

BOARDS AND COMMISSIONS AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

AN ACT RELATING TO BOARDS AND COMMISSIONS; REMOVING THE REQUIREMENT TO STAGGER TERMS FOR MEMBERS OF JUDICIAL NOMINATING COMMISSIONS; MODIFYING THE PURPOSE, COMPOSITION, AND DUTIES OF THE COMMISSION ON CRIMINAL AND JUVENILE JUSTICE; MODIFYING THE DUTIES OF THE UTAH SUBSTANCE ABUSE AND ANTI-VIOLENCE COORDINATING COUNCIL; MODIFYING THE MEMBERSHIP OF THE PREVENTION COMMITTEE AND THE TREATMENT COMMITTEE; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-12-102, as last amended by Chapter 249, Laws of Utah 1997

20A-12-103, as last amended by Chapter 249, Laws of Utah 1997

51-7-12, as last amended by Chapter 243, Laws of Utah 1996

63-11a-402, as last amended by Chapter 10, Laws of Utah 1997

63-25a-101, as last amended by Chapter 102, Laws of Utah 1998

63-25a-102, as last amended by Chapter 194 and renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-103, as last amended by Chapter 102, Laws of Utah 1998

63-25a-104, as last amended by Chapter 102, Laws of Utah 1998

63-25a-104.5, as enacted by Chapter 102, Laws of Utah 1998

63-25a-203, as last amended by Chapter 102, Laws of Utah 1998

63-25a-204, as last amended by Chapter 308, Laws of Utah 1997

63-25a-206, as last amended by Chapter 308, Laws of Utah 1997

63C-6-101, as last amended by Chapter 243, Laws of Utah 1996

28 **72-6-115**, as renumbered and amended by Chapter 270, Laws of Utah 1998

29 **76-3-201**, as last amended by Chapter 149, Laws of Utah 1998

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

31 Section 1. Section **20A-12-102** is amended to read:

32 **20A-12-102. Appellate Court Nominating Commission.**

33 (1) (a) There is created an Appellate Court Nominating Commission.

34 (b) The Appellate Court Nominating Commission shall nominate justices of the Supreme
35 Court and judges of the Court of Appeals.

36 (2) (a) The Appellate Court Nominating Commission shall consist of seven
37 commissioners, each appointed by the governor to serve a single four-year term.

38 ~~[(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time~~
39 ~~of appointment, adjust the length of terms to ensure that the terms of commission members are~~
40 ~~staggered so that approximately half of the commission is appointed every two years.]~~

41 ~~[(c)]~~ (b) Each commissioner shall:

42 (i) be a United States citizen and a resident of Utah; and

43 (ii) serve until the commissioner's successor is appointed.

44 ~~[(d)]~~ (c) The governor may not appoint:

45 (i) a commissioner to serve successive terms;

46 (ii) a member of the Legislature to serve as a member of the Appellate Court Nominating
47 Commission; or

48 (iii) more than four commissioners from the same political party to the Appellate Court
49 Nominating Commission.

50 ~~[(e)]~~ (d) (i) The Utah State Bar shall submit to the governor a list of six nominees to serve
51 as Appellate Court Nominating Commissioners.

52 (ii) The governor shall appoint two commissioners from the list of nominees provided by
53 the Utah State Bar.

54 (iii) The governor may reject the list submitted by the Utah State Bar and request a new
55 list of nominees.

56 ~~[(f)]~~ (e) The governor may not appoint more than four persons who are members of the
57 Utah State Bar to the Appellate Court Nominating Commission.

58 ~~[(g)]~~ (f) (i) The chief justice of the Supreme Court is an ex officio, nonvoting member of

the Appellate Court Nominating Commission.

(ii) If the chief justice cannot serve on the commission, he shall appoint another justice of the Supreme Court to serve in his absence.

~~[(h)]~~ (g) The governor shall appoint the chair of the Appellate Court Nominating Commission from among the membership.

(3) (a) Except for the chief justice of the Supreme Court, each commissioner is a voting member of the Appellate Court Nominating Commission.

(b) Four commissioners are a quorum.

(c) The state court administrator shall serve as secretary to the Appellate Court Nominating Commission.

(d) The chief justice of the Supreme Court shall:

(i) ensure that the commission follows the rules promulgated by the Judicial Council; and

(ii) resolve any questions regarding those rules.

(e) A member of the commission who is also a member of the Utah State Bar may recuse himself if there is a conflict of interest that makes the member unable to serve.

(4) If an appellate court nominating commissioner is disqualified or is otherwise unable to serve, the governor shall appoint a new commissioner of the same political party as the unavailable commissioner.

(5) (a) The governor shall fill any vacancy in the office of Appellate Court Nominating Commission.

(b) If the vacancy occurs among commission members who are also members of the Utah State Bar, the governor shall replace that commissioner with a person from a list of nominees submitted by the Utah State Bar as provided in Subsection (2).

(c) The governor shall ensure that each person who is appointed to fill any vacancy in the Appellate Court Nominating Commission other than a vacancy caused by expiration of term is a member of the same political party as the commissioner whom he replaces.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term and may not be reappointed.

(6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections

63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

Section 2. Section **20A-12-103** is amended to read:

20A-12-103. Trial court nominating commission.

(1) (a) There is created a trial court nominating commission for each geographical division of the trial courts of record.

(b) The trial court nominating commission shall nominate judges of the district court and the juvenile court within its geographical division.

(2) (a) The trial court nominating commission shall consist of seven commissioners, each appointed by the governor to serve a single four-year term.

~~[(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.]~~

~~[(c)]~~ (b) Each commissioner shall:

(i) be a United States citizen, a resident of Utah, and a resident of the geographic division to be served by the commission to which he is appointed; and

(ii) serve until the commissioner's successor is appointed.

~~[(d)]~~ (c) The governor may not appoint:

(i) a commissioner to serve successive terms;

(ii) a member of the Legislature to serve as a member of a trial court nominating commission; or

(iii) more than four commissioners from the same political party to a trial court nominating commission.

~~[(e)]~~ (d) (i) The governor shall appoint two commissioners from a list of nominees provided by the Utah State Bar.

(ii) The Utah State Bar shall submit:

(A) six nominees from Districts 2, 3, and 4; and

(B) four nominees from Districts 1, 5, 6, 7, and 8.

(iii) The governor may reject any list and request a new list of nominees.

~~[(f)]~~ (e) The governor may not appoint more than four persons who are members of the Utah State Bar to a trial court nominating commission.

~~[(g)]~~ (f) (i) The chief justice of the Supreme Court is an ex officio, nonvoting member of each trial court nominating commission.

(ii) If the chief justice cannot serve on the commission, he shall appoint another justice of the Supreme Court to serve in his absence.

~~[(h)]~~ (g) The governor shall appoint the chair of each trial court nominating commission from among its membership.

(3) (a) Except for the chief justice of the Supreme Court, each trial court nominating commissioner is a voting member of the commission.

(b) Four commissioners are a quorum.

(c) The state court administrator shall serve as secretary to each trial court nominating commission.

(d) The chief justice of the Supreme Court shall:

(i) ensure that each trial court nominating commission follows the rules promulgated by the Judicial Council; and

(ii) resolve any questions regarding those rules.

(e) A member of a trial court nominating commission who is also a member of the Utah State Bar may recuse himself if there is a conflict of interest that makes the member unable to serve.

(4) If a commissioner is disqualified or otherwise unable to serve, the governor shall appoint a new commissioner of the same political party as the unavailable commissioner.

(5) (a) The governor shall fill any vacancy in the office of trial court nominating commissioner.

(b) If the vacancy occurs among commission members who are also members of the Utah State Bar, the governor shall replace that commissioner with a person from a list of nominees submitted by the Utah State Bar as provided in Subsection (2).

(c) The governor shall ensure that each person who is appointed to fill any vacancy in the office of commissioner other than a vacancy caused by expiration of term is a member of the same political party as the commissioner whom he replaces.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term under this Subsection (5) and may not be reappointed.

(6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 3. Section **51-7-12** is amended to read:

51-7-12. Deposit or investment of permanent land grant trust funds -- Authorized deposits and investments -- Asset manager -- Investment Advisory Committee.

(1) The principal of the permanent land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution shall be deposited or invested only in the following:

(a) any deposit or investment authorized by Section 51-7-11;

(b) equity securities, including common and preferred stock issued by corporations listed on a major securities exchange, in accordance with the following criteria applied at the time of investment:

(i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of any one issuer;

(ii) the treasurer may not invest more than 25%, determined on a cost basis, of total fund assets in a particular industry;

(iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in securities of corporations that have been in continuous operation for less than three years;

(iv) the fund may not hold in excess of 5% of the outstanding voting securities of any one corporation; and

(v) at least 75% of the corporations in which investments are made under Subsection (b) must appear on the Standard and Poor's 500 Composite Stock Price Index;

(c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon securities and convertible securities issued by domestic corporations rated A or higher by Moody's Investor's Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied at the time of investment:

(i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of any one issuer;

(ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total fund assets in a particular industry;

(iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in securities of corporations that have been in continuous operation for less than three years; and

(iv) the dollar-weighted average maturity of fixed-income securities acquired under Subsection (1)(c) may not exceed ten years;

(d) fixed-income securities issued by agencies of the United States and government-sponsored organizations, including mortgage-backed pass-through certificates and mortgage-backed bonds;

(e) shares of an open-end diversified management investment company established under the Investment Companies Act of 1940; and

(f) shares of or deposits in a pooled-investment program.

(2) (a) No more than 65% of the total fund assets of any of these funds, on a cost basis,

may be invested in common or preferred stocks at any one time.

(b) At least 35% of the total assets of these funds shall be invested in fixed-income securities authorized by Subsections (1)(a), (c), and (d).

(3) The state treasurer shall use appropriate investment strategies to protect the principal of the funds administered under this section during periods of financial market volatility.

(4) (a) The state treasurer may employ professional asset managers to assist in the investment of assets of the permanent trust funds.

(b) The treasurer may provide compensation to asset managers from earnings generated by the funds' investments.

(5) This section applies only to permanent trust funds in which the principal is prudently invested and held by the state in perpetuity.

(6) (a) There is established an advisory committee to give suggestions, advice, and opinions to the state treasurer in regard to this section.

(b) The committee shall consist of the following:

(i) one member appointed by the president of the University of Utah;

(ii) one member appointed by the president of Utah State University;

(iii) one member appointed by the state superintendent of public instruction;

(iv) one member appointed by the president of the Utah Education Association;

(v) one member appointed by the president of the Utah Parent Teachers Association; and

(vi) one member appointed by the director of the Department of Human Services.

(c) (i) Except as required by Subsection (ii), as terms of current committee members expire, the [governor] appointing authority shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection ~~(6)(c)~~(i), the [governor] appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The committee shall meet at least annually and review investment reports prepared by the state treasurer, including information on portfolio composition and investment performance.

(7) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government member who is a member because of their state government position may not receive per diem or expenses for their service.

(iii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 4. Section **63-11a-402** is amended to read:

63-11a-402. Council membership -- Expenses.

(1) The council shall consist of nine members knowledgeable about muscle-powered recreational activities as follows:

(a) five members shall represent the public at large;

(b) one member, nominated by the Utah League of Cities and Towns, shall represent city government;

(c) one member, nominated by the Utah Association of Counties, shall represent county government;

(d) one member shall represent the United States Forest Service; and

(e) one member shall represent the Bureau of Land Management.

(2) (a) Except as required by Subsection (2)(b), as terms of current council members

expire, the [governor] division shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the [governor] division shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(3) The council shall elect annually a chair and a vice chair from its members.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 5. Section **63-25a-101** is amended to read:

63-25a-101. Creation -- Purpose.

(1) The State Commission on Criminal and Juvenile Justice is created within the governor's office.

(2) The commission's purpose is to:

307 ~~[(a) significantly reduce crime and victimization in the state of Utah;]~~
308 ~~[(b)]~~ (a) promote broad philosophical agreement concerning the objectives of the criminal
309 and juvenile justice system in Utah;
310 ~~[(c)]~~ (b) provide a mechanism for coordinating the functions of the various branches and
311 levels of government concerned with criminal and juvenile justice to achieve those objectives;
312 [and]
313 (c) coordinate statewide efforts to reduce crime and victimization in Utah; and
314 (d) accomplish the duties enumerated in Section 63-25a-104.
315 Section 6. Section **63-25a-102** is amended to read:
316 **63-25a-102. Composition -- Ex officio members -- Appointees of governor -- Terms.**
317 (1) The commission on criminal and juvenile justice shall be composed of ~~[19]~~ 20 voting
318 members as follows:
319 (a) the chief justice of the supreme court, as the presiding officer of the judicial council,
320 or a judge designated by the chief justice;
321 (b) the state court administrator;
322 (c) a juvenile court judge appointed by the chief justice, as presiding officer of the Judicial
323 Council;
324 (d) the executive director of the Department of Corrections;
325 (e) the director of the Division of Youth Corrections;
326 (f) the commissioner of the Department of Public Safety;
327 (g) the attorney general;
328 (h) a representative of the statewide association of public attorneys designated by the
329 association's officers;
330 (i) the president of the chief of police association or a chief of police designated by the
331 association's president;
332 (j) the president of the sheriff's association or a sheriff designated by the association's
333 president;
334 (k) the chair of the Board of Pardons and Parole or a member designated by the chair;
335 (l) the chair of the Utah Sentencing Commission;
336 (m) the chair of the Utah Substance Abuse and Anti-Violence Coordinating Council; [and]
337 (n) the chair of the Utah Board of Juvenile Justice; and

(o) the chair of the Utah Council on Victims of Crime or the chair's designee.

(2) The remaining five members shall be appointed by the governor, with the advice and consent of the Senate, to two-year staggered terms as follows:

(a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;

(b) one state senator;

(c) one state representative;

(d) one representative of public education; and

(e) one citizen representative.

(3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah may serve as a nonvoting member.

(4) In appointing the members under Subsection (2), the governor shall take into account the geographical makeup of the commission and the representation from local criminal justice advisory groups.

Section 7. Section **63-25a-103** is amended to read:

63-25a-103. Executive director -- Qualifications -- Compensation -- Appointment -- Functions.

(1) The governor, with the advice and consent of the Senate, shall appoint a person experienced in the field of criminal justice and in administration as the executive director of the Commission on Criminal and Juvenile Justice. The governor shall establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) (a) The executive director, under the direction of the commission, shall administer the duties of the commission and act as the governor's advisor on national, state, regional, metropolitan, and local government planning as it relates to criminal justice.

(b) This chapter does not derogate the planning authority conferred on state, regional, metropolitan, and local governments by existing law.

Section 8. Section **63-25a-104** is amended to read:

63-25a-104. Duties of commission.

The state commission on criminal and juvenile justice administration shall:

~~[(1) promote the communication and coordination of all criminal and juvenile justice~~

agencies, including coordination by those agencies in their implementation and operation of programs and other efforts to reduce crime;]

~~[(2)]~~ (1) promote the commission's purposes as enumerated in Section 63-25a-101;

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

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

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

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

~~[(6) publish the recommendations made under Section 63-25a-104.5;]~~

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

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

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

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

~~[(11)]~~ (10) provide a comprehensive criminal justice plan annually~~[- that includes a strategic plan for the efficient management of information resources];~~

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

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

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

agencies;

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

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

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

Section 9. Section **63-25a-104.5** is amended to read:

63-25a-104.5. Annual report by the commission.

~~[On or before October 1, the]~~ (1) The commission shall annually prepare and publish a report directed to the governor, the Legislature, and the Judicial Council~~[- and to each political subdivision of the state].~~

(2) The report shall describe~~[- (1)]~~ how the commission fulfilled its statutory purposes and duties during the year~~[-];~~.

~~[(2) how the commission accomplished its duties under Section 63-25a-104, with specific emphasis on:]~~

~~[(a) the status of crime in Utah, including statistics for the last five years; and]~~

~~[(b) effective programs in Utah and other states for reducing crime and victimization; and]~~

~~[(3) the commission's specific recommendations addressing:]~~

~~[(a) how crime and victimization may be significantly reduced during the year following the publication of the report, and during the five years following the report;]~~

~~[(b) how criminal and juvenile justice agencies may be more effective in reaching their objectives, including reduction of crime and victimization;]~~

~~[(c) suggested legislation necessary to accomplish the objective of significantly reducing crime and victimization in the state; and]~~

~~[(d) how all criminal and juvenile justice agencies may coordinate and work together more effectively to reduce crime and victimization.]~~

Section 10. Section **63-25a-203** is amended to read:

63-25a-203. Duties of council.

(1) The Utah Substance Abuse and Anti-Violence Coordinating Council shall:

(a) provide leadership and generate unity for Utah's ongoing efforts to combat substance abuse and community violence;

(b) recommend and coordinate the creation, dissemination, and implementation of a statewide substance abuse and anti-violence policy;

(c) facilitate planning for a balanced continuum of substance abuse and community violence prevention, treatment, and [criminal] justice services;

(d) promote collaboration and mutually beneficial public and private partnerships;

(e) coordinate recommendations made by the [subcommittees] committees under Section 63-25a-206; and

(f) analyze and provide an objective assessment of all proposed legislation concerning alcohol and other drug issues and community violence issues[;].

~~[(g) consolidate and review studies concerning violence and substance abuse in Utah and report findings as required in Subsection (3); and]~~

~~[(h) include in the report recommendations regarding how to significantly reduce substance abuse and violence, as measured by available indicators of drug use, crime, and violence, during the year following the publication of the report, and during the five years following the report.]~~

(2) The council shall meet quarterly or more frequently as determined necessary by the chair.

(3) The council shall report its recommendations annually to the commission, governor, Legislature, and judicial council.

Section 11. Section **63-25a-204** is amended to read:

63-25a-204. Creation of committees -- Membership -- Terms.

(1) There is created within the governor's office, the Justice Committee, the Treatment Committee, the Prevention Committee, and the Judiciary Committee.

(2) The president of the Senate may annually designate a member of the Senate to serve on each committee.

(3) The speaker of the House may annually designate a member of the House of Representatives to serve on each committee.

(4) (a) The Justice Committee comprises a minimum of 15 voting members as follows:

(i) a representative annually designated by the Utah Chiefs of Police Association;

- 462 (ii) a representative annually designated by the Utah Sheriff's Association;
- 463 (iii) a representative annually designated by the Statewide Association of Public Attorneys;
- 464 (iv) a representative annually designated by the Department of Commerce;
- 465 (v) an assistant attorney general annually designated by the attorney general;
- 466 (vi) a representative annually designated by the commissioner of the Department of Public
467 Safety;
- 468 (vii) the director of the [~~Utah Division of~~] Criminal Investigations Bureau of the
469 Department of Public Safety or his designee;
- 470 (viii) a representative annually designated by the executive director of the Department of
471 Corrections;
- 472 (ix) a representative annually designated by the director of the Division of Youth
473 Corrections;
- 474 (x) a representative from a drug task force within the state appointed by the governor to
475 serve for two years;
- 476 (xi) a gang intelligence officer appointed by the governor to serve for two years;
- 477 (xii) a representative of crime victims appointed by the governor to serve for two years;
- 478 (xiii) a district director of juvenile probation or his designee, annually designated by the
479 presiding officer of the Judicial Council;
- 480 (xiv) a representative of adult probation and parole annually designated by the executive
481 director of the Department of Corrections; and
- 482 (xv) a school resource officer annually appointed by the governor to serve for two years.
- 483 (b) In addition to the members designated under Subsection (4)(a):
- 484 (i) the Federal Bureau of Investigation may annually designate a representative to be a
485 voting member of the committee;
- 486 (ii) the United States Attorney's Office may annually designate a representative to be a
487 voting member of the committee; and
- 488 (iii) the Drug Enforcement Administration may annually designate a representative to be
489 a voting member of the committee.
- 490 (c) Additional committee members may be selected by a majority of the committee to
491 serve as voting members for two-year terms.
- 492 (5) (a) The Treatment Committee comprises a minimum of [~~16~~] 17 voting members as

follows:

(i) ~~[an urban]~~ a representative of an urban local substance abuse authority annually designated by the Utah ~~[Association of Substance Abuse Program Providers]~~ Behavioral Healthcare Network;

(ii) a ~~[rural]~~ representative of a rural local substance abuse authority annually designated by the Utah ~~[Association of Substance Abuse Program Providers]~~ Behavioral Healthcare Network;

(iii) a representative annually designated by the Division of Substance Abuse;

(iv) a representative annually designated by the director of the Division of Youth Corrections;

(v) a registered pharmacist annually designated by the Utah Pharmaceutical Association;

(vi) a representative annually designated by the Utah Hospital and Health Systems Association ~~[of Health Care Providers]~~;

(vii) a licensed physician annually designated by the Utah Medical Association;

(viii) a licensed psychologist annually designated by the Utah Psychological Association;

(ix) a licensed social worker annually designated by the National Association of Social Workers (Utah Chapter);

(x) a registered nurse annually designated by the Utah Nurses Association;

(xi) a substance abuse counselor annually designated by the Utah Association of Alcohol and Drug Abuse Counselors;

(xii) a representative annually designated by the Utah Association of Local Health Officers;

(xiii) a domestic violence treatment professional annually appointed by the Domestic Violence Advisory Council;

(xiv) a school counselor annually designated by the Utah School Counselors Association;

(xv) an elementary school principal from a high risk school annually designated by the Utah Association of Elementary School Principals; ~~[and]~~

(xvi) a secondary school principal from a high risk school annually designated by the Utah Association of Secondary School Principals; and

(xvii) a representative annually designated by the executive director of the Department of Workforce Services.

(b) Additional committee members may be selected by a majority of the committee to

serve as voting members for two-year terms.

(6) (a) The Prevention Committee comprises a minimum of ~~[17]~~ 18 voting members as follows:

(i) a representative annually designated by the director of the Division of Substance Abuse;

(ii) the executive director of the Utah Council for Crime Prevention or his designee;

(iii) a representative annually designated by the state superintendent of public instruction, State Office of Education;

(iv) the commissioner of higher education, from the State Board of Regents, or his designee;

(v) a representative annually designated by the executive director of the Department of Health ~~[or his designee]~~;

(vi) the president of the Utah Federation for Youth or his designee;

(vii) a ~~[superintendent from an urban school district or his]~~ Safe and Drug-Free Schools program director from an urban school district, annually designated by the Utah School Superintendents Association;

(viii) a ~~[superintendent from a rural school district or his]~~ Safe and Drug-Free Schools program director from a rural school district, annually designated by the Utah School Superintendents Association;

(ix) the president of the state Parent Teacher Association or his designee;

(x) a representative of an urban local substance abuse ~~[prevention specialist]~~ authority, annually designated by the Utah ~~[Association of Substance Abuse Program Providers]~~ Behavioral Healthcare Network;

(xi) a representative annually designated by the ~~[executive director of the Department of Workforce Services]~~ commissioner of the Labor Commission;

(xii) a representative of a rural local substance abuse ~~[prevention specialist]~~ authority, annually designated by the Utah ~~[Association of Substance Abuse Program Providers]~~ Behavioral Healthcare Network;

(xiii) a representative annually designated by the Utah Association of Local Health Officers;

(xiv) a representative of the academic and research community who is knowledgeable in the field of substance abuse or violence prevention, appointed by the governor to serve for two

555 years;

556 (xv) the director of the [Utah] Association of Youth Councils or his designee;

557 (xvi) a representative of a community-based organization that provides services to children

558 appointed by the governor to serve for two years; [and]

559 (xvii) one or more members of the religious community appointed by the governor to serve

560 for two years; and

561 (xviii) the chair of the Coalition for Tobacco Free Utah or the chair's designee.

562 (b) Additional committee members may be selected by a majority of the committee to

563 serve as voting members for two-year terms.

564 (7) (a) The Judiciary Committee comprises a minimum of 17 voting members as follows:

565 (i) a juvenile court judge annually designated by the presiding officer of the Judicial

566 Council;

567 (ii) a district court judge annually designated by the presiding officer of the Judicial

568 Council;

569 (iii) an appellate court judge annually designated by the presiding officer of the Judicial

570 Council;

571 (iv) a justice court judge annually designated by the presiding officer of the Judicial

572 Council;

573 (v) two court executives annually designated by the presiding officer of the Judicial

574 Council;

575 (vi) two court administrative officers annually designated by the presiding officer of the

576 Judicial Council;

577 (vii) a representative of court treatment or prevention programs annually designated by the

578 presiding officer of the Judicial Council;

579 (viii) a representative annually designated by the director of the Division of Substance

580 Abuse;

581 (ix) a defense attorney annually designated by the Utah State Bar;

582 (x) a prosecuting attorney annually designated by the Utah Prosecution Council;

583 (xi) an assistant attorney general annually designated by the attorney general;

584 (xii) a director of pupil services from a local school district annually designated by the

585 state superintendent of public instruction;

(xiii) a law-related education specialist annually designated by the state superintendent of public instruction;

(xiv) a guardian ad litem annually designated by the presiding officer of the Judicial Council; and

(xv) a commander of a gang task force, or his designee, appointed by the governor to serve for two years.

(b) In addition to the members designated under Subsection (7)(a), the presiding federal judge may annually designate a federal trial judge to be a voting member of the committee.

(c) Additional committee members may be selected by a majority of the committee to serve as voting members for two-year terms.

Section 12. Section **63-25a-206** is amended to read:

63-25a-206. Duties of committees.

(1) The duties of the Justice, Prevention, and Treatment Committees shall be to recommend to the council:

(a) a statewide substance abuse and anti-violence policy;

(b) priorities for programs to combat substance abuse and community violence; and

(c) executive, legislative, and judicial action based upon policy needs and identified gaps in the continuum of services.

(2) The duties of the Judiciary Committee shall be to:

(a) provide a forum for education, coordination, and communication on violence and drug-related issues that affect the total judicial system; and

(b) enhance multidisciplinary cooperation while preserving judicial independence.

(3) The committees shall meet quarterly or more frequently as determined necessary by the chairs.

(4) Each committee shall report its recommendations to the Utah Substance Abuse and Anti-Violence Coordinating Council at the [quarterly] council's meetings.

Section 13. Section **63C-6-101** is amended to read:

63C-6-101. Creation of commission -- Membership -- Appointment -- Vacancies.

(1) There is created the Utah Seismic Safety Commission consisting of 13 members, designated as follows:

(a) the commissioner of the Department of Public Safety;

- 617 (b) the director of the Division of Comprehensive Emergency Management;
618 (c) the director of the Utah Geological Survey;
619 (d) the director of the University of Utah Seismograph Stations;
620 (e) the executive director of the Utah League of Cities and Towns or his designee;
621 (f) a representative from the Structural Engineers Association of Utah biannually selected
622 by the membership;
623 (g) the director of the Division of Facilities and Construction Management or his designee;
624 (h) the executive director of the Department of Transportation or his designee;
625 (i) the State Planning Coordinator or his designee;
626 (j) a representative from the American Institute of Architects, Utah Section;
627 (k) a representative from the American Society of Civil Engineers, Utah Section;
628 (l) a member of the House of Representatives appointed biannually by the speaker of the
629 House; and
630 (m) a member of the Senate appointed biannually by the president of the Senate.
631 ~~[(2)(a) Except as required by Subsection (b), as terms of current commission members~~
632 ~~expire, the governor shall appoint each new member or reappointed member to a four-year term.]~~
633 ~~[(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time~~
634 ~~of appointment or reappointment, adjust the length of terms to ensure that the terms of commission~~
635 ~~members are staggered so that approximately half of the commission is appointed every two years.]~~
636 ~~[(3)]~~ (2) The commission shall annually select one of its members to serve as chair of the
637 commission.
638 ~~[(4)]~~ (3) When a vacancy occurs in the membership for any reason, the replacement shall
639 be appointed for the unexpired term.

640 Section 14. Section **72-6-115** is amended to read:

641 **72-6-115. Traffic Management Committee -- Appointment -- Duties.**

642 (1) As used in this section, "committee" means the Traffic Management Committee
643 created in this section.

644 (2) (a) There is created within the Department of Transportation the Traffic Management
645 Committee comprising seven members knowledgeable about traffic engineering, traffic flow, or
646 air quality as follows:

- 647 (i) one member designated by the executive director of the department;

- (ii) one member designated by the Utah Association of Counties;
- (iii) one member designated by the Department of Environmental Quality;
- (iv) one member designated by the Wasatch Front Regional Council;
- (v) one member designated by the Mountainland Association of Governments;
- (vi) one member designated by the Commissioner of Public Safety; and
- (vii) one member designated by the Utah League of Cities and Towns.

(b) The committee shall:

(i) advise the department on matters related to the implementation and administration of this section;

(ii) make recommendations to law enforcement agencies related to traffic flow and incident management during heavy traffic periods;

(iii) make recommendations to the department on increasing the safety and efficiency of highways using current traffic management systems, including traffic signal coordination, traffic monitoring, freeway ramp metering, variable message signing, and incident management; and

(iv) evaluate the cost effectiveness of implementing a specific traffic management system on a highway considering:

(A) existing traffic volume in the area;

(B) the necessity and potential of reducing vehicle emissions in the area;

(C) the feasibility of the traffic management system on the highway; and

(D) whether traffic congestion will be reduced by the system.

(c) (i) Except as required by Subsection (2)(c)(ii), as terms of current committee members expire, the [governor] appointing authority shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (2)(c)(i), the [governor] appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(d) The committee shall annually elect a chair and a vice chair from its members.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(f) The committee shall meet as it determines necessary to accomplish its duties.

679 (g) Reasonable notice shall be given to each member of the committee prior to any
680 meeting.

681 (h) A majority of the committee constitutes a quorum for the transaction of business.

682 (i) (i) (A) Members who are not government employees shall receive no compensation or
683 benefits for their services, but may receive per diem and expenses incurred in the performance of
684 the member's official duties at the rates established by the Division of Finance under Sections
685 63A-3-106 and 63A-3-107.

686 (B) Members may decline to receive per diem and expenses for their service.

687 (ii) (A) State government officer and employee members who do not receive salary, per
688 diem, or expenses from their agency for their service may receive per diem and expenses incurred
689 in the performance of their official duties from the committee at the rates established by the
690 Division of Finance under Sections 63A-3-106 and 63A-3-107.

691 (B) State government officer and employee members may decline to receive per diem and
692 expenses for their service.

693 (iii) (A) Local government members who do not receive salary, per diem, or expenses from
694 the entity that they represent for their service may receive per diem and expenses incurred in the
695 performance of their official duties at the rates established by the Division of Finance under
696 Sections 63A-3-106 and 63A-3-107.

697 (B) Local government members may decline to receive per diem and expenses for their
698 service.

699 (3) (a) The Department of Transportation shall implement and administer traffic
700 management systems to facilitate the efficient flow of motor vehicle traffic on state highways and
701 to reduce motor vehicle emissions where cost effective, as determined by the committee in
702 accordance with criteria under Subsection (2)(b).

703 (b) A traffic management system shall be designed to allow safe, efficient, and effective:

704 (i) integration of existing traffic management systems;

705 (ii) additions of highways and intersections under county and city administrative
706 jurisdiction;

707 (iii) incorporation of other traffic management systems; and

708 (iv) adaptation to future traffic needs.

709 (4) (a) The cost of implementing and administering a traffic management system shall be

shared pro rata by the department and the counties and municipalities using it.

(b) The department shall enter into an agreement or contract under Title 11, Chapter 13, Interlocal Cooperation Act, with a county or municipality to share costs incurred under this section.

(5) Additional highways and intersections under the administrative jurisdiction of a county or municipality may be added to a traffic management system upon application of the county or municipality after:

(a) a recommendation of the committee;

(b) approval by the department;

(c) determination of the appropriate cost share of the addition under Subsection (4)(a); and

(d) an agreement under Subsection (4)(b).

Section 15. Section **76-3-201** is amended to read:

76-3-201. Sentences or combination of sentences allowed -- Civil penalties -- Restitution -- Hearing -- Definitions.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including the accrual of interest from the time of sentencing, insured damages, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Subsection (4)(c).

(e) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

741 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

742 (2) Within the limits prescribed by this chapter, a court may sentence a person convicted
743 of an offense to any one of the following sentences or combination of them:

744 (a) to pay a fine;

745 (b) to removal or disqualification from public or private office;

746 (c) to probation unless otherwise specifically provided by law;

747 (d) to imprisonment;

748 (e) to life imprisonment;

749 (f) on or after April 27, 1992, to life in prison without parole; or

750 (g) to death.

751 (3) (a) This chapter does not deprive a court of authority conferred by law to:

752 (i) forfeit property;

753 (ii) dissolve a corporation;

754 (iii) suspend or cancel a license;

755 (iv) permit removal of a person from office;

756 (v) cite for contempt; or

757 (vi) impose any other civil penalty.

758 (b) A civil penalty may be included in a sentence.

759 (4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary
760 damages, in addition to any other sentence it may impose, the court shall order that the defendant
761 make restitution to victims of crime as provided in this subsection, or for conduct for which the
762 defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution,
763 a victim has the meaning as defined in Subsection (1)(e).

764 (ii) In determining whether restitution is appropriate, the court shall follow the criteria and
765 procedures as provided in Subsections (4)(c) and (4)(d).

766 (iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an
767 order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and
768 provide notice of the order to the parties.

769 (iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil
770 Procedure, and the person in whose favor the restitution order is entered may seek enforcement of
771 the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the

Department of Corrections may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(v) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover reasonable attorney's fees.

(vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(vii) The Department of Corrections shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) (i) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(ii) In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (4)(c).

(c) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(i) Complete restitution means the restitution necessary to compensate a victim for all losses caused by the defendant.

(ii) Court-ordered restitution means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(iii) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (8).

(d) (i) If the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record.

(ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

(iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket

and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(iv) The Department of Corrections shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(e) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue.

(5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) \$75 for up to 100 miles a defendant is transported;

(B) \$125 for 100 up to 200 miles a defendant is transported; and

(C) \$250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(6) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to

the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) ~~[The court in]~~ In determining a just sentence, ~~the court~~ shall consider sentencing guidelines regarding ~~[aggravation and mitigation]~~ aggravating and mitigating circumstances promulgated by the Sentencing Commission ~~[on Criminal and Juvenile Justice]~~.

(7) If during the commission of a crime described as child kidnaping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the highest minimum term in state prison. This subsection takes precedence over any conflicting provision of law.

(8) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; the cost of necessary physical and occupational therapy and rehabilitation; and the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim; and

865 (iii) the cost of necessary funeral and related services if the offense resulted in the death
866 of a victim.

867 (c) In determining the monetary sum and other conditions for court-ordered restitution, the
868 court shall consider the factors listed in Subsection (8)(b) and:

869 (i) the financial resources of the defendant and the burden that payment of restitution will
870 impose, with regard to the other obligations of the defendant;

871 (ii) the ability of the defendant to pay restitution on an installment basis or on other
872 conditions to be fixed by the court;

873 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method
874 of payment; and

875 (iv) other circumstances which the court determines make restitution inappropriate.

876 (d) The court may decline to make an order or may defer entering an order of restitution
877 if the court determines that the complication and prolongation of the sentencing process, as a result
878 of considering an order of restitution under this subsection, substantially outweighs the need to
879 provide restitution to the victim.

Legislative Review Note

as of 2-10-99 12:54 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel