and in the physical custody of any prisoner, whether in the form of currency and coin which are legal tender in any jurisdiction or negotiable instruments drawn upon a personal or business account, shall be subject to forfeiture following a hearing

which accords with prevailing standards of due process. All such forfeited funds shall be used by the department for purposes which promote the general welfare of prisoners in the custody of the department. Money and negotiable instruments taken from offenders' mail under department rule and which are not otherwise contraband shall be placed in an account administered by the department, to the credit of the offender who owns the money or negotiable instruments.

- (2) Upon discharge from a secure correctional facility, the department may give an inmate transition funds in an amount established by the department with the approval of the director of the Division of Finance. At its discretion, the department may spend the funds directly on the purchase of necessities or transportation for the discharged inmate.

Amended by Chapter 124, 1991 General Session

**64-13-16 Inmate employment.**

- (1) The department may employ inmates, unless incapable of employment because of sickness or other infirmity or for security reasons, to the degree that funding and available resources allow. An offender may not be employed on work which benefits any employee or officer of the department.
- (2) An offender employed under this section is not considered an employee, worker, workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act, except as required by federal statute or regulation.

Amended by Chapter 10, 1997 General Session

Amended by Chapter 375, 1997 General Session

**64-13-17 Visitors to correctional facilities -- Correspondence.**

- (1)
  - (a) The following persons may visit correctional facilities without the consent of the department:
    - (i) the governor;
    - (ii) the attorney general;
    - (iii) a justice or judge of the courts of record;
    - (iv) members of the Board of Pardons and Parole;
    - (v) members of the Legislature;
    - (vi) the sheriff, district attorney, and county attorney for the county in which the correctional facility is located; and
    - (vii) any other persons authorized under rules prescribed by the department or court order.
  - (b) Any person acting under a court order may visit or correspond with any inmate without the consent of the department provided the department has received notice of, and is permitted to respond to, the court order. The court shall consider department policy when making its order.
  - (c) The department may limit access to correctional facilities when the department or governor declares an emergency or when there is a riot or other disturbance.
- (2)
  - (a) A person may not visit with any offender at any correctional facility, other than under Subsection (1), without the consent of the department.
  - (b) Offenders and all visitors, including those listed in Subsection (1), may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

- (3) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing guidelines for providing written notice to visitors regarding prohibited items and regarding the fact that under state law all visitors may be required to submit to a search of their persons and properties as a condition of visitation.
- (4) Offenders housed at any correctional facility may send and receive correspondence, subject to the rules of the department. All correspondence is subject to search, consistent with department rules.

Amended by Chapter 382, 2008 General Session

**64-13-18 Copy of sentence of incarceration.**

The officer delivering any offender for incarceration shall deliver to the department a certified copy of the sentence received by the officer from the clerk of the court. The department shall give the officer a certificate of delivery and shall submit to the Board of Pardons and Parole a copy of the commitment order. The certified copy of sentence is conclusive evidence of the facts contained in it.

Amended by Chapter 13, 1994 General Session

**64-13-19 Labor at correctional facilities.**

- (1) The department shall determine the types of labor to be pursued, and what kind, quality, and quantity of goods, materials, and supplies shall be produced, manufactured, or repaired at correctional facilities. Contracts may be made for the labor of offenders, including contracts with any federal agency for a project affecting national defense. As many offenders as practicable may be employed to produce, manufacture, or repair any goods, materials, or supplies for sale to the state or its political subdivisions. Prices for all goods, materials, and supplies shall be fixed by the department.
- (2) An offender performing labor under this section is not considered an employee, worker, workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act, except as required by federal statute or regulation.

Amended by Chapter 375, 1997 General Session

**64-13-20 Investigative services -- Presentence investigation reports.**

- (1) The department shall:
  - (a) provide investigative services and prepare reports to:
    - (i) assist the courts in sentencing;
    - (ii) assist the Board of Pardons and Parole in its decision-making responsibilities regarding offenders;
    - (iii) assist the department in managing offenders; and
    - (iv) assure the professional and accountable management of the department;
  - (b) establish standards for providing investigative services based on available resources, giving priority to felony cases; and
  - (c) employ staff for the purpose of conducting:
    - (i) thorough presentence investigations of the social, physical, and mental conditions and backgrounds of offenders; and
    - (ii) examinations when required by the court or the Board of Pardons and Parole.



- (2) The department may provide recommendations concerning appropriate measures to be taken regarding offenders.
- (3)
  - (a) An employee of the department who is trained to prepare a presentence investigation report may prepare a presentence investigation report for the courts, the department, or the Board of Pardons and Parole.
  - (b) The presentence investigation reports prepared by the department are protected as defined in Section 63G-2-305 and after sentencing may not be released except by express court order or by rule made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (c) The reports are intended only for use by:
    - (i) the courts in the sentencing process;
    - (ii) the Board of Pardons and Parole in its decision-making responsibilities; and
    - (iii) the department in the supervision, confinement, and treatment of the offender.
- (4) A presentence investigation report shall be made available upon request to another correctional program within the state if the offender who is the subject of the report has been committed or is being evaluated for commitment to the facility for treatment as a condition of probation or parole.
- (5)
  - (a) The presentence investigation reports shall include a victim impact statement in all felony cases and in misdemeanor cases if the offender caused bodily harm or death to the victim.
  - (b) Victim impact statements shall:
    - (i) identify the victim of the offense;
    - (ii) itemize any economic loss suffered by the victim as a result of the offense;
    - (iii) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;
    - (iv) describe any change in the victim's personal welfare or familial relationships as a result of the offense;
    - (v) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and
    - (vi) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.
- (6) If the victim is deceased, under a mental, physical, or legal disability, or otherwise unable to provide the information required under this section, the information may be obtained from the personal representative, guardian, or family members, as necessary.
- (7) The department shall employ staff necessary to pursue investigations of complaints from the public, staff, or offenders regarding the management of corrections programs.

Amended by Chapter 27, 2019 General Session

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

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

- (b) The department shall establish standards for the supervision of offenders in accordance with sentencing guidelines and supervision length guidelines, including the graduated sanctions matrix, established by the Utah Sentencing Commission, giving priority, based on available resources, to felony offenders and offenders sentenced pursuant to Subsection 58-37-8(2)(b)(ii).
- (2) The department shall apply graduated sanctions established by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an individual's violation of the terms of probation or parole, including:
  - (a) sanctions to be used in response to a violation of the terms of probation or parole; and
  - (b) requesting approval from the court or Board of Pardons and Parole to impose a sanction for an individual's violation of the terms of probation or parole, for a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.
- (3) The department shall implement a program of graduated incentives as established by the Utah Sentencing Commission to facilitate the department's prompt and appropriate response to an offender's:
  - (a) compliance with the terms of probation or parole; or
  - (b) positive conduct that exceeds those terms.
- (4)
  - (a) The department shall, in collaboration with the Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of inmates, related to the use of the graduated sanctions and incentives, and offenders' outcomes.
  - (b) The collected information shall be provided to the Commission on Criminal and Juvenile Justice not less frequently than annually on or before August 31.
- (5) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:
  - (a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;
  - (b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;
  - (c) supervising any offender during transportation; or
  - (d) collecting DNA specimens when the specimens are required under Section 53-10-404.
- (6)
  - (a) A monthly supervision fee of \$30 shall be collected from each offender on probation or parole. The fee may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.
  - (b)
    - (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.
    - (ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.
- (7)

- (a) For offenders placed on probation under Section 77-18-1 or parole under Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the department shall establish a program allowing an offender to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).
- (b) The program shall provide that an offender earns a reduction credit of 30 days from the offender's period of probation or parole for each month the offender completes without any violation of the terms of the offender's probation or parole agreement, including the case action plan.
- (c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).
- (d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).
- (e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment program is completed.
- (f) The department shall report annually to the Commission on Criminal and Juvenile Justice on or before August 31:
  - (i) the number of offenders who have earned probation or parole credits under this Subsection (7) in one or more months of the preceding fiscal year and the percentage of the offenders on probation or parole during that time that this number represents;
  - (ii) the average number of credits earned by those offenders who earned credits;
  - (iii) the number of offenders who earned credits by county of residence while on probation or parole;
  - (iv) the cost savings associated with sentencing reform programs and practices; and
  - (v) a description of how the savings will be invested in treatment and early-intervention programs and practices at the county and state levels.

Amended by Chapter 27, 2019 General Session

**64-13-21.2 Offender supervision dedicated credits.**

All money received from the monthly supervision fee established in Subsection 64-13-21(3) shall be deposited in the General Fund as a parole and probation dedicated credit and shall be used to cover costs incurred in the collection of the fee and in the development of offender supervision programs.

Amended by Chapter 391, 2010 General Session

**64-13-21.5 Powers of correctional officers and POST certified correctional enforcement or investigation officers.**

- (1) Employees of the department who are designated by the executive director as correctional officers may exercise the powers and authority of a peace officer only when needed to properly carry out the following functions:

- (a) performing the officer's duties within the boundaries of a correctional facility;
  - (b) supervising an offender during transportation;
  - (c) when in fresh pursuit of an offender who has escaped from the custody of the department; or
  - (d) when requested to assist a local, state, or federal law enforcement agency.
- (2) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as correctional enforcement or investigation officers have the following duties as specified by the executive director:
- (a) providing investigative services for the department;
  - (b) conducting criminal investigations and operations in cooperation with state, local, and federal law enforcement agencies; and
  - (c) providing security and enforcement for the department.

Amended by Chapter 282, 1998 General Session

#### **64-13-23 Offender's income and finances.**

The department may require each offender, while in the custody of the department or while on probation or parole, to place funds received or earned by him from any source into an account administered by the department or into a joint account with the department at a federally insured financial institution.

- (1) The department may require each offender to maintain a minimum balance in either or both accounts for the particular offender's use upon discharge from the custody of the department or upon completion of parole or probation.
- (2) If the funds are placed in a joint account at a federally insured financial institution:
  - (a) any interest accrues to the benefit of the offender account; and
  - (b) the department may require that the signatures of both the offender and a departmental representative be submitted to the financial institution to withdraw funds from the account.
- (3) If the funds are placed in an account administered by the department, the department may by rule designate a certain portion of the offender's funds as interest-bearing savings, and another portion as noninterest-bearing to be used for day-to-day expenses.
- (4) The department may withhold part of the offender's funds in either account for expenses of:
  - (a) incarceration, supervision, or treatment;
  - (b) court-ordered restitution, reparation, fines, alimony, support payments, or similar court-ordered payments;
  - (c) obtaining the offender's DNA specimen, if the offender is required under Section 53-10-404 to provide a specimen;
  - (d) department-ordered restitution; and
  - (e) any other debt to the state.
- (5)
  - (a) Offenders may not be granted free process in civil actions, including petitions for a writ of habeas corpus, if, at any time from the date the cause of action arose through the date the cause of action remains pending, there are any funds in either account which have not been withheld or are not subject to withholding under Subsection (3) or (4).
  - (b) The amount assessed for the filing fee, service of process and other fees and costs shall not exceed the total amount of funds the offender has in excess of the indigence threshold established by the department but not less than \$25 including the withholdings under Subsection (3) or (4) during the identified period of time.
  - (c) The amounts assessed shall not exceed the regular fees and costs provided by law.

- (6) The department may disclose information on offender accounts to the Office of Recovery Services and other appropriate state agencies.

Amended by Chapter 140, 2002 General Session

**64-13-24 Standards for staff training.**

To assure the safe and professional operation of correctional programs, the department shall establish policies setting minimum standards for the basic training of all staff upon employment, and the subsequent regular training of staff. The training standards of correctional officers who are designated as peace officers shall be not less than those established by the Peace Officer Standards and Training Council.

Amended by Chapter 116, 1987 General Session

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

- (1) To promote accountability and to ensure safe and professional operation of correctional programs, the department shall establish minimum standards for the organization and operation of its programs, including collaborating with the Department of Human Services to establish minimum standards for programs providing assistance for individuals involved in the criminal justice system.
- (a) The standards shall be promulgated according to state rulemaking provisions. Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Offenders are not a class of persons under that act.
  - (b) Standards shall provide for inquiring into and processing offender complaints.
  - (c)
    - (i) The department shall establish minimum standards and qualifications for treatment programs provided in county jails to which persons committed to the state prison are placed by jail contract under Section 64-13e-103.
    - (ii) In establishing the standards and qualifications for the treatment programs, the department shall:
      - (A) consult and collaborate with the county sheriffs and the Division of Substance Abuse and Mental Health; and
      - (B) include programs demonstrated by recognized scientific research to reduce recidivism by addressing an offender's criminal risk factors as determined by a risk and needs assessment.
    - (iii) All jails contracting to house offenders committed to the state prison shall meet the minimum standards for treatment programs as established under this Subsection (1)(c).
  - (d)
    - (i) The department shall establish minimum standards of treatment for sex offenders, which shall include the requirements under Subsection 64-13-7.5(3) regarding licensure and competency.
    - (ii) The standards shall require the use of the most current best practices demonstrated by recognized scientific research to address an offender's criminal risk factors.
    - (iii) The department shall collaborate with the Division of Substance Abuse and Mental Health to develop and effectively distribute the standards to jails and to mental health professionals who desire to provide mental health treatment for sex offenders.
    - (iv) The department shall establish the standards by administrative rule pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (2) The department shall establish an audit for compliance with standards established under this section according to policies and procedures established by the department, for continued operation of correctional and treatment programs provided to offenders committed to the department's custody, including inmates housed in county jails by contract with the Department of Corrections.
  - (a) At least every three years, the department shall internally audit all programs for compliance with established standards.
  - (b) All financial statements and accounts of the department shall be reviewed during the audit. Written review shall be provided to the managers of the programs and the executive director of the department.
  - (c) The reports shall be classified as confidential internal working papers and access is available at the discretion of the executive director or the governor, or upon court order.
- (3) The department shall establish a certification program for public and private providers of treatment for sex offenders on probation or parole that requires the providers' sex offender treatment practices meet the standards and practices established under Subsection (1)(d) to reduce sex offender recidivism.
  - (a) The department shall collaborate with the Division of Substance Abuse and Mental Health to develop, coordinate, and implement the certification program.
  - (b) The certification program shall be based on the standards under Subsection (1)(d) and shall require renewal of certification every two years.
  - (c) All public and private providers of sex offender treatment, including those providing treatment to offenders housed in county jails by contract under Section 64-13e-103, shall comply with these standards on and after July 1, 2016, in order to begin receiving or continue receiving payment from the department to provide sex offender treatment on or after July 1, 2016.
  - (d) The department shall establish the certification program by administrative rule pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) The department shall establish performance goals and outcome measurements for all programs that are subject to the minimum standards established under this section and shall collect data to analyze and evaluate whether the goals and measurements are attained.
  - (a) The department shall collaborate with the Division of Substance Abuse and Mental Health to develop and coordinate the performance goals and outcome measurements, including recidivism rates and treatment success and failure rates.
  - (b) The department may use these data to make decisions on the use of funds to provide treatment for which standards are established under this section.
  - (c) The department shall collaborate with the Division of Substance Abuse and Mental Health to track a subgroup of participants to determine if there is a net positive result from the use of treatment as an alternative to incarceration.
  - (d) The department shall collaborate with the Division of Substance Abuse and Mental Health to evaluate the costs, including any additional costs, and the resources needed to attain the performance goals established for the use of treatment as an alternative to incarceration.
  - (e) The department shall annually provide data collected under this Subsection (4) to the Commission on Criminal and Juvenile Justice on or before August 31. The commission shall compile a written report of the findings based on the data and shall provide the report to the legislative Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

Amended by Chapter 412, 2015 General Session

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

- (1) The department may contract with private providers or other agencies for the provision of care, treatment, and supervision of offenders committed to the care and custody of the department.
- (2)
  - (a) The department shall:
    - (i) establish standards for the operation of the programs;
    - (ii) establish standards pursuant to Section 64-13-25 regarding program standards; and
    - (iii) annually review the programs for compliance.
  - (b) The reviews shall be classified as confidential internal working papers.
  - (c) Access to records regarding the reviews is available upon the discretion of the executive director or the governor, or upon court order.

Amended by Chapter 412, 2015 General Session

**64-13-27 Records -- Access.**

- (1)
  - (a) The Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103, county attorneys' offices, and state and local law enforcement agencies shall furnish to the department upon request a copy of records of any person arrested in this state.
  - (b) The department shall maintain centralized files on all offenders under the jurisdiction of the department and make the files available for review by other criminal justice agencies upon request in cases where offenders are the subject of active investigations.
- (2) All records maintained by programs under contract to the department providing services to public offenders are the property of the department.

Amended by Chapter 263, 1998 General Session

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

- (1)
  - (a) The department or local law enforcement agency shall ensure that the court is notified of violations of the terms and conditions of probation in the case of probationers under the supervision of the department, the local law enforcement agency, or the Board of Pardons and Parole in the case of parolees under the department's supervision when:
    - (i) a sanction of incarceration is recommended; or
    - (ii) the department or local law enforcement agency determines that a graduated sanction is not an appropriate response to the offender's violation and recommends revocation of probation or parole.
  - (b) In cases where the department desires to detain an offender alleged to have violated his parole or probation and where it is unlikely that the Board of Pardons and Parole or court will conduct a hearing within a reasonable time to determine if the offender has violated his conditions of parole or probation, the department shall hold an administrative hearing within a reasonable time, unless the hearing is waived by the parolee or probationer, to determine if there is probable cause to believe that a violation has occurred.
  - (c) If there is a conviction for a crime based on the same charges as the probation or parole violation, or a finding by a federal or state court that there is probable cause to believe that

an offender has committed a crime based on the same charges as the probation or parole violation, the department need not hold an administrative hearing.

- (2) The appropriate officer or officers of the department shall, as soon as practical following the department's administrative hearing, report to the court or the Board of Pardons and Parole, furnishing a summary of the hearing, and may make recommendations regarding the disposition to be made of the parolee or probationer.
- (3) Pending any proceeding under this section, the department may take custody of and detain the parolee or probationer involved for a period not to exceed 72 hours excluding weekends and holidays.
- (4) In cases where probationers are supervised by a local law enforcement agency, the agency may take custody of and detain the probationer involved for a period not to exceed 72 hours excluding weekends and holidays if:
  - (a) the probationer commits a major violation or repeated violations of probation; and
  - (b) it is unlikely that the court will conduct a hearing within a reasonable time to determine if the offender has violated the conditions of probation; and
  - (c) the law enforcement agency conducts an administrative hearing within a reasonable time to determine if there is probable cause to believe the offender has violated the conditions of probation, unless the hearing is waived by the probationer.
- (5) If the requirements for Subsection (4) are met, the local law enforcement agency shall ensure the proper court is notified.
- (6) If the hearing officer determines that there is probable cause to believe that the offender has violated the conditions of his parole or probation, the department may detain the offender for a reasonable period of time after the hearing or waiver, as necessary to arrange for the incarceration of the offender. A written order of the department is sufficient authorization for any peace officer to incarcerate the offender. The department may promulgate rules for the implementation of this section.
- (7) A written order from the local law enforcement agency is sufficient authorization for any peace officer to incarcerate the offender if:
  - (a) the probationers are supervised by a local law enforcement agency; and
  - (b) the appropriate officer or officers determine that there is probable cause to believe that the offender has violated the conditions of probation.
- (8) If a probationer supervised by a local law enforcement agency commits a violation outside of the jurisdiction of the supervising agency, the arresting agency is not required to hold or transport the probationer for the supervising agency.

Amended by Chapter 227, 2020 General Session

**64-13-30 Expenses incurred by offenders -- Payment to department or county jail -- Medical care expenses and copayments.**

- (1)
  - (a) The department or county jail may require an inmate to make a copayment for medical and dental services provided by the department or county jail.
  - (b) For services provided while in the custody of the department, the copayment by the inmate is \$5 for primary medical care, \$5 for dental care, and \$2 for prescription medication.
  - (c) For services provided outside of a prison facility while in the custody of the department, the offender is responsible for 10% of the costs associated with hospital care with a cap on an inmate's share of hospital care expenses not to exceed \$2,000 per fiscal year.
- (2)



- (a) An inmate who has assets exceeding \$200,000, as determined by the department upon entry into the department's custody, is responsible to pay the costs of all medical and dental care up to 20% of the inmate's total determined asset value.
- (b) After an inmate has received medical and dental care equal to 20% of the inmate's total asset value, the inmate is subject to the copayments provided in Subsection (1).
- (3) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.
- (4) An inmate may not be denied medical treatment if the inmate is unable to pay for the treatment because of inadequate financial resources.
- (5) When an offender in the custody of the department receives medical care that is provided outside of a prison facility, the department shall pay the costs:
  - (a) at the contracted rate; or
  - (b)
    - (i) if there is no contract between the department and a health care facility that establishes a fee schedule for medical services rendered, expenses shall be at the noncapitated state Medicaid rate in effect at the time the service was provided; and
    - (ii) if there is no contract between the department and a health care provider that establishes a fee schedule for medical services rendered, expenses shall be 65% of the amount that would be paid under the Public Employees' Benefit and Insurance Program, created in Section 49-20-103.
- (6) Expenses described in Subsection (5) are a cost to the department only to the extent that they exceed an offender's private insurance that is in effect at the time of the service and that covers those expenses.
- (7)
  - (a) The Public Employees' Benefit and Insurance Program shall provide information to the department that enables the department to calculate the amount to be paid to a health care provider under Subsection (5)(b).
  - (b) The department shall ensure that information provided under Subsection (7)(a) is confidential.

Amended by Chapter 243, 2016 General Session

**64-13-30.5 Payment by inmate for postsecondary educational tuition.**

- (1)
  - (a) An inmate participating in a postsecondary education program through the department shall pay to the department at the time of enrollment 50% of the costs of the postsecondary education tuition.
  - (b) If an inmate desires to participate in the postsecondary education program but is unable to pay the costs of the education because of inadequate financial resources, the inmate may participate in a deferred tuition payment program under this section.
  - (c) The department and the Office of State Debt Collection shall coordinate a deferred postsecondary education tuition repayment program to provide inmates a reasonable payment schedule and payment amount to allow for deferred payment of the postsecondary educational tuition obligation the inmate incurred while under supervision of the department, which shall:
    - (i) account for all postsecondary education tuition costs incurred by the inmate while under the supervision of the department;

- (ii) establish an appropriate time for the inmate to begin payment of postsecondary education tuition costs, which shall require that payments start no later than two years after termination of parole; and
  - (iii) establish a payment schedule and payment amounts, including prevailing interest rates, commensurate with student loans currently being offered by local financial institutions.
  - (d) Neither the department nor the Office of State Debt Collection may relieve an offender of the postsecondary tuition repayment responsibility.
  - (e) The department shall pay costs of postsecondary education not paid by the offender at the time of participation in the program from the Prison Telephone Surcharge Account.
- (2)
- (a) Of those tuition funds collected by the Office of State Debt Collection under this section, 10% may be used by the Office of State Debt Collection for operation of the deferred payment program.
  - (b) All other funds collected as repayment for postsecondary tuition costs shall be deposited in the Prison Telephone Surcharge Account.
- (3) Only inmates lawfully present in the United States may participate in the postsecondary educational program offered through the department.

Enacted by Chapter 258, 2009 General Session

#### **64-13-31 Emergencies.**

In the case of riots, disturbances, or other emergencies at correctional facilities, the Department of Corrections has authority to direct the resolution of the emergencies. The department may request and coordinate the assistance of other state and local agencies in responding to the emergencies.

Amended by Chapter 116, 1987 General Session

#### **64-13-32 Discipline of offenders -- Use of force.**

- (1) If an offender offers violence to an officer or other employee of the Department of Corrections, or to another offender, or to any other person; attempts to damage or damages any corrections property; attempts to escape; or resists or refuses to obey any lawful and reasonable command; the officers and other employees of the department may use all reasonable means, including the use of weapons, to defend themselves and department property and to enforce the observance of discipline and prevent escapes.
- (2) An inmate who is housed in a secure correctional facility and is in the act of escaping from that secure correctional facility or from the custody of a peace or correctional officer is presumed to pose a threat of death or serious bodily injury to an officer or others if apprehension is delayed. Notwithstanding Section 76-2-404, a peace or correctional officer is justified in using deadly force if he reasonably believes deadly force is necessary to apprehend the inmate.

Amended by Chapter 49, 1993 General Session

#### **64-13-33 Restitution for offenses -- Debt collection.**

- (1) Following an administrative hearing, the department is authorized to require restitution from an offender for expenses incurred by the department as a result of the offender's violation of department rules. The department is authorized to require payment from the offender's account or to place a hold on it to secure compliance with this section.

- (2) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.

Amended by Chapter 258, 2009 General Session

**64-13-34 Safety of offenders.**

In case of disaster or acts of God that threaten the safety of inmates or the security of a secure correctional facility, inmates may be moved to a suitable place of security. Inmates shall be returned to a correctional facility as soon as it is practicable.

Amended by Chapter 116, 1987 General Session

**64-13-36 Testing of prisoners for AIDS and HIV infection -- Medical care -- Department authority.**

(1) As used in this section:

- (a) "Prisoner" means a person who has been adjudicated and found guilty of a criminal offense and who is in the custody of and under the jurisdiction of the department.
- (b) "Test" or "testing" means a test or tests for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection in accordance with standards recommended by the state Department of Health.

(2)

- (a) Within 90 days after July 1, 1989, the effective date of this act, the department shall test or provide for testing of all prisoners who are under the jurisdiction of the department, and subsequently test or provide for testing of all prisoners who are committed to the jurisdiction of the department upon admission or within a reasonable period after admission.
- (b) At the time test results are provided to persons tested, the department shall provide education and counseling regarding Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection.

(3)

- (a) The results of tests conducted under Subsection (2) become part of the inmate's medical file, accessible only to persons designated by department rule and in accordance with any other legal requirement for reporting of Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.
- (b) Medical and epidemiological information regarding results of tests conducted under Subsection (2) shall be provided to the state Department of Health.

(4) The department has authority to take action as medically indicated with regard to any prisoner who has tested positive for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

(5) Prisoners who test positive for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection may not be excluded from common areas of the prison that are accessible to other prisoners solely on the basis of that condition, unless medically necessary for protection of the general prison population or staff.

Amended by Chapter 12, 1994 General Session

Amended by Chapter 148, 1994 General Session

**64-13-37 Department authorized to test offenders for communicable disease.**

(1) As used in this section, "communicable disease" means:

- (a) an illness due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly, as from an infected person or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment; and
  - (b) a disease designated by the Department of Health by rule as a communicable disease in accordance with Section 26-6-7.
- (2) The department may:
- (a) test an offender for a communicable disease upon admission or within a reasonable time after admission to a correctional facility; and
  - (b) periodically retest the offender for a communicable disease during the time the offender is in the custody of the department.

Enacted by Chapter 277, 1993 General Session

**64-13-38 Emergency release due to overcrowding.**

- (1) Definitions:
- (a) "Maximum capacity" means every physical and funded prison bed is occupied by an inmate.
  - (b) "Operational capacity" means 96.5% of every physical and funded bed is occupied by an inmate.
  - (c) "Emergency release capacity" means 98% of every physical and funded bed is occupied by an inmate.
- (2) When the executive director of the department finds that either the male or female inmate population of the Utah State Prison has exceeded operational capacity for at least 45 consecutive days, the executive director shall notify the governor, the legislative leadership, and the Board of Pardons and Parole that the department is approaching an overcrowding emergency and provide them with information relevant to that determination.
- (3) When the executive director of the department finds that either the male or female inmate population of the Utah State Prison has exceeded emergency release capacity for at least 45 consecutive days, the executive director shall:
- (a) notify the governor and the legislative leadership that the emergency release capacity has been reached and provide them with information relevant to that determination; and
  - (b) notify the Board of Pardons and Parole that the emergency release capacity has been reached so that the board may commence the emergency release process pursuant to Subsection (4).
- (4) Upon the department's notifying the governor and the legislative leadership of the emergency release capacity under Subsection (3), the department shall:
- (a) notify the Board of Pardons and Parole of the number of inmates who need to be released in order to return the prison inmate population to operational capacity; and
  - (b) in cooperation and consultation with the Board of Pardons and Parole, compile a list of inmates, the release of whom would be sufficient to return the prison inmate population to operational capacity.
- (5) After 45 consecutive days of emergency release capacity, the Board of Pardons and Parole may order the release of a sufficient number of inmates identified under Subsection (4) to return the prison inmate population to operational capacity.
- (6) The department shall inform the governor and the legislative leadership when the emergency release has been completed.
- (7) The Board of Pardons and Parole shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

Amended by Chapter 21, 2012 General Session

**64-13-39 Standards for health care facilities.**

All health care facilities, as defined in Section 26-21-2, owned or operated by the department shall apply for and meet the requirements for accreditation by the National Commission for Correctional Health Care. The department shall begin the application process in a timely manner to facilitate accreditation of the health care facilities of the department on or before January 1, 1996. Inspections to ensure compliance and accreditation shall be conducted by staff of the national commission.

Enacted by Chapter 353, 1995 General Session

**64-13-39.5 Definitions -- Health care for chronically or terminally ill offenders -- Notice to health care facility.**

(1) As used in this section:

- (a) "Department or agency" means the Utah Department of Corrections or a department of corrections or government entity responsible for placing an offender in a facility located in Utah.
- (b) "Chronically ill" has the same meaning as in Section 31A-36-102.
- (c) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5) and a nursing care facility as defined in Subsection 26-21-2(17), except that transitional care units and other long term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not facilities for the purpose of this section.
- (d) "Offender" means an inmate whom the department or agency has given an early release, pardon, or parole due to a chronic or terminal illness.
- (e) "Terminally ill" has the same meaning as in Section 31A-36-102.

(2) If an offender from Utah or any other state is admitted as a resident of a facility due to the chronic or terminal illness, the department or agency placing the offender shall:

- (a) provide written notice to the administrator of the facility no later than 15 days prior to the offender's admission as a resident of a facility, stating:
  - (i) the offense for which the offender was convicted and a description of the actual offense;
  - (ii) the offender's status with the department or agency;
  - (iii) that the information provided by the department or agency regarding the offender shall be provided to employees of the facility no later than 10 days prior to the offender's admission to the facility; and
  - (iv) the contact information for:
    - (A) the offender's parole officer and also a point of contact within the department or agency, if the offender is on parole; and
    - (B) a point of contact within the department or agency, if the offender is not under parole supervision but was given an early release or pardon due to a chronic or terminal illness;
- (b) make available to the public on the Utah Department of Corrections' website and upon request:
  - (i) the name and address of the facility where the offender resides; and
  - (ii) the date the offender was placed at the facility; and
- (c) provide a training program for employees who work in a facility where offenders reside, and if the offender is placed at the facility by:

- (i) the Utah Department of Corrections, the department shall provide the training program for the employees; and
  - (ii) by a department or agency from another state, that state's department or agency shall arrange with the Utah Department of Corrections to provide the training required by this Subsection (2), if training has not already been provided by the Utah Department of Corrections, and shall provide to the Utah Department of Corrections any necessary compensation for this service.
- (3) The administrator of the facility shall:
- (a) provide residents of the facility or their guardians notice that a convicted felon is being admitted to the facility no later than 10 days prior to the offender's admission to the facility;
  - (b) advise potential residents or their guardians of persons under Subsection (2) who are current residents of the facility; and
  - (c) provide training, offered by the Utah Department of Corrections, in the safe management of offenders for all employees.
- (4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:
- (a) a consistent format and procedure for providing notification to facilities and information to the public in compliance with Subsection (2); and
  - (b) a training program, in compliance with Subsection (3) for employees, who work at facilities where offenders reside to ensure the safety of facility residents and employees.

Amended by Chapter 355, 2009 General Session

**64-13-39.6 Penalty.**

Any person who willfully violates Subsection 64-13-39.5(3) is guilty of a class B misdemeanor.

Enacted by Chapter 343, 2007 General Session

**64-13-40 Worship for native American inmates.**

- (1) As used in this section:
- (a) "Items used in religious ceremonies" includes cedar, corn husks, corn pollen, corn meal, eagle and other feathers, sage, sweet grass, tobacco, pipes, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, staffs, and other traditional items and materials.
  - (b) "Native American" means an individual who is eligible for membership in a tribe recognized by the federal government.
  - (c) "Native American religion" means a religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community.
  - (d) "Native American spiritual advisor" means a person who leads, instructs, or facilitates a native American religious ceremony or service, or provides religious counseling, and includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.
  - (e) "Site of worship" means a site indoors or outdoors where a person can pray or meditate, or where a sweat lodge ceremony, talking circle, or individual prayer can be made.
- (2)
- (a) At the request of any native American inmate, a state correctional facility shall reasonably accommodate the practice of the native American inmate's religion including a native American religion at each state correctional facility, unless the inmate is a maximum security

inmate and accommodating the maximum security inmate would threaten the reasonable security of the state correctional facility.

- (b) In accommodating a native American religion, the state correctional facility shall:
  - (i) permit access on a regular basis to:
    - (A) a native American spiritual advisor; and
    - (B) a site of worship on the grounds of the correctional facility, unless the inmate is a maximum security inmate and permitting access would threaten the reasonable security of the state correctional facility;
  - (ii) permit access to items used in religious ceremonies during the religious ceremonies; and
  - (iii) provide a secure place at the site of worship to store the items used in religious ceremonies.
- (3) Notwithstanding Subsection (2)(b)(iii), the state correctional facility is not required to provide to the inmate any item used in religious ceremonies.
- (4) A native American spiritual advisor shall have any privilege of access to inmates and sites of worship provided to an individual functioning as a religious leader or advisor at a state correctional facility.
- (5) An inmate claiming to be a native American for purposes of this section shall bear the burden of establishing to the state correctional facility that the inmate is a native American.
- (6) The department may not require a native American inmate to cut the inmate's hair if it conflicts with the inmate's traditional native American religious beliefs.
- (7) A state correctional facility is required to comply with this section only to the extent that it does not threaten the reasonable security of the state correctional facility.
- (8) This section may not be construed as requiring a state correctional facility to permit access to peyote by a native American inmate.

Enacted by Chapter 88, 1996 General Session

**64-13-41 Limitations on offender access to sexually explicit material.**

- (1) As used in this section:
  - (a)
    - (i) "Commercially published information or material" means any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, and video and audio tapes, disks, or other recording, that is distributed or made available through any means or media for a commercial purpose.
    - (ii) "Commercially published information or material" includes an extraction, photocopy, clipping, or electronically created copy made from any of the items under Subsection (1)(a)(i).
  - (b)
    - (i) "Features nudity" means the information or material:
      - (A) that, in the case of a one-time publication or issue, promotes itself based upon depictions of nudity or sexually explicit conduct; or
      - (B) that, in the case of information or material other than under Subsection (1)(b)(i)(A), contains depictions of nudity or sexually explicit conduct on a routine or regular basis.
    - (ii) The department may by rule, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exclude from the definition in Subsection (1)(b)(i) information or material containing nudity that is illustrative of medical, educational, or anthropological content.
  - (c) "Nudity" means a pictorial depiction where genitalia or female breasts are exposed.
  - (d) "Offender" means any person who has been convicted of a crime and is housed in a prison, jail, youth detention facility, or community correctional center.

- (e) "Sexually explicit" means a pictorial depiction of actual or simulated sexual acts, including sexual intercourse, sodomy, or masturbation.
  - (f) "State funds" means state or local funding provided to the department, and includes legislative appropriations to the department, dedicated credits, grants, and money for jail reimbursement to county correctional facilities under Title 64, Chapter 13, Department of Corrections - State Prison, private providers, and contractors.
- (2) State funds may not be used to distribute or make available any commercially published information or material to an offender when the state employee, contractor, or private provider who has the authority to expend the funds knows that the commercially published information or material is sexually explicit or features nudity.
- (3)
- (a) When the department rejects commercially published information or material for distribution to an offender under this section, the department shall advise the publisher or sender that it may request reconsideration by the department of the decision to reject the material. However, the department need advise the publisher or sender only once in the case of information or material that on a routine or regular basis either depicts sexually explicit material or features nudity.
  - (b) The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish an administrative reconsideration process.
  - (c) For purposes of extraordinary relief under Rule 65B, Utah Rules of Civil Procedure, this administrative reconsideration process is a plain, speedy, and adequate legal remedy that must be exhausted before extraordinary relief is available.
  - (d) There is no right to judicial review of the department's decision under this section to reject material for distribution.
- (4) This section does not apply to sexually explicit material used under Section 76-10-1207.5 for the assessment or treatment of an offender.

Amended by Chapter 382, 2008 General Session

**64-13-42 Prison Telephone Surcharge Account -- Funding inmate and offender education and training programs.**

- (1)
- (a) There is created within the General Fund a restricted account known as the Prison Telephone Surcharge Account.
  - (b) The Prison Telephone Surcharge Account consists of:
    - (i) beginning July 1, 2006, revenue generated by the state from pay telephone services located at any correctional facility as defined in Section 64-13-1;
    - (ii) interest on account money;
    - (iii)
      - (A) money paid by inmates participating in postsecondary education provided by the department; and
      - (B) money repaid by former inmates who have a written agreement with the department to pay for a specified portion of the tuition costs under the department's deferred tuition payment program;
    - (iv) money collected by the Office of State Debt Collection for debt described in Subsection (1)(b)(iii); and
    - (v) money appropriated by the Legislature.



- (2) Upon appropriation by the Legislature, money from the Prison Telephone Surcharge Account shall be used by the department for education and training programs for offenders and inmates as defined in Section 64-13-1.

Amended by Chapter 415, 2018 General Session

**64-13-43 Use of state vehicles by department personnel.**

The department executive director may authorize the use of a state vehicle for official and commute purposes for a department employee who:

- (1) supervises probationers or parolees; or
- (2) investigates the criminal activity of inmates, probationers, or parolees.

Enacted by Chapter 368, 2008 General Session

**64-13-44 Posthumous organ donations by inmates.**

(1) As used in this section:

- (a) "Document of gift" has the same meaning as in Section 26-28-102.
- (b) "Sign" has the same meaning as in Section 26-28-102.

- (2)
  - (a) The Utah Department of Corrections shall make available to each inmate a document of gift form that allows an inmate to indicate the inmate's desire to make an anatomical gift if the inmate dies while in the custody of the department.
  - (b) If the inmate chooses to make an anatomical gift after death, the inmate shall complete a document of gift in accordance with the requirements of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.
  - (c) The department shall maintain a record of the document of gift that an inmate provides to the department.
- (3) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the department may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all inmates who complete and sign the document of gift form indicating they intend to make an anatomical gift.
- (4) The making of an anatomical gift by an inmate under this section shall comply with Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.
- (5) Notwithstanding anything in this section, the department shall not be considered to be an inmate's "guardian" for the purposes of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

Enacted by Chapter 256, 2013 General Session

**64-13-45 Department reporting requirements.**

(1) As used in this section:

- (a)
  - (i) "In-custody death" means an inmate death that occurs while the inmate is in the custody of the department.
  - (ii) "In-custody death" includes an inmate death that occurs while the inmate is:
    - (A) being transported for medical care; or
    - (B) receiving medical care outside of a correctional facility, other than a county jail.

- (b) "Inmate" means an individual who is processed or booked into custody or housed in the department or a correctional facility other than a county jail.
- (c) "Opiate" means the same as that term is defined in Section 58-37-2.
- (2) The department shall submit a report to the Commission on Criminal and Juvenile Justice, created in Section 63M-7-201, before June 15 of each year that includes:
  - (a) the number of in-custody deaths that occurred during the preceding calendar year, including:
    - (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of each of the in-custody deaths described in Subsection (2)(a); and
    - (ii) the department's policy for notifying an inmate's next of kin after the inmate's in-custody death;
  - (b) the department policies, procedures, and protocols:
    - (i) for treatment of an inmate experiencing withdrawal from alcohol or substance use, including use of opiates;
    - (ii) that relate to the department's provision, or lack of provision, of medications used to treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all forms of buprenorphine and naltrexone; and
    - (iii) that relate to screening, assessment, and treatment of an inmate for a substance use disorder or mental health disorder;
  - (c) the number of inmates who gave birth and were restrained in accordance with Section 64-13-46, including:
    - (i) the types of restraints used; and
    - (ii) whether the use of restraints was to prevent escape or to ensure the safety of the inmate, medical or corrections staff, or the public; and
  - (d) any report the department provides or is required to provide under federal law or regulation relating to inmate deaths.
- (3) The Commission on Criminal and Juvenile Justice shall:
  - (a) compile the information from the reports described in Subsection (2);
  - (b) omit or redact any identifying information of an inmate in the compilation to the extent omission or redaction is necessary to comply with state and federal law ; and
  - (c) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee and the Utah Substance Use and Mental Health Advisory Council before November 1 of each year.
- (4) The Commission on Criminal and Juvenile Justice may not provide access to or use the department's policies, procedures, or protocols submitted under this section in a manner or for a purpose not described in this section.

Amended by Chapter 311, 2019 General Session

Amended by Chapter 385, 2019 General Session

**64-13-46 Pregnant inmates.**

- (1) If the staff of a correctional facility knows or has reason to believe that an inmate is pregnant, the staff, when restraining the inmate, shall use the least restrictive restraints necessary to ensure the safety and security of the inmate and others. This requirement shall continue during postpartum recovery and any transport to or from a correctional facility.
- (2) The staff of a correctional facility may not use restraints on an inmate during labor and childbirth unless a correctional staff member makes an individualized determination that there are compelling grounds to believe that the inmate presents:

- (a) an immediate and serious risk of harm to herself, medical staff, correctional staff, or the public; or
  - (b) a substantial risk of escape that cannot reasonably be reduced by the use of other existing means.
- (3) Notwithstanding Subsection (1) or (2), under no circumstances may shackles, leg restraints, or waist restraints be used on an inmate during labor and childbirth or postpartum recovery while in a medical facility.
- (4) Correctional staff present during labor or childbirth shall:
- (a) be stationed in a location that offers the maximum privacy to the inmate, while taking into consideration safety and security concerns; and
  - (b) be female, if practicable.
- (5) If restraints are authorized under Subsection (1) or (2), a written record of the decision and use of the restraints shall be made that includes:
- (a) the correctional staff member's determination on the use of restraints;
  - (b) the circumstances that necessitated the use of restraints;
  - (c) the type of restraints that were used; and
  - (d) the length of time the restraints were used.
- (6) The record created in Subsection (5):
- (a) shall be retained by the correctional facility for five years;
  - (b) shall be available for public inspection with individually identifying information redacted; and
  - (c) may not be considered a medical record under state or federal law.
- (7) As used in this section:
- (a) "Postpartum recovery" means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or medical facility after birth.
  - (b) "Restraints" means any physical restraint or mechanical device used to control the movement of an inmate's body or limbs, including flex cuffs, soft restraints, shackles, or a convex shield.
  - (c) "Shackles" means metal or iron restraints and includes hard metal handcuffs, leg irons, belly chains, or a security or tether chain.

Enacted by Chapter 385, 2019 General Session