

**Representative Eric K. Hutchings** proposes the following substitute bill:

**CRIMINAL CODE AND CRIMINAL PROCEDURE**

**AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Criminal Code and the Utah Code of Criminal Procedure regarding penalties.

**Highlighted Provisions:**

This bill:

- ▶ modifies criminal law provisions and criminal procedure provisions regarding certain penalty provisions;
- ▶ amends restrictions imposed due to possession of controlled substances;
- ▶ modifies provisions regarding probation supervision and services; and
- ▶ modifies the earned time program for incarcerated offenders.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-10-503**, as last amended by Laws of Utah 2015, Chapter 412



26 77-18-1, as last amended by Laws of Utah 2015, Chapters 412 and 413

27 77-27-5.4, as enacted by Laws of Utah 2015, Chapter 412



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

30 Section 1. Section 76-10-503 is amended to read:

31 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**  
32 **dangerous weapons by certain persons -- Exceptions.**

33 (1) For purposes of this section:

34 (a) A Category I restricted person is a person who:

35 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;

36 (ii) is on probation or parole for any felony;

37 (iii) is on parole from a secure facility as defined in Section 62A-7-101;

38 (iv) within the last 10 years has been adjudicated delinquent for an offense which if  
39 committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

40 (v) is an alien who is illegally or unlawfully in the United States; or

41 (vi) is on probation for a conviction of possessing:

42 (A) a substance classified in Section 58-37-4 as a Schedule I ~~[or H]~~ controlled  
43 substance other than marijuana, or as a Schedule II controlled substance;

44 (B) a controlled substance analog; or

45 (C) a substance listed in Section 58-37-4.2.

46 (b) A Category II restricted person is a person who:

47 (i) has been convicted of any felony;

48 (ii) within the last seven years has been adjudicated delinquent for an offense which if  
49 committed by an adult would have been a felony;

50 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

51 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in  
52 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

53 (v) has been found not guilty by reason of insanity for a felony offense;

54 (vi) has been found mentally incompetent to stand trial for a felony offense;

55 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun  
56 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed

57 to a mental institution;

58 (viii) has been dishonorably discharged from the armed forces; or

59 (ix) has renounced his citizenship after having been a citizen of the United States.

60 (c) As used in this section, a conviction of a felony or adjudication of delinquency for  
61 an offense which would be a felony if committed by an adult does not include:

62 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust  
63 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the  
64 regulation of business practices not involving theft or fraud; or

65 (ii) a conviction or adjudication of delinquency which, according to the law of the  
66 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by  
67 court order, pardoned or regarding which the person's civil rights have been restored unless the  
68 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person  
69 may not ship, transport, possess, or receive firearms.

70 (d) It is the burden of the defendant in a criminal case to provide evidence that a  
71 conviction or adjudication of delinquency is subject to an exception provided in Subsection  
72 (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the  
73 conviction or adjudication of delinquency is not subject to that exception.

74 (2) A Category I restricted person who intentionally or knowingly agrees, consents,  
75 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or  
76 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under  
77 the person's custody or control:

78 (a) any firearm is guilty of a second degree felony; or

79 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.

80 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,  
81 possesses, uses, or has under the person's custody or control:

82 (a) any firearm is guilty of a third degree felony; or

83 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

84 (4) A person may be subject to the restrictions of both categories at the same time.

85 (5) If a higher penalty than is prescribed in this section is provided in another section  
86 for one who purchases, transfers, possesses, uses, or has under this custody or control any  
87 dangerous weapon, the penalties of that section control.

88 (6) It is an affirmative defense to a charge based on the definition in Subsection  
89 (1)(b)(iv) that the person was:

90 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner  
91 for use of a member of the person's household or for administration to an animal owned by the  
92 person or a member of the person's household; or

93 (b) otherwise authorized by law to possess the substance.

94 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon  
95 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

96 (i) was possessed by the person or was under the person's custody or control before the  
97 person became a restricted person;

98 (ii) was not used in or possessed during the commission of a crime or subject to  
99 disposition under Section 24-3-103;

100 (iii) is not being held as evidence by a court or law enforcement agency;

101 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

102 (v) unless a different time is ordered by the court, was transferred within 10 days of the  
103 person becoming a restricted person.

104 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person  
105 of a firearm or other dangerous weapon by a restricted person.

106 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or  
107 dangerous weapon to any person, knowing that the recipient is a person described in  
108 Subsection (1)(a) or (b).

109 (b) A person who violates Subsection (8)(a) when the recipient is:

110 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is  
111 guilty of a second degree felony;

112 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous  
113 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use  
114 the weapon for any unlawful purpose, is guilty of a third degree felony;

115 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is  
116 guilty of a third degree felony; or

117 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous  
118 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use

119 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

120 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or  
121 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under  
122 circumstances which the person knows would be a violation of the law.

123 (b) A person may not provide to a dealer or other person any information that the  
124 person knows to be materially false information with intent to deceive the dealer or other  
125 person about the legality of a sale, transfer or other disposition of a firearm or dangerous  
126 weapon.

127 (c) "Materially false information" means information that portrays an illegal transaction  
128 as legal or a legal transaction as illegal.

129 (d) A person who violates this Subsection (9) is guilty of:

130 (i) a third degree felony if the transaction involved a firearm; or

131 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a  
132 firearm.

133 Section 2. Section **77-18-1** is amended to read:

134 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**  
135 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**  
136 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
137 **monitoring.**

138 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea  
139 in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,  
140 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

141 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any  
142 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence  
143 and place the defendant on probation. The court may place the defendant:

144 (i) on probation under the supervision of the Department of Corrections except in cases  
145 of class C misdemeanors or infractions;

146 (ii) on probation [~~with~~] under the supervision of an agency of local government or with  
147 a private organization; or

148 (iii) on [~~bench~~] court probation under the jurisdiction of the sentencing court.

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

150 with the department.

151 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court  
152 is vested as ordered by the court.

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

154 (iv) Court probation may include an administrative level of services, including  
155 notification to the court of scheduled periodic reviews of the probationer's compliance with  
156 conditions.

157 (c) Supervised probation services provided by the department, an agency of local  
158 government, or a private organization shall specifically address the offender's risk of  
159 reoffending as identified by a validated risk and needs screening or assessment.

160 (3) (a) The department shall establish supervision and presentence investigation  
161 standards for all individuals referred to the department. These standards shall be based on:

162 (i) the type of offense;

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

164 (iii) the demand for services;

165 (iv) the availability of agency resources;

166 (v) public safety; and

167 (vi) other criteria established by the department to determine what level of services  
168 shall be provided.

169 (b) Proposed supervision and investigation standards shall be submitted to the Judicial  
170 Council and the Board of Pardons and Parole on an annual basis for review and comment prior  
171 to adoption by the department.

172 (c) The Judicial Council and the department shall establish procedures to implement  
173 the supervision and investigation standards.

174 (d) The Judicial Council and the department shall annually consider modifications to  
175 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider  
176 appropriate.

177 (e) The Judicial Council and the department shall annually prepare an impact report  
178 and submit it to the appropriate legislative appropriations subcommittee.

179 (4) Notwithstanding other provisions of law, the department is not required to  
180 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to

181 conduct presentence investigation reports on class C misdemeanors or infractions. However,  
182 the department may supervise the probation of class B misdemeanants in accordance with  
183 department standards.

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

188 (b) The presentence investigation report shall include:

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

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

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

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

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

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

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

211 (b) If a party fails to challenge the accuracy of the presentence investigation report at

212 the time of sentencing, that matter shall be considered to be waived.

213 (7) At the time of sentence, the court shall receive any testimony, evidence, or  
214 information the defendant or the prosecuting attorney desires to present concerning the  
215 appropriate sentence. This testimony, evidence, or information shall be presented in open court  
216 on record and in the presence of the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (ii) provide documentation of the inability to obtain one of the items listed in

243 Subsection (8)(b)(i) because of:

244 (A) a diagnosed learning disability; or

245 (B) other justified cause.

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

248 (a) the parole period and any extension of that period in accordance with Subsection  
249 77-27-6(4); and

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

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

256 (ii) (A) If, upon expiration or termination of the probation period under Subsection  
257 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section  
258 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench  
259 probation for the limited purpose of enforcing the payment of the account receivable. If the  
260 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to  
261 the court the costs associated with continued probation under this Subsection (10).

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

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

268 (b) (i) The department shall notify the sentencing court, the Office of State Debt  
269 Collection, and the prosecuting attorney in writing in advance in all cases when termination of  
270 supervised probation is being requested by the department or will occur by law.

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

273 (11) (a) (i) Any time served by a probationer outside of confinement after having been

274 charged with a probation violation and prior to a hearing to revoke probation does not  
275 constitute service of time toward the total probation term unless the probationer is exonerated  
276 at a hearing to revoke the probation.

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

280 (iii) Any time served in confinement awaiting a hearing or decision concerning  
281 revocation of probation constitutes service of time toward a term of incarceration imposed as a  
282 result of the revocation of probation or a graduated sanction imposed under Section  
283 63M-7-404.

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

287 (12) (a) (i) Probation may [~~not~~] be modified [~~or extended~~] as is consistent with the  
288 graduated sanctions and incentives developed by the Sentencing Commission under Section  
289 63M-7-404, but the length of probation may not be extended, except upon waiver of a hearing  
290 by the probationer or upon a hearing and a finding in court that the probationer has violated the  
291 conditions of probation.

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

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

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

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

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

304 (iii) The order to show cause shall inform the defendant of a right to be represented by

305 counsel at the hearing and to have counsel appointed if the defendant is indigent.

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

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

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

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

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

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

316 (ii) Upon a finding that the defendant violated the conditions of probation, the court  
317 may order the probation revoked, modified, continued, or ~~[that the entire probation term~~  
318 ~~commence anew]~~ reinstated for all or a portion of the original term of probation.

319 (iii) If a period of incarceration is imposed for a violation, the defendant shall be  
320 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to  
321 Subsection 63M-7-404(4), unless the judge determines that:

322 (A) the defendant needs substance abuse or mental health treatment, as determined by a  
323 validated risk and needs screening or assessment, that warrants treatment services that are  
324 immediately available in the community; or

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

326 (iv) If the defendant had, prior to the imposition of a term of incarceration or the  
327 execution of the previously imposed sentence under this Subsection (12), served time in jail as  
328 a condition of probation or due to a violation of probation under Subsection 77-18-1(12)(e)(iii),  
329 the time the probationer served in jail constitutes service of time toward the sentence  
330 previously imposed.

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

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

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

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

339 (14) Presentence investigation reports are classified protected in accordance with Title  
340 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections  
341 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a  
342 presentence investigation report. Except for disclosure at the time of sentencing pursuant to  
343 this section, the department may disclose the presentence investigation only when:

344 (a) ordered by the court pursuant to Subsection 63G-2-202(7);

345 (b) requested by a law enforcement agency or other agency approved by the department  
346 for purposes of supervision, confinement, and treatment of the offender;

347 (c) requested by the Board of Pardons and Parole;

348 (d) requested by the subject of the presentence investigation report or the subject's  
349 authorized representative; or

350 (e) requested by the victim of the crime discussed in the presentence investigation  
351 report or the victim's authorized representative, provided that the disclosure to the victim shall  
352 include only information relating to statements or materials provided by the victim, to the  
353 circumstances of the crime including statements by the defendant, or to the impact of the crime  
354 on the victim or the victim's household.

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

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

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

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

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

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

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

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

371 (i) place the defendant on probation under the supervision of the Department of  
372 Corrections;

373 (ii) order the department to place an electronic monitoring device on the defendant and  
374 install electronic monitoring equipment in the residence of the defendant; and

375 (iii) order the defendant to pay the costs associated with home confinement to the  
376 department or the program provider.

377 (e) The department shall pay the costs of home confinement through electronic  
378 monitoring only for those persons who have been determined to be indigent by the court.

379 (f) The department may provide the electronic monitoring described in this section  
380 either directly or by contract with a private provider.

381 Section 3. Section **77-27-5.4** is amended to read:

382 **77-27-5.4. Earned time program.**

383 (1) The board shall establish an earned time program that reduces the period of  
384 incarceration for offenders who successfully complete specified programs, the purpose of  
385 which is to reduce the risk of recidivism.

386 (2) The earned time program shall:

387 (a) provide not less than four months of earned time credit each for the completion of  
388 [~~the highest ranked priority in the offender's case action plan;~~] up to two programs that:

389 (i) are approved by the board in collaboration with the Department of Corrections; and

390 (ii) are recommended programs that are part of the offender's case action plan; and

391 [~~(b) provide not less than four months of earned time credit for completion of one of~~  
392 ~~the recommended programs in the offender's case action plan; or]~~

393 [~~(c)~~] (b) allow the board to grant in its discretion earned time credit in addition to the  
394 earned time credit provided under [~~Subsections~~] Subsection (2)(a) [~~and (b)~~].

395 (3) The earned time program may not provide earned time credit for offenders:

396 (a) whose previously ordered release date does not provide enough time, including time  
397 for transition services, for the Board of Pardons and Parole to grant the earned time credit;

398 (b) who have been sentenced by the court to a term of life without the possibility of  
399 parole; [~~or~~]

400 (c) who have been ordered by the Board of Pardons and Parole to serve a life  
401 sentence[~~;~~];

402 (d) who do not have a current release date; or

403 (e) who have not met a contingency requirement for release that has been ordered by  
404 the board.

405 (4) The board may order the forfeiture of earned time credits under this section if [~~the~~  
406 ~~offender commits a major disciplinary infraction~~] it determines a rescission hearing is  
407 necessary.

408 (5) The department shall notify the board not more than 30 days after an offender  
409 completes [~~a priority in the case action plan~~] a program as defined in Subsection  
410 77-27-5.4(2)(a).

411 (6) The board shall collect data for the fiscal year regarding the operation of the earned  
412 time credit program, including:

413 (a) the number of offenders who have earned time credit under this section in the prior  
414 year;

415 (b) the amount of time credit earned in the prior year;

416 (c) the number of offenders who forfeited earned time credit; and

417 (d) additional related information as requested by the Commission on Criminal and  
418 Juvenile Justice.

419 (7) The board shall collaborate with the Department of Corrections in the  
420 establishment of the earned time credit program.

421 (8) To the extent possible, programming and hearings shall be provided early enough  
422 in an offender's incarceration to allow the offender to earn time credit.