Title 77. Utah Code of Criminal Procedure

Chapter 1
Preliminary Provisions

77-1-1 Short title.

This act shall be known and may be cited as the "Utah Code of Criminal Procedure."

Enacted by Chapter 15, 1980 General Session

77-1-2 Criminal procedure prescribed.

The procedure in criminal cases shall be as prescribed in this title, the Rules of Criminal Procedure, and such further rules as may be adopted by the Supreme Court of Utah.

Enacted by Chapter 15, 1980 General Session

77-1-3 Definitions.

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused, and brought to trial for a public offense.

(2) "Indictment" means an accusation in writing presented by a grand jury to the district court charging a person with a public offense.

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented, signed, and filed in the office of the clerk where the prosecution is commenced in accordance with Section 77-2-2.2.

(4) "Magistrate" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78A-5-107, except that the authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial council. The judicial council rules shall not exceed constitutional limitations upon the delegation of judicial authority.

(5) "Risk and needs assessment" means an actuarial tool validated on 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.

Amended by Chapter 260, 2021 General Session

77-1-4 Conviction to precede punishment.

No person shall be punished for a public offense until convicted in a court having jurisdiction.

Enacted by Chapter 15, 1980 General Session

77-1-5 Prosecuting party.

A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.

Enacted by Chapter 15, 1980 General Session

77-1-6 Rights of defendant.

(1) In criminal prosecutions the defendant is entitled:
- (a) To appear in person and defend in person or by counsel;
- (b) To receive a copy of the accusation filed against him;
- (c) To testify in his own behalf;
- (d) To be confronted by the witnesses against him;
- (e) To have compulsory process to insure the attendance of witnesses in his behalf;
- (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
- (g) To the right of appeal in all cases; and
- (h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.

(2) In addition:
- (a) No person shall be put twice in jeopardy for the same offense;
- (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
- (c) No person shall be compelled to give evidence against himself;
- (d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
- (e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

Enacted by Chapter 15, 1980 General Session

77-1-7 Dismissal without trial -- Custody or discharge of defendant.

(1)
- (a) Further prosecution for an offense is not barred if the court dismisses an information or indictment based on the ground:
  - (i) there was unreasonable delay;
  - (ii) the court is without jurisdiction;
  - (iii) the offense was not properly alleged in the information or indictment; or
  - (iv) there was a defect in the impaneling or the proceedings relating to the grand jury.
- (b) The court may make orders regarding custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise, the defendant shall be discharged and bail exonerated.

(2) An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or upon the statute of limitations is a bar to any other prosecution for the offense charged.

Enacted by Chapter 7, 1990 General Session

Chapter 2
Prosecution, Screening, and Diversion

77-2-2 Definitions.

As used in this chapter:

(1) "Commencement of prosecution" means the filing of an information or an indictment.

(2) "Diversion" means suspending criminal proceedings before conviction on the condition that a defendant agree to:

(a) participate in a rehabilitation program;

(b) pay restitution to a victim; or

(c) fulfill some other condition.

(3) "Restitution" means the same as that term is defined in Section 77-38b-102.

(4) "Screening" means the process used by a prosecuting attorney to:

(a) terminate an investigative action;

(b) proceed with prosecution;

(c) move to dismiss a prosecution that has been commenced; or

(d) cause a prosecution to be diverted.

Amended by Chapter 260, 2021 General Session

77-2-2.1 Authorization to file information.

Except as otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor unless authorized by a prosecuting attorney.

Renumbered and Amended by Chapter 260, 2021 General Session

77-2-2.2 Signing and filing of information.

(1) The prosecuting attorney shall sign all informations.

(2) The prosecuting attorney may:

(a) sign the information in the presence of a magistrate; or

(b) present and file the information in the office of the clerk where the prosecution is commenced upon the signature of the prosecuting attorney.

Renumbered and Amended by Chapter 260, 2021 General Session

77-2-2.3 Reducing the level of an offense.

(1) Notwithstanding any other provision of law, a prosecuting attorney may:

(a) present and file an information charging an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute if the prosecuting attorney believes that the sentence would be disproportionate to the offense because there are special circumstances relating to the offense; or

(b) subject to the approval of the court, amend an information, as part of a plea agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute.

(2) A court may:

(a) enter a judgment of conviction for an offense filed under Subsection (1) at one degree lower than classified in statute; and

(b) impose a sentence for the offense filed under Subsection (1) at one degree lower than classified in statute.

(3) A conviction of an offense at one degree lower than classified in statute under Subsection (2) does not affect the requirements for registration of the offense under Title 77, Chapter 41, Sex and Kidnap Offender Registry, or Title 77, Chapter 43, Child Abuse Offender Registry, if the elements of the offense for which the defendant is convicted are the same as the elements of an offense described in Section 77-41-102 or 77-43-102.
(4) This section does not preclude an individual from obtaining and being granted an expungement for the individual's record in accordance with Title 77, Chapter 40, Utah Expungement Act.

Renumbered and Amended by Chapter 260, 2021 General Session

77-2-3 Termination of investigative action.

Prior to the commencement of prosecution, the prosecutor may, without approval of a magistrate, authorize a termination of investigative action when it appears that further investigative action is not in the public interest.

Enacted by Chapter 15, 1980 General Session

77-2-4 Dismissal of prosecution.

After commencement of a prosecution the prosecutor may, upon reasonable grounds, move the magistrate before whom the prosecution is pending to dismiss the prosecution. If, in the judgment of the magistrate, the prosecution should not continue, he may dismiss the prosecution and enter an order of dismissal stating the reasons for the dismissal in the order.

Enacted by Chapter 15, 1980 General Session

77-2-4.2 Compromise of traffic charges -- Limitations.

(1) As used in this section:
(a) "Compromise" means referral of a person charged with a traffic violation to traffic school or other school, class, or remedial or rehabilitative program.
(b) "Traffic violation" means any charge for which bail may be forfeited in lieu of appearance, by citation or information, of a violation of:
(i)Title 41, Chapter 6a, Traffic Code, amounting to:
(A) a class B misdemeanor;
(B) a class C misdemeanor; or
(C) an infraction; or
(ii) any local traffic ordinance.
(2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:
(a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or
(b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge.
(3) In all cases which are compromised pursuant to the provisions of Subsection (2):
(a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:
(i) be subject to the same surcharge as if imposed on a criminal fine;
(ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and

(iii) be not more than $25 greater than the bail designated in the Uniform Bail Schedule; or
(b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic school or other school, class, or rehabilitative program shall be collected, which surcharge shall:
(i) be computed, assessed, collected, and remitted in the same manner as if the traffic school fee and surcharge had been imposed as a criminal fine and surcharge; and
(ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.
(4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:
(a) the Uniform Bail Schedule amount;
(b) the amount of any surcharges being assessed; and
(c) the amount of the plea in abeyance fee.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 339, 2008 General Session
Amended by Chapter 382, 2008 General Session

77-2-4.3 Compromise of boating violations -- Limitations.
(1) As used in this section:
(a) "Compromise" means referral of a person charged with a boating violation to a boating safety course approved by the Division of Recreation.
(b) "Boating violation" means any charge for which bail may be forfeited in lieu of appearance, by citation or information, of a violation of Title 73, Chapter 18, State Boating Act, amounting to:
(i) a class B misdemeanor;
(ii) a class C misdemeanor; or
(iii) an infraction.
(2) Any compromise of a boating violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:
(a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or
(b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge.
(3) In all cases which are compromised pursuant to the provisions of Subsection (2):
(a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:
(i) be subject to the same surcharge as if imposed on a criminal fine;
(ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and
(iii) be not more than $25 greater than the bail designated in the Uniform Bail Schedule; or
(b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the boating safety course shall be collected, which surcharge shall:
(i) be computed, assessed, collected, and remitted in the same manner as if the boating safety course fee and surcharge had been imposed as a criminal fine and surcharge; and
(ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:
(a) the Uniform Bail Schedule amount;
(b) the amount of any surcharges being assessed; and
(c) the amount of the plea in abeyance fee.

Amended by Chapter 280, 2021 General Session

77-2-4.5 Dismissal by compromise -- Limitations.

(1) In misdemeanor cases the court may dismiss the case upon motion of the prosecutor if it is compromised by the defendant and the injured party, except under Subsection (2). The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth and entered in the minutes. The order is a bar to another prosecution for the same offense.
(2) A dismissal by compromise may not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of his duties, or riotously, or with intent to commit a felony.

Enacted by Chapter 7, 1990 General Session

77-2-5 Diversion agreement -- Negotiation -- Contents.

(1) At any time after the commencement of prosecution and before conviction, the prosecuting attorney may, by written agreement with the defendant, filed with the court, and upon approval of the court, divert a defendant to a non-criminal diversion program.
(2) A defendant shall be represented by counsel during negotiations for diversion and at the time of execution of any diversion agreement unless the defendant has knowingly and intelligently waived the defendant's right to counsel.
(3) The defendant has the right to be represented by counsel at any court hearing relating to a diversion program.
(4)
(a) A diversion agreement, entered into between the prosecuting attorney and the defendant and approved by a magistrate, shall contain a full, detailed statement of the requirements agreed to by the defendant and the reasons for diversion.
(b) The diversion agreement described in Subsection (4)(a) shall include an agreement, by the parties, for a specific amount of restitution that the defendant will pay, unless the prosecuting attorney certifies that:
(i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and
(ii) the defendant does not owe any restitution.
(5)
(a) If the court approves a diversion agreement that includes an agreement by the parties for the amount of restitution that the defendant will pay, the court shall order the defendant to pay restitution in accordance with the terms of the diversion agreement.
(b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the diversion agreement.
(6) A decision by a prosecuting attorney not to divert a defendant is not subject to judicial review.

(7) A diversion agreement entered into between the prosecution and the defense and approved by a magistrate may contain an order that the defendant pay a nonrefundable diversion fee that:
(a) shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 or Section 78A-7-120; and
(b) may not exceed the suggested fine listed in the Uniform Fine Schedule adopted by the Judicial Council.
(8) A diversion agreement may not be approved unless the defendant knowingly and intelligently waives the defendant's constitutional right to a speedy trial before a magistrate and in the diversion agreement.
(9)
(a) The court shall, on the defendant's request, consider the defendant's ability to pay a diversion fee before ordering the defendant to pay a diversion fee.
(b) The court may:
(i) consider any relevant evidence in determining the defendant's ability to pay a diversion fee; and
(ii) lower or waive the diversion fee based on that evidence.
(10) A diversion program longer than two years is not permitted.

Amended by Chapter 43, 2021 General Session
Amended by Chapter 260, 2021 General Session

77-2-6 Dismissal after compliance with diversion agreement.

The court shall dismiss the information or indictment filed against the defendant who has complied with the requirements of his diversion agreement and the defendant shall not thereafter be subject to further prosecution for the offense involved or for any lesser included offense.

Enacted by Chapter 15, 1980 General Session

77-2-7 Diversion not a conviction.

Diversion is not a conviction and if the case is dismissed the matter shall be treated as if the charge had never been filed.

Enacted by Chapter 15, 1980 General Session

77-2-8 Violation of diversion agreement -- Hearing -- Prosecution resumed.

If, during the course of the diversion of a defendant, information is brought to the attention of a magistrate or the prosecuting attorney that the defendant has violated his diversion agreement and it appears in the best interests of the community to reinstate and proceed with the prosecution, the prosecuting attorney, upon court approval, or the magistrate, on his own motion, shall cause to be served upon the defendant an order to show cause specifying the facts relied upon by the prosecuting attorney or magistrate to terminate diversion and shall set a time and place for a hearing to determine whether or not the defendant has violated his diversion agreement. If, at the hearing, the magistrate finds the defendant has failed to comply with any terms or conditions of the diversion agreement, he may authorize the prosecuting attorney to proceed with prosecution. The prosecution of a diverted offense shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of the diversion agreement by which the original prosecution was diverted.

Enacted by Chapter 15, 1980 General Session

77-2-9 Offenses ineligible for diversion.

(1) A magistrate may not grant a diversion for:
  (a) a capital felony;
  (b) a felony in the first degree;
  (c) any case involving a sexual offense against a victim who is under 14 years old;
  (d) any motor vehicle related offense involving alcohol or drugs;
  (e) any case involving using a motor vehicle in the commission of a felony;
  (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;
  (g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:
    (i) manslaughter under Section 76-5-205; or
    (ii) negligent homicide under Section 76-5-206; or
  (h) a crime of domestic violence as defined in Section 77-36-1.

(2) When an individual is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses, while under 16 years old, the court may enter a diversion in the matter if the court enters on the record the court's findings that:
  (a) the offenses could have been adjudicated in juvenile court but for the delayed reporting or delayed filing of the information in the district court, unless the offenses are before the court in accordance with Section 80-6-502 or 80-6-504;
  (b) the individual did not use coercion or force;
  (c) there is no more than three years' difference between the ages of the participants; and
  (d) it would be in the best interest of the person to grant diversion.

Amended by Chapter 262, 2021 General Session

Chapter 2a
Pleas in Abeyance

77-2a-1 Definitions.

As used in this chapter:

(1) "Pecuniary damages" means the same as that term is defined in Section 77-38b-102.

(2) "Plea in abeyance" means an order by a court, upon motion of the prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against the defendant nor imposing sentence upon the defendant on condition that the defendant comply with specific conditions as set forth in a plea in abeyance agreement.

(3) "Plea in abeyance agreement" means an agreement entered into between the prosecuting attorney and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(4) "Restitution" means the same as that term is defined in Section 77-38b-102.

Amended by Chapter 260, 2021 General Session

77-2a-2 Plea in abeyance agreement -- Negotiation -- Contents -- Terms of agreement -- Waiver of time for sentencing.

(1) At any time after acceptance of a plea of guilty or no contest but before entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.

(2) A defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant knowingly and intelligently waives the defendant's right to counsel.

(3) A defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.

(4)

(a) Any plea in abeyance agreement entered into between the prosecution and the defendant and approved by the court shall include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.

(b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, before acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.

(5)

(a) Except as provided in Subsection (5)(b), a plea may not be held in abeyance for a period longer than 18 months if the plea is to any class of misdemeanor or longer than three years if the plea is to any degree of felony or to any combination of misdemeanors and felonies.

(b)

(i) For a plea in abeyance agreement that Adult Probation and Parole supervises, the plea may not be held in abeyance for a period longer than the initial term of probation required under the supervision length guidelines described in Section 63M-7-404, if the initial term of probation is shorter than the period required under Subsection (5)(a).

(ii) Subsection (5)(b)(i) does not:

(A) apply to a plea that is held in abeyance in a drug court created under Title 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by the Judicial Council; or

(B) prohibit court supervision of a plea in abeyance agreement after the day on which the Adult Probation and Parole supervision described in Subsection (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends.

(6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years if the plea is to any class of misdemeanor and the plea in abeyance agreement includes a condition that the defendant participate in a problem solving court approved by the Judicial Council.

(7) A plea in abeyance agreement may not be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in Rule 22(a), Utah Rules of Criminal Procedure.

Amended by Chapter 281, 2020 General Session

77-2a-3 Manner of entry of plea -- Powers of court.

(1)

(a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

(b) In cases charging offenses for which bail may be forfeited, a plea in abeyance agreement may be entered into without a personal appearance before a magistrate.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or

(b) allow withdrawal of defendant's plea and order the dismissal of the case.

(3)

(a) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as provided in the plea in abeyance agreement or as agreed to by all parties.

(b) Upon sentencing a defendant for any lesser offense in accordance with a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.

(4) The court may require the Department of Corrections to assist in the administration of the plea in abeyance agreement as if the defendant were on probation to the court under Section 77-18-105.

(5) The terms of a plea in abeyance agreement may include:

(a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and which may not exceed in amount the maximum fine and surcharge which could have been imposed upon conviction and sentencing for the same offense;

(b) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and

(c) an order that the defendant comply with any other conditions that could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6)

(a) The terms of a plea in abeyance shall include an order for a specific amount of restitution that the defendant will pay, as agreed to by the defendant and the prosecuting attorney, unless the prosecuting attorney certifies that:

(i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and

(ii) the defendant does not owe any restitution.

(b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the plea in abeyance agreement.

(c) If the defendant does not successfully complete the terms of the plea in abeyance, the court shall enter an order for restitution, in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act, upon entering a sentence for the defendant.

(7)

(a) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant.

(b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

(8) No plea may be held in abeyance in any case involving a sexual offense against a victim who is under 14 years old.

(9) No plea may be held in abeyance in any case involving a driving under the influence violation under Section 41-6a-502, 41-6a-502.5, 41-6a-517, or 41-6a-520.

Amended by Chapter 79, 2021 General Session
Amended by Chapter 260, 2021 General Session

77-2a-4 Violation of plea in abeyance agreement -- Hearing -- Entry of judgment and imposition of sentence -- Subsequent prosecutions.

(1) If, at any time during the term of the plea in abeyance agreement, information comes to the attention of the prosecuting attorney or the court that the defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated. If, following an evidentiary hearing, the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered. Upon entry of judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.

(2) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.

Enacted by Chapter 82, 1993 General Session

Chapter 3
Security to Keep the Peace

77-3-1 Threatened offense -- Complaint.

A complaint that a person has threatened to commit an offense against the person or property of another, except in the case of stalking, may be made before any magistrate. Petitions alleging the commission of stalking shall be handled pursuant to Title 78B, Chapter 7, Protective Orders and Stalking Injunctions.

Amended by Chapter 276, 2001 General Session

77-3-2 Examination of complainant and witnesses.

The magistrate shall examine, on oath, the complainant and any witnesses he may produce and may take their testimony in writing.

Enacted by Chapter 15, 1980 General Session

77-3-3 "Complaint" defined.

A complaint, within the meaning of this chapter, is a statement in writing setting forth the jurisdictional facts, specifying the threatened offense, and subscribed and sworn to by the complainant before the magistrate.

Enacted by Chapter 15, 1980 General Session

77-3-4 Warrant of arrest -- Temporary restraining order.

If the magistrate believes there is reasonable ground to fear the commission of the offense threatened, he may:

(1) Issue a warrant directed generally to any peace officer, reciting the substance of the complaint and commanding the officer to immediately arrest the person complained of and bring him before the magistrate or in the case of his absence or inability to act before the nearest and most accessible magistrate of the county; and

(2) Issue a temporary restraining order against the commission of the offense and order the person complained of to immediately appear before the magistrate for a hearing.

Enacted by Chapter 15, 1980 General Session

77-3-5 Defendant taken before different magistrate -- Procedure.

When the person arrested is taken before a magistrate other than the one who issued the warrant, the peace officer who executed the warrant shall deliver it to the issuing magistrate with his endorsed return. The complaint and written testimony, if any, on which the warrant was issued shall be sent to the magistrate before whom the person arrested is taken.

Enacted by Chapter 15, 1980 General Session

77-3-6 Change of venue.

When the person complained of is brought before the magistrate, a change of venue may be had for good cause shown.

Enacted by Chapter 15, 1980 General Session

77-3-7 Hearing -- Evidence -- Record.

At the time set for hearing, the magistrate shall take evidence. The hearing may be recorded or reduced to writing.

Enacted by Chapter 15, 1980 General Session

77-3-8 Findings and orders -- Discharge -- Undertaking -- Commitment.

(1) If it appears there is no reasonable ground to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged. The complainant may be ordered to pay the costs of the proceedings if the magistrate believes the complaint was unfounded and frivolous.

(2) If there is reasonable ground to fear the commission of an offense, the court may, in addition or as an alternative to other relief, enter an order permanently restraining the person from engaging in illegal conduct or acting in any manner that could result in illegal conduct or the person complained of may be required to enter into an undertaking in a sum not to exceed $3,000, with one or more sufficient sureties, to keep the peace toward the people of this state

and particularly toward the persons endangered. The conditions of the undertaking shall be in writing and shall be for a period of six months. It may be extended on good cause shown for a longer period or enlarged and a new undertaking may be required.

(a) If the undertaking is given, the party complained of shall be discharged.

(b) If the undertaking is not given, the magistrate shall commit the defendant to jail specifying in the warrant of commitment the requirement to give security, the amount thereof, and the effective period of time.

(c) A person committed for not giving the required undertaking may be discharged by any magistrate when he provides the undertaking.

Enacted by Chapter 15, 1980 General Session

77-3-9 Filing undertaking with district court clerk.

An undertaking shall be filed in the office of the clerk of the district court.

Amended by Chapter 68, 1995 General Session

77-3-10 Assault in presence of magistrate or court.

A person who, in the presence of the court or magistrate, assaults or threatens to assault another or to commit an offense against person or property, or who contends with another with threatening words, may be ordered by the court or magistrate to give security and if he refuses to do so, may be committed as provided in Subsection 77-3-8(2)(b).

Enacted by Chapter 15, 1980 General Session

77-3-11 Undertaking, when broken -- Prosecution.

(1) The undertaking is broken if the person posting the bond violates the conditions set by the court.

(2) If the undertaking is broken and the county attorney produces evidence of the violation to the district court where the undertaking was filed, the court shall order an action on the undertaking to be commenced, and the county attorney shall commence an action in the name of the state against the principal sureties on the undertaking.

Enacted by Chapter 15, 1980 General Session

77-3-12 Record of conviction conclusive evidence -- Judgment on undertaking.

In an action filed by the county attorney to recover on an undertaking:

(1) The offense shall be alleged as a breach of the undertaking stated in a record of conviction and a record of conviction is conclusive evidence thereof.

(2) If the court finds the offense constitutes a breach of the undertaking, judgment for the amount of the undertaking shall be entered against the parties liable.

Enacted by Chapter 15, 1980 General Session

Chapter 4
Suppression of Resistance to Service of Process

77-4-1 Force by officer -- Arrest.

A public officer authorized to execute process issued by any court may use such force as is reasonable and necessary to execute service of process. If necessary, he may seize, arrest, and confine persons resisting or aiding and abetting resistance to his service of process.

Enacted by Chapter 15, 1980 General Session

Chapter 5
Impeachments

77-5-1 Officers liable to impeachment.

The governor and other state and judicial officers shall be liable to impeachment for high crimes and misdemeanors or malfeasance in office.

Amended by Chapter 471, 2015 General Session

77-5-2 Chief justice to preside, when.

When the governor is on trial, the chief justice of the Supreme Court shall preside, and, in case he is disqualified or unable to act, the Senate shall select some other justice of the Supreme Court to preside.

Enacted by Chapter 15, 1980 General Session

77-5-3 Two-thirds vote of House required.

The House of Representatives shall have the sole power of impeachment, but in order to impeach, two-thirds of all the members elected shall vote therefor. Impeachments shall be by resolution. The resolution shall originate in and be adopted by the House of Representatives.

Enacted by Chapter 15, 1980 General Session

77-5-4 Trial by Senate.

All impeachments shall be tried by the Senate sitting for that purpose.

Enacted by Chapter 15, 1980 General Session

77-5-5 Hearing, notice of -- Defendant served with articles.

The Senate shall assign a day for the hearing of the impeachment and inform the House of Representatives. The president of the Senate shall cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the officer being impeached not less than 10 days before the day fixed for the hearing.

Enacted by Chapter 15, 1980 General Session

77-5-6 Suspension on filing articles -- Vacancy, how filled.

When articles of impeachment are presented to the Senate, and the officer has been served with a copy of the articles, the officer shall be temporarily suspended from office and may not exercise the duties of the office until the officer is acquitted. Upon the suspension of any officer, other than the governor, or a justice or judge of a court of record, the office shall be temporarily filled by an appointment made by the governor, with the advice and consent of the Senate, until the acquittal of the party impeached, or, in the case of the officer's removal, until the vacancy is filled at the next election as provided by law.

Amended by Chapter 352, 2020 General Session

77-5-7 Senators to be sworn -- Two-thirds required for proceedings.

At the time and place appointed, and before the Senate proceeds to act on the impeachment, the secretary shall administer to the president of the Senate, and the president of the Senate shall administer to each of the members of the Senate then present, an oath or affirmation to do justice according to law and the evidence and no member of the Senate shall act or vote on the impeachment, or any question arising on it without taking the oath or affirmation and being present during the proceedings. No proceedings shall be conducted unless at least two-thirds of the senators elected and entitled to vote are present.

Enacted by Chapter 15, 1980 General Session

77-5-8 Two-thirds vote necessary for conviction.

The officer shall not be convicted on impeachment without the concurrence of two-thirds of the senators elected, voting by ayes and nays, and if two-thirds of the senators elected do not concur in a conviction, he shall be acquitted.

Enacted by Chapter 15, 1980 General Session

77-5-9 Nature of judgment.

The judgment may be that the officer be suspended, or removed from office and disqualified to hold any office of honor, trust, or profit in the state.

Enacted by Chapter 15, 1980 General Session

77-5-10 Effect of judgment.

If judgment of suspension is given, the officer, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

Enacted by Chapter 15, 1980 General Session

77-5-11 Impeachment not a bar to prosecution.

The officer, whether convicted or acquitted, shall nevertheless be liable to prosecution, trial, and punishment according to law for any offense committed that constituted a basis for the impeachment proceedings.

Enacted by Chapter 15, 1980 General Session

77-5-12 Rules of procedure.

The procedure for impeachment proceedings shall be adopted by rule in each house and such rules shall govern.

Enacted by Chapter 15, 1980 General Session

Chapter 6
Removal by Judicial Proceedings

77-6-1 Officers subject to removal.

All officers of any city, county, or other political subdivision of this state not liable to impeachment shall be subject to removal as provided in this chapter for high crimes and misdemeanors or malfeasance in office.

Amended by Chapter 471, 2015 General Session

77-6-2 Commencement of action for removal.

An action for the removal of a justice court judge or officer of a city, county, or other political subdivision of this state shall be commenced by presenting a sworn, written accusation to the district court. The accusation may be initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general.

Amended by Chapter 38, 1993 General Session

77-6-3 Form of accusation.

The accusation shall state the grounds for removal in ordinary and concise language.

Enacted by Chapter 15, 1980 General Session

77-6-4 Presentation of accusation -- Service on defendant.

(1) When the accusation is initiated by:

(a) a grand jury, the foreperson shall present the accusation to the court in the presence of the grand jurors which shall be filed with the clerk; or

(b) a taxpayer, the county attorney, district attorney, or the attorney general, any of these persons shall present the accusation to the presiding judge of the district court for filing with the clerk.

(2)

(a) Except when the accusation is initiated by the county attorney or district attorney, the court shall furnish a copy of the accusation to the county attorney or, if within a prosecution district, the district attorney who shall investigate and may prosecute the accusation.

(b) If the accusation is against the county or district attorney, the court shall furnish a copy of the accusation to the Office of the Attorney General, who shall investigate and may prosecute the accusation.

(c) If prosecution is pursued, the county attorney, district attorney, or attorney general shall serve a copy of the accusation on the defendant with a summons which requires the defendant to appear before the district court of the county in which the county attorney or district attorney serves and to answer the accusation.

(3) The time fixed for appearance may not be less than 10 days from the date of service of summons. The service of the accusation, summons, and the return of service shall be made in the manner provided by law for service of civil process.

Amended by Chapter 67, 1996 General Session

77-6-5 Appearance -- Procedure on default.

The defendant shall appear at the time appointed and answer the accusation, unless for some sufficient cause the court assigns another time for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

Enacted by Chapter 15, 1980 General Session

77-6-6 Answer -- Objections for insufficiency.

The defendant may orally answer the accusation either by admitting or denying it in open court, or he may, in writing, object to the legal sufficiency of the accusation. If the objection to the sufficiency of the accusation is sustained, the accusation shall be dismissed. If the objection is overruled, the defendant shall immediately admit or deny the accusation.

Enacted by Chapter 15, 1980 General Session

77-6-7 Trial on denial or refusal to answer -- Procedure.

If the defendant denies the accusation or refuses to answer or appear, the court shall proceed to try the accusation. The rights of the parties and procedures used shall be the same as in any civil proceeding.

Enacted by Chapter 15, 1980 General Session

77-6-8 Judgment of removal -- Service on defendant.

If the defendant admits the accusation or is convicted, the court shall enter judgment against him directing the defendant be removed from office and setting forth the causes of removal. The judgment of removal shall immediately be served upon the defendant.

Enacted by Chapter 15, 1980 General Session

77-6-9 Appeal -- Suspension from office.

From a judgment of removal an appeal may be taken to the Supreme Court in the same manner as from a judgment in a civil action; but from entry of judgment and until the judgment is reversed, the defendant shall be suspended from his office. Pending the appeal, the office shall be filled as in the case of a vacancy.

Enacted by Chapter 15, 1980 General Session

Chapter 7
Arrest, by Whom, and How Made

77-7-1 "Arrest" defined -- Restraint allowed.

An arrest is an actual restraint of the person arrested or submission to custody. The person shall not be subjected to any more restraint than is necessary for his arrest and detention.

Enacted by Chapter 15, 1980 General Session

77-7-2 Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1)
  (a) for any public offense committed or attempted in the presence of any peace officer; and
  (b) as used in this Subsection (1), "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when the peace officer has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when the peace officer has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:
  (a) flee or conceal himself to avoid arrest;
  (b) destroy or conceal evidence of the commission of the offense; or
  (c) injure another person or damage property belonging to another person;

(4) when the peace officer has reasonable cause to believe the person has committed the offense of failure to disclose identity under Section 76-8-301.5; or

(5) when the peace officer has reasonable cause to believe that the person is an alien:
  (a) subject to a civil removal order issued by an immigration judge;
  (b) regarding whom a civil detainer warrant has been issued by the federal Department of Homeland Security; or
  (c) who has been charged or convicted in another state with one or more aggravated felonies as defined by 8 U.S.C. Sec. 1101(a)(43).

Amended by Chapter 18, 2011 General Session
Amended by Chapter 21, 2011 General Session

77-7-3 By private persons.

A private person may arrest another:

(1) For a public offense committed or attempted in his presence; or

(2) When a felony has been committed and he has reasonable cause to believe the person arrested has committed it.

Enacted by Chapter 15, 1980 General Session

77-7-4 Magistrate may orally order arrest.

A magistrate may orally require a peace officer to arrest anyone committing or attempting to commit a public offense in the presence of the magistrate, and, in the case of an emergency, when probable cause exists, a magistrate may orally authorize a peace officer to arrest a person for a public offense, and thereafter, as soon as practical, an information shall be filed against the person arrested.

Enacted by Chapter 15, 1980 General Session

77-7-5 Issuance of summons or warrant -- Time and place arrests may be made -- Contents of warrant or summons -- Responsibility for transporting prisoners -- Court clerk to dispense costs for transportation.

(1) A magistrate may issue a warrant for arrest in lieu of a summons for the appearance of the accused only upon finding:
  (a) probable cause to believe that the person to be arrested has committed a public offense; and
  (b) under the Utah Rules of Criminal Procedure, and this section that a warrant is necessary to:
    (i) prevent risk of injury to a person or property;
    (ii) secure the appearance of the accused; or
    (iii) protect the public safety and welfare of the community or an individual.

(2) If the offense charged is:
  (a) a felony, the arrest upon a warrant may be made at any time of the day or night; or
  (b) a misdemeanor, the arrest upon a warrant can be made at night only if:
    (i) the magistrate has endorsed authorization to do so on the warrant;
    (ii) the person to be arrested is upon a public highway, in a public place, or in a place open to or accessible to the public; or
    (iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(3) For the purpose of Subsection (1):
  (a) daytime hours are the hours of 6 a.m. to 10 p.m.; and
  (b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

(4)
  (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.
  (b)
    (i) The law enforcement agency identified by the magistrate under Subsection (4)(a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.
    (ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.
  (c)
    (i) The law enforcement agency identified by the magistrate under Subsection (4)(a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.
    (ii) The court clerk shall:
      (A) account for a cost paid under Subsection 76-3-201(4)(b) for government transportation; and
      (B) dispense money collected by the court under Subsection (4)(c)(ii)(A) to the law enforcement agency responsible for the transportation of a convicted defendant.

(5) The law enforcement agency identified by the magistrate under Subsection (4)(a) shall indicate to the court within 48 hours of the issuance, excluding Saturdays, Sundays, and legal holidays if a warrant issued in accordance with this section is an extradition warrant.
(6) The law enforcement agency identified by the magistrate under Subsection (4)(a) shall report any changes to the status of a warrant issued in accordance with this section to the Bureau of Criminal Identification.

Amended by Chapter 260, 2021 General Session

77-7-6 Manner of making arrest.
(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:
(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;
(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or
(c) the person being arrested is pursued immediately after the commission of an offense or an escape.
(2)
(a) If a deaf or hard of hearing person, as defined in Subsection 78B-1-201(2), is arrested for an alleged violation of a criminal law, including a local ordinance, the arresting officer shall assess the communicative abilities of the deaf or hard of hearing person and conduct this notification, and any further notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the deaf or hard of hearing person, including qualified interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and telecommunications devices for the deaf.
(b) Compliance with this Subsection (2) is a factor to be considered by any court when evaluating whether statements of a deaf or hard of hearing person were made knowingly, voluntarily, and intelligently.

Amended by Chapter 43, 2017 General Session

77-7-7 Force in making arrest.
If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in Section 76-2-404.

Enacted by Chapter 15, 1980 General Session

77-7-8 Forcible entry to conduct search or make arrest -- Conditions requiring a warrant.
(1)
(a) Subject to Subsection (2), a peace officer when making an arrest may forcibly enter the building in which the person to be arrested is located, or in which there is probable cause for believing the person to be.
(b) Before making the forcible entry, the officer shall:
(i) identify himself or herself as a law enforcement officer;
(ii) demand admission;
(iii) wait a reasonable period of time for an occupant to admit access; and

(iv) explain the purpose for which admission is desired.

(c)

(i) The officer need not give a demand and explanation, or identify himself or herself, before making a forcible entry under the exceptions in Section 77-7-6 or where there is probable cause to believe evidence will be easily or quickly destroyed.

(ii) The officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering the premises.

(d) The officer may use only that force which is reasonable and necessary to effectuate forcible entry under this section.

(2) If the building to be entered under Subsection (1) appears to be a private residence or the officer knows the building is a private residence, and if there is no consent to enter or there are no exigent circumstances, the officer shall, before entering the building:

(a) obtain an arrest or search warrant if the building is the residence of the person to be arrested; or

(b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.

(3) Notwithstanding any other provision of this chapter, forcible entry under this section may not be made solely for the alleged:

(a) possession or use of a controlled substance under Section 58-37-8; or

(b) the possession of drug paraphernalia as defined in Section 58-37a-3.

Amended by Chapter 317, 2015 General Session

77-7-8.5 Use of tactical groups -- Reporting requirements.

(1) As used in this section:

(a)

(i) "Reportable incident" means:

(A) the deployment of a tactical group; or

(B) law enforcement officers who serve a search warrant after using forcible entry.

(ii) "Reportable incident" does not mean a forced cell entry at a corrections facility.

(b) "Tactical group" means a special unit, within a law enforcement agency, specifically trained and equipped to respond to critical, high-risk situations.

(2) On and after January 1, 2015, every state, county, municipal, or other law enforcement agency shall annually on or before April 30 report to the Commission on Criminal and Juvenile Justice the following information for the previous calendar year:

(a) whether the law enforcement agency conducted one or more reportable incidents;

(b) the following information regarding each reportable incident:

(i) the organizational title of the agency, task force, or tactical group deployed;

(ii) the city, county, and zip code of the location where the reportable incident occurred;

(iii) the reason for the deployment;

(iv) the type of warrant obtained, if any;

(v) if a threat assessment was completed;

(vi) if a warrant was obtained, the name of the judge or magistrate who authorized the warrant;

(vii) the number of arrests made, if any;

(viii) if any evidence was seized;

(ix) if any property was seized, other than property that was seized as evidence;

(x) if a forcible entry was made;

(xi) if a firearm was discharged by a law enforcement officer, and, if so, approximately how many shots were fired by each officer;
(xii) if a weapon was brandished by a person other than the law enforcement officers;
(xiii) if a weapon was used by a person against the law enforcement officers and, if a firearm was used, the number or approximate number of shots fired by the person;
(xiv) the identity of any law enforcement agencies that participated or provided resources for the deployment;
(xv) if a person or domestic animal was injured or killed by a law enforcement officer; and
(xvi) if a law enforcement officer was injured or killed; and

(c) the number of arrest warrants served that required a forced entry as provided by Section 77-7-8 and were not served in conjunction with a search warrant that resulted in a reportable incident.

(3) If a warrant is served by a multijurisdictional team of law enforcement officers, the reporting requirement in this section shall be the responsibility of the commanding agency or governing authority of the multijurisdictional team.

(4) The Commission on Criminal and Juvenile Justice shall develop a standardized format that each law enforcement agency shall use in reporting the data required in Subsection (2).

(5) A law enforcement agency shall:

(a) compile the data described in Subsection (2) for each year as a report in the format required under Subsection (4); and

(b) submit the report to:

(i) the Commission on Criminal and Juvenile Justice; and
(ii) the local governing body of the jurisdiction served by the law enforcement agency.

(6)

(a) The Commission on Criminal and Juvenile Justice shall summarize the yearly reports of law enforcement agencies submitted under Subsection (2).

(b) Before August 1 of each year, the Commission on Criminal and Juvenile Justice shall submit a report of the summaries described in Subsection (6)(a) to:

(i) the attorney general;
(ii) the speaker of the House of Representatives, for referral to any house standing or interim committees with oversight of law enforcement and criminal justice;
(iii) the president of the Senate, for referral to any senate standing or interim committees with oversight of law enforcement and criminal justice; and
(iv) each law enforcement agency.

(c) The report described in Subsection (6)(b) shall be published on the Utah Open Government website, open.utah.gov, before August 15 of each year.

(7)

(a) If a law enforcement agency fails to comply with the reporting requirements listed in Subsection (2), the Commission on Criminal and Juvenile Justice shall contact the law enforcement agency and request that the agency comply with the required reporting provisions.

(b) If a law enforcement agency fails to comply with the reporting requirements listed in Subsection (2) within 30 days after being contacted by the Commission on Criminal and Juvenile Justice with a request to comply, the Commission on Criminal and Juvenile Justice shall report the noncompliance to the attorney general, the speaker of the House of Representatives, and the president of the Senate.

Enacted by Chapter 106, 2014 General Session

77-7-9 Weapons may be taken from prisoner.

Any person making an arrest may seize from the person arrested all weapons which he may have on or about his person.

Enacted by Chapter 15, 1980 General Session

77-7-10 Telegraph or telephone authorization of execution of arrest warrant.

Any magistrate may, by an endorsement on a warrant of arrest, authorize by telegraph, telephone or other reasonable means, its execution. A copy of the warrant or notice of its issuance and terms may be sent to one or more peace officers. The copy or notice communicated authorizes the officer to proceed in the same manner under it as if he had an original warrant.

Enacted by Chapter 15, 1980 General Session

77-7-11 Possession of warrant by arresting officer not required.

Any peace officer who has knowledge of an outstanding warrant of arrest may arrest a person he reasonably believes to be the person described in the warrant, without the peace officer having physical possession of the warrant.

Enacted by Chapter 15, 1980 General Session

77-7-12 Detaining persons suspected of shoplifting or library theft -- Persons authorized.

(1) A peace officer, merchant, or merchant's employee, servant, or agent who has reasonable grounds to believe that goods held or displayed for sale by the merchant have been taken by a person with intent to steal may, for the purpose of investigating the unlawful act and attempting to effect a recovery of the goods, detain the person in a reasonable manner for a reasonable length of time.
(2) A peace officer or employee of a library may detain a person for the purposes and under the limits of Subsection (1) if there are reasonable grounds to believe the person violated Title 76, Chapter 6, Part 8, Library Theft.

Amended by Chapter 245, 1987 General Session

77-7-13 Arrest without warrant by peace officer -- Reasonable grounds, what constitutes -- Exemption from civil or criminal liability.

(1) A peace officer may arrest, without warrant, any person the officer has reasonable ground to believe has committed a theft under Title 76, Chapter 6, Part 8, Library Theft, or of goods held or displayed for sale.
(2) A charge of theft made to a peace officer under Title 76, Chapter 6, Part 8, Library Theft, by an employee of a library, or by a merchant, merchant's employee, servant, or agent constitutes a reasonable ground for arrest, and the peace officer is relieved from any civil or criminal liability.

Amended by Chapter 282, 1998 General Session

77-7-14 Person causing detention or arrest of person suspected of shoplifting or library theft -- Civil and criminal immunity.

(1) A peace officer, merchant, or merchant's employee, servant, or agent who causes the detention of a person as provided in Section 77-7-12, or who causes the arrest of a person for theft of goods held or displayed for sale, is not criminally or civilly liable where he has reasonable and probable cause to believe the person detained or arrested committed a theft of goods held or displayed for sale.
(2) A peace officer or employee of a library who causes a detention or arrest of a person under Title 76, Chapter 6, Part 8, Library Theft, is not criminally or civilly liable where he has reasonable and probable cause to believe that the person committed a theft of library materials.

Amended by Chapter 245, 1987 General Session

77-7-15 Authority of peace officer to stop and question suspect -- Grounds.

A peace officer may stop any individual in a public place when the officer has a reasonable suspicion to believe the individual has committed or is in the act of committing or is attempting to commit a public offense and may demand the individual's name, address, date of birth, and an explanation of the individual's actions.

Amended by Chapter 411, 2019 General Session

77-7-16 Authority of peace officer to frisk suspect for dangerous weapon -- Grounds.

A peace officer who has stopped a person temporarily for questioning may frisk the person for a dangerous weapon if he reasonably believes he or any other person is in danger.

Enacted by Chapter 15, 1980 General Session

77-7-17 Authority of peace officer to take possession of weapons.

A peace officer who finds a dangerous weapon pursuant to a frisk may take and keep it until the completion of the questioning, at which time he shall either return it if lawfully possessed, or arrest such person.

Enacted by Chapter 15, 1980 General Session

77-7-17.5 Physical body cavity search policy -- Requirements.

(1) As used in this section:
(a) "Arrestee" means an individual who is in the custody of law enforcement for an offense for which the individual has not been convicted.
(b)
(i) "Body cavity" includes the anus, rectum, vagina, esophagus, or stomach.
(ii) "Body cavity" does not include the mouth, ear canal, or nasal passages.
(c)
(i) "Physical body cavity search" means a search of a body cavity of an individual that involves touching the individual with:
(A) any part of another individual's body; or
(B) an instrument or other item.
(ii) "Physical body cavity search" does not include a clothed, pat down search.
(2) Each county jail shall adopt and implement a policy that meets the minimum standards contained in a model policy established by the Commission on Criminal and Juvenile Justice.

(3) The model policy shall specify the minimum standards and procedures to be followed by the county jail when a body cavity search is performed on an arrestee within the county jail's jurisdiction, including:
(a) stating with specificity the circumstances under which a body cavity search may be performed on an arrestee;
(b) designating who may authorize the performance of a body cavity search;
(c) designating specific jail staff or medical personnel who may perform a body cavity search;
(d) requiring any nonmedically trained jail staff who may perform a body cavity search to be trained on safe practices for conducting a body cavity search;
(e) requiring documentation of each body cavity search performed at the correctional facility, including:
(i) the identity of the arrestee searched;
(ii) the date, time, and location of the search;
(iii) the identity of the individual performing the search;
(iv) the identity of the individual authorizing the search;
(v) a description of the body areas searched and the procedures followed in performing the search; and
(vi) the circumstances necessitating the body cavity search; and
(f) designating rules and procedures to be followed, by authorized staff, when performing a body cavity search that account for the health and privacy interests of the arrestee, including:
(i) the location where a body cavity search must be performed;
(ii) the gender requirements of the individuals who perform or observe the search in relation to the gender of the arrestee being searched; and
(iii) methods to ensure the body cavity search is conducted with the minimal amount of touching necessary to effectuate the purposes of the search.
(4) A county jail's body cavity search policy is a public record.

Enacted by Chapter 462, 2019 General Session

77-7-18 Citation on misdemeanor or infraction charge.
(1) Any person subject to arrest or prosecution on a misdemeanor or infraction charge may be issued and delivered a citation that requires the person to appear at the court of the magistrate with territorial jurisdiction.
(2) The following may issue the citation described in Subsection (1):
(a) a peace officer, in lieu of or in addition to taking the person into custody;
(b) any public official of any county or municipality charged with the enforcement of the law;
(c) a port-of-entry agent as defined in Section 72-1-102;
(d) an animal control officer of a county, municipality, or special service district under Title 17D, Chapter 1, Special Service District Act, who is authorized to provide animal control service; and
(e) a volunteer authorized to issue a citation under Section 41-6a-217.

Amended by Chapter 379, 2018 General Session

77-7-19 Appearance required by citation -- Arrest for failure to appear -- Transfer of cases -- Disposition of fines and costs.
(1) An individual receiving a citation issued pursuant to Section 77-7-18 shall appear in the court designated in the citation on or before the time and date specified in the citation unless:

(a) the citation states that the court will, within five to 14 days, notify the individual of when to appear; or
(b) the individual is permitted to remit the fine and other penalties without a personal appearance in accordance with a uniform fine schedule adopted by the Judicial Council or by court order under Section 77-7-21.
(2) A citation may not require an individual to appear or contact the court sooner than five days or later than 14 days following its issuance.
(3) If the individual cited does not appear before the court as directed by the citation or the court, or pay the fine as allowed by Section 77-7-21, the court may issue a bench warrant for the individual's arrest.
(4)
(a) Clerks and other administrative personnel serving the courts shall identify for the judge any citations over which the court may lack jurisdiction.
(b) Upon determining that the court lacks jurisdiction over a citation, the court shall:
(i) transfer the case to a court with jurisdiction;
(ii) if the court cannot readily identify a court with jurisdiction, dismiss the charges contained in the citation; and
(iii) notify the prosecutor of the transfer or dismissal.
(c) Any fine, fee, or forfeiture collected by a court that lacks jurisdiction shall be:
(i) transferred to the court receiving the case; or
(ii) if the case is dismissed, returned to the defendant.

Amended by Chapter 185, 2020 General Session

77-7-20 Service of citation on defendant -- Filing in court -- Electronic filing -- Contents of citations.

(1) Except as provided in Subsection (4), a peace officer or other authorized official who issues a citation pursuant to Section 77-7-18 shall give the citation to the individual cited and shall, within five business days, electronically file the data from Subsections (2)(a) through (2)(h) with the court specified in the citation. The data transmission shall use the court's electronic filing interface. A nonconforming filing is not effective.
(2) The citation issued under authority of this chapter shall contain the following data:
(a) the name, address, and phone number of the court before which the individual is to appear;
(b) the name and date of birth of the individual cited;
(c) a brief description of the offense charged;
(d) the date, time, and place at which the offense is alleged to have occurred;
(e) the date on which the citation was issued;
(f) the name of the peace officer or official who issued the citation, and the name of the arresting individual if a private party made the arrest and the citation was issued in lieu of taking the arrested individual before a magistrate;
(g) the time and date on or date range during which the individual is to appear or a statement that the court will notify the individual of the time to appear;
(h) whether the offense is a domestic violence offense; and
(i) a notice containing substantially the following language:

READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear

in court on or before the time set in this citation or as directed by the court. IF YOU FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

(3) By electronically filing the data with the court, the peace officer or official affirms to the court that:

(a) the citation or information, including the summons and complaint, was served upon the defendant in accordance with the law;

(b) the defendant committed the offense described in the served documents; and

(c) the court to which the defendant was directed to appear has jurisdiction over the offense charged.

(4)

(a) If a citing law enforcement officer is not reasonably able to access the efiling system, the citation need not be filed electronically if being filed with a justice court.

(b) The court may accept an electronic filing received after five business days if:

(i) the defendant consents to the filing; and

(ii) the court finds the interests of justice would be best served by accepting the filing.

Amended by Chapter 431, 2021 General Session

77-7-21 Proceeding on citation -- Voluntarily remitting a fine -- Parent signature required -- Information, when required.

(1)

(a) A citation filed with the court may, with the consent of the defendant, serve in lieu of an information to which the defendant may plead guilty or no contest to the charge or charges listed and be sentenced accordingly.

(b) If provided by the uniform fine schedule described in Section 76-3-301.5, or with the court's approval, an individual may remit the fine and other penalties without a personal appearance before the court in any case charging a class B misdemeanor or lower offense, unless the charge is:

(i) a domestic violence offense as defined in Section 77-36-1;

(ii) a violation of Section 41-6a-502, driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration;

(iii) a violation of Section 41-6a-517, driving with any measurable controlled substance in the body;

(iv) a violation of a local ordinance similar to the offenses described in Subsections (1)(b)(i) through (iii); or

(v) a violation that appears to:

(A) affect a victim, as defined in Section 77-38b-102; or

(B) require restitution, as defined in Section 77-38b-102.

(c) The remittal of fines and other penalties shall be entered as a conviction and treated the same as if the accused pleaded no contest.

(d) If the person cited is under 18 years old, the court shall promptly mail a copy or notice of the citation to the address as shown on the citation, to the attention of the parent or guardian of the defendant.

(2) If the individual pleads not guilty to the offense charged, further proceedings shall be held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code.

Amended by Chapter 260, 2021 General Session

Amended by Chapter 431, 2021 General Session

77-7-23 Delivery of prisoner arrested without warrant to magistrate -- Transfer to court with jurisdiction -- Transfer of duties -- Violation as misdemeanor.

(1)
(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested shall be taken without unnecessary delay to the magistrate in the district court, the precinct of the county, or the municipality in which the offense occurred, except under Subsection (2). An information stating the charge against the person shall be made before the magistrate.
(b) If the justice court judge of the precinct or municipality or the district court judge is not available, the arrested person shall be taken before the magistrate within the same county who is nearest to the scene of the alleged offense or nearest to the jail under Subsection (2), who may act as committing magistrate for arraigning the accused, setting bail, or issuing warrants.

(2)
(a) If the arrested person under Subsection (1) must be transported from jail to a magistrate, the person may be taken before the magistrate nearest to the jail rather than the magistrate specified in Subsection (1) for arraignment, setting bail, or issuing warrants.
(b) The case shall then be transferred to the court having jurisdiction.

(3) If a jail accepts custody of a person arrested under Subsection (1), the duties under this section of the peace officer or private person who makes the arrest are transferred to the jail and the jail's personnel.
(4) This section does not confer jurisdiction upon a court unless otherwise provided by law.
(5) Any officer or person violating this section is guilty of a class B misdemeanor.

Amended by Chapter 140, 2018 General Session

77-7-24 Notice to appear in court -- Contents -- Promise to comply -- Signing -- Release from custody -- Official misconduct.

(1) If a person who is arrested for a violation of Title 41, Chapter 6a, Traffic Code, that is punishable as a misdemeanor is immediately taken before a magistrate as provided under Section 77-7-23, the peace officer shall prepare, in triplicate or more copies, a written notice to appear in court containing:
(a) the name and address of the person;
(b) the number, if any, of the person's driver license;
(c) the license plate number of the person's vehicle;
(d) the offense charged; and
(e) the time and place the person shall appear in court.
(2) The time specified in the notice to appear must be at least five days after the arrest of the person unless the person demands an earlier hearing.
(3) The place specified in the notice to appear shall be made before a magistrate of competent jurisdiction in the county in which the alleged violation occurred.
(4)
(a) In order to secure release as provided in this section, the arrested person shall promise to appear in court by signing at least one copy of the written notice prepared by the arresting officer.
(b) The arresting peace officer shall immediately:

(i) deliver a copy of the notice to the person promising to appear; and
(ii) release the person arrested from custody.
(5) A peace officer violating any of the provisions of this section shall be:
(a) guilty of misconduct in office; and
(b) subject to removal from office.

Renumbered and Amended by Chapter 2, 2005 General Session

77-7-25 Keeping of records -- Making and forwarding of abstract upon conviction or forfeiture of bail -- Form and contents -- Official misconduct.

(1) A magistrate or judge of a court shall keep a full record of each case in which a person is charged with:
(a) a violation of this chapter; or
(b) any other law regulating the operation of a motor vehicle on the highway.
(2)
(a) Within five days after the conviction or forfeiture of bail of a person on a charge of violating a provision of this chapter or other law regulating the operation of a motor vehicle on the highway, the magistrate of the court or clerk of the court in which the conviction was made or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of the court covering the case in which the person was convicted or forfeited bail.
(b) The abstract shall be certified by the person required to prepare the abstract to be true and correct.
(c) A report under this Subsection (2) is not required for a conviction involving the illegal parking or standing of a vehicle.
(3) The abstract must be made in a manner specified by the Driver License Division and shall include the:
(a) name and address of the party charged;
(b) number, if any, of the person's driver license;
(c) license plate number of the vehicle involved;
(d) nature of the offense;
(e) date of hearing;
(f) plea;
(g) judgment, or whether bail was forfeited; and
(h) amount of the fine or forfeiture.
(4) A court shall provide a copy of the report to the Driver License Division on the conviction of a person of manslaughter or other felony in which a vehicle was used.
(5) The failure, refusal, or neglect of a judicial officer to comply with the requirements of this section constitutes misconduct in office and is grounds for removal.
(6) The Driver License Division shall classify and disclose all abstracts received in accordance with Section 53-3-109.

Amended by Chapter 33, 2016 General Session

77-7-26 Improper disposition or cancellation of notice to appear or traffic citation -- Official misconduct -- Misdemeanor.

(1)
(a) It is unlawful and official misconduct for any peace officer or other officer or public employee to dispose of:

(i) a notice to appear; or
(ii) traffic citation.
(b) The provisions of Subsection (1)(a) do not apply if the disposal is done with the consent of the magistrate before whom the arrested person was to appear.
(2) A person who cancels or solicits the cancellation of a notice to appear or a traffic citation, in any manner other than as provided by law, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 2, 2005 General Session

77-7-27 Quotas for arrest, citation prohibited.
(1) As used in this section:
(a) "Law enforcement agency" means an entity of the state, or a political subdivision of the state, that exists primarily to prevent and detect crime and enforce criminal laws, statutes, or ordinances.
(b) "Law enforcement quota" means any requirement or minimum standard regarding the number or percentage of citations or arrests made by a law enforcement officer.
(2) A political subdivision or law enforcement agency employing a peace officer may not require or direct that a peace officer meet a law enforcement quota.
(3) Subsection (2) does not prohibit a political subdivision or law enforcement agency from including a peace officer's engagement with the community or enforcement activity as part of an overall determination of the peace officer's performance.

Enacted by Chapter 289, 2018 General Session

Chapter 7a
Law Enforcement Use of Body-worn Cameras

77-7a-101 Title.
This chapter is known as "Law Enforcement Use of Body-Worn Cameras."

Enacted by Chapter 410, 2016 General Session

77-7a-102 Body-worn cameras -- Written policies and procedures.
(1) Any law enforcement agency that uses body-worn cameras shall have a written policy governing the use of body-worn cameras that is consistent with the provisions of this chapter.
(2)
(a) Any written policy regarding the use of body-worn cameras by a law enforcement agency shall, at a minimum:
(i) comply with and include the requirements in this chapter; and
(ii) address the security, storage, and maintenance of data collected from body-worn cameras.
(b) Except as provided in Subsection 77-7a-104(11), this chapter does not prohibit a law enforcement agency from adopting body-worn camera policies that are more expansive than the minimum guidelines provided in this chapter.
(3) This chapter does not require an officer to jeopardize the safety of the public, other law enforcement officers, or himself or herself in order to activate or deactivate a body-worn camera.

Amended by Chapter 415, 2017 General Session

77-7a-103 Definitions.

(1)
(a) "Body-worn camera" means a video recording device that is carried by, or worn on the body of, a law enforcement officer and that is capable of recording the operations of the officer.
(b) "Body-worn camera" does not include a dashboard mounted camera or a camera intended to record clandestine investigation activities.
(2) "Law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.
(3) "Law enforcement encounter" means:
(a) an enforcement stop;
(b) a dispatched call;
(c) a field interrogation or interview;
(d) use of force;
(e) execution of a warrant;
(f) a traffic stop, including:
(i) a traffic violation;
(ii) stranded motorist assistance; and
(iii) any crime interdiction stop; or
(g) any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Enacted by Chapter 410, 2016 General Session

77-7a-104 Activation and use of body-worn cameras.

(1) An officer using a body-worn camera shall verify that the equipment is properly functioning as is reasonably within the officer's ability.
(2) An officer shall report any malfunctioning equipment to the officer's supervisor if:
(a) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or
(b) an officer determines that the officer's body-worn camera is not functioning properly at any time while the officer is on duty.
(3) An officer shall wear the body-worn camera so that it is clearly visible to the person being recorded.
(4) An officer shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible.
(5) An officer shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter, except as an interruption of a recording is allowed under this section.
(6) When going on duty and off duty, an officer who is issued a body-worn camera shall record the officer's name, identification number, and the current time and date, unless the information is already available due to the functionality of the body-worn camera.
(7) If a body-worn camera was present during a law enforcement encounter, the officer shall document the presence of the body-worn camera in any report or other official record of a contact.

(8) When a body-worn camera has been activated, the officer may not deactivate the body-worn camera until the officer's direct participation in the law enforcement encounter is complete, except as provided in Subsection (9).
(9) An officer may deactivate a body-worn camera:
(a) to consult with a supervisor or another officer;
(b) during a significant period of inactivity;
(c) during a conversation with a sensitive victim of crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity if:
(i) the individual who is the subject of the recording requests that the officer deactivate the officer's body-worn camera; and
(ii) the officer believes that the value of the information outweighs the value of the potential recording and records the request by the individual to deactivate the body-worn camera; or
(d) during a conversation with a victim of a sexual offense, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, or domestic violence, as defined in Section 77-36-1, if:
(i) the officer is conducting an evidence-based lethality assessment;
(ii) the victim or the officer believes that deactivating the body-worn camera recording:
(A) will encourage complete and accurate information sharing by the victim; or
(B) is necessary to protect the safety or identity of the victim; and
(iii) the officer's body-worn camera is reactivated as soon as reasonably possible after the evidence-based lethality assessment is complete.
(10) If an officer deactivates or fails to activate a body-worn camera in violation of this section, the officer shall document the reason for deactivating or for failing to activate a body-worn camera in a written report.
(11)
(a) For purposes of this Subsection (11):
(i) "Health care facility" means the same as that term is defined in Section 78B-3-403.
(ii) "Health care provider" means the same as that term is defined in Section 78B-3-403.
(iii) "Hospital" means the same as that term is defined in Section 78B-3-403.
(iv) "Human service program" means the same as that term is defined in Section 62A-2-101.
(b) An officer may not activate a body-worn camera in a hospital, health care facility, human service program, or the clinic of a health care provider, except during a law enforcement encounter, and with notice under Section 77-7a-105.
(12) A violation of this section may not serve as the sole basis to dismiss a criminal case or charge.
(13) Nothing in this section precludes a law enforcement agency from establishing internal agency policies for an officer's failure to comply with the requirements of this section.

Amended by Chapter 404, 2020 General Session

77-7a-104.1 Adverse inference jury instruction.
(1) As used in this section, "adverse inference instruction" means an instruction that:
(a) is provided to a jury in accordance with Utah Rules of Criminal Procedure, Rule 19; and
(b) directs the jury that an officer's failure to comply with a requirement of Section 77-7a-104 may give rise to an adverse inference against the officer.
(2)
(a) A court presiding over a jury trial may provide an adverse inference instruction if the defendant seeking the adverse inference instruction establishes by a preponderance of the evidence that:

(i) an officer intentionally or, with reckless disregard of a requirement of Section 77-7a-104, failed to comply with a requirement of Section 77-7a-104; and
(ii) the officer's failure to comply with the requirement of Section 77-7a-104 is reasonably likely to affect the outcome of the defendant's trial.
(b) In considering whether to include an adverse inference instruction under Subsection (2)(a), the court shall consider:
(i) the degree of prejudice to the defendant as a result of the officer's failure to comply with Section 77-7a-104;
(ii) the materiality and importance of the missing evidence in relation to the case as a whole;
(iii) the strength of the remaining evidence;
(iv) the degree of fault on behalf of the officer described in Subsection (2)(a)(i) or the law enforcement agency employing the officer, including whether evidence supports that the officer or the law enforcement agency displays a pattern of intentional or reckless disregard of the requirements of Section 77-7a-104; and
(v) other considerations the court determines are relevant to ensure just adjudication and due process.
(c) If a court includes an adverse inference instruction, the prosecutor shall, after the conclusion of the trial, send written notice of the instruction to the law enforcement agency that employed the officer described in Subsection (2)(a)(i) at the time of the offense, including:
(i) the written order or a description of the order allowing for the instruction;
(ii) the language of the instruction; and
(iii) the outcome of the trial.

Enacted by Chapter 404, 2020 General Session

77-7a-105 Notice and privacy.

(1) An officer with a body-worn camera shall give notice, when reasonable under the circumstances:
(a) to:
(i) the occupants of a private residence in which the officer enters and in which a body-worn camera is in use; or
(ii) a health care provider present at a hospital, a health care facility, human service program, or a health care provider's clinic in which the officer enters and in which a body-worn camera is in use; and
(b) either by:
(i) wearing a body-worn camera in a clearly visible manner; or
(ii) giving an audible notice that the officer is using a body-worn camera.
(2) An agency shall make the agency's policies regarding the use of body-worn cameras available to the public, and shall place the policies on the agency's public website when possible.

Amended by Chapter 415, 2017 General Session

77-7a-106 Prohibited Activities.

An officer is prohibited from:
(1) using a body-worn camera for personal use;
(2) making a personal copy of a recording created while on duty or acting in an official capacity as a law enforcement officer;

(3) retaining a recording of any activity or information obtained while on duty or acting in an official capacity as a law enforcement officer;
(4) duplicating or distributing a recording except as authorized by the employing law enforcement agency; and
(5) altering or deleting a recording in violation of this chapter.

Enacted by Chapter 410, 2016 General Session

77-7a-107 Retention and release of recordings.

(1)
(a) Any recording made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer shall be retained in accordance with applicable federal, state, and local laws.
(b) Any recording made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer may not be retained, electronically or otherwise, by a private entity if the private entity has any authority to:
(i) withhold the recording; or
(ii) prevent the political subdivision from accessing or disclosing the recording.
(c)
(i) Notwithstanding Subsection (1)(b), a political subdivision may continue to retain a recording in a manner prohibited under Subsection (1)(b) if the political subdivision is under contract with a private entity on May 7, 2018, and the contract includes terms prohibited by Subsection (1)(b).
(ii) A political subdivision may not renew a contract described in Subsection (1)(c)(i).
(d) This Subsection (1) does not prohibit a political subdivision from using a private entity's retention or redaction service if the private entity does not have authority to:
(i) withhold the recording; or
(ii) prevent the political subdivision from accessing or disclosing the recording.

(2)
(a) Any release of recordings made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.
(b) Notwithstanding any other provision in state or local law, a person who requests access to the recordings may immediately appeal to a district court, as provided in Section 63G-2-404, any denial of access to a recording based solely on Subsection 63G-2-305(10)(b) or (c) due to a pending criminal action that has been filed in a court of competent jurisdiction.

Amended by Chapter 71, 2018 General Session

Chapter 8
Lineups

77-8-1 Order of magistrate -- Grounds -- Arrested suspect's appearance without order.

(1) A magistrate may issue an order requiring a suspect to appear in a lineup when probable cause exists to believe a crime has been committed and there is reason to believe the suspect committed it.

(2) A suspect who has been arrested, and is in custody, may be required by a peace officer to appear in a lineup without a court order.
(3) Upon application of any suspect and a showing of good cause, a magistrate may order a lineup.

Enacted by Chapter 15, 1980 General Session

77-8-2 Suspect's right to have attorney present.

A suspect has the right to have his attorney present at any lineup. The magistrate or party in charge of the lineup shall notify the suspect of this right. Every suspect unable to employ counsel shall be entitled to representation by an attorney appointed by a magistrate for a lineup either before or after an arrest.

Enacted by Chapter 15, 1980 General Session

77-8-3 Conduct of peace officer.

The peace officers conducting a lineup shall not attempt to influence the identification of any particular suspect.

Enacted by Chapter 15, 1980 General Session

77-8-4 Record of proceedings -- Access by suspect.

The entire lineup procedure shall be recorded, including all conversations between the witnesses and the conducting peace officers. The suspect shall have access to and may make copies of the record and any photographs taken of him or any other persons in connection with the lineup.

Enacted by Chapter 15, 1980 General Session

Chapter 8a
Criminal Offense Charges

77-8a-1 Joinder of offenses and of defendants.

(1) Two or more felonies, misdemeanors, or both, may be charged in the same indictment or information if each offense is a separate count and if the offenses charged are:
  (a) based on the same conduct or are otherwise connected together in their commission; or
  (b) alleged to have been part of a common scheme or plan.
(2)
  (a) When a felony and misdemeanor are charged together the defendant is afforded a preliminary hearing with respect to both the misdemeanor and felony offenses.
  (b) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or conduct or in the same criminal episode.
  (c) The defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(d) When two or more defendants are jointly charged with any offense, they shall be tried jointly unless the court in its discretion on motion or otherwise orders separate trials consistent with the interests of justice.

(3)

(a) The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants, if there is more than one, could have been joined in a single indictment or information.

(b) The procedure shall be the same as if the prosecution were under a single indictment or information.

(4)

(a) If the court finds a defendant or the prosecution is prejudiced by a joinder of offenses or defendants in an indictment or information or by a joinder for trial together, the court shall order an election of separate trials of separate counts, grant a severance of defendants, or provide other relief as justice requires.

(b) A defendant's right to severance of offenses or defendants is waived if the motion is not made at least five days before trial. In ruling on a motion by defendant for severance, the court may order the prosecutor to disclose any statements made by the defendants which he intends to introduce in evidence at the trial.

Enacted by Chapter 201, 1990 General Session

Chapter 9
Uniform Act on Fresh Pursuit

77-9-1 Authority of peace officer of another state.

A peace officer of another state or the District of Columbia who enters this state in fresh pursuit and continues in fresh pursuit of a person in order to arrest him on the ground that he is reasonably believed to have committed a felony in another state, has the same authority to arrest and hold a person in custody as a peace officer of this state. Fresh pursuit does not require instant action, but pursuit without unreasonable delay.

Enacted by Chapter 15, 1980 General Session

77-9-2 Procedure after arrest.

An officer who has made an arrest pursuant to Section 77-9-1 shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made. The magistrate shall conduct a hearing to determine the lawfulness of the arrest. If he finds the arrest was lawful, the magistrate may commit the person arrested for a reasonable time or may admit the person to bail pending extradition proceedings.

Enacted by Chapter 15, 1980 General Session

77-9-3 Authority of peace officer of this state beyond normal jurisdiction.

(1) Any peace officer authorized by any governmental entity of this state may exercise a peace officer's authority beyond the limits of such officer's normal jurisdiction as follows:

(a) when in fresh pursuit of an offender for the purpose of arresting and holding that person in custody or returning the suspect to the jurisdiction where the offense was committed;
(b) when a public offense is committed in such officer's presence;
(c) when participating in an investigation of criminal activity which originated in the officer's normal jurisdiction in cooperation with the local authority; or
(d) when called to assist peace officers of another jurisdiction.

(2)
(a) Any peace officer, prior to taking any action authorized by Subsection (1), shall notify and receive approval of the local law enforcement authority, or if the prior contact is not reasonably possible, notify the local law enforcement authority as soon as reasonably possible.
(b) Unless specifically requested to aid a peace officer of another jurisdiction or otherwise as provided for by law, no legal responsibility for a peace officer's action outside his normal jurisdiction, except as provided in this section, shall attach to the local law enforcement authority.

Amended by Chapter 282, 1998 General Session

Chapter 10a
Grand Jury Reform

77-10a-1 Definitions.

As used in this chapter:

(1) "Clerk of the court" means the state court administrator or his designee.
(2) "Managing judge" means the supervising judge when he retains authority to manage a grand jury, or the district court judge to whom the supervising judge delegates management of a grand jury.
(3) "Presiding officer" means the presiding officer of the Judicial Council.
(4) "Subject" means a person whose conduct is within the scope of the grand jury's investigation, and that conduct exposes the person to possible criminal prosecution.
(5) "Supervising judge" means the district court judge appointed by the presiding officer to supervise the five-judge grand jury panel.
(6) "Target" means a person regarding whom the attorney for the state, the special prosecutor, or the grand jury has substantial evidence that links that person to the commission of a crime and who could be indicted or charged with that crime.
(7) "Witness" means a person who appears before the grand jury either voluntarily or pursuant to subpoena for the purpose of providing testimony or evidence for the grand jury's use in discharging its responsibilities.

Enacted by Chapter 318, 1990 General Session

77-10a-2 Panel of judges -- Appointment -- Membership -- Ordering of grand jury.

(1)
(a) The presiding officer of the Judicial Council shall appoint a panel of five judges from the district courts of the state to hear in secret all persons claiming to have information that would justify the calling of a grand jury. The presiding officer may appoint senior status district

court judges to the panel. The presiding officer shall designate one member of the panel as supervising judge to serve at the pleasure of the presiding officer. The panel has the authority of the district court.

(b) To ensure geographical diversity on the panel one judge shall be appointed from the first or second district for a five-year term, one judge shall be appointed from the third district for a four-year term, one judge shall be appointed from the fourth district for a three-year term, one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year term, and one judge shall be appointed from the third district for a one-year term. Following the first term, all terms on the panel are for five years.

(c) The panel shall schedule hearings in each judicial district at least once every three years and may meet at any location within the state. Three members of the panel constitute a quorum for the transaction of panel business. The panel shall act by the concurrence of a majority of members present and may act through the supervising judge or managing judge. The schedule for the hearings shall be set by the panel and published by the Administrative Office of the Courts. Persons who desire to appear before the panel shall schedule an appointment with the Administrative Office of the Courts at least 10 days in advance. If no appointments are scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed under oath and examined by the judges conducting the hearings. Hearsay evidence may be presented at the hearings only under the same provisions and limitations that apply to preliminary hearings.

(2)

(a) If the panel finds good cause to believe a grand jury is necessary, the panel shall make its findings in writing and may order a grand jury to be summoned.

(b) The panel may refer a matter to the attorney general, county attorney, district attorney, or city attorney for investigation and prosecution. The referral shall contain as much of the information presented to the panel as the panel determines relevant. The attorney general, county attorney, district attorney, or city attorney shall report to the panel the results of any investigation and whether the matter will be prosecuted by a prosecutor's information. The report shall be filed with the panel within 120 days after the referral unless the panel provides for a different amount of time. If the panel is not satisfied with the action of the attorney general, county attorney, district attorney, or city attorney, the panel may order a grand jury to be summoned.

(3) When the attorney general, a county attorney, a district attorney, municipal attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the supervising judge that in his judgment a grand jury is necessary because of criminal activity in the state, the panel shall order a grand jury to be summoned if the panel finds good cause exists.

(4) In determining whether good cause exists under Subsection (3), the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process.

(5) A written certification under Subsection (3) shall contain a statement that in the prosecutor's judgement a grand jury is necessary, but the certification need not contain any information which if disclosed may create a risk of:

(a) destruction or tainting of evidence;

(b) flight or other conduct by the subject of the investigation to avoid prosecution;

(c) damage to a person's reputation or privacy;

(d) harm to any person; or

(e) a serious impediment to the investigation.

(6) A written certification under Subsection (3) shall be accompanied by a statement of facts in support of the need for a grand jury.
(7) The supervising judge shall seal any written statement of facts submitted under Subsection (6).
(8) The supervising judge may at the time the grand jury is summoned:
  (a) order that it be drawn from the state at large as provided in this chapter or from any district within the state; and
  (b) retain authority to supervise the grand jury or delegate the supervision of the grand jury to any judge of any district court within the state.
(9) If after the certification under Subsection (3) the panel does not order the summoning of a grand jury or the grand jury does not return an indictment regarding the subject matter of the certification, the prosecuting attorney may release to the public a copy of the written certification if in the prosecutor's judgment the release does not create a risk as described in Subsection (5).

Amended by Chapter 25, 2018 General Session

77-10a-3 Scope of grand jury inquiry.

Any grand jury summoned under this chapter may inquire into and indict for any criminal activity occurring within the state.

Enacted by Chapter 318, 1990 General Session

77-10a-4 Number of members -- Number required for indictment.

(1) Any grand jury summoned under this chapter shall consist of not fewer than nine or more than 15 members.
(2) The grand jury may return an indictment only if at least three-fourths of the members, or the next highest whole number, vote in favor of the indictment.

Enacted by Chapter 318, 1990 General Session

77-10a-5 Grand jurors -- Qualification and selection -- Limits on disclosure.

(1) Grand jurors shall meet the qualifications provided for jurors generally in Title 78B, Chapter 1, Part 1, Jury and Witness Act. Grand jurors shall be selected from the prospective jury list as provided in Section 78B-1-107.
(2) The names of grand jurors are classified as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 115, 2017 General Session

77-10a-7 Selection of grand jurors -- Notice -- Examination -- Qualification -- Alternates.

(1) When the supervising judge orders that a grand jury be summoned, the managing judge shall direct the clerk to select at random from the master list the number of names determined by the managing judge to ensure that the required number of grand jurors under this chapter may be qualified to constitute the grand jury.
(2)
  (a) The managing judge may direct the clerk to draw additional names from the master list so alternate grand jurors may be designated at the time the grand jury is selected.

(b) Alternate grand jurors shall be drawn in the same manner and have the same qualifications as the regular grand jurors. If impanelled, they are subject to the same challenges, shall take the same oath, and have the same functions, powers, facilities, and privileges as the regular jurors.

(3) The clerk shall cause each person drawn for service on the grand jury or as an alternate to be notified of when and where to report for service. Notice may be given by telephone or by service of a summons, either personally or by first class mail addressed to the prospective juror's current residence, place of business, or post office box.

(4) The names of those drawn for service on the grand jury or as alternates and the contents of all grand juror questionnaires may not be made available to the public.

(5)

(a) At the time and place specified for the appearance of the persons summoned to serve as grand jurors and alternates, the managing judge shall examine the prospective grand jurors and alternates. Before accepting any person as a grand juror or alternate, the managing judge shall be satisfied that the person has no bias or prejudice that would prevent him from fairly and dispassionately considering the matters presented to the grand jury.

(b) When drawn and qualified, the person shall be accepted for service unless the managing judge in his discretion and on the application of the juror excuses him from service before he is sworn.

(6) The managing judge may dismiss the grand jury panel if he finds there has been a material departure from the methods prescribed for the selecting, drawing, and return of the grand jury, or if there has been an intentional omission by the proper officer to summon one or more of the grand jurors drawn.

(7) When 15 of the persons summoned as grand jurors who are qualified and not excused remain, they are the grand jury. If more than 15 qualified persons remain, their names shall be written by the clerk on separate slips, folded to conceal the names, and placed in a box. The clerk shall then draw 15 slips, and the persons whose names are drawn are the grand jury.

(8)

(a) When the number of persons to be designated as alternate grand jurors who are qualified and not excused remain, they are the alternate grand jurors.

(b) If more than the number of alternate grand jurors designated by the managing judge remain, their names shall be written by the clerk on separate slips, folded to conceal the names, and placed in a box. The clerk shall then draw slips until the designated number of alternate grand jurors are selected.

Enacted by Chapter 318, 1990 General Session

77-10a-8 Challenge of prospective grand jurors -- Failure to comply in selection of jurors -- Remedies.

(1) The attorney general, county attorney, district attorney, or special prosecutor may challenge:

(a) the array of grand jurors on the ground the grand jury was not selected, drawn, or summoned in accordance with law; and

(b) an individual juror on the ground the juror is not legally qualified.

(2) Challenges shall be made before the administration of the oath to the jurors and shall be tried to the court managing the grand jury.

(3) A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge.

(4) In criminal cases the defendant or attorney for the state may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with this chapter in selecting the grand jury. However, he must do so before the voir dire examination begins or within seven days after the defendant or attorney for the state discovered or could have discovered the grounds by the exercise of diligence, whichever is earlier, or the motion is considered waived.

(5)

(a) Any motion filed under Subsection (1), (3), or (4) must contain a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this chapter. The moving party may present in support of the motion the testimony of the clerk if he is available, any relevant records and papers used by the clerk that were not made public or otherwise available, and any other relevant evidence.

(b) If the managing judge determines there has been a substantial failure to comply with the provisions of this chapter in selecting the grand jury, he shall stay the proceedings pending the selection of a grand jury in conformity with this chapter or dismiss the indictment, whichever is appropriate.

(6)

(a) The procedures prescribed by this section are the exclusive means by which a party accused of a crime or an attorney for the state may challenge any grand jury on the ground it was not selected in conformity with this chapter.

(b) An indictment may not be dismissed in any case on the ground that one or more members of the grand jury that returned the indictment were not legally qualified if it appears from the record kept by the grand jury that eight or more jurors, after deducting the number not qualified, concurred in finding the indictment.

Amended by Chapter 38, 1993 General Session

77-10a-9 Oath for grand jurors.

Grand jurors and those selected as alternates shall take the following oath:

"Do you, and each of you, solemnly swear that you will diligently inquire into and make true presentment or indictment of all matters and things as are given you in charge or otherwise come to your knowledge, touching upon your grand jury service; to keep secret the counsel of the state, your fellows, and yourselves; to not present or indict any person through hatred, malice, or ill will; to not leave any person unpresented or unindicted through fear, favor, or affection, nor for any reward, or hope or promise thereof; but in all your investigations, presentments, and indictments to seek and present the truth, the whole truth and nothing but the truth, to the best of your skill and understanding? If so, answer 'I do.'"

Enacted by Chapter 318, 1990 General Session

77-10a-10 Charge of grand jury -- Rights and duties.

Upon impanelment of each grand jury, the judge managing the grand jury shall charge the grand jury and inform it of:

(1) its duty to inquire into offenses against the criminal laws alleged to have been committed within the jurisdiction;

(2) its independent right to call and interrogate witnesses;

(3) its right to request the production of documents or other evidence, including exculpatory evidence;

(4) the necessity of finding credible evidence of each material element of any crime charged before returning an indictment;
(5) the need to be satisfied that clear and convincing evidence exists that tends to show that a crime was committed by the person or persons accused before returning an indictment;
(6) its right to have the prosecutor present it with draft indictments for less serious charges than those originally requested by the prosecutor;
(7) the obligation of secrecy; and
(8) other duties and rights as the court finds advisable.

Enacted by Chapter 318, 1990 General Session

77-10a-11 Jury foreman -- Compensation of grand jurors.

(1) The managing judge shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman may administer oaths and affirmations and shall sign all indictments. The foreman or another juror designated by him shall keep record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court. The record may not be made public except on order of the managing judge.
(2) During the absence of the foreman the deputy foreman shall act as foreman.
(3) A grand juror shall be compensated at the same rate as a juror in a state district court for each day of service.

Enacted by Chapter 318, 1990 General Session

77-10a-12 Representation of state -- Appointment and compensation of special prosecutor.

(1) The state may be represented before any grand jury summoned in the state by:
  (a) the attorney general or any assistant attorney general;
  (b) a county attorney or any deputy county attorney;
  (c) a district attorney or any deputy district attorney;
  (d) a municipal attorney or any deputy municipal attorney; or
  (e) special prosecutors appointed under this chapter and their assistants.
(2) The supervising judge shall determine if a special prosecutor is necessary. A special prosecutor may be appointed only upon good cause shown and after the supervising judge makes a written finding that a conflict of interest exists in the Office of the Attorney General, the office of the county attorney, district attorney, or municipal attorney who would otherwise represent the state before the grand jury.
(3) In selecting a special prosecutor, the supervising judge shall give preference to the attorney general and assistant attorneys general, county attorneys, district attorneys, or municipal attorneys and their deputies.
(4)
  (a) The compensation of a special prosecutor appointed under this chapter who is an employee of the Office of the Attorney General, the office of a county attorney, district attorney, or municipal attorney is only the current compensation received in that office.
  (b) The compensation for an appointed special prosecutor who is not an employee of a prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a deputy or assistant attorney general having similar experience to that of the special prosecutor.
(5) The attorney general, county attorney, district attorney, or municipal attorney may elect to have a special prosecutor appointed by the supervising judge at the expense of the governmental

entity supporting the electing prosecutor. Upon receipt of written notice from the prosecutor of that election, the supervising judge shall appoint a special prosecutor in accordance with this section. The electing prosecutor's supporting governmental entity shall reimburse the state for expenses incurred in appointment and compensation of the special prosecutor.

Amended by Chapter 258, 2015 General Session

77-10a-13 Location -- Who may be present -- Witnesses -- Witnesses who are subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.

(1) The managing judge shall designate the place where the grand jury meets. The grand jury may, upon request and with the permission of the managing judge, meet and conduct business any place within the state. Subject to the approval of the managing judge the grand jury shall determine the times at which it meets.

(2)

(a) Attorneys representing the state, special prosecutors appointed under Section 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and a court reporter or operator of a recording device to record the proceedings may be present while the grand jury is in session.

(b) No person other than the jurors may be present while the grand jury is deliberating.

(3)

(a) The attorneys representing the state and the special prosecutors may subpoena witnesses to appear before the grand jury and may subpoena evidence in the name of the grand jury without the prior approval or consent of the grand jury or the court. The jury may request that other witnesses or evidence be subpoenaed.

(b) Subpoenas may be issued in the name of the grand jury to any person located within the state and for any evidence located within the state or as otherwise provided by law.

(c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72 hours before the victim is required to testify.

(d) A subpoena may be served upon a minor less than 72 hours before the minor is required to testify if the managing judge makes a factual finding that the minor was intentionally concealed to prevent service or that a shorter period is reasonably necessary to prevent:

(i) a risk to the minor's safety;

(ii) the concealment or removal of the minor from the jurisdiction;

(iii) intimidation or coercion of the minor or a family member of the minor; or

(iv) undue influence on the minor regarding the minor's testimony.

(e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf of the minor and is not a basis for invalidation of the minor's testimony or any indictment issued by the grand jury.

(f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal guardian of the minor on the minor's behalf.

(g) If the managing judge finds it necessary to prevent any of the actions enumerated in Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a guardian ad litem to receive service on behalf of the minor, to represent the minor, and to protect the interests of the minor.

(h) If the minor served under Subsection (3)(d) has no parent, legal guardian, or guardian ad litem with whom to confer prior to the grand jury hearing, the managing judge shall appoint legal counsel to represent the minor at the hearing.

(i) For any minor served with a subpoena under this section, attorneys representing the state, or special prosecutors appointed under Section 77-10a-12, shall interview and prepare the minor in the presence of the minor's parent or legal guardian and their attorney, or a guardian ad litem at least 24 hours prior to the time the minor is required to testify. The provisions of this subsection requiring the presence of the minor's parent do not apply if:

(i) the parent is the subject of the grand jury investigation; or

(ii) the parent is engaged in frustrating, or conspires with another to frustrate, the protections and purposes of Subsection (3)(d).

(j) The managing judge may enter any order necessary to secure compliance with any subpoena issued in the name of the grand jury.

(4)

(a) Any witness who appears before the grand jury shall be advised, by the attorney for the state or the special prosecutor, of his right to be represented by counsel.

(b) A witness who is also a subject as defined in Section 77-10a-1 shall, at the time of appearance as a witness, be advised:

(i) of his right to be represented by counsel;

(ii) that he is a subject;

(iii) that he may claim his privilege against self-incrimination; and

(iv) of the general scope of the grand jury's investigation.

(c) A witness who is also a target as defined in Section 77-10a-1 shall, at the time of appearance as a witness, be advised:

(i) of his right to be represented by counsel;

(ii) that he is a target;

(iii) that he may claim his privilege against self-incrimination;

(iv) that the attorney for the state, the special prosecutor, or the grand jury is in possession of substantial evidence linking him to the commission of a crime for which he could be charged; and

(v) of the general nature of that charge and of the evidence that would support the charge.

(d) This Subsection (4) does not require the attorney for the state, the special prosecutor, or the grand jury to disclose to any subject or target the names or identities of witnesses, sources of information, or informants, or disclose information in detail or in a fashion that would jeopardize or compromise any ongoing criminal investigation or endanger any person or the community.

(5)

(a) The grand jury shall receive evidence without regard for the formal rules of evidence, except the grand jury may receive hearsay evidence only under the same provisions and limitations that apply to preliminary hearings.

(b) Any person, including a witness who has previously testified or produced books, records, documents, or other evidence, may present exculpatory evidence to the attorney representing the state or the special prosecutor and request that it be presented to the grand jury, or request to appear personally before the grand jury to testify or present evidence to that body. The attorney for the state or the special prosecutor shall forward the request to the grand jury.

(c) When the attorney for the state or the special prosecutor is personally aware of substantial and competent evidence negating the guilt of a subject or target that might reasonably be expected to lead the grand jury not to indict, the attorney or special prosecutor shall present or otherwise disclose the evidence to the grand jury before the grand jury is asked to indict that person.

(6)

(a) The managing judge has the contempt power and authority inherent in the court over which the managing judge presides and as provided by statute.

(b) When a witness in any proceeding before or ancillary to any grand jury appearance refuses to comply with an order from the managing judge to testify or provide other information, including any book, paper, document, record, recording, or other material without having a recognized privilege, the attorney for the state or special prosecutor may apply to the managing judge for an order directing the witness to show cause why the witness should not be held in contempt.

(c) After submission of the application and a hearing at which the witness is entitled to be represented by counsel, the managing judge may hold the witness in contempt and order that the witness be confined, upon a finding that the refusal was not privileged.

(d) A hearing may not be held under this part unless 72 hours' notice is given to the witness who has refused to comply with the order to testify or provide other information, except a witness may be given a shorter notice if the managing judge upon a showing of special need so orders.

(e) Any confinement for refusal to comply with an order to testify or produce other information shall continue until the witness is willing to give the testimony or provide the information. A period of confinement may not exceed the term of the grand jury, including extensions, before which the refusal to comply with the order occurred. In any event the confinement may not exceed one year.

(f) A person confined under this Subsection (6) for refusal to testify or provide other information concerning any transaction, set of transactions, event, or events may not be again confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify or provide other information concerning the same transaction, set of transactions, event, or events.

(g) Any person confined under this section may be admitted to bail or released in accordance with local procedures pending the determination of an appeal taken by the person from the order of the person's confinement unless the appeal affirmatively appears to be frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, pursuant to an expedited schedule and in no event more than 30 days from the filing of the appeal.

(7)

(a) All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding does not affect the validity of any prosecution or indictment. The recording or reporter's notes or any transcript prepared from them shall remain in the custody or control of the attorney for the state or the special prosecutor unless otherwise ordered by the managing judge in a particular case.

(b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any person to whom disclosure is made under the provisions of this section may not disclose matters occurring before the grand jury except as otherwise provided in this section. A knowing violation of this provision may be punished as a contempt of court.

(c) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(i) an attorney for the state or a special prosecutor for use in the performance of that attorney's duty; and

(ii) government personnel, including those of state, local, and federal entities and agencies, as are considered necessary by the attorney for the state or special prosecutor to assist the attorney in the performance of the attorney's duty to enforce the state's criminal laws.

(d) Any person to whom matters are disclosed under this section may not utilize that grand jury material for any purpose other than assisting the attorney for the state or the special prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An attorney for the state or the special prosecutor shall promptly provide the managing judge with the names of the persons to whom the disclosure has been made and shall certify that the attorney has advised the person of the person's obligation of secrecy under this section.

(e) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made when:

(i) directed by the managing judge or by any court before which the indictment that involves matters occurring before the grand jury that are subject to disclosure is to be tried, preliminary to or in connection with a judicial proceeding;

(ii) permitted by the managing judge at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) the disclosure is made by an attorney for the state or the special prosecutor to another state or local grand jury or a federal grand jury;

(iv) permitted by the managing judge at the request of an attorney for the state or the special prosecutor, upon a showing that the matters may disclose a violation of federal criminal law, to an appropriate official of the federal government for the purpose of enforcing federal law; or

(v) showing of special need is made and the managing judge is satisfied that disclosure of the information or matters is essential for the preparation of a defense.

(f) When the matters are transcripts of testimony given by witnesses the state or special prosecutor intends to call in the state's case in chief in any trial upon an indictment returned by the grand jury before which the witnesses testified, the attorney for the state or the special prosecutor shall, no later than 30 days before trial, provide the defendant with access to the transcripts. The attorney for the state or the special prosecutor shall at the same time provide the defendant with access to all exculpatory evidence presented to the grand jury prior to indictment.

(g) When the managing judge orders disclosure of matters occurring before the grand jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge directs.

(h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon the attorney for the state or the special prosecutor, the parties to the judicial proceeding if disclosure is sought in connection with the proceeding, and other persons as the managing judge directs. The managing judge shall afford those persons a reasonable opportunity to appear and be heard.

(8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and so long as necessary to prevent disclosure of matters occurring before the grand jury other than as provided in this section.

(9) Subject to any right to an open hearing in contempt proceedings, the managing judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

Amended by Chapter 281, 2018 General Session

77-10a-14 Concurrence for indictment -- Proof -- Validity -- Disclosure.

(1) An indictment may be found only upon the concurrence of at least three-fourths, or the next highest whole number, of the grand jurors.

(2) An indictment may not be found unless the grand jurors who vote in favor of the indictment find there is clear and convincing evidence to believe the crime to be charged was committed and the person to be indicted committed the crime. An indictment may not be returned solely on the basis of incompetent hearsay.

(3) To be valid, the indictment shall be signed by the foreman and then returned to the managing judge in open court. The clerk of the managing court shall file the indictment upon receipt.

(4)

(a) The managing judge who takes the return of the indictment may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial.

(b) The clerk shall then seal the indictment and, except for transferring the indictment to the appropriate court for trial as provided by this chapter, may not permit any person to disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

Amended by Chapter 30, 2018 General Session

77-10a-15 Return and transfer of indictment.

Immediately upon the return of an indictment the managing judge shall enter an order transferring the indictment to a court with appropriate jurisdiction and proper venue under Section 76-1-202 to try the matter.

Enacted by Chapter 318, 1990 General Session

77-10a-16 Return of indictment -- Warrant of arrest -- Bail.

(1) The managing judge may upon return of an indictment, when the defendant is not in custody, cause a warrant to be issued for the arrest of the defendant charged and shall fix an appropriate bail.

(2) Return of any warrant of arrest shall be in the court to which the indictment is transferred for trial. The court to which the return is made may review bail and any conditions of detention or release.

Enacted by Chapter 318, 1990 General Session

77-10a-17 Grand jury report on noncriminal misconduct -- Action on the report.

(1) A grand jury may upon completion of its original term or each extension, with the concurrence of a majority of its members, submit to the managing judge a report concerning noncriminal misconduct, malfeasance, or misfeasance in office as a basis for a recommendation of removal or disciplinary action against a public officer or employee.

(2) The judge to whom the report is submitted shall examine it and the minutes of the grand jury. The judge shall make an order accepting and filing the report as a public record, but only if the judge is satisfied that it complies with Subsection (1) and:

(a) the report is based on facts revealed during the grand jury's investigation and is supported by a preponderance of evidence; and

(b) each person named and any reasonable number of witnesses on his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of the report.

(3) An order accepting a report made under this section and the report itself shall be sealed by the managing judge and may not be filed as a public record or be subject to subpoena or otherwise made public until:

(a) at least 31 days after a copy of the order and report are served on each public officer or employee named and an answer has been filed;

(b) the time for filing an answer has expired; or

(c) an appeal is taken or until all rights of review of the public officer or employee named have expired or terminated in an order accepting the report.

(4)

(a) An order accepting the report may not be entered until 30 days after the delivery of the report to the public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

(b) The managing judge may issue orders it finds necessary and appropriate to prevent unauthorized publication of a report. Unauthorized publication of a report may be punished as contempt of court.

(5)

(a) A public officer or employee named in a report may file with the clerk a verified answer to the report not later than 20 days after service of the order and report upon him. Upon a showing of good cause, the managing judge may grant the public officer or employee an extension of time to file an answer and may authorize limited publication of the report as necessary to prepare an answer.

(b) The answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in the report. Except for those parts the managing judge determines have been inserted scandalously, prejudiciously, or unnecessarily, the answer becomes an appendix to the report.

(6) Upon the submission of a report made under this section the managing judge shall order the report sealed if he finds the filing of the report as a public record may prejudice fair consideration of a pending criminal matter. The report may not be subject to subpoena or public inspection during the pendency of the criminal matter except upon order of the managing judge.

(7)

(a) When the managing judge to whom a report is submitted is not satisfied that the report complies with the provisions of this section, he may direct that additional testimony be taken before the same grand jury or he shall make an order sealing the report.

(b) If the report is sealed, it may not be filed as a public record or be subject to subpoena or otherwise made public until the provisions of this section are met.

(8) A grand jury's term may be extended by the managing judge so additional testimony may be taken or the provisions of this section met.

Enacted by Chapter 318, 1990 General Session

77-10a-18 Grand jury term of service -- Excusing a juror.

(1) A grand jury shall serve until discharged by the managing judge. However, a grand jury may not serve more than 18 months unless the managing judge extends the service of the grand

jury, upon determining an extension is in the public interest. The extension may be no longer than a period of six months.

(2) The managing judge may at any time excuse a juror either temporarily or permanently for cause shown. If a juror is excused permanently, the managing judge may impanel another juror in his place.

Enacted by Chapter 318, 1990 General Session

77-10a-19 Compensation for special prosecutors.

(1) Compensation for special prosecutors under this section shall be paid by the Judicial Council. For this purpose, there is appropriated from the General Fund to the Judicial Council $50,000 as a separate line item in the budget of the Judicial Council for the fiscal year 1989-1990. The line item shall be nonlapsing.

(2)

(a) If during the fiscal year compensation of special prosecutors under this chapter exceeds $50,000, additional compensation shall be requested as a supplemental appropriation from the Legislature.

(b) If during the fiscal year compensation of special prosecutors under this chapter is less than $50,000, the balance carries over to the next fiscal year, and the appropriation for that next fiscal year for prosecutor compensation shall be no more than the amount necessary to total $50,000 when added to the nonlapsing balance carried over from the prior fiscal year.

Enacted by Chapter 318, 1990 General Session

77-10a-20 Expenses of grand jury -- Appropriation -- Payment by state or county.

(1)

(a) The expenses of operation of a grand jury summoned under this chapter shall be paid by the Judicial Council, except under Subsection (2).

(b) Expenses include grand juror fees, rental of a facility, cost of transcripts, payment for a court reporter or electronic recording device, secretarial services, and investigation and recorder staff.

(c) For this purpose, an appropriation of $25,000 is made from the General Fund to the Judicial Council as a separate line item in the budget of the Judicial Council.

(d) Any amount of this appropriation remaining at the end of the fiscal year lapses into the General Fund.

(2)

(a) When a grand jury is summoned to investigate an allegation that is determined to be primarily a county-related issue, the expenses of the grand jury shall be paid by the county or counties involved.

(b) The supervising judge shall determine before the grand jury is called if the allegations involve primarily the state or a county or counties for purposes of determining payment of expenses under this section.

(3) The expenses of any grand jury and the compensation for any special prosecutor appointed under this chapter shall be reviewed and approved or disapproved by the clerk of the court under the direction of the managing judge.

Amended by Chapter 372, 1997 General Session

Chapter 13
Pleas

77-13-1 Kinds of pleas.
(1) There are five kinds of pleas to an indictment or information:
(a) not guilty;
(b) guilty;
(c) no contest;
(d) not guilty by reason of insanity; and
(e) guilty with a mental illness at the time of the offense.
(2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

Amended by Chapter 366, 2011 General Session

77-13-2 Record of plea -- Effect of each kind of plea.
Every plea shall be entered upon the record of the court and shall have the following effect:
(1) A plea of not guilty is a denial of the guilt of the accused and puts in issue every material allegation of the information or indictment;
(2) A plea of guilty is an acknowledgment that the accused is guilty of the offense charged; and
(3) A plea of no contest indicates the accused does not challenge the charges in the information or indictment and if accepted by the court shall have the same effect as a plea of guilty and imposition of sentence may be rendered in the same manner as if a plea of guilty had been entered.

Enacted by Chapter 15, 1980 General Session

77-13-3 Court approval of no contest plea required.
A plea of no contest may be entered by the accused only upon approval of the court and only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

Enacted by Chapter 15, 1980 General Session

77-13-4 Felonies -- Entry in open court.
All pleas in felony cases shall be entered by the defendant in open court and the proceedings recorded.

Enacted by Chapter 15, 1980 General Session

77-13-5 Failure to plead -- Not guilty entered.
When a defendant does not enter a plea, the court shall enter a plea of not guilty for him.

Enacted by Chapter 15, 1980 General Session

77-13-6 Withdrawal of plea.
(1) A plea of not guilty may be withdrawn at any time prior to conviction.

(2)
(a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.
(b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.
(c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78B, Chapter 9, Postconviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.

Amended by Chapter 3, 2008 General Session

Chapter 14
Defenses

77-14-1 Time and place of alleged offense -- Specification.

The prosecuting attorney, on timely written demand of the defendant, shall within 10 days, or such other time as the court may allow, specify in writing as particularly as is known to him the place, date and time of the commission of the offense charged.

Enacted by Chapter 15, 1980 General Session

77-14-2 Alibi -- Notice requirements -- Witness lists.

(1) A defendant, whether or not written demand has been made, who intends to offer evidence of an alibi shall, not less than 10 days before trial or at such other time as the court may allow, file and serve on the prosecuting attorney a notice, in writing, of his intention to claim alibi. The notice shall contain specific information as to the place where the defendant claims to have been at the time of the alleged offense and, as particularly as is known to the defendant or his attorney, the names and addresses of the witnesses by whom he proposes to establish alibi. The prosecuting attorney, not more than five days after receipt of the list provided herein or at such other time as the court may direct, shall file and serve the defendant with the addresses, as particularly as are known to him, of the witnesses the state proposes to offer to contradict or impeach the defendant's alibi evidence.
(2) The defendant and prosecuting attorney shall be under a continuing duty to disclose the names and addresses of additional witnesses which come to the attention of either party after filing their alibi witness lists.
(3) If a defendant or prosecuting attorney fails to comply with the requirements of this section, the court may exclude evidence offered to establish or rebut alibi. However, the defendant may always testify on his own behalf concerning alibi.
(4) The court may, for good cause shown, waive the requirements of this section.

Enacted by Chapter 15, 1980 General Session

77-14-3 Testimony regarding mental state of defendant or another -- Notice requirements -- Right to examination.

(1)
(a) If the prosecution or the defense intends to call any expert to testify at trial or at any hearing regarding the mental state of the defendant or another, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before any hearing at which the testimony is offered. Notice shall include the name and address of the expert, the expert's curriculum vitae, and a copy of the expert's report.
(b) The expert shall prepare a written report relating to the proposed testimony. If the expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed testimony including any opinion and the bases and reasons of that opinion, the party intending to call the expert shall provide a written explanation of the expert's anticipated testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by the expert when available.
(2) As soon as practicable after receipt of the expert's report, the party receiving notice shall provide notice to the other party of witnesses whom the party anticipates calling to rebut the expert's testimony, including the name and address of any expert witness and the expert's curriculum vitae. If available, a report of any rebuttal expert shall be provided. If the rebuttal expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed rebuttal testimony, or in the event the witness is not an expert, the party intending to call the rebuttal witness shall provide a written explanation of the witness's anticipated rebuttal testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by any rebuttal expert when available.
(3) If the prosecution or the defense proposes to introduce testimony of an expert which is based upon personal contact, interview, observation, or psychological testing of the defendant, testimony of an expert involving a mental diagnosis of the defendant, or testimony of an expert that the defendant does or does not fit a psychological or sociological profile, the opposing party shall have a corresponding right to have its own expert examine and evaluate the defendant.
(4) This section applies to any trial, sentencing hearing, and other hearing, excluding a preliminary hearing, whether or not the defendant proposes to offer evidence of the defense of insanity or diminished mental capacity.
(5) If the defendant or the prosecution fails to meet the requirements of this section, the opposing party shall be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony. If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions.
(6) This section may not require the admission of evidence not otherwise admissible.

Amended by Chapter 139, 1994 General Session

77-14-4 Insanity or diminished mental capacity -- Notice requirement.
(1) If a defendant intends to offer evidence that the defendant is not guilty as a result of insanity or that the defendant had diminished mental capacity, or intends to offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense under Subsection 76-5-205.5(2)(a), the defendant shall file and serve the prosecuting attorney with written notice of the intention to claim the defense at the time of arraignment or as soon afterward as practicable, but not less than 30 days before the trial.

(2) If the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, the court shall proceed in accordance with the requirements described in Section 77-16a-301.

Amended by Chapter 312, 2019 General Session

77-14-6 Entrapment -- Notice of claim required.

Notice of a claim of entrapment shall be given by the defendant in accord with Section 76-2-303.

Amended by Chapter 194, 1986 General Session

Chapter 15
Inquiry into Sanity of Defendant

77-15-1 Incompetent individual not to be tried for public offense.

An individual who is incompetent to proceed may not be tried for a public offense.

Amended by Chapter 147, 2018 General Session

77-15-2 Definitions.

As used in this chapter:

(1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to determine if an individual is competent to stand trial.

(2) "Competent to stand trial" means that a defendant has:

(a) a rational and factual understanding of the criminal proceedings against the defendant and of the punishment specified for the offense charged; and

(b) the ability to consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense.

(3) "Department" means the Department of Human Services.

(4) "Forensic evaluator" means a licensed mental health professional who is:

(a) not involved in the defendant's treatment; and

(b) trained and qualified by the department to conduct a competency evaluation, a restoration screening, and a progress toward competency evaluation.

(5) "Incompetent to proceed" means that a defendant is not competent to stand trial.

(6) "Petition" means a petition to request a court to determine whether a defendant is competent to stand trial.

(7) "Progress toward competency evaluation" means an evaluation to determine whether an individual who is receiving restoration treatment is:

(a) competent to stand trial;

(b) incompetent to proceed but has a substantial probability of becoming competent to stand trial in the foreseeable future; or

(c) incompetent to proceed and does not have a substantial probability of becoming competent to stand trial in the foreseeable future.

(8) "Restoration screening" means an assessment of an individual determined to be incompetent to stand trial for the purpose of determining the appropriate placement and restoration treatment for the individual.
(9) "Restoration treatment" means training and treatment that is:
(a) provided to an individual who is incompetent to proceed;
(b) tailored to the individual's particular impairment to competency; and
(c) limited to the purpose of restoring the individual to competency.

Amended by Chapter 147, 2018 General Session

77-15-3 Petition for inquiry regarding defendant or prisoner -- Filing -- Contents.
(1) When a defendant charged with a public offense or serving a sentence of imprisonment is incompetent to proceed, an individual described in Subsection (2)(b) may file a petition in the district court of the county where the charge is pending or where the defendant is confined.
(2)
(a) The petition shall contain a certificate that it is filed in good faith and on reasonable grounds to believe the defendant is incompetent to proceed. The petition shall contain a recital of the facts, observations, and conversations with the defendant that have formed the basis for the petition. If filed by defense counsel, the petition may not disclose information in violation of the attorney-client privilege.
(b) The petition may be based upon knowledge or information and belief and may be filed by the defendant, any person acting on behalf of the defendant, the prosecuting attorney, or any person having custody or supervision over the defendant.

Amended by Chapter 147, 2018 General Session

77-15-3.5 Incompetent to proceed in misdemeanor cases.
(1) When a defendant charged with a misdemeanor is incompetent to proceed, a petition may be filed in the district court of the county where the charge is pending or where the defendant is confined.
(2) If the most severe charge against a defendant is a misdemeanor and the defendant is adjudicated by a court as incompetent to proceed:
(a) the department shall provide restoration treatment to the defendant; and
(b) the court may refer the defendant to pretrial diversion services, upon agreement of the prosecution and defense counsel.
(3) Unless the prosecutor indicates that civil commitment proceedings will be initiated under Subsection 77-15-6(5)(c), a court shall release a defendant who is incompetent to proceed if:
(a) the most severe charge against the defendant is no more severe than a class B misdemeanor;
(b) more than 60 days have passed after the day on which the court adjudicated the defendant incompetent to proceed; and
(c) the defendant has not been restored to competency.
(4) A court may dismiss the charges against a defendant who was released under Subsection (3).

Enacted by Chapter 147, 2018 General Session

77-15-4 Court may raise issue of competency at any time.

The court in which a charge is pending may raise the issue of a defendant's competency at any time. If raised by the court, the court shall permit counsel for each party to address the issue of competency.

Amended by Chapter 147, 2018 General Session

77-15-5 Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.

(1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:
  (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
  (b) the court raises the issue of the defendant's competency under Section 77-15-4.
(2) The court in which the petition described in Subsection (1)(a) is filed:
  (a) shall inform the court in which criminal proceedings are pending of the petition, if the petition is not filed in the court in which criminal proceedings are pending;
  (b) shall review the allegations of incompetency;
  (c) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition, if the court finds the petition is not clearly sufficient on its face;
  (d) shall hold a hearing, if the petition is opposed by either party;
  (e) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial; and
  (f) if the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial, shall order:
    (i) the department to have the defendant evaluated by one forensic evaluator, if:
      (A) the most severe charge against the defendant is a misdemeanor; or
      (B) the defendant is charged with a felony but is not charged with a capital felony, and the court determines, based upon the allegations in the petition, that a second competency evaluation is not necessary;
    (ii) the department to have the defendant evaluated by two forensic evaluators, if:
      (A) the defendant is charged with a capital felony; or
      (B) the defendant is charged with a felony but is not charged with a capital felony, and the court determines, based upon the allegations in the petition, that a second competency evaluation is necessary; and
    (iii) the defendant to be evaluated by an additional forensic evaluator, if requested by a party, who shall:
      (A) select the additional forensic evaluator; and
      (B) pay for the costs of the additional forensic evaluator.
(3)
  (a) If the petition or other information sufficiently raises concerns that the defendant may have intellectual or developmental disabilities, at least one forensic evaluator who is experienced in intellectual or developmental disability assessments shall conduct a competency evaluation.
  (b) The petitioner or other party, as directed by the court, shall provide to the forensic evaluator information and materials relevant to a determination of the defendant's competency, including the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) For purposes of a competency evaluation, a court may order that custodians of mental health records pertaining to the defendant provide those records to a forensic evaluator without the need for consent of the defendant.

(d) An order for a competency evaluation may not contain an order for any other inquiry into the mental state of the defendant.

(4) Pending a competency evaluation, unless the court or the department directs otherwise, the defendant shall be retained in the same custody or status that the defendant was in at the time the examination was ordered.

(5) In the conduct of a competency evaluation, a progress toward competency evaluation, and in a report to the court, a forensic evaluator shall consider and address, in addition to any other factors determined to be relevant by the forensic evaluator:

(a) the defendant's present ability to:

(i) rationally and factually understand the criminal proceedings against the defendant;

(ii) consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense;

(iii) understand the charges or allegations against the defendant;

(iv) communicate facts, events, and states of mind;

(v) understand the range of possible penalties associated with the charges or allegations against the defendant;

(vi) engage in reasoned choice of legal strategies and options;

(vii) understand the adversarial nature of the proceedings against the defendant;

(viii) manifest behavior sufficient to allow the court to proceed; and

(ix) testify relevantly, if applicable;

(b) the impact of the mental disorder or intellectual disability, if any, on the nature and quality of the defendant's relationship with counsel;

(c) if psychoactive medication is currently being administered:

(i) whether the medication is necessary to maintain the defendant's competency; and

(ii) whether the medication may have an effect on the defendant's demeanor, affect, and ability to participate in the proceedings; and

(d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.

(6) If the forensic evaluator's opinion is that the defendant is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:

(a) the factors that contribute to the defendant's incompetency, including the nature of the defendant's mental disorder or intellectual or developmental disability, if any, and its relationship to the factors contributing to the defendant's incompetency; and

(b) whether there is a substantial probability that restoration treatment may, in the foreseeable future, bring the defendant to competency to stand trial, or that the defendant cannot become competent to stand trial in the foreseeable future.

(7)

(a) A forensic evaluator shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial.

(b)

(i) If the forensic evaluator is unable to complete the report in the time specified in Subsection (7)(a), the forensic evaluator shall give written notice to the court.

(ii) A forensic evaluator who provides the notice described in Subsection (7)(b)(i) shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on which the

forensic evaluator received the court's order to conduct a competency evaluation and file a report.

(iii) The court may further extend the deadline for completion of the evaluation and report if the court determines that there is good cause for the extension.

(iv) Upon receipt of an extension described in Subsection (7)(b)(iii), the forensic evaluator shall file the report as soon as reasonably possible.

(8) Any written report submitted by a forensic evaluator shall:

(a) identify the case ordered for evaluation by the case number;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the forensic evaluator's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the forensic evaluator could not give an opinion; and

(d) identify the sources of information used by the forensic evaluator and present the basis for the forensic evaluator's clinical findings and opinions.

(9)

(a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by a forensic evaluator based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Before examining the defendant, the forensic evaluator shall specifically advise the defendant of the limits of confidentiality as provided under Subsection (9)(a).

(10)

(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a competency hearing. The hearing shall be held not less than 5 and not more than 15 days after the day on which the court received the forensic evaluators' reports, unless for good cause the court sets a later date.

(b) Any person directed by the department to conduct the competency evaluation may be subpoenaed to testify at the hearing.

(c) The court may call any forensic evaluator to testify at the hearing who is not called by the parties. If the court calls a forensic evaluator, counsel for the parties may cross-examine the forensic evaluator.

(d) If the forensic evaluators are in conflict as to the competency of the defendant, all forensic evaluators should be called to testify at the hearing if reasonably available. A conflict in the opinions of the forensic evaluators does not require the appointment of an additional forensic evaluator unless the court determines the appointment to be necessary.

(11)

(a) A defendant shall be presumed competent to stand trial unless the court, by a preponderance of the evidence, finds the defendant incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetent to proceed does not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(12) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the forensic evaluator's report, testimony, and studies.

(13) If the court finds the defendant incompetent to proceed:
(a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
(i) include findings addressing each of the factors in Subsection (5)(a);
(ii) include a transportation order, if necessary;
(iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant, and any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition; and
(iv) be sent by the court to the department; and
(b) the prosecuting attorney shall provide to the department:
(i) the charging document and probable cause statement, if any;
(ii) arrest or incident reports prepared by law enforcement and pertaining to the charged offense; and
(iii) additional supporting documents.
(14) The court may make any reasonable order to ensure compliance with this section.
(15) Failure to comply with this section does not result in the dismissal of criminal charges.

Amended by Chapter 147, 2018 General Session

77-15-6 Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.
(1)
(a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to be incompetent to proceed, the court shall order the defendant committed to the department for restoration treatment.
(b) The court may recommend but may not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. Following restoration screening, the department's designee shall designate and inform the court of the specific placement and restoration treatment program for the defendant.
(c) Restoration treatment shall be of sufficient scope and duration to:
(i) restore the individual to competency; or
(ii) determine whether the individual can be restored to competency in the foreseeable future.
(d) A defendant whom a court determines is incompetent to proceed may not be held for restoration treatment longer than:
(i) the time reasonably necessary to determine whether there is a substantial probability that the defendant will become competent to stand trial in the foreseeable future, or that the defendant cannot become competent to stand trial in the foreseeable future; and
(ii) the maximum period of incarceration that the defendant could receive if the defendant were convicted of the most severe offense of the offenses charged.
(2)
(a) A defendant who is receiving restoration treatment shall receive a progress toward competency evaluation, by:
(i) a forensic evaluator, designated by the department; and
(ii) an additional forensic evaluator, if requested by a party and paid for by the requesting party.
(b) A forensic evaluator shall complete a progress toward competency evaluation and submit a report within 90 days after the day on which the forensic evaluator receives the commitment order. If the forensic evaluator is unable to complete the report within 90 days, the forensic

evaluator shall provide to the court and counsel a summary progress statement that informs the court that additional time is necessary to complete the report, in which case the examiner shall have up to an additional 45 days to provide the full report.

(c) The report shall:

(i) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms;

(ii)describe any diagnostic instruments, methods, and observations used by the examiner to make the determination;

(iii)state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on the defendant's competency to stand trial;

(iv)assess the facility's or program's capacity to provide appropriate restoration treatment for the defendant;

(v)assess the nature of restoration treatment provided to the defendant;

(vi)assess what progress the defendant has made toward competency restoration, with respect to the factors identified by the court in its initial order;

(vii)describe the defendant's current level of intellectual or developmental disability and need for treatment, if any; and

(viii)assess the likelihood of restoration to competency, the amount of time estimated to achieve competency, or the amount of time estimated to determine whether restoration to competency may be achieved.

(3) The court on its own motion or upon motion by either party or the department may appoint an additional forensic evaluator to conduct a progress toward competency evaluation. If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the costs of the additional forensic evaluator.

(4) Within 15 days after the day on which the court receives the forensic evaluator's report of the progress toward competency evaluation, the court shall hold a hearing to review the defendant's competency. At the hearing, the burden of proving that the defendant is competent to stand trial is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to proceed, with a substantial probability that the defendant may become competent in the foreseeable future; or

(c) incompetent to proceed, without a substantial probability that the defendant may become competent in the foreseeable future.

(5)

(a) If the court determines that the defendant is competent to stand trial, the court shall:

(i) proceed with the trial or other procedures as may be necessary to adjudicate the charges; and

(ii) order that the defendant be returned to the placement and status that the defendant was in at the time when the petition for the adjudication of competency was filed, unless the court determines that a different placement is more appropriate.

(b) If the court determines that the defendant is not competent to proceed but that there is a substantial probability that the defendant may become competent in the foreseeable future, the court may order that the defendant remain committed to the department or the department's designee for the purpose of restoration treatment.

(c) If the court determines that the defendant is incompetent to proceed and that there is not a substantial probability that the defendant may become competent in the foreseeable future, the court shall order the defendant released from commitment to the department, unless the

prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings must be initiated within seven days after the day on which the court makes the determination described in Subsection (4)(c), unless the court finds that there is good cause to delay the initiation of the civil commitment proceedings. The court may order the defendant to remain in the commitment of the department until the civil commitment proceedings conclude. If the defendant is civilly committed, the department shall notify the court that adjudicated the defendant incompetent to proceed at least 10 days before any release of the committed individual.

(6) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall schedule a competency review hearing for the earlier of:

(a) the department's best estimate of when the defendant may be restored to competency; or

(b) three months after the day on which the court determined under Subsection (5)(b) to extend the defendant's commitment.

(7) If a defendant is not competent to proceed by the day of the competency review hearing that follows the extension of a defendant's commitment, a court shall:

(a) except for a defendant charged with crimes listed in Subsection (8), order a defendant:

(i) released; or

(ii) temporarily detained pending civil commitment proceedings under the same terms as described in Subsection (5)(c); and

(b) terminate the defendant's commitment to the department for restoration treatment.

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may extend the commitment for a period not to exceed 9 months for the purpose of restoration treatment, with a mandatory review hearing at the end of the 9-month period.

(9) If at the 9-month review hearing described in Subsection (8), the court determines that the defendant is not competent to proceed, the court shall:

(a) order the defendant, except for a defendant charged with aggravated murder or murder, to be:

(i) released; or

(ii) temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c); and

(b) terminate the defendant's commitment to the department for restoration treatment.

(10) If the defendant has been charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the 9-month review hearing described in Subsection (8), the court may extend the commitment for a period not to exceed 24 months for the purpose of restoration treatment.

(11) If the court extends the defendant's commitment term under Subsection (10), the court shall hold a hearing no less frequently than at 12-month intervals following the extension for the purpose of determining the defendant's competency status.

(12) If, at the end of the 24-month commitment period described in Subsection (10), the court determines that the defendant is not competent to proceed, the court shall:

(a) order the defendant to be:

(i) released; or

(ii) temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c); and

(b) terminate the defendant's commitment to the department for restoration treatment.

(13) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews.

(14) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter.

(15)

(a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), or (12), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), or (12), or is not dismissal of the criminal charges.

(16) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(17)

(a) At any time that the defendant becomes competent to stand trial, the clinical director of the hospital, the department, or the department's designee shall certify that fact to the court.

(b) The court shall conduct a competency review hearing:

(i) within 15 working days after the day on which the court receives the certification described in Subsection (17)(a); or

(ii) within 30 working days after the day on which the court receives the certification described in Subsection (17)(a), if the court determines that more than 15 days are necessary for good cause related to the defendant's competency.

(18) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the department.

(19) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

Amended by Chapter 147, 2018 General Session

77-15-6.5 Petition for involuntary medication of incompetent defendant.

(1) As used in this section, "final order" means a court order that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(2)

(a) At any time after a defendant has been found incompetent to proceed and has been committed to the department under Section 77-15-6 for restoration treatment, the department shall notify the court, prosecuting attorney, and attorney for the defendant if the department determines that the defendant is not responding to restoration treatment and is unlikely to be restored to competency without the involuntary administration of antipsychotic medication.

(b) The department shall provide the notification under Subsection (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than to restore the defendant's competency.

(3) In the notice under Subsection (2)(a), the department shall state whether:

(a) medication is necessary to render the defendant competent;
(b) medication is substantially likely to render the defendant competent;
(c) medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in the defendant's defense;
(d) no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and
(e) medication is medically appropriate and is in the defendant's best medical interest in light of the defendant's medical condition.

(4)
(a) The court shall conduct a hearing within 15 days, or, for good cause, within 30 days after the day on which the court receives the notice described in Subsection (2)(a), regarding the involuntary medication of the defendant.
(b) The prosecuting attorney shall represent the state at any hearing under this section.
(c) The court shall consider whether the following factors apply in determining whether the defendant should be involuntarily medicated:
(i) important state interests are at stake in restoring the defendant's competency;
(ii) involuntary medication will significantly further the important state interests, in that the medication proposed:
(A) is substantially likely to render the defendant competent to stand trial; and
(B) is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in the defendant's defense;
(iii) involuntary medication is necessary to further important state interests, because any less intrusive treatments are unlikely to achieve substantially the same results; and
(iv) the administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of the defendant's medical condition.

(5) In determining whether the proposed treatment is medically appropriate and is in the defendant's best medical interest, the potential penalty the defendant may be subject to, if the defendant is convicted of any charged offense, is not a relevant consideration.

(6)
(a) If the court finds by clear and convincing evidence that the involuntary administration of antipsychotic medication is appropriate, it shall make findings addressing each of the factors in Subsection (4)(c) and shall issue an order authorizing the department to involuntarily administer antipsychotic medication to the defendant in order to restore the defendant's competency, subject to the periodic reviews and other procedures provided in Section 77-15-6.
(b) When issuing an order under Subsection (6)(a), the court shall consider ordering less intrusive means for administering the drugs, such as a court order to the defendant enforceable by the contempt power, before ordering more intrusive methods of involuntary medication.

(7) The provisions in Section 77-15-6 establishing time limitations for treatment of incompetent defendants before they must be either released or civilly committed are tolled from the time the department gives notice to the court and the parties under Subsection (2) until:
(a) the court has issued a final order for the involuntary medication of the defendant, and the defendant has been medicated under that order; or
(b) the court has issued a final order that the defendant will not be involuntarily medicated.

(8) This section applies only when an order of involuntary medication is sought solely for the purpose of rendering a defendant competent to stand trial.

Amended by Chapter 147, 2018 General Session

77-15-7 Statute of limitations and speedy trial -- Effect of incompetency of defendant.

(1) The statute of limitations is tolled during any period in which the defendant is adjudicated incompetent to proceed.

(2) Any period of time during which the defendant has been adjudicated incompetent to proceed and any period during which the defendant is being evaluated for competency may not be computed in determining the defendant's speedy trial rights.

Amended by Chapter 147, 2018 General Session

77-15-8 Bail exonerated on commitment of defendant.

When a defendant awaiting trial is committed to a mental health facility, bail shall be exonerated.

Enacted by Chapter 15, 1980 General Session

77-15-9 Expenses.

(1) In determining the competence of a defendant to proceed, expenses of examination, observation, or treatment, excluding travel to and from any mental health facility, shall be charged to the department when the offense is a state offense. Travel expenses incurred by the defendant shall be charged to the county where prosecution is commenced. Examination of a defendant on local ordinance violations shall be charged by the department to the municipality or county commencing the prosecution.

(2) When examination is initiated by the court or on motion of the prosecutor, expenses of commitment and treatment of the defendant, if the defendant is determined to be incompetent to proceed, shall also be charged to the department.

(3) Expenses of examination, treatment, or confinement in a mental health facility for any individual who has been convicted of a crime and placed in a state correctional facility shall be charged to the Department of Corrections.

(4) If, after evaluation, the court determines that a defendant is competent to stand trial, all subsequent costs are charged to the county commencing prosecution. If the defendant requested the examination and is found to be competent to stand trial by the court, the department may recover the expenses of the examination from the defendant.

Amended by Chapter 147, 2018 General Session

Chapter 15a
Exemptions From Death Penalty In Capital Cases

77-15a-101 Intellectually disabled defendant not subject to death penalty -- Defendant with subaverage functioning not subject to death penalty if confession not corroborated.

(1) A defendant who is found by the court to be intellectually disabled as defined in Section 77-15a-102 is not subject to the death penalty.

(2) A defendant who does not meet the definition of intellectually disabled under Section 77-15a-102 is not subject to the death penalty if:

(a) the defendant has significantly subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning;
(b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and
(c) the state intends to introduce into evidence a confession by the defendant which is not supported by substantial evidence independent of the confession.

Amended by Chapter 115, 2016 General Session

77-15a-102 "Intellectually disabled" defined.

As used in this chapter, a defendant is " intellectually disabled" if:
(1) the defendant has significant subaverage general intellectual functioning that results in and exists concurrently with significant deficiencies in adaptive functioning that exist primarily in the areas of reasoning or impulse control, or in both of these areas; and
(2) the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning under Subsection (1) are both manifested prior to age 22.

Amended by Chapter 115, 2016 General Session

77-15a-103 Court may raise issue of intellectual disability at any time.

The court in which a capital charge is pending may raise the issue of the defendant's intellectual disability at any time. If raised by the court, counsel for each party shall be allowed to address the issue of intellectual disability.

Amended by Chapter 115, 2016 General Session

77-15a-104 Hearing -- Notice -- Stay of proceeding -- Examinations of defendant -- Scope of examination -- Report -- Procedures.

(1)
(a) If a defendant proposes to offer evidence concerning or argue that he qualifies for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.
(b) If the defendant wishes to claim the exemption provided in Subsection 77-15a-101(2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.
(2) When notice is given under Subsection (1), the court raises the issue, or a motion is filed regarding Section 77-15a-101, the court may stay all proceedings in order to address the issue.
(3)
(a) The court shall order the Department of Human Services to appoint at least two mental health experts to examine the defendant and report to the court. The experts:
(i) may not be involved in the current treatment of the defendant; and
(ii) shall have expertise in intellectual disability assessment.
(b) Upon appointment of the experts, the defendant or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's intellectual disability, including copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) The court may make the necessary orders to provide the information listed in Subsection (3)(b) to the examiners.
(d) The court may provide in its order appointing the examiners that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.
(e) Prior to examining the defendant, examiners shall specifically advise the defendant of the limits of confidentiality as provided under Section 77-15a-106.

(4) During any examinations under Subsection (3), unless the court directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(5) The experts shall in the conduct of their examinations and in their reports to the court consider and address:
(a) whether the defendant is intellectually disabled as defined in Section 77-15a-102;
(b) the degree of any intellectual disability the expert finds to exist;
(c) whether the defendant is intellectually disabled as specified in Subsection 77-15a-101(2); and
(d) the degree of any intellectual disability the expert finds to exist.

(6)
(a) The experts examining the defendant shall provide written reports to the court, the prosecution, and the defense within 60 days of the receipt of the court's order, unless the expert submits to the court a written request for additional time in accordance with Subsection (6)(c).
(b) The reports shall provide to the court and to prosecution and defense counsel the examiners' written opinions concerning the intellectual disability of the defendant.
(c) If an examiner requests of the court additional time, the examiner shall provide the report to the court and counsel within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by an expert shall:
(a) identify the specific matters referred for evaluation;
(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
(c) state the expert's clinical observations, findings, and opinions; and
(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) Within 30 days after receipt of the report from the Department of Human Services, but not later than five days before hearing, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of witnesses the prosecuting attorney proposes to call in rebuttal.

(9)
(a) Except pursuant to Section 77-15a-105, this chapter does not prevent any party from producing any other testimony as to the mental condition of the defendant.
(b) Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (10).

(10)
(a) Expenses of examinations of the defendant ordered by the court under this section shall be paid by the Department of Human Services.

(b) Travel expenses associated with any court-ordered examination that are incurred by the defendant shall be charged by the Department of Human Services to the county where prosecution is commenced.

(11)

(a) When the report is received, the court shall set a date for a hearing to determine if the exemption under Section 77-15a-101 applies. The hearing shall be held and the judge shall make the determination within a reasonable time prior to jury selection.

(b) Prosecution and defense counsel may subpoena to testify at the hearing any person or organization appointed by the Department of Human Services to conduct the examination and any independent examiner.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine that examiner.

(12)

(a) A defendant is presumed not to be intellectually disabled unless the court, by a preponderance of the evidence, finds the defendant to be intellectually disabled. The burden of proof is upon the proponent of intellectual disability at the hearing.

(b) A finding of intellectual disability does not operate as an adjudication of intellectual disability for any purpose other than exempting the person from a sentence of death in the case before the court.

(13)

(a) The defendant is presumed not to possess the mental deficiencies listed in Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22. The burden of proof is upon the proponent of that proposition.

(b) If the court finds by a preponderance of the evidence that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22, then the burden is upon the state to establish that any confession by the defendant which the state intends to introduce into evidence is supported by substantial evidence independent of the confession.

(14)

(a) If the court finds the defendant intellectually disabled, it shall issue an order:

(i) containing findings of fact and conclusions of law, and addressing each of the factors in Subsections (5)(a) and (b); and

(ii) stating that the death penalty is not a sentencing option in the case before the court.

(b) If the court finds by a preponderance of the evidence that the defendant possesses the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to establish that any confession is supported by substantial evidence independent of the confession, the state may proceed with its case and:

(i) introduce the confession into evidence, and the death penalty will not be a sentencing option in the case; or

(ii) not introduce into evidence any confession or the fruits of a confession that the court has found is not supported by substantial evidence independent of the confession, and the death penalty will be a sentencing option in the case.

(c)

(i) A finding by the court regarding whether the defendant qualifies for an exemption under Section 77-15a-101 is a final determination of that issue for purposes of this chapter.

(ii) The following questions may not be submitted to the jury by instruction, special verdict, argument, or other means:
(A) whether the defendant is intellectually disabled for purposes of this chapter; and
(B) whether the defendant possesses the mental deficiencies specified in Subsection 77-15a-101(2).
(iii) This chapter does not prevent the defendant from submitting evidence of intellectual disability or other mental deficiency to establish a mental condition as a mitigating circumstance under Section 76-3-207.
(15) A ruling by the court that the defendant is exempt from the death penalty may be appealed by the state pursuant to Section 77-18a-1.
(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Amended by Chapter 281, 2018 General Session

77-15a-105 Defendant's wilful failure to cooperate -- Expert testimony regarding intellectual disability is barred.
(1) If the defendant files notice, raises the issue, or intends to present evidence or make an argument that the defendant is exempt from the death penalty under this chapter, the defendant shall make himself available and fully cooperate in any examination by mental health experts appointed by the Department of Human Services and any other independent examiners for the defense or the prosecution.
(2) If the defendant wilfully fails to make himself available and fully cooperate in the examination, and that failure is established to the satisfaction of the court, the defendant is barred from presenting expert testimony relating to any exemption from the death penalty under this chapter.

Enacted by Chapter 11, 2003 General Session

77-15a-106 Limitations on admitting intellectual disability examination evidence.
(1) The following may not be admitted into evidence against the defendant in any criminal proceeding, except as provided in Subsection (2):
(a) any statement made by the defendant in the course of any mental examination conducted under this chapter, whether the examination is with or without the consent of the defendant, and any testimony by the expert based upon the defendant's statement; and
(b) any other fruits of the defendant's statement under Subsection (1)(a).
(2) Evidence under Subsection (1) may be admitted on an issue regarding a mental condition on which the defendant has introduced evidence.

Enacted by Chapter 11, 2003 General Session

Chapter 16a
Commitment and Treatment of Persons with a Mental Illness

Part 1
Plea and Verdict of Guilty with a Mental Illness

77-16a-101 Definitions.

As used in this chapter:

(1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

(2) "Department" means the Department of Human Services.

(3) "Executive director" means the executive director of the Department of Human Services.

(4) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

(5) "Mental illness" is as defined in Section 76-2-305.

(6) "Offender with a mental illness" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability.

(7) "UDC" means the Department of Corrections.

Amended by Chapter 366, 2011 General Session

77-16a-102 Jury instructions.

(1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that the jury may find the defendant:

(a) guilty;

(b) guilty with a mental illness at the time of the offense;

(c) guilty of a lesser offense;

(d) guilty of a lesser offense with a mental illness at the time of the offense;

(e) not guilty by reason of insanity; or

(f) not guilty.

(2)

(a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(2)(a), or when the evidence raises the issue and either party requests the instruction, the court shall instruct the jury that if the jury finds a defendant guilty by proof beyond a reasonable doubt of a charged offense or lesser included offense, the jury shall also return a special verdict indicating whether the jury finds that the defendant had a mental illness at the time of the offense.

(b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, the jury shall return the general verdict of "guilty with a mental illness at the time of the offense."

(c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, the jury shall return the general verdict of "guilty of a lesser offense with a mental illness at the time of the offense."

(d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental illness at the time of the offense, the jury shall return a verdict of "guilty" of the offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental illness at the time of the offense.

(e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for the jury's general verdict.

(3)

(a) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the court shall instruct the jury that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence.
(b) The court shall also instruct the jury that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of an offense must be proven beyond a reasonable doubt.
(4)
(a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(2)(b), the jury shall, in addition to the jury's general verdict, return a special verdict.
(b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for the jury's general verdict.

Amended by Chapter 312, 2019 General Session

77-16a-103 Plea of guilty with a mental illness at the time of the offense.
(1) Upon a plea of guilty with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.
(2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.
(3)
(a) A defendant who tenders a plea of guilty with a mental illness at the time of the offense shall be examined first by the trial judge, in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.
(b) If the defendant is later found not to have a current mental illness, that plea remains a valid plea of guilty with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.
(4) If the court concludes that the defendant currently has a mental illness, the defendant's plea shall be accepted and the defendant shall be sentenced in accordance with Section 77-16a-104.
(5)
(a) When the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department.
(b) Travel expenses shall be paid by the county where prosecution is commenced.
(c) Expenses of examination for defendants charged with violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.

Amended by Chapter 366, 2011 General Session

77-16a-104 Verdict of guilty with a mental illness -- Hearing to determine present mental state.
(1) Upon a verdict of guilty with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.

(2) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.
(3) If the court finds by clear and convincing evidence that the defendant currently has a mental illness, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental illness and who is convicted of the same offense, and:
(a) commit the defendant to the department, in accordance with the provisions of Section 77-16a-202, if:
(i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and
(ii) the court finds by clear and convincing evidence that:
(A) because of the defendant's mental illness the defendant poses an immediate physical danger to self or others, including jeopardizing the defendant's own or others' safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and
(B) the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs;
(b) order probation in accordance with Section 77-16a-201; or
(c) if the court determines that commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in the custody of UDC or a county jail as allowed by law.
(4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall, before making a determination, notify the executive director of the proposed placement and provide the department with an opportunity to evaluate the defendant and make a recommendation to the court regarding placement prior to commitment.
(5) If the court finds that the defendant does not currently have a mental illness, the court shall sentence the defendant as it would any other defendant.
(6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection 77-16a-103(5).

Amended by Chapter 366, 2011 General Session

Part 2
Disposition of Defendants Found Guilty with a Mental Illness

77-16a-201 Probation.
(1)
(a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental illness at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether the offender has, or had, a mental illness.

(2) The period of probation for a felony offense committed by a defendant who has been found guilty with a mental illness at the time of the offense may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3)

(a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release an offender with a mental illness into the community, as a part of probation, if it finds by clear and convincing evidence that the offender:

(a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) An offender with a mental illness who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Amended by Chapter 334, 2018 General Session

77-16a-202 Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing an offender with a mental illness to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that

specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

77-16a-203 Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.

(1)

(a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the offender with a mental illness should be:

(i) transferred to UDC; or

(ii) remain in the custody of the department.

(3)

(a) The executive director shall notify the UDC medical administrator and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:

(i) no longer has a mental illness; or

(ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to self or others; and

(vii) recommendations for future treatment.

Amended by Chapter 366, 2011 General Session

77-16a-204 UDC acceptance of transfer of persons found guilty with a mental illness -- Retransfer from UDC to department for admission to the Utah State Hospital.

(1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.

(2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental illness with adequate mental health treatment.

(3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for the offender's mental condition to remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.

(4) In the event that the department and UDC do not agree on the transfer of an offender with a mental illness, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.

(5) UDC shall notify the board whenever an offender with a mental illness is transferred from the department to UDC.

(6) When an offender with a mental illness sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

(7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

(8) An offender with a mental illness who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Amended by Chapter 366, 2011 General Session

77-16a-205 Parole.

(1) When an offender with a mental illness who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.

(2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the offender with a mental illness, including:

(a) all available clinical facts;

(b) the diagnosis;

(c) the course of treatment received at the mental health facility;

(d) the prognosis for remission of symptoms;

(e) potential for recidivism;

(f) an estimation of the dangerousness of the offender with a mental illness either to self or others; and

(g) recommendations for future treatment.

(3) Based on the report described in Subsection (2), the board may place the offender with a mental illness on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.

(4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental illness who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

(5) The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Amended by Chapter 334, 2018 General Session

Part 3
Defendants Pleading Not Guilty by Reason of Insanity

77-16a-301 Mental examination of defendant.

(1)

(a) When the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, or that the defendant intends to assert special mitigation under Subsection 76-5-205.5(2)(a), the court shall order the department to examine the defendant and investigate the defendant's mental condition.

(b) The person or organization directed by the department to conduct the examination shall testify at the request of the court or either party in a proceeding in which the testimony is otherwise admissible.

(c) Pending trial, unless the court or the executive director directs otherwise, the defendant shall be retained in the same custody or status the defendant was in at the time the examination was ordered.

(2)

(a) The defendant shall be available and shall fully cooperate in the examination by the department and other independent examiners for the defense and the prosecuting attorney.
(b) If the defendant fails to be available and to fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting expert testimony relating to the defendant's defense of mental illness at the trial of the case.
(c) The department shall complete the examination within 30 days after the court's order, and shall prepare and provide to the court prosecutor and defense counsel a written report concerning the condition of the defendant.

(3) Within 10 days after receipt of the report described in Subsection (2)(c) from the department, but not later than five days before the trial of the case, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of mental illness, which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.

(4) The report of another independent examiner is admissible as evidence upon stipulation of the prosecution and defense.

(5)
(a) This section does not prevent a party from producing other testimony as to the mental condition of the defendant.
(b) An expert witness who is not appointed by the court is not entitled to compensation under Subsection (7).

(6) This section does not require the admission of evidence not otherwise admissible.

(7)
(a) The department shall pay the expenses of an examination ordered by the court under this section.
(b) The department shall charge the county where the prosecution is commenced for travel expenses associated with an examination incurred by a defendant.
(c) The department shall charge the entity commencing the prosecution for an examination of a defendant charged with a violation of a municipal or county ordinance.

Amended by Chapter 312, 2019 General Session

77-16a-302 Persons found not guilty by reason of insanity -- Disposition.

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant currently has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:
(a) the defendant has a mental illness; and
(b) because of that mental illness the defendant presents a substantial danger to self or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had the defendant been convicted and received the maximum sentence for the crime of which the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

77-16a-303 Court determinations.

After entry of judgment of not guilty by reason of insanity, the court shall:
(1) determine on the record the offense of which the person otherwise would have been convicted and the maximum sentence he could have received; and
(2) make specific findings regarding whether there is a victim of the crime for which the defendant has been found not guilty by reason of insanity and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.

Enacted by Chapter 171, 1992 General Session

77-16a-304 Review after commitment.
(1)
(a) The executive director, or the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months.
(b) The team described in Subsection (1)(a) shall include:
(i) at least one psychiatrist; and
(ii) if the defendant has an intellectual disability, at least one staff member who is a designated intellectual disability professional.
(2) If the review team described in Subsection (1) finds that the defendant has recovered from the defendant's mental illness, or, that the defendant still has a mental illness but does not present a substantial danger to self or others, the executive director, or the executive director's designee, shall:
(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and
(b) provide the court with a report stating the facts that form the basis for the recommendation.
(3)
(a) The court shall conduct a hearing within 10 business days after receipt of the executive director's, or the executive director's designee's, notification.
(b) The court clerk shall provide notice of the date and time of the hearing to:
(i) the prosecuting attorney;
(ii) the defendant's attorney; and
(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.
(4)
(a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:
(i) no longer has a mental illness; or
(ii) has a mental illness, but no longer presents a substantial danger to self or others.
(b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:
(i) has a mental illness;
(ii) is a substantial danger to self or others; and
(iii) can be controlled adequately if conditionally released with treatment as a condition of release.
(c) The court shall order that the commitment be continued if the court finds that the defendant:
(i) has not recovered from the defendant's mental illness;
(ii) is a substantial danger to self or others; and
(iii) cannot adequately be controlled if conditionally released on supervision.
(d)

(i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a defendant whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to self or others.
(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Amended by Chapter 366, 2011 General Session

77-16a-305 Conditional release.

(1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.
(2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.
(3) The executive director, or his designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.
(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.
(5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

Amended by Chapter 285, 1993 General Session

77-16a-306 Continuing review -- Discharge.

(1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from the defendant's mental illness, or, if the defendant has a mental illness, no longer presents a substantial danger to self or others, it shall notify the executive director of its findings.
(2) Upon receipt of notification under Subsection (1), the executive director shall designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section 77-16a-302, within 10 business days after receipt of that notice.
(3) The court may not discharge an individual whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to self or others.

Amended by Chapter 366, 2011 General Session

Chapter 16b
Involuntary Feeding and Hydration of Inmates

77-16b-101 Title.

This chapter is known as the "Involuntary Feeding and Hydration of Inmates."

Enacted by Chapter 355, 2012 General Session

77-16b-102 Definitions.

As used in this chapter:

(1) "Correctional facility" means:
  (a) a county jail;
  (b) a secure correctional facility as defined by Section 64-13-1; or
  (c) a secure care facility as defined in Section 80-1-102.
(2) "Correctional facility administrator" means:
  (a) a county sheriff in charge of a county jail;
  (b) a designee of the executive director of the Utah Department of Corrections; or
  (c) a designee of the director of the Division of Juvenile Justice Services.
(3) "Medical supervision" means under the direction of a licensed physician, physician assistant, or nurse practitioner.
(4) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
(5) "Prisoner" means:
  (a) any individual who is a pretrial detainee or who has been committed to the custody of a sheriff or the Utah Department of Corrections, and who is physically in a correctional facility; and
  (b) any individual who is 18 years old or older and younger than 21 years old, and who has been committed to the custody of the Division of Juvenile Justice Services.

Amended by Chapter 262, 2021 General Session

77-16b-103 Involuntary feeding or hydration of prisoners -- Petition procedures, venue -- Prisoner rights.

(1) A correctional facility administrator may petition the district court where the correctional facility is located for an order permitting the involuntary feeding or hydration of any prisoner who is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration.
(2) Prior to the filing of a petition under this section, a mental health therapist who is designated by the correctional facility administrator shall conduct a mental health evaluation of the subject prisoner.
(3) Upon the filing of a petition, the district court shall hold a hearing within two working days. The court:
  (a) shall confidentially review the prisoner's medical and mental health records as they are available;
  (b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence, concerning the circumstances of the prisoner's lack of nutrition or hydration; and

(c) may exclude from the hearing any person whose presence is not necessary for the purposes of the hearing, due to the introduction of personal medical and mental health evidence.
(4) After conducting the hearing under Subsection (3), the district court shall issue an order to involuntarily feed or hydrate the prisoner, if the court finds by a preponderance of evidence that:
(a)
(i) the prisoner is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration; and
(ii) the correctional facility's medical or penological objectives are valid and outweigh the prisoner's right to refuse treatment; or
(b) the prisoner is refusing sufficient nutrition or hydration with the intent to obstruct or delay any judicial or administrative proceeding pending against the prisoner.
(5) The district court shall state its findings of fact and conclusions of law on the record.
(6) The correctional facility administrator shall serve copies of the petition and a notice of the district court hearing on the prisoner and the prisoner's counsel, if the prisoner is represented by counsel, at least 24 hours in advance of the hearing under Subsection (3).
(7) The prisoner has the right to attend the hearing, testify, present evidence, and cross-examine witnesses.

Enacted by Chapter 355, 2012 General Session

77-16b-104 Involuntary feeding or hydration of prisoners -- Standards, continuing jurisdiction, and records.
(1) Any involuntary nutrition or hydration of a prisoner pursuant to this chapter shall be conducted under immediate medical supervision and in a medically recognized and acceptable manner.
(2) Upon the filing of a petition pursuant to Section 77-16b-102, the court has the continuing jurisdiction to review the prisoner's need for involuntary nutrition or hydration as long as the prisoner remains in custody of the correctional facility.
(3) A correctional facility shall maintain records of any involuntary feeding or hydration of prisoners under this chapter.
(a) The records are classified as "controlled" under Section 63G-2-304.
(b) All medical or mental health records submitted to the court under this chapter shall be kept under seal.

Enacted by Chapter 355, 2012 General Session

77-16b-105 Involuntary feeding or hydration of prisoners -- Exceptions.
This chapter does not apply to medically imposed fasts for the purpose of conducting medical procedures or tests, or to religious fasts of reasonable duration.

Enacted by Chapter 355, 2012 General Session

Chapter 17
The Trial

77-17-1 Doubt as to degree -- Conviction only on lowest.

When it appears the defendant has committed a public offense and there is reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lower degree.

Enacted by Chapter 15, 1980 General Session

77-17-2 Discharging one of several defendants -- To testify for state.

When two or more persons are included in the same charge, the court may at any time, on the application of the prosecuting attorney, direct any defendant to be discharged or his case severed so that he may be a witness for the prosecution.

Enacted by Chapter 15, 1980 General Session

77-17-3 Discharge for insufficient evidence.

When it appears to the court that there is not sufficient evidence to put a defendant to his defense, it shall forthwith order him discharged.

Enacted by Chapter 15, 1980 General Session

77-17-4 Conspiracy -- Pleading -- Evidence -- Proof necessary.

On a trial for conspiracy in a case where an overt act is necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts are expressly alleged in the information or indictment, and unless one of the acts alleged has been proved. However, proof of overt acts not alleged may be given in evidence.

Enacted by Chapter 15, 1980 General Session

77-17-5 Proof of corporate existence or powers generally.

In a criminal case the existence, constitution or powers of any corporation may be proved by general reputation, or by the printed statutes of the state, government or country by which this corporation was created.

Enacted by Chapter 15, 1980 General Session

77-17-6 Lottery tickets -- Evidence.

(1) On a trial for violation of any of the lottery provisions of the Utah Criminal Code, it is not necessary to prove:
  (a) The existence of any lottery in which any lottery tickets shall purport to have been issued;
  (b) The actual signing of any ticket or share, or pretended share of any pretended lottery; or
  (c) That any lottery ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager.
(2) In all cases, proof of the sale, furnishing, bartering or procuring of any lottery ticket, share or interest therein, or of any instrument purporting to be a ticket, or part or share of any ticket shall be evidence that the share or interest was signed and issued according to its purport.

Enacted by Chapter 15, 1980 General Session

77-17-7 Conviction on testimony of accomplice -- Instruction to jury.

(1) A conviction may be had on the uncorroborated testimony of an accomplice.

(2) In the discretion of the court, an instruction to the jury may be given to the effect that such uncorroborated testimony should be viewed with caution, and such an instruction shall be given if the trial judge finds the testimony of the accomplice to be self contradictory, uncertain or improbable.

Enacted by Chapter 15, 1980 General Session

77-17-8 Mistake in charging offense -- Procedure -- Witnesses.

(1) If, at any time before verdict or judgment, a mistake is made in charging the proper offense, and there is probable cause to believe that the defendant is chargeable with another offense, the court may:
  (a) release the individual on the individual's own recognizance, as defined in Section 77-20-102, during the time the individual awaits trial or other resolution of criminal charges;
  (b) designate a condition, or a combination of conditions, described in Subsection 77-20-205(4), to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges; or
  (c) order the individual be detained during the time the individual awaits trial or other resolution of criminal charges.
(2) A court may require a witness to post monetary bail, as defined in Section 77-20-102, to ensure that the witness appears in court.

Amended by Chapter 4, 2021 Special Session 2

77-17-9 Separation or sequestration of jurors -- Oath of officer having custody.

(1) The court, at any time before the submission of the case to the jury, may permit the jury to separate or order that it be sequestered in charge of a proper officer.
(2) If the jury is sequestered the officer shall be sworn to keep the jurors together until the next meeting of the court, to prevent any person from speaking or communicating with them, and not to do so himself on any subject connected with the trial, and to return the jury to the court pursuant to its order.

Enacted by Chapter 15, 1980 General Session

77-17-10 Court to determine law; the jury, the facts.

(1) In a jury trial, questions of law are to be determined by the court, questions of fact by the jury.
(2) The jury may find a general verdict which includes questions of law as well as fact but they are bound to follow the law as stated by the court.

Enacted by Chapter 15, 1980 General Session

77-17-11 Jury to retire for deliberation -- Oath of officer having custody.

After hearing the court's instructions and arguments of counsel, the jury shall retire for deliberation. An officer shall be sworn to keep them together in some private and convenient place and not permit any person to speak to or communicate with them or to do so himself except upon the order of the court, or to ask them whether they have agreed on a verdict. He shall return them to court when they have agreed and the court has so ordered, or when otherwise ordered by the court.

Enacted by Chapter 15, 1980 General Session

77-17-12 Defendant on bail appearing for trial may be committed.

When a defendant who has given bail appears for trial, the court may, at any time after his appearance for trial, order him to be committed to the custody of the proper officer to await the judgment or further order of the court.

Enacted by Chapter 15, 1980 General Session

77-17-13 Expert testimony generally -- Notice requirements.

(1)
(a) If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before the hearing.
(b) Notice shall include the name and address of the expert, the expert's curriculum vitae, and one of the following:
(i) a copy of the expert's report, if one exists; or
(ii) a written explanation of the expert's proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and
(iii) a notice that the expert is available to cooperatively consult with the opposing party on reasonable notice.
(c) The party intending to call the expert is responsible for any fee charged by the expert for the consultation.
(2) If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request.
(3) As soon as practicable after receipt of the expert's report or the information concerning the expert's proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the information required under Subsection (1)(b).
(4)
(a) If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony.
(b) If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert's testimony will only apply if the court finds that a party deliberately violated the provisions of this section.
(5)
(a) For purposes of this section, testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing.
(b) Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.

(6) This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

Amended by Chapter 290, 2003 General Session

Chapter 18
The Judgment

77-18-101 Title.

This chapter is known as "The Judgment."

Enacted by Chapter 260, 2021 General Session

77-18-102 Definitions.

As used in this chapter:

(1) "Assessment" means, except as provided in Section 77-18-104, the same as the term "risk and needs assessment" in Section 77-1-3.
(2) "Board" means the Board of Pardons and Parole.
(3) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
(4) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.
(5) "Convicted" means the same as that term is defined in Section 76-3-201.
(6) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.
(7) "Default" means the same as that term is defined in Section 77-32b-102.
(8) "Delinquent" means the same as that term is defined in Section 77-32b-102.
(9) "Department" means the Department of Corrections created in Section 64-13-2.
(10) "Payment schedule" means the same as that term is defined in Section 77-32b-102.
(11) "Restitution" means the same as that term is defined in Section 77-38b-102.
(12) "Screening" means, except as provided in Section 77-18-104, a tool or questionnaire that is designed to determine whether an individual needs further assessment or any additional resource or referral for treatment.
(13) "Substance use disorder treatment" means treatment obtained through a substance use disorder program that is licensed by the Office of Licensing within the Department of Human Services.

Enacted by Chapter 260, 2021 General Session

77-18-103 Presentence investigation report -- Classification of presentence investigation report -- Evidence or other information at sentencing.

(1) Before the imposition of a sentence, the court may:
  (a) upon agreement of the defendant, continue the date for the imposition of the sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant; and
  (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the department prepare a presentence investigation report for the defendant.

(2) If a presentence investigation report is required under the standards established by the department described in Section 77-18-109, the presentence investigation report under Subsection (1) shall include:
(a) any impact statement provided by a victim as described in Subsection 77-38b-203(3)(c);
(b) information on restitution as described in Subsection 77-38b-203(3)(a) and (b);
(c) findings from any screening and any assessment of the defendant conducted under Section 77-18-104;
(d) recommendations for treatment for the defendant; and
(e) the number of days since the commission of the offense that the defendant has spent in the custody of the jail and the number of days, if any, the defendant was released to a supervised release program or an alternative incarceration program under Section 17-22-5.5.
(3) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if the defendant is not represented by counsel, the prosecuting attorney, and the court for review within three working days before the day on which the defendant is sentenced.
(4)
(a)
(i) If there is an alleged inaccuracy in the presentence investigation report that is not resolved by the parties and the department before sentencing:
(A) the alleged inaccuracy shall be brought to the attention of the court at sentencing; and
(B) the court may grant an additional 10 working days after the day on which the alleged inaccuracy is brought to the court's attention to allow the parties and the department to resolve the alleged inaccuracy in the presentence investigation report.
(ii) If the court does not grant additional time under Subsection (4)(a)(i)(B), or the alleged inaccuracy cannot be resolved after 10 working days, and if the court finds that there is an inaccuracy in the presentence investigation report, the court shall:
(A) enter a written finding as to the relevance and accuracy of the challenged portion of the presentence investigation report; and
(B) provide the written finding to the Division of Adult Probation and Parole.
(b) The Division of Adult Probation and Parole shall attach the written finding to the presentence investigation report as an addendum.
(c) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, the matter shall be considered waived.
(5) The contents of the presentence investigation report are protected and not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.
(6)
(a) A presentence investigation report is classified as protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
(b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report.
(7) Except for disclosure at the time of sentencing in accordance with this section, the department may disclose a presentence investigation only when:
(a) ordered by the court in accordance with Subsection 63G-2-202(7);
(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of a defendant;
(c) requested by the board;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative;
(e) requested by the victim of the offense discussed in the presentence investigation report, or the victim's authorized representative, if the disclosure is only information relating to:
(i) statements or materials provided by the victim;
(ii) the circumstances of the offense, including statements by the defendant; or
(iii) the impact of the offense on the victim or the victim's household; or
(f) requested by a sex offender treatment provider:
(i) who is certified to provide treatment under the certification program established in Subsection 64-13-25(3);
(ii) who is providing, at the time of the request, sex offender treatment to the offender who is the subject of the presentence investigation report; and
(iii) who provides written assurance to the department that the report:
(A) is necessary for the treatment of the defendant;
(B) will be used solely for the treatment of the defendant; and
(C) will not be disclosed to an individual or entity other than the defendant.
(8)
(a) At the time of sentence, the court shall receive any testimony, evidence, or information that the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.
(b) Testimony, evidence, or information under Subsection (8)(a) shall be presented in open court on record and in the presence of the defendant.

Enacted by Chapter 260, 2021 General Session

77-18-104 Screening, assessment, and treatment.
(1) As used in this section:
(a) "Assessment" has the same meaning as in Section 41-6a-501.
(b) "Screening" has the same meaning as in Section 41-6a-501.
(2) In coordination with the local substance abuse authority regarding available resources, a court in which the Drug-Related Offenses Reform Act under Section 63M-7-305 is implemented shall order a convicted defendant, who is determined to be eligible in accordance with the implementation plan developed by the Utah Substance Use and Mental Health Advisory Council under Section 63M-7-305, to:
(a) participate in a screening before sentencing;
(b) participate in an assessment before sentencing if the screening indicates an assessment to be appropriate; and
(c) participate in substance use disorder treatment if:
(i) the assessment indicates treatment to be appropriate;
(ii) the court finds treatment to be appropriate for the convicted defendant; and
(iii) the court finds the convicted defendant to be an appropriate candidate for community-based supervision.
(3) The findings from any screening and any assessment conducted under this section shall be part of the presentence investigation report submitted to the court under Section 77-18-103.
(4) Money appropriated by the Legislature to assist in the funding of the screening, assessment, substance use disorder treatment, and supervision provided under this section is not subject to any requirement regarding matching funds from a state or local governmental entity.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-105 Pleas held in abeyance -- Suspension of a sentence -- Probation -- Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench supervision for payments on criminal accounts receivable.

(1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance:
  (a) in accordance with Chapter 2a, Pleas in Abeyance; and
  (b) under the terms of the plea in abeyance agreement.
(2) If a defendant is convicted, the court:
  (a) shall impose a sentence in accordance with Section 76-3-201; and
  (b) may suspend the execution of the sentence and place the defendant:
    (i) on probation under the supervision of the department, except as provided in Subsection (5);
    (ii) on probation under the supervision of an agency of a local government or a private organization; or
    (iii) on court probation under the jurisdiction of the sentencing court.
(3)
  (a) The legal custody of all probationers under the supervision of the department is with the department.
  (b) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.
  (c) The court has continuing jurisdiction over all probationers.
(4)
  (a) Court probation may include an administrative level of services, including notification to the sentencing court of scheduled periodic reviews of the probationer's compliance with conditions.
  (b) Supervised probation services provided by the department, an agency of a local government, or a private organization shall specifically address the defendant's risk of reoffending as identified by a screening or an assessment.
(5) A court may not order the department to supervise the probation of an individual who is convicted of a class B or C misdemeanor or an infraction.
(6)
  (a) If a defendant is placed on probation, the court may order the defendant as a condition of the defendant's probation:
    (i) to provide for the support of persons for whose support the defendant is legally liable;
    (ii) to participate in available treatment programs, including any treatment program in which the defendant is currently participating if the program is acceptable to the court;
    (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;
    (iv) if the defendant is on probation for a felony offense, to serve a period of time as an initial condition of probation that does not exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;
    (v) to serve a term of home confinement in accordance with Section 77-18-107;
    (vi) to participate in compensatory service programs, including the compensatory service program described in Section 76-6-107.1;
    (vii) to pay for the costs of investigation, probation, or treatment services;

(viii) to pay a criminal accounts receivable established for the defendant under Section 77-32b-103; or

(ix) to comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation.

(b)

(i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a defendant to include a period of time that is served in a county jail immediately before the termination of probation as long as that period of time does not exceed one year.

(ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply to the period of time that the court orders the defendant to serve in a county jail under this Subsection (6)(b)(ii).

(7)

(a) Except as provided in Subsection (7)(b), probation of an individual placed on probation after December 31, 2018:

(i) may not exceed the individual's maximum sentence;

(ii) shall be for a period of time that is in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law; and

(iii) shall be terminated in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

(b) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less, may not exceed 36 months.

(c) Probation of an individual placed on probation on or after October 1, 2015, but before January 1, 2019, may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance with Section 64-13-21 regarding earned credits.

(d) This Subsection (7) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(8)

(a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal accounts receivable for the defendant upon termination of the probation period for the defendant under Subsection (7), the court may require the defendant to continue to make payments towards the criminal accounts receivable in accordance with the payment schedule established by the court under Section 77-32b-103.

(b) A court may not require the defendant to make payments as described in Subsection (8)(a) beyond the expiration of the defendant's sentence.

(c) If the court requires a defendant to continue to pay in accordance with the payment schedule for the criminal accounts receivable under this Subsection (8) and the defendant defaults on the criminal accounts receivable, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable for the defendant as described in Section 77-18-114.

(d)

(i) Upon a motion from the prosecuting attorney, the victim, or upon the court's own motion, the court may require a defendant to show cause as to why the defendant's failure to pay in accordance with the payment schedule should not be treated as contempt of court.

(ii) A court may hold a defendant in contempt for failure to make payments for a criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

(e) This Subsection (8) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(9) When making any decision regarding probation, the court shall consider information provided by the Department of Corrections regarding a defendant's individual case action plan, including any progress the defendant has made in satisfying the case action plan's completion requirements.

Amended by Chapter 246, 2021 General Session, (Coordination Clause)
Enacted by Chapter 260, 2021 General Session

77-18-106 Treatment at the Utah State Hospital -- Condition of probation or stay of sentence.

The court may order as a condition of probation, or a stay of sentence, that the defendant be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital only if the superintendent of the Utah State Hospital, or the superintendent's designee, certifies to the court that:

(1) the defendant is appropriate for, and can benefit from, treatment at the Utah State Hospital;

(2) there is space at the Utah State Hospital for treatment of the defendant; and

(3) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendant.

Enacted by Chapter 260, 2021 General Session

77-18-107 Home confinement -- Electronic monitoring for home confinement.

(1) The court may order home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(2) The department shall establish procedures and standards for home confinement for all defendants supervised by the department for home confinement.

(3) If the court places the defendant on probation and orders the defendant to participate in home confinement under Subsection (1), the court may order the defendant to participate in home confinement through the use of electronic monitoring until further order of the court.

(4) The electronic monitoring of a defendant shall alert the department and the appropriate law enforcement agency of the defendant's whereabouts.

(5) An electronic monitoring device shall be used under conditions that require:

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

(b) the device be placed in the home of the defendant to monitor the defendant's compliance with the court's order.

(6) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under Subsection (3), the court shall:

(a) place the defendant on probation under the supervision of the department;

(b) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(c) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(7) The department shall pay the costs of home confinement through electronic monitoring only for an individual who is determined to be indigent by the court.

(8) The department may provide the electronic monitoring described in this section directly or by contract with a private provider.

Enacted by Chapter 260, 2021 General Session

77-18-108 Termination, revocation, modification, or extension of probation -- Violation of probation -- Hearing on violation.

(1)
(a) The department shall notify the court and the prosecuting attorney, in writing:
(i) when the department is requesting termination of supervision for a defendant; or
(ii) before a defendant's supervision will be terminated by law.
(b) The notification under this Subsection (1) shall include a probation progress report.
(c) If a defendant's probation is being terminated, and the defendant's criminal accounts receivable has an unpaid balance or there is any outstanding debt with the department, the department shall notify the Office of State Debt Collection that the defendant's criminal accounts receivable has an unpaid balance or there is an outstanding debt with the department.

(2)
(a) The court may modify the defendant's probation in accordance with the supervision length guidelines and the graduated and evidence-based responses and graduated incentives developed by the Utah Sentencing Commission under Section 63M-7-404.
(b) The court may not:
(i) extend the length of a defendant's probation, except upon:
(A) waiver of a hearing by the defendant; or
(B) a hearing and a finding by the court that the defendant has violated the terms of probation;
(ii) revoke a defendant's probation, except upon a hearing and a finding by the court that the terms of probation have been violated; or
(iii) terminate a defendant's probation before expiration of the probation period until the court enters a finding of whether the defendant owes restitution under Section 77-38b-205.

(3)
(a) Upon the filing of an affidavit, or an unsworn written declaration executed in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, alleging with particularity facts asserted to constitute violation of the terms of a defendant's probation, the court shall determine if the affidavit or unsworn written declaration establishes probable cause to believe that revocation, modification, or extension of the defendant's probation is justified.
(b)
(i) If the court determines there is probable cause, the court shall order that the defendant be served with:
(A) a warrant for the defendant's arrest or a copy of the affidavit or unsworn written declaration; and
(B) an order to show cause as to why the defendant's probation should not be revoked, modified, or extended.
(ii) The order under Subsection (3)(b)(i)(B) shall:
(A) be served upon the defendant at least five days before the day on which the hearing is held;
(B) specify the time and place of the hearing; and

(C) inform the defendant of the right to be represented by counsel at the hearing, the right to have counsel appointed if the defendant is indigent, and the right to present evidence at the hearing.

(iii) The defendant shall show good cause for a continuance of the hearing.

(c) At the hearing, the defendant shall admit or deny the allegations of the affidavit or unsworn written declaration.

(d)

(i) If the defendant denies the allegations of the affidavit or unsworn written declaration, the prosecuting attorney shall present evidence on the allegations.

(ii) If the affidavit, or unsworn written declaration, alleges that a defendant is delinquent, or in default, on a criminal accounts receivable, the prosecuting attorney shall present evidence to establish, by a preponderance of the evidence, that the defendant:

(A) was aware of the defendant's obligation to pay the balance of the criminal accounts receivable;

(B) failed to pay on the balance of the criminal accounts receivable as ordered by the court; and

(C) had the ability to make a payment on the balance of the criminal accounts receivable if the defendant opposes an order to show cause, in writing, and presents evidence that the defendant was unable to make a payment on the balance of the criminal accounts receivable.

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

(f) At the hearing, the defendant may:

(i) call witnesses;

(ii) appear and speak in the defendant's own behalf; and

(iii) present evidence.

(g)

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

(ii) Upon a finding that the defendant violated the terms of the defendant's probation, the court may order the defendant's probation terminated, revoked, modified, continued, or reinstated for all or a portion of the original term of probation.

(4)

(a)

(i) Except as provided in Subsection 77-18-105(7), the court may not require a defendant to remain on probation for a period of time that exceeds the length of the defendant's maximum sentence.

(ii) Except as provided in Subsection 77-18-105(7), if a defendant's probation is revoked and later reinstated, the total time of all periods of probation that the defendant serves, in relation to the same sentence, may not exceed the defendant's maximum sentence.

(b) If a period of incarceration is imposed for a violation of the defendant's probation, the defendant shall be sentenced within the guidelines established by the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4), unless the court determines that:

(i) the defendant needs substance abuse or mental health treatment, as determined by a screening and an assessment, that warrants treatment services that are immediately available in the community; or

(ii) the sentence previously imposed shall be executed.

(c) If the defendant had, before the imposition of a term of incarceration or the execution of the previously imposed sentence under this section, served time in jail as a term of probation or due to a violation of probation, the time that the defendant served in jail constitutes service of time toward the sentence previously imposed.

(5)

(a) Any time served by a defendant:

(i) outside of confinement after having been charged with a probation violation, and before a hearing to revoke probation, does not constitute service of time toward the total probation term, unless the defendant is exonerated at a hearing to revoke the defendant's probation;

(ii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation does not constitute service of time toward the total probation term, unless the defendant is exonerated at the hearing to revoke probation; or

(iii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated and evidence-based response imposed under the guidelines established by the Utah Sentencing Commission in accordance with Section 63M-7-404.

(b) The running of the probation period is tolled upon:

(i) the filing of a report with the court alleging a violation of the terms of the defendant's probation; or

(ii) the issuance of an order or a warrant under Subsection (3).

Enacted by Chapter 260, 2021 General Session
Amended by Chapter 260, 2021 General Session, (Coordination Clause)

77-18-109 Standards for supervision and presentence investigation.

(1) The department shall establish supervision and presentence investigation standards for all individuals referred to the department based on:

(a) the type of offense;

(b) the results of a screening and an assessment;

(c) the demand for services;

(d) the availability of agency resources;

(e) public safety; and

(f) other criteria established by the department to determine what level of services shall be provided.

(2) The department shall submit proposed supervision and presentence investigation standards annually to the Judicial Council and the board for review and comment before the department adopts the standards.

(3) The Judicial Council and the department shall establish procedures to implement the supervision and presentence investigation standards.

(4) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (1) and other criteria as the Judicial Council and the department consider appropriate.

(5) The Judicial Council and the department shall:

(a) annually prepare an impact report; and

(b) submit the impact report to the appropriate legislative appropriations subcommittee.

Enacted by Chapter 260, 2021 General Session

77-18-110 Disposition of fines.

A fine imposed by the district court shall be paid in accordance with Section 78A-5-110.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-111 Sentence -- Term -- Construction.

(1) If an individual is convicted of a crime and the judgment provides for a commitment to the state prison, the court shall not fix a definite term of imprisonment unless otherwise provided by law.
(2) The sentence and judgment of imprisonment shall be for an indeterminate term of not less than the minimum and not to exceed the maximum term provided by law for the particular crime.
(3) Except as otherwise expressly provided by law, every sentence, regardless of the sentence's form or terms, which purports to be for a shorter or different period of time, shall be construed to be a sentence for the term between the minimum and maximum periods of time provided by law and shall continue until the maximum period has been reached unless sooner terminated or commuted by authority of the board.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-112 Reports by courts and prosecuting attorneys to Board of Pardons and Parole.

In cases where an indeterminate sentence is imposed, the court and prosecuting attorney may, within 30 days, mail a statement to the board setting forth the term for which the prisoner ought to be imprisoned together with any information which might aid the board in passing on the application for termination or commutation of the sentence or for parole or pardon.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-113 Judgment of death -- Method is lethal injection -- Exceptions for use of firing squad.

(1)
  (a) When a defendant is convicted of a capital felony and the judgment of death has been imposed, lethal intravenous injection is the method of execution.
  (b) Subsection (1)(a) applies to any defendant sentenced to death on or after May 3, 2004, except under Subsections (2), (3), and (4).
(2)
  (a) If a court holds that a defendant has a right to be executed by a firing squad, the method of execution for that defendant shall be a firing squad.
  (b) This Subsection (2) applies to any defendant whose right to be executed by a firing squad is preserved by that judgment.
(3)
  (a) If a court holds that execution by lethal injection is unconstitutional on its face, the method of execution shall be a firing squad.
  (b) If a court holds that execution by lethal injection is unconstitutional as applied, the method of execution for that defendant shall be a firing squad.
(4) The method of execution for the defendant is the firing squad if the sentencing court determines the state is unable to lawfully obtain the substance or substances necessary to conduct an execution by lethal intravenous injection 30 or more days before the date specified in the warrant issued upon a judgment of death under Section 77-19-6.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-114 Unpaid balance at termination of sentence -- Past due account -- Notice -- Account or judgment paid in full -- Effect of civil accounts receivable and civil judgment of restitution.

(1) When a defendant's sentence is terminated by law or by the decision of the court or the board:
  (a) the board shall provide an accounting of the unpaid balance of the defendant's criminal accounts receivable to the court if the defendant was on parole or incarcerated at the time of termination; and
  (b) within 90 days after the day on which a defendant's sentence is terminated, the court shall:
    (i) enter an order for a civil accounts receivable and a civil judgment of restitution for a defendant on the civil judgment docket;
    (ii) transfer the responsibility of collecting the civil accounts receivable and the civil judgment of restitution to the Office of State Debt Collection; and
    (iii) identify in the order under this Subsection (1):
      (A) the Office of State Debt Collection as a judgment creditor for the civil accounts receivable and the civil judgment of restitution; and
      (B) the victim as a judgment creditor for the civil judgment of restitution.

(2) If a criminal accounts receivable for the defendant is more than 90 days past due and the court has ordered that a defendant does not owe restitution to any victim, or the time period in Subsection 77-38b-205(5) has passed and the court has not ordered restitution, the court may:
  (a) enter an order for a civil accounts receivable for the defendant on the civil judgment docket;
  (b) identify, in the order under Subsection (2)(a), the Office of State Debt Collection as a judgment creditor for the civil accounts receivable; and
  (c) transfer the responsibility of collecting the civil accounts receivable to the Office of State Debt Collection.

(3) An order for a criminal accounts receivable is no longer in effect after the court enters an order for a civil accounts receivable or a civil judgment of restitution under Subsection (1) or (2).

(4) The court shall provide notice to the Office of State Debt Collection and the prosecuting attorney of any hearing that affects an order for the civil accounts receivable or the civil judgment of restitution.

(5) The Office of State Debt Collection shall:
  (a) notify the court when a civil judgment of restitution or a civil accounts receivable is satisfied; and
  (b) provide the court with an accounting of any distribution made by the Office of State Debt Collection for the civil accounts receivable and the civil judgment of restitution.

(6) When a fine, forfeiture, surcharge, cost, or fee is recorded in an order for a civil accounts receivable on the civil judgment docket, or when restitution is recorded as an order for a civil judgment of restitution on the civil judgment docket, the order:
  (a) constitutes a lien on the defendant's real property until the judgment is satisfied; and
  (b) may be collected by any means authorized by law for the collection of a civil judgment.

(7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of restitution are not subject to the civil statutes of limitation and expire only upon payment in full.

(8)
  (a) If a defendant asserts that a payment was made to a victim or third party for a civil judgment of restitution, or enters into any other transaction that does not involve the Office of State

Debt Collection, and the defendant asserts that the payment results in a credit towards the civil judgment of restitution for the defendant:

(i) the defendant shall provide notice to the Office of State Debt Collection and the prosecuting attorney within 30 days after the day on which the payment or other transaction is made; and

(ii) the payment may only be credited towards the principal of the civil judgment of restitution and does not affect any other amount owed to the Office of State Debt Collection under Section 63A-3-502.

(b) Nothing in this Subsection (8) shall be construed to prevent a victim or a third party from providing notice of a payment towards a civil judgment of restitution to the Office of State Debt Collection.

Enacted by Chapter 260, 2021 General Session

77-18-115 Liability of rescued person for costs of emergency response.

(1) Any person who violates Section 76-6-206.1 and whose conduct required emergency care, rescue, assistance, or recovery services at the scene of an abandoned or inactive mine may be charged with the expenses incurred in meeting the emergency.

(2)

(a) The court's order shall be a judgment that orders the payment of reimbursement to any public agency or private body that incurred the expenses.

(b) The judgment shall constitute a lien when recorded in the judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action.

(3) The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-116 Costs imposed on defendant -- Restrictions.

Unless specifically authorized by statute, a defendant shall not be required to pay court costs in a criminal case as:

(1) a part of a sentence; or

(2) a condition of probation or dismissal.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-117 Fine not paid -- Commitment.

(1) When a defendant is sentenced to pay a fine in addition to a jail or a prison sentence and the judgment is that the jail or prison sentence be suspended upon payment of the fine, the service of the jail or prison sentence shall satisfy the judgment.

(2) If a defendant fails to pay the fine and the court finds that the defendant failed to make a good faith effort to pay the fine, the court may, after a hearing, order the execution of the suspended jail or prison sentence.

(3) If a defendant is sentenced to pay a fine only, or is sentenced to jail or prison and a fine, with neither suspended, the defendant may not later be committed to jail for failure to pay the fine.

Renumbered and Amended by Chapter 260, 2021 General Session

77-18-118 Continuing jurisdiction of a sentencing court.

(1) A sentencing court shall retain jurisdiction over a defendant's criminal case:
(a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);
(b) if the defendant is on probation and the probation period has terminated under Subsection 77-18-105(7), to require the defendant to continue to make payments towards a criminal accounts receivable until the defendant's sentence expires;
(c) within the time periods described in Subsection 77-38b-205(5), to enter or modify an order for a criminal accounts receivable in accordance with Section 77-32b-103;
(d) within the time periods described in Subsection 77-38b-205(5), to enter or modify an order for restitution in accordance with Section 77-38b-205;
(e) until a defendant's sentence is terminated, to correct an error for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(a);
(f) until a defendant's sentence is terminated, to modify a payment schedule for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);
(g) if a defendant files a petition for remittance under Subsection 77-32b-105(1)(c) before the defendant's sentence is terminated, for 90 days from the day on which the petition is filed to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable;
(h) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within 90 days from the day on which the defendant's sentence is terminated, to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable; and
(i) to enter an order for a civil accounts receivable and a civil judgment of restitution in accordance with Section 77-18-114.
(2) This section does not prevent a court from exercising jurisdiction over:
(a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3, Contempt; or
(b) enforcement of a civil accounts receivable or a civil judgment of restitution.

Enacted by Chapter 260, 2021 General Session

Chapter 18a
The Appeal

77-18a-1 Appeals -- When proper.

(1) A defendant may, as a matter of right, appeal from:
(a) a final judgment of conviction, whether by verdict or plea;
(b) an order made after judgment that affects the substantial rights of the defendant;
(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or
(d) an order denying bail under Chapter 20, Bail.
(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.
(3) The prosecution may, as a matter of right, appeal from:
(a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;
(b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;
(c) an order granting a motion to withdraw a plea of guilty or no contest;

(d) an order arresting judgment or granting a motion for merger;
(e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
(f) an order granting a new trial;
(g) an order holding a statute or any part of it invalid;
(h) an order adjudicating the defendant's competency to proceed further in a pending prosecution;
(i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed;
(j) an order reducing the degree of offense pursuant to Section 76-3-402;
(k) an illegal sentence; or
(l) an order dismissing a charge pursuant to Subsection 76-2-309(3).
(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

Amended by Chapter 4, 2021 Special Session 2

77-18a-2 Capital cases.

After the resolution of an initial appeal of a capital case when the sentence of death has been imposed, a subsequent appeal may not be entertained by any court and a stay of execution of the sentence may not be granted when the appeal does not raise any new matter not previously resolved or when the new matter could have been raised at the previous appeal.

Enacted by Chapter 7, 1990 General Session

Chapter 19
The Execution

Part 1
Judgment Provisions

77-19-1 Judgment for fine or costs -- Enforcement.

If the judgment is for a fine or costs when allowed by statute and the fine is not paid as ordered by the court, execution or garnishment may be issued as on a judgment in a civil action. The prosecuting attorney, upon written request of the court clerk, shall effectuate collection through execution or garnishment when the fine or costs have not been paid as ordered by the court.

Enacted by Chapter 15, 1980 General Session

77-19-2 Judgment of imprisonment -- Commitment.

If the judgment is for imprisonment, the sheriff of the county or other appropriate custodial officer designated by the court shall, upon receipt of a certified copy of the judgment, deliver the defendant to the warden of the state prison or keeper of the jail. Such custodial officer shall also deliver a certified copy of the judgment and take a receipt from the warden or keeper of the jail for the defendant and return it to the court.

Enacted by Chapter 15, 1980 General Session

77-19-3 Special release from city or county jail -- Purposes.

(1) Any person incarcerated in any city or county jail may, in accordance with the release policy of the facility, be released from jail during those hours which are reasonable and necessary to accomplish any of the purposes under Subsection (2) if:
  (a) the offense is not one for which release is prohibited under state law; and
  (b) the judge has not entered an order prohibiting a special release.
(2) The custodial authority at the jail may release an inmate who qualifies under Subsection (1) for:
  (a) working at his employment;
  (b) seeking employment;
  (c) attending an educational institution;
  (d) obtaining necessary medical treatment; or
  (e) any other reasonable purpose as determined by the custodial authority of the jail.

Amended by Chapter 148, 2007 General Session

77-19-4 Special release from city or county jail -- Conditions and limitations.

(1) All released prisoners under Section 77-19-3 are in the custody of the custodial authority and are subject at any time to being returned to jail, for good cause.
(2) The judge may order that the prisoner:
  (a) pay money earned from employment during the jail term to those persons he is legally responsible to support; or
  (b) retain sufficient money to pay his costs of transportation, meals, and other incidental and necessary expenses related to his special release.
(3) The custodial authority of the jail shall establish all other conditions of special release.
(4) During all hours when the prisoner is not serving the function for which he is awarded release time, he shall be confined to jail.
(5) The prisoner shall obtain his own transportation to and from the place where he performs the function for which he is released.

Amended by Chapter 148, 2007 General Session
Amended by Chapter 306, 2007 General Session

77-19-5 Special release from city or county jail -- Revocation.

The judge may, for good cause, revoke any release time previously awarded, and shall notify the prisoner that, if he makes written request, a hearing shall be afforded to him to challenge the revocation.

Enacted by Chapter 15, 1980 General Session

77-19-6 Judgment of death -- Warrant -- Delivery of warrant -- Determination of execution time.

(1)
  (a) When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of the county where the conviction is had.

(b) The sheriff shall deliver the warrant and a certified copy of the judgment to the executive director of the Department of Corrections or the executive director's designee at the time of delivering the defendant to the custody of the Department of Corrections.
(2) The warrant shall state the conviction, the judgment, the method of execution, and the appointed day the judgment is to be executed, which may not be fewer than 30 days nor more than 60 days from the date of issuance of the warrant, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.
(3) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Amended by Chapter 382, 2008 General Session

77-19-7 Judgment of death -- Statement to Board of Pardons and Parole.

The judge of a court where a judgment of death was had shall, immediately after the conviction, transmit to the chair of the Board of Pardons and Parole a statement of the conviction and judgment and a summary of the evidence given at trial.

Amended by Chapter 13, 1994 General Session

77-19-8 Judgment of death, when suspended, and by whom.

(1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor or the Board of Pardons and Parole, may not stay or suspend the execution of a judgment of death.
(2)
(a) A court of competent jurisdiction shall issue a temporary stay of judgment of death when:
(i) the judgment is appealed;
(ii) the judgment is automatically reviewed;
(iii) the person sentenced to death files a first petition for postconviction relief after the direct appeal under Title 78B, Chapter 9, Postconviction Remedies Act;
(iv) the person sentenced to death requests counsel under Subsection 78B-9-202(2)(a) to represent the person in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act; or
(v) counsel enters an appearance to represent the person sentenced to death in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act.
(b) A court may not issue a temporary stay of judgment of death when the person sentenced to death files a petition for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, after a first petition has been denied or dismissed, unless the court first finds all of the following:
(i) the claims would not be barred under Section 78B-9-106;
(ii) the claims are potentially meritorious; and
(iii) the petition may not be reasonably disposed of before the execution date.
(c)
(i) The executive director of the Department of Corrections or a designee under Section 77-19-202 may temporarily suspend the execution if the person sentenced to death appears to be incompetent or pregnant.
(ii) A temporary suspension under Subsection (2)(c)(i) shall end if the person is determined to be:
(A) competent;
(B) not pregnant; or

(C) no longer incompetent or pregnant.

(3)

(a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the appeal, automatic review, or action under Title 78B, Chapter 9, Postconviction Remedies Act is concluded.

(b) A request for counsel under Section 78B-9-202 does not constitute an application for postconviction or other collateral review and does not toll the statute of limitations under Section 78B-9-107.

Amended by Chapter 165, 2011 General Session

77-19-9 Judgment of death not executed -- Order for execution.

(1) If for any reason a judgment of death has not been executed and remains in force, the court where the conviction was had, on application of the prosecuting attorney, shall order the defendant to be brought before it or, if the defendant is at large, issue a warrant for the defendant's apprehension.

(2) When the defendant is brought before the court, it shall inquire into the facts and, if no legal reason exists against the execution of judgment, the court shall make an order requiring the executive director of the Department of Corrections or the executive director's designee to ensure that the judgment is executed on a specified day, which may not be fewer than 30 nor more than 60 days after the court's order, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301. The court shall also draw and have delivered another warrant under Section 77-19-6.

(3) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Amended by Chapter 382, 2008 General Session

77-19-10 Judgment of death -- Location and procedures for execution.

(1) The executive director of the Department of Corrections or a designee shall ensure that the method of judgment of death specified in the warrant or as required under Section 77-18-113 is carried out at a secure correctional facility operated by the department and at an hour determined by the department on the date specified in the warrant.

(2) When the judgment of death is to be carried out by lethal intravenous injection, the executive director of the department or a designee shall select two or more persons trained in accordance with accepted medical practices to administer intravenous injections, who shall each administer a continuous intravenous injection, one of which shall be of a lethal quantity of:

(a) sodium thiopental; or

(b) other equally or more effective substance sufficient to cause death.

(3) If the judgment of death is to be carried out by firing squad under Subsection 77-18-113(2), (3), or (4) the executive director of the department or a designee shall select a five-person firing squad of peace officers.

(4) Compensation for persons administering intravenous injections and for members of a firing squad under Subsection 77-18-113(2), (3), or (4) shall be in an amount determined by the director of the Division of Finance.

(5) Death under this section shall be certified by a physician.

(6) The department shall adopt and enforce rules governing procedures for the execution of judgments of death.

Amended by Chapter 260, 2021 General Session

77-19-11 Who may be present -- Photographic and recording equipment.

(1) As used in this section:

(a) "Close relative of the deceased victim" means:

(i) the spouse of the victim;

(ii) a parent or stepparent of the victim;

(iii) a brother, sister, stepbrother, stepsister, child, or stepchild of the victim; and

(iv) any person who had a close relationship with the deceased victim, or with a close relative of the victim, upon the recommendation of the victim assistance coordinator for the Department of Corrections or for the Office of the Attorney General.

(b) "Director" means the executive director of the Department of Corrections, or the director's designee.

(2) At the discretion of the director, the following persons may attend the execution:

(a) the prosecuting attorney, or a designated deputy, of the county in which the defendant committed the offense for which he is being executed;

(b) no more than two law enforcement officials from the county in which the defendant committed the offense for which he is being executed;

(c) the attorney general or a designee;

(d) religious representatives, friends, or relatives designated by the defendant, not exceeding a total of five persons; and

(e) unless approved by the director, no more than five close relatives of the deceased victim, as selected by the director, but giving priority in the order listed in Subsection (1)(a).

(3) The persons listed in Subsection (2) may not be required to attend, nor may any of them attend as a matter of right.

(4) The director shall permit the attendance at the execution of members of the press and broadcast news media:

(a) as named by the director in accordance with rules of the department; and

(b) with the agreement of the selected news media members that they serve as a pool for other members of the news media.

(5)

(a) Except as provided in Subsection (5)(b), photographic or recording equipment is not permitted at the execution site until the execution is completed, the body is removed, and the site has been restored to an orderly condition. However, the physical arrangements for the execution may not be disturbed.

(b) Audio recording equipment may be used by the department for the purpose of recording the defendant's last words.

(c) The department shall permanently destroy the recording made under Subsection (5)(b) not later than 24 hours after the completion of the execution.

(d) A violation of this subsection is a class B misdemeanor.

(6) All persons in attendance are subject to reasonable search as a condition of attendance.

(7)

(a) The following persons may also attend the execution:

(i) staff as determined by the director; and

(ii) no more than three correctional officials from other states that are preparing for executions, but no more than two correctional officials may be from any one state, as designated by the director.

(b) A person younger than 18 years of age may not attend.
(8) The department shall adopt rules governing the attendance of persons, including the number of media representatives, at the execution. These rules shall be in accordance with this section.

Amended by Chapter 1, 2000 General Session
Amended by Chapter 250, 2000 General Session

77-19-12 Return upon death warrant.

After the execution, the executive director of the Department of Corrections or his designee shall make a return upon the death warrant, showing the time, place, and manner in which it was executed.

Amended by Chapter 190, 1988 General Session

Part 2
Competency for Execution

77-19-201 Definition.

As used in this part, "incompetent to be executed" means that, due to mental condition, an inmate is unaware of either the punishment he is about to suffer or why he is to suffer it.

Amended by Chapter 71, 2005 General Session

77-19-202 Incompetency or pregnancy of person sentenced to death -- Procedures.

(1) If, after judgment of death, the executive director of the Department of Corrections has good reason to believe that an inmate sentenced to death is pregnant, or has good reason to believe that an inmate's competency to be executed under this chapter should be addressed by a court, the executive director of the Department of Corrections or the executive director's designee shall immediately give written notice to the court in which the judgment of death was rendered, to the prosecuting attorney, and counsel for the inmate. The judgment shall be stayed pending further order of the court.
(2)
(a) On receipt of the notice under Subsection (1) of good reason for the court to address an inmate's competency to be executed, the court shall order that the mental condition of the inmate shall be examined under the provisions of Section 77-19-204.
(b) If the inmate is found incompetent, the court shall immediately transmit a certificate of the findings to the Board of Pardons and Parole and continue the stay of execution pending further order of the court.
(c) If the inmate is subsequently found competent at any time, the judge shall immediately transmit a certificate of the findings to the Board of Pardons and Parole, and shall draw and have delivered another warrant under Section 77-19-6, together with a copy of the certificate of the findings. The warrant shall state an appointed day on which the judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.
(3)

(a) If the court finds the inmate is pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and Parole and to the executive director of the Department of Corrections or the executive director's designee, and the court shall issue an order staying the execution of the judgment of death during the pregnancy.
(b) When the court determines the inmate is no longer pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and Parole and draw and have delivered another warrant under Section 77-19-6, with a copy of the certificate of the finding. The warrant shall state an appointed day on which the judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.
(4) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Amended by Chapter 382, 2008 General Session

77-19-203 Petition for inquiry as to competency to be executed -- Filing -- Contents -- Successive petitions.
(1) If an inmate who has been sentenced to death is or becomes incompetent to be executed, a petition under Subsection (2) may be filed in the district court of the county where the inmate is confined.
(2) The petition shall:
(a) contain a certificate stating that it is filed in good faith and on reasonable grounds to believe the inmate is incompetent to be executed; and
(b) contain a specific recital of the facts, observations, and conversations with the inmate that form the basis for the petition.
(3) The petition may be based upon knowledge or information and belief and may be filed by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney representing the state.
(4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is incompetent to be executed, the court shall give the state and the Department of Corrections an opportunity to respond to the allegations of incompetency.
(5) If a petition is filed after an inmate has previously been found competent under either this chapter or under Title 77, Chapter 15, Inquiry into Sanity of Defendant, no further hearing on competency may be granted unless the successive petition:
(a) alleges with specificity a substantial change of circumstances subsequent to the previous determination of competency; and
(b) is sufficient to raise a significant question about the inmate's competency to be executed.

Enacted by Chapter 137, 2004 General Session

77-19-204 Order for hearing -- Examinations of inmate -- Scope of examination and report.
(1) When a court has good reason to believe an inmate sentenced to death is incompetent to be executed, it shall stay the execution and shall order the Department of Human Services to examine the inmate and report to the court concerning the inmate's mental condition.
(2)
(a) The inmate subject to examination under Subsection (1) shall be examined by at least two mental health experts who are not involved in the inmate's current treatment.

(b) The Department of Corrections shall provide information and materials to the examiners relevant to a determination of the inmate's competency to be executed.

(3) The inmate shall make himself available and fully cooperate in the examination by the Department of Human Services and any other independent examiners for the defense or the state.

(4) The examiners shall in the conduct of their examinations and in their reports to the court consider and address, in addition to any other factors determined to be relevant by the examiners:

(a) the inmate's awareness of the fact of the inmate's impending execution;

(b) the inmate's understanding that the inmate is to be executed for the crime of murder;

(c) the nature of the inmate's mental disorder, if any, and its relationship to the factors relevant to the inmate's competency; and

(d) whether psychoactive medication is necessary to maintain or restore the inmate's competency.

(5) The examiners who are examining the inmate shall each provide an initial report to the court and the attorneys for the state and the inmate within 60 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the inmate to be executed, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(6)

(a) All interviews with the inmate conducted by the examiners shall be videotaped, unless otherwise ordered by the court for good cause shown. The Department of Corrections shall provide the videotaping equipment and facilitate the videotaping of the interviews.

(b) Immediately following the videotaping, the videotape shall be provided to the attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the competency determination is pending.

(c) The court shall grant counsel for the state and for the inmate, and examiners who are examining the inmate under this part access to view the videotape at the court building where the court is located that is conducting the competency determination under this part.

(7) Any written report submitted by an examiner shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the examiner's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; and

(d) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(8)

(a) When the reports are received, the court shall set a date for a competency hearing, which shall be held within not less than five and not more than 15 days, unless the court extends the time for good cause.

(b) Any examiner directed by the Department of Human Services to conduct the examination may be subpoenaed to provide testimony at the hearing. If the examiners are in conflict as to

the competency of the inmate, all of them should be called to testify at the hearing if they are reasonably available.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. An examiner called by the court may be cross-examined by counsel for the parties.

(9)

(a) An inmate shall be presumed competent to be executed unless the court, by a preponderance of the evidence, finds the inmate incompetent to be executed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to be executed does not operate as an adjudication of the inmate's incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(10)

(a) If the court finds the inmate incompetent to be executed, its order shall contain findings addressing each of the factors in Subsections (4)(a) through (d).

(b) The order finding the inmate incompetent to be executed shall be delivered to the Department of Human Services, and shall be accompanied by:

(i) copies of the reports of the examiners filed with the court pursuant to the order of examination, if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the inmate; and

(iii) any other documents made available to the court by either the defense or the state, pertaining to the inmate's current or past mental condition.

(c) A copy of the order finding the inmate incompetent to be executed shall be delivered to the Department of Corrections.

Enacted by Chapter 137, 2004 General Session

77-19-205 Procedures on finding of incompetency to be executed -- Subsequent hearings -- Notice to attorneys.

(1)

(a)

(i) If after the hearing under Section 77-19-204 the inmate is found to be incompetent to be executed, the court shall continue the stay of execution and the inmate shall receive appropriate mental health treatment.

(ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(b) The court shall order the executive director of the Department of Human Services to provide periodic assessments to the court regarding the inmate's competency to be executed.

(c) The inmate shall be held in secure confinement, either at the prison or the State Hospital, as agreed upon by the executive director of the Department of Corrections and the executive director of the Department of Human Services. If the inmate remains at the prison, the Department of Human Services shall consult with the Department of Corrections regarding the inmate's mental health treatment.

(2)

(a) The examiner or examiners designated by the executive director of the Department of Human Services to assess the inmate's progress toward competency may not be involved in the routine treatment of the inmate.

(b) The examiner or examiners shall each provide a full report to the court and counsel for the state and the inmate within 90 days of receipt of the court's order. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel for the state and the inmate a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner has up to an additional 90 days to provide the full report, unless the court enlarges the time for good cause. The full report shall assess:

(i) the facility's or program's capacity to provide appropriate treatment for the inmate;

(ii) the nature of treatments provided to the inmate;

(iii) what progress toward restoration of competency has been made;

(iv) the inmate's current level of mental disorder and need for treatment, if any; and

(v) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party may order the Department of Human Services to appoint additional mental health examiners to examine the inmate and advise the court on the inmate's current mental status and progress toward competency restoration.

(4)

(a) Upon receipt of the full report, the court shall hold a hearing to determine the inmate's current status. At the hearing, the burden of proving that the inmate is competent is on the proponent of competency.

(b) Following the hearing, the court shall determine by a preponderance of evidence whether the inmate is competent to be executed.

(5)

(a) If the court determines that the inmate is competent to be executed, it shall enter findings and shall proceed under Subsection 77-19-202(2)(c).

(b)

(i) If the court determines the inmate is still incompetent to be executed, the inmate shall continue to receive appropriate mental health treatment, and the court shall hold hearings no less frequently than at 18-month intervals for the purpose of determining the defendant's competency to be executed.

(ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(6)

(a) If at any time the clinical director of the Utah State Hospital or the primary treating mental health professional determines that the inmate has been restored to competency, he shall notify the court.

(b) The court shall conduct a hearing regarding the inmate's competency to be executed within 30 working days of the receipt of the notification under Subsection (6)(a), unless the court extends the time for good cause. The court may order a hearing or rehearing at any time on its own motion.

(7) Notice of a hearing on competency to be executed shall be given to counsel for the state and for the inmate, as well as to the office of the prosecutor who prosecuted the inmate on the original capital charge.

Enacted by Chapter 137, 2004 General Session

77-19-206 Expenses -- Allocation.

The Department of Human Services and the Department of Corrections shall each pay 1/2 of the costs of any examination of the inmate conducted pursuant to Sections 77-19-204 and 77-19-205 to determine if an inmate is competent to be executed.

Enacted by Chapter 137, 2004 General Session

Chapter 20
Bail

Part 1
General Provisions

77-20-101 Title.

This chapter is known as "Bail."

Enacted by Chapter 4, 2021 Special Session 2

77-20-102 Definitions.

As used in this chapter:

(1) "Bail bond" means the same as that term is defined in Section 31A-35-102.
(2) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
(3) "Bail bond producer" means the same as that term is defined in Section 31A-35-102.
(4) "Bail commissioner" means a bail commissioner appointed in accordance with Section 17-32-1.
(5) "Exonerate" means to release and discharge a surety, or a surety's bail bond producer, from liability for a bail bond.
(6) "Financial condition" or "monetary bail" means any monetary condition that is imposed to secure an individual's pretrial release.
(7) "Forfeiture" means:
  (a) to divest an individual or surety from a right to the repayment of monetary bail; or
  (b) to enforce a pledge of assets or real or personal property from an individual or surety used to secure an individual's pretrial release.
(8) "Magistrate" means the same as that term is defined in Section 77-1-3.
(9) "Own recognizance" means the release of an individual without any condition of release other than the individual's promise to:
  (a) appear for all required court proceedings; and
  (b) not commit any criminal offense.
(10) "Pretrial detention hearing" means a hearing described in Section 77-20-206.
(11) "Pretrial release" or "bail" means the release of an individual from law enforcement custody during the time the individual awaits trial or other resolution of criminal charges.
(12) "Pretrial risk assessment" means an objective, research-based, validated assessment tool that measures an individual's risk of flight and risk of anticipated criminal conduct while on pretrial release.
(13) "Pretrial services program" means a program that is established to:
  (a) gather information on individuals booked into a jail facility;
  (b) conduct pretrial risk assessments; and

(c) supervise individuals granted pretrial release.
(14) "Pretrial status order" means an order issued by a magistrate or judge that:
(a) releases the individual on the individual's own recognizance while the individual awaits trial or other resolution of criminal charges;
(b) sets the terms and conditions of the individual's pretrial release while the individual awaits trial or other resolution of criminal charges; or
(c) denies pretrial release and orders that the individual be detained while the individual awaits trial or other resolution of criminal charges.
(15) "Principal" means the same as that term is defined in Section 31A-35-102.
(16) "Surety" means a surety insurer or a bail bond agency.
(17) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
(18) "Temporary pretrial status order" means an order issued by a magistrate that:
(a) releases the individual on the individual's own recognizance until a pretrial status order is issued;
(b) sets the terms and conditions of the individual's pretrial release until a pretrial status order is issued; or
(c) denies pretrial release and orders that the individual be detained until a pretrial status order is issued.
(19) "Unsecured bond" means an individual's promise to pay a financial condition if the individual fails to appear for any required court appearance.

Enacted by Chapter 4, 2021 Special Session 2

77-20-103 Release data requirements.
(1) The Administrative Office of the Courts shall submit the following data on cases involving individuals for whom the Administrative Office of the Courts has a state identification number broken down by judicial district to the Commission on Criminal and Juvenile Justice before July 1 of each year:
(a) for the preceding calendar year:
(i) the number of individuals charged with a criminal offense who failed to appear at a required court preceding while on pretrial release under each of the following categories of release:
(A) the individual's own recognizance;
(B) a financial condition; and
(C) a release condition other than a financial condition;
(ii) the number of offenses that carry a potential penalty of incarceration an individual committed while on pretrial release under each of the following categories of release:
(A) the individual's own recognizance;
(B) a financial condition; and
(C) a release condition other than a financial condition; and
(iii) the total amount of fees and fines, including bond forfeiture, collected by the court from an individual for the individual's failure to comply with a condition of release under each of the following categories of release:
(A) an individual's own recognizance;
(B) a financial condition; and
(C) a release condition other than a financial condition; and
(b) at the end of the preceding calendar year:
(i) the total number of outstanding warrants of arrest for individuals who were released from law enforcement custody on pretrial release under each of the following categories of release:

(A) the individual's own recognizance;
(B) a financial condition; and
(C) a release condition other than a financial condition;
(ii) for each of the categories described in Subsection (1)(b)(i), the average length of time that the outstanding warrants had been outstanding; and
(iii) for each of the categories described in Subsection (1)(b)(i), the number of outstanding warrants for arrest for crimes of each of the following categories:
(A) a first degree felony;
(B) a second degree felony;
(C) a third degree felony;
(D) a class A misdemeanor;
(E) a class B misdemeanor; and
(F) a class C misdemeanor.

(2) Each county jail shall submit the following data, based on the preceding calendar year, to the Commission of Criminal and Juvenile Justice before July 1 of each year:
(a) the number of individuals released upon payment of monetary bail before appearing before a court;
(b) the number of individuals released on the individual's own recognizance before appearing before a court; and
(c) the amount of monetary bail, any fees, and any other money paid by or on behalf of individuals collected by the county jail.

(3) The Commission on Criminal and Juvenile Justice shall compile the data collected under this section and shall submit the compiled data in an electronic report to the Law Enforcement and Criminal Justice Interim Committee before November 1 of each year.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

Part 2
Preconviction Bail

77-20-201 Right to bail -- Capital felony.

(1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:
(a) a capital felony when the court finds there is substantial evidence to support the charge;
(b) a felony committed while on parole or on probation for a felony conviction, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
(c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;
(d) a felony when the court finds there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual violated a material condition of release while previously on bail;
(e) a domestic violence offense if the court finds:
(i) that there is substantial evidence to support the charge; and

(ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail;

(f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:

(i) the offense results in death or serious bodily injury to an individual; and

(ii) the court finds:

(A) that there is substantial evidence to support the charge; and

(B) by clear and convincing evidence, that the person would constitute a substantial danger to the community if released on bail; or

(g) a felony violation of Section 76-9-101 if there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance.

(2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection (1)(f)(ii)(B):

(a) as long as the individual has a blood or breath alcohol concentration of .05 grams or greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or

(b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.

(3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section 76-5-202, aggravated murder, is a capital felony unless:

(a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.

Enacted by Chapter 4, 2021 Special Session 2

77-20-202 Collection of pretrial information.

(1) On or after May 4, 2022, when an individual is arrested without a warrant for an offense and booked at a jail facility, an employee at the jail facility, or an employee of a pretrial services program, shall submit the following information to the court with the probable cause statement to the extent that the information is reasonably available to the employee:

(a) identification information for the individual, including:

(i) the individual's legal name and any known aliases;

(ii) the individual's date of birth;

(iii) the individual's state identification number;

(iv) the individual's mobile phone number; and

(v) the individual's email address;

(b) the individual's residential address;

(c) any pending criminal charge or warrant for the individual, including the offense tracking number of the current offense for which the individual is booked;

(d) the individual's probation or parole supervision status;

(e) whether the individual was on pretrial release for another criminal offense prior to the booking of the individual for the current criminal offense;

(f) the individual's financial circumstances to the best of the individual's knowledge at the time of booking, including:

(i) the individual's current employer;
(ii) the individual's monthly income, including any alimony or child support that contributes to the individual's monthly income;
(iii) the individual's monthly expenses, including any alimony or child support obligation that the individual is responsible for paying;
(iv) the individual's ownership of, or any interest in, personal or real property, including any savings or checking accounts or cash;
(v) the number, ages, and relationships of any dependents;
(vi) any financial support or benefit that the individual receives from a state or federal government; and
(vii) any other information about the individual's financial circumstances that may be relevant; and

(g) any ties the individual has to the community, including:
(i) the length of time that the individual has been at the individual's residential address;
(ii) any enrollment in a local college, university, or trade school; and
(iii) the name and contact information for any family member or friend that the individual believes would be willing to provide supervision of the individual.

(2) Upon request, the jail facility, or the pretrial services program, shall provide the information described in Subsection (1) to the individual, the individual's attorney, or the prosecuting attorney.

(3) Any information collected from an individual under Subsection (1) is inadmissible in any court proceeding other than:
(a) a criminal proceeding addressing the individual's pretrial release or indigency for the offense, or offenses, for which the individual was arrested or charged with; or
(b) another criminal proceeding regarding prosecution for providing a false statement under Subsection (1).

(4) Nothing in this section prohibits a court and a county from entering into an agreement regarding information to be submitted to the court with a probable cause statement.

Enacted by Chapter 4, 2021 Special Session 2

77-20-203 Sheriff and bail commissioner authority to release an individual from jail on own recognizance.

(1) As used in this section:
(a) "Qualifying offense" means the same as that term is defined in Section 78B-7-801.
(b) "Violent felony" means the same as that term is defined in Subsection 76-3-203.5(1)(c)(i).

(2) A county sheriff or a bail commissioner may release an individual from a jail facility on the individual's own recognizance if:
(a) the individual was arrested without a warrant;
(b) the individual was not arrested for:
(i) a violent felony;
(ii) a qualifying offense;
(iii) the offense of driving under the influence or driving with a measurable controlled substance in the body if the offense results in death or serious bodily injury to an individual; or
(iv) an offense described in Subsection 76-9-101(4);
(c) law enforcement has not submitted a probable cause statement to a court or magistrate;
(d) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and

(e) the individual qualifies for release under the written policy described in Subsection (3) for the county.

(3)

(a) A county sheriff shall create and approve a written policy for the county that governs the release of an individual on the individual's own recognizance.

(b) The written policy shall describe the criteria an individual shall meet to be released on the individual's own recognizance.

(c) A county sheriff may include in the written policy the criteria for release relating to:

(i) criminal history;

(ii) prior instances of failing to appear for a mandatory court appearance;

(iii) current employment;

(iv) residency;

(v) ties to the community;

(vi) an offense for which the individual was arrested;

(vii) any potential criminal charges that have not yet been filed;

(viii) the individual's health condition;

(ix) any potential risks to a victim, a witness, or the public; and

(x) any other similar factor a sheriff determines is relevant.

(4) Nothing in this section prohibits a court and a county from entering into an agreement regarding release.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-204 Bail commissioner authority to release an individual from jail on monetary bail.

(1) As used in this section, "eligible felony offense" means a third degree felony violation under:

(a) Section 23-19-15;

(b) Section 23-20-4;

(c) Section 23-20-4.7;

(d)Title 76, Chapter 6, Part 4, Theft;

(e)Title 76, Chapter 6, Part 5, Fraud;

(f)Title 76, Chapter 6, Part 6, Retail Theft;

(g)Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;

(h)Title 76, Chapter 6, Part 8, Library Theft;

(i)Title 76, Chapter 6, Part 9, Cultural Sites Protection;

(j)Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;

(k)Title 76, Chapter 6, Part 11, Identity Fraud Act;

(l)Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;

(m)Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;

(n)Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;

(o)Title 76, Chapter 6a, Pyramid Scheme Act;

(p)Title 76, Chapter 7, Offenses Against the Family;

(q)Title 76, Chapter 7a, Abortion Prohibition;

(r)Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;

(s)Title 76, Chapter 9, Part 3, Cruelty to Animals;

(t)Title 76, Chapter 9, Part 4, Offenses Against Privacy;

(u)Title 76, Chapter 9, Part 5, Libel; or

(v)Title 76, Chapter 9, Part 6, Offenses Against the Flag.

(2) Except as provided in Subsection (7)(a), a bail commissioner may fix a financial condition for an individual if:
(a)
(i) the individual is ineligible to be released on the individual's own recognizance under Section 77-20-203;
(ii) the individual is arrested for, or charged with:
(A) a misdemeanor offense under state law; or
(B) a violation of a city or county ordinance that is classified as a class B or C misdemeanor offense;
(iii) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and
(iv) law enforcement has not submitted a probable cause statement to a magistrate; or
(b)
(i) the individual is arrested for, or charged with, an eligible felony offense;
(ii) the individual is not on pretrial release for a separate criminal offense;
(iii) the individual is not on probation or parole;
(iv) the primary risk posed by the individual is the risk of failure to appear;
(v) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and
(vi) law enforcement has not submitted a probable cause statement to a magistrate.
(3) A bail commissioner may not fix a financial condition at a monetary amount that exceeds:
(a) $5,000 for an eligible felony offense;
(b) $1,950 for a class A misdemeanor offense;
(c) $680 for a class B misdemeanor offense;
(d) $340 for a class C misdemeanor offense;
(e) $150 for a violation of a city or county ordinance that is classified as a class B misdemeanor; or
(f) $80 for a violation of a city or county ordinance that is classified as a class C misdemeanor.
(4) If an individual is arrested for more than one offense, and the bail commissioner fixes a financial condition for release:
(a) the bail commissioner shall fix the financial condition at a single monetary amount; and
(b) the single monetary amount may not exceed the monetary amount under Subsection (3) for the highest level of offense for which the individual is arrested.
(5) Except as provided in Subsection (7)(b), an individual shall be released if the individual posts a financial condition fixed by a bail commissioner in accordance with this section.
(6) If a bail commissioner fixes a financial condition for an individual, law enforcement shall submit a probable cause statement in accordance with Rule 9 of the Utah Rules of Criminal Procedure after the bail commissioner fixes the financial condition.
(7) Once a magistrate begins a review of an individual's case under Rule 9 of the Utah Rules of Criminal Procedure:
(a) a bail commissioner may not fix or modify a financial condition for an individual; and
(b) if a bail commissioner fixed a financial condition for the individual before the magistrate's review, the individual may no longer be released on the financial condition.
(8) Nothing in this section prohibits a court and a county from entering into an agreement regarding release.

Enacted by Chapter 4, 2021 Special Session 2

77-20-205 Pretrial release by a magistrate or judge.

(1)

(a) At the time that a magistrate issues a warrant of arrest, or finds there is probable cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure, the magistrate shall issue a temporary pretrial status order that:

(i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges;

(ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges; or

(iii) orders the individual be detained during the time the individual awaits trial or other resolution of criminal charges.

(b) At the time that a magistrate issues a summons, the magistrate may issue a temporary pretrial status order that:

(i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges; or

(ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges.

(2)

(a) Except as provided in Subsection (2)(c), at an individual's first appearance before the court, the magistrate or judge shall issue a pretrial status order that:

(i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges;

(ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges; or

(iii) orders the individual be detained during the time the individual awaits trial or other resolution of criminal charges.

(b) In making a determination under Subsection (2)(a), the magistrate or judge may not give any deference to a magistrate's decision in a temporary pretrial status order.

(c) The magistrate or judge shall delay the issuance of a pretrial status order described in Subsection (2)(a):

(i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for pretrial detention as described in Section 77-20-206;

(ii) if a party requests a delay; or

(iii) if there is good cause to delay the issuance.

(d) If a magistrate or judge delays the issuance of a pretrial status order under Subsection (2)(c), the magistrate or judge shall extend the temporary pretrial status order until the issuance of a pretrial status order.

(3) In making a determination about pretrial release under Subsection (1) or (2), a magistrate or judge shall impose only conditions of release that are reasonably available and necessary to reasonably ensure:

(a) the individual's appearance in court when required;

(b) the safety of any witnesses or victims of the offense allegedly committed by the individual;

(c) the safety and welfare of the public; and

(d) that the individual will not obstruct, or attempt to obstruct, the criminal justice process.

(4) Except as provided in Subsection (5), a magistrate or judge may impose a condition, or combination of conditions, under Subsection (1) or (2) that requires an individual to:

(a) not commit a federal, state, or local offense during the period of pretrial release;

(b) avoid contact with a victim of the alleged offense;

(c) avoid contact with a witness who:
(i) may testify concerning the alleged offense; and
(ii) is named in the pretrial status order;
(d) not consume alcohol or any narcotic drug or other controlled substance unless prescribed by a licensed medical practitioner;
(e) submit to drug or alcohol testing;
(f) complete a substance abuse evaluation and comply with any recommended treatment or release program;
(g) submit to electronic monitoring or location device tracking;
(h) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;
(i) maintain employment or actively seek employment if unemployed;
(j) maintain or commence an education program;
(k) comply with limitations on where the individual is allowed to be located or the times that the individual shall be, or may not be, at a specified location;
(l) comply with specified restrictions on personal associations, place of residence, or travel;
(m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;
(n) comply with a specified curfew;
(o) forfeit or refrain from possession of a firearm or other dangerous weapon;
(p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;
(q) comply with requirements for house arrest;
(r) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;
(s) remain in custody of one or more designated individuals who agree to:
(i) supervise and report on the behavior and activities of the individual; and
(ii) encourage compliance with all court orders and attendance at all required court proceedings;
(t) comply with a financial condition; or
(u) comply with any other condition that is reasonably available and necessary to ensure compliance with Subsection (3).

(5)
(a) If a county or municipality has established a pretrial services program, the magistrate or judge shall consider the services that the county or municipality has identified as available in determining what conditions of release to impose.
(b) The magistrate or judge may not order conditions of release that would require the county or municipality to provide services that are not currently available from the county or municipality.
(c) Notwithstanding Subsection (5)(a), the magistrate or judge may impose conditions of release not identified by the county or municipality so long as the condition does not require assistance or resources from the county or municipality.

(6)
(a) If the magistrate or judge determines that a financial condition, other than an unsecured bond, is necessary to impose as a condition of release, the magistrate or judge shall consider the individual's ability to pay when determining the amount of the financial condition.

(b) If the magistrate or judge determines that a financial condition is necessary to impose as a condition of release, and a bail commissioner fixed a financial condition for the individual under Section 77-20-204, the magistrate or judge may not give any deference to:
(i) the bail commissioner's action to fix a financial condition; or
(ii) the amount of the financial condition that the individual was required to pay for pretrial release.
(c) If a magistrate or judge orders a financial condition as a condition of release, the judge or magistrate shall set the financial condition at a single amount per case.
(7) In making a determination about pretrial release under this section, the magistrate or judge may:
(a) rely upon information contained in:
(i) the indictment or information;
(ii) any sworn or probable cause statement or other information provided by law enforcement;
(iii) a pretrial risk assessment;
(iv) an affidavit of indigency described in Section 78B-22-201.5;
(v) witness statements or testimony; or
(vi) any other reliable record or source, including proffered evidence; and
(b) consider:
(i) the nature and circumstances of the offense, or offenses, that the individual was arrested for, or charged with, including:
(A) whether the offense is a violent offense; and
(B) the vulnerability of a witness or alleged victim;
(ii) the nature and circumstances of the individual, including the individual's:
(A) character;
(B) physical and mental health;
(C) family and community ties;
(D) employment status or history;
(E) financial resources;
(F) past criminal conduct;
(G) history of drug or alcohol abuse; and
(H) history of timely appearances at required court proceedings;
(iii) the potential danger to another individual, or individuals, posed by the release of the individual;
(iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;
(v) the availability of:
(A) other individuals who agree to assist the individual in attending court when required; or
(B) supervision of the individual in the individual's community;
(vi) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or
(vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.
(8) An individual arrested for violation of a jail release agreement, or a jail release court order, issued in accordance with Section 78B-7-802:
(a) may not be released before the individual's first appearance before a magistrate or judge; and
(b) may be denied pretrial release by the magistrate or judge under Subsection (2).

Enacted by Chapter 4, 2021 Special Session 2

77-20-206 Motion for pretrial detention -- Pretrial detention hearing.

(1)
(a) If the criminal charges filed against an individual include one or more offenses eligible for detention under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8, the prosecuting attorney may make a motion for pretrial detention.
(b) Upon receiving a motion for pretrial detention under Subsection (1)(a), the judge shall set a pretrial detention hearing in accordance with Subsection (2).

(2) If a pretrial status order is not issued at an individual's first appearance and the individual remains detained, a pretrial detention hearing shall be held at the next available court hearing that is:
(a) no sooner than seven days from the day on which the defendant was arrested; and
(b) no later than fourteen days from the day on which the defendant was arrested.

(3)
(a) An individual, who is the subject of a pretrial detention hearing, has the right to be represented by counsel at the pretrial detention hearing.
(b) If a judge finds the individual is indigent under Section 78B-22-202, the judge shall appoint counsel to represent the individual in accordance with Section 78B-22-203.

(4) At the pretrial detention hearing:
(a) the judge shall give both parties the opportunity to make arguments and to present relevant evidence or information;
(b) the prosecuting attorney and the defendant have a right to subpoena witnesses to testify; and
(c) the judge shall issue a pretrial status order in accordance with Subsection (5) and Section 77-20-205.

(5) After hearing evidence on a motion for pretrial detention, and based on the totality of the circumstances, a judge may order detention if:
(a) the individual is accused of committing an offense that qualifies for detention of the individual under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8; and
(b) the prosecuting attorney demonstrates substantial evidence to support the charge, and meets all additional evidentiary burdens required under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8.

(6) An alleged victim has the right to be heard at a pretrial detention hearing on a motion for pretrial detention.

(7) If a defendant seeks to subpoena an alleged victim who did not willingly testify at the pretrial detention hearing, a defendant may issue a subpoena, at the conclusion of the pretrial detention hearing, compelling the alleged victim to testify at a subsequent hearing only if the judge finds that the testimony sought by the subpoena:
(a) is material to the substantial evidence or clear and convincing evidence determinations described in Section 77-20-201 in light of all information presented to the court; and
(b) would not unnecessarily intrude on the rights of the victim or place an undue burden on the victim.

Enacted by Chapter 4, 2021 Special Session 2

77-20-207 Modification of pretrial status order.

(1) A motion to modify a pretrial status order may be made:
(a) by a party at any time after a pretrial status order is issued; and
(b) only upon a showing that there has been a material change in circumstances.

(2)
(a) If a party makes a motion to modify the pretrial status order, the party shall provide notice to the opposing party sufficient to permit the opposing party to prepare for a hearing and to permit each alleged victim to be notified and be present.
(b) A hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.
(3) In ruling upon a motion to modify a pretrial status order, the judge may:
(a) rely on information as provided in Subsection 77-20-205(7);
(b) base the judge's ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to pretrial release; and
(c) modify the pretrial status order, including the conditions of release, upon a finding that there has been a material change in circumstances.

Enacted by Chapter 4, 2021 Special Session 2

77-20-208 Release from conditions when charges not filed in specified time period.
(1) If a prosecuting attorney does not file an information, indictment, or a request to extend time under Subsection (2), within 120 days after the day on which a bail commissioner released the individual on a financial condition under Section 77-20-203 or within 120 days after the day on which a temporary pretrial status order was issued for the individual:
(a) the individual shall be relieved from any condition of pretrial release;
(b) the court shall refund any monetary bail in accordance with Subsection 77-20-402(5); and
(c) if a bail bond was used to post monetary bail, the bail bond shall be exonerated without further order of the court.
(2) A request to extend time shall:
(a) be served on:
(i) the individual and the individual's attorney; and
(ii) if a bail bond was used to post monetary bail, the surety; and
(b) except as provided in Subsection (3), be granted for a period of up to 60 days.
(3) The magistrate may grant a request to extend time for a period of up to 120 days upon a showing of good cause.
(4) Nothing in this section prohibits the filing of charges against an individual at any time.

Enacted by Chapter 4, 2021 Special Session 2

Part 3
Postconviction Bail

77-20-301 Grounds for detaining or releasing defendant on conviction and prior to sentence.
(1) Upon conviction, by plea or trial, the court shall order that the convicted defendant who is waiting imposition or execution of sentence be detained, unless the court finds, by clear and convincing evidence, presented by the defendant that the defendant:
(a) is not likely to flee the jurisdiction of the court if released; and
(b) will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, including conditions of release described in Subsection 77-20-205(4).

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-302 Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.

(1) The court shall order that a defendant who has been found guilty of an offense in a court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:
  (a) the appeal raises a substantial question of law or fact likely to result in:
    (i) reversal;
    (ii) an order for a new trial; or
    (iii) a sentence that does not include a term of imprisonment in jail or prison;
  (b) the appeal is not for the purpose of delay; and
  (c) by clear and convincing evidence presented by the defendant, that the defendant:
    (i) is not likely to flee the jurisdiction of the court if released; and
    (ii) will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2)
  (a) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to only conditions of release that are reasonably available and necessary to reasonably ensure the appearance of the defendant as required and the safety of any other individual, property, and the community.
  (b) The conditions under Subsection (2)(a) may include conditions described in Subsection 77-20-205(4).
  (c) The court may, in the court's discretion, amend an order granting release to impose additional or different conditions of release.

(3) If the defendant is found guilty of an offense in a court not of record and files a timely notice of appeal in accordance with Subsection 78A-7-118(1) for a trial de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance of the evidence that the defendant poses a danger to another person or the community.

(4) If a stay is ordered, the court may order postconviction restrictions on the defendant's conduct as appropriate, including:
  (a) continuation of any pretrial restrictions or orders;
  (b) sentencing protective orders under Section 78B-7-804;
  (c) drug and alcohol use;
  (d) use of an ignition interlock; and
  (e) posting appropriate monetary bail.

(5) The provisions of Subsections (3) and (4) do not apply to convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(6) Any stay authorized by Subsection (3) is lifted upon the dismissal of the appeal by the district court.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

Part 4
Monetary Bail

77-20-401 Payment of monetary bail to sheriff or bail commissioner -- Specific payment methods.

(1) Subject to Subsection 77-20-402(2), if an individual has been required by a bail commissioner, or ordered by a magistrate or judge, to post monetary bail as a condition of pretrial release, the individual may post the amount of monetary bail with the bail commissioner:
  (a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; or
  (b) by a bail bond issued by a surety.
(2) A bail commissioner shall deliver any monetary bail received under Subsection (1) to the appropriate court within three days after the day on which the monetary bail is received by the bail commissioner.

Enacted by Chapter 4, 2021 Special Session 2

77-20-402 Payment of monetary bail to court -- Specific payment methods -- Refund of monetary bail.

(1) Subject to Subsection (2), a defendant may choose to post the amount of monetary bail imposed by a judge or magistrate by any of the following methods:
  (i) in cash;
  (ii) by a bail bond with a surety;
  (iii) by an unsecured bond, at the discretion of the judge or magistrate; or
  (iv) by credit or debit card, at the discretion of the judge or magistrate.
(2) A judge or magistrate may limit a defendant to a specific method of posting monetary bail described in Subsection (1):
  (a) if, after charges are filed, the defendant fails to appear in the case on a bail bond and the case involves a violent offense;
  (b) in order to allow the defendant to voluntarily remit the fine in accordance with Section 77-7-21 and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;
  (c) if the defendant has failed to respond to a citation or summons and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;
  (d) if a warrant is issued for the defendant solely for failure to pay a criminal accounts receivable, as defined in Section 77-32b-102, and the defendant's monetary bail is limited to the amount owed; or
  (e) if a court has entered a judgment of bail bond forfeiture under Section 77-20-505 in any case involving the defendant.
(3) Monetary bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address, telephone number, and email address of the surety.
(4) Monetary bail posted by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.
(5)

(a) Monetary bail refunded by the court may be refunded by credit to the debit or credit card or in cash.
(b) The amount refunded shall be the full amount received by the court under Subsection (4), which may be less than the full amount of the monetary bail set by the judge or magistrate.
(c) Before refunding monetary bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward a criminal accounts receivable, as defined in Section 77-32b-102, that is owed by the defendant in the priority set forth in Section 77-38b-304.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-404 Disposition of forfeited monetary bail.

If money deposited as a financial condition or money paid by a surety on a bail bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom the money is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:
(1) the forfeited amount in cases in precinct justice courts or in municipal justice courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121; and
(2) in all other cases:
(a) where the financial condition was paid by a surety:
(i) 60% of the forfeited amount shall be paid to the Pretrial Release Programs Special Revenue Fund established in Section 63M-7-215;
(ii) 20% of the forfeited amount shall be paid to the General Fund; and
(iii) 20% of the forfeited amount shall be paid to the prosecuting agency that brings an action to collect under Section 77-20-505; and
(b) where the financial condition was paid without the assistance of a surety:
(i) 75% of the forfeited amount shall be paid to the Pretrial Release Programs Special Revenue Fund established in Section 63M-7-215; and
(ii) 25% of the forfeited amount shall be paid to the General Fund.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

Part 5
Bail Surety

77-20-501 Liability on a bail bond -- Failure to appear -- Notice to surety.

(1)
(a) Unless exonerated under Subsection 77-20-504(5), the principal and the surety on a bail bond are liable on the bail bond during all proceedings and for all court appearances required of the defendant up to and including the surrender of the defendant for sentencing, regardless of any contrary provision in the bail bond agreement.
(b) Any failure of the defendant to appear when required is a breach of the conditions of the bail bond and subjects the bail bond to forfeiture regardless of whether notice of the required appearance was given to the surety.
(2)
(a) If a defendant, who has posted monetary bail by a bail bond, fails to appear before the appropriate court as required, the court shall:

(i) within 28 days after the day on which the defendant fails to appear, issue a bench warrant that includes the original case number; and
(ii) direct the clerk of the court to notify the surety of the defendant's failure to appear.
(b) The clerk of the court shall:
(i) email notice of the defendant's failure to appear to the surety at the email address provided on the bond;
(ii) notify the surety as listed on the bail bond of the name, address, and telephone number of the prosecuting attorney;
(iii) email a copy of the notice sent under Subsection (2)(b)(i) to the prosecuting attorney's office at the same time notice is sent under Subsection (2)(b)(i); and
(iv) ensure that the name, address, business email address, and telephone number of the surety or the surety's agent as listed on the bail bond is stated on the bench warrant.
(3) The prosecuting attorney may email notice of the defendant's failure to appear to the address of the surety as listed on the bail bond within 35 days after the day on which the defendant fails to appear.
(4)
(a)
(i) If a defendant appears in court within seven days after a missed, scheduled court appearance, the court may reinstate the bail bond without further notice to the surety.
(ii) If the defendant, while in custody, appears on the case for which the bail bond was posted, the court may not reinstate the bail bond without the consent of the bail bond company.
(b) If a defendant fails to appear within seven days after a scheduled court appearance, the court may not reinstate the bail bond without the consent of the surety.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-502 Time for bringing defendant to court -- Defendant in custody in another jurisdiction -- Notice to prosecuting attorney.
(1)
(a) If notice of a defendant's failure to appear is emailed to a surety under Section 77-20-501, the surety may bring the defendant before the court, or surrender the defendant into the custody of a county sheriff within the state, within 180 days after the day on which the defendant failed to appear in court as required.
(b) A forfeiture action may not be brought during the 180-day time period described in Subsection (1)(a).
(2) A surety may request an extension of the 180-day time period in Subsection (1) if the surety within that time:
(a) files a motion for extension with the court; and
(b) mails the motion for extension and a notice of hearing on the motion to the prosecuting attorney.
(3) The court may extend the 180-day time period in Subsection (1) for no more than 30 days if:
(a) the surety has complied with Subsection (2); and
(b) the court finds good cause.
(4) If a surety is unable to bring a defendant to the court because the defendant is and will be in the custody of authorities of another jurisdiction, the surety shall:
(a) notify the court and the prosecuting attorney; and
(b) provide the name, address, and telephone number of the custodial authority.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-503 Surrender of defendant by surety -- Arrest of defendant.

(1)
(a)
(i) A surety may at any time prior to a defendant's failure to appear, surrender the defendant and obtain an exoneration of the bail bond by notifying the clerk of the court in which the bail bond was posted of the defendant's surrender and requesting exoneration.
(ii) Notification shall be made immediately following the surrender by mail, email, or fax.
(b) To effect surrender of the defendant, a certified copy of the surety's bail bond from the court in which the bail bond was posted or a copy of the bail bond agreement with the defendant shall be delivered to the on-duty jailer, who shall:
(i) detain the defendant in the on-duty jailer's custody as upon a commitment; and
(ii) in writing acknowledge the surrender upon the copy of the bail bond or bail bond agreement.
(c) The certified copy of the bail bond or copy of the bail bond agreement upon which the acknowledgment of surrender is endorsed shall be filed with the court.
(d) Upon a filing described in Subsection (1)(c), the court, upon proper application, may:
(i) exonerate the bail bond; and
(ii) order a refund of any paid premium, or part of a premium, as the court finds just.
(2) For the purpose of surrendering the defendant, the surety may:
(a) arrest the defendant:
(i) at any time before the defendant is finally exonerated; and
(ii) at any place within the state; and
(b) surrender the defendant to any county jail booking facility in Utah.
(3) An arrest under this section is not a basis for exoneration of the bail bond under Section 77-20-504.
(4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond Recovery Act.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-504 Exoneration of a bail bond.

(1) The court shall exonerate a bail bond if:
(a)
(i) a defendant, who has posted monetary bail by a bail bond, fails to appear before the appropriate court as required;
(ii) notice of the defendant's failure to appear is not emailed to the surety as listed on the bail bond as described in Subsection 77-20-501(2) or (3); and
(iii) the surety's current name and email address, or the bail bond agency's current name and email address, are listed on the bail bond in the court's file;
(b) the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges for which the bail bond was issued and the surety provides written proof of the arrest and booking to the court and the prosecuting attorney;
(c) the court recalls a warrant for failure to appear due to the defendant's having paid the fine and before entry of a judgment of forfeiture of the bail bond;
(d) the surety provides written proof to the court and the prosecuting attorney that the defendant is in custody and the surety has served the defendant's bail bond revocation on the custodial authority; or
(e) unless the court makes a finding of good cause why the bail bond should not be exonerated:

(i) the surety has delivered the defendant to the county jail booking facility in the county where the original charge or charges are pending;
(ii) the defendant has been released on a bail bond secured from a subsequent surety for the original charge and the failure to appear;
(iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's own recognizance under a court order regulating jail capacity or by a sheriff's release under Section 17-22-5.5;
(iv) the surety has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending and the payment is in an amount equal to the cost of government transportation under Section 76-3-201; or
(v) the surety demonstrates, by a preponderance of the evidence, that:
(A) at the time the surety issued the bail bond, the surety made reasonable efforts to determine that the defendant was legally present in the United States;
(B) a reasonable person would have concluded, based on the surety's determination, that the defendant was legally present in the United States; and
(C) the surety has failed to bring the defendant before the court because the defendant is in federal custody or has been deported.

(2) Under circumstances not otherwise provided for in Subsection (1), the court may exonerate the bail bond if the court finds:
(a) that the prosecuting attorney has been given reasonable notice of a surety's motion to exonerate the bail bond; and
(b) there is good cause for the bail bond to be exonerated.

(3) If a surety's bail bond has been exonerated under Subsection (1) or (2) and the surety remains liable for the cost of transportation of the defendant, the surety may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.

(4) If the defendant is subject to extradition or other means by which the state can return the defendant to law enforcement custody within the court's jurisdiction, and the surety gives notice under Subsection 77-20-502(4)(a), the surety's bail bond shall be exonerated:
(a) if the prosecuting attorney elects in writing not to extradite the defendant immediately; and
(b) if the prosecuting attorney elects in writing to extradite the defendant, to the extent the bail bond exceeds the reasonable, actual, or estimated costs to extradite and return the defendant to law enforcement custody within the court's jurisdiction, upon the occurrence of the earlier of:
(i) the prosecuting attorney's lodging a detainer on the defendant; or
(ii) 60 days after the day on which the surety gives notice to the prosecuting attorney under Subsection 77-20-502(4)(a) if the defendant remains in custody of the same authority during that 60-day time period.

(5)
(a) Except as provided in Subsection (6), the court shall exonerate the bail bond, without motion, upon sentencing the defendant.
(b) If the defendant's sentence includes commitment to a jail or prison, the court shall exonerate the bail bond when the defendant appears at the appropriate jail or prison, unless the judge does not require the defendant to begin the commitment within seven days, in which case the bail bond is exonerated upon sentencing.

(c) For purposes of this Subsection (5), an order of the court accepting a plea in abeyance agreement and holding that plea in abeyance in accordance with Title 77, Chapter 2a, Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.
(d) Any suspended or deferred sentencing is not the responsibility of the surety and the bail bond is exonerated without any motion, upon acceptance of the court and the defendant of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement.
(6) If a surety issues a bail bond after sentencing, the surety is liable on the bail bond during all proceedings and for all court appearances required of the defendant up to and including the defendant's appearance to commence serving the sentence imposed under Subsection (5).

Enacted by Chapter 4, 2021 Special Session 2

77-20-505 Forfeiture of a bail bond.
(1) If a surety fails to bring the defendant before the court within the time period described in Section 77-20-502, the prosecuting attorney may request the forfeiture of the bail bond by:
(a) filing a motion for bail bond forfeiture with the court, supported by proof of notice to the surety of the defendant's failure to appear; and
(b) emailing a copy of the motion to the surety.
(2) A court shall enter judgment of bail bond forfeiture without further notice if the court finds, by a preponderance of the evidence:
(a) the defendant failed to appear as required;
(b) the surety was given notice of the defendant's failure to appear in accordance with Section 77-20-501;
(c) the surety failed to bring the defendant to the court within the 180-day time period under Section 77-20-502; and
(d) the prosecuting attorney has complied with the notice requirements under Subsection (1).
(3) If the surety shows, by a preponderance of the evidence, that the surety has failed to bring the defendant before the court because the defendant is deceased through no act of the surety, the court may not enter judgment of bail bond forfeiture and the bail bond is exonerated.
(4)
(a) The amount of bail forfeited is the face amount of the bail bond, but if the defendant is in the custody of another jurisdiction and the state extradites or intends to extradite the defendant, the court may reduce the amount forfeited to the actual or estimated costs of returning the defendant to the court's jurisdiction.
(b) A judgment under Subsection (5) shall:
(i) identify the surety against whom judgment is granted;
(ii) specify the amount of monetary bail forfeited;
(iii) grant the forfeiture of the bail bond; and
(iv) be docketed by the clerk of the court in the civil judgment docket.
(5) A prosecuting attorney may immediately commence collection proceedings to execute a judgment of bail bond forfeiture against the assets of the surety.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

Chapter 21
Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings

77-21-1 Short title -- Construction.

This chapter may be cited as the "Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings." It shall be interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Enacted by Chapter 15, 1980 General Session

77-21-2 Procedure to secure attendance in another state.

If a judge of a court of record in any state, which by its laws has made provisions for commanding persons within that state to attend and testify in this state, certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in the prosecution or grand jury investigation and that his presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record within this state in the county in which the person is found, the judge shall fix a time and place for a hearing and make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct the witness to be immediately brought before him for the hearing, and the judge at the hearing being satisfied of the desirability of custody and delivery, for which determination the certificate shall be prima facie proof of desirability, may, in lieu of issuing subpoena or summons, order the witness to be immediately taken into custody and delivered to an officer of the requesting state.

If the witness who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 20 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $30 for each day he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Enacted by Chapter 15, 1980 General Session

77-21-3 Procedure to secure attendance of witness from without state.

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered such sum as may be required by the laws of the state in which the witness is found, not exceeding the sum of 20 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $30 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If the witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Enacted by Chapter 15, 1980 General Session

77-21-4 Fees.

Whenever a judge of a court of record of this state issues a certificate under the provisions of this chapter to obtain the attendance of a witness for the prosecution from without the state in a criminal prosecution or grand jury investigation commenced or about to commence he shall designate therein a suitable peace officer of this state to present the certificate to the proper officer or tribunal of the state wherein the witness is found and to tender to the witness his per diem and mileage fees.

The officer shall exhibit the certificate to the county auditor of the county in which the criminal proceeding is pending and the auditor shall draw his warrant upon the county treasurer in favor of the officer in the amount to be tendered the witness. The officer shall be liable upon his official bond for the proper disposition of the money received.

In all cases in which the officer is required to travel in order to present the certificate and tender fees, his actual and necessary traveling expenses shall be paid out of the fund from which witnesses for the prosecution in the criminal proceeding are paid.

Enacted by Chapter 15, 1980 General Session

77-21-5 Witnesses not subject to arrest or service of process.

If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not, while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom he shall not, while so

passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

Enacted by Chapter 15, 1980 General Session

Chapter 22
Subpoena Powers for Aid of Criminal Investigation and Grants of Immunity

77-22-1 Declaration of necessity.

It is declared, as a matter of legislative determination, that it is necessary to grant subpoena powers in aid of criminal investigations and to provide a method of keeping information gained from investigations secret both to protect the innocent and to prevent criminal suspects from having access to information prior to prosecution.

Amended by Chapter 296, 1997 General Session

77-22-2 Investigations -- Right to subpoena witnesses and require production of evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed court -- Disclosure of information.

(1) As used in this section, "prosecutor" means the same as that term is defined in Section 77-22-4.5.

(2)
  (a) In any matter involving the investigation of a crime or malfeasance in office, or any criminal conspiracy or activity, the prosecutor may, upon application and approval of the district court and for good cause shown, conduct a criminal investigation.
  (b) The application and statement of good cause shall state whether another investigative order related to the investigation at issue has been filed in another court.

(3)
  (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:
    (i) subpoena witnesses;
    (ii) compel their attendance and testimony under oath to be recorded by a suitable electronic recording device or to be given before any certified court reporter; and
    (iii) require the production of books, papers, documents, recordings, and any other items that are evidence or may be relevant to the investigation.
  (b) The prosecutor shall:
    (i) apply to the district court for each subpoena; and
    (ii) show that the requested information is reasonably related to the criminal investigation authorized by the court.

(4)
  (a) The prosecutor shall state in each subpoena:
    (i) the time and place of the examination;
    (ii) that the subpoena is issued in aid of a criminal investigation; and
    (iii) the right of the person subpoenaed to have counsel present.
  (b) The examination may be conducted anywhere within the jurisdiction of the prosecutor issuing the subpoena.
  (c) The subpoena need not disclose the names of possible defendants.

(d) Witness fees and expenses shall be paid as in a civil action.

(5)

(a) At the beginning of each compelled interrogation, the prosecutor shall personally inform each witness:

(i) of the general subject matter of the investigation;

(ii) of the privilege to, at any time during the proceeding, refuse to answer any question or produce any evidence of a communicative nature that may result in self-incrimination;

(iii) that any information provided may be used against the witness in a subsequent criminal proceeding; and

(iv) of the right to have counsel present.

(b) If the prosecutor has substantial evidence that the subpoenaed witness has committed a crime that is under investigation, the prosecutor shall:

(i) inform the witness in person before interrogation of that witness's target status; and

(ii) inform the witness of the nature of the charges under consideration against the witness.

(6)

(a)

(i) The prosecutor may make written application to any district court showing a reasonable likelihood that publicly releasing information about the identity of a witness or the substance of the evidence resulting from a subpoena or interrogation would pose a threat of harm to a person or otherwise impede the investigation.

(ii) Upon a finding of reasonable likelihood, the court may order the:

(A) interrogation of a witness be held in secret;

(B) occurrence of the interrogation and other subpoenaing of evidence, the identity of the person subpoenaed, and the substance of the evidence obtained be kept secret; and

(C) record of testimony and other subpoenaed evidence be kept secret unless the court for good cause otherwise orders.

(b) After application, the court may by order exclude from any investigative hearing or proceeding any persons except:

(i) the attorneys representing the state and members of their staffs;

(ii) persons who, in the judgment of the attorneys representing the state, are reasonably necessary to assist in the investigative process;

(iii) the court reporter or operator of the electronic recording device; and

(iv) the attorney for the witness.

(c) This chapter does not prevent attorneys representing the state or members of their staff from disclosing information obtained pursuant to this chapter for the purpose of furthering any official governmental investigation.

(d)

(i) If a secrecy order has been granted by the court regarding the interrogation or disclosure of evidence by a witness under this subsection, and if the court finds a further restriction on the witness is appropriate, the court may order the witness not to disclose the substance of the witness's testimony or evidence given by the witness to others.

(ii) Any order to not disclose made under this subsection shall be served with the subpoena.

(iii) In an appropriate circumstance the court may order that the witness not disclose the existence of the investigation to others.

(iv) Any order under this Subsection (6)(d) must be based upon a finding by the court that one or more of the following risks exist:

(A) disclosure by the witness would cause destruction of evidence;

(B) disclosure by the witness would taint the evidence provided by other witnesses;

(C) disclosure by the witness to a target of the investigation would result in flight or other conduct to avoid prosecution;
(D) disclosure by the witness would damage a person's reputation; or
(E) disclosure by the witness would cause a threat of harm to any person.

(e)
(i) If the court imposes an order under Subsection (6)(d) authorizing an instruction to a witness not to disclose the substance of testimony or evidence provided and the prosecuting agency proves by a preponderance of the evidence that a witness has violated that order, the court may hold the witness in contempt.
(ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not infringe on the attorney-client relationship between the witness and the witness's attorney or on another legally recognized privileged relationship.

(7)
(a)
(i) The prosecutor may submit to any district court a separate written request that the application, statement of good cause, and the court's order authorizing the investigation be kept secret.
(ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government Records Access and Management Act, but need not contain any information that would compromise any of the interest listed in Subsection (7)(c).

(b) With the court's permission, the prosecutor may submit to the court, in camera, any additional information to support the request for secrecy if necessary to avoid compromising the interests listed in Subsection (7)(c).

(c) The court shall consider all information in the application and order authorizing the investigation and any information received in camera and shall order that all information be placed in the public file except information that, if disclosed, would pose:
(i) a substantial risk of harm to a person's safety;
(ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or
(iii) a serious impediment to the investigation.

(d) Before granting an order keeping secret documents and other information received under this section, the court shall narrow the secrecy order as much as reasonably possible in order to preserve the openness of court records while protecting the interests listed in Subsection (7)(c).

Amended by Chapter 420, 2019 General Session

77-22-2.5 Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:
(a)
(i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.
(ii) "Electronic communication" does not include:
(A) a wire or oral communication;
(B) a communication made through a tone-only paging device;
(C) a communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means a service which provides for users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means a wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and a computer facilities or related electronic equipment for the electronic storage of the communication.

(d) "Internet service provider" means the same as that term is defined in Section 76-10-1230.

(e) "Prosecutor" means the same as that term is defined in Section 77-22-4.5.

(f) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(g) "Sexual offense against a minor" means:

(i) sexual exploitation of a minor or attempted sexual exploitation of a minor in violation of Section 76-5b-201;

(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206;

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401;

(v) human trafficking of a child in violation of Section 76-5-308.5; or

(vi) aggravated sexual extortion of a child in violation of Section 76-5b-204.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec. 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier is suspected of being used in the commission of the offense:

(i) names of subscribers, service customers, and users;

(ii) addresses of subscribers, service customers, and users;

(iii) records of session times and durations;

(iv) length of service, including the start date and types of service utilized; and

(v) telephone or other instrument subscriber numbers or other subscriber identifiers, including a temporarily assigned network address.

(3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce a record under Subsections (2)(c)(i)

through (v) that is reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.

(4)

(a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that the provider does not have the information.

(7) There is no cause of action against a provider or wire or electronic communication service, or the provider or service's officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

(8)

(a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) A prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, pursuant to Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Amended by Chapter 382, 2019 General Session
Amended by Chapter 420, 2019 General Session

77-22-4 Investigation records to be filed with court.

In all investigations under Section 77-22-2, the attorney general, county attorney, or district attorney shall maintain and file with the district court the following records of the criminal investigation, unless otherwise ordered by the court:

(1) a copy of the good cause statement and application for the authorization of the criminal investigation;

(2) a copy of all motions made to the court by the attorney general, the county attorney, or the district attorney;

(3) a copy of all court orders;

(4) a copy of all subpoenas issued;

(5) detailed descriptions of all documents and other evidence produced in response to subpoenas;

(6) a copy of all transcripts of testimony taken pursuant to the subpoena; and

(7) a copy of all written communications between the court and the attorney general, county attorney, or district attorney, and staff.

Amended by Chapter 38, 1993 General Session

77-22-4.5 Prosecutorial authority to compromise an offense regarding a witness.

(1) As used in this section, "prosecutor" includes the state attorney general and any assistant, a district attorney and any deputy, a county attorney and any deputy, and a municipal prosecutor and any deputy.

(2) This chapter does not prohibit or limit the authority of a prosecutor to divert, reduce, or compromise any criminal charge against a witness or other party when the witness voluntarily enters into an agreement to provide testimony or other evidence against himself or another accused in consideration for the diversion, reduction, or compromise if:

(a) the prosecutor holds authority to prosecute the offense against the witness or other party; and

(b) the complete agreement with the witness is in writing and a copy of the agreement is given to the witness.

(3) Any agreement under Subsection (2) is subject to discovery by counsel for the accused in any prosecution in which the witness with whom the agreement is made has agreed to testify.

Enacted by Chapter 115, 1995 General Session

77-22-5 Prosecutorial powers.

The powers of this chapter are in addition to any other powers granted to the attorney general or county attorneys.

Enacted by Chapter 123, 1989 General Session

Chapter 22a
Administrative Subpoenas in Controlled Substances Investigations

77-22a-1 Administrative subpoenas -- Controlled substances investigations -- Procedures -- Witness fees.

(1)

(a) The administrative subpoena process of this chapter may be used only to obtain third party information under circumstances where it is clear that the subpoenaed information is not subject to a claim of protection under the Fourth, Fifth, or Sixth Amendment, United States Constitution, or a similar claim under Article I, Sec. 12 and Sec. 14, Utah Constitution.

(b) A party subpoenaed under this chapter shall be advised by the subpoena that the party has a right to challenge the subpoena by motion to quash filed in the appropriate district court named in the subpoena before compliance is required.

(2)

(a) In any investigation relating to an attorney's functions under this chapter regarding controlled substances, the attorney general or a deputy or assistant attorney general, the county attorney or a deputy county attorney, or the district attorney or deputy district attorney may subpoena witnesses, compel the attendance and testimony of witnesses, or require the production of any records including books, papers, documents, and other tangible things that

constitute or contain evidence found by the attorney general or a deputy or assistant attorney general or the county attorney or district attorney, as provided under Sections 17-18a-202 and 17-18a-203, or the county attorney's or district attorney's deputy under Section 17-18a-602, to be relevant or material to the investigation.

(b) The attendance of witnesses or the production of records may be required from any place within the state.

(3) Witnesses subpoenaed under this section shall be paid the same fees and mileage costs as witnesses in the state district courts.

(4) If the attorney general, a deputy or assistant attorney general, or the county attorney or district attorney, or a deputy attorney determines that disclosure of the existence of an administrative subpoena or of the information sought or of the existence of the investigation under which it is issued would pose a threat of harm to a person or otherwise impede the investigation, the subpoena shall contain language on its face directing that the witness not disclose to any person the existence or service of the subpoena, the information being sought, or the existence of an investigation.

Amended by Chapter 237, 2013 General Session

77-22a-2 Service of administrative subpoena.

(1) A subpoena issued under this section may be served by any person designated in the subpoena for that purpose. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association subject to suit under a common name by delivering the subpoena to an officer, managing or general agent, or other agent authorized by appointment or law to receive service of process.

(2) The affidavit of the person serving the subpoena, when entered on a copy of the subpoena by the person serving it, is proof of service.

Enacted by Chapter 9, 1989 General Session

77-22a-3 Compliance with administrative subpoena.

(1) In the case of contumacy by or refusal to obey a subpoena issued to any person, the attorney general or a deputy or assistant attorney general or the county attorney or district attorney or his deputy may compel compliance with the subpoena through the district court:

(a) in the jurisdiction where the investigation is carried on;

(b) where the subpoenaed person is an inhabitant;

(c) where he carries on business; or

(d) where he may be found.

(2) The court may issue an order requiring the person subpoenaed to produce records or to appear before the attorney general or deputy or assistant attorney general, or the county attorney or district attorney or his deputy who issued the subpoena testimony touching the matter under investigation.

(3) Any failure to obey the court order may be punished by the court as contempt. All process in the case may be served in any judicial district in which the person may be found within the state.

(4) A witness may not be held liable in any civil or criminal proceeding for producing records or disclosing information to the person issuing the administrative subpoena as commanded by the subpoena.

Amended by Chapter 38, 1993 General Session

Chapter 22b
Grants of Immunity

77-22b-1 Immunity granted to witness.

(1)

(a) A witness who refuses, or is likely to refuse, on the basis of the witness's privilege against self-incrimination to testify or provide evidence or information in a criminal investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of an investigation or inquiry being conducted by a government agency or commission, or by either house of the Legislature, a joint committee of the two houses, or a committee or subcommittee of either house, may be compelled to testify or provide evidence or information by any of the following, after being granted use immunity with regards to the compelled testimony or production of evidence or information:

(i) the attorney general or any assistant attorney general authorized by the attorney general;

(ii) a district attorney or any deputy district attorney authorized by a district attorney;

(iii) in a county not within a prosecution district, a county attorney or any deputy county attorney authorized by a county attorney;

(iv) a special counsel for the grand jury;

(v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec. 16; or

(vi) legislative general counsel in the case of testimony pursuant to subpoena before:

(A) the Legislature;

(B) either house of the Legislature; or

(C) a committee of the Legislature, including a joint committee, a committee of either house, a subcommittee, or a special investigative committee.

(b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to testify or provide evidence or information under a grant of use immunity, the prosecutor shall notify the witness by written notice. The notice shall include the information contained in Subsection (2) and advise the witness that the witness may not refuse to testify or provide evidence or information on the basis of the witness's privilege against self-incrimination. The notice need not be in writing when the grant of use immunity occurs on the record in the course of a preliminary hearing, grand jury proceeding, or trial.

(2) Testimony, evidence, or information compelled under Subsection (1) may not be used against the witness in any criminal or quasi-criminal case, nor any information directly or indirectly derived from this testimony, evidence, or information, unless the testimony, evidence, or information is volunteered by the witness or is otherwise not responsive to a question. Immunity does not extend to prosecution or punishment for perjury or to giving a false statement in connection with any testimony.

(3) If a witness is granted immunity under Subsection (1) and is later prosecuted for an offense that was part of the transaction or events about which the witness was compelled to testify or produce evidence or information under a grant of immunity, the burden is on the prosecution to show by a preponderance of the evidence that no use or derivative use was made of the compelled testimony, evidence, or information in the subsequent case against the witness, and to show that any proffered evidence was derived from sources totally independent of

the compelled testimony, evidence, or information. The remedy for not establishing that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information is suppression of that evidence only.
(4) Nothing in this section prohibits or limits prosecutorial authority granted in Section 77-22-4.5.
(5) A county attorney within a prosecution district shall have the authority to grant immunity only as provided in Subsection 17-18a-402(3).
(6) For purposes of this section, "quasi-criminal" means only those proceedings that are determined by a court to be so far criminal in their nature that a defendant has a constitutional right against self-incrimination.

Amended by Chapter 1, 2013 Special Session 1
Amended by Chapter 1, 2013 Special Session 1

77-22b-2 Refusal of witness to testify or produce evidence or information.
(1) A witness who has been served with notice under Section 77-22b-1 and refuses to comply with the notice may be required to show cause before the district court why the witness should not be compelled to testify or otherwise produce evidence or information.
(2) If, after notice and hearing, the court finds that the witness should be compelled to testify or otherwise produce evidence or information, it shall order the witness to comply. If the witness then refuses to comply, the witness may be held in contempt of court.

Enacted by Chapter 296, 1997 General Session

Chapter 23
Search and Administrative Warrants

Part 1
Administrative Traffic Checkpoint Act

77-23-101 Title of act.
Sections 77-23-101 through 77-23-105 may be cited as the "Administrative Traffic Checkpoint Act."

Enacted by Chapter 72, 1992 General Session

77-23-102 Definitions.
As used in this part:
(1) "Administrative traffic checkpoint" means a roadblock procedure where enforcement officers stop all, or a designated sequence of, motor vehicles traveling on highways and roads and subject those vehicles to inspection or testing and the drivers or occupants to questioning or the production of documents.
(2) "Command level officer" includes all sheriffs, heads of law enforcement agencies, and all supervisory enforcement officers of sergeant rank or higher.
(3) "Emergency circumstances" means circumstances where enforcement officers reasonably believe road conditions, weather conditions, or persons present a significant hazard to persons or the property of other persons.

(4) "Enforcement officer" includes:
(a) peace officers as defined in Title 53, Chapter 13, Peace Officer Classifications;
(b) correctional officers as defined in Title 53, Chapter 13, Peace Officer Classifications;
(c) special function officers as defined and under the restrictions of Title 53, Chapter 13, Peace Officer Classifications; and
(d) federal officers as defined in Title 53, Chapter 13, Peace Officer Classifications.
(5) "Magistrate" includes all judicial officers enumerated in Subsection 77-1-3(4).
(6) "Motor vehicle" includes all vehicles as defined in Title 41, Chapter 1a, Motor Vehicle Act.

Amended by Chapter 282, 1998 General Session

77-23-103 Circumstances permitting an administrative traffic checkpoint.

A motor vehicle may be stopped and the occupants detained by an enforcement officer when the enforcement officer:
(1) is acting pursuant to a duly authorized search warrant or arrest warrant;
(2) has probable cause to arrest or search;
(3) has reasonable suspicion that criminal activity has occurred or is occurring;
(4) is acting under emergency circumstances; or
(5) is acting pursuant to duly authorized administrative traffic checkpoint authority granted by a magistrate in accordance with Section 77-23-104.

Enacted by Chapter 72, 1992 General Session

77-23-104 Written plan -- Approval of magistrate.

(1) An administrative traffic checkpoint may be established and operated upon written authority of a magistrate.
(2) A magistrate may issue written authority to establish and operate an administrative traffic checkpoint if:
(a) a command level officer submits to the magistrate a written plan signed by the command level officer describing:
(i) the location of the checkpoint including geographical and topographical information;
(ii) the date, time, and duration of the checkpoint;
(iii) the sequence of traffic to be stopped;
(iv) the purpose of the checkpoint, including the inspection or inquiry to be conducted;
(v) the minimum number of personnel to be employed in operating the checkpoint, including the rank of the officer or officers in charge at the scene;
(vi) the configuration and location of signs, barriers, and other means of informing approaching motorists that they must stop and directing them to the place to stop;
(vii) any advance notice to the public at large of the establishment of the checkpoint; and
(viii) the instructions to be given to the enforcement officers operating the checkpoint;
(b) the magistrate makes an independent judicial determination that the plan appropriately:
(i) minimizes the length of time the motorist will be delayed;
(ii) minimizes the intrusion of the inspection or inquiry;
(iii) minimizes the fear and anxiety the motorist will experience;
(iv) minimizes the degree of discretion to be exercised by the individual enforcement officers operating the checkpoint; and
(v) maximizes the safety of the motorist and the enforcement officers; and

(c) the administrative traffic checkpoint has the primary purpose of inspecting, verifying, or detecting:
(i) drivers that may be under the influence of alcohol or drugs;
(ii) license plates, registration certificates, insurance certificates, or driver licenses;
(iii) violations of Title 23, Wildlife Resources Code of Utah; or
(iv) other circumstances that are specifically distinguishable by the magistrate from a general interest in crime control.
(3) Upon determination by the magistrate that the plan meets the requirements of Subsection (2), the magistrate shall sign the authorization and issue it to the command level officer, retaining a copy for the court's file.
(4) A copy of the plan and signed authorization shall be issued to the checkpoint command level officer participating in the operation of the checkpoint.
(5) Any enforcement officer participating in the operation of the checkpoint shall conform his activities as nearly as practicable to the procedures outlined in the plan.
(6) The checkpoint command level officer shall be available to exhibit a copy of the plan and signed authorization to any motorist who has been stopped at the checkpoint upon request of the motorist.

Amended by Chapter 168, 2001 General Session

77-23-104.5 Signs -- Prohibitions.

An enforcement officer may not display a sign that notifies motorists of an administrative traffic checkpoint unless the checkpoint is being operated under the authority of a magistrate as provided in Section 77-23-104.

Enacted by Chapter 168, 2001 General Session

77-23-105 Failure to stop -- Criminal liability.

Any person who intentionally and knowingly passes, without stopping as required, any administrative traffic checkpoint operated under the authority of a magistrate as provided in Section 77-23-104 is guilty of a class B misdemeanor.

Enacted by Chapter 72, 1992 General Session

Part 2
Search Warrants

77-23-205 Officer may request assistance.

An officer who is serving a search warrant may request other persons to assist in conducting the search.

Amended by Chapter 153, 2007 General Session

77-23-210 Force used in executing a search warrant -- When notice of authority is required as a prerequisite.

(1)

(a) No later than July 1, 2015, any law enforcement agency that seeks a warrant under this section shall comply with guidelines and procedures which are, at a minimum, in accordance with state law and model guidelines and procedures recommended by the Utah Peace Officer Standards and Training Council created in Section 53-6-106.
(b) Written policies adopted pursuant to this section shall be subject to public disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
(2) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may enter:
(a) if, after giving notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or
(b) without notice of the officer's authority and purpose as provided in Subsection (3).
(3)
(a) The officer may enter without notice only if:
(i) there is reasonable suspicion to believe that the notice will endanger the life or safety of the officer or another person;
(ii) there is probable cause to believe that evidence may be easily or quickly destroyed; or
(iii) the magistrate, having found probable cause based upon proof provided under oath that the object of the search may be easily or quickly destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under the Rules of Criminal Procedure; or
(iv) the officer physically observes and documents a previously unknown event or circumstance at the time the warrant is being executed which creates probable cause to believe the object of the search is being destroyed, or creates reasonable suspicion to believe that physical harm may result to any person if notice were given.
(b) The officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering.
(4) An officer executing a warrant under this section may use only that force which is reasonable and necessary to execute the warrant.
(5) An officer executing a warrant under this section shall wear readily identifiable markings, including a badge and vest or clothing with a distinguishing label or other writing which indicates that he or she is a law enforcement officer.
(6)
(a) An officer executing a warrant under this section shall comply with the officer's employing agency's body worn camera policy when the officer is equipped with a body-worn camera.
(b) The employing agency's policy regarding the use of body-worn cameras shall include a provision that an officer executing a warrant under this section shall wear a body-worn camera when a camera is available, except in exigent circumstances where it is not practicable to do so.
(7)
(a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person.
(b) The officer shall minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

(8) Notwithstanding any provision in this chapter, a warrant authorizing forcible entry without prior announcement may not be issued under this section, solely for:
(a) the alleged possession or use of a controlled substance; or
(b) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.

Amended by Chapter 281, 2018 General Session

77-23-213 Blood testing.
(1) As used in this section:
(a) "Law enforcement purpose" means duties that consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of this state's political subdivisions.
(b) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.
(2) A peace officer may require an individual to submit to a blood test for a law enforcement purpose only if:
(a) the individual or legal representative of the individual with authority to give consent gives oral or written consent to the blood test;
(b) the peace officer obtains a warrant to administer the blood test; or
(c) a judicially recognized exception to obtaining a warrant exists as established by the Utah Court of Appeals, Utah Supreme Court, Court of Appeals of the Tenth Circuit, or the Supreme Court of the United States.
(3)
(a) Only the following, acting at the request of a peace officer, may draw blood to determine the blood's alcohol or drug content:
(i) a physician;
(ii) a physician assistant;
(iii) a registered nurse;
(iv) a licensed practical nurse;
(v) a paramedic;
(vi) as provided in Subsection (3)(b), emergency medical service personnel other than a paramedic; or
(vii) a person with a valid permit issued by the Department of Health under Section 26-1-30.
(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection (3)(a)(vi), based on the type of license under Section 26-8a-302.
(c) The following are immune from civil or criminal liability arising from drawing a blood sample from a person who a peace officer requests, for law enforcement purposes, if the sample is drawn in accordance with standard medical practice:
(i) a person authorized to draw blood under Subsection (3)(a); and
(ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

Amended by Chapter 349, 2019 General Session

Part 3

Warrantless Searches

77-23-301 Warrantless searches regarding persons on parole.

(1) An inmate who is eligible for release on parole shall, as a condition of parole, sign an agreement as described in Subsection (2) that the inmate, while on parole, is subject to search or seizure of the inmate's person, property, place of temporary or permanent residence, vehicle, or personal effects while on parole:
  (a) by a parole officer at any time, with or without a search warrant, and with or without cause; and
  (b) by a law enforcement officer at any time, with or without a search warrant, and with or without cause, but subject to Subsection (3).
(2)
  (a) The terms of the agreement under Subsection (1) shall be stated in clear and unambiguous language.
  (b) The agreement shall be signed by the parolee, indicating the parolee's understanding of the terms of searches as allowed by Subsection (1).
(3)
  (a) In order for a law enforcement officer to conduct a search of a parolee's residence under Subsection (1) or a seizure pursuant to the search, the law enforcement officer shall have obtained prior approval from a parole officer or shall have a warrant for the search.
  (b) If a law enforcement officer conducts a search of a parolee's person, personal effects, or vehicle pursuant to a stop, the law enforcement officer shall notify a parole officer as soon as reasonably possible after conducting the search.
(4) A search conducted under this section may not be for the purpose of harassment.
(5) Any inmate who does not agree in writing to be subject to search or seizure under Subsection (1) may not be paroled until the inmate enters into the agreement under Subsection (1).
(6) This section applies only to an inmate who is eligible for release on parole on or after May 5, 2008.

Enacted by Chapter 357, 2008 General Session

Chapter 23a
Interception of Communications Act

77-23a-1 Short title.

This act shall be known and may be cited as the "Interception of Communications Act."

Enacted by Chapter 15, 1980 General Session

77-23a-2 Legislative findings.

The Legislature finds and determines that:
(1) Wire communications are normally conducted through facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications.
(2) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate

commerce, it is necessary for the legislature to define the circumstances and conditions under which the interception of wire and oral communications may be authorized and to prohibit any unauthorized interception of these communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire or oral communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

Enacted by Chapter 15, 1980 General Session

77-23a-3 Definitions.

As used in this chapter:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication, or a person against whom the interception was directed.

(2) "Aural transfer" means any transfer containing the human voice at any point between and including the point of origin and the point of reception.

(3) "Communications common carrier" means any person engaged as a common carrier for hire in intrastate, interstate, or foreign communication by wire or radio, including a provider of electronic communication service. However, a person engaged in radio broadcasting is not, when that person is so engaged, a communications common carrier.

(4) "Contents" when used with respect to any wire, electronic, or oral communication includes any information concerning the substance, purport, or meaning of that communication.

(5) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:

(a) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(b) any wire or oral communications;

(c) any communication made through a tone-only paging device; or

(d) any communication from an electronic or mechanical device that permits the tracking of the movement of a person or object.

(6) "Electronic communications service" means any service that provides for users the ability to send or receive wire or electronic communications.

(7) "Electronic communications system" means any wire, radio, electromagnetic, photoelectronic, or photo-optical facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(8) "Electronic, mechanical, or other device" means any device or apparatus that may be used to intercept a wire, electronic, or oral communication other than:

(a) any telephone or telegraph instrument, equipment or facility, or a component of any of them:

(i) furnished by the provider of wire or electronic communications service or by the subscriber or user, and being used by the subscriber or user in the ordinary course of its business; or

(ii) being used by a provider of wire or electronic communications service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(9) "Electronic storage" means:

(a) any temporary intermediate storage of a wire or electronic communication incident to the electronic transmission of it; and

(b) any storage of the communication by an electronic communications service for the purposes of backup protection of the communication.

(10) "Intercept" means the acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(11) "Investigative or law enforcement officer" means any officer of the state or of a political subdivision, who by law may conduct investigations of or make arrests for offenses enumerated in this chapter, or any federal officer as defined in Section 53-13-106, and any attorney authorized by law to prosecute or participate in the prosecution of these offenses.

(12) "Judge of competent jurisdiction" means a judge of a district court of the state.

(13) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation, but does not include any electronic communication.

(14) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. "Pen register" does not include any device used by a provider or customer of a wire or electronic communication service for billing or recording as an incident to billing, for communications services provided by the provider, or any device used by a provider or customer of a wire communications service for cost accounting or other like purposes in the ordinary course of its business.

(15) "Person" means any employee or agent of the state or a political subdivision, and any individual, partnership, association, joint stock company, trust, or corporation.

(16) "Readily accessible to the general public" means, regarding a radio communication, that the communication is not:

(a) scrambled or encrypted;

(b) transmitted using modulation techniques with essential parameters that have been withheld from the public with the intention of preserving the privacy of the communication;

(c) carried on a subcarrier or signal subsidiary to a radio transmission;

(d) transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) transmitted on frequencies allocated under Part 25, Subpart D, E, or F of Part 74, or Part 94, Rules of the Federal Communications Commission unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

(17) "Trap and trace device" means a device, process, or procedure that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication is transmitted.

(18) "User" means any person or entity who:

(a) uses an electronic communications service; and

(b) is authorized by the provider of the service to engage in the use.

(19)

(a) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of the connection in a switching station, furnished or operated by any person engaged as a common carrier in providing or operating these facilities for the transmission of intrastate, interstate, or foreign communications.

(b) "Wire communication" includes the electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

Amended by Chapter 282, 1998 General Session

77-23a-4 Offenses -- Criminal and civil -- Lawful interception.

(1)

(a) Except as otherwise specifically provided in this chapter, any person who violates Subsection (1)(b) is guilty of an offense and is subject to punishment under Subsection (10), or when applicable, the person is subject to civil action under Subsection (11).

(b) A person commits a violation of this subsection who:

(i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(ii) intentionally or knowingly uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication, when the device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication or when the device transmits communications by radio, or interferes with the transmission of the communication;

(iii) intentionally or knowingly discloses or endeavors to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section; or

(iv) intentionally or knowingly uses or endeavors to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section.

(2) The operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire communication may intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service. However, a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(3)

(a) Providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other persons may provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance if the provider and its officers,

employees, or agents, and any landlords, custodians, or other specified persons have been provided with:

(i) a court order directing the assistance signed by the authorizing judge; or

(ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by the attorney general or an assistant attorney general, or by a county attorney or district attorney or his deputy that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

(b) The order or certification under this subsection shall set the period of time during which the provision of the information, facilities, or technical assistance is authorized and shall specify the information, facilities, or technical assistance required.

(4)

(a) The providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other specified persons may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance regarding which the person has been furnished an order or certification under this section except as is otherwise required by legal process, and then only after prior notification to the attorney general or to the county attorney or district attorney of the county in which the interception was conducted, as is appropriate.

(b) Any disclosure in violation of this subsection renders the person liable for civil damages under Section 77-23a-11.

(5) A cause of action does not lie in any court against any provider of wire or electronic communications service, its officers, employees, or agents, or any landlords, custodians, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

(6) Subsections (3), (4), and (5) supersede any law to the contrary.

(7)

(a) A person acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(b) A person not acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.

(c) An employee of a telephone company may intercept a wire communication for the sole purpose of tracing the origin of the communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The telephone company and its officers, employees, and agents shall release the results of the interception, made under this subsection, upon request of the local law enforcement authorities.

(8) A person may:

(a) intercept or access an electronic communication made through an electronic communications system that is configured so that the electronic communication is readily accessible to the general public;

(b) intercept any radio communication transmitted by:

(i) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(ii) any government, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(iii) a station operating on an authorized frequency within the bands allocated to the amateur, citizens' band, or general mobile radio services; or

(iv) by a marine or aeronautics communications system;

(c) intercept any wire or electronic communication, the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference; or

(d) as one of a group of users of the same frequency, intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.

(9)

(a) Except under Subsection (9)(b), a person or entity providing an electronic communications service to the public may not intentionally divulge the contents of any communication, while in transmission of that service, to any person or entity other than an addressee or intended recipient of the communication or his agent.

(b) A person or entity providing electronic communications service to the public may divulge the contents of any communication:

(i) as otherwise authorized under this section or Section 77-23a-9;

(ii) with lawful consent of the originator or any addressee or intended recipient of the communication;

(iii) to a person employed or authorized or whose facilities are used to forward the communication to its destination; or

(iv) that is inadvertently obtained by the service provider and appears to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

(10)

(a) Except under Subsection (10)(b) or (11), a violation of Subsection (1) is a third degree felony.

(b) If the offense is a first offense under this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication regarding which the offense was committed is a radio communication that is not scrambled or encrypted:

(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or paging service communication, and the conduct is not under Subsection (11), the offense is a class A misdemeanor; and

(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offense is a class B misdemeanor.

(c) Conduct otherwise an offense under this section is not an offense if the conduct was not done for the purpose of direct or indirect commercial advantage or private financial gain, and consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled, and is either transmitted:

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but in any event not including data transmissions or telephone calls.

(11)

(a) A person is subject to civil suit initiated by the state in a court of competent jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:

(i) private satellite video communication that is not scrambled or encrypted, and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious

or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(ii) radio communication that is transmitted on frequencies allocated under Subpart D, Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(b) In an action under Subsection (11)(a):

(i) if the violation of this chapter is a first offense under this section and the person is not found liable in a civil action under Section 77-23a-11, the state may seek appropriate injunctive relief; or

(ii) if the violation of this chapter is a second or subsequent offense under this section, or the person has been found liable in any prior civil action under Section 77-23a-11, the person is subject to a mandatory $500 civil penalty.

(c) The court may use any means within its authority to enforce an injunction issued under Subsection (11)(b)(i), and shall impose a civil fine of not less than $500 for each violation of the injunction.

Amended by Chapter 340, 2011 General Session

77-23a-4.5 Implanting an electronic identification device -- Penalties.

(1) A person may not require, coerce, or compel any other individual to undergo or submit to the subcutaneous implanting of a radio frequency identification tag.

(2) Any person who violates Subsection (1) is guilty of a class A misdemeanor.

(3)

(a) A person who is implanted with a subcutaneous identification device in violation of Subsection (1) may bring a civil action in any court of competent jurisdiction for actual damages, compensatory damages, punitive damages, injunctive relief, or any combination of these.

(b) The initial civil penalty may not be more than $10,000, and no more than $1,000 for each day the violation continues until the electronic identification device is removed or disabled.

Enacted by Chapter 168, 2011 General Session

77-23a-5 Traffic in intercepting devices -- Offenses -- Lawful activities.

(1) Except as otherwise specifically provided in this chapter, any person is guilty of a third degree felony who intentionally:

(a) sends through the mail, or sends or carries in intrastate, interstate, or foreign commerce any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of:

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications; or

(ii) any other electronic, mechanical, or other device, where the advertisement promotes the use of the device for the purpose of the surreptitious interception of wire, electronic, or oral communications.

(2) The following persons may send through the mail, send or carry in intrastate, interstate, or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of surreptitious interception of wire, electronic, or oral communication:

(a) a provider in the normal course of the business of providing that wire or electronic communications service; or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a state, or a political subdivision, in the normal course of the activities of the United States, a state, or a political subdivision.

Amended by Chapter 122, 1989 General Session

77-23a-6 Seizure and forfeiture of intercepting devices.

Any electronic, mechanical or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of Sections 77-23a-4 and 77-23a-5, may be seized and forfeited to the State of Utah.

Enacted by Chapter 15, 1980 General Session

77-23a-7 Evidence -- Exclusionary rule.

When any wire, electronic, or oral communication has been intercepted, no part of the contents of the communication and no evidence derived from it may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision of the state, if the disclosure of that information would be in violation of this chapter.

Amended by Chapter 251, 1988 General Session

77-23a-8 Court order to authorize or approve interception -- Procedure.

(1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when the interception sought may provide or has provided evidence of the commission of:

(a) any act:

(i) prohibited by the criminal provisions of:

(A)Title 58, Chapter 37, Utah Controlled Substances Act;

(B)Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(C)Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) punishable by a term of imprisonment of more than one year;

(b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act, and punishable by a term of imprisonment of more than one year;
(c) an offense:
(i) of:
(A) attempt, Section 76-4-101;
(B) conspiracy, Section 76-4-201;
(C) solicitation, Section 76-4-203; and
(ii) punishable by a term of imprisonment of more than one year;
(d) a threat of terrorism offense punishable by a maximum term of imprisonment of more than one year, Section 76-5-107.3;
(e)
(i) aggravated murder, Section 76-5-202;
(ii) murder, Section 76-5-203; or
(iii) manslaughter, Section 76-5-205;
(f)
(i) kidnapping, Section 76-5-301;
(ii) child kidnapping, Section 76-5-301.1;
(iii) aggravated kidnapping, Section 76-5-302;
(iv) human trafficking or human smuggling, Section 76-5-308; or
(v) aggravated human trafficking or aggravated human smuggling, Section 76-5-310;
(g)
(i) arson, Section 76-6-102; or
(ii) aggravated arson, Section 76-6-103;
(h)
(i) burglary, Section 76-6-202; or
(ii) aggravated burglary, Section 76-6-203;
(i)
(i) robbery, Section 76-6-301; or
(ii) aggravated robbery, Section 76-6-302;
(j) an offense:
(i) of:
(A) theft, Section 76-6-404;
(B) theft by deception, Section 76-6-405; or
(C) theft by extortion, Section 76-6-406; and
(ii) punishable by a maximum term of imprisonment of more than one year;
(k) an offense of receiving stolen property that is punishable by a maximum term of imprisonment of more than one year, Section 76-6-408;
(l) a financial card transaction offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;
(m) bribery of a labor official, Section 76-6-509;
(n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
(o) a criminal simulation offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-518;
(p) criminal usury, Section 76-6-520;
(q) a fraudulent insurance act offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-521;
(r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by a maximum term of imprisonment of more than one year, Section 76-6-703;

(s) bribery to influence official or political actions, Section 76-8-103;
(t) misusing public money or public property, Section 76-8-402;
(u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
(v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
(w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
(x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
(y) obstruction of justice, Section 76-8-306;
(z) destruction of property to interfere with preparation for defense or war, Section 76-8-802;
(aa) an attempt to commit crimes of sabotage, Section 76-8-804;
(bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
(cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
(dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
(ee) riot punishable by a maximum term of imprisonment of more than one year, Section 76-9-101;
(ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year, Section 76-9-301.1;
(gg) possession, use, or removal of an explosive, chemical, or incendiary device and parts, Section 76-10-306;
(hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary device, Section 76-10-307;
(ii) exploiting prostitution, Section 76-10-1305;
(jj) aggravated exploitation of prostitution, Section 76-10-1306;
(kk) bus hijacking or assault with intent to commit hijacking, Section 76-10-1504;
(ll) discharging firearms and hurling missiles, Section 76-10-1505;
(mm) violations of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;
(nn) communications fraud, Section 76-10-1801;
(oo) money laundering, Sections 76-10-1903 and 76-10-1904; or
(pp) reporting by a person engaged in a trade or business when the offense is punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

Amended by Chapter 211, 2019 General Session

77-23a-9 Disclosure or use of intercepted information.

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic, or oral communication, or evidence derived from any of these, may disclose those contents to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.
(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived from any of them may use those contents to the extent the use is appropriate to the proper performance of his official duties.
(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic, or oral communication or evidence derived from any of them intercepted in accordance with this chapter may disclose the contents of that communication or

the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any state or political subdivision.

(4) An otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents, and evidence derived from the contents, may be disclosed or used as provided in Subsections (1) and (2). The contents and any evidence derived from them may be used under Subsection (3) when authorized or approved by a judge of competent jurisdiction, if the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this chapter. The application shall be made as soon as practicable.

Amended by Chapter 251, 1988 General Session

77-23a-10 Application for order -- Authority of order -- Emergency action -- Application -- Entry -- Conditions -- Extensions -- Recordings -- Admissibility or suppression -- Appeal by state.

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge of competent jurisdiction, and shall state the applicant's authority to make the application. Each application shall include:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

(i) details regarding the particular offense that has been, is being, or is about to be committed;

(ii) except as provided in Subsection (12), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communication sought to be intercepted; and

(iv) the identity of the person, if known, committing the offense and whose communication is to be intercepted;

(c) a full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained, and if the investigation is of a nature that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and the individual making the application, made to any judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each application;

(f) when the application is for the extension of an order, a statement setting forth the results so far obtained from the interception, or a reasonable explanation of the failure to obtain results; and

(g) additional testimony or documentary evidence in support of the application as the judge may require.

(2) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications within the territorial jurisdiction of the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense under Section 77-23a-8;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous; and

(d) except as provided in Subsection (12), there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by that person.

(3) Each order authorizing or approving the interception of any wire, electronic, or oral communications shall specify:

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) except as provided in Subsection (12), the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications and of the persons authorizing the application; and

(e) the period of time during which the interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communications has been first obtained.

(4) An order authorizing the interception of a wire, electronic, or oral communications shall, upon request of the applicant, direct that a provider of wire or electronic communications service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communications service, landlord, custodian, or other person furnishing the facilities or technical assistance shall be compensated by the applicant for reasonable expenses involved in providing the facilities or systems.

(5)

(a) An order entered under this chapter may not authorize or approve the interception of any wire, electronic, or oral communications for any period longer than is necessary to achieve the objective of the authorization, but in any event for no longer than 30 days. The 30-day period begins on the day the investigative or law enforcement officer first begins to conduct an interception under the order, or 10 days after the order is entered, whichever is earlier.

(b) Extensions of an order may be granted, but only upon application for an extension made under Subsection (1) and if the court makes the findings required by Subsection (2). The period of extension may be no longer than the authorizing judge considers necessary to achieve the purposes for which it was granted, but in no event for longer than 30 days.

(c) Every order and extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event within 30 days.

(d) If the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, the minimizing of the interception may be accomplished as soon as practicable after the interception.

(e) An interception under this chapter may be conducted in whole or in part by government personnel or by an individual under contract with the government and acting under supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) When an order authorizing interception is entered under this chapter, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. These reports shall be made at intervals the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer who is specially designated by either the attorney general or a county attorney or district attorney, as provided under Sections 17-18a-202 and 17-18a-203 may intercept wire, electronic, or oral communications if an application for an order approving the interception is made in accordance with this section and within 48 hours after the interception has occurred or begins to occur, when the investigative or law enforcement officer reasonably determines that:

(a) an emergency situation exists that involves:

(i) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the national security interest; or

(iii) conspiratorial activities characteristic of organized crime, that require a wire, electronic, or oral communications to be intercepted before an order authorizing interception can, with diligence, be obtained; and

(b) there are grounds upon which an order could be entered under this chapter to authorize the interception.

(8)

(a) In the absence of an order under Subsection (7), the interception immediately terminates when the communication sought is obtained or when the application for the order is denied, whichever is earlier.

(b) If the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic, or oral communications intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in Subsection (9)(d) on the person named in the application.

(9)

(a) The contents of any wire, electronic, or oral communications intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communications under this Subsection (9)(a) shall be done so as to protect the recording from editing or other alterations. Immediately upon the expiration of the period of an order or extension, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be where the judge orders. The recordings may not be destroyed, except upon an order of the issuing or denying judge. In any event, it

shall be kept for 10 years. Duplicate recordings may be made for use or disclosure under Subsections 77-23a-9(1) and (2) for investigations. The presence of the seal provided by this Subsection (9)(a), or a satisfactory explanation for the absence of one, is a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communications or evidence derived from it under Subsection 77-23a-9(3).

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and may not be destroyed, except on order of the issuing or denying judge. But in any event they shall be kept for 10 years.

(c) Any violation of any provision of this Subsection (9) may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time, but not later than 90 days after the filing of an application for an order of approval under Subsection 77-23a-10(7) that is denied or the termination of the period of an order or extensions, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and other parties to the intercepted communications as the judge determines in his discretion is in the interest of justice, an inventory, which shall include notice:

(i) of the entry of the order or application;

(ii) of the date of the entry and the period of authorization, approved or disapproved interception, or the denial of the application; and

(iii) that during the period, wire, electronic, or oral communications were or were not intercepted.

(e) The judge, upon filing of a motion, may in the judge's discretion, make available to the person or the person's counsel for inspection the portions of the intercepted communications, applications, and orders the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this Subsection (9)(e) may be postponed.

(10) The contents of any intercepted wire, electronic, or oral communications, or evidence derived from any of these, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(11)

(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, the state, or a political subdivision may move to suppress the contents of any intercepted wire, electronic, or oral communications, or evidence derived from any of them, on the grounds that:

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

(b) The motion shall be made before the trial, hearing, or proceeding, unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communications,

or evidence derived from any of these, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, may in the judge's discretion make available to the aggrieved person or the aggrieved person's counsel for inspection portions of the intercepted communication or evidence derived from the intercepted communication as the judge determines to be in the interests of justice.

(c) In addition to any other right to appeal, the state or its political subdivision may appeal from an order granting a motion to suppress made under Subsection (11)(a), or the denial of an application for an order of approval, if the attorney bringing the appeal certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(12) The requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) relating to the specification of the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted do not apply if:

(a) in the case of an applicant regarding the interception of oral communications:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application contains a full and complete statement of why the specification is not practical, and identifies the person committing the offense and whose communications are to be intercepted; or

(iii) the judge finds that the specification is not practical; and

(b) in the case of an application regarding wire or electronic communications:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that the purpose has been adequately shown.

(13)

(a) An interception of a communication under an order regarding which the requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection (12) does not begin until the facilities from which, or the place where, the communications are to be intercepted is ascertained by the person implementing the interception order.

(b) A provider of wire or electronic communications service that has received an order under Subsection (12)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide the motion expeditiously.

Amended by Chapter 237, 2013 General Session

77-23a-11 Civil remedy for unlawful interception -- Action for relief.

(1) Except under Subsections 77-23a-4(3), (4), and (5), a person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover relief as appropriate from the person or entity that engaged in the violation.

(2) In an action under this section appropriate relief includes:

(a) preliminary and other equitable or declaratory relief as is appropriate;
(b) damages under Subsection (3) and punitive damages in appropriate cases; and
(c) a reasonable attorney's fee and reasonably incurred litigation costs.
(3)
(a) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted, or if the communication is a radio communication that is transmitted on frequencies allocated under Subpart (D), Part 74, Rules of the Federal Communications Commission, that is not scrambled or encrypted, and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, the court shall assess damages as follows:
(i) if the person who engaged in the conduct has not previously been enjoined under Subsection 77-23a-4(11) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or the statutory damages of not less than $50 nor more than $500;
(ii) if on one prior occasion the person who engaged in the conduct has been enjoined under Subsection 77-23a-4(11) or has been liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1,000;
(b) in any other action under this section, the court may assess as damages whichever is the greater of:
(i) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violations; or
(ii) statutory damages of $100 a day for each day of violation, or $10,000, whichever is greater.
(4) A good faith reliance on any of the following is a complete defense against any civil or criminal action brought under this chapter or any other law:
(a) a court order, a warrant, a grand jury subpoena, a legislative authorization, or a statutory authorization;
(b) a request of an investigative or law enforcement officer under Subsection 77-23a-10(7); or
(c) a good faith determination that Section 77-23a-4 permitted the conduct complained of.
(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.
(6) The remedies and sanctions described in this chapter regarding the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving these communications.

Amended by Chapter 122, 1989 General Session

77-23a-12 Enjoining a violation -- Civil action by attorney general.
(1) When it appears that a person is engaged or is about to engage in any act that constitutes or will constitute a felony violation of this chapter or is otherwise prohibited by this chapter, the attorney general may initiate a civil action in a district court of the state to enjoin the violation.
(2) The court shall proceed as soon as practicable to the hearing and determination of the action and may at any time before final determination enter a restraining order or prohibition, or take other action as warranted to prevent a continuing and substantial injury to the state or to any person or class of persons for whose protection the action is brought.

(3) A proceeding under this section is governed by the Utah Rules of Civil Procedure, except if an information has been filed or an indictment has been returned against the respondent, discovery is governed by the Utah Rules of Criminal Procedure.

Amended by Chapter 122, 1989 General Session

77-23a-13 Installation of device when court order required -- Penalty.

(1) Except as provided in this section, a person may not install or use a pen register or trap or trace device without previously obtaining a court order under Section 77-23a-15, or under federal law.

(2) Subsection (1) does not apply to the use of a pen register or trap and trace device by a provider of electronic or wire communications services:

(a) relating to the operation, maintenance, and testing of a wire or electronic communications service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(b) to record that a wire or electronic communication was initiated or completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service from fraudulent, unlawful, or abusive use of that service; or

(c) when the consent of the user of that service has been obtained.

(3) A knowing or intentional violation of Subsection (1) is a class B misdemeanor.

Amended by Chapter 241, 1991 General Session

77-23a-14 Court order for installation -- Application.

(1) The attorney general, a deputy attorney general, a county attorney or district attorney, a deputy county attorney or deputy district attorney, or a prosecuting attorney for a political subdivision of the state, or a law enforcement officer, may make application for an order or extension of an order under Section 77-23a-15 authorizing or approving the installation and use of a pen register or trap and trace device, in writing and under oath or equivalent affirmation, to a court of competent jurisdiction.

(2) An application under Subsection (1) shall include:

(a) the identity of the attorney for the government or the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(b) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

Amended by Chapter 38, 1993 General Session

77-23a-15 Order for installation -- Contents -- Duration -- Extension -- Disclosure.

(1) In general, upon an application made under Section 77-23a-14, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the attorney for the government or the law enforcement or investigative officer has certified to the court that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

(2)

(a) An order issued under this section shall specify:

(i) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
(ii) the identity, if known, of the person who is the subject of the criminal investigation;
(iii) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographical limits of the trap and trace order; and
(iv) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(b) The order shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under Section 77-23a-16.

(3)
(a) An order issued under this section may authorize the installation and use of a pen register or trap and trace device for a period not to exceed 60 days.
(b) Extensions of an order may be granted, but only upon an application for an order under Section 77-23a-14 and upon the judicial finding required by Subsection (1). The period of extension shall be for a period not to exceed 60 days.

(4) An order authorizing or approving the installation and use of a pen register or trap and trace device shall direct that:
(a) the order be sealed until otherwise ordered by the court; and
(b) the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.

Enacted by Chapter 251, 1988 General Session

77-23a-16 Communications provider -- Cooperation and support services -- Compensation -- Liability defense.

(1) Upon the request of an attorney for the government or an officer of a law enforcement agency authorized to install and use pen registers under this chapter, a provider of wire or electronic communications service, landlord, custodian, or other person shall furnish investigative or law enforcement officers forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services the person ordered by the court accords the party regarding whom the installation and use is to take place, if such assistance is directed by a court order as provided in Subsection 77-23a-15(2)(b) of this chapter.

(2)
(a) Upon request of an attorney for the government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of wire or electronic communications service, landlord, custodian, or other person shall install the device forthwith on the appropriate line.
(b) He shall also furnish the investigative or law enforcement officer all additional information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order under Section 77-23a-15(2)(b).

(c) Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of the law enforcement agency designated by the court, at reasonable intervals and during regular business hours, for the duration of the order.

(3) A provider of wire or electronic communications service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section shall be reasonably compensated for reasonable expenses incurred in providing the facilities and assistance.

(4) A cause of action does not lie in any court against the provider of wire or electronic communications service, its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization, is a complete defense against any civil or criminal action brought under this chapter or any other law.

Enacted by Chapter 251, 1988 General Session

Chapter 23b
Access to Electronic Communications

77-23b-1 Definitions.

(1) As used in this chapter, "remote computing service" means provision to the public of computer storage or processing services by means of an electronic communications system.

(2) The definitions of terms in Section 77-23a-3 apply to this chapter.

Amended by Chapter 122, 1989 General Session

77-23b-2 Interference with access to stored communication -- Offenses -- Penalties.

(1) Except under Subsection (3), a person who obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in the system shall be punished under Subsection (2) if he:

(a) intentionally accesses without authorization a facility through which an electronic communications service is provided; or

(b) intentionally exceeds an authorization to access that facility.

(2) A person who commits a violation of Subsection (1) is:

(a) if the offense is committed for purposes of commercial advantage, malicious destruction, or damage, or private commercial gain, guilty of a:

(i) third degree felony for the first offense under this subsection; and

(ii) second degree felony for any subsequent offense; and

(b) class B misdemeanor in any other case.

(3) Subsection (1) does not apply to conduct authorized:

(a) by the person or entity providing a wire or electronic communications service;

(b) by a user of that service with respect to a communication of or intended for that user; or

(c) under Sections 77-23a-10, 77-23b-4, and 77-23b-5.

Amended by Chapter 241, 1991 General Session

77-23b-3 Revealing stored electronic communication -- Prohibitions -- Penalties.

(1) Except under Subsection (2):
  (a) the person or entity providing an electronic communications service to the public may not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and
  (b) a person or entity providing a remote computing service to the public may not knowingly divulge to any person or entity the contents of any communication that is carried or maintained on that service:
    (i) on behalf of and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from a subscriber or customer of the service; and
    (ii) solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the provider is not authorized to access the contents of any communications for the purpose of providing any services other than storage or computer processing.

(2) A person or entity may divulge the contents of a communication:
  (a) to an addressee or intended recipient of the communication or an agent of the addressee or intended recipient;
  (b) as otherwise authorized under Section 77-23a-4, 77-23a-8, or 77-23b-4;
  (c) with the lawful consent of the originator or addressee or intended recipient of the communication, or the subscriber in the case of remote computing service;
  (d) to a person employed or authorized, or whose facilities are used to forward the communication to its destination;
  (e) as may be necessarily incident to the rendition of the service or the protection of the rights or property of the provider of that service; or
  (f) to a law enforcement agency, if the contents:
    (i) were inadvertently obtained by the service provider; and
    (ii) appear to pertain to the commission of a criminal offense.

Amended by Chapter 122, 1989 General Session

77-23b-4 Disclosure by a provider -- Grounds for requiring disclosure -- Court order.

(1) A government entity may only require the disclosure by a provider of electronic communication services of the contents of an electronic communication that is in electronic storage in an electronic communication system pursuant to a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant.

(2) Subsection (1) applies to any electronic communication that is held or maintained on that service:
  (a) on behalf of and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from a subscriber or customer of the remote computing service; and
  (b) solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the provider is not authorized to access the contents of any communication for purposes of providing any services other than storage or computer processing.

(3)
  (a)
    (i) Except under Subsection (3)(a)(ii), a provider of electronic communication services or remote computing services may disclose a record or other information pertaining to a subscriber

to or customer of the service, not including the contents of communication covered by Subsection (1), to any person other than a governmental agency.

(ii) A provider of electronic communication services or remote computing services shall disclose a record or other information pertaining to a subscriber to or customer of the service, not including the contents of communication covered by Subsection (1), to a governmental entity only when the entity:

(A) uses an administrative subpoena authorized by a state or federal statute or a state or federal grand jury subpoena;

(B) obtains a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant;

(C) obtains a court order for the disclosure under Subsection (4); or

(D) has the consent of the subscriber or customer to the disclosure.

(b) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(4)

(a) A court order for disclosure under this section may be issued only if the governmental entity shows there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.

(b) A court issuing an order under this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with the order otherwise would cause an undue burden on the provider.

(5) A cause of action may not be brought in any court against any provider of wire or electronic communications services, its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

Amended by Chapter 115, 2012 General Session

77-23b-5 Backup copy of communications -- When required of provider -- Court order -- Procedures.

(1)

(a) A governmental entity acting under Subsection 77-23b-4(2)(b) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create the backup as soon as practicable, consistent with its regular business practices. The provider shall also confirm to the governmental entity that the backup copy has been made. The backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of confirmation, unless the notice is delayed under Subsection 77-23b-6(1).

(c) The service provider may not destroy the backup copy until the later of:

(i) the delivery of the information; or

(ii) the resolution of any proceedings, including appeals of any proceeding, concerning the government's subpoena or court order.

(d) The service provider shall release the backup copy to the requesting governmental entity no sooner than 14 days after the governmental entity's notice to the subscriber or customer, if the service provider:
(i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and
(ii) has not initiated proceedings to challenge the request of the governmental entity.
(e) A governmental entity may seek to require the creation of a backup copy under Subsection (1)(a) if in its sole discretion the entity determines that there is reason to believe that notification under Section 77-23b-4 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber, customer, or service provider.
(2)
(a) Within 14 days after notice by the governmental entity to the subscriber or customer under Subsection (1)(b), the subscriber or customer may file a motion to quash the subpoena or vacate the court order, with copies served upon the governmental entity, and with written notice of the challenge to the service provider. A motion to vacate a court order shall be filed in the court that issues the order. A motion to quash a subpoena shall be filed in the appropriate district court. The motion or application shall contain an affidavit or sworn statement:
(i) that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and
(ii) that the applicant's reason for believing the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.
(b) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice the customer received under this chapter. For purposes of this subsection, "deliver" has the same meaning as under the Utah Rules of Criminal Procedure.
(c) If the court finds that the customer has complied with Subsections (2)(a) and (b), the court shall order the governmental entity to file a sworn response, that may be filed in camera if the governmental entity includes in its response the reasons making in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct additional proceedings as it considers appropriate. All proceedings shall be completed, and the motion or application decided, as soon as practicable after the filing of the governmental entity's response.
(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order the process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is no reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with this chapter, it shall order the process quashed.
(e) A court order denying a motion or application under this section is not considered a final order, and no interlocutory appeal may be taken from it by the customer or subscriber.

Enacted by Chapter 251, 1988 General Session

77-23b-6 Notifying subscriber or customer of court order -- Requested delay -- Grounds -- Limits.

(1)

(a) The governmental entity acting under Section 77-23b-4 may:

(i) if a court order is sought, include in the application a request for an order delaying notification to the subscriber for not to exceed 90 days and, if the court determines there is reason to believe that notification of existence of the court order may have an adverse result, the court shall grant the order; or

(ii) if an administrative subpoena authorized by a state or federal statute or a state or federal grand jury subpoena is obtained, delay notification to the subscriber for not to exceed 90 days, upon the execution of a written certification of a supervisory official that there is reason to believe that the notification of the existence of the subpoena may have an adverse result.

(b) An adverse result is:

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) The governmental entity shall maintain a true copy of certification under Subsection (1)(a)(ii).

(d) Extensions of the delay of notification under Section 77-23b-4 of up to 90 days each, may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with Subsection (2).

(e) On expiration of the period of delay of notification under Subsection (1)(a) or (d), the governmental entity shall serve upon, or deliver by registered or first class mail, to the customer or subscriber a copy of the process or request together with a notice:

(i) stating with reasonable specificity the nature of the law enforcement inquiry; and

(ii) informing the customer or subscriber:

(A) that information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by that governmental authority and the date the supplying or request took place;

(B) that notification of the customer or subscriber was delayed;

(C) which governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) which provision of this chapter allows the delay.

(f) As used in this subsection, "supervisory official" means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigative agency's headquarters or regional office; a county sheriff or chief deputy sheriff, or police chief or assistant police chief; the officer in charge of an investigative task force or the assistant officer in charge; or the attorney general, an assistant attorney general, a county attorney or district attorney, a deputy county attorney or deputy district attorney, or the chief prosecuting attorney of any political subdivision of the state.

(2) A governmental entity acting under Section 77-23b-4, when not required to notify the subscriber or customer, or to the extent that it may delay notice under Subsection (1), may apply to a court for an order commanding the provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for a period of time the court considers appropriate, to not notify any other person of the existence of the warrant,

subpoena, or court order. The court shall enter the order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in:
(a) endangering the life or physical safety of an individual;
(b) flight from prosecution;
(c) destruction of or tampering with evidence;
(d) intimidation of potential witnesses; or
(e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Amended by Chapter 115, 2012 General Session

77-23b-7 Fee for services of provider of information.
(1)
(a) Except as otherwise provided in Subsection (3), a governmental entity obtaining the contents of communications, records, or other information under Section 77-23b-4 or 77-23b-5 shall pay to the person or entity assembling or providing the information a reimbursement fee for the costs reasonably necessary and directly incurred in searching for, assembling, reproducing, or otherwise providing the information.
(b) The reimbursement costs shall include any costs due to the necessary disruption of normal operations of any electronic communications service or remote computing service in which the information may be stored.
(2) The fee amount under Subsection (1) shall be mutually agreed upon by the governmental entity and the person or entity providing the information, or in the absence of agreement, shall be as determined by the court:
(a) that issued the order for production of the information; or
(b) before which a criminal prosecution relating to the information would be brought, if no court order was issued for production of the information.
(3) The requirement of Subsection (1) does not apply to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under Section 77-23b-4. However, the court may order a payment as described under Subsection (1) if the court determines the information required is unusually voluminous in nature or otherwise causes an undue burden on the provider.

Amended by Chapter 122, 1989 General Session

77-23b-8 Violation of chapter -- Civil action by provider or subscriber -- Good faith defense -- Limitation of action.
(1) Except under Subsection 77-23b-4(5), any provider of electronic communications service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may in a civil action recover from the person or entity that engaged in that violation relief as is appropriate.
(2) In a civil action under this section, appropriate relief includes:
(a) preliminary and other equitable or declaratory relief as is appropriate;
(b) damages under Subsection (3); and
(c) a reasonable attorney's fee and other litigation costs reasonably incurred.
(3) The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case is a person entitled to recover less than $1,000.

(4) A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under this chapter or any other law:
(a) a court warrant or order, a grand jury subpoena, legislative authorization, or a statutory authorization;
(b) a request of an investigative or law enforcement officer under Subsection 77-23a-10(7); or
(c) a good faith determination that Subsection 77-23a-4(9) permitted the conduct complained of.
(5) A civil action under this section may not be commenced later than two years after the date the claimant first discovered or had a reasonable opportunity to discover the violation.

Amended by Chapter 22, 1989 General Session
Amended by Chapter 122, 1989 General Session

77-23b-9 Judicial scope of chapter remedies and sanctions.
The remedies and sanctions under this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

Enacted by Chapter 251, 1988 General Session

Chapter 23c
Electronic Information or Data Privacy Act

77-23c-101.1 Title.
This chapter is known as the "Electronic Information or Data Privacy Act."

Enacted by Chapter 362, 2019 General Session

77-23c-101.2 Definitions.
As used in this chapter:
(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.
(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.
(3)
(a) "Electronic information or data" means information or data including a sign, signal, writing, image, sound, or intelligence of any nature transmitted or stored in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.
(b) "Electronic information or data" includes the location information, stored data, or transmitted data of an electronic device.
(c) "Electronic information or data" does not include:
(i) a wire or oral communication;
(ii) a communication made through a tone-only paging device; or
(iii) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of money.
(4) "Law enforcement agency" means an entity of the state or a political subdivision of the state that exists to primarily prevent, detect, or prosecute crime and enforce criminal statutes or ordinances.

(5) "Location information" means information, obtained by means of a tracking device, concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device.
(6) "Location information service" means the provision of a global positioning service or other mapping, location, or directional information service.
(7) "Oral communication" means the same as that term is defined in Section 77-23a-3.
(8) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.
(9) "Transmitted data" means electronic information or data that is transmitted wirelessly:
(a) from an electronic device to another electronic device without the use of an intermediate connection or relay; or
(b) from an electronic device to a nearby antenna.
(10) "Wire communication" means the same as that term is defined in Section 77-23a-3.

Renumbered and Amended by Chapter 362, 2019 General Session
Amended by Chapter 479, 2019 General Session, (Coordination Clause)
Amended by Chapter 479, 2019 General Session

77-23c-102 Electronic information or data privacy -- Warrant required for disclosure.
(1)
(a) Except as provided in Subsection (2), for a criminal investigation or prosecution, a law enforcement agency may not obtain, without a search warrant issued by a court upon probable cause:
(i) the location information, stored data, or transmitted data of an electronic device; or
(ii) electronic information or data transmitted by the owner of the electronic information or data:
(A) to a provider of a remote computing service; or
(B) through a provider of an electronic communication service.
(b) Except as provided in Subsection (1)(c), a law enforcement agency may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device, or electronic information or data provided by a provider of a remote computing service or an electronic communication service, that:
(i) is not the subject of the warrant; and
(ii) is collected as part of an effort to obtain the location information, stored data, or transmitted data of an electronic device, or electronic information or data provided by a provider of a remote computing service or an electronic communication service that is the subject of the warrant in Subsection (1)(a).
(c) A law enforcement agency may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the law enforcement agency reasonably believes that the transmitted data is necessary to achieve the objective of the warrant.
(d) The electronic information or data described in Subsection (1)(b) shall be destroyed in an unrecoverable manner by the law enforcement agency as soon as reasonably possible after the electronic information or data is collected.
(2)
(a) A law enforcement agency may obtain location information without a warrant for an electronic device:
(i) in accordance with Section 53-10-104.5;
(ii) if the device is reported stolen by the owner;

(iii) with the informed, affirmative consent of the owner or user of the electronic device;
(iv) in accordance with a judicially recognized exception to warrant requirements;
(v) if the owner has voluntarily and publicly disclosed the location information; or
(vi) from a provider of a remote computing service or an electronic communications service if the provider voluntarily discloses the location information:
(A) under a belief that an emergency exists involving an imminent risk to an individual of death, serious physical injury, sexual abuse, live-streamed sexual exploitation, kidnapping, or human trafficking; or
(B) that is inadvertently discovered by the provider and appears to pertain to the commission of a felony, or of a misdemeanor involving physical violence, sexual abuse, or dishonesty.
(b) A law enforcement agency may obtain stored data or transmitted data from an electronic device or electronic information or data transmitted by the owner of the electronic information or data to a provider of a remote computing service or through a provider of an electronic communication service, without a warrant:
(i) with the informed consent of the owner of the electronic device or electronic information or data;
(ii) in accordance with a judicially recognized exception to warrant requirements; or
(iii) subject to Subsection 77-23c-102(2)(a)(vi)(B), from a provider of a remote computing service or an electronic communication service if the provider voluntarily discloses the stored or transmitted data as otherwise permitted under 18 U.S.C. Sec. 2702.
(c) A prosecutor may obtain a judicial order as described in Section 77-22-2.5 for the purposes described in Section 77-22-2.5.
(3) A provider of an electronic communication service or a remote computing service, the provider's officers, employees, or agents, or other specified persons may not be held liable for providing information, facilities, or assistance in good faith reliance on the terms of the warrant issued under this section or without a warrant in accordance with Subsection (2).
(4) Nothing in this chapter:
(a) limits or affects the disclosure of public records under Title 63G, Chapter 2, Government Records Access and Management Act;
(b) affects the rights of an employer under Subsection 34-48-202(1)(e) or an administrative rule adopted under Section 63F-1-206; or
(c) limits the ability of a law enforcement agency to receive or use information, without a warrant or subpoena, from the National Center for Missing and Exploited Children under 18 U.S.C. Sec. 2258A.

Amended by Chapter 42, 2021 General Session

77-23c-103 Notification required -- Delayed notification.
(1)
(a) Except as provided in Subsection (2), if a law enforcement agency executes a warrant in accordance with Subsection 77-23c-102(1) or 77-23c-104(3), the law enforcement agency shall notify the owner of the electronic device or electronic information or data specified in the warrant within 90 days after the day on which the electronic device or the electronic data or information is obtained by the law enforcement agency but in no case shall the law enforcement agency notify the owner more than three days after the day on which the investigation is concluded.
(b) The notification described in Subsection (1)(a) shall state:
(i) that a warrant was applied for and granted;

(ii) the kind of warrant issued;
(iii) the period of time during which the collection of the electronic information or data was authorized;
(iv) the offense specified in the application for the warrant;
(v) the identity of the law enforcement agency that filed the application; and
(vi) the identity of the judge who issued the warrant.

(c) For the notification requirement described in Subsection (1)(a), the time period under Subsection (1)(a) begins on the day after the day on which the owner of the electronic device or electronic information or data specified in the warrant is known, or could be reasonably identified, by the law enforcement agency.

(2) A law enforcement agency seeking a warrant in accordance with Subsection 77-23c-102(1)(a) or 77-23c-104(3) may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 30 days, if the court determines that there is reasonable cause to believe that the notification may:

(a) endanger the life or physical safety of an individual;
(b) cause a person to flee from prosecution;
(c) lead to the destruction of or tampering with evidence;
(d) intimidate a potential witness; or
(e) otherwise seriously jeopardize an investigation or unduly delay a trial.

(3) When a delay of notification is granted under Subsection (2) and upon application by the law enforcement agency, the court may grant additional extensions of up to 30 days each.

(4)

(a) A law enforcement agency that seeks a warrant for an electronic device or electronic information or data in accordance with Subsection 77-23c-102(1)(a) or 77-23c-104(3) may submit a request to the court to delay a notification under Subsection (2) if the purpose of delaying the notification is to apprehend an individual:
(i) who is a fugitive from justice under Section 77-30-13; and
(ii) for whom an arrest warrant has been issued for a violent felony offense as defined in Section 76-3-203.5.

(b) The court may grant the request under Subsection (4)(a) to delay notification until the individual who is a fugitive from justice under Section 77-30-13 is apprehended by the law enforcement agency.

(c) A law enforcement agency shall issue a notification described in Subsection (5) to the owner of the electronic device or electronic information or data within 14 days after the day on which the law enforcement agency apprehends the individual described in Subsection (4)(a).

(5) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), or upon the apprehension of an individual described in Subsection (4)(a), the law enforcement agency shall serve upon or deliver by first-class mail, or by other means if delivery is impracticable, to the owner of the electronic device or electronic information or data a copy of the warrant together with notice that:

(a) states with reasonable specificity the nature of the law enforcement inquiry; and
(b) contains:
(i) the information described in Subsection (1)(b);
(ii) a statement that notification of the search was delayed;
(iii) the name of the court that authorized the delay of notification; and
(iv) a reference to the provision of this chapter that allowed the delay of notification.

(6) A law enforcement agency is not required to notify the owner of the electronic device or electronic information or data if the owner is located outside of the United States.

Amended by Chapter 42, 2021 General Session

77-23c-104 Third-party electronic information or data.

(1) As used in this section, "subscriber record" means a record or information of a provider of an electronic communication service or remote computing service that reveals the subscriber's or customer's:
  (a) name;
  (b) address;
  (c) local and long distance telephone connection record, or record of session time and duration;
  (d) length of service, including the start date;
  (e) type of service used;
  (f) telephone number, instrument number, or other subscriber or customer number or identification, including a temporarily assigned network address; and
  (g) means and source of payment for the service, including a credit card or bank account number.

(2) Except as provided in Chapter 22, Subpoena Powers for Aid of Criminal Investigation and Grants of Immunity, a law enforcement agency may not obtain, use, copy, or disclose a subscriber record.

(3) A law enforcement agency may not obtain, use, copy, or disclose, for a criminal investigation or prosecution, any record or information, other than a subscriber record, of a provider of an electronic communication service or remote computing service related to a subscriber or customer without a warrant.

(4) Notwithstanding Subsections (2) and (3), a law enforcement agency may obtain, use, copy, or disclose a subscriber record, or other record or information related to a subscriber or customer, without an investigative subpoena or a warrant:
  (a) with the informed, affirmed consent of the subscriber or customer;
  (b) in accordance with a judicially recognized exception to warrant requirements;
  (c) if the subscriber or customer voluntarily discloses the record in a manner that is publicly accessible; or
  (d) if the provider of an electronic communication service or remote computing service voluntarily discloses the record:
    (i) under a belief that an emergency exists involving the imminent risk to an individual of:
      (A) death;
      (B) serious physical injury;
      (C) sexual abuse;
      (D) live-streamed sexual exploitation;
      (E) kidnapping; or
      (F) human trafficking;
    (ii) that is inadvertently discovered by the provider, if the record appears to pertain to the commission of:
      (A) a felony; or
      (B) a misdemeanor involving physical violence, sexual abuse, or dishonesty; or
    (iii) subject to Subsection 77-23c-104(4)(d)(ii), as otherwise permitted under 18 U.S.C. Sec. 2702.

(5) A provider of an electronic communication service or remote computing service, or the provider's officers, employees, agents, or other specified persons may not be held liable for

providing information, facilities, or assistance in good faith reliance on the terms of a warrant issued under this section, or without a warrant in accordance with Subsection (3).

Amended by Chapter 42, 2021 General Session

77-23c-105 Exclusion of records.

All electronic information or data and records of a provider of an electronic communications service or remote computing service pertaining to a subscriber or customer that are obtained in violation of the provisions of this chapter shall be subject to the rules governing exclusion as if the records were obtained in violation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 14.

Enacted by Chapter 362, 2019 General Session

Chapter 23d
Imaging Surveillance Privacy

77-23d-101 Title.

This chapter is known as "Imaging Surveillance Privacy."

Enacted by Chapter 447, 2015 General Session

77-23d-102 Definitions.

As used in this chapter:

(1) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(2) "Imaging surveillance device" means a device that uses radar, sonar, infrared, or other remote sensing or detection technology used by the individual operating the device to obtain information, not otherwise directly observable, about individuals, items, or activities within a closed structure.

(3) "Target" means a person or a structure upon which a government entity intentionally collects or attempts to collect information using an imaging surveillance device.

Enacted by Chapter 447, 2015 General Session

77-23d-103 Use of imaging surveillance device -- Warrant required -- Exceptions.

(1) Except as provided in Subsection (2), a government entity may not operate an imaging surveillance device without a search warrant issued upon probable cause.

(2) A government entity may operate an imaging surveillance device without a search warrant:

(a) for testing equipment or training if the testing or training:

(i) is not conducted as part of an investigation or law enforcement activity; and

(ii) is conducted with the knowledge and consent of:

(A) each individual who is imaged; and

(B) an owner of each property that is imaged;
(b) in exigent circumstances; or
(c) in fresh pursuit of a person suspected of committing a felony.

Enacted by Chapter 447, 2015 General Session

77-23d-104 Notification required -- Delayed notification.

(1) Except as provided in Subsection (2), a government entity that executes a search warrant that authorizes the use of an imaging surveillance device shall, within 14 days after the day on which the warrant is executed, provide notice to the individual who owns, resides in, or rents the structure specified in the warrant that states:
(a) that a warrant was applied for and granted;
(b) the type of warrant issued;
(c) the period of time during which the collection of data from the structure was authorized;
(d) the offense specified in the application for the warrant;
(e) the identity of the government entity that filed the application; and
(f) the name of the court that issued the warrant.
(2) A government entity seeking a warrant described in Subsection 77-23d-103(1) may submit a request, and the court may grant permission, to delay the notification described in Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable cause to believe that the notification may:
(a) endanger the life or physical safety of an individual;
(b) cause an individual to flee from prosecution;
(c) lead to the destruction of or tampering with evidence;
(d) result in the intimidation of a potential witness; or
(e) otherwise seriously jeopardize an investigation or unduly delay a trial.
(3) When a delay of notification is granted under Subsection (2), and upon application by the government entity, the court may grant additional extensions of up to 30 days each.
(4) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), the government entity shall serve upon or deliver by first-class mail to the individual who owns, resides in, or rents the structure specified in the warrant a copy of the warrant together with a notice that:
(a) states with reasonable specificity the nature of the law enforcement inquiry; and
(b) contains:
(i) the information described in Subsections (1)(a) through (f);
(ii) a statement that notification of the search was delayed;
(iii) the name of the court that authorized the delay of notification; and
(iv) a reference to the provision of this chapter that allowed the delay of notification.
(5) A government entity is not required to notify the owner of a structure if the owner is located outside of the United States.

Enacted by Chapter 447, 2015 General Session

77-23d-105 Data use and retention.

(1) Except as provided in Subsection (2), a government entity:
(a) may not use, copy, or disclose data collected using an imaging surveillance device on an individual or structure that is not a target; and

(b) shall ensure that data described in Subsection (1)(a) is destroyed as soon as reasonably possible after the government entity collects or receives the data.

(2) A government entity is not required to comply with Subsection (1) if:

(a) deleting the data would also require the deletion of data that:

(i) relates to the target of the operation; and

(ii) is requisite for the success of the operation;

(b) the government entity receives the data:

(i) through a court order that:

(A) requires a person to release the data to the government entity; or

(B) prohibits the destruction of the data; or

(ii) from a person who is a nongovernment actor;

(c)

(i) the data was collected inadvertently; and

(ii) the data appears to pertain to the commission of a crime; or

(d)

(i) the government entity reasonably determines that the data pertains to an emergency situation; and

(ii) using or disclosing the data would assist in remedying the emergency.

Enacted by Chapter 447, 2015 General Session

Chapter 23e
Government Use of Facial Recognition Technology

77-23e-101 Title.

This chapter is known as "Government Use of Facial Recognition Technology."

Enacted by Chapter 200, 2021 General Session

77-23e-102 Definitions.

As used in this chapter:

(1) "Department" means the Department of Public Safety, created in Section 53-1-103.

(2) "Facial biometric data" means data derived from a measurement, pattern, contour, or other characteristic of an individual's face, either directly or from an image.

(3) "Facial recognition comparison" means the process of comparing an image or facial biometric data to an image database.

(4)

(a) "Facial recognition system" means a computer system that, for the purpose of attempting to determine the identity of an unknown individual, uses an algorithm to compare biometric data of the face of the unknown individual to facial biometric data of known individuals.

(b) "Facial recognition system" does not include:

(i) a system described in Subsection (4)(a) that is available for use, free of charge, by the general public; or

(ii) a system a consumer uses for the consumer's private purposes.

(5)

(a) "Government entity" means:

(i) an executive department agency of the state;
(ii) the office of:
(A) the governor;
(B) the lieutenant governor;
(C) the state auditor;
(D) the attorney general; or
(E) the state treasurer;
(iii) the Board of Pardons and Parole;
(iv) the Board of Examiners;
(v) the National Guard;
(vi) the Career Service Review Office;
(vii) the State Board of Education;
(viii) the Utah Board of Higher Education;
(ix) the State Archives;
(x) the Office of the Legislative Auditor General;
(xi) the Office of Legislative Fiscal Analyst;
(xii) the Office of Legislative Research and General Counsel;
(xiii) the Legislature;
(xiv) a legislative committee of the Legislature;
(xv) a court, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;
(xvi) a state institution of higher education as that term is defined in Section 53B-3-102;
(xvii) an entity within the system of public education that receives funding from the state; or
(xviii) a political subdivision of the state as that term is defined in Section 63G-7-102.

(b) "Government entity" includes:
(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity described in Subsection (5)(a) that is funded or established by the government to carry out the public's business; or
(ii) an individual acting as an agent of a government entity or acting on behalf of an entity described in this Subsection (5).

(6)
(a) "Image database" means a database maintained by a government entity that contains images the government entity captures of an individual while the individual interacts with the government entity.
(b) "Image database" does not include publicly available information.

(7) "Law enforcement agency" means a public entity that exists primarily to prevent, detect, or prosecute crime or enforce criminal statutes or ordinances.

(8) "Trained employee" means an individual who is trained to make a facial recognition comparison and identification and who has completed implicit bias training.

Enacted by Chapter 200, 2021 General Session

77-23e-103 Government use of facial recognition system with image database -- Restrictions -- Process -- Disclosure.

(1) Except as provided in this section, in Section 77-23e-104, and in Section 77-23e-105, a government entity may not use a facial recognition system on an image database.

(2)
(a)

(i) Only a law enforcement agency may make a request for a government entity to conduct a facial recognition comparison using a facial recognition system.
(ii) Except as provided in Subsection (2)(a)(iii), a law enforcement agency shall submit a request for a facial recognition comparison on an image database in writing to the government entity that manages the image database.
(iii) A law enforcement agency shall submit a request for a facial recognition comparison on an image database shared with or maintained by the department in accordance with Section 77-23e-104.
(b) A trained employee who is employed by the government entity that maintains or has access to the image database shall complete the request if the request:
(i) is for a purpose described in Subsection (2)(c);
(ii) includes a case identification number; and
(iii) is, if it is a request made for the purpose of investigating a crime, supported by a statement of the specific crime and factual narrative to support that there is a fair probability that the individual who is the subject of the request is connected to the crime.
(c) An individual described in Subsection (2)(b) shall only comply with requests made for a purpose of:
(i) investigating a felony, a violent crime, or a threat to human life; or
(ii) identifying an individual who is:
(A) deceased;
(B) incapacitated; or
(C) at risk and otherwise unable to provide the law enforcement agency with his or her identity.
(d) The law enforcement agency shall only use the facial recognition comparison:
(i) in accordance with the requirements of law; and
(ii) in relation to a purpose described in Subsection (2)(c).
(3) A government entity may not use a facial recognition system for a civil immigration violation.
(4) To make a facial recognition comparison, a trained employee described in Subsection (2)(b) shall:
(a) use a facial recognition system that, in accordance with industry standards:
(i) makes the comparison using an algorithm that compares only facial biometric data;
(ii) is secure; and
(iii) is produced by a company that is currently in business;
(b) if the facial recognition system indicates a possible match, make an independent visual comparison to determine whether the facial recognition system's possible match is a probable match;
(c) if the trained employee determines that there is a possible match that is a probable match, seek a second opinion from another trained employee or the trained employee's supervisor; and
(d)
(i) if the other trained employee or the trained employee's supervisor agrees that the match is a probable match:
(A) report the result to the requesting law enforcement agency through an encrypted method; and
(B) return to the requesting law enforcement agency only a result that all trained employees agree is a probable match; or

(ii) if the other trained employee or the trained employee's supervisor disagrees that there is a probable match, report the fact that the search returned no results to the requesting law enforcement agency.

(5) When submitting a case to a prosecutor, a law enforcement agency of the state or of a political subdivision shall disclose to the prosecutor, in writing:

(a) whether a facial recognition system was used in investigating the case; and

(b) if a facial recognition system was used:

(i) the information the law enforcement agency received in accordance with Subsection (4)(d)(ii); and

(ii) a description of how the facial recognition comparison was used in the investigation.

Enacted by Chapter 200, 2021 General Session

77-23e-104 Department use of facial recognition system with specific images -- Restrictions.

(1) The department is the only government entity in the state authorized to use a facial recognition system to conduct a facial recognition comparison on an image database that is maintained by or shared with the department.

(2) The department may only use a facial recognition system:

(a) for a purpose authorized in Subsection 77-23e-103(2)(c); or

(b) notwithstanding Subsection 77-23e-103(2)(b), to:

(i) compare an image taken of an applicant for a license certificate or an identification card to determine whether the applicant has submitted a fraudulent or an inaccurate application; or

(ii) provide images for a photo lineup for a purpose authorized in Subsection 77-23e-103(2)(c).

(3) Notwithstanding Subsection 77-23e-104(2)(a)(ii), a law enforcement agency shall submit a request to the department to use a facial recognition system on an image database maintained by the department through the Utah Criminal Justice Information System.

Enacted by Chapter 200, 2021 General Session

77-23e-105 Notice requirement.

(1) When capturing an image of an individual when the individual interacts with the government entity, the government entity shall notify the individual that the individual's image may be used in conjunction with facial recognition technology.

(2) At least 30 days before the day on which a government entity other than the department begins using a facial recognition system to conduct a facial recognition comparison on the government entity's image database, the government entity shall:

(a) publish on the government entity's website:

(i) notice of the proposed use of facial recognition system;

(ii) a description of the image database on which the government entity plans to use the facial recognition system; and

(iii) information about how to provide public comment;

(b) allow the public to submit written comments to the government entity within 15 days after the date of publication;

(c) consider timely submitted public comments and the criteria established in this chapter in determining whether to proceed with the intended use of the facial recognition system; and

(d) post notice of the final decision on the government entity's website.

(3) The process described in Subsection (2) does not create a right of appeal.

Enacted by Chapter 200, 2021 General Session

77-23e-106 Data protection and disclosure.

(1) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, data relating to a facial recognition comparison may not be used or shared for any purpose other than a purpose described in this chapter.

(2)
  (a) Upon request, a government entity shall release statistical information regarding facial recognition comparisons, including:
    (i) the different types of crime for which the government entity received a request;
    (ii) how many requests the government entity received for each type of crime; and
    (iii) the number of probable matches the government entity provided in response to each request.
  (b) In responding to a request for a release of statistical information under Subsection (2)(a), a government entity may not disclose details regarding a pending investigation.

(3)
  (a) On or after August 1 but before October 15 of each year, a government entity that uses a facial recognition system to conduct a facial recognition comparison shall provide to the Government Operations Interim Committee a report that discloses:
    (i) the different types of crime for which the department received a request;
    (ii) how many requests the department received for each type of crime;
    (iii) the number of probable matches the department provided in response to each request; and
    (iv) the image source from which the department made each match.
  (b) In responding to a request for a release of statistical information under Subsection (2)(a), a government entity may not disclose details regarding a pending investigation.

Enacted by Chapter 200, 2021 General Session

Chapter 24a
Lost or Mislaid Personal Property

77-24a-1 Definition.

(1) "Lost or mislaid property":
  (a) means any property that comes into the possession of a peace officer or law enforcement agency:
    (i) that is not claimed by anyone who is identified as the owner of the property; or
    (ii) for which no owner or interest holder can be found after a reasonable and diligent search;
  (b) includes any property received by a peace officer or law enforcement agency from a person claiming to have found the property; and
  (c) does not include property seized by a peace officer pursuant to Title 24, Forfeiture and Disposition of Property Act.

(2) "Public interest use" means:
  (a) use by a governmental agency as determined by the agency's legislative body; or
  (b) donation to a nonprofit charity registered with the state.

Repealed and Re-enacted by Chapter 394, 2013 General Session

77-24a-2 Disposition by police agency.

All lost or mislaid property coming into the possession of a peace officer or law enforcement agency shall be turned over to, held, and disposed of only by the local law enforcement agency whose authority extends to the area where the item was found.

Amended by Chapter 394, 2013 General Session

77-24a-3 Statement of finder of property.

(1) A person who finds lost or mislaid property and delivers it to a local law enforcement agency shall sign a statement included in a form provided by the agency, stating:
  (a) the manner in which the property came into the person's possession, including the time, date, and place;
  (b) that the person does not know who owns the property;
  (c) that, to the person's knowledge, the property was not stolen;
  (d) that the person's possession of the property is not unlawful; and
  (e) any information the person is aware of which could lead to a determination of the owner.
(2) Additional information may be requested by the agency receiving the property, as necessary.

Amended by Chapter 394, 2013 General Session

77-24a-4 Locating owner of property.

(1) The local law enforcement agency shall take reasonable steps to determine the identity and location of the owner, and notify the owner that the property is in custody.
(2) The owner may obtain the property only by providing personal identification, identifying the property, and paying any costs incurred by the agency, including costs for advertising or storage.

Amended by Chapter 394, 2013 General Session

77-24a-5 Disposition of unclaimed property.

(1)
  (a) If the owner of any lost or mislaid property cannot be determined or notified, or if the owner of the property is determined and notified, and fails to appear and claim the property after three months of its receipt by the local law enforcement agency, the agency shall:
    (i) publish notice of the intent to dispose of the unclaimed property on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b);
    (ii) post a similar notice on the public website of the political subdivision within which the law enforcement agency is located; and
    (iii) post a similar notice in a public place designated for notice within the law enforcement agency.
  (b) The notice shall:
    (i) give a general description of the item; and
    (ii) the date of intended disposition.
  (c) The agency may not dispose of the lost or mislaid property until at least eight days after the date of publication and posting.
(2)

(a) If no claim is made for the lost or mislaid property within nine days of publication and posting, the agency shall notify the person who turned the property over to the local law enforcement agency, if it was turned over by a person under Section 77-24a-3.
(b) Except as provided in Subsection (4), if that person has complied with the provisions of this chapter, the person may take the lost or mislaid property if the person:
(i) pays the costs incurred for advertising and storage; and
(ii) signs a receipt for the item.
(3) If the person who found the lost or mislaid property fails to take the property under the provisions of this chapter, the agency shall:
(a) apply the property to a public interest use as provided in Subsection (4);
(b) sell the property at public auction and apply the proceeds of the sale to a public interest use; or
(c) destroy the property if it is unfit for a public interest use or sale.
(4) Before applying the lost or mislaid property to a public interest use, the agency having possession of the property shall obtain from the agency's legislative body:
(a) permission to apply the property to a public interest use; and
(b) the designation and approval of the public interest use of the property.
(5) Any person employed by a law enforcement agency who finds property may not claim or receive property under this section.

Amended by Chapter 394, 2013 General Session

Chapter 25
Justice Courts

77-25-2 Venue of prosecution by information.

Any prosecution by information, except in the case of a felony or class A misdemeanor, shall be commenced before a magistrate in the precinct of the county or municipality where the offense was alleged to have been committed, except as otherwise provided by law.

Enacted by Chapter 15, 1980 General Session

Chapter 27
Pardons and Parole

77-27-1 Definitions.

As used in this chapter:
(1) "Appearance" means any opportunity to address the board, a board member, a panel, or hearing officer, including an interview.
(2) "Board" means the Board of Pardons and Parole.
(3)
(a) "Case action plan" means a document developed by the Department of Corrections that identifies the program priorities for the treatment of the offender.
(b) "Case action plan" includes the criminal risk factors as determined by a risk and needs assessment conducted by the department.

(4) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.
(5) "Commutation" is the change from a greater to a lesser punishment after conviction.
(6) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.
(7) "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 reduced risk of criminal behavior.
(8)
(a) "Deliberative process" means the board or any number of the board's individual members together engaging in discussions, whether written or verbal, regarding a parole, a pardon, a commutation, termination of sentence, or fines, fees, or restitution in an individual case.
(b) "Deliberative process" includes the votes, mental processes, written notes, and recommendations of individual board members and staff.
(c) "Deliberative process" does not include:
(i) a hearing where the offender is present;
(ii) any factual record the board is considering, including records of the offender's criminal convictions, records regarding the offender's current or previous incarceration and supervision, and records regarding the offender's physical or mental health;
(iii) recommendations regarding the offender's incarceration or supervision from any other individual, governmental entity, or agency;
(iv) testimony received by the board regarding the offender, whether written or verbal; or
(v) the board's decision or rationale for the decision.
(9) "Department" means the Department of Corrections.
(10) "Expiration" means when the maximum sentence has run.
(11) "Family" means any individual related to the victim as a spouse, child, sibling, parent, or grandparent, or the victim's legal guardian.
(12) "Hearing" or "full hearing" means an appearance before the board, a panel, a board member or hearing examiner, at which an offender or inmate is afforded an opportunity to be present and address the board.
(13) "Location," in reference to a hearing, means the physical location at which the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of the location of any person participating by electronic means.
(14) "Open session" means any hearing, before the board, a panel, a board member, or a hearing examiner, that is open to the public, regardless of the location of any person participating by electronic means.
(15) "Panel" means members of the board assigned by the chairperson to a particular case.
(16) "Pardon" means:
(a) an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction;
(b) the release of an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction; and
(c) the reinstatement of any civil rights lost as a consequence of conviction or punishment for a criminal offense.
(17) "Parole" means a release from imprisonment on prescribed conditions which, if satisfactorily performed by the parolee, enables the parolee to obtain a termination of the parolee's sentence.
(18) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(19) "Pecuniary damages" means the same as that term is defined in Section 77-38b-102.
(20) "Probation" means an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon prescribed conditions.
(21) "Remit" or "remission" means the same as that term is defined in Section 77-32b-102.
(22) "Reprieve" or "respite" means the temporary suspension of the execution of the sentence.
(23) "Restitution" means the same as that term is defined in Section 77-38b-102.
(24) "Termination" means the act of discharging from parole or concluding the sentence of imprisonment before the expiration of the sentence.
(25) "Victim" means:
(a) a person against whom the defendant committed a felony or class A misdemeanor offense for which a hearing is held under this chapter; or
(b) the victim's family if the victim is deceased as a result of the offense for which a hearing is held under this chapter.

Amended by Chapter 21, 2021 General Session
Amended by Chapter 260, 2021 General Session

77-27-1.5 Appearance by inmate, offender, or witness.
(1) An appearance by an inmate, offender, or witness before the board, a panel, board member, or hearing officer may be in person, through videoconferencing or other electronic means. Any appearance by videoconference or other electronic means shall be recorded as provided in Section 77-27-8.
(2) An inmate's or offender's electronic appearance by telephone is permissible with the consent of the inmate or offender, when the inmate or offender is incarcerated in a facility outside of this state.

Enacted by Chapter 110, 2010 General Session

77-27-2 Board of Pardons and Parole -- Creation -- Compensation -- Functions.
(1)
(a) There is created the Board of Pardons and Parole.
(b) The board shall consist of five full-time members and not more than five pro tempore members to be appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies, and as provided in this section.
(c) The members of the board shall be resident citizens of the state.
(d) The governor shall establish salaries for the members of the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
(2)
(a)
(i)
(A) The full-time board members shall serve terms of five years.
(B) The terms of the full-time members shall be staggered so one board member is appointed for a term of five years on March 1 of each year.
(ii)
(A) The pro tempore members shall serve terms of five years, beginning on March 1 of the year of appointment, with no more than one pro tempore member term beginning or expiring in the same calendar year.

(B) If a pro tempore member vacancy occurs, the board may submit the names of not fewer than three or more than five persons to the governor for appointment to fill the vacancy.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the advice and consent of the Senate in accordance with this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(d)

(i) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.

(ii) A member may not engage in any occupation or business inconsistent with the member's duties.

(e)

(i) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any location within or without the state, or for the purpose of exercising any duty or authority of the board.

(ii) An action is deemed the action of the board if the action is taken by a majority of the board regarding whether:

(A) parole, pardon, commutation, or termination of a sentence is granted in an offender's case;

(B) remission of a criminal accounts receivable, or a fines or forfeiture, is granted in an offender's case; or

(C) an offender's payment schedule for a criminal accounts receivable is modified.

(iii) A majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute.

(iv) Notwithstanding Subsection (2)(e)(iii), a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(v) A board member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

(f)

(i) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board.

(ii) When an action under Subsection (2)(f)(i) is approved and confirmed by the board and filed in the board's office, the action is considered to be the action of the board and has the same effect as if originally made by the board.

(g)

(i) When a full-time board member is absent or in other extraordinary circumstances, the chair may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member.

(ii) Pro tempore members shall receive a per diem rate of compensation as established by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chair may request staff and administrative support as necessary from the department.

(3)

(a) Except as provided in Subsection (3)(b), the commission shall:

(i) recommend five applicants to the governor for a full-time member appointment to the board; and
(ii) consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.
(b) The procedures and requirements of Subsection (3)(a) do not apply if the governor appoints a sitting board member to a new term of office.
(4)
(a)
(i) The board shall appoint an individual to serve as the board's mental health adviser and may appoint other staff necessary to aid the board in fulfilling the board's responsibilities under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness.
(ii) The adviser shall prepare reports and recommendations to the board on all persons adjudicated as guilty with a mental illness, in accordance with Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness.
(b) The mental health adviser shall possess the qualifications necessary to carry out the duties imposed by the board and may not be employed by the department or the Utah State Hospital.
(i) The board may review outside employment by the mental health advisor.
(ii) The board shall develop rules governing employment with entities other than the board by the mental health advisor for the purpose of prohibiting a conflict of interest.
(c) The mental health adviser shall:
(i) act as liaison for the board with the Department of Human Services and local mental health authorities;
(ii) educate the members of the board regarding the needs and special circumstances of persons with a mental illness in the criminal justice system;
(iii) in cooperation with the department, monitor the status of persons in the prison who have been found guilty with a mental illness;
(iv) monitor the progress of other persons under the board's jurisdiction who have a mental illness;
(v) conduct hearings as necessary in the preparation of reports and recommendations; and
(vi) perform other duties as assigned by the board.

Amended by Chapter 260, 2021 General Session

77-27-4 Chairperson and vice chairperson.
(1) The governor shall select one of the members of the board to serve as chairperson and board administrator at the governor's pleasure. The chairperson may exercise the duties and powers, in addition to those established by this chapter, necessary for the administration of daily operations of the board, including personnel, budgetary matters, panel appointments, and scheduling of hearings.
(2) The chairperson shall appoint a vice chairperson to act in the absence of the chairperson.

Amended by Chapter 195, 1990 General Session

77-27-5 Board of Pardons and Parole authority.
(1)

(a) Subject to this chapter and other laws of the state, and except for a conviction for treason or impeachment, the board shall determine by majority decision when and under what conditions an offender's conviction may be pardoned or commuted.

(b) The Board of Pardons and Parole shall determine by majority decision when and under what conditions an offender committed to serve a sentence at a penal or correctional facility, which is under the jurisdiction of the department, may:

(i) be released upon parole;

(ii) have a fine or forfeiture remitted;

(iii) have the offender's criminal accounts receivable remitted in accordance with Section 77-32b-105 or 77-32b-106;

(iv) have the offender's payment schedule modified in accordance with Section 77-32b-103; or

(v) have the offender's sentence terminated.

(c)

(i) The board may sit together or in panels to conduct hearings.

(ii) The chair shall appoint members to the panels in any combination and in accordance with rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the board.

(iii) The chair may participate on any panel and when doing so is chair of the panel.

(iv) The chair of the board may designate the chair for any other panel.

(d)

(i) Except after a hearing before the board, or the board's appointed examiner, in an open session, the board may not:

(A) remit a fine or forfeiture for an offender or the offender's criminal accounts receivable;

(B) release the offender on parole; or

(C) commute, pardon, or terminate an offender's sentence.

(ii) An action taken under this Subsection (1) other than by a majority of the board shall be affirmed by a majority of the board.

(e) A commutation or pardon may be granted only after a full hearing before the board.

(2)

(a) In the case of any hearings, timely prior notice of the time and location of the hearing shall be given to the offender.

(b) The county or district attorney's office responsible for prosecution of the case, the sentencing court, and law enforcement officials responsible for the defendant's arrest and conviction shall be notified of any board hearings through the board's website.

(c) Whenever possible, the victim or the victim's representative, if designated, shall be notified of original hearings and any hearing after that if notification is requested and current contact information has been provided to the board.

(d)

(i) Notice to the victim or the victim's representative shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section.

(ii) The information under Subsection (2)(d)(i) shall be provided in terms that are reasonable for the lay person to understand.

(3)

(a) A decision by the board is final and not subject for judicial review if the decision is regarding:

(i) a pardon, parole, commutation, or termination of an offender's sentence;

(ii) the modification of an offender's payment schedule for restitution; or

(iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.

(b) Deliberative processes are not public and the board is exempt from Title 52, Chapter 4, Open and Public Meetings Act, when the board is engaged in the board's deliberative process.
(c) Pursuant to Subsection 63G-2-103(22)(b)(xi), records of the deliberative process are exempt from Title 63G, Chapter 2, Government Records Access and Management Act.
(d) Unless it will interfere with a constitutional right, deliberative processes are not subject to disclosure, including discovery.
(e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.

(4)
(a) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment.
(b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole.
(c) At the next session of the board, the board:
(i) shall continue or terminate the respite or reprieve; or
(ii) may commute the punishment or pardon the offense as provided.
(d) In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at the Legislature's next session.
(e) The Legislature shall pardon or commute the sentence or direct the sentence's execution.

(5)
(a) In determining when, where, and under what conditions an offender serving a sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the offender's criminal accounts receivable remitted, or have the offender's sentence commuted or terminated, the board shall:
(i) consider whether the offender has made restitution ordered by the court under Section 77-38b-205, or is prepared to pay restitution as a condition of any parole, pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a commutation or termination of the offender's sentence;
(ii) except as provided in Subsection (5)(b), develop and use a list of criteria for making determinations under this Subsection (5);
(iii) consider information provided by the Department of Corrections regarding an offender's individual case action plan; and
(iv) review an offender's status within 60 days after the day on which the board receives notice from the Department of Corrections that the offender has completed all of the offender's case action plan components that relate to activities that can be accomplished while the offender is imprisoned.
(b) The board shall determine whether to remit an offender's criminal accounts receivable under this Subsection (5) in accordance with Section 77-32b-105 or 77-32b-106.

(6) In determining whether parole may be terminated, the board shall consider:
(a) the offense committed by the parolee; and
(b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.

(7) For an offender placed on parole after December 31, 2018, the board shall terminate parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

Amended by Chapter 21, 2021 General Session
Amended by Chapter 246, 2021 General Session

Amended by Chapter 260, 2021 General Session
Amended by Chapter 260, 2021 General Session, (Coordination Clause)

77-27-5.1 Board authority to order expungement.

(1) Upon granting a pardon, the board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.
  (a) When a pardon has been granted, employees of the Board of Pardons and Parole may not divulge any identifying information regarding the pardoned person to any person or agency, except for the pardoned person.
  (b) The Bureau of Criminal Identification may not count pardoned convictions against any future expungement eligibility.
(2) An expungement order, issued by the board, has at least the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.
(3) The board shall provide clear written directions to the recipient along with a list of agencies known to be affected by the expungement order.

Amended by Chapter 356, 2017 General Session

77-27-5.2 Board authority to order removal from Sex and Kidnap Offender Registry.

(1) If the board grants a pardon for a conviction that is the basis for an individual's registration on the Sex and Kidnap Offender Registry, the board shall issue an order directing the Department of Corrections to remove the individual's name and personal information relating to the pardoned conviction from the Sex and Kidnap Offender Registry.
(2) An order described in Subsection (1), issued by the board, satisfies the notification requirement described in Subsection 77-41-113(1)(b).

Enacted by Chapter 410, 2021 General Session

77-27-5.3 Meritless and bad faith litigation.

(1) For purposes of this section:
  (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest, and conviction of any crime or offense.
  (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.
(2) In any case filed in state or federal court in which a prisoner submits a claim that the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons and Parole and any county jail administrator may consider that finding in any early release decisions concerning the prisoner.

Amended by Chapter 366, 2011 General Session

77-27-5.4 Earned time program.

(1) The board shall establish an earned time program that reduces the period of incarceration for offenders who successfully complete specified programs, the purpose of which is to reduce the risk of recidivism.
(2) The earned time program shall:

(a) provide not less than four months of earned time credit each for the completion of up to two programs that:
(i) are approved by the board in collaboration with the Department of Corrections; and
(ii) are recommended programs that are part of the offender's case action plan; and
(b) allow the board to grant in its discretion earned time credit in addition to the earned time credit provided under Subsection (2)(a).
(3) The earned time program may not provide earned time credit for offenders:
(a) whose previously ordered release date does not provide enough time, including time for transition services, for the Board of Pardons and Parole to grant the earned time credit;
(b) who have been sentenced by the court to a term of life without the possibility of parole;
(c) who have been ordered by the Board of Pardons and Parole to serve a life sentence;
(d) who do not have a current release date; or
(e) who have not met a contingency requirement for release that has been ordered by the board.
(4) The board may order the forfeiture of earned time credits under this section if it determines a rescission hearing is necessary.
(5) The department shall notify the board not more than 30 days after an offender completes a program as defined in Subsection 77-27-5.4(2)(a).
(6) The board shall collect data for the fiscal year regarding the operation of the earned time credit program, including:
(a) the number of offenders who have earned time credit under this section in the prior year;
(b) the amount of time credit earned in the prior year;
(c) the number of offenders who forfeited earned time credit; and
(d) additional related information as requested by the Commission on Criminal and Juvenile Justice.
(7) The board shall collaborate with the Department of Corrections in the establishment of the earned time credit program.
(8) To the extent possible, programming and hearings shall be provided early enough in an offender's incarceration to allow the offender to earn time credit.

Amended by Chapter 4, 2016 Special Session 3

77-27-5.5 Review procedure -- Commutation.
(1) The Board of Pardons and Parole may consider the commutation of a death sentence only to life without parole.
(2) Only the person who has been sentenced to death or his counsel may petition the Board of Pardons and Parole for commutation.
(3) The petition shall be in writing, signed personally by the person sentenced to death, and shall include a statement of the grounds upon which the petitioner seeks review.
(4) The state shall be permitted to respond in writing to the petition as may be established by board rules.
(5) The board shall review the petition and determine whether the petition presents a substantial issue which has not been reviewed in the judicial process.
(6) The board shall not consider legal issues, including constitutional issues, which:
(a) have been reviewed previously by the courts;
(b) should have been raised during the judicial process; or
(c) if based on new information, are subject to judicial review.
(7)

(a) If the board does not find a substantial issue, the board shall deny the hearing to the petitioner.
(b) If the board finds a substantial issue, the board shall conduct a hearing in which the petitioner and the state may present evidence and argument as may be provided by board rules.

Amended by Chapter 13, 1994 General Session

77-27-6.1 Payment of a criminal accounts receivable -- Failure to enter an order for restitution or create a criminal accounts receivable -- Modification of a criminal accounts receivable -- Order for recovery of costs or pecuniary damages.

(1) When an offender is committed to prison, the board may require the offender to pay the offender's criminal accounts receivable ordered by the court during the period of incarceration or parole supervision.
(2) If the board orders the release of an offender on parole and there is an unpaid balance on the offender's criminal accounts receivable, the board may modify the payment schedule entered by the court for the offender's criminal accounts receivable in accordance with Section 77-32b-105.
(3)
(a) If the sentencing court has not entered an order of restitution for an offender who is under the jurisdiction of the board, the board shall refer the offender's case to the sentencing court, within the time periods described in Subsection 77-38b-205(5), to enter an order for restitution for the offender in accordance with Section 77-38b-205.
(b) If the sentencing court has not entered an order to establish a criminal accounts receivable for an offender who is under the jurisdiction of the board, the board shall refer the offender's case to the sentencing court, within the time periods described in Subsection 77-38b-205(5), to enter an order to establish a criminal accounts receivable for the offender in accordance with Section 77-32b-103.
(4)
(a) If there is a challenge to an offender's criminal accounts receivable, the board shall refer the offender's case to the sentencing court, within the time periods described in Subsection 77-38b-205(5), to resolve the challenge to the criminal accounts receivable.
(b) If a sentencing court modifies a criminal accounts receivable after the offender is committed to prison, the sentencing court shall provide notice to the board of the modification.
(5) The board may enter an order to recover any cost incurred by the department, or the state or any other agency, arising out of the offender's needs or conduct.

Enacted by Chapter 260, 2021 General Session

77-27-7 Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.
(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider the offender's fitness for release and

verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

(3)

(a) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, the chair may appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3).

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) A parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, and released on parole before January 1, 2019.

(5) In any case where an offender's mental competency is questioned by the board, the chair may appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules governing:

(a) the hearing process;

(b) alienist examination; and

(c) parolee petitions for termination of parole.

Amended by Chapter 334, 2018 General Session

77-27-8 Record of hearing.

(1) A verbatim record of proceedings before the Board of Pardons and Parole shall be maintained by a suitable electronic recording device, except when the board dispenses with a record in a particular hearing or a portion of the proceedings.

(2) When the hearing involves the commutation of a death sentence, a certified shorthand reporter, in addition to electronic means, shall record all proceedings except when the board dispenses with a record for the purpose of deliberations in executive session. The compensation of the reporter shall be determined by the board. The reporter shall immediately file with the board the original record and when requested shall with reasonable diligence furnish a transcription or copy of the record upon payment of reasonable fees as determined by the board.

(3) When an inmate or offender affirms by affidavit that he is unable to pay for a copy of the record, the board may furnish a copy of the record, at the expense of the state, to the inmate or offender.

Amended by Chapter 110, 2010 General Session

77-27-9 Parole proceedings.

(1)
(a) The Board of Pardons and Parole may parole any offender or terminate the sentence of any offender committed to a penal or correctional facility under the jurisdiction of the Department of Corrections except as provided in Subsection (2).
(b) The board may not release any offender before the minimum term has been served unless the board finds mitigating circumstances which justify the release and unless the board has granted a full hearing, in open session, after previous notice of the time and location of the hearing, and recorded the proceedings and decisions of the board.
(c) The board may not parole any offender or terminate the sentence of any offender unless the board has granted a full hearing, in open session, after previous notice of the time and location of the hearing, and recorded the proceedings and decisions of the board.
(d) The release of an offender shall be at the initiative of the board, which shall consider each case as the offender becomes eligible. However, a prisoner may submit the prisoner's own application, subject to the rules of the board promulgated in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(2)
(a) An individual sentenced to prison prior to April 29, 1996, for a first degree felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4); aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole until the offender has fully completed serving the minimum mandatory sentence imposed by the court. This Subsection (2)(a) supersedes any other provision of law.
(b) The board may not parole any offender or commute or terminate the sentence of any offender before the offender has served the minimum term for the offense, if the offender was sentenced prior to April 29, 1996, and if:
(i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape, aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person; and
(ii) the victim of the offense was under 18 years old at the time the offense was committed.
(c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.
(d) The board may not pardon or parole any offender or commute or terminate the sentence of any offender who is sentenced to life in prison without parole except as provided in Subsection (7).
(e) On or after April 27, 1992, the board may commute a sentence of death only to a sentence of life in prison without parole.
(f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come before the Board of Pardons and Parole on or after April 27, 1992.
(g) The board may not parole any offender convicted of a homicide unless:
(i) the remains of the victim have been recovered; or
(ii) the offender can demonstrate by a preponderance of the evidence that the offender has cooperated in good faith in efforts to locate the remains.

(h) Subsection (2)(g) applies to any offender convicted of a homicide after February 25, 2021, or any offender who was incarcerated in a correctional facility on or after February 25, 2021, for a homicide offense.

(3) The board may rescind:

(a) an inmate's prison release date prior to the inmate being released from custody; or

(b) an offender's termination date from parole prior to the offender being terminated from parole.

(4)

(a) The board may issue subpoenas to compel the attendance of witnesses and the production of evidence, to administer oaths, and to take testimony for the purpose of any investigation by the board or any of the board's members or by a designated hearing examiner in the performance of the board's duties.

(b) A person who willfully disobeys a properly served subpoena issued by the board is guilty of a class B misdemeanor.

(5)

(a) The board may adopt rules consistent with law for the board's government, meetings and hearings, the conduct of proceedings before the board, the parole and pardon of offenders, the commutation and termination of sentences, and the general conditions under which parole may be granted and revoked.

(b) The rules shall ensure an adequate opportunity for victims to participate at hearings held under this chapter, as provided in Section 77-27-9.5.

(c) The rules may allow the board to establish reasonable and equitable time limits on the presentations by all participants in hearings held under this chapter.

(6) The board does not provide counseling or therapy for victims as a part of their participation in any hearing under this chapter.

(7) The board may parole a person sentenced to life in prison without parole if the board finds by clear and convincing evidence that the person is permanently incapable of being a threat to the safety of society.

Amended by Chapter 18, 2021 General Session
Amended by Chapter 21, 2021 General Session
Amended by Chapter 21, 2021 General Session, (Coordination Clause)

77-27-9.5 Victim may attend hearings.

(1) As used in this section, "hearing" means a hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present.

(2)

(a) Except as provided in Subsection (2)(b), when a hearing is held regarding any offense committed by the defendant that involved the victim, the victim may attend the hearing to present his views concerning the decisions to be made regarding the defendant.

(b)

(i) The victim may not attend a redetermination or special attention hearing, if the offender is not present.

(ii) At that redetermination or special attention hearing, the board shall give consideration to any presentation previously given by the victim regarding that offender.

(3)

(a) The notice of the hearing shall be timely sent to the victim at his most recent address of record with the board.

(b) The notice shall include:

(i) the date, time, and location of the hearing;
(ii) a clear statement of the reason for the hearing, including all offenses involved;
(iii) the statutes and rules applicable to the victim's participation in the hearing;
(iv) the address and telephone number of an office or person the victim may contact for further explanation of the procedure regarding victim participation in the hearing; and
(v) specific information about how, when, and where the victim may obtain the results of the hearing.

(c) If the victim is dead, or the board is otherwise unable to contact the victim, the board shall make reasonable efforts to notify the victim's immediate family of the hearing.

(d) The victim may communicate with the board for consideration of continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

(4) The victim, or family members if the victim is deceased or unable to attend due to physical incapacity, may:

(a) attend the hearing to observe;

(b) make a statement to the board or its appointed examiner either in person or through a representative appointed by the victim or his family; and

(c) remain present for the hearing if he appoints another to make a statement on his behalf.

(5) The statement may be presented:

(a) as a written statement, which may also be read aloud, if the presenter desires; or

(b) as an oral statement presented by the person selected under Subsection (4).

(6) The victim may be accompanied by a member of his family or another individual, present to provide emotional support to the victim.

(7) The victim may, upon request, testify outside the presence of the defendant but a separate hearing may not be held for this purpose.

Amended by Chapter 355, 1998 General Session

77-27-9.7 Victim right to notification of release -- Notice by board.

A victim entitled to notice of the hearings regarding parole under Section 77-27-9.5 shall also be notified by the Board of Pardons and Parole of the right of victims to be advised upon request of other releases of the defendant under Section 64-13-14.7. The board may include this notification in the same notice sent under Section 77-27-9.5. The board shall coordinate with the Department of Corrections to ensure notice under this section is provided to victims.

Amended by Chapter 13, 1994 General Session

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

(1)

(a) When the Board of Pardons and Parole releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole, including the graduated and evidence-based responses to a violation of a condition of parole established by the Sentencing Commission in accordance with Section 64-13-21, which the offender shall accept and agree to as evidenced by the offender's signature affixed to the agreement.

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

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

(ii)

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

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

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

(2)

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

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

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

(3)

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

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

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

(ii) has not been sentenced pursuant to Section 76-3-406.

(c) The department shall:

(i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for operation of the program;

(ii) adopt and implement internal management policies for operation of the program;

(iii) determine whether or not to refer an offender into this program within 120 days from the date the offender is committed to prison by the sentencing court; and

(iv) make the final recommendation to the board regarding the placement of an offender into the program.

(d) The department may not consider credit for time served in a county jail awaiting trial or sentencing when calculating the 120-day period.

(e) The prosecuting attorney or sentencing court may refer an offender for consideration by the department for participation in the program.

(f) The board shall determine whether or not to place an offender into this program within 30 days of receiving the department's recommendation.

(4) This program shall be implemented by the department within the existing budget.

(5) During the time the offender is on parole, the department shall collect from the offender the monthly supervision fee authorized by Section 64-13-21.

(6) When a parolee commits a violation of the parole agreement, the department may:

(a) respond in accordance with the graduated and evidence-based responses established in accordance with Section 64-13-21; or

(b) when the graduated and evidence-based responses established in accordance with Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation of parole.

Amended by Chapter 173, 2021 General Session

77-27-10.5 Special condition of parole -- Penalty.

(1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release the defendant on parole and as a condition of parole, the board may order the defendant to be prohibited from directly or indirectly engaging in any profit or benefit generating activity relating to the publication of facts or circumstances pertaining to the defendant's involvement in the criminal act for which the defendant is convicted.

(2) The order may prohibit the defendant from contracting with any person, firm, corporation, partnership, association, or other legal entity with respect to the commission and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article, tape recording, phonograph record, radio, or television presentations, live entertainment of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the criminal conduct.

(3) The board may order that the prohibition includes any event undertaken and experienced by the defendant while avoiding apprehension from the authorities or while facing criminal charges.

(4) The board may order that any action taken by the defendant by way of execution of power of attorney, creation of corporate entities, or other action to avoid compliance with the board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

(5) Adult Probation and Parole shall notify the board of any alleged violation of the board's order under this section.

(6) The violation of the board's order shall be considered a violation of parole.

(7) For purposes of this section:

(a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest, and conviction of any crime or offense; and

(b) "defendant" means the convicted defendant, the defendant's assignees, and representatives acting on the defendant's authority.

Amended by Chapter 366, 2011 General Session

77-27-11 Revocation of parole.

(1) The board may revoke the parole of any individual who is found to have violated any condition of the individual's parole.

(2)

(a) If a parolee is confined by the department or any law enforcement official for a suspected violation of parole, the department:

(i) shall immediately report the alleged violation to the board, by means of an incident report; and

(ii) make any recommendation regarding the incident.

(b) A parolee may not be held for a period longer than 72 hours, excluding weekends and holidays, without first obtaining a warrant.

(3) Any member of the board may:

(a) issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee; and

(b) upon arrest of the parolee, determine, or direct the department to determine, if there is probable cause to believe that the parolee has violated the conditions of the parolee's parole.

(4) Upon a finding of probable cause, a parolee may be further detained or imprisoned again pending a hearing by the board or the board's appointed examiner.
(5)
(a) The board or the board's appointed examiner shall conduct a hearing on the alleged violation, and the parolee shall have written notice of the time and location of the hearing, the alleged violation of parole, and a statement of the evidence against the parolee.
(b) The board or the board's appointed examiner shall provide the parolee the opportunity:
(i) to be present;
(ii) to be heard;
(iii) to present witnesses and documentary evidence;
(iv) to confront and cross-examine adverse witnesses, absent a showing of good cause for not allowing the confrontation; and
(v) to be represented by counsel when the parolee is mentally incompetent or pleading not guilty.
(c)
(i) If heard by an appointed examiner, the examiner shall make a written decision which shall include a statement of the facts relied upon by the examiner in determining the guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the alleged violation occurred.
(ii) The appointed examiner shall then refer the case to the board for disposition.
(d)
(i) A final decision shall be reached by a majority vote of the sitting members of the board.
(ii) A parolee shall be promptly notified in writing of the board's findings and decision.
(6)
(a) If a parolee is found to have violated the terms of parole, the board, at the board's discretion, may:
(i) return the parolee to parole;
(ii) modify the payment schedule for the parolee's criminal accounts receivable in accordance with Section 77-32b-105;
(iii) order the parolee to pay pecuniary damages that are proximately caused by a defendant's violation of the terms of the defendant's parole;
(iv) order the parolee to be imprisoned, but not to exceed the maximum term of imprisonment for the parolee's sentence; or
(v) order any other conditions for the parolee.
(b) If the board returns the parolee to parole, the length of parole may not be for a period of time that exceeds the length of the parolee's maximum sentence.
(c) If the board revokes parole for a violation and orders incarceration, the board shall impose a period of incarceration consistent with the guidelines under Subsection 63M-7-404(5).
(d) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)(c):
(i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and
(ii) time served in jail by a parolee due to a violation of parole under Subsection 64-13-6(2).

Amended by Chapter 260, 2021 General Session

77-27-12 Parole discharge, sentence termination.

Any person released on parole shall be discharged from parole or have his sentence terminated subject to the conditions and limitations contained in Section 76-3-202.

Enacted by Chapter 213, 1985 General Session

77-27-13 Board of Pardons and Parole -- Duties of the judiciary, the Department of Corrections, and law enforcement -- Removal of material from files.

(1) The chief executive officer and employees of each penal or correctional institution shall cooperate fully with the board, permit board members free access to offenders, and furnish the board with pertinent information regarding an offender's physical, mental, and social history and his institutional record of behavior, discipline, work, efforts of self-improvement, and attitude toward society.

(2) The Department of Corrections shall furnish pertinent information it has and shall provide a copy of the pre-sentence report and any other investigative reports to the board. In all cases where a pre-sentence report has not been completed, the department shall make a post-sentence report and shall provide a copy of it to the board as soon as possible. The department shall provide the board, upon request, any additional investigations or information needed by the board to reach a decision or conduct a hearing.

(3) The department shall make its facilities available to the board to carry out its functions.

(4) Law enforcement officials responsible for the offender's arrest, conviction, and sentence shall furnish all pertinent data requested by the board.

(5)

(a) In all cases where an indeterminate sentence is imposed, the judge imposing the sentence may within 30 days from the date of the sentence, mail to the chief executive of the board a statement in writing setting out the term for which, in his opinion, the offender sentenced should be imprisoned, and any information he may have regarding the character of the offender or any mitigating or aggravating circumstances connected with the offense for which the offender has been convicted. In addition, the prosecutor shall in all cases, within 30 days from the date of sentence, forward in writing to the chief executive of the board a full and complete description of the crime, a written record of any plea bargain entered into, a statement of the mitigating or aggravating circumstances or both, all investigative reports, a victim impact statement referring to physical, mental, or economic loss suffered, and any other information the prosecutor believes will be relevant to the board. These statements shall be preserved in the files of the board.

(b) Notwithstanding Subsection (5)(a), the board may remove from its files any:

(i) statement that it is not going to rely on in its decisionmaking process;

(ii) information found to be incorrect by a court, the Board of Pardons and Parole, or administrative agency; or

(iii) duplicative materials.

(6) The chief executive officer of any penal or correctional institution shall permit offenders to send mail to the board without censorship.

Amended by Chapter 171, 1998 General Session

77-27-21.7 Sex offender restrictions.

(1) As used in this section:

(a) "Minor" means an individual who is less than 18 years old;

(b)

(i) "Protected area" means the premises occupied by:
(A) any licensed day care or preschool facility;
(B) a swimming pool that is open to the public;
(C) a public or private primary or secondary school that is not on the grounds of a correctional facility;
(D) a community park that is open to the public;
(E) a playground that is open to the public, including those areas designed to provide children space, recreational equipment, or other amenities intended to allow children to engage in physical activity; and
(F) except as provided in Subsection (1)(b)(ii), an area that is 1,000 feet or less from the residence of a victim of the sex offender if the sex offender is subject to a victim requested restriction.
(ii) "Protected area" does not include the area described in Subsection (1)(b)(i)(F) if:
(A) the victim is a member of the immediate family of the sex offender; and
(B) the terms of the sex offender's agreement of probation or parole allow the sex offender to reside in the same residence as the victim.
(c) "Sex offender" means an adult or juvenile who is required to register in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, due to a conviction for any offense that is committed against a person younger than 18 years old.
(2) For purposes of Subsection (1)(b)(i)(F), a sex offender is subject to a victim requested restriction if:
(a) the sex offender is on probation or parole for an offense that requires the offender to register in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry;
(b) the victim or the victim's parent or guardian advises the Department of Corrections that the victim elects to restrict the sex offender from the area and authorizes the Department of Corrections to advise the sex offender of the area where the victim resides; and
(c) the Department of Corrections notifies the sex offender in writing that the sex offender is prohibited from being in the area described in Subsection (1)(b)(i)(F) and provides a description of the location of the protected area to the sex offender.
(3) A sex offender may not:
(a) be in a protected area except:
(i) when the sex offender must be in a protected area to perform the sex offender's parental responsibilities;
(ii)
(A) when the protected area is a public or private primary or secondary school; and
(B) the school is open and being used for a public activity other than a school-related function that involves a minor; or
(iii)
(A) if the protected area is a licensed day care or preschool facility located within a building that is open to the public for purposes other than the operation of the day care or preschool facility; and
(B) the sex offender does not enter a part of the building that is occupied by the day care or preschool facility; or
(b) serve as an athletic coach, manager, or trainer for any sports team of which a minor who is less than 18 years old is a member.
(4) A sex offender who violates this section is guilty of a class A misdemeanor.

Amended by Chapter 206, 2020 General Session

77-27-21.8 Sex offender in presence of a child -- Definitions -- Penalties.

(1) As used in this section:

(a) "Accompany" means:

(i) to be in the presence of an individual; and

(ii) to move or travel with that individual from one location to another, whether outdoors, indoors, or in or on any type of vehicle.

(b) "Child" means an individual younger than 14 years of age.

(2) A sex offender subject to registration in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an offense committed or attempted to be committed against a child younger than 14 years of age is guilty of a class A misdemeanor if the sex offender requests, invites, or solicits a child to accompany the sex offender, under circumstances that do not constitute an attempt to violate Section 76-5-301.1, child kidnapping, unless:

(a)

(i) the sex offender, prior to accompanying the child:

(A) verbally advises the child's parent or legal guardian that the sex offender is on the state sex offender registry and is required by state law to obtain written permission in order for the sex offender to accompany the child; and

(B) requests that the child's parent or legal guardian provide written authorization for the sex offender to accompany the child, including the specific dates and locations;

(ii) the child's parent or legal guardian has provided to the sex offender written authorization, including the specific dates and locations, for the sex offender to accompany the child; and

(iii) the sex offender has possession of the written authorization and is accompanying the child only at the dates and locations specified in the authorization;

(b) the child's parent or guardian has verbally authorized the sex offender to accompany the child either in the child's residence or on property appurtenant to the child's residence, but in no other locations; or

(c) the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child.

(3)

(a) A sex offender convicted of a violation of Subsection (2) is subject to registration in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an additional five years subsequent to the required registration under Section 77-41-105.

(b) The period of additional registration imposed under Subsection (3)(a) is also in addition to any period of registration imposed under Subsection 77-41-107(3) for failure to comply with registration requirements.

(4) It is not a defense to a prosecution under this section that the defendant mistakenly believed the individual to be 14 years of age or older at the time of the offense or was unaware of the individual's true age.

(5) This section does not apply if a sex offender is acting to rescue a child who is in an emergency and life-threatening situation.

Amended by Chapter 258, 2015 General Session

77-27-21.9 Sex offender assessment.

(1) As used in this section:

(a) "Dynamic factors" means a person's individual characteristics, issues, resources, or circumstances that:

(i) can change or be influenced; and
(ii) affect the risk of recidivism or the risk of violating conditions of probation or parole.
(b) "Multi-domain assessment" means an evaluation process or tool which reports in quantitative and qualitative terms an offender's condition, stability, needs, resources, and dynamic factors affecting the offender's transition into the community and compliance with conditions of probation or parole, such as the following:
(i) alcohol and other drug use;
(ii) mental health status;
(iii) physical health;
(iv) criminal behavior;
(v) education;
(vi) emotional health and barriers;
(vii) employment;
(viii) family dynamics;
(ix) housing;
(x) physical health and nutrition;
(xi) spirituality;
(xii) social support systems;
(xiii) special population needs, including:
(A) co-existing disorders;
(B) domestic violence;
(C) drug of choice;
(D) gender, ethnic, and cultural considerations;
(E) other health issues;
(F) sexual abuse; and
(G) sexual orientation;
(xiv) transportation; and
(xv) treatment involvement.
(c) "Qualitative terms" means written summaries used to describe meaning, enrich, or explain significant quantitative indicators or benchmarks within the areas defined in Subsection (1)(b).
(d) "Quantitative terms" means numerical distinctions or benchmarks used to describe conditions within the areas defined in Subsection (1)(b).
(2) The department shall issue a request for proposals to provide a periodic multi-domain assessment tool, as defined in Subsection (1)(b) and implement the tool for a three-year trial period in the management of sex offenders being supervised in the community in the department's Region 3.
(3) The request for proposals shall include a requirement that the multi-domain assessment tool be designed to be administered:
(a) every 16 weeks during the first year a sex offender is supervised in the community; and
(b) every 12 to 26 weeks during the second and subsequent years a sex offender is supervised in the community, as determined appropriate by the department's supervisory personnel and the sex offender's treatment team.
(4) The department shall promptly make results of the multi-domain assessment available to:
(a) the sex offender's treatment team; and
(b) the corrections personnel responsible for supervising the offender.
(5) The department shall provide to the legislative Law Enforcement and Criminal Justice Interim Committee at the conclusion of the trial period a written report of the results of the use of the multi-domain assessments, including:

(a) the impact on recidivism;
(b) other indicators of the effect of the use of the assessments;
(c) the number of assessments administered annually;
(d) the number of individuals who were assessed during the year; and
(e) any recommended legislative or policy changes.

Enacted by Chapter 309, 2008 General Session

77-27-24 Out-of-state supervision of probationers and parolees -- Compacts.

The governor of this state is authorized to execute a compact on behalf of the State of Utah with any other state legally joining therein. "State," as used in this section, includes any state, territory or possession of the United States, and the District of Columbia. The compact shall be in substantially the following form:

(1) A compact entered into by and among the contracting states, signatories thereto, with the consent of the Congress of the United States of America, granted by an act entitled An Act Granting the Consent of Congress to any two or more States to enter into Agreements or Compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes.

(2) The contracting states solemnly agree:

(a) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called sending state) to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called receiving state) while on probation or parole, if:

(i) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there; or

(ii) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

(A) Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

(B) A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(b) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(c) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole from such sending state. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation (or parole) shall be conclusive upon and not reviewable within the receiving state; provided if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(d) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference.
(e) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.
(f) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.
(g) That this compact shall continue in force and remain binding upon each executing state until renounced by it. That duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, on sending six months' notice in writing of intention to withdraw from the compact to the other states party thereto.

Amended by Chapter 306, 2007 General Session

77-27-25 Amendments to interstate compact -- Transfer of prisoners -- Costs -- Supplementary agreements.

The governor is authorized, on behalf of the state, to execute amendments to the compacts provided for in Section 77-27-24, with any other state legally joined therein. "State," as used in this section, includes any state, territory or possession of the United States and the District of Columbia. The amendments to the compact shall be in form substantially as follows:

(a) Whenever the duly constituted judicial and administrative authorities in a sending state shall determine incarceration of a probationer or reincarceration of a parolee is necessary or desirable, said officials may direct that the incarceration or reincarceration be in a prison or other correctional institution within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(b) As used in this amendment, the term "receiving state" shall be construed to mean any state, other than the sending state, in which a parolee or probationer may be found, provided that said state is a party to this amendment.

(c) Every state which adopts this amendment shall designate at least one of its correctional institutions as a "Compact Institution" and shall incarcerate persons therein as provided in (a) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's prisoners as may be confined in the institution.

(d) Persons confined in "Compact Institutions" pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to a prison or other correctional institution within the sending state, for return to probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state.

(e) All persons who may be confined in a "Compact Institution" pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of incarceration or reincarceration in a receiving state shall not deprive any person so incarcerated or reincarcerated of any rights which said person would have had if incarcerated or reincarcerated in an

appropriate institution of the sending state; nor shall any agreement to submit to incarceration or reincarceration pursuant to the terms of this amendment be construed as a waiver of any rights which the prisoner would have had if he had been incarcerated or reincarcerated in an appropriate institution of the sending state, except that the hearing or hearings, if any, to which a parolee or probationer may be entitled, (prior to incarceration or reincarceration) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(f) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(g) This amendment shall take effect when ratified by any two or more states party to the compact and shall be effective as to those states which have specifically ratified this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have ratified this amendment.

Enacted by Chapter 15, 1980 General Session

77-27-26 Deputization of agents to effect return of parole and probation violators.

(1)
(a) The official administrator of the interstate compact for the supervision of parolees and probationers is authorized and empowered to deputize any person to act as an officer and agent of this state in carrying out the return of any person who has violated the terms and conditions of parole or probation as granted by this state.
(b) In any matter relating to the return of a violator described in Subsection (1)(a), any deputized agent shall have all the powers of a peace officer of this state.

(2) Any deputization of any person pursuant to this section shall be in writing and the deputized agent shall:
(a) carry formal evidence of his deputization; and
(b) produce the evidence of deputization upon demand.

(3) The official administrator of the interstate compact is authorized, subject to the approval of the governor, to enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state.

Amended by Chapter 282, 1998 General Session

77-27-27 Retaking or reincarceration for parole or probation violations -- Hearing and notice to sending state -- Detention of parolee or probationer.

Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this act within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable, following termination

of any hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

Enacted by Chapter 15, 1980 General Session

77-27-28 Hearing officer.

Any hearing pursuant to this act shall be heard by the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of the administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

Enacted by Chapter 15, 1980 General Session

77-27-29 Rights of parolee or probationer -- Record of proceedings.

(1) With respect to any hearing pursuant to the Uniform Act for Out-of-State Supervision, the parolee or probationer shall have the following rights:
  (a) reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;
  (b) be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing;
  (c) to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons; and
  (d) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions.
(2) A record of the proceedings shall be made and preserved.

Amended by Chapter 306, 2007 General Session

77-27-30 Violation by parolee or probationer supervised in another state -- Hearing in other state -- Procedure upon receipt of record from other state.

In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this act, the record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

Enacted by Chapter 15, 1980 General Session

77-27-31 Short title.

Sections 77-27-24 through 77-27-30 of this chapter may be cited as the "Uniform Act for Out-of-State Supervision."

Enacted by Chapter 15, 1980 General Session

Chapter 28
Western Interstate Corrections Compact

77-28-1 Compact enacted into law -- Text of compact.

The Western Interstate Corrections Compact as contained herein is enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

ARTICLE I
PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III
CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that money is legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

PROCEDURE AND RIGHTS

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institutions in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal

rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any powers in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE -- EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at any time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract

pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purpose of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Amended by Chapter 342, 2011 General Session

77-28-2 Department of Corrections -- Authority to transfer inmates.

The Department of Corrections may transfer an inmate (as defined in Article II (d) of the Western Interstate Corrections Compact) to any institution within or without this state if this state has entered into a contract or contracts for the confinement of inmates in said institutions pursuant to Article III of the Western Interstate Corrections Compact.

Amended by Chapter 212, 1985 General Session

77-28-3 Duties and powers of courts, departments, agencies and officers in enforcing and effecting compact.

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

Enacted by Chapter 15, 1980 General Session

77-28-4 Board of Pardons and Parole -- Authority to hold hearings.

The Board of Pardons and Parole is hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV (f) of the Western Interstate Corrections Compact. The board is further authorized to travel to any state who is a party to the compact to which an inmate is sent for confinement, for the purpose of holding any hearing to which an inmate is entitled by the laws of Utah.

Amended by Chapter 13, 1994 General Session

77-28-5 Governor -- Power to enter into contracts.

The governor is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof.

Enacted by Chapter 15, 1980 General Session

Chapter 28a
Interstate Corrections Compact

77-28a-1 Compact entered into law -- Text of compact.

The interstate compact on corrections as contained herein is enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I

PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best

interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this Compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II

DEFINITIONS

As used in this Compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the United States of America, a Territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(b) "Sending state" means a state party to this Compact in which conviction or court commitment was had;

(c) "Receiving state" means a state party to this Compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had;

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution;

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III

CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration;

(2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(3) Participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account thereof, and the crediting of proceeds from or disposal of any products resulting therefrom;

(4) Delivery and retaking of inmates;

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted authorities in a state party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care of an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution with the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the

purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this Compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state, if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this Compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any powers in respect of any inmate confined pursuant to the terms of this Compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the

receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this Compact through any and all states party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

FEDERAL AID

Any state party to this Compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this Compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ENTRY INTO FORCE

This Compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII

WITHDRAWAL AND TERMINATION

This Compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of co-operative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this Compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XI

An inmate must request a transfer in writing before such a transfer can be made pursuant to Article IV.

Enacted by Chapter 38, 1982 General Session

77-28a-2 Department of Corrections -- Authority to transfer inmates.

The Department of Corrections may transfer an inmate, as defined in Subparagraph (d) of Article II of the Interstate Corrections Compact, to any institution within or without this state if this state has entered into any contracts for the confinement of inmates in said institutions pursuant to Article III of that Compact.

Amended by Chapter 212, 1985 General Session

77-28a-3 Duties and powers of courts, departments, agencies and officers in enforcing and effecting compact.

The courts, departments, agencies and officers of this state and its political subdivisions shall enforce this Compact and shall do all things necessary and appropriate to the effectuation of the purposes and intent of this Compact which may be within their respective jurisdictions including, but not limited to, the making and submission of any reports required by that Compact.

Enacted by Chapter 38, 1982 General Session

77-28a-4 Board of Pardons and Parole -- Authority to hold hearings.

The Board of Pardons and Parole is hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV (a) of the Interstate Corrections Compact. The board is further authorized to travel to any state which is a party to that Compact and to which an inmate is sent for confinement, for the purpose of holding any hearing to which that inmate is entitled by the laws of Utah.

Amended by Chapter 13, 1994 General Session

77-28a-5 Governor -- Power to enter into contracts.

The governor is empowered to enter into such contracts on behalf of this state as may be appropriate to implement its participation in the Interstate Corrections Compact pursuant to Article III thereof.

Amended by Chapter 320, 1983 General Session

Chapter 28b
Interjurisdictional Transfer of Prisoners

77-28b-1 Definitions.

(1) "Assurance" means a special condition concerning the confinement or release of an offender which must be met prior to the release of the offender.
(2) "Offender" means a juvenile certified to be tried as an adult or an adult convicted of any criminal offense under Utah law.
(3) "Receiving country" means the jurisdiction to which the offender is to be transferred.
(4) "Sending state" means the jurisdiction from which the offender is to be transferred.

Enacted by Chapter 324, 1990 General Session

77-28b-2 Director's authority.

The director of the Department of Corrections may transfer offenders having foreign citizenship status to countries of citizenship under this chapter if a treaty exists between the United States and the foreign country.

Enacted by Chapter 324, 1990 General Session

77-28b-3 Eligibility criteria for international transfer.

An offender must meet the following criteria before he may be considered for an international transfer:

(1) the offender is a citizen of the receiving country;
(2) the offender consents to transfer to his country of citizenship;
(3) the offense committed by the offender constitutes a criminal offense under the laws of the receiving state;
(4) the offender does not have fewer than 12 months remaining on his sentence at the time of the application for transfer;
(5) the offender is not under a sentence of death;
(6) the offender does not have collateral attacks or appeals on either the sentence or conviction pending;
(7) all other provisions of the imposed sentence such as fines, restitution, and penalties are paid in full;
(8) there are no detainers, wanted notices based on criminal convictions, indictments, informations, complaints, or parole or probation violation allegations pending against the offender; and
(9) the offender meets all of the eligibility requirements of the treaty with his country.

Enacted by Chapter 324, 1990 General Session

77-28b-4 Role of the classification officer.

(1) The classification officer of each correctional institution shall be provided with the eligibility requirements of each prisoner transfer treaty.
(2) The classification officer shall forward Form I, Transfer Inquiry, to all offenders identified as having national or citizenship status in a party nation.
(3) Upon receipt of Form I, Transfer Inquiry, the offender may indicate he is:

(a) interested in pursuing a transfer by signing Form I and returning it to the classification officer along with proof of citizenship; or
(b) not interested in pursuing a transfer by returning Form I to the classification officer without proof of citizenship.
(4) If the offender indicates on Form I, Transfer Inquiry, that he is interested in pursuing a transfer, the institution classification officer shall complete Form II, Inmate Information Provided to Treaty Nation, and Form III, Notice Regarding International Prisoner Transfer.
(5) The following forms, provided by the federal government, shall be completed and forwarded in triplicate by the classification officer to the superintendent of the institution:
(a) Form I, Transfer Inquiry;
(b) Form II, Inmate Information Provided to Treaty Nation;
(c) Form III, Notice Regarding International Prisoner Transfer;
(d) proof of citizenship;
(e) statement of offender's eligibility;
(f) presentence report;
(g) classification assessment;
(h) current psychological and medical reports;
(i) signed release of confidential information forms;
(j) criminal history sheet; and
(k) judgments of conviction or certification to be tried as an adult.

Enacted by Chapter 324, 1990 General Session

77-28b-5 Role of institution warden.

The warden shall sign Form III, Notice Regarding International Prisoner Transfer, and forward the application and the material required in Section 77-28b-4 in triplicate to the Department of Corrections Inmate Placement Program Bureau.

Enacted by Chapter 324, 1990 General Session

77-28b-6 Role of Inmate Placement Program Bureau.

(1) The Department of Corrections Inmate Placement Program Bureau shall:
(a) investigate the request to ensure that all eligibility requirements are met;
(b) request a records check to verify records listed in Section 77-28b-3;
(c) review application and materials for completeness and compliance with treaty terms;
(d) develop and recommend assurances, where indicated; and
(e) provide written notification of the transfer request to the following entities and receive objections or other comments for 15 business days after sending the notification:
(i) attorney general;
(ii) prosecuting law enforcement agency;
(iii) prosecutor; and
(iv) sentencing court.
(2) If the Inmate Placement Program Bureau investigation determines that the application and materials are incomplete or do not comply with the terms of the treaty, the application shall be rejected and returned to the institution in which the inmate is incarcerated.
(3) If the investigation of the bureau determines the application and materials are complete and in compliance with the terms of the treaty, the application and materials shall be forwarded to the director of the Department of Corrections.

Enacted by Chapter 324, 1990 General Session

77-28b-7 Role of director.

(1) The director of the Department of Corrections shall review the application and materials. Upon his approval the application and materials shall be forwarded to the governor for authorization to transfer.
(2) Applications that are not approved by the director shall be returned to the sending institution and the inmate shall be notified.

Enacted by Chapter 324, 1990 General Session

77-28b-8 Referral to the United States Department of Justice, Office of International Affairs.

(1) Upon receipt of the governor's authorization for international transfer, the application and materials shall be forwarded to the United States Department of Justice, Office of International Affairs, by the Inmate Placement Program Bureau.
(2) The bureau shall notify the inmate and the warden of the sending institution of the decision of the application for international transfer.
(3) All arrangements regarding the treaty process and proposed assurances shall be negotiated between the bureau and the United States Department of Justice, Office of International Affairs.

Enacted by Chapter 324, 1990 General Session

77-28b-9 Transfer of offender.

(1) If the inmate is accepted for international transfer by the United States Department of Justice, Office of International Affairs, the offender shall be transported by the Department of Corrections to the federal district court for a verification hearing to ensure the offender consents to the international transfer.
(2) The Department of Corrections shall then relinquish jurisdiction over the offender to the United States Department of Justice.

Enacted by Chapter 324, 1990 General Session

Chapter 28c
Interstate Compact for Adult Offender Supervision

Part 1
Purpose and Functions

77-28c-101 Title.

This chapter is known as the "Interstate Compact for Adult Offender Supervision."

Enacted by Chapter 45, 2001 General Session

77-28c-102 Preamble.

PREAMBLE

Whereas: The Interstate Compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

Enacted by Chapter 45, 2001 General Session

77-28c-103 Compact.

ARTICLE I
PURPOSE

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the by-laws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches, and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and

correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and by-laws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II

DEFINITIONS

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "By-laws" mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the state council under this compact.

(4) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article IV of this compact.

ARTICLE III

THE COMPACT COMMISSION

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision." The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein; including the power to sue and be sued, and such additional powers as may

be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the by-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws, and as directed by the Interstate Commission; and performs other duties as directed by the Commission or set forth in the by-laws.

ARTICLE IV

THE STATE COUNCIL

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission.

(2) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue and be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the Interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) By-laws. The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff.

(1) The Interstate Commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the by-laws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. The Interstate Commission shall maintain its corporate books and records in accordance with the by-laws.

(d) Qualified Immunity, Defense, and Indemnification.

(1) The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The Interstate Commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual

or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

(3) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the Interstate movement of offenders as directed through its by-laws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. Section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. App. 2, Section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule, stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court

finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within 12 months after the first meeting must at a minimum include:

(i) notice to victims and opportunity to be heard;

(ii) offender registration and compliance;

(iii) violations/returns;

(iv) transfer procedures and forms;

(v) eligibility for transfer;

(vi) collection of restitution and fees from offenders;

(vii) data collection and reporting;

(viii) the level of supervision to be provided by the receiving state;

(ix) transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(x) mediation, arbitration, and dispute resolution.

(f) The existing rules governing the operation of the previous compact superceded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(g) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) Oversight.

(1) The Interstate Commission shall oversee the Interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution.

(1) The compacting states shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

(2) The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

(3) The Interstate Commission shall enact a by-law or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII (b) of this compact.

ARTICLE X
FINANCE

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI
COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII
WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default.

(1) If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the by-laws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(i) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(ii) Remedial training and technical assistance as directed by the Interstate Commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer, and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact and its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) Dissolution of Compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) Other Laws.

(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact.

(1) All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Enacted by Chapter 45, 2001 General Session

77-28c-104 Definitions -- Compact transfer application fee.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Offender" has the same meaning as provided in Section 77-28c-103, Article II(a)(9).

(2)

(a) Offenders desiring a transfer of supervision to another state under the Interstate Compact for Adult Offender Supervision shall apply to the department for transfer.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the transfer of supervision of an offender.

(3) The department shall collect a fee of $50 from each offender applying for transfer of supervision to another state under the Interstate Compact for Adult Offender Supervision.

Amended by Chapter 382, 2008 General Session

77-28c-105 Compact for Adult Offender Supervision Restricted Account.

(1) There is created within the General Fund, a restricted account known as the Interstate Compact for Adult Offender Supervision Restricted Account.
(2) Money in the account shall consist of the compact application fee collected by the department for a transfer of supervision under the provisions of Subsection 77-28c-104(3).
(3) Upon appropriation by the Legislature, money in the account shall be used:
  (a) to cover costs incurred in the collection of the fee; and
  (b) for the administration of the Interstate Compact for Adult Offender Supervision, including the payment of the annual assessment levied under Subsection 77-28c-103, Article X(b).

Enacted by Chapter 239, 2004 General Session

Part 2
Authority of the Governor to Enter Into Compact

77-28c-201 Authority of governor to join compact.

The governor of Utah is authorized and directed to execute a compact on behalf of this state with any other state or states joining the Interstate Compact for Adult Offender Supervision as provided in Section 77-28c-103.

Enacted by Chapter 45, 2001 General Session

Chapter 29
Disposition of Detainers Against Prisoners

77-29-3 Chapter inapplicable to incompetent persons.

The provisions of this chapter shall not apply to any person while adjudged to be incompetent to proceed under Chapter 15, Inquiry into Sanity of Defendant.

Enacted by Chapter 15, 1980 General Session

77-29-5 Interstate agreement on detainers -- Enactment into law -- Text of agreement.

The interstate agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments,

informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of co-operative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final dispositions pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to a paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in the article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request

for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Enacted by Chapter 15, 1980 General Session

77-29-6 Interstate agreement -- "Appropriate court" defined.

The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

Enacted by Chapter 15, 1980 General Session

77-29-7 Interstate agreement -- Duty of state agencies and political subdivisions to cooperate.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

Enacted by Chapter 15, 1980 General Session

77-29-8 Interstate agreement -- Application of habitual criminal law.

Nothing in the agreement on detainers shall be construed to require the application of the habitual criminal law of this state to any person as a result of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

Enacted by Chapter 15, 1980 General Session

77-29-9 Interstate agreement -- Escape of prisoner while in temporary custody.

Escape or attempt to escape from custody, whether within or without this state, while in the temporary custody of an authority of another state acting pursuant to the agreement on detainers shall constitute an offense against this state. Such escape or attempt to escape shall constitute an offense to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been released to temporary custody, and shall be punishable in the same manner as an escape or attempt to escape from said institution.

Enacted by Chapter 15, 1980 General Session

77-29-10 Interstate agreement -- Duty of warden.

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to deliver any inmate thereof whenever so required by the operation of the agreement on detainers.

Enacted by Chapter 15, 1980 General Session

77-29-11 Interstate agreement -- Attorney general as administrator and information agent.

The attorney general is hereby designated as the officer who shall be the central administrator of and information agent for the agreement on detainers as provided in Article VII of the agreement.

Enacted by Chapter 15, 1980 General Session

Chapter 30
Extradition

77-30-1 Definitions.

Where appearing in this act, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

Enacted by Chapter 15, 1980 General Session

77-30-2 Duty of governor to deliver person charged with crime upon demand by other state.

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime who has fled from justice and is found in this state.

Enacted by Chapter 15, 1980 General Session

77-30-3 Form of demand -- What documents presented must show.

No demand for the extradition of a person charged with a crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under Section 77-30-6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence composed in execution, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Enacted by Chapter 15, 1980 General Session

77-30-4 Governor may investigate demand.

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with a crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Enacted by Chapter 15, 1980 General Session

77-30-5 Extradition for prosecution before conclusion of trial or term in other state -- Return of person involuntarily leaving demanding state.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in Section 77-30-23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Enacted by Chapter 15, 1980 General Session

77-30-6 Extradition for crime committed in another state by person while in this state.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state, in the manner provided in section 77-30-3, with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not

otherwise inconsistent shall apply to such cases even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Enacted by Chapter 15, 1980 General Session

77-30-7 Governor's warrant of arrest -- Recitals.

If the governor decides that the demand should be complied with he shall sign a warrant of arrest, which shall be sealed with the state seal, directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Enacted by Chapter 15, 1980 General Session

77-30-8 Execution of warrant of arrest.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where the accused may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act, to the duly authorized agent of the demanding state.

Amended by Chapter 281, 2018 General Session

77-30-9 Authority of officers under warrant of arrest.

Every such peace officer or other person empowered to make the arrest shall have the same authority in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Enacted by Chapter 15, 1980 General Session

77-30-10 Time to apply for habeas corpus allowed.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

Enacted by Chapter 15, 1980 General Session

77-30-11 Penalty for disobedience of habeas corpus.

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to Section 77-30-10, shall be guilty

of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned in the county jail not more than six months, or both.

Amended by Chapter 20, 1995 General Session

77-30-12 Officers entitled to use local jails.

The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping; provided, such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

Enacted by Chapter 15, 1980 General Session

77-30-13 Fugitives from justice -- Warrant of arrest.

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under Section 77-30-6 that he has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and except in cases arising under Section 77-30-6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Enacted by Chapter 15, 1980 General Session

77-30-14 Arrest without warrant.

The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a

state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in Section 77-30-13, and thereafter his answer shall be heard as if he had been arrested on a warrant.

Amended by Chapter 20, 1995 General Session

77-30-15 Commitment pending arrest under warrant of governor.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under Section 77-30-6 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in the next section or until he shall be legally discharged.

Enacted by Chapter 15, 1980 General Session

77-30-16 Amount of bail.

(1) Except as provided in Subsection (2), a judge or magistrate in this state may admit the person arrested to bail by bond with sufficient sureties and in an amount he considers proper, conditioned for his appearance before him at a time specified in the bond and for his surrender, to be arrested upon the warrant of the governor of this state.
(2) A person arrested under Section 77-30-13 shall be admitted to bail as a matter of right, except the court has discretion to deny bail as provided in Utah Constitution Article I, Section 8, and when a judge or magistrate in the demanding state has ordered that the person charged be held without bail or the person has waived extradition.
(3) There is a rebuttable presumption that the bail set by the court or magistrate in the demanding state is the proper amount of bail in this state.

Amended by Chapter 199, 1997 General Session

77-30-17 Procedure when no arrest made under warrant of governor.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in Section 77-30-16, but within a period not to exceed 60 days after the date of such new bond.

Enacted by Chapter 15, 1980 General Session

77-30-18 Forfeiture of bail.

If the prisoner is admitted to bail and fails to appear and surrender according to the conditions of the prisoner's bond, the judge or magistrate by proper order shall declare the bond forfeited and order the prisoner's immediate arrest without warrant if the prisoner is within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Amended by Chapter 281, 2018 General Session

77-30-19 Procedure if prosecution pending in this state.

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, may either surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

Enacted by Chapter 15, 1980 General Session

77-30-20 Governor not to inquire into guilt or innocence.

The guilt or innocence of the accused as to the crime of which he is charged in another state may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

Enacted by Chapter 15, 1980 General Session

77-30-21 Governor's warrant of arrest recalled or another issued.

The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

Enacted by Chapter 15, 1980 General Session

77-30-22 Fugitives from this state -- Issuance of governor's warrant.

Whenever the governor of this state shall demand a person charged with a crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the executive authority of any other state or from the chief justice or an associate justice of the superior court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

Enacted by Chapter 15, 1980 General Session

77-30-23 Fugitives from this state -- Applications for requisition for return.

(1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.
(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole,

the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which escape was made shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate stating the offense with which the accused is charged, or of the judgment or conviction, or of the sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

Amended by Chapter 306, 2007 General Session

77-30-24 Payment of expenses -- Extradition costs.

(1)

(a) When the punishment of an offense is the confinement of the defendant in prison, the expenses shall be paid out of the state treasury on the certificate of the governor and warrant of the auditor.

(b) In all other cases, the expenses for confinement shall be paid out of the treasury of the county where the offense is alleged to have been committed.

(c) The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made.

(2) If a defendant is returned to the state under this chapter and the defendant is convicted of, or pleads guilty or no contest to, the offense or to a lesser offense, the defendant may be required to pay the costs of extradition to the appropriate governmental entity as described in Subsection 76-3-201(4)(c).

Amended by Chapter 260, 2021 General Session

77-30-25 Individual brought into state on extradition exempt from civil process -- Waiver of extradition proceedings -- Nonwaiver by this state.

(1) An individual brought into this state by or after waiver of extradition based on a criminal charge is not subject to service of personal process in a civil action arising out of the same facts as the criminal proceedings to answer which the individual is being or has been returned until the individual has been convicted in the criminal proceedings, or, if acquitted, until the individual has had reasonable opportunity to return to the state from which the individual was extradited.

(2)

(a) An individual arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of the individual's bail, probation, or parole may waive the issuance and service of the warrant provided for

in Sections 77-30-7 and 77-30-8, and a procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing that states that the individual consents to return to the demanding state, except that before the waiver is executed or subscribed by the individual, it shall be the duty of the judge to inform the individual of the individual's rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 77-30-10.

(b) The judge shall direct the officer having an individual in custody to deliver forthwith the individual to the accredited agent or agents of the demanding state and shall deliver or cause to be delivered to the accredited agent or agents a copy of the consent except that nothing in this section may be considered to limit the rights of the accused individual to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be considered to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(3) Nothing in this chapter may be considered to constitute a waiver by this state of its right, power, or privilege to try the demanded individual for a crime committed within this state, or of its right, power, or privilege to regain custody of the individual by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this chapter, which result in or fail to result in extradition, be considered a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

Amended by Chapter 429, 2019 General Session

77-30-26 Prosecution not limited to crime specified in requisition.

After a person has been brought back to this state by or after waiver of extradition proceedings he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Enacted by Chapter 15, 1980 General Session

77-30-26.5 Person who has violated parole or probation agreement with demanding state.

(1) A law enforcement agency that is holding a person subject to extradition based on having allegedly violated the terms of the person's probation, parole, bail, or other terms of release in the demanding state shall immediately release the person to the authorized agent of the demanding state. A governor's warrant is not required in order to return the person if:

(a) the person has previously signed a waiver of extradition as a term of the person's probation, parole, bail, or other terms of release in the demanding state;

(b) the law enforcement agency holding the person has received:

(i) an authenticated copy of the prior waiver of extradition signed by the person; and

(ii) a photograph and fingerprints identifying the person as the person who signed the waiver.

(2) Utah may, prior to releasing a person to the authorized agent of the demanding state, prosecute the person for any criminal offense committed in Utah.

(3) This section does not affect or limit:

(a) the right of the person sought by the demanding state to return to the demanding state voluntarily and without governmental action;

(b) the authority of the law enforcement or parole officers of Utah or the demanding state; or

(c) any procedures regarding waiver of extradition under Title 77, Chapter 30, Extradition.

Enacted by Chapter 156, 2007 General Session

77-30-27 Uniformity of interpretation.

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

Enacted by Chapter 15, 1980 General Session

77-30-28 Citation -- Uniform Criminal Extradition Act.

This act may be cited as the Uniform Criminal Extradition Act.

Enacted by Chapter 15, 1980 General Session

Chapter 32b
Criminal Accounts Receivable and Costs

77-32b-101 Title.

This chapter is known as "Criminal Accounts Receivable and Costs."

Enacted by Chapter 260, 2021 General Session

77-32b-102 Definitions.

As used in this chapter:

(1) "Board" means the Board of Pardons and Parole.

(2)

(a) "Civil accounts receivable" means any amount of the criminal accounts receivable that is owed by the defendant that has not been paid on or before the day on which:

(i) the defendant's sentence is terminated; or

(ii) the court enters an order for a civil accounts receivable under Subsection 77-18-114(1) or (2).

(b) "Civil accounts receivable" does not include any amount of the criminal accounts receivable that is owed by the defendant for restitution.

(3) "Civil judgment of restitution" means any amount of the criminal accounts receivable that is owed by the defendant for restitution that has not been paid on or before the day on which the defendant's sentence is terminated.

(4)

(a) "Criminal accounts receivable" means any amount owed by a defendant that arises from a criminal judgment until:

(i) the defendant's sentence terminates;

(ii) the court enters an order for a civil accounts receivable under Subsection 77-18-114(1) or (2); or

(iii) if the court requires the defendant, upon termination of the probation period for the defendant, to continue to make payments on the criminal accounts as described in Subsection 77-18-105(8), the defendant's sentence expires.

(b) "Criminal accounts receivable" includes unpaid fees, forfeitures, surcharges, costs, interest, penalties, restitution, third party claims, claims, reimbursement of a reward, and damages.

(5) "Default" means a civil accounts receivable, a civil judgment of restitution, or a criminal accounts receivable that is overdue by at least 90 days.
(6) "Delinquent" means a civil accounts receivable, a civil judgment of restitution, or a criminal account receivable that is overdue by more than 28 days but less than 90 days.
(7) "Payment schedule" means the amount that is be paid by a defendant in installments, or by a certain date, to satisfy a criminal accounts receivable for the defendant.
(8) "Remit" or "remission" means to forgive or to excuse, in whole or in part, any unpaid amount of a criminal accounts receivable.
(9) "Restitution" means the same as that term is defined in Section 77-38b-102.

Renumbered and Amended by Chapter 260, 2021 General Session

77-32b-103 Establishment of a criminal accounts receivable -- Responsibility -- Payment schedule -- Delinquency or default.

(1)
(a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts receivable for the defendant.
(b) The court is not required to create a criminal accounts receivable for the defendant under Subsection (1) if the court finds that the defendant does not owe restitution and there are no other fines or fees to be assessed against the defendant.
(c) Subject to Subsection 77-38b-205(5), if the court does not create a criminal accounts receivable for a defendant under Subsection (1), the court shall enter an order to establish a criminal accounts receivable for the defendant at the time the court enters an order for restitution under Section 77-38b-205.

(2) After establishing a criminal accounts receivable for a defendant, the court shall:
(a) if a prison sentence is imposed and not suspended for the defendant:
(i) accept any payment for the criminal accounts receivable that is tendered on the date of sentencing; and
(ii) transfer the responsibility of receiving, distributing, and processing payments for the criminal accounts receivable to the Office of State Debt Collection; and
(b) for all other cases:
(i) retain the responsibility for receiving, processing, and distributing payments for the criminal accounts receivable until the court enters a civil accounts receivable or civil judgment of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and
(ii) record each payment by the defendant on the case docket.
(c) For a criminal accounts receivable that a court retains responsibility for receiving, processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may establish rules to require a defendant to pay the cost, or a portion of the cost, that is charged by a financial institution for the use of a credit or debit card by the defendant to make payments towards the criminal accounts receivable.

(3)
(a) Upon entering an order for a criminal accounts receivable, the court shall establish a payment schedule for the defendant to make payments towards the criminal accounts receivable.
(b) In establishing the payment schedule for the defendant, the court shall consider:
(i) the needs of the victim if the criminal accounts receivable includes an order for restitution under Section 77-38b-205;

(ii) the financial resources of the defendant, as disclosed in the financial declaration under Section 77-38b-204;
(iii) the burden that the payment schedule will impose on the defendant regarding the other reasonable obligations of the defendant;
(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions fixed by the court;
(v) the rehabilitative effect on the defendant of the payment of restitution and method of payment; and
(vi) any other circumstance that the court determines is relevant.
(4) A payment schedule for a criminal accounts receivable does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.
(5) If the court orders restitution under Section 77-38b-205, or makes another financial decision, after sentencing that increases the total amount owed in a defendant's case, the defendant's criminal accounts receivable balance shall be adjusted to include any new amount ordered by the court.
(6)
(a) If a defendant is incarcerated in a county jail or a secure correctional facility, as defined in Section 64-13-1, or the defendant is involuntarily committed under Section 62A-15-631:
(i) all payments for a payment schedule shall be suspended for the period of time that the defendant is incarcerated or involuntarily committed, unless the court, or the board if the defendant is under the jurisdiction of the board, expressly orders the defendant to make payments according to the payment schedule; and
(ii) the defendant shall provide the court with notice of the incarceration or involuntary commitment.
(b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day in which the defendant is released from incarceration or commitment.

Enacted by Chapter 260, 2021 General Session

77-32b-104 Costs -- What constitute costs -- Ability to pay.
(1) Except for a cost described in Subsection 76-3-201(4), costs shall be limited to expenses incurred by the state or any political subdivision of the state for investigating, searching for, apprehending, and prosecuting the defendant, including:
(a) attorney fees of counsel assigned to represent the defendant;
(b) investigators' fees; or
(c) except for a monetary reward that is paid to a codefendant, an accomplice, or a bounty hunter, a monetary reward that is:
(i) offered to the public in exchange for information that would lead to the apprehension and conviction of the defendant; and
(ii) paid to a person who provided information that led to the apprehension and conviction of the defendant.
(2) A cost may not include:
(a) expenses inherent in providing a constitutionally guaranteed trial;
(b) expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law; or
(c) attorney fees for prosecuting attorneys.
(3) The court may not order a defendant to pay a cost, unless there is evidence that the defendant is, or will be, able to pay the cost.

(4) In determining the amount of a cost that a defendant is ordered to pay, the court shall take into account:
(a) the financial resources of the defendant;
(b) the nature of the burden that payment of the cost will impose; and
(c) that restitution is prioritized over any cost.

Renumbered and Amended by Chapter 260, 2021 General Session

77-32b-105 Petition for remittance or modification of a criminal accounts receivable before termination of a sentence.

(1) At any time before a defendant's sentence terminates, the defendant may petition the sentencing court to:
(a) correct an error in a criminal accounts receivable;
(b) modify the payment schedule for the defendant's criminal accounts receivable in accordance with this section if the defendant is not under the jurisdiction of the board; or
(c) remit, in whole or in part, an unpaid amount of the defendant's criminal accounts receivable that is not the principal amount owed for restitution in accordance with this section.
(2) If a defendant files a petition under Subsection (1), and it appears to the satisfaction of the sentencing court that payment of an unpaid amount of a criminal accounts receivable will impose manifest hardship on the defendant, or the defendant's family, the court may:
(a) if the criminal accounts receivable is not delinquent or in default, remit, in whole or in part, the unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution; or
(b) regardless of whether the criminal accounts receivable is delinquent or in default:
(i) require the defendant to pay the criminal accounts receivable, or a specified amount of the criminal accounts receivable, by a certain date;
(ii) modify the payment schedule for the criminal accounts receivable in accordance with the factors described in Subsection 77-32b-103(3)(b) if the defendant has demonstrated that the criminal accounts receivable will impose a manifest hardship due to changed circumstances or new evidence that justifies modifying the payment schedule; or
(iii) allow the defendant to satisfy an unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution with proof of compensatory service completed by the defendant at a rate of credit not less than $10 for each hour of compensatory service.
(3)
(a) If a defendant is under the jurisdiction of the board, the defendant may petition the board, at any time before the defendant's sentence terminates, to modify the payment schedule for the defendant's criminal accounts receivable.
(b) If a defendant files a petition under Subsection (3)(a), the board may modify the payment schedule for the criminal accounts receivable in accordance with the factors described in Subsection 77-32b-103(3)(b) if the defendant has demonstrated that the criminal accounts receivable will impose a manifest hardship to the defendant, or the defendant's family, due to changed circumstances or new evidence that justifies modifying the payment schedule.

Enacted by Chapter 260, 2021 General Session

77-32b-106 Petition for remittance of an unpaid balance of a criminal accounts receivable upon termination of a sentence.

(1)

(a) If a defendant is not under the jurisdiction of the board, and if any amount of a defendant's criminal accounts receivable is unpaid at the termination of the defendant's sentence, the defendant may petition the sentencing court, within 90 days after the day on which the sentence is terminated, to remit, in whole or in part, the unpaid amount of the criminal accounts receivable.

(b)

(i) If a defendant is under the jurisdiction of the board, and if any amount of the defendant's criminal accounts receivable is unpaid at the termination of the defendant's sentence, the defendant may petition the board within 90 days after the day on which the sentence is terminated, to remit, in whole or in part, the unpaid amount of the criminal accounts receivable.

(ii) If a defendant files a petition for remittance under Subsection (1)(b)(i) within 90 days from the day on which the defendant's sentence is terminated, the board retains jurisdiction over the defendant's case beyond the termination of the defendant's sentence to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable.

(2)

(a) If a petition is filed under Subsection (1), a hearing shall be held, unless the court or the board determines that the petition under Subsection (1) is frivolous or the petition is uncontested.

(b) If a hearing is held under Subsection (2)(a), and the court, or the board, finds by a preponderance of the evidence that the factors listed in Subsection (3) weigh in favor of remitting, in whole or in part, the unpaid amount of a criminal accounts receivable, the court or the board may remit:

(i) any of the unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution; or

(ii) if the victim consents to remittance of the unpaid amount of the criminal accounts receivable that is restitution that the defendant owes to the victim, any of the unpaid amount of restitution that defendant owes to the victim.

(c) The court, or the board, shall give the prosecuting attorney and the victim:

(i) notice of a hearing on the remittance of a criminal accounts receivable; and

(ii) an opportunity to be heard at the hearing.

(d) Nothing in this section shall be construed to prohibit a victim from pursuing a private action against a defendant, even if the victim consents to the remission of restitution.

(3) In making a determination to remit an unpaid amount of a criminal accounts receivable, the court, or the board, shall consider:

(a) whether the defendant has made substantial and good faith efforts to make payments on the criminal accounts receivable;

(b) the needs of the victim;

(c) whether the remission would further the rehabilitation of the defendant;

(d) the ability of the defendant to continue to make payments on a civil accounts receivable; and

(e) any other factor that the court or the board determines is relevant.

(4) If any unpaid amount of a criminal accounts receivable is not remitted by the court or the board upon termination of the defendant's sentence, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable as described in Section 77-18-114.

Enacted by Chapter 260, 2021 General Session

77-32b-107 Verified statement of time and expenses of counsel for indigent defendants.

The court may require a verified statement of time and expenses from appointed counsel, or the nonprofit legal aid or other association providing counsel, for a convicted indigent defendant in order to establish any cost under Section 77-32b-104 that will be included in the judgment.

Renumbered and Amended by Chapter 260, 2021 General Session

Chapter 33
Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act

77-33-1 Definitions.

As used in this act:

(1) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(2) "Penal institution" includes a jail, prison, penitentiary, house of correction, or other place of penal detention; and

(3) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

Enacted by Chapter 15, 1980 General Session

77-33-2 Summoning prisoner in this state to testify in another state -- Certificate of out-of-state judge.

A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

Enacted by Chapter 15, 1980 General Session

77-33-3 Summoning prisoner in this state to testify in another state -- Hearing -- Issuance of order to attend.

If at the hearing the judge determines:

(1) that the witness may be material and necessary;

(2) that his attending and testifying are not adverse to the interest of this state or to the health or legal rights of the witness;

(3) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order; and

(4) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached:
(a) directing the witness to attend and testify;
(b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order; and
(c) prescribing such conditions as the judge shall determine.

Enacted by Chapter 15, 1980 General Session

77-33-4 Summoning prisoner in this state to testify in another state -- Order to provide for return, safeguards on custody, and payment of expenses.

The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness, and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

Enacted by Chapter 15, 1980 General Session

77-33-5 Rendition procedure inapplicable to person confined as insane or having a mental illness or under sentence of death.

This act does not apply to any person in this state confined as insane or as having a mental illness or under sentence of death.

Amended by Chapter 366, 2011 General Session

77-33-6 Prisoner in another state summoned to testify in this state -- Certificate of judge.

If a person confined in a penal institution in any state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in another state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

Enacted by Chapter 15, 1980 General Session

77-33-7 Prisoner in another state summoned to testify in this state -- Order of compliance with terms and conditions prescribed by out-of-state judge.

The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

Enacted by Chapter 15, 1980 General Session

77-33-8 Exemption of prisoner from another state from arrest or service of process.

If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

Enacted by Chapter 15, 1980 General Session

77-33-9 Uniformity of interpretation.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Enacted by Chapter 15, 1980 General Session

77-33-10 Citation -- Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

This act may be cited as the "Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act."

Enacted by Chapter 15, 1980 General Session

Chapter 34
Uniform Interstate Furlough Compact

77-34-1 Citation -- Utah Interstate Furlough Compact.

This chapter may be cited as the "Utah Interstate Furlough Compact."

Enacted by Chapter 15, 1980 General Session

77-34-2 Definitions.

As used in this compact:

(1) "State" means a state in the United States, the United States of America, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(2) "Sending state" means a state which is party to this compact in which conviction or commitment was had except if confinement be in another state, pursuant to the Interstate Corrections Compact, in which event the sending state shall be determined by contract between the parties of the Interstate Corrections Compact agreement;

(3) "Receiving state" means a state which is party to this compact to which an inmate is sent for furlough;

(4) "Institution" means a penal or correctional facility, including all those facilities normally used by adult correctional agencies for the care and custody of inmates whether or not such facilities are owned or operated by the agencies;

(5) "Relative" means spouse, child (including stepchild, adopted child, or foster child), parents (including stepparents, adoptive parents, or foster parents), brothers, sisters, and grandparents;

(6) "Interstate furlough" means any out-of-state leave of an inmate for a designated period in accordance with the requirements established by the appropriate officials of the sending state;
(7) "Appropriate official" means a person designated by the sending state to grant furloughs or by the receiving state to accept or reject furloughs pursuant to this compact;
(8) "Authorized person" means a person designated by law or appointment for purposes of escorting, transferring, or retaining a furloughed inmate;
(9) "Medical emergency" means any illness, injury, incapacity, or condition, physical or mental, of such a nature and gravity that timely and immediate treatment of and attention to the illness is required to prevent permanent injury, substantial harm, or death, and which cannot be adequately treated or attended to, in a timely manner, by the sending state;
(10) "Escorted interstate furlough" means the transference of an inmate in emergency situations, who does not meet the furlough requirements of the sending state to a state which is party to the compact under escort or guard of an authorized person of the sending state;
(11) "Escapee" means an inmate who is on interstate furlough, pursuant to this compact, and fails to return at the prescribed time to the sending state or becomes a known absconder during the period of his furlough; and
(12) "Violator" means an inmate who is on interstate furlough in the receiving state, pursuant to this compact, and fails to abide by the conditions of the furlough as established by the sending state.

Enacted by Chapter 15, 1980 General Session

77-34-3 Reasons for granting furlough pursuant to compact -- Period of furlough -- Escorted furloughs -- Waiver of extradition -- Termination of furlough -- Laws and regulations applicable to inmates.

(1) A furlough pursuant to this compact may be granted to an inmate for the following reasons:
  (a) To visit a critically ill relative;
  (b) To attend a funeral of a relative;
  (c) To obtain medical services of both a physiological and psychiatric nature;
  (d) To contact prospective employers;
  (e) To secure a suitable residence for use upon discharge or upon parole; if in the latter event, the inmate qualifies for the Interstate Parole and Probation Compact;
  (f) For any other reason which, in the opinion of the appropriate official of the sending state, is consistent with the rehabilitation of the inmate.
(2) A furlough among states which are party to the compact shall be granted for a period not to exceed 15 days, including travel time; however, for emergency or other exigent circumstances and at the written request of the furloughee, an extension may be granted by the appropriate official of the sending state upon the consent of the receiving state.
(3) For those inmates ineligible for an unescorted furlough, the sending state, in emergency situations, as defined below, may furlough those inmates under escort to a state which is party to this compact. All inmates on escorted furlough shall be under the guard and jurisdiction of an authorized person from the sending state and shall be under the continuous supervision of that person as consistent with Section 77-34-6.
  (a) An emergency situation shall apply only to visit a critically ill relative, to attend a funeral of a relative, or if a medical emergency exists. In all such instances, the sending state shall first verify the legitimacy of the request and if verified shall request the receiving state to approve or reject the proposed furlough.

(b) Escorted furloughs granted for these reasons shall not exceed four days including travel time; however for emergency or other exigent circumstances and at the written request of the inmate, an extension may be granted by the appropriate official of the sending state upon the verification and consent of the appropriate official of the receiving state.

(4) Prior to the authorization for an inmate to go beyond the limits of the state, the appropriate official shall obtain a written waiver of extradition from the inmate waiving his right to be extradited from any state to which he is furloughed or from any state where he was apprehended.

(5) The grant of a stipulated period of furlough may be terminated by either the sending or receiving state upon written showing of cause. In some instances, the furloughed inmate shall be given reasonable opportunity to obtain the information, including written statements of witnesses and other documentation, which may be of assistance to him in subsequent disciplinary hearings by the sending state for those events or violations that caused termination of his furlough. Reasonable costs of gathering of the information shall be chargeable to the furloughee or to the sending state in the event of the furloughed inmate's inability to pay.

(6) Inmates from the sending state, who are on interstate furlough in the receiving state, shall be subject to all the provisions of laws and regulations applicable to those on interstate furlough status within the receiving state, not inconsistent with the sentence imposed.

Enacted by Chapter 15, 1980 General Session

77-34-4 Duties of officials in nonemergency and emergency cases.

(1) In nonemergency situations, the appropriate official of the sending state shall notify the appropriate official of the receiving state in writing 30 days prior to the granting of the furlough, requesting the receiving state to investigate the circumstances of the proposed furlough plan. In these circumstances, the receiving state shall respond in writing within 10 days prior to the proposed furlough either accepting the inmate or stating the reasons for the rejection.

(2) In emergency circumstances, as defined in Subsection 77-34-3(3)(a), the appropriate official of the sending state shall, prior to granting such furlough:

(a) verify the legitimacy of the request; and

(b) upon verification, immediately notify and secure the consent of the receiving state.

Enacted by Chapter 15, 1980 General Session

77-34-5 Contracts supplemental to compact authorized.

The appropriate official of a party state may supplement but in no way abrogate the provisions of this compact through one or more contracts with any other party state for the furlough of inmates. The contracts may provide for:

(1) Duration;

(2) Terms and conditions of the furlough;

(3) Report of violations and escapes by furloughees;

(4) Costs, if any, to be incurred;

(5) Delivery and retaining of furloughees; and

(6) Other matters as may be necessary and appropriate to fix the jurisdictions, obligations, responsibilities, liabilities, and rights of the sending and receiving states.

Enacted by Chapter 15, 1980 General Session

77-34-6 Jurisdiction and duties of authorized persons of sending and receiving states.

(1) As provided for by the laws, rules, and regulations of the sending state, the furloughee will at all times be subject to the jurisdiction of the appropriate officials and authorized persons of the sending state who shall retain the powers over the furloughee that they would normally exercise over the inmate were he on intrastate furlough.

(2) The authorized person of a sending state may at all times enter a receiving state and there apprehend and retake any person on furlough. For that purpose no formalities will be required other than establishing the authority of that person and the identity of the furloughee to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto as to such persons. The decision of the sending state to retake a person on furlough shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a furloughee there should be pending against him within the receiving state any criminal charge or should he be suspected of having committed within that state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for the offense.

(3) The authorized person of the sending state or the receiving state acting as agent for the sending state will be permitted to transport inmates being retaken through any or all states party to this compact without interference.

(4) The governor of each state may designate an officer who, acting jointly with like officers of other party states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(5) Appropriate officials and authorized persons of the receiving state shall act solely as agents of the sending state with respect to jurisdiction over and liability for the furloughees. The jurisdiction and liability of the sending and receiving states may be subject to further contractual specifications by the sending and receiving states as may be deemed necessary.

(6) The receiving state shall, upon a furlough violation of which it has knowledge, promptly notify the sending state. The notification should specify the nature of the violation and, if a crime has been committed, shall, whenever possible, give the official and furloughee's version of the act. If the grant of furlough is terminated due to the violation, the right and responsibility to retake the furloughee shall be that of the sending state but nothing contained herein shall prevent the receiving state from assisting the sending state toward retaking and returning the furloughee except in instances where the receiving state shall subject the furloughee to confinement for a crime allegedly committed during the furlough within its boundaries. All costs in connection therewith shall be chargeable to the sending state unless costs arise from an escape from confinement in the receiving state.

(7) In the case of an escape to a jurisdiction other than the sending or receiving state, the right and responsibility to retake the escapee shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee, except in instances where the receiving state shall subject the furloughee to confinement for a crime allegedly committed during furlough within its boundaries.

(8) The receiving state shall make all necessary arrangements to secure overnight lodging in a state, county, or municipal facility for escorted furloughees or, in exceptional circumstances, for unescorted furloughees when they would not have the availability of overnight lodging.

Enacted by Chapter 15, 1980 General Session

77-34-7 Costs and expenses.

(1) Costs arising out of a grant of a furlough for transportation, lodgings, meals, and other related expenses shall be the sole responsibility of the furloughee; however, in the event that the furloughee is financially unable to pay for these expenses, such costs may be assumed by the sending state.

(2) Extraordinary costs, other than those specified in Subsection (1) arising from the grant of furlough among party states shall be the sole responsibility of the sending state. Such costs will generally be confined to emergency medical and special confinement and transportation needs.

Enacted by Chapter 15, 1980 General Session

77-34-8 Effect of execution of compact between states -- Renunciation of compact.

The contracting states solemnly agree:

(1) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state; and

(2) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to furloughees residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending a six-month notice in writing of its intention to withdraw from the compact to the other states party hereto.

Enacted by Chapter 15, 1980 General Session

Chapter 36
Cohabitant Abuse Procedures Act

77-36-1 Definitions.

As used in this chapter:

(1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

(2) "Department" means the Department of Public Safety.

(3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" includes commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) aggravated cruelty to an animal, as described in Subsection 76-9-301(4), with the intent to harass or threaten the other cohabitant;

(c) assault, as described in Section 76-5-102;

(d) criminal homicide, as described in Section 76-5-201;

(e) harassment, as described in Section 76-5-106;

(f) electronic communication harassment, as described in Section 76-9-201;
(g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
(h) mayhem, as described in Section 76-5-105;
(i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
(j) stalking, as described in Section 76-5-106.5;
(k) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
(l) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
(m) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
(n) possession of a deadly weapon with criminal intent, as described in Section 76-10-507;
(o) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;
(p) disorderly conduct, as defined in Section 76-9-102, if a conviction or adjudication of disorderly conduct is the result of a plea agreement in which the perpetrator was originally charged with a domestic violence offense otherwise described in this Subsection (4), except that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(p), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
(q) child abuse, as described in Section 76-5-109.1;
(r) threatening use of a dangerous weapon, as described in Section 76-10-506;
(s) threatening violence, as described in Section 76-5-107;
(t) tampering with a witness, as described in Section 76-8-508;
(u) retaliation against a witness or victim, as described in Section 76-8-508.3;
(v) unlawful distribution of an intimate image, as described in Section 76-5b-203, or unlawful distribution of a counterfeit intimate image, as described in Section 76-5b-205;
(w) sexual battery, as described in Section 76-9-702.1;
(x) voyeurism, as described in Section 76-9-702.7;
(y) damage to or interruption of a communication device, as described in Section 76-6-108; or
(z) an offense described in Subsection 78B-7-806(1).

(5) "Jail release agreement" means the same as that term is defined in Section 78B-7-801.
(6) "Jail release court order" means the same as that term is defined in Section 78B-7-801.
(7) "Marital status" means married and living together, divorced, separated, or not married.
(8) "Married and living together" means a couple whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.
(9) "Not married" means any living arrangement other than married and living together, divorced, or separated.
(10) "Protective order" includes an order issued under Subsection 78B-7-804(3).
(11) "Pretrial protective order" means a written order:
(a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and
(b) specifying other conditions of release under Sections 78B-7-802 or 78B-7-803, pending trial in the criminal case.
(12) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact an individual who is convicted or adjudicated of a

domestic violence offense may have with a victim or other specified individuals under Section 78B-7-804.

(13) "Separated" means a couple who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

(14) "Victim" means a cohabitant who has been subjected to domestic violence.

Amended by Chapter 134, 2021 General Session
Amended by Chapter 159, 2021 General Session

77-36-1.1 Enhancement of offense and penalty for subsequent domestic violence offenses.

(1) As used in this section:

(a)

(i) "Convicted" means a conviction by plea or verdict of a crime or offense.

(ii) "Convicted" includes:

(A) a plea of guilty or guilty and mentally ill;

(B) a plea of no contest; and

(C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(iii) "Convicted" does not include an adjudication in juvenile court.

(b) "Criminal mischief offense" means commission or attempt to commit an offense under Section 76-6-106 by one cohabitant against another.

(c) "Offense against the person" means commission or attempt to commit an offense under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal Homicide, Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7, Genital Mutilation, by one cohabitant against another.

(d) "Qualifying domestic violence offense" means:

(i) a domestic violence offense in Utah; or

(ii) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.

(2) An individual who is convicted of a domestic violence offense is guilty of a class B misdemeanor if:

(a) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and

(b) the individual commits or is convicted of the domestic violence offense described in this Subsection (2):

(i) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(ii) within five years after the day on which the individual is convicted of a criminal mischief offense.

(3) An individual who is convicted of a domestic violence offense is guilty of a class A misdemeanor if:

(a) the domestic violence offense described in this Subsection (3) is designated by law as a class B misdemeanor; and

(b) the individual commits or is convicted of the domestic violence offense described in this Subsection (3):

(i) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(ii) within five years after the day on which the individual is convicted of a criminal mischief offense.

(4) An individual who is convicted of a domestic violence offense is guilty of a third degree felony if:

(a) the domestic violence offense described in this Subsection (4) is designated by law as a class B misdemeanor offense against the person and the individual:

(i)

(A) commits or is convicted of the domestic violence offense described in this Subsection (4) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; and

(B) is convicted of another qualifying domestic violence offense that is not a criminal mischief offense after the day on which the individual is convicted of the qualifying domestic violence offense described in Subsection (4)(a)(i)(A) and before the day on which the individual is convicted of the domestic violence offense described in this Subsection (4);

(ii)

(A) commits or is convicted of the domestic violence offense described in this Subsection (4) within five years after the day on which the individual is convicted of a criminal mischief offense; and

(B) is convicted of another criminal mischief offense after the day on which the individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A) and before the day on which the individual is convicted of the domestic violence offense described in this Subsection (4); or

(iii) commits or is convicted of the domestic violence offense described in this Subsection (4) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense and within five years after the day on which the individual is convicted of a criminal mischief offense; and

(b)

(i) the domestic violence offense described in this Subsection (4) is designated by law as a class A misdemeanor; and

(ii) the individual commits or is convicted of the domestic violence offense described in this Subsection (4):

(A) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(B) within five years after the day on which the individual is convicted of a criminal mischief offense.

Amended by Chapter 213, 2021 General Session

77-36-1.2 Acceptance of a plea of guilty or no contest to domestic violence -- Restrictions.

(1) Before agreeing to a plea of guilty or no contest, the prosecutor shall examine the criminal history of the perpetrator.

(2) An entry of a plea of guilty or no contest to a domestic violence offense is invalid unless the prosecutor agrees to the plea:

(a) in open court;

(b) in writing; or

(c) by another means of communication that the court finds adequate to record the prosecutor's agreement.

Amended by Chapter 159, 2021 General Session

Amended by Chapter 213, 2021 General Session

77-36-2.1 Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:
  (a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;
  (b) confiscating the weapon or weapons involved in the alleged domestic violence;
  (c) making arrangements for the victim and any child to obtain emergency housing or shelter;
  (d) providing protection while the victim removes essential personal effects;
  (e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and
  (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2)
  (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, and Title 78B, Chapter 7, Part 2, Child Protective Orders.
  (b) The written notice shall also include:
    (i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;
    (ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and
    (iii) the information required to be provided to both parties in accordance with Subsections 78B-7-802(8) and (9) .

(3) If a weapon is confiscated under this section, the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a domestic violence protective order is not issued or once the domestic violence protective order is terminated.

Amended by Chapter 142, 2020 General Session

77-36-2.2 Powers and duties of law enforcement officers to arrest -- Reports of domestic violence cases -- Reports of parties' marital status.

(1) The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law.

(2)
  (a) In addition to the arrest powers described in Section 77-7-2, when a peace officer responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the peace officer shall arrest without a warrant or shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.
  (b)
    (i) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section.

(ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.

(c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section 77-36-2.1.

(3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:

(a) any prior complaints of domestic violence;

(b) the relative severity of injuries inflicted on each person;

(c) the likelihood of future injury to each of the parties; and

(d) whether one of the parties acted in self defense.

(4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement.

(5)

(a) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more parties, shall submit a detailed, written report specifying the grounds for not arresting any party or for arresting both parties.

(b) A law enforcement officer who does not make an arrest shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence.

(6)

(a) A law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer's disposition of the case.

(b) From January 1, 2009 until December 31, 2013, any law enforcement officer employed by a city of the first or second class responding to a complaint of domestic violence shall also report, either as a part of an incident report or on a separate form, the following information:

(i) marital status of each of the parties involved;

(ii) social, familial, or legal relationship of the suspect to the victim; and

(iii) whether or not an arrest was made.

(c) The information obtained in Subsection (6)(b):

(i) shall be reported monthly to the department;

(ii) shall be reported as numerical data that contains no personal identifiers; and

(iii) is a public record as defined in Section 63G-2-103.

(d) The incident report shall be made available to the victim, upon request, at no cost.

(e) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.

(7) The department shall compile the information described in Subsections (6)(b) and (c) into a report and present that report to the Law Enforcement and Criminal Justice Interim Committee during the 2013 interim, no later than May 31, 2013.

(8) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it, and shall be identified by a law enforcement agency code for domestic violence.

Amended by Chapter 143, 2013 General Session

77-36-2.3 Law enforcement officer's training.

All training of law enforcement officers relating to domestic violence shall stress protection of the victim, enforcement of criminal laws in domestic situations, and the availability of community shelters, services, and resources. Law enforcement agencies and community organizations with expertise in domestic violence shall cooperate in all aspects of that training.

Enacted by Chapter 300, 1995 General Session

77-36-2.4 Violation of a protective order -- Mandatory arrest -- Penalties.

(1) A law enforcement officer shall arrest an alleged perpetrator for a violation of any of the provisions of an ex parte protective order or protective order in accordance with Section 78B-7-119.
(2) A violation of a protective order is punishable in accordance with Section 76-5-108.

Amended by Chapter 142, 2020 General Session

77-36-2.6 Appearance required -- Considerations by court.

(1) An alleged perpetrator who is arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the day on which the arrest is made.
(2) An alleged perpetrator who is charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.
(3) At the time of an appearance under Subsection (1) or (2), the court shall consider imposing a pretrial protective order in accordance with Section 78B-7-803.
(4) Appearances required by this section are mandatory and may not be waived.

Amended by Chapter 159, 2021 General Session

77-36-2.7 Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial protective order.

(1) Because of the serious nature of domestic violence, the court, in domestic violence actions:
  (a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;
  (b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;
  (c) shall waive any requirement that the victim's location be disclosed other than to the alleged perpetrator's attorney and order the alleged perpetrator's attorney not to disclose the victim's location to the client;
  (d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence; and
  (e) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the alleged perpetrator a condition of that status.
(2) When the court holds a plea in abeyance in accordance with Subsection (1)(e), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully

completes all conditions imposed by the court. If the perpetrator fails to complete any condition imposed by the court under Subsection (1)(e), the court may accept the perpetrator's plea.

(3) When an alleged perpetrator is charged with a crime involving a qualifying offense, as defined in Section 78B-7-801, the court may, during any court hearing where the alleged perpetrator is present, issue a pretrial protective order in accordance with Section 78B-7-803.

(4)

(a) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against an alleged perpetrator of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of any related order or agreement on the statewide domestic violence network described in Section 78B-7-113.

(b) The court shall transmit the dismissal to the statewide domestic violence network.

(c) Any pretrial protective orders, including jail release court orders and jail release agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.

(5) The court may not approve diversion for a perpetrator of domestic violence.

Amended by Chapter 159, 2021 General Session

77-36-5 Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against perpetrator -- Sentencing protective order -- Continuous protective order.

(1) When a perpetrator is found guilty of a crime involving domestic violence and a condition of the sentence restricts the perpetrator's contact with the victim, a sentencing protective order may be issued under Section 78B-7-804 for the length of the perpetrator's probation or a continuous protective order may be issued under Section 78B-7-804.

(2) In determining the court's sentence, the court, in addition to penalties otherwise provided by law, may require the perpetrator to participate in an electronic or other type of monitoring program.

(3) The court may also require the perpetrator to pay all or part of the costs of counseling incurred by the victim and any children affected by or exposed to the domestic violence offense, as well as the costs for the perpetrator's own counseling.

(4) The court shall:

(a) assess against the perpetrator, as restitution, any costs for services or treatment provided to the victim and affected child of the victim or the perpetrator by the Division of Child and Family Services under Section 62A-4a-106; and

(b) order those costs to be paid directly to the division or its contracted provider.

(5) The court may order the perpetrator to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is licensed by the Department of Human Services.

Amended by Chapter 159, 2021 General Session

77-36-5.1 Conditions of probation for domestic violence offense.

(1) Before a perpetrator who is convicted or adjudicated of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court, which may include:

(a) a sentencing protective order issued under Section 78B-7-804;

(b) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
(c) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;
(d) directing the perpetrator to surrender any weapons the perpetrator owns or possesses;
(e) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
(f) directing the perpetrator to pay restitution to the victim, enforcement of which shall be in accordance with Chapter 38b, Crime Victims Restitution Act; and
(g) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) The perpetrator is responsible for the costs of any condition of probation, according to the perpetrator's ability to pay.

(4)
(a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any offense involving domestic violence committed by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any violation of a sentencing protective order issued by the court under Section 78B-7-804.
(b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

(5) In addition to a protective order issued under this section, the court may issue a separate order relating to the transfer of a wireless telephone number in accordance with Section 78B-7-117.

Amended by Chapter 159, 2021 General Session

77-36-6 Enforcement of orders.

(1) Each law enforcement agency in this state shall enforce all orders of the court issued under the requirements and procedures described in this chapter, and shall enforce:
(a) all protective orders and ex parte protective orders issued under Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;
(b) pretrial protective orders issued under Section 78B-7-803 and sentencing protective orders and continuous protective orders issued under Section 78B-7-804; and
(c) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

Amended by Chapter 142, 2020 General Session

77-36-7 Prosecutor to notify victim of decision as to prosecution.

(1) The prosecutor who is responsible for making the decision of whether to prosecute a case shall advise the victim, if the victim has requested notification, of the status of the victim's case and shall notify the victim of a decision within five days after the decision has been made.

(2) Notification to the victim that charges will not be filed against an alleged perpetrator shall include a description of the procedures available to the victim in that jurisdiction for initiation of criminal and other protective proceedings.

Amended by Chapter 244, 1996 General Session

77-36-8 Peace officers' immunity from liability.

A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest or for issuing or failing to issue a citation in accordance with this chapter, for enforcing in good faith an order of the court, or for acting or omitting to act in any other way in good faith under this chapter, in situations arising from an alleged incident of domestic violence.

Amended by Chapter 300, 1995 General Session

77-36-9 Separability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Enacted by Chapter 114, 1983 General Session

77-36-10 Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

Enacted by Chapter 244, 1996 General Session

Chapter 37
Victims' Rights

77-37-1 Legislative intent.

(1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

Enacted by Chapter 194, 1987 General Session

77-37-2 Definitions.

In this chapter:

(1) "Child" means a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.
(2) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.
(3) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.
(4) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

Enacted by Chapter 194, 1987 General Session

77-37-3 Bill of rights.

(1) The bill of rights for victims and witnesses is:
(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.
(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.
(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.
(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.
(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b, Crime Victims Restitution Act, and Section 80-6-710. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.
(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.
(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.
(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 76-5-502;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b)

(i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

Amended by Chapter 260, 2021 General Session
Amended by Chapter 262, 2021 General Session
Amended by Chapter 262, 2021 General Session, (Coordination Clause)

77-37-4 Additional rights -- Children.

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

(5)

(a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.

(b) A court order described in Subsection (5)(a):

(i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and

(ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.

(c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order.

(d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.

(6)

(a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order:

(i) the Division of Child and Family Services;
(ii) administrative law judges employed by the Department of Human Services;
(iii) Department of Human Services investigators investigating the Division of Child and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;
(iv) an office of the city attorney, county attorney, district attorney, or attorney general;
(v) a law enforcement agency;
(vi) a Children's Justice Center established under Section 67-5b-102; or
(vii) the attorney for the child who is the subject of the interview.

(b) In a criminal case or in a juvenile court in which the state is a party:
(i) the parties may display and enter into evidence a recording or transcript in the course of a prosecution;
(ii) the state's attorney may distribute a recording or transcript to the attorney for the defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for discovery;
(iii) the attorney for the defendant or respondent may do one or both of the following:
(A) release the recording or transcript to an expert retained by the attorney for the defendant or respondent if the expert agrees in writing that the expert will not distribute, release, or display the recording or transcript to anyone without prior authorization from the court; or
(B) permit the defendant or respondent to view the recording or transcript, but may not distribute or release the recording or transcript to the defendant or respondent; and
(iv) the court shall advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court.

(c) A court's failure to advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be used as a defense to prosecution for a violation of the disclosure rule.

(d) In an administrative case, pursuant to a written request, the Division of Child and Family Services may display, but may not distribute or release, a recording or transcript to the respondent or to the respondent's designated representative.

(e)
(i) Within two business days of a request from a parent or guardian of a child victim, an investigative agency shall allow the parent or guardian to view a recording after the conclusion of an interview, unless:
(A) the suspect is a parent or guardian of the child victim;
(B) the suspect resides in the home with the child victim; or
(C) the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation.
(ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c).
(iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e).

(f) A multidisciplinary team assembled by a Children's Justice Center or an interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript.

(g) A Children's Justice Center:

(i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and
(ii) may display, but may not distribute, a recording or transcript to an authorized trainee.
(h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment.
(i)
(i) In an investigation under Section 53E-6-506, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under State Board of Education authorization, upon the investigator's written request.
(ii) If the respondent in a case investigated under Section 53E-6-506 requests a hearing authorized under that section, the investigator operating under State Board of Education authorization may display, release, or distribute the recording or transcript to the prosecutor operating under State Board of Education authorization or to an expert retained by an investigator.
(iii) Upon request for a hearing under Section 53E-6-506, a prosecutor operating under State Board of Education authorization may display the recording or transcript to a pro se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.
(iv) The parties to a hearing authorized under Section 53E-6-506 may display and enter into evidence a recording or transcript in the course of a prosecution.
(7) Except as otherwise provided in this section, it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript of an interview of a child victim conducted at a Children's Justice Center.

Amended by Chapter 415, 2018 General Session

77-37-5 Remedies -- District Victims' Rights Committee.
(1) In each judicial district, the Utah Council on Victims of Crime, established in Section 63M-7-601, shall appoint a person who shall chair a judicial district victims' rights committee consisting of:
(a) a county attorney or district attorney;
(b) a sheriff;
(c) a corrections field services administrator;
(d) an appointed victim advocate;
(e) a municipal attorney;
(f) a municipal chief of police; and
(g) other representatives as appropriate.
(2) The committee shall meet at least semiannually to review progress and problems related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter 38b, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and other interested parties may submit matters of concern to the victims' rights committee. The committee may hold a hearing open to the public on any appropriate matter of concern and may publish its findings. These matters shall also be considered at the meetings of the victims' rights committee. The committee shall forward minutes of all meetings to the Utah Council on Victims of Crime for review and other appropriate action.

(3) If a victims' rights committee is unable to resolve a complaint, it may refer the complaint to the Utah Council on Victims of Crime.
(4) The Utah Office for Victims of Crime shall provide materials to local law enforcement to inform every victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.
(5)
(a) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual.
(b) For all other violations, if the committee finds a violation of a victim's right, it shall refer the matter to the appropriate court for further proceedings consistent with Subsection 77-38-11(2).
(c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.
(6) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Amended by Chapter 260, 2021 General Session

Chapter 38
Rights of Crime Victims Act

Part 1
General Provisions

77-38-1 Title.

This act shall be known and may be cited as the "Rights of Crime Victims Act."

Enacted by Chapter 198, 1994 General Session

77-38-2 Definitions.

For the purposes of this chapter and the Utah Constitution:
(1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or disparage.
(2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.
(3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.
(4) "Harassment" means treating the crime victim in a persistently annoying manner.
(5) "Important criminal justice hearings" or "important juvenile justice hearings" means the following proceedings in felony criminal cases or cases involving a minor's conduct which would be a felony if committed by an adult:
(a) any preliminary hearing to determine probable cause;
(b) any court arraignment where practical;
(c) any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceeding to

take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;

(d) any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;

(e) any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or at a sidebar conference;

(f) any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant; and

(g) any public hearing concerning whether to grant a defendant or minor parole or other form of discretionary release from confinement.

(6) "Reliable information" means information worthy of confidence, including any information whose use at sentencing is permitted by the United States Constitution.

(7) "Representative of a victim" means a person who is designated by the victim or designated by the court and who represents the victim in the best interests of the victim.

(8) "Respect" means treating the crime victim with regard and value.

(9)

(a) "Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

(b) For purposes of the right to be present, "victim of a crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment.

(c) For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

Amended by Chapter 103, 1997 General Session

77-38-3 Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact order.

(1) Within seven days after the day on which felony criminal charges are filed against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime:

(a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which the victim has requested; and

(b) for a restitution request to be submitted in accordance with Section 77-38b-202.

(4)
(a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
(b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.
(5)
(a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.
(b) The court shall consider whether any notification system that the court might use to provide notice of judicial proceedings to defendants could be used to provide notice of judicial proceedings to victims of crimes.
(6) A defendant or, if it is the moving party, the Division of Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with the prosecuting agency's notification obligation.
(7)
(a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing under Subsection 77-38-2(5)(g).
(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.
(9) To facilitate the payment of restitution and the notice of hearings regarding restitution, a victim who seeks restitution and notice of restitution hearings shall provide the court with the victim's current address and telephone number.
(10)
(a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.
(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice the prosecuting agency has received from a victim to the Board of Pardons and Parole.
(11) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in the prosecuting agency's discretion to a representative sample of the victims.
(12)
(a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, Utah State Courts, and Board of Pardons and Parole, for purposes of providing notice under this section, are classified as protected under Subsection 63G-2-305(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:
(i) a law enforcement agency, including the prosecuting agency;
(ii) a victims' right committee as provided in Section 77-37-5;
(iii) a governmentally sponsored victim or witness program;
(iv) the Department of Corrections;
(v) the Utah Office for Victims of Crime;
(vi) the Commission on Criminal and Juvenile Justice;
(vii) the Utah State Courts; and
(viii) the Board of Pardons and Parole.
(13) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.
(14)
(a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:
(i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
(ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
(iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.
(b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.
(c)
(i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.
(ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

Amended by Chapter 260, 2021 General Session

77-38-4 Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from persons in custody.
(1) The victim of a crime, the representative of the victim, or both shall have the right:
(a) to be present at the important criminal or juvenile justice hearings provided in Subsection 77-38-2(5);
(b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), (f), and (g);
(c) to submit a written statement in any action on appeal related to that crime; and
(d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.
(2) This chapter shall not confer any right to the victim of a crime to be heard:

(a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and
(b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.

(3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.
(4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.
(5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.
(6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.
(7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.
(8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.
(9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.
(10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

Amended by Chapter 28, 2011 General Session

77-38-5 Application to felonies and misdemeanors of the declaration of the rights of crime victims.

The provisions of this chapter shall apply to:
(1) any felony filed in the courts of the state;
(2) to any class A and class B misdemeanor filed in the courts of the state; and
(3) to cases in the juvenile court as provided in Section 80-6-604.

Amended by Chapter 262, 2021 General Session

77-38-6 Victim's right to privacy.

(1) The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that a compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.
(2) A defendant may not compel any witness to a crime, at any court proceeding, including any juvenile court proceeding, to testify regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

Amended by Chapter 352, 1995 General Session

77-38-7 Victim's right to a speedy trial.

(1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.

(2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments.

(3)

(a) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.

(b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

Amended by Chapter 352, 1995 General Session

77-38-8 Age-appropriate language at judicial proceedings -- Advisor.

(1) In any criminal proceeding or juvenile court proceeding regarding or involving a child, examination and cross-examination of a victim or witness 13 years of age or younger shall be conducted in age-appropriate language.

(2)

(a) The court may appoint an advisor to assist a witness 13 years of age or younger in understanding questions asked by counsel.

(b) The advisor is not required to be an attorney.

Amended by Chapter 352, 1995 General Session

77-38-9 Representative of victim -- Court designation -- Representation in cases involving minors -- Photographs in homicide cases.

(1)

(a) A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter, including pursuing restitution.

(b) Except as otherwise provided in this section, the victim may revoke the designation at any time.

(c) In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.

(2) In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.

(3)

(a) If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim.
(b) The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.
(4) The representative of a victim of a crime shall not be:
(a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is defined under the laws of this state;
(b) a person in the custody of or under detention of federal, state, or local authorities; or
(c) a person whom the court in its discretion considers to be otherwise inappropriate.
(5) Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative.
(6) On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights.
(7) In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

Amended by Chapter 244, 2014 General Session

77-38-10 Victim's discretion.
(1)
(a) The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding.
(b) The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding.
(2) A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter.
(3) A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

Amended by Chapter 352, 1995 General Session

77-38-11 Enforcement -- Appellate review -- No right to money damages.
(1) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief, including prospective injunctive relief, may be brought against the individual and the governmental entity that employs the individual.
(2)
(a) The victim of a crime or representative of a victim of a crime, including any Victims' Rights Committee as defined in Section 77-37-5 may:
(i) bring an action for declaratory relief or for a writ of mandamus defining or enforcing the rights of victims and the obligations of government entities under this chapter;
(ii) petition to file an amicus brief in any court in any case affecting crime victims; and
(iii) after giving notice to the prosecution and the defense, seek an appropriate remedy for a violation of a victim's right from the judge assigned to the case involving the issue as provided in Section 77-38-11.

(b) Adverse rulings on these actions or on a motion or request brought by a victim of a crime or a representative of a victim of a crime may be appealed under the rules governing appellate actions, provided that an appeal may not constitute grounds for delaying any criminal or juvenile proceeding.

(c) An appellate court shall review all properly presented issues, including issues that are capable of repetition but would otherwise evade review.

(3)

(a) Upon a showing that the victim has not unduly delayed in seeking to protect the victim's right, and after hearing from the prosecution and the defense, the judge shall determine whether a right of the victim has been violated.

(b) If the judge determines that a victim's right has been violated, the judge shall proceed to determine the appropriate remedy for the violation of the victim's right by hearing from the victim and the parties, considering all factors relevant to the issue, and then awarding an appropriate remedy to the victim. The court shall reconsider any judicial decision or judgment affected by a violation of the victim's right and determine whether, upon affording the victim the right and further hearing from the prosecution and the defense, the decision or judgment would have been different. If the court's decision or judgment would have been different, the court shall enter the new different decision or judgment as the appropriate remedy. If necessary to protect the victim's right, the new decision or judgment shall be entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall the appropriate remedy be a new trial, damages, attorney fees, or costs.

(c) The appropriate remedy shall include only actions necessary to provide the victim the right to which the victim was entitled and may include reopening previously held proceedings. Subject to Subsection (3)(d), the court may reopen a sentence or a previously entered guilty or no contest plea only if doing so would not preclude continued prosecution or sentencing the defendant and would not otherwise permit the defendant to escape justice. Any remedy shall be tailored to provide the victim an appropriate remedy without violating any constitutional right of the defendant.

(d) If the court sets aside a previously entered plea of guilty or no contest, and thereafter continued prosecution of the charge is held to be prevented by the defendant's having been previously put in jeopardy, the order setting aside the plea is void and the plea is reinstated as of the date of its original entry.

(e) The court may not award as a remedy the dismissal of any criminal charge.

(f) The court may not award any remedy if the proceeding that the victim is challenging occurred more than 90 days before the victim filed an action alleging the violation of the right.

(4) The failure to provide the rights in this chapter or Title 77, Chapter 37, Victims' Rights, shall not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

Amended by Chapter 331, 2010 General Session

77-38-12 Construction of this chapter -- No right to set aside conviction, adjudication, admission, or plea -- Severability clause.

(1) All of the provisions contained in this chapter shall be construed to assist the victims of crime.

(2) This chapter may not be construed as creating a basis for dismissing any criminal charge or delinquency petition, vacating any adjudication or conviction, admission or plea of guilty or no

contest, or for a defendant to obtain appellate, habeas corpus, or other relief from a judgment in any criminal or delinquency case.

(3) This chapter may not be construed as creating any right of a victim to appointed counsel at state expense.

(4) All of the rights contained in this chapter shall be construed to conform to the Constitution of the United States.

(5)

(a) In the event that any portion of this chapter is found to violate the Constitution of the United States, the remaining provisions of this chapter shall continue to operate in full force and effect.

(b) In the event that a particular application of any portion of this chapter is found to violate the Constitution of the United States, all other applications shall continue to operate in full force and effect.

(6) The enumeration of certain rights for crime victims in this chapter shall not be construed to deny or disparage other rights granted by the Utah Constitution or the Legislature or retained by victims of crimes.

Amended by Chapter 120, 2009 General Session

77-38-13 Declaration of legislative authority.

It is the view of the Legislature that the provisions of this chapter, and other provisions enacted simultaneously with it, are substantive provisions within inherent legislative authority. In the event that any of the provisions of this chapter, and other provisions enacted simultaneously with it, are interpreted to be procedural in nature, the Legislature also intends to invoke its powers to modify procedural rules under the Utah Constitution.

Enacted by Chapter 198, 1994 General Session

77-38-14 Notice of expungement petition -- Victim's right to object.

(1)

(a) The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim's representative to object to a petition for expungement under Section 77-40-107 or 80-6-1004 and the procedures for obtaining notice of the petition.

(b) The department or division shall provide each trial court a copy of the document that has jurisdiction over delinquencies or criminal offenses subject to expungement.

(2) The prosecuting attorney in any case leading to a conviction, a charge dismissed in accordance with a plea in abeyance agreement, or an adjudication subject to expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for expungement under Sections 77-40-107 and 80-6-1004.

Amended by Chapter 262, 2021 General Session

77-38-15 Civil action against human traffickers and human smugglers.

(1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, human trafficking of a child under Section 76-5-308.5, aggravated human trafficking or aggravated human smuggling under Section 76-5-310, or benefitting from human trafficking under Subsection 76-5-309(4) may bring a civil action against that person.

(2)
(a) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.
(b) The court may award treble damages on proof of actual damages if the court finds that the person's acts were willful and malicious.
(3) In an action under this section, the court shall award a prevailing victim reasonable attorney fees and costs.
(4) An action under this section shall be commenced no later than 10 years after the later of:
(a) the day on which the victim was freed from the human trafficking or human smuggling situation;
(b) the day on which the victim attains 18 years old; or
(c) if the victim was unable to bring an action due to a disability, the day on which the victim's disability ends.
(5) The time period described in Subsection (4) is tolled during a period of time when the victim fails to bring an action due to the person:
(a) inducing the victim to delay filing the action;
(b) preventing the victim from filing the action; or
(c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.
(6) The court shall offset damages awarded to the victim under this section by any restitution paid to the victim under Title 77, Chapter 38b, Crime Victims Restitution Act.
(7) A victim may bring an action described in this section in any court of competent jurisdiction where:
(a) a violation described in Subsection (1) occurred;
(b) the victim resides; or
(c) the person that commits the offense resides or has a place of business.
(8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.
(9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.

Amended by Chapter 260, 2021 General Session

Part 2
Confidential Communications for Sexual Assault Act

77-38-201 Title.

This part is known and cited as the "Confidential Communications for Sexual Assault Act."

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-202 Purpose.

It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-203 Definitions.

As used in this part:

(1) "Confidential communication" means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.

(2) "Rape crisis center" means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.

(3) "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.

(4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

Renumbered and Amended by Chapter 3, 2008 General Session

77-38-204 Disclosure of confidential communications.

Notwithstanding Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional Advocacy Services Act, the confidential communication between a victim and a sexual assault counselor is available to a third person only when:

(1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;

(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or

(4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

Amended by Chapter 188, 2017 General Session

Part 3
Profits from Notorious Criminal Activity Act

77-38-301 Title.

This part is known as the "Profits from Notorious Criminal Activity Act."

Amended by Chapter 260, 2012 General Session

77-38-302 Definitions.

As used in this part:

(1) "Convicted person" means a person who has been convicted of a crime.

(2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended.
(3) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.
(4) "Memorabilia" means any tangible property of a convicted person or a representative or assignee of a convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted.
(5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to:
  (a) the reenactment of a crime in any manner including a movie, book, magazine article, Internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind;
  (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or
  (c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime.
(6) "Office" means the Utah Office for Victims of Crime.
(7) "Profit" means any income or benefit:
  (a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or
  (b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract.

Amended by Chapter 230, 2020 General Session

77-38-303 Profit from sale of memorabilia or notoriety of crimes contract -- Deposit in Crime Victim Reparations Fund -- Penalty.

(1) Any convicted person or a representative or assignee of a convicted person who receives a profit from the sale or transfer of memorabilia shall remit to the fund:
  (a) a complete, itemized accounting of the transaction, including:
    (i) a description of each item sold;
    (ii) the amount received for each item;
    (iii) the estimated fair market value of each item; and
    (iv) the name and address of the purchaser of each item; and
  (b) a check or money order for the amount of the profit, which shall be the difference between the amount received for the item and the estimated fair market value of the item.
(2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of up to $1,000 per item sold or transferred or three times the amount of the unremitted profit, whichever is greater.
(3)
  (a) Any person or entity who enters into a notoriety of crime contract with a convicted person or with a representative or assignee of a convicted person shall pay to the fund any profit which by the terms of the contract would otherwise be owing to the convicted person or representative or assignee of the convicted person.
  (b) A convicted person or a representative or assignee of a convicted person who has received any profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit

which, by the terms of the contract, would otherwise be owing to the convicted person or a representative or assignee of a convicted person shall be paid to the fund as required under Subsection (3)(a).

(4) Upon receipt of money under Subsection (3), the office shall distribute the amounts to the victim of the crime from which the profits are derived if any restitution remains outstanding. If no restitution is outstanding, the money shall be deposited into the fund.

(5)

(a) Any person or entity who willfully violates Subsection (3) may be assessed a civil penalty of up to $1,000,000.00, or up to three times the total value of the original notoriety of crime contract, whichever is greater.

(b) Any civil penalty ordered under this Subsection shall be paid to the fund.

(6) The prosecuting agency or the attorney general may bring an action to enforce the provisions of this chapter in the court of conviction.

(7) A court shall enter an order to remit funds as provided in this chapter if it finds by a preponderance of the evidence any violation of Subsection (1) or (3).

Amended by Chapter 278, 2013 General Session

Part 4
Privileged Communications with Victim Advocates Act

77-38-401 Title.

This part is known as the "Privileged Communications with Victim Advocates Act."

Enacted by Chapter 361, 2019 General Session

77-38-402 Purpose.

It is the purpose of this part to enhance and promote the mental, physical, and emotional recovery of victims by restricting the circumstances under which a confidential communication with the victim may be disclosed.

Enacted by Chapter 361, 2019 General Session

77-38-403 Definitions.

As used in this part:

(1) "Advocacy services" means assistance provided that supports, supplements, intervenes, or links a victim or a victim's family with appropriate resources and services to address the wide range of potential impacts of being victimized.

(2) "Advocacy services provider" means an entity that has the primary focus of providing advocacy services in general or with specialization to a specific crime type or specific type of victimization.

(3) "Confidential communication" means a communication that is intended to be confidential between a victim and a victim advocate for the purpose of obtaining advocacy services.

(4) "Criminal justice system victim advocate" means an individual who:

(a) is employed or authorized to volunteer by a government agency that possesses a role or responsibility within the criminal justice system;

(b) has as a primary responsibility addressing the mental, physical, or emotional recovery of victims;
(c) completes a minimum 40 hours of trauma-informed training:
(i) in crisis response, the effects of crime and trauma on victims, victim advocacy services and ethics, informed consent, and this part regarding privileged confidential communication; and
(ii) that have been approved or provided by the Utah Office for Victims of Crime; and
(d) is under the supervision of the director or director's designee of the government agency.
(5) "Health care provider" means the same as that term is defined in Section 78B-3-403.
(6) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
(7) "Nongovernment organization victim advocate" means an individual who:
(a) is employed or authorized to volunteer by an nongovernment organization advocacy services provider;
(b) has as a primary responsibility addressing the mental, physical, or emotional recovery of victims;
(c) has a minimum 40 hours of trauma-informed training:
(i) in assisting victims specific to the specialization or focus of the nongovernment organization advocacy services provider and includes this part regarding privileged confidential communication; and
(ii)
(A) that have been approved or provided by the Utah Office for Victims of Crime; or
(B) that meets other minimally equivalent standards set forth by the nongovernment organization advocacy services provider; and
(d) is under the supervision of the director or the director's designee of the nongovernment organization advocacy services provider.
(8) "Record" means a book, letter, document, paper, map, plan, photograph, file, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.
(9) "Victim" means:
(a) a victim of a crime as defined in Section 77-38-2;
(b) an individual who is a victim of domestic violence as defined in Section 77-36-1; or
(c) an individual who is a victim of dating violence as defined in Section 78B-7-102.
(10)
(a) "Victim advocate" means:
(i) a criminal justice system victim advocate;
(ii) a nongovernment organization victim advocate; or
(iii) an individual who is employed or authorized to volunteer by a public or private entity and is designated by the Utah Office for Victims of Crime as having the specific purpose of providing advocacy services to or for the clients of the public or private entity.
(b) "Victim advocate" does not include an employee of the Utah Office for Victims of Crime.

Amended by Chapter 142, 2020 General Session

77-38-404 Scope of part.

This part governs the disclosure of a confidential communication to a victim advocate, except that:
(1) if Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional Advocacy Services Act, applies, that part governs; and
(2) if Part 2, Confidential Communications for Sexual Assault Act, applies, that part governs.

Enacted by Chapter 361, 2019 General Session

77-38-405 Disclosure of a communication given to a victim advocate.

(1)

(a) A victim advocate may not disclose a confidential communication with a victim, including a confidential communication in a group therapy session, except:

(i) that a criminal justice system victim advocate shall provide the confidential communication to a prosecutor who is responsible for determining whether the confidential communication is exculpatory or goes to the credibility of a witness;

(ii) that a criminal justice system victim advocate may provide the confidential communication to a parent or guardian of a victim if the victim is a minor and the parent or guardian is not the accused, or a law enforcement officer, health care provider, mental health therapist, domestic violence shelter employee, an employee of the Utah Office for Victims of Crime, or member of a multidisciplinary team assembled by a Children's Justice Center or a law enforcement agency for the purpose of providing advocacy services; or

(iii) to the extent allowed by the Utah Rules of Evidence.

(b) If a prosecutor determines that the confidential communication is exculpatory or goes to the credibility of a witness, after the court notifies the victim and the defense attorney of the opportunity to be heard at an in camera review, the prosecutor will present the confidential communication to the victim, defense attorney, and the court for in camera review in accordance with the Utah Rules of Evidence.

(2) A record that contains information from a confidential communication between a victim advocate and a victim may not be disclosed under Title 63G, Chapter 2, Government Records Access and Management Act, to the extent that it includes the information about the confidential communication.

(3) A criminal justice system victim advocate, as soon as reasonably possible, shall notify a victim, or a parent or guardian of the victim if the victim is a minor and the parent or guardian is not the accused:

(a) whether a confidential communication with the criminal justice system victim advocate will be disclosed to a prosecutor and whether a statement relating to the incident that forms the basis for criminal charges or goes to the credibility of a witness will also be disclosed to the defense attorney; and

(b) of the name, location, and contact information of one or more nongovernment organization advocacy services providers specializing in the victim's service needs, when a nongovernment organization advocacy services provider exists and is known to the criminal justice system victim advocate.

Enacted by Chapter 361, 2019 General Session

Part 5
Victims Guidelines for Prosecutors Act

77-38-501 Title.

This part is known as the "Victims Guidelines for Prosecutors Act."

Enacted by Chapter 112, 2020 General Session

77-38-502 Definitions.

As used in this part:

(1) "Certifying entity" means any of the following:
- (a) a law enforcement agency, as defined in Section 77-7a-103;
- (b) a prosecutor, as defined in Section 77-22-4.5;
- (c) a court, as defined in Section 78A-1-101;
- (d) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; and
- (e) an agency that has criminal detection or investigative jurisdiction in the agency's respective areas of expertise, including:
  - (i) the Division of Child and Family Services; and
  - (ii) the Labor Commission.

(2) "Certifying official" means:
- (a) the head of the certifying entity;
- (b) a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency;
- (c) a judge; or
- (d) any other certifying official defined under 8 C.F.R. Sec. 214.14.

(3) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(4)
- (a) "Qualifying criminal activity" means the same as that term is defined in 8 C.F.R. Sec. 214.14.
- (b) "Qualifying criminal activity" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in Subsection (4)(a), and the attempt, conspiracy, or solicitation to commit any of those offenses.

Enacted by Chapter 112, 2020 General Session

77-38-503 Guidelines for prosecutors.

(1) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, if the certifying entity determines the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity.

(2) A certifying entity shall determine helpfulness as described in Subsection (1) in a manner consistent with federal guidelines.

(3) A certifying entity shall process a Form I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

(4) A current investigation, the filing of charges, a prosecution, or a conviction are not required for the victim to request the Form I-918 Supplement B certification from a certifying official.

(5) A certifying official may withdraw a Form I-918 Supplement B certification if:
- (a) the victim refuses to provide information and assistance when reasonably requested; or
- (b) the certifying entity determines that the individual is not a victim of a qualifying criminal activity.

(6) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.
(7)
(a) Each certifying entity shall maintain records of the following information related to each request for a Form I-918 Supplement B certification:
(i) the number of victims that requested Form I-918 Supplement B certifications from the entity;
(ii) the number of those Form I-918 Supplement B certifications that were signed; and
(iii) the number of Form I-918 Supplement B certifications that were denied.
(b) Each certifying entity shall report the information described in Subsection (7)(a) to the commission before June 30, 2021, and each year thereafter.
(c) The commission shall report the information received pursuant to Subsection (7)(b) to the Judiciary Interim Committee of the Legislature on or before November 30 of each year.
(8)
(a) A certifying entity may not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless:
(i) required to do so by applicable state or federal law or court order; or
(ii) the certifying agency has written authorization from:
(A) the victim; or
(B) if the victim is a minor or is otherwise not legally competent, from the victim's parent or guardian.
(b) Subsection (8)(a) does not modify legal obligations of a prosecutor or law enforcement to disclose information and evidence to a defendant.

Enacted by Chapter 112, 2020 General Session

Chapter 38b
Crime Victims Restitution Act

Part 1
General Provisions

77-38b-101 Title.

This chapter is known as the "Crime Victims Restitution Act."

Renumbered and Amended by Chapter 260, 2021 General Session

77-38b-102 Definitions.

As used in this chapter:
(1)
(a) "Conviction" means:
(i) a plea of:
(A) guilty;
(B) guilty with a mental illness; or

(C) no contest; or
(ii) a judgment of:
(A) guilty; or
(B) guilty with a mental illness.
(b) "Conviction" does not include:
(i) a plea in abeyance until a conviction is entered for the plea in abeyance;
(ii) a diversion agreement; or
(iii) an adjudication of a minor for an offense under Section 80-6-701.
(2) "Criminal conduct" means:
(a) any misdemeanor or felony offense of which the defendant is convicted; or
(b) any other criminal behavior for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal behavior.
(3)
(a) "Defendant" means an individual who has been convicted of, or entered into a plea disposition for, criminal conduct.
(b) "Defendant" does not include a minor, as defined in Section 80-1-102, who is adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6, Juvenile Justice.
(4) "Department" means the Department of Corrections.
(5) "Diversion agreement" means an agreement entered into by the prosecuting attorney and the defendant that suspends criminal proceedings before conviction on the condition that a defendant agree to participate in a rehabilitation program, pay restitution to the victim, or fulfill some other condition.
(6) "Office" means the Office of State Debt Collection created in Section 63A-3-502.
(7) "Party" means the prosecuting attorney, the defendant, or the department involved in a prosecution.
(8) "Payment schedule" means the same as that term is defined in Section 77-32b-102.
(9)
(a) "Pecuniary damages" means all demonstrable economic injury, losses, and expenses regardless of whether the economic injury, losses, and expenses have yet been incurred.
(b) "Pecuniary damages" does not include punitive damages or pain and suffering damages.
(10) "Plea agreement" means an agreement entered between the prosecuting attorney and the defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.
(11) "Plea disposition" means an agreement entered into between the prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.
(12) "Plea in abeyance" means an order by a court, upon motion of the prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against the defendant nor imposing sentence upon the defendant on condition that the defendant comply with specific conditions as set forth in a plea in abeyance agreement.
(13) "Plea in abeyance agreement" means an agreement entered into between the prosecuting attorney and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.
(14) "Restitution" means the payment of pecuniary damages to a victim.
(15)

(a) "Victim" means any person who has suffered pecuniary damages that are proximately caused by the criminal conduct of the defendant.
(b) "Victim" includes:
(i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes a payment to a victim under Section 63M-7-519;
(ii) the estate of a deceased victim; and
(iii) a parent, spouse, or sibling of a victim.
(c) "Victim" does not include a codefendant or accomplice.

Amended by Chapter 262, 2021 General Session

Part 2
Determination of Restitution

77-38b-201 Law enforcement responsibility for collecting restitution information.

A law enforcement agency investigating criminal conduct that would constitute a felony or a misdemeanor shall include all information about restitution for any potential victim in the investigative report, including information about:
(1) whether a claim for restitution exists;
(2) the basis for the claim; and
(3) the estimated or actual amount of the claim.

Enacted by Chapter 260, 2021 General Session

77-38b-202 Prosecuting attorney responsibility for collecting restitution information -- Depositing restitution on behalf of victim.

(1) If a prosecuting attorney files a criminal charge against a defendant, the prosecuting attorney shall:
(a) contact any known victim of the offense for which the criminal charge is filed, or person asserting a claim for restitution on behalf of the victim; and
(b) gather the following information from the victim or person:
(i) the name of the victim or person; and
(ii) the actual or estimated amount of restitution.
(2)
(a) When a conviction, a diversion agreement, or a plea in abeyance is entered by the court, the prosecuting attorney shall provide the court with the information gathered by the prosecuting attorney under Subsection (1)(b).
(b) If, at the time of the plea disposition or conviction, the prosecuting attorney does not have all the information under Subsection (1)(b), the prosecuting attorney shall provide the defendant with:
(i) at the time of plea disposition or conviction, all information under Subsection (1)(b) that is reasonably available to the prosecuting attorney; and
(ii) any information under Subsection (1)(b) as the information becomes available to the prosecuting attorney.
(c) Nothing in this section shall be construed to prevent a prosecuting attorney, a victim, or a person asserting a claim for restitution on behalf of a victim from:

(i) submitting information on, or a request for, restitution to the court within the time periods described in Subsection 77-38b-205(5); or
(ii) submitting information on, or a request for, restitution for additional or substituted victims within the time periods described in Subsection 77-38b-205(5).
(3)
(a) The prosecuting attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of a victim into an interest-bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending the distribution of the funds to the victim.
(b) If restitution is deposited into an interest-bearing account under Subsection (3)(a), the prosecuting attorney shall:
(i) distribute any interest that accrues in the account to each victim on a pro rata basis; and
(ii) if all victims have been made whole and funds remain in the account, distribute any remaining funds to the Division of Finance, created in Section 63A-3-101, to deposit to the Utah Office for Victims of Crime.
(c) Nothing in this section prevents an independent judicial authority from collecting, holding, and distributing restitution.

Enacted by Chapter 260, 2021 General Session

77-38b-203 Department of Corrections responsibility for collecting restitution information -- Presentence investigation report -- In camera review of victim information.
(1) In preparing a presentence investigation report described in Section 77-18-103, the department shall obtain information on restitution from:
(a) the law enforcement agency and the prosecuting attorney; and
(b) any victim of the offense or person asserting a claim for restitution on behalf of the victim.
(2) A victim seeking restitution, a prosecuting attorney, or a person asserting a claim for restitution on behalf of a victim, shall provide the department with:
(a) all invoices, bills, receipts, and any other evidence of pecuniary damages;
(b) all documentation of any compensation or reimbursement from an insurance company or a local, state, or federal agency that is related to the pecuniary damages for the offense;
(c) the victim's proof of identification, including the victim's date of birth, social security number, driver license number; and
(d) the victim's or the person's contact information, including next of kin if available, current home and work address, and telephone number.
(3) In the presentence investigation report, the department shall make every effort to:
(a) itemize any pecuniary damages suffered by the victim;
(b) include a specific statement on the amount of restitution that the department recommends for each victim; and
(c) include a victim impact statement that:
(i) provides the name of each victim and any person asserting a claim on behalf of a victim;
(ii) describes the effect of the offense on the victim and the victim's family;
(iii) describes any physical, mental, or emotional injury suffered by a victim as a result of the offense and the seriousness and permanence of the injury;
(iv) describes any change in a victim's personal welfare or familial relationships as a result of the offense;
(v) provides any request for mental health services by a victim or a victim's family member as a result of the offense; and

(vi) provides any other relevant information regarding the impact of the offense upon a victim or the victim's family.

(4)

(a) A prosecuting attorney and the department may take steps that are reasonably necessary to protect the identity of a victim and the victim's family in information that is submitted to the court under this section.

(b) If a defendant seeks to view protected, safeguarded, or confidential information about a victim or a victim's family, the court shall review the information in camera.

(c) The court may allow the defendant to view the information under Subsection (4)(b) if the court finds that:

(i) the defendant's interest in viewing the information outweighs the victim's or the victim's family safety and privacy interests; and

(ii) there are protections in place to safeguard the victim's and the victim's family safety and privacy interests.

Enacted by Chapter 260, 2021 General Session

77-38b-204 Financial declaration by defendant.

(1)

(a) The Judicial Council shall design and publish a financial declaration form to be completed by a defendant before the sentencing court establishes a payment schedule under Section 77-38b-205.

(b) The financial declaration form shall:

(i) require a defendant to disclose all assets, income, and financial liabilities of the defendant, including:

(A) real property;

(B) vehicles;

(C) precious metals or gems;

(D) jewelry with a value of $1,000 or more;

(E) other personal property with a value of $1,000 or more;

(F) the balance of any bank account and the name of the financial institution for the bank account;

(G) cash;

(H) salary, wages, commission, tips, and business income, including the name of any employer or entity from which the defendant receives a salary, wage, commission, tip, or business income;

(I) pensions and annuities;

(J) intellectual property;

(K) accounts receivable;

(L) accounts payable;

(M) mortgages, loans, and other debts; and

(N) restitution that has been ordered, and not fully paid, in other cases; and

(ii) state that a false statement made in the financial declaration form is punishable as a class B misdemeanor under Section 76-8-504.

(2) After a plea disposition or conviction has been entered but before sentencing, a defendant shall complete the financial declaration form described in Subsection (1).

(3) When a civil judgment of restitution or a civil accounts receivable is entered for a defendant on the civil judgment docket under Section 77-18-114, the court shall provide the Office of State Debt Collection with the defendant's financial declaration form.

Renumbered and Amended by Chapter 260, 2021 General Session

77-38b-205 Order for restitution.

(1)

(a)

(i) If a defendant is convicted, as defined in Section 76-3-201, the court shall order a defendant, as part of the sentence imposed under Section 76-3-201, to pay restitution to all victims:

(A) in accordance with the terms of any plea agreement in the case; or

(B) for the entire amount of pecuniary damages that are proximately caused to each victim by the criminal conduct of the defendant.

(ii) In determining the amount of pecuniary damages under Subsection (1)(a)(i)(B), the court shall consider all relevant facts to establish an amount that fully compensates a victim for all pecuniary damages proximately caused by the criminal conduct of the defendant.

(iii) The court shall enter the determination of the amount of restitution under Subsection (1)(a)(ii) as a finding on the record.

(b) If a court enters a plea in abeyance or a diversion agreement for a defendant that includes an agreement to pay restitution, the court shall order the defendant to pay restitution in accordance with the terms of the plea in abeyance or the diversion agreement.

(2)

(a) Upon an order for a defendant to pay restitution under Subsection (1), the court shall:

(i) enter an order to establish a criminal accounts receivable as described in Section 77-32b-103; and

(ii) establish a payment schedule for the criminal accounts receivable as described in Section 77-32b-103.

(3) If the defendant objects to the order for restitution or the payment schedule, the court shall allow the defendant to have a hearing on the issue, unless the issue is addressed at the sentencing hearing for the defendant.

(4)

(a) For a defendant who is sentenced after July 1, 2021, if no restitution is ordered at sentencing, the court shall schedule a hearing to determine restitution, unless the parties waive the hearing in accordance with Subsection (4)(b).

(b) The parties may only waive a hearing under Subsection (4)(a) if:

(i) the parties have stipulated to the amount of restitution owed; or

(ii) the prosecuting attorney certifies that the prosecuting attorney has consulted with the victim, including the Utah Office for Victims of Crime, and the defendant owes no restitution.

(c) The court may not enter an order for restitution without a statement from the prosecuting attorney that the prosecuting attorney has consulted with the victim, including the Utah Office for Victims of Crime.

(d) If the court does not enter an order for restitution in a hearing under Subsection (4)(a), the court shall:

(i) state, on the record, why the court did not enter an order for restitution; and

(ii) order a continuance of the hearing.

(5) A court shall enter an order for restitution in a defendant's case no later than the earlier of:

(a) the termination of the defendant's sentence; or

(b)
(i) if the defendant is convicted and imprisoned for a first degree felony, within seven years after the day on which the court sentences the defendant for the first degree felony conviction;
(ii) except as provided in Subsection (5)(b)(i), and if the defendant is convicted of a felony, within three years after the day on which the court sentences the defendant for the felony conviction; and
(iii) if the defendant is convicted of a misdemeanor, within one year after the day on which the court sentences the defendant for the misdemeanor conviction.

(6)
(a) Upon a motion from the prosecuting attorney or the victim, the court may modify an existing order of restitution, including the amount of pecuniary damages owed by the defendant in the order for restitution, if the prosecuting attorney or the victim shows good cause for modifying the order.
(b) A motion under Subsection (6)(a) shall be brought within the time periods described in Subsection (5).

Enacted by Chapter 260, 2021 General Session

Part 3
Civil Accounts Receivables and Civil Judgments for Restitution

77-38b-301 Entry of judgment -- Interest -- Civil actions -- Lien -- Delinquency.

(1) As used in this section, "judgment" means an order for:
(a) a civil judgment of restitution; or
(b) a civil accounts receivable.

(2)
(a) If the court has entered a judgment on the civil judgment docket under Section 77-18-114, the judgment is enforceable under the Utah Rules of Civil Procedure.
(b)
(i) Notwithstanding Subsection (2)(a):
(A) a judgment is an obligation that arises out of the defendant's criminal case;
(B) civil enforcement of a judgment shall be construed as a continuation of the criminal action for which the judgment arises; and
(C) a judgment is criminal in nature.
(ii) Civil enforcement of a judgment does not divest a defendant of an obligation imposed in a criminal action as part of the defendant's punishment for an offense.

(3)
(a) Notwithstanding Sections 77-18-114, 78B-2-311, and 78B-5-202, a judgment shall expire only upon payment in full, including applicable interest, collection fees, attorney fees, and liens that directly result from the judgment.
(b) Interest on a judgment may only accrue from the day on which the judgment is entered on the civil judgment docket by the court.
(c) This Subsection (3) applies to all judgments that are not paid in full on or before May 12, 2009.

(4) A judgment is considered entered on the civil judgment docket when the judgment appears on the civil judgment docket with:

(a) an amount owed by the defendant;
(b) the name of the defendant as the judgment debtor; and
(c) the name of the judgment creditors described in Subsections 77-18-114(1)(b)(iii) and (2)(b).

(5) If a civil judgment of restitution becomes delinquent, or is in default, and upon a motion from a judgment creditor, the court may order the defendant to appear and show cause why the defendant should not be held in contempt under Section 78B-6-317 for the delinquency or the default.

Enacted by Chapter 260, 2021 General Session

77-38b-302 Nondischargability in bankruptcy.

A civil judgment of restitution and a civil accounts receivable are considered a debt from a criminal case that may not be discharged in bankruptcy.

Enacted by Chapter 260, 2021 General Session

77-38b-303 Civil action by a victim for damages.

(1)
(a) A provision under this part concerning restitution does not limit or impair the right of a person injured by a defendant's criminal conduct to sue and recover damages from the defendant in a civil action.
(b) A court's finding under Subsection 77-38b-205(1)(a)(iii) may be used in a civil action for a defendant's liability to a victim as presumptive proof of the victim's pecuniary damages that are proximately caused by the defendant's criminal conduct.
(c) If a conviction in a criminal trial decides the issue of a defendant's liability for pecuniary damages suffered by a victim, the issue of the defendant's liability is conclusively determined as to the defendant if the issue is involved in a subsequent civil action.

(2)
(a) The sentencing court shall credit any payment in favor of the victim in a civil action for the defendant's criminal conduct toward the amount of restitution owed by the defendant to the victim.
(b) In a civil action, a court shall credit any restitution paid by the defendant to a victim for the defendant's criminal conduct towards the victim against any judgment that is in favor of the victim for the civil action.
(c) If a victim receives payment from the defendant for the civil action, the victim shall provide notice to the sentencing court and the court in the civil action of the payment within 30 days after the day on which the victim receives the payment.
(d) Nothing in this section shall prevent a defendant from providing proof of payment to the court or the office.

(3)
(a) If a victim prevails in a civil action against a defendant, the court shall award reasonable attorney fees and costs to the victim.
(b) If the defendant prevails in the civil action, the court shall award reasonable costs to the defendant if the court finds that the victim brought the civil action for an improper purpose, including to harass the defendant or to cause unnecessary delay or needless increase in the cost of litigation.

Enacted by Chapter 260, 2021 General Session

77-38b-304 Priority.

(1) The court, or the office, shall disburse a payment for restitution within 60 days after the day on which the payment is received from the defendant if:
  (a) the victim has complied with Subsection 77-38b-203(2);
  (b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received; and
  (c) the payment to the victim is at least $5, unless the payment is the final payment.

(2) The court, or the office, shall disburse money collected from a defendant for a criminal accounts receivable in the following order of priority:
  (a) first, and except as provided in Subsection (4)(b), to restitution owed by the defendant in accordance with Subsection (4);
  (b) second, to the cost of obtaining a DNA specimen from the defendant as described in Subsection (4)(b);
  (c) third, to any criminal fine or surcharge owed by the defendant;
  (d) fourth, to the cost owed by the defendant for a reward described in Section 77-32b-104;
  (e) fifth, to the cost owed by the defendant for medical care, treatment, hospitalization, and related transportation paid by a county correctional facility under Section 17-50-319; and
  (f) sixth, to any other cost owed by the defendant.

(3) The office shall disburse money collected from a defendant for a civil accounts receivable and civil judgment of restitution in the following order of priority:
  (a) first, to any past due amount owed to the department for the monthly supervision fee under Subsection 64-13-21(6)(a);
  (b) second, and except as provided in Subsection (4)(b), to restitution owed by the defendant in accordance with Subsection (4);
  (c) third, to the cost of obtaining a DNA specimen from the defendant in accordance with Subsection (4)(b);
  (d) fourth, to any criminal fine or surcharge owed by the defendant;
  (e) fifth, to the cost owed by the defendant for a reward described in Section 77-32b-104;
  (f) sixth, to the cost owed by the defendant for medical care, treatment, hospitalization and related transportation paid by a county correctional facility under Section 17-50-319; and
  (g) seventh, to any other cost owed by the defendant.

(4)
  (a) If a defendant owes restitution to more than one person or government agency at the same time, the court, or the office, shall disburse a payment for restitution in the following order of priority:
    (i) first, to the victim of the offense;
    (ii) second, to the Utah Office for Victims of Crime;
    (iii) third, any other government agency that has provided reimbursement to the victim as a result of the defendant's criminal conduct; and
    (iv) fourth, any insurance company that has provided reimbursement to the victim as a result of the defendant's criminal conduct.
  (b) If a defendant is required under Section 53-10-404 to reimburse the department for the cost of obtaining the defendant's DNA specimen, the reimbursement for the cost of obtaining the defendant's DNA specimen is the next priority after restitution to the victim of the offense under Subsection (4)(a)(i).

(c) If the defendant is required to pay restitution to more than one victim, restitution shall be disbursed to each victim according to the percentage of each victim's share of the total order for restitution.

(5) For a criminal accounts receivable, the department shall collect the current and past due amount owed by a defendant for the monthly supervision fee under Subsection 64-13-21(6) (a) until the court enters a civil accounts receivable on the civil judgment docket under Section 77-18-114.

Renumbered and Amended by Chapter 260, 2021 General Session

Part 4
Enforcement and Collection of Restitution

77-38b-401 Collection from inmate offenders.

Upon written request of the prosecuting attorney, the victim, or the parole or probation agent for the defendant, the department shall collect restitution from offender funds held by the department under Section 64-13-23.

Renumbered and Amended by Chapter 260, 2021 General Session

77-38b-402 Preservation of assets.

(1) Before, or at the time, a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a prosecuting attorney may, if in the prosecuting attorney's best judgment there is a substantial likelihood that a conviction will be obtained and restitution will be ordered in the case, petition the court to:

(a) enter a temporary restraining order, an injunction, or both;

(b) require the execution of a satisfactory performance bond; or

(c) take any other action to preserve the availability of property that may be necessary to satisfy an anticipated order for restitution.

(2)

(a) Upon receiving a request from a prosecuting attorney under Subsection (1), and after notice to a person appearing to have an interest in the property and affording the person an opportunity to be heard, the court may take action as requested by the prosecuting attorney if the court determines:

(i) there is probable cause to believe that an offense has been committed and that the defendant committed the offense, and that failure to enter the order will likely result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and

(ii) the need to preserve the availability of the property or prevent the property's sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(b) In a hearing conducted in accordance with this section, a court may consider reliable hearsay as defined in Utah Rules of Evidence, Rule 1102.

(c) An order for an injunction entered under this section is effective for the period of time given in the order.

(3)

(a) Upon receiving a request for a temporary restraining order from a prosecuting attorney under this section, a court may enter a temporary restraining order against an owner with respect to specific property without notice or opportunity for a hearing if:
(i) the prosecuting attorney demonstrates that there is a substantial likelihood that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this chapter; and
(ii) provision of notice would jeopardize the availability of the property to satisfy any judgment or order for restitution.
(b) The temporary order in this Subsection (3) expires no later than 10 days after the day on which the temporary order is entered unless extended for good cause shown or the party against whom the temporary order is entered consents to an extension.
(4) A hearing concerning an order entered under this section shall be held as soon as possible, and before the expiration of the temporary order.

Renumbered and Amended by Chapter 260, 2021 General Session

Chapter 39
Sale of Tobacco or Alcohol to Under Age Persons

77-39-101 Investigation of sales of alcohol, tobacco products, electronic cigarette products, and nicotine products to underage individuals.
(1) As used in this section:
(a) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
(b) "Nicotine product" means the same as that term is defined in Section 76-10-101.
(c) "Peace officer" means the same as the term is described in Section 53-13-109.
(d) "Tobacco product" means the same as that term is defined in Section 76-10-101.
(2)
(a) A peace officer may investigate the possible violation of:
(i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and attempt to purchase or make a purchase of alcohol from a retail establishment; or
(ii) Section 76-10-114 by requesting an individual under 21 years old to enter into and attempt to purchase or make a purchase from a retail establishment of:
(A) a tobacco product;
(B) an electronic cigarette product; or
(C) a nicotine product.
(b) A peace officer who is present at the site of a proposed purchase shall direct, supervise, and monitor the individual requested to make the purchase.
(c) Immediately following a purchase or attempted purchase or as soon as practical the supervising peace officer shall inform the cashier and the proprietor or manager of the retail establishment that the attempted purchaser was under the legal age to purchase:
(i) alcohol; or
(ii)
(A) a tobacco product;
(B) an electronic cigarette product; or
(C) a nicotine product.

(d) If a citation or information is issued, the citation or information shall be issued within seven days after the day on which the purchase occurs.

(3)

(a) If an individual under 18 years old is requested to attempt a purchase, a written consent of that individual's parent or guardian shall be obtained before the individual participates in any attempted purchase.

(b) An individual requested by the peace officer to attempt a purchase may:

(i) be a trained volunteer; or

(ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco products, electronic cigarette products, or nicotine products.

(4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the individual attempting a purchase may use false identification in attempting the purchase if:

(a) the Department of Public Safety created in Section 53-1-103 provides the false identification;

(b) the false identification:

(i) accurately represents the individual's age; and

(ii) displays a current photo of the individual; and

(c) the peace officer maintains possession of the false identification at all times outside the attempt to purchase.

(5) An individual requested to attempt to purchase or make a purchase pursuant to this section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol, a tobacco product, an electronic cigarette product, or a nicotine product if a peace officer directs, supervises, and monitors the individual.

(6)

(a) Except as provided in Subsection (6)(b), a purchase attempted under this section shall be conducted within a 12-month period:

(i) on a random basis at any one retail establishment location, not more often than four times for the attempted purchase of alcohol; and

(ii) a minimum of two times at a retail establishment that sells tobacco products, electronic cigarette products, or nicotine products for the attempted purchase of a tobacco product, an electronic cigarette product, or a nicotine product.

(b) This section does not prohibit an investigation or an attempt to purchase alcohol, a tobacco product, an electronic cigarette product, or a nicotine product under this section if:

(i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a tobacco product, an electronic cigarette product, or a nicotine product to an individual under the age established by Section 32B-4-403 or 76-10-114; and

(ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion.

(7)

(a) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made.

(b) The report required by this Subsection (7) shall include:

(i) the name of the supervising peace officer;

(ii) the name of the individual attempting the purchase;

(iii) a photograph of the individual attempting the purchase showing how that individual appeared at the time of the attempted purchase;

(iv) the name and description of the cashier or proprietor from whom the individual attempted the purchase;

(v) the name and address of the retail establishment; and

(vi) the date and time of the attempted purchase.

Amended by Chapter 291, 2021 General Session

Chapter 40
Utah Expungement Act

77-40-101 Title.

This chapter is known as the "Utah Expungement Act."

Enacted by Chapter 283, 2010 General Session

77-40-101.5 Applicability to juvenile court records.

This chapter does not apply to an expungement of a record for an adjudication under Section 80-6-701 or a nonjudicial adjustment, as that term is defined in Section 80-1-102, of an offense in the juvenile court.

Amended by Chapter 262, 2021 General Session

77-40-102 Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5)

(a) "Clean slate eligible case" means a case:

(i) where, except as provided in Subsection (5)(c), each conviction within the case is:

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor conviction; or

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40-105(6) and (7) without taking into consideration the exception in Subsection 77-40-105(9); and

(B) against whom no criminal proceedings are pending in the state; and

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:
(A) at least five years for a class C misdemeanor or an infraction;
(B) at least six years for a class B misdemeanor; and
(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).
(b) "Clean slate eligible case" includes a case that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:
(i) except as provided in Subsection (5)(c), each charge within the case is:
(A) a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);
(B) a class B or class C misdemeanor; or
(C) an infraction;
(ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and
(iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed.
(c) "Clean slate eligible case" does not include a case:
(i) where the individual is found not guilty by reason of insanity;
(ii) where the case establishes a criminal accounts receivable, as defined in Section 77-32b-102, that:
(A) has been entered as a civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; or
(B) has not been satisfied according to court records; or
(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:
(A) any of the offenses listed in Subsection 77-40-105(2)(a);
(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Person;
(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
(D) sexual battery in violation of Section 76-9-702.1;
(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
(G) damage to or interruption of a communication device in violation of Section 76-6-108;
(H) a domestic violence offense as defined in Section 77-36-1; or
(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).
(6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.
(7) "Department" means the Department of Public Safety established in Section 53-1-103.
(8) "Drug possession offense" means an offense under:
(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;
(c) Section 58-37b-6, possession or use of an imitation controlled substance; or
(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (8).
(9) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.
(10) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.
(11) "Minor regulatory offense" means any class B or C misdemeanor offense, and any local ordinance, except:
(a) any drug possession offense;
(b)Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
(c) Sections 73-18-13 through 73-18-13.6;
(d) those offenses defined in Title 76, Utah Criminal Code; or
(e) any local ordinance that is substantially similar to those offenses listed in Subsections (11)(a) through (d).
(12) "Petitioner" means an individual applying for expungement under this chapter.
(13)
(a) "Traffic offense" means:
(i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41, Chapter 6a, Traffic Code;
(ii)Title 53, Chapter 3, Part 2, Driver Licensing Act;
(iii)Title 73, Chapter 18, State Boating Act; and
(iv) all local ordinances that are substantially similar to those offenses.
(b) "Traffic offense" does not mean:
(i)Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
(ii) Sections 73-18-13 through 73-18-13.6; or
(iii) any local ordinance that is substantially similar to the offenses listed in Subsections (13)(b)(i) and (ii).

Amended by Chapter 206, 2021 General Session
Amended by Chapter 260, 2021 General Session

77-40-103 Petition for expungement procedure overview.

The process for a petition for the expungement of records under this chapter regarding the arrest, investigation, detention, and conviction of a petitioner is as follows:
(1) The petitioner shall apply to the bureau for a certificate of eligibility for expungement and pay the application fee established by the department.
(2) Once the eligibility process is complete, the bureau shall notify the petitioner.
(3) If the petitioner is qualified to receive a certificate of eligibility for expungement, the petitioner shall pay the issuance fee established by the department.
(4)
(a) The petitioner shall file the certificate of eligibility with a petition for expungement in the court in which the proceedings occurred.
(b) If there were no court proceedings, or the court no longer exists, the petitioner may file the petition in the district court where the arrest occurred.
(c) If a petitioner files a certificate of eligibility electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded.

(d) If the petitioner files the original certificate of eligibility with the petition, the clerk or the court shall scan and return the original certificate to the petitioner or the petitioner's attorney, who shall keep the original certificate until the proceedings are concluded.

(5) Notwithstanding Subsections (3) and (4), if the petitioner is not qualified to receive a certificate of eligibility for expungement, the petitioner may file a petition without a certificate to obtain expungement for a record of conviction related to cannabis possession if the petition demonstrates that:

(a) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

(b) the possession of cannabis in question was in a form and an amount to medicinally treat the condition described in Subsection (5)(a).

(6)

(a) The petitioner shall deliver a copy of the petition and certificate of eligibility to the prosecutorial office that handled the court proceedings.

(b) If there were no court proceedings, the petitioner shall deliver the copy of the petition and certificate to the county attorney's office in the jurisdiction where the arrest occurred.

(7) If the prosecutor or the victim files an objection to the petition, the court shall set a hearing and notify the prosecutor and the victim of the date set for the hearing.

(8) If the court requests a response from the Division of Adult Probation and Parole and a response is received, the petitioner may file a written reply in accordance with Section 77-40-107.

(9) A court may grant an expungement without a hearing if no objection is received.

(10) Upon receipt of an order of expungement, the petitioner shall deliver copies to all government agencies in possession of records relating to the expunged matter.

Amended by Chapter 12, 2020 General Session
Amended by Chapter 218, 2020 General Session

77-40-104 Requirements to apply for certificate of eligibility to expunge records of arrest, investigation, and detention.

An individual who is arrested or formally charged with an offense may apply to the bureau for a certificate of eligibility to expunge the records of arrest, investigation, and detention that may have been made in the case, subject to the following conditions:

(1) at least 30 days have passed since the day of the arrest for which a certificate of eligibility is sought;

(2) there are no criminal proceedings pending against the individual; and

(3) one of the following occurs:

(a) charges are screened by the investigating law enforcement agency and the prosecutor makes a final determination that no charges will be filed in the case;

(b) the entire case is dismissed with prejudice;

(c) the entire case is dismissed without prejudice or without condition and:

(i) the prosecutor consents in writing to the issuance of a certificate of eligibility; or

(ii) at least 180 days have passed since the day on which the case is dismissed;

(d) the individual is acquitted at trial on all of the charges contained in the case; or

(e) the statute of limitations expires on all of the charges contained in the case.

Amended by Chapter 448, 2019 General Session

77-40-104.1 Eligibility for removing the link between personal identifying information and court case dismissed.

(1) As used in this section:
(a) "Domestic violence offense" means the same as that term is defined in Section 77-36-1.
(b) "Personal identifying information" means:
(i) a current name, former name, nickname, or alias; and
(ii) date of birth.
(2) An individual whose criminal case is dismissed, or civil case filed in accordance with Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, is denied, may move the court for an order to remove the link between the individual's personal identifying information from the dismissed case in any publicly searchable database of the Utah state courts and the court shall grant that relief if:
(a) 30 days have passed from the day on which the case is dismissed or denied;
(b) no appeal is filed for the dismissed or denied case within the 30-day period described in Subsection (2)(a); and
(c) no charge in the case was a domestic violence offense.
(3) Removing the link to personal identifying information of a court record under Subsection (2) does not affect a prosecuting, arresting, or other agency's records.
(4) A case history, unless expunged under this chapter, remains public and accessible through a search by case number.

Amended by Chapter 272, 2021 General Session

77-40-105 Requirements to apply for a certificate of eligibility to expunge conviction.

(1) An individual convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.
(2) Except as provided in Subsection (3), an individual is not eligible to receive a certificate of eligibility from the bureau if:
(a) the conviction for which expungement is sought is:
(i) a capital felony;
(ii) a first degree felony;
(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
(iv) felony automobile homicide;
(v) a felony conviction described in Subsection 41-6a-501(2);
(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or
(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
(b) a criminal proceeding is pending against the petitioner; or
(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.
(3) The eligibility limitation described in Subsection (2) does not apply in relation to a conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1), if, at the time of the offense, the individual who committed the offense was at least 14 years old, but under 18 years old, unless the conviction occurred in district court after the individual was:
(a) charged by criminal information under Section 80-6-502 or 80-6-503; and
(b) bound over to district court under Section 80-6-504.
(4) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought;
(b) the petitioner has paid in full all restitution ordered by the court under Section 77-38b-205; and
(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:
(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);
(ii) seven years in the case of a felony;
(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;
(iv) four years in the case of a class B misdemeanor; or
(v) three years in the case of any other misdemeanor or infraction.

(5) When determining whether to issue a certificate of eligibility, the bureau may not consider:
(a) a petitioner's pending or previous:
(i) infraction;
(ii) traffic offense;
(iii) minor regulatory offense; or
(iv) clean slate eligible case that was automatically expunged in accordance with Section 77-40-114; or
(b) a fine or fee related to an offense described in Subsection (5)(a).

(6) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (9):
(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;
(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;
(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or
(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

(7) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:
(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or
(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(8) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (6) if any non drug possession offense in that episode:
(a) is a felony or class A misdemeanor; or
(b) has the same or a longer waiting period under Subsection (4) than any drug possession offense in that episode.

(9) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (6) shall be increased by one.
(10) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Amended by Chapter 206, 2021 General Session
Amended by Chapter 260, 2021 General Session
Amended by Chapter 261, 2021 General Session, (Coordination Clause)
Amended by Chapter 107, 2020 General Session, (Coordination Clause)

77-40-106 Application for certificate of eligibility -- Fees.

(1)
(a) A petitioner seeking to obtain an expungement for a criminal record shall apply for a certificate of eligibility from the bureau.
(b) A petitioner who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.
(c) Regardless of whether the petitioner is prosecuted, the bureau may deny a certificate of eligibility to anyone who knowingly provides false information on an application.

(2)
(a) The bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether a petitioner is eligible to receive a certificate of eligibility under this chapter.
(b) For purposes of determining eligibility under this chapter, the bureau may review records of arrest, investigation, detention and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred.
(c) If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105, the bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of 90 days from the date the certificate is issued.
(d) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court.

(3)
(a) The bureau shall charge application and issuance fees for a certificate of eligibility or special certificate in accordance with the process in Section 63J-1-504.
(b) The application fee shall be paid at the time the petitioner submits an application for a certificate of eligibility to the bureau.
(c) If the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility or special certificate unless Subsection (3)(d) applies.
(d) An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40-104 unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.
(e) Funds generated under this Subsection (3) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(4) The bureau shall provide clear written directions to the petitioner along with a list of agencies known to be affected by an order of expungement.

Amended by Chapter 356, 2017 General Session

77-40-107 Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -- Exception.

(1) The petitioner shall file a petition for expungement and, except as provided in Subsection 77-40-103(5), the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(2)

(a) Upon receipt of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall:

(i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;

(ii) state that the victim has a right to object to the expungement; and

(iii) provide instructions for registering an objection with the court.

(3) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after receipt of the petition.

(4)

(a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:

(i) the reasons probation was terminated; and

(ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.

(5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after receipt.

(6)

(a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.

(b) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement is filed with the court, the expungement may be granted without a hearing.
(8) The court shall issue an order of expungement if the court finds by clear and convincing evidence that:
(a) the petition and, except as provided under Subsection 77-40-103(5), certificate of eligibility are sufficient;
(b) the statutory requirements have been met;
(c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecutor provided written consent and has not filed and does not intend to refile related charges;
(d) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105(7), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction;
(e) if the petitioner seeks expungement without a certificate of eligibility for expungement under Subsection 77-40-103(5) for a record of conviction related to cannabis possession:
(i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and
(ii) the possession of cannabis in question was in a form and an amount to medicinally treat the condition described in Subsection (8)(e)(i);
(f) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and
(g) it is not contrary to the interests of the public to grant the expungement.
(9)
(a) If the court denies a petition described in Subsection (8)(c) because the prosecutor intends to refile charges, the person seeking expungement may again apply for a certificate of eligibility if charges are not refiled within 180 days of the day on which the court denies the petition.
(b) A prosecutor who opposes an expungement of a case dismissed without prejudice or without condition shall have a good faith basis for the intention to refile the case.
(c) A court shall consider the number of times that good faith basis of intention to refile by the prosecutor is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (8)(c).
(10) If the court grants a petition described in Subsection (8)(e), the court shall make the court's findings in a written order.
(11) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Amended by Chapter 206, 2021 General Session

77-40-108 Distribution of order -- Redaction -- Receipt of order -- Bureau requirements -- Administrative proceedings.
(1)
(a)
(i) An individual who receives an order of expungement under Section 77-40-107 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(ii) The provisions of Subsection (1)(a)(i) do not apply to an individual who receives an automatic expungement under Section 77-40-114.

(b) An individual who receives an order of expungement under Section 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process in Section 63J-1-504, before the bureau's record may be expunged.

(2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, an individual who has received an expungement of an arrest or conviction under this chapter or Section 77-27-5.1 may respond to any inquiry as though the arrest or conviction did not occur.

(3) The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(4) An agency receiving an expungement order shall expunge the individual's identifying information contained in records in the agency's possession relating to the incident for which expungement is ordered.

(5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2), a government agency or official may not divulge information or records that have been expunged.

(6)

(a) An order of expungement may not restrict an agency's use or dissemination of records in the agency's ordinary course of business until the agency has received a copy of the order.

(b) Any action taken by an agency after issuance of the order but prior to the agency's receipt of a copy of the order may not be invalidated by the order.

(7) An order of expungement may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which the individual had notice according to the records of the administrative body prior to issuance of the expungement order;

(b) affect the enforcement of any order or findings issued by an administrative body pursuant to the administrative body's lawful authority prior to issuance of the expungement order;

(c) remove any evidence relating to the individual including records of arrest, which the administrative body has used or may use in these proceedings; or

(d) prevent an agency from maintaining, sharing, or distributing any record required by law.

Amended by Chapter 448, 2019 General Session

77-40-108.5 Distribution for order for vacatur.

(1) An individual who receives an order for vacatur under Subsection 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(2) To complete delivery of the order for vacatur to the bureau, the individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, as provided in Subsection 77-40-103(1).

(3) The bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement under Section 77-40-108, except as provided in this section.

(4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, an individual who has received a vacatur of conviction under Section 78B-9-108(2) may respond to any inquiry as though the conviction did not occur.

(5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of Investigation.

(6) An agency receiving an order for vacatur shall expunge the individual's identifying information contained in records in the agency's possession relating to the incident for which vacatur is ordered.
(7) A government agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to any person or agency, except for:
(a) the individual for whom vacatur was ordered; or
(b) Peace Officer Standards and Training, pursuant to Section 53-6-203 and Subsection 77-40-109(2)(b)(ii).
(8) The bureau may not count vacated convictions against any future expungement eligibility.

Amended by Chapter 448, 2019 General Session

77-40-109 Retention and release of expunged records -- Agencies.
(1) The bureau shall keep, index, and maintain all expunged records of arrests and convictions.
(2)
(a) Employees of the bureau may not divulge any information contained in the bureau's index to any person or agency without a court order unless specifically authorized by statute.
(b) The following organizations may receive information contained in expunged records upon specific request:
(i) the Board of Pardons and Parole;
(ii) Peace Officer Standards and Training;
(iii) federal authorities, only as required by federal law;
(iv) the Department of Commerce;
(v) the Department of Insurance;
(vi) the State Board of Education; and
(vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office.
(c) A person or agency authorized by this Subsection (2) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, except as directed by a court order, including distribution on a public website.
(3) The bureau may also use the information in the bureau's index as provided in Section 53-5-704.
(4) If, after obtaining an expungement, an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction, the state may petition the court to open the expunged records upon a showing of good cause.
(5)
(a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.
(b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.
(c) At the end of the action or proceeding, the court shall order the records expunged again.
(d) Any person authorized by this Subsection (5) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.
(6) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records.

Amended by Chapter 448, 2019 General Session

77-40-110 Use of expunged records -- Individuals -- Use in civil actions.

Records expunged under this chapter or Section 77-27-5.1 may be released to or viewed by the following individuals:

(1) the petitioner or an individual who receives an automatic expungement under Section 77-40-114;

(2) a law enforcement officer who was involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and

(3) parties to a civil action arising out of the expunged incident, providing the information is kept confidential and utilized only in the action.

Amended by Chapter 448, 2019 General Session

77-40-111 Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to:

(1) implement procedures for processing an automatic expungement;

(2) implement procedures for applying for certificates of eligibility;

(3) specify procedures for receiving a certificate of eligibility; and

(4) create forms and determine information necessary to be provided to the bureau.

Amended by Chapter 448, 2019 General Session

77-40-112 Penalty.

An employee or agent of an agency that is prohibited from disseminating information from expunged, vacated, or pardoned records under Section 77-27-5.1 or 77-40-109 who knowingly or intentionally discloses identifying information from the expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.

Amended by Chapter 356, 2017 General Session
Amended by Chapter 447, 2017 General Session

77-40-113 Retroactive application.

The provisions of this chapter apply retroactively to all arrests and convictions regardless of the date on which the arrests were made or convictions were entered.

Renumbered and Amended by Chapter 283, 2010 General Session

77-40-114 Automatic expungement procedure.

(1)

(a) Except as provided in Subsection (1)(b) and subject to Section 77-40-116, this section governs the process for the automatic expungement of all records in:

(i) except as provided in Subsection (2)(d), a case that resulted in an acquittal on all charges;

(ii) except as provided in Subsection (3)(d), a case that is dismissed with prejudice; or

(iii) a case that is a clean slate eligible case.

(b) This section does not govern automatic expungement of a traffic offense.

(2)

(a) Except as provided in Subsection (2)(d), the process for automatic expungement of records for a case that resulted in an acquittal on all charges is as described in Subsections (2)(b) through (c).

(b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:

(i) issue, without a petition, an expungement order; and

(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.

(c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.

(d) For purposes of this section, a case that resulted in acquittal on all charges does not include a case that resulted in an acquittal because the individual is found not guilty by reason of insanity.

(3)

(a) The process for an automatic expungement of a case that is dismissed with prejudice is as described in Subsections (3)(b) through (c).

(b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:

(i) issue, without a petition, an expungement order; and

(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.

(c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.

(d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not include a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).

(4)

(a) The process for the automatic expungement of a clean slate eligible case is as described in Subsections (4)(b) through (f) and in accordance with any rules made by the Judicial Council as described in Subsection (4)(g).

(b) A prosecuting agency shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be a clean slate eligible case.

(c) Within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the prosecuting agency shall provide written notice in accordance with any rules made by the Judicial Council if the prosecuting agency objects to an automatic expungement for any of the following reasons:

(i) after reviewing the agency record, the prosecuting agency believes that the case does not meet the definition of a clean slate eligible case;

(ii) the individual has not paid court-ordered restitution to the victim; or

(iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible case is continuing to engage in criminal activity within or outside of the state.

(d)

(i) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (4)(c) within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the court may not proceed with automatic expungement.

(ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is sent without the prosecuting agency providing written notice of an objection for a reason described in Subsection (4)(c), the court may proceed with automatic expungement.

(e) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:

(i) issue, without a petition, an expungement order; and

(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.

(f) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.

(g) The Judicial Council shall make rules to govern the process for automatic expungement of records for a clean slate eligible case in accordance with this Subsection (4).

(5) Nothing in this section precludes an individual from filing a petition for expungement of records that are eligible for automatic expungement under this section if an automatic expungement has not occurred pursuant to this section.

(6) An automatic expungement performed under this section does not preclude a person from requesting access to expunged records in accordance with Section 77-40-109 or 77-40-110.

Amended by Chapter 218, 2020 General Session

77-40-115 Automatic deletion for traffic offense.

(1) Subject to Section 77-40-116, records for the following traffic offenses shall be deleted without a court order or notice to the prosecuting agency:

(a) a traffic offense case that resulted in an acquittal on all charges;

(b) a traffic offense case that is dismissed with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b); or

(c) a traffic offense case that is a clean slate eligible case, as that term is defined in Section 77-40-102.

(2) The Judicial Council shall make rules to provide an ongoing process for identifying and deleting records on all traffic offenses described in Subsection (1).

Enacted by Chapter 448, 2019 General Session

77-40-116 Time periods for expungement or deletion -- Identification and processing of clean slate eligible cases.

(1) Reasonable efforts within available funding shall be made to expunge or delete a case as quickly as is practicable with the goal of:

(a) for cases adjudicated on or after May 1, 2020:

(i) expunging a case that resulted in an acquittal on all charges, 60 days after the acquittal;

(ii) expunging a case that resulted in a dismissal with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b), 180 days after:

(A) for a case in which no appeal was filed, the day on which the entire case against the individual is dismissed with prejudice; or

(B) for a case in which an appeal was filed, the day on which a court issues a final unappealable order;

(iii) expunging a clean slate eligible case that is not a traffic offense within 30 days of the court, in accordance with Section 77-40-114, determining that the requirements for expungement have been satisfied; or
(iv) deleting a clean slate eligible case that is a traffic offense upon identification; and
(b) for cases adjudicated before May 1, 2020, expunging or deleting a case within one year of the day on which the case is identified as eligible for automatic expungement or deletion.
(2)
(a) The Judicial Council shall make rules governing the identification and processing of clean slate eligible cases in accordance with Sections 77-40-114 and 77-40-115.
(b) Reasonable efforts shall be made to identify and process all clean slate eligible cases in accordance with Sections 77-40-114 and 77-40-115.
(c) An individual does not have a cause of action for damages as a result of the failure to identify an individual's case as a clean slate eligible case or to automatically expunge or delete the records of a clean slate eligible case.

Enacted by Chapter 448, 2019 General Session

Chapter 41
Sex and Kidnap Offender Registry

77-41-101 Title.

This chapter is known as the "Sex and Kidnap Offender Registry."

Enacted by Chapter 145, 2012 General Session

77-41-102 Definitions.

As used in this chapter:
(1) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.
(2) "Business day" means a day on which state offices are open for regular business.
(3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.
(4) "Department" means the Department of Corrections.
(5) "Division" means the Division of Juvenile Justice Services.
(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.
(7) "Indian Country" means:
(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;
(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and
(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.
(9) "Kidnap offender" means any individual, other than a natural parent of the victim:
(a) who has been convicted in this state of a violation of:
(i) Subsection 76-5-301(1)(c) or (d), kidnapping;
(ii) Section 76-5-301.1, child kidnapping;
(iii) Section 76-5-302, aggravated kidnapping;
(iv) Section 76-5-308, human trafficking for labor and human smuggling;
(v) Section 76-5-308, human smuggling, when the individual smuggled is under 18 years old;
(vi) Section 76-5-308.5, human trafficking of a child for labor;
(vii) Section 76-5-310, aggravated human trafficking and aggravated human smuggling, on or after May 10, 2011;
(viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or
(ix) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iii);
(b)
(i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a); and
(ii) who is:
(A) a Utah resident; or
(B) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;
(c)
(i)
(A) who is required to register as a kidnap offender in any other jurisdiction of original conviction;
(B) who is required to register as a kidnap offender by any state, federal, or military court; or
(C) who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and
(ii) in any 12-month period, who is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;
(d)
(i)
(A) who is a nonresident regularly employed or working in this state; or
(B) who is a student in this state; and
(ii)
(A) who was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction; or
(B) as a result of the conviction, who is required to register in the individual's state of residence;
(e) who is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or
(f)

(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (9)(a); and
(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense and:
(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday; or
(B) if the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605, the individual remains in the division's custody until 30 days before the individual's 25th birthday.

(10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).

(12) "Online identifier" or "Internet identifier":
(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and
(b) does not include date of birth, social security number, PIN number, or Internet passwords.

(13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(15) "Registration website" means the Sex and Kidnap Offender Notification and Registration website described in Section 77-41-110 and the information on the website.

(16) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(17) "Sex offender" means any individual:
(a) convicted in this state of:
(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;
(iii) Section 76-5-308, human trafficking for sexual exploitation;
(iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
(v) Section 76-5-310, aggravated human trafficking for sexual exploitation;
(vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
(vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in Subsection 76-5-401(3)(b) or (c);
(viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection 76-5-401.1(3);
(ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
(x) Section 76-5-402, rape;
(xi) Section 76-5-402.1, rape of a child;
(xii) Section 76-5-402.2, object rape;
(xiii) Section 76-5-402.3, object rape of a child;
(xiv) a felony violation of Section 76-5-403, forcible sodomy;
(xv) Section 76-5-403.1, sodomy on a child;
(xvi) Section 76-5-404, forcible sexual abuse;
(xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
(xviii) Section 76-5-405, aggravated sexual assault;

(xix) Section 76-5-412, custodial sexual relations, when the individual in custody is younger than 18 years old, if the offense is committed on or after May 10, 2011;
(xx) Section 76-5b-201, sexual exploitation of a minor;
(xxi) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
(xxii) Section 76-7-102, incest;
(xxiii) Section 76-9-702, lewdness, if the individual has been convicted of the offense four or more times;
(xxiv) Section 76-9-702.1, sexual battery, if the individual has been convicted of the offense four or more times;
(xxv) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;
(xxvi) Section 76-9-702.5, lewdness involving a child;
(xxvii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
(xxviii) Section 76-10-1306, aggravated exploitation of prostitution; or
(xxix) attempting, soliciting, or conspiring to commit any felony offense listed in this Subsection (17)(a);

(b)
(i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (17)(a); and
(ii) who is:
(A) a Utah resident; or
(B) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(c)
(i)
(A) who is required to register as a sex offender in any other jurisdiction of original conviction;
(B) who is required to register as a sex offender by any state, federal, or military court; or
(C) who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or any previous registration requirements; and
(ii) who, in any 12-month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d)
(i)
(A) who is a nonresident regularly employed or working in this state; or
(B) who is a student in this state; and
(ii)
(A) who was convicted of one or more offenses listed in Subsection (17)(a), or any substantially equivalent offense in any jurisdiction; or
(B) who is, as a result of the conviction, required to register in the individual's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (17)(a); or

(f)
(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (17)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense and:
(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday; or
(B) if the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605, the individual remains in the division's custody until 30 days before the individual's 25th birthday.
(18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.
(19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Revisor instructions Chapter 2, 2021 Special Session 1
Amended by Chapter 2, 2021 Special Session 1

77-41-103 Department duties.
(1) The department, to assist in investigating kidnapping and sex-related crimes, and in apprehending offenders, shall:
(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex and kidnap offenses;
(b) make information listed in Subsection 77-41-110(4) available to the public; and
(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-41-110(4), but only:
(i) for the purposes under this chapter; or
(ii) in accordance with Section 63G-2-206.
(2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:
(a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102(9) or (17), within three business days; and
(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102(9) or (17), within five business days.
(3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102(9) or (17), the convicting court shall within three business days forward a signed copy of the judgment and sentence to the Sex and Kidnap Offender Registry office within the Department of Corrections.
(4) Upon modifying, withdrawing, setting aside, vacating, or otherwise altering a conviction for any offense listed in Subsection 77-41-102(9) or (17), the court shall, within three business days, forward a signed copy of the order to the Sex and Kidnap Offender Registry office within the Department of Corrections.
(5) The department may intervene in any matter, including a criminal action, where the matter purports to affect a person's lawfully entered registration requirement.
(6) The department shall:
(a) provide the following additional information when available:
(i) the crimes the offender has been convicted of or adjudicated delinquent for;
(ii) a description of the offender's primary and secondary targets; and
(iii) any other relevant identifying information as determined by the department;
(b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and
(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i)
(A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or
(B) promptly made available to the district superintendent of the school district where the offender is employed if the educational institution is an institution of primary education; and
(ii) entered into the appropriate state records or data system.

Amended by Chapter 281, 2018 General Session

77-41-104 Registration of offenders -- Department and agency requirements.

(1) The department or an agent of the department shall register an offender in the custody of the department as required under this chapter upon:
(a) placement on probation;
(b) commitment to a secure correctional facility operated by or under contract to the department;
(c) release from confinement to parole status, termination or expiration of sentence, or escape;
(d) entrance to and release from any community-based residential program operated by or under contract to the department; or
(e) termination of probation or parole.
(2) The sheriff of the county in which an offender is confined shall register an offender with the department, as required under this chapter, if the offender is not in the custody of the department and is confined in a correctional facility not operated by or under contract to the department upon:
(a) commitment to the correctional facility; and
(b) release from confinement.
(3) The division shall register an offender in the custody of the division with the department, as required under this chapter, before the offender's release from custody of the division.
(4) A state mental hospital shall register an offender committed to the state mental hospital with the department, as required under this chapter, upon the offender's admission and upon the offender's discharge.
(5)
(a)
(i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole within the department.
(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:
(A) has received initial training by the department and has been certified by the department as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and
(B) certify annually with the department.
(b)
(i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days after the day on which the department receives the information electronically notify the law enforcement agencies that have jurisdiction over the area where:
(A) the residence that the offender is leaving is located; and
(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under this chapter the name of the agency, whether the agency is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of registration.

(6) An agency in the state that registers an offender on probation, an offender who has been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with the continuing registration requirements of this chapter during the period of registration required in Subsection 77-41-105(3), including:

(a) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

(b) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(c) notification to the out-of-state agency where the offender is living, regardless of whether the offender is a resident of that state.

(7) The department may make administrative rules necessary to implement this chapter, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(8) The department shall redact information regarding the identity or location of a victim from information provided under Subsections 77-41-103(4) and 77-41-105(7).

(9) This chapter does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

Amended by Chapter 382, 2019 General Session

77-41-105 Registration of offenders -- Offender responsibilities.

(1)

(a) An offender who enters this state from another jurisdiction is required to register under Subsection (3) and Subsection 77-41-102(9) or (17).

(b) The offender shall register with the department within 10 days after the day on which the offender enters the state, regardless of the offender's length of stay.

(2)

(a) An offender required to register under Subsection 77-41-102(9) or (17) who is under supervision by the department shall register in person with Division of Adult Probation and Parole.

(b) An offender required to register under Subsection 77-41-102(9) or (17) who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3)

(a) Except as provided in Subsections (3)(b), (c), and (4), an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register each year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and within three business days after the day on which there is a change of the offender's primary residence, any secondary residences, place of

employment, vehicle information, or educational information required to be submitted under Subsection (7).

(b) Except as provided in Subsections (3)(c)(iii), (4), and (5), an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (17)(a), a substantially similar offense, another offense that requires registration in the jurisdiction of conviction, or an offender who is ordered by a court of another jurisdiction to register as an offender shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted or ordered to register if:

(A) that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the registration period required under Subsection (3)(a), or is more frequent than every six months; or

(B) that jurisdiction's court order requires registration for greater than the registration period required under Subsection (3)(a) or more frequently than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (3)(a), or is less frequent than every six months.

(c)

(i) An offender convicted as an adult of an offense listed in Section 77-41-106 shall, for the offender's lifetime, register each year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days after the day on which there is a change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (7).

(ii) Except as provided in Subsection (3)(c)(iii), the registration requirement described in Subsection (3)(c)(i) is not subject to exemptions and may not be terminated or altered during the offender's lifetime, unless a petition is granted under Section 77-41-112.

(iii) If the sentencing court determines that the offense does not involve force or coercion, lifetime registration under Subsection (3)(c)(i) does not apply to an offender who commits the offense when the offender is under 21 years of age. For an offense listed in Section 77-41-106, an offender who commits the offense when the offender is under 21 years of age shall register for the registration period required under Subsection (3)(a), unless a petition is granted under Section 77-41-112.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5)

(a) Except as provided in Subsection (5)(b), in the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of Subsection (3).

(b) If the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the registration website.

(6) A sex offender who violates Section 77-27-21.8 regarding being in the presence of a child while required to register under this chapter shall register for an additional five years subsequent to the registration period otherwise required under this chapter.

(7) An offender shall provide the department or the registering entity with the following information:

(a) all names and aliases by which the offender is or has been known;

(b) the addresses of the offender's primary and secondary residences;

(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;

(d) the make, model, color, year, plate number, and vehicle identification number of a vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a set of fingerprints, if one has not already been provided;

(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;

(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;

(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

(k) a copy of the offender's passport, if a passport has been issued to the offender;

(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and a change of enrollment or employment status of the offender at an educational institution;

(o) the name, the telephone number, and the address of a place where the offender is employed or will be employed;

(p) the name, the telephone number, and the address of a place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's social security number.

(8)

(a) An offender may change the offender's name in accordance with Title 42, Chapter 1, Change of Name, if the name change is not contrary to the interests of the public.

(b) Notwithstanding Section 42-1-2, an offender shall provide notice to the department at least 30 days before the day on which the hearing for the name change is held.

(c) The court shall provide a copy of the order granting the offender's name change to the department within 10 days after the day on which the court issues the order.

(d) If the court orders an offender's name changed, the department shall publish on the registration website the offender's former name, and the offender's changed name as an alias.

(9) Notwithstanding Subsections (7)(i) and (j) and 77-41-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including a bank, retirement, or investment account.

Amended by Chapter 108, 2020 General Session

77-41-106 Registerable offenses.

Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

(b) Section 76-5-402, rape;

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

(d) Section 76-5-402.2, object rape;

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

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

(g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

(h) Section 76-5-405, aggravated sexual assault;

(3) Section 76-5-308, human trafficking for sexual exploitation;

(4) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

(5) Section 76-5-310, aggravated human trafficking for sexual exploitation;

(6) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

(7) Section 76-4-401, a felony violation of enticing a minor over the Internet;

(8) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;

(9) Section 76-5-403, forcible sodomy;

(10) Section 76-5-404.1, sexual abuse of a child;

(11) Section 76-5b-201, sexual exploitation of a minor;

(12) Subsection 76-5b-204(4), aggravated sexual extortion; or

(13) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

Amended by Chapter 108, 2020 General Session

77-41-107 Penalties.

(1) An offender who knowingly fails to register under this chapter or provides false or incomplete information is guilty of:

(a) a third degree felony and shall be sentenced to serve a term of incarceration for not less than 30 days and also at least one year of probation if:

(i) the offender is required to register for a felony conviction or adjudicated delinquent for what would be a felony if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or (17)(a); or

(ii) the offender is required to register for the offender's lifetime under Subsection 77-41-105(3)(c); or

(b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 30 days and also at least one year of probation if the offender is required to register for a misdemeanor conviction or is adjudicated delinquent for what would be a misdemeanor if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or (17)(a).

(2)

(a) Neither the court nor the Board of Pardons and Parole may release an individual who violates this chapter from serving the term required under Subsection (1).
(b) This Subsection (2) supersedes any other provision of the law contrary to this chapter.
(3) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this chapter.

Amended by Chapter 189, 2019 General Session

77-41-108 Classification of information.

Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, information under Subsection 77-41-103(4) that is collected and released under Subsection 77-41-110(4) is public information, unless otherwise restricted under Subsection 77-41-103(1).

Enacted by Chapter 145, 2012 General Session

77-41-109 Miscellaneous provisions.

(1)
(a) If an offender is to be temporarily sent on any assignment outside a secure facility in which the offender is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.
(b) This Subsection (1) does not apply to any person temporarily released under guard from the institution in which the person is confined.
(2) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted of any offense listed in Subsection 77-41-102(9) or (17) is not relieved from the responsibility to register as required under this section, unless the offender is removed from the registry under Section 77-41-112 or Section 77-41-113.

Amended by Chapter 237, 2020 General Session

77-41-110 Sex offender and kidnap offender registry -- Department to maintain.

(1) The department shall maintain a Sex Offender and Kidnap Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:
(a) the information contained on the site is obtained from offenders and the department does not guarantee its accuracy or completeness;
(b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and
(c) harassment, stalking, or threats against offenders or their families are prohibited and doing so may violate Utah criminal laws.
(2) The Sex Offender and Kidnap Offender Notification and Registration website shall be indexed by both the surname of the offender and by postal codes.
(3) The department shall construct the Sex Offender Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.
(4) Except as provided in Subsection (5), the Sex Offender and Kidnap Offender Notification and Registration website shall include the following registry information:

(a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;
(b) the addresses of the offender's primary, secondary, and temporary residences;
(c) a physical description, including the offender's date of birth, height, weight, and eye and hair color;
(d) the make, model, color, year, and plate number of any vehicle or vehicles the offender owns or regularly drives;
(e) a current photograph of the offender;
(f) a list of all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business;
(g) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student;
(h) a list of places where the offender works as a volunteer; and
(i) the crimes listed in Subsections 77-41-102(9) and (16) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

(5) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this chapter and will be presumed to have acted in good faith by reporting information.

(6) The department shall redact information that, if disclosed, could reasonably identify a victim.

Enacted by Chapter 145, 2012 General Session
Amended by Chapter 382, 2012 General Session, (Coordination Clause)

77-41-111 Fees.

(1) Each offender required to register under Section 77-41-105 shall, in the month of the offender's birth:
(a) pay to the department an annual fee of $100 each year the offender is subject to the registration requirements of this chapter; and
(b) pay to the registering agency, if it is an agency other than the Department of Corrections, an annual fee of not more than $25, which may be assessed by that agency for providing registration.

(2) Notwithstanding Subsection (1), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(3) The department shall deposit fees collected in accordance with this chapter in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this chapter and monitoring offender registration compliance, including the costs of:
(a) data entry;
(b) processing registration packets;
(c) updating registry information;
(d) ensuring offender compliance with registration requirements under this chapter; and
(e) apprehending offenders who are in violation of the offender registration requirements under this chapter.

Enacted by Chapter 145, 2012 General Session

77-41-112 Removal from registry -- Requirements -- Procedure.

(1) An offender who is required to register with the Sex and Kidnap Offender Registry may petition the court for an order removing the offender from the Sex and Kidnap Offender Registry if:

(a)
(i) the offender was convicted of an offense described in Subsection (2);
(ii) at least five years have passed after the day on which the offender's sentence for the offense terminated;
(iii) the offense is the only offense for which the offender was required to register;
(iv) the offender has not been convicted of another offense, excluding a traffic offense, since the day on which the offender was convicted of the offense for which the offender is required to register, as evidenced by a certificate of eligibility issued by the bureau;
(v) the offender successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the offense; and
(vi) the offender has paid all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; or
(b)
(i) if the offender is required to register in accordance with Subsection 77-41-105(3)(a);
(ii) at least 10 years have passed after the later of:
(A) the day on which the offender was placed on probation;
(B) the day on which the offender was released from incarceration to parole;
(C) the day on which the offender's sentence was terminated without parole;
(D) the day on which the offender entered a community-based residential program; or
(E) for a minor, as defined in Section 80-1-102, the day on which the division's custody of the offender was terminated;
(iii) the offender has not been convicted of another offense that is a class A misdemeanor, felony, or capital felony within the most recent 10-year period after the date described in Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;
(iv) the offender successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the offense; and
(v) the offender has paid all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; or
(c)
(i) the offender is required to register in accordance with Subsection 77-41-105(3)(c);
(ii) at least 20 years have passed after the later of:
(A) the day on which the offender was placed on probation;
(B) the day on which the offender was released from incarceration to parole;
(C) the day on which the offender's sentence was terminated without parole;
(D) the day on which the offender entered a community-based residential program; or
(E) for a minor, as defined in Section 80-1-102, the day on which the division's custody of the offender was terminated;
(iii) the offender has not been convicted of another offense that is a class A misdemeanor, felony, or capital felony within the most recent 20-year period after the date described in Subsection (1)(c)(ii), as evidenced by a certificate of eligibility issued by the bureau;
(iv) the offender completed all treatment ordered by the court or the Board of Pardons and Parole relating to the offense;
(v) the offender has paid all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; and
(vi) the offender submits to an evidence-based risk assessment to the court, with the offender's petition, that:
(A) meets the standards for the current risk assessment, score, and risk level required by the Board of Pardons and Parole for parole termination requests;

(B) is completed within the six months before the date on which the petition is filed; and
(C) describes the evidence-based risk assessment of the current level of risk to the safety of the public posed by the offender.

(2) The offenses referred to in Subsection (1)(a)(i) are:
(a) Section 76-4-401, enticing a minor, if the offense is a class A misdemeanor;
(b) Section 76-5-301, kidnapping;
(c) Section 76-5-304, unlawful detention, if the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;
(d) Section 76-5-401, unlawful sexual activity with a minor if, at the time of the offense, the offender is not more than 10 years older than the victim;
(e) Section 76-5-401.1, sexual abuse of a minor, if, at the time of the offense, the offender is not more than 10 years older than the victim;
(f) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, the offender is not more than 15 years older than the victim; or
(g) Section 76-9-702.7, voyeurism, if the offense is a class A misdemeanor.

(3)
(a)
(i) An offender seeking removal from the Sex and Kidnap Offender Registry under this section shall apply for a certificate of eligibility from the bureau.
(ii) An offender who intentionally or knowingly provides false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.
(iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate of eligibility to an offender who provides false information on an application.
(b)
(i) The bureau shall perform a check of records of governmental agencies, including national criminal databases, to determine whether an offender is eligible to receive a certificate of eligibility.
(ii) If the offender meets the requirements described in Subsection (1)(a), (b), or (c), the bureau shall issue a certificate of eligibility to the offender, which is valid for a period of 90 days after the day on which the bureau issues the certificate.
(iii) The bureau shall request information from the department regarding whether the offender meets the requirements.
(iv)
(A) Upon request from the bureau under Subsection (3)(b)(iii), the department shall issue a document on whether the offender meets the requirements described in Subsection (1)(a), (b), or (c), which shall be used by the bureau to determine if a certificate of eligibility is appropriate.
(B) The document from the department shall also include a statement regarding the offender's compliance with all registration requirements under this chapter.
(v) The bureau shall provide a copy of the document provided to the bureau under Subsection (3)(b)(iv) to the offender upon issuance of a certificate of eligibility.

(4)
(a)
(i) The bureau shall charge application and issuance fees for a certificate of eligibility in accordance with the process in Section 63J-1-504.
(ii) The application fee shall be paid at the time the offender submits an application for a certificate of eligibility to the bureau.

(iii) If the bureau determines that the issuance of a certificate of eligibility is appropriate, the offender will be charged an additional fee for the issuance of a certificate of eligibility.

(b) Funds generated under this Subsection (4) shall be deposited into the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(5)

(a) The offender shall file the petition, including original information, the court docket, the certificate of eligibility from the bureau, and the document from the department described in Subsection (3)(b)(iv) with the court, and deliver a copy of the petition to the office of the prosecutor.

(b) Upon receipt of a petition for removal from the Sex and Kidnap Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to the victim at the most recent address of record on file or, if the victim is still a minor under 18 years old, to the parent or guardian of the victim.

(c) The notice described in Subsection (5)(b) shall include a copy of the petition, state that the victim has a right to object to the removal of the offender from the registry, and provide instructions for registering an objection with the court.

(d) The office of the prosecutor shall provide the following, if available, to the court within 30 days after the day on which the office receives the petition:

(i) presentencing report;

(ii) an evaluation done as part of sentencing; and

(iii) any other information the office of the prosecutor feels the court should consider.

(e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years old, may respond to the petition by filing a recommendation or objection with the court within 45 days after the day on which the petition is mailed to the victim.

(6)

(a) The court shall:

(i) review the petition and all documents submitted with the petition; and

(ii) hold a hearing if requested by the prosecutor or the victim.

(b)

(i) Except as provided in Subsections (6)(b)(ii) and (iii), the court may grant the petition and order removal of the offender from the registry if the court determines that the offender has met the requirements described in Subsection (1)(a) or (b) and removal is not contrary to the interests of the public.

(ii) When considering a petition filed under Subsection (1)(c), the court shall determine whether the offender has demonstrated, by clear and convincing evidence, that the offender is rehabilitated and does not pose a threat to the safety of the public.

(iii) In making the determination described in Subsection (6)(b)(ii), the court may consider:

(A) the nature and degree of violence involved in the offense that requires registration;

(B) the age and number of victims of the offense that requires registration;

(C) the age of the offender at the time of the offense that requires registration;

(D) the offender's performance while on supervision for the offense that requires registration;

(E) the offender's stability in employment and housing;

(F) the offender's community and personal support system;

(G) other criminal and relevant noncriminal behavior of the offender both before and after the offense that requires registration;

(H) the level of risk posed by the offender as evidenced by the evidence-based risk assessment described in Subsection (1)(c)(vi); and

(I) any other relevant factors.

(c) In determining whether removal is contrary to the interests of the public, the court may not consider removal unless the offender has substantially complied with all registration requirements under this chapter at all times.
(d) If the court grants the petition, the court shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.
(e)
(i) Except as provided in Subsection (6)(e)(ii), if the court denies the petition, the offender may not submit another petition for three years.
(ii) If the offender files a petition under Subsection (1)(c) and the court denies the petition, the offender may not submit another petition for eight years.
(7) The court shall notify the victim and the Sex and Kidnap Offender Registry office in the department of the court's decision within three days after the day on which the court issues the court's decision in the same manner described in Subsection (5).

Amended by Chapter 262, 2021 General Session
Amended by Chapter 334, 2021 General Session, (Coordination Clause)
Amended by Chapter 334, 2021 General Session
Amended by Chapter 410, 2021 General Session

77-41-113 Removal for offenses or convictions for which registration is no longer required.
(1) The department shall automatically remove an individual who is currently on the Sex and Kidnap Offender Registry because of a conviction if:
(a) the only offense or offenses for which the individual is on the registry are listed in Subsection (2); or
(b) the department receives a formal notification or order from the court or the Board of Pardons and Parole that the conviction for the offense or offenses for which the individual is on the registry have been reversed, vacated, or pardoned.
(2) The offenses described in Subsection (1)(a) are:
(a) a class B or class C misdemeanor for enticing a minor, Section 76-4-401;
(b) kidnapping, based upon Subsection 76-5-301(1)(a) or (b);
(c) child kidnapping, Section 76-5-301.1, if the offender was the natural parent of the child victim;
(d) unlawful detention, Section 76-5-304;
(e) a third degree felony for unlawful sexual intercourse before 1986, or a class B misdemeanor for unlawful sexual intercourse, Section 76-5-401;
(f) sodomy, but not forcible sodomy, Section 76-5-403; or
(g) unless the offender is an individual described in Subsection 77-41-102(9)(f) or (17)(f), an offense committed in Utah before the offender is 18 years old.
(3)
(a) The department shall notify an individual who has been removed from the registry in accordance with Subsection (1).
(b) The notice described in Subsection (3)(a) shall include a statement that the individual is no longer required to register as a sex offender.
(4) An individual who is currently on the Sex and Kidnap Offender Registry may submit a request to the department to be removed from the registry if the individual believes that the individual qualifies for removal under this section.
(5) The department, upon receipt of a request for removal from the registry shall:
(a) check the registry for the individual's current status;
(b) determine whether the individual qualifies for removal based upon this section; and

(c) notify the individual in writing of the department's determination and whether the individual:
(i) qualifies for removal from the registry; or
(ii) does not qualify for removal.
(6) If the department determines that the individual qualifies for removal from the registry, the department shall remove the offender from the registry.
(7) If the department determines that the individual does not qualify for removal from the registry, the department shall provide an explanation in writing for the department's determination. The department's determination is final and not subject to administrative review.
(8) Neither the department nor any employee may be civilly liable for a determination made in good faith in accordance with this section.
(9) The department shall provide a response to a request for removal within 30 days of receipt of the request. If the response cannot be provided within 30 days, the department shall notify the individual that the response may be delayed up to 30 additional days.

Amended by Chapter 206, 2021 General Session
Amended by Chapter 334, 2021 General Session
Amended by Chapter 410, 2021 General Session
Amended by Chapter 410, 2021 General Session, (Coordination Clause)

Chapter 42
Utah White Collar Crime Offender Registry

77-42-101 Title.

This chapter is known as the "Utah White Collar Crime Offender Registry."

Enacted by Chapter 131, 2015 General Session

77-42-102 Definitions.

As used in this chapter:
(1) "Attorney general" means the Utah attorney general or a deputy attorney general.
(2) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.
(3) "Business day" means a day on which state offices are open for regular business.
(4) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification stating that the offender has met the requirements of Section 77-42-108.
(5) "Conviction" means the same as that term is defined in Section 76-3-201.
(6) "Offender" means an individual required to register as provided in Section 77-42-105.
(7) "Register" means to comply with the requirements of this chapter and rules of the Office of the Attorney General made under this chapter.

Amended by Chapter 319, 2016 General Session

77-42-103 Duties.

(1) The attorney general shall:
(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders; and

(b) make information listed in Section 77-42-104 available to the public.
(2) Any prosecuting attorney who obtains a conviction for an offense listed in Section 77-42-105 shall:
(a) inform the attorney general within 45 business days of sentencing; and
(b) in a manner prescribed by the attorney general, cooperate with a request for information by the attorney general.
(3) The attorney general shall:
(a) provide the following additional information when available:
(i) the crimes for which the offender has been convicted;
(ii) a description of the offender's targets; and
(iii) any other relevant identifying information as determined by the attorney general;
(b) maintain the Utah White Collar Crime Offender Registry website; and
(c) ensure that information is entered into the offender registry in a timely manner.

Amended by Chapter 288, 2019 General Session

77-42-104 Utah White Collar Crime Offender Registry -- Attorney general to maintain.
(1) The attorney general shall maintain the Utah White Collar Crime Offender Registry website on the Internet, which shall contain a disclaimer informing the public that:
(a) the information contained on the website is obtained from government records where feasible, however, the attorney general does not guarantee the website's accuracy or completeness;
(b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and
(c) harassment, stalking, or making threats against offenders or their families is prohibited and may violate Utah criminal laws.
(2) The Utah White Collar Crime Offender Registry website shall be indexed by the surname of the offender.
(3) The attorney general shall construct the Utah White Collar Crime Offender Registry website so that before accessing registry information, users must indicate that they have read and understand the disclaimer and agree to comply with the disclaimer's terms.
(4) Except as provided in Subsection (6), the Utah White Collar Crime Offender Registry website shall include the following registry information, which may be obtained from court records, prison or jail booking records, driver license records, or other sources lawfully and appropriately obtained by and available to the attorney general:
(a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;
(b) a physical description, including the offender's date of birth, height, weight, and eye and hair color;
(c) a recent photograph of the offender; and
(d) the crimes listed in Section 77-42-105 of which the offender has been convicted.
(5) The Office of the Attorney General and any individual or entity acting at the request or upon the direction of the attorney general are immune from civil liability for damages and will be presumed to have acted in good faith by reporting information.
(6) The attorney general shall redact the names, addresses, phone numbers, Social Security numbers, and other information that, if disclosed, specifically identifies individual victims.
(7) An offender is considered to have consented to the public posting of the images or records specified in Subsection (4) if the offender:

(a) fails to register as required by Subsection 77-42-106(2) within 30 days of conviction of a registerable offense, as specified in Section 77-42-105; or
(b) fails to appear at the request of the Office of the Attorney General to have a current photograph taken.

Amended by Chapter 319, 2016 General Session

77-42-105 Registerable offenses.

A person shall be required to register with the Office of the Attorney General for a conviction of any of the following offenses as a second degree felony:
(1) Section 61-1-1 or Section 61-1-2, securities fraud;
(2) Section 76-6-405, theft by deception;
(3) Section 76-6-513, unlawful dealing of property by fiduciary;
(4) Section 76-6-521, fraudulent insurance;
(5) Section 76-6-1203, mortgage fraud;
(6) Section 76-10-1801, communications fraud;
(7) Section 76-10-1903, money laundering; and
(8) Section 76-10-1603, pattern of unlawful activity, if at least one of the unlawful activities used to establish the pattern of unlawful activity is an offense listed in Subsections (1) through (7).

Amended by Chapter 319, 2016 General Session

77-42-106 Registration of offenders -- Utah White Collar Crime Offender Registry -- Penalty for failure to register.

(1) An offender who has been convicted of any offense listed in Section 77-42-105 shall be on the Utah White Collar Crime Offender Registry for:
(a) a period of 10 years for a first offense;
(b) a second period of 10 years for a second conviction under this section; and
(c) a lifetime period if convicted a third time under this section.
(2) Except as provided in Subsection (3), an offender who has been convicted of any offense listed in Section 77-42-105 after December 31, 2005, shall register:
(a) with the attorney general to be included in the Utah White Collar Crime Offender Registry; and
(b)
(i) no later than 45 days after the offender is sentenced; and
(ii) in a manner prescribed by the attorney general.
(3) An offender is not required to register as provided in Subsection (2) if the offender:
(a) has complied with all court orders at the time of sentencing;
(b) has paid in full all court-ordered amounts of restitution to victims; and
(c) has not been convicted of any other offense for which registration would be required.
(4) If an offender is in the custody of the Department of Corrections:
(a) the department shall register the offender within 45 days of sentencing; or
(b) at the discretion of the department, provide the offender access to necessary resources so that the offender may register within 45 days of sentencing.
(5)
(a) An offender who knowingly fails to register within 45 days of sentencing is guilty of a class A misdemeanor.

(b) An offender who is found guilty under Subsection (5)(a) shall be sentenced to serve a term of incarceration of 30 days or more.

(c)

(i) The Board of Pardons and Parole or a court may not release an individual who violates this chapter from serving the term required under Subsection (5)(b).

(ii) The provisions of this Subsection (5) supersede any other provision of law.

Amended by Chapter 288, 2019 General Session

77-42-107 Department and agency requirements.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the attorney general shall make rules necessary to implement this chapter, including:

(a) the method for dissemination of registry information; and

(b) instructions to the public regarding acceptable use of the information.

(2) Any information regarding the identity or location of a victim may be redacted by the attorney general from information provided under Subsection 77-42-104(6).

Enacted by Chapter 131, 2015 General Session

77-42-108 Removal from the Utah White Collar Crime Offender Registry.

(1) An offender may petition the court where the offender was convicted of the offense for which registration with the Utah White Collar Crime Offender Registry is required, for an order to remove the offender from the Utah White Collar Crime Offender Registry, if:

(a) five years have passed since the completion of the offender's sentence;

(b) the offender has successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the conviction;

(c)

(i) the offender has not been convicted of any other crime, excluding traffic offenses, as evidenced by a certificate of eligibility issued by the bureau; and

(ii) as used in this section, "traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(d) the offender has paid all restitution ordered by the court;

(e) notice has been delivered to the victims and the office that prosecuted the offender; and

(f) the offender has not been found to be civilly liable in any case in which fraud, misrepresentation, deceit, breach of fiduciary duty, or the misuse or misappropriation of funds is an element.

(2)

(a)

(i) An offender seeking removal from the White Collar Crime Offender Registry shall apply for a certificate of eligibility from the bureau.

(ii) An offender who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.

(iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate of eligibility to anyone providing false information on an application under this Subsection (2).

(b)

(i) The bureau shall check the records of governmental agencies, including national criminal databases, to determine whether an offender is eligible to receive a certificate of eligibility under this section.

(ii) If the offender meets all of the criteria under Subsections (1)(a) through (d), the bureau shall issue a certificate of eligibility to the offender which shall be valid for a period of 90 days from the date the certificate is issued.

(c)

(i) The bureau shall charge an application fee for the certificate of eligibility in accordance with the process in Section 63J-1-504.

(ii) The fee shall be paid at the time the offender submits an application for a certificate of eligibility to the bureau.

(iii) If the bureau determines that the issuance of a certificate of eligibility is appropriate, the bureau shall issue to the offender a certificate of eligibility at no additional charge.

(d) Funds generated under this Subsection (2) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(3) The offender shall:

(a) file with the court the following information:

(i) the petition;

(ii) the original information;

(iii) the court docket; and

(iv) an affidavit certifying that the offender is in compliance with the provisions of Subsection (1); and

(b) deliver a copy of the petition to the office of the prosecutor.

(4)

(a) Upon receipt of a petition for removal from the Utah White Collar Crime Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to the victims at the most recent addresses of record on file.

(b) The notice shall:

(i) include a copy of the petition for removal from the registry;

(ii) state that the victim has a right to object to the removal of the offender from the registry; and

(iii) provide instructions for filing an objection with the court.

(5) The office of the prosecutor shall provide the following, if available, to the court within 30 days after receiving the petition:

(a) a presentence report;

(b) any evaluation done as part of sentencing; and

(c) any other information the office of the prosecutor feels the court should consider.

(6) The victim may respond to the petition by filing a recommendation or objection with the court within 45 days after the mailing of the petition to the victim.

(7) The court shall:

(a) review the petition and all documents submitted with the petition; and

(b) hold a hearing if requested by the office of the prosecutor or the victim.

(8) When considering a petition for removal from the registry, the court shall consider whether the offender has paid all restitution ordered by the court or the Board of Pardons and Parole.

(9) If the court determines that it is not contrary to the interests of the public to do so, the court may grant the petition and order removal of the offender from the registry.

(10) If the court grants the petition, the court shall forward a copy of the order directing removal of the offender from the registry to the attorney general and the office of the prosecutor.

(11) The office of the prosecutor shall notify the victims of the court's decision in the same manner as the notification required in Subsection (3)(a).
(12) The attorney general shall remove an offender from the registry upon the offender providing satisfactory evidence to the attorney general that:
(a) each conviction listed in Section 77-42-105 has either been expunged or reduced in degree below a second degree felony; and
(b) the offender has paid all court-ordered restitution to victims.

Enacted by Chapter 131, 2015 General Session

Chapter 43
Child Abuse Offender Registry

77-43-101 Title.
(1) This chapter is known as the "Child Abuse Offender Registry."
(2) This chapter applies to all child abuse offenders in the custody of the Department of Corrections or on parole or probation on May 9, 2017, or who enter this state on or after May 9, 2017.

Enacted by Chapter 282, 2017 General Session

77-43-102 Definitions.
As used in this chapter:
(1) "Business day" means a day on which state offices are open for regular business.
(2) "Child abuse offender" means any person who:
(a) has been convicted in this state of a felony violation of:
(i) Subsection 76-5-109(2)(a) or (b), child abuse;
(ii) Section 76-5-308.5, human trafficking of a child; or
(iii) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (2)(a)(i) or (ii);
(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection (2)(a) and who is:
(i) a Utah resident; or
(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;
(c)
(i) is required to register as a child abuse offender in any other jurisdiction of original conviction, who is required to register as a child abuse offender by any state, federal, or military court, or who would be required to register as a child abuse offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and
(ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;
(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (2)(a), or any substantially

equivalent offense in another jurisdiction, or who, as a result of the conviction, is required to register in the person's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (2)(a); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (2)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days before the person's 21st birthday.

(3) "Correctional facility" means the same as that term is defined in Section 64-13-1.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States Armed Forces, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(10) "Offender" means a child abuse offender as defined in Subsection (2).

(11) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, Social Security number, PIN number, or Internet passwords.

(12) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(13) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(14) "Registration website" means the Child Abuse Offender Notification and Registration website described in Section 77-43-108 and the information on the website.

(15) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(16) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(17) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Enacted by Chapter 282, 2017 General Session

77-43-103 Department duties.

(1) The department shall:
(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders;
(b) make information listed in Subsection 77-43-108(4) available to the public; and
(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-43-108(4), but only:
(i) for the purposes under this chapter; or
(ii) in accordance with Section 63G-2-206.
(2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:
(a) the receipt of a report or complaint of an offense listed in Subsection 77-43-102(2)(a), within three business days; and
(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-43-102(2)(a), within five business days.
(3) Upon convicting and sentencing a person of any of the offenses listed in Subsection 77-43-102(2)(a), the convicting court shall within three business days forward a signed copy of the judgment and sentence to the Child Abuse Offender Registry office within the department.
(4) The department shall:
(a) provide the following additional information when available:
(i) the crimes the offender has been convicted of or adjudicated delinquent for; and
(ii) any other relevant identifying information as determined by the department;
(b) maintain the Child Abuse Offender Notification and Registration website; and
(c) ensure that the registration information collected regarding an offender's employment at an educational institution is entered into the appropriate state records or data system.

Enacted by Chapter 282, 2017 General Session

77-43-104 Registration of offenders -- Department and agency requirements.
(1) An offender in the custody of the department shall be registered by agents of the department upon:
(a) placement on probation;
(b) commitment to a secure correctional facility operated by or under contract to the department;
(c) release from confinement to parole status, termination or expiration of sentence, or escape;
(d) entrance to and release from any community-based residential program operated by or under contract to the department; or
(e) termination of probation or parole.
(2) An offender who is not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined, upon:
(a) commitment to the correctional facility; and
(b) release from confinement.
(3) An offender in the custody of the division shall be registered with the department by the division prior to release from custody.
(4) An offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.
(5)
(a)

(i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole.

(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b)

(i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under this chapter the name of the agency, whether it is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of registration.

(6) An agency in the state that registers an offender on probation, an offender who has been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with:

(a) the continuing registration requirements of this chapter during the period of registration required in Subsection 77-43-105(3), including:

(i) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

(ii) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(iii) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state; and

(b) the identification card requirement under Section 53-3-806.5.

(7) The department may make administrative rules necessary to implement this chapter, including:

(a) training requirements for agency staff responsible for conducting offender registration;

(b) the method for dissemination of the information; and

(c) instructions to the public regarding the use of the information.

(8) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections 77-43-103(4) and 77-43-105(8).

(9) This chapter does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

Enacted by Chapter 282, 2017 General Session

77-43-105 Registration of offenders -- Offender responsibilities.

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-43-102(2). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2)

(a) An offender required to register under this chapter who is under supervision by the department shall register in person with Division of Adult Probation and Parole.

(b) An offender required to register under this chapter who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3)

(a) Except as provided in Subsections (3)(b), (c), and (4), an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (6).

(b) Except as provided in Subsections (4) and (5), an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-43-102(2)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (2)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (2)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (2)(a), or is less frequent than every six months.

(c)

(i) An offender convicted as an adult of any first degree felony offense listed in Subsection 77-43-102(2)(a) shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (6).

(ii) This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3), an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the

department shall maintain, but not publish the offender's information on the Child Abuse Offender Registration website.

(6) An offender shall provide the department or the registering entity with the following information:
(a) all names and aliases by which the offender is or has been known;
(b) the addresses of the offender's primary and secondary residences;
(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;
(d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;
(e) a current photograph of the offender;
(f) a set of fingerprints, if one has not already been provided;
(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;
(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;
(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;
(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;
(k) a copy of the offender's passport, if a passport has been issued to the offender;
(l) if the offender is an alien, all documents establishing the offender's immigration status;
(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;
(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;
(o) the name, the telephone number, and the address of any place where the offender is employed or will be employed;
(p) the name, the telephone number, and the address of any place where the offender works as a volunteer or will work as a volunteer; and
(q) the offender's social security number.

(7) Notwithstanding Section 42-1-1, an offender:
(a) may not change the offender's name:
(i) while under the jurisdiction of the department; and
(ii) until the registration requirements of this statute have expired; and
(b) may not change the offender's name at any time, if registration is for life under Subsection (3)(c).

(8) Notwithstanding Subsections (6)(i) and (j) and 77-43-103(1)(c), an offender is not required to provide the department with:
(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or
(b) online identifiers for the offender's financial accounts, including any bank, retirement, or investment accounts.

Enacted by Chapter 282, 2017 General Session

77-43-106 Penalties.

(1) An offender who knowingly fails to register under this chapter or provides false or incomplete information is guilty of a third degree felony and shall be sentenced to serve a term of incarceration for not less than 90 days and also at least one year of probation.
(2) Neither the court nor the Board of Pardons and Parole may release a person who violates this chapter from serving the term required under Subsection (1). This Subsection (2) supersedes any other provision of the law contrary to this chapter.
(3) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this chapter.

Enacted by Chapter 282, 2017 General Session

77-43-107 Classification of information.

Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, information under Subsection 77-43-103(4) that is collected and released under Subsection 77-43-108(4) is public information, unless otherwise restricted under Subsection 77-43-103(1).

Enacted by Chapter 282, 2017 General Session

77-43-108 Child Abuse Offender Registry -- Department to maintain.

(1) The department shall maintain a Child Abuse Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:
  (a) the information contained on the site is obtained from offenders and the department does not guarantee its accuracy or completeness;
  (b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and
  (c) harassment, stalking, or threats against offenders or their families are prohibited and doing so may violate Utah criminal laws.
(2) The Child Abuse Offender Notification and Registration website shall be:
  (a) indexed by both the surname of the offender and by postal codes; and
  (b) linked with the Sex and Kidnap Offender Registry as created in Chapter 41.
(3) The department shall construct the Child Abuse Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.
(4) Except as provided in Subsection (6), the Child Abuse Offender Notification and Registration website shall include the following registry information:
  (a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;
  (b) the addresses of the offender's primary, secondary, and temporary residences;
  (c) a physical description, including the offender's date of birth, height, weight, and eye and hair color;
  (d) the make, model, color, year, and plate number of any vehicle or vehicles the offender owns or regularly drives;
  (e) a current photograph of the offender;
  (f) a list of all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business;
  (g) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student;
  (h) a list of places where the offender works as a volunteer; and

(i) the crimes listed in Subsection 77-43-102(2) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

(5) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this chapter and will be presumed to have acted in good faith by reporting information.

(6) The department shall redact information that, if disclosed, could reasonably identify a victim.

Enacted by Chapter 282, 2017 General Session

77-43-109 Fees.

(1) Each offender required to register under Section 77-43-105 shall, in the month of the offender's birth:

(a) pay to the department an annual fee of $100 each year the offender is subject to the registration requirements of this chapter; and

(b) pay to the registering agency, if it is an agency other than the Department of Corrections, an annual fee of not more than $25, which may be assessed by that agency for providing registration.

(2) Notwithstanding Subsection (1), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(3) The department shall deposit fees collected in accordance with this chapter in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this chapter and monitoring offender registration compliance, including the costs of:

(a) data entry;

(b) processing registration packets;

(c) updating registry information; and

(d) ensuring offender compliance with registration requirements under this chapter.

Enacted by Chapter 282, 2017 General Session