

**SENTENCING COMMISSION LENGTH OF SUPERVISION**

**GUIDELINES**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill amends provisions of the Utah Code relating to probation and parole.

**Highlighted Provisions:**

This bill:

- ▶ requires the Utah Sentencing Commission to develop guidelines relating to the length of supervision of adult offenders on probation or parole and to make recommendations to the Legislature, the courts, and the governor;
- ▶ provides that the length of an offender's probation or parole term may not exceed the length of an offender's maximum sentence, unless the maximum sentence is one year or less;
- ▶ removes certain lifetime parole requirements;
- ▶ modifies the circumstances under which an individual may be discharged following a parole revocation;
- ▶ removes the requirement that an offender found guilty with a mental illness and placed on probation or parole must be supervised for at least five years;
- ▶ removes the prohibition on termination of probation or parole resulting from a driving under the influence conviction;
- ▶ requires the Utah Board of Pardons and Parole and courts to terminate probation or parole in accordance with the supervision length guidelines developed by the Utah



28 Sentencing Commission; and  
29       ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       This bill provides a special effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36       **41-6a-505**, as last amended by Laws of Utah 2017, Chapters 445 and 446
- 37       **63M-7-404 (Superseded 07/01/18)**, as last amended by Laws of Utah 2015, Chapter
- 38       412
- 39       **63M-7-404 (Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 330
- 40       **63M-7-405**, as last amended by Laws of Utah 2017, Chapter 377
- 41       **64-13-21**, as last amended by Laws of Utah 2015, Chapter 412
- 42       **76-3-202**, as last amended by Laws of Utah 2015, Chapter 412
- 43       **77-16a-201**, as last amended by Laws of Utah 2011, Chapter 366
- 44       **77-16a-205**, as last amended by Laws of Utah 2011, Chapter 366
- 45       **77-18-1**, as last amended by Laws of Utah 2017, Chapter 304
- 46       **77-27-5**, as last amended by Laws of Utah 2017, Chapter 475
- 47       **77-27-7**, as last amended by Laws of Utah 2008, Chapter 382
- 48       **77-27-9**, as last amended by Laws of Utah 2010, Chapter 110
- 49       **77-27-11**, as last amended by Laws of Utah 2015, Chapter 412



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

52       Section 1. Section **41-6a-505** is amended to read:

53       **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**  
54 **drugs, or a combination of both violations.**

55       (1) As part of any sentence for a first conviction of Section **41-6a-502**:

56       (a) the court shall:

57       (i) (A) impose a jail sentence of not less than 48 consecutive hours; or

58       (B) require the [person] individual to work in a compensatory-service work program

59 for not less than 48 hours;

60 (ii) order the [person] individual to participate in a screening;

61 (iii) order the [person] individual to participate in an assessment, if it is found  
62 appropriate by a screening under Subsection (1)(a)(ii);

63 (iv) order the [person] individual to participate in an educational series if the court does  
64 not order substance abuse treatment as described under Subsection (1)(b);

65 (v) impose a fine of not less than \$700;

66 (vi) order probation for the [person] individual in accordance with Section 41-6a-507,  
67 if there is admissible evidence that the [person] individual had a blood alcohol level of .16 or  
68 higher;

69 (vii) (A) order the [person] individual to pay the administrative impound fee described  
70 in Section 41-6a-1406; or

71 (B) if the administrative impound fee was paid by a party described in Subsection  
72 41-6a-1406(5)(a), other than the [person] individual sentenced, order the [person] individual  
73 sentenced to reimburse the party; or

74 (viii) (A) order the [person] individual to pay the towing and storage fees described in  
75 Section 72-9-603; or

76 (B) if the towing and storage fees were paid by a party described in Subsection  
77 41-6a-1406(5)(a), other than the [person] individual sentenced, order the [person] individual  
78 sentenced to reimburse the party; and

79 (b) the court may:

80 (i) order the [person] individual to obtain substance abuse treatment if the substance  
81 abuse treatment program determines that substance abuse treatment is appropriate;

82 (ii) order probation for the person in accordance with Section 41-6a-507;

83 (iii) order the [person] individual to participate in a 24-7 sobriety program as defined in  
84 Section 41-6a-515.5 if the person is 21 years of age or older; or

85 (iv) order a combination of Subsections (1)(b)(i) through (iii).

86 (2) If [a person] an individual has a prior conviction as defined in Subsection  
87 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the  
88 commission of the offense upon which the current conviction is based:

89 (a) the court shall:

- 90 (i) (A) impose a jail sentence of not less than 240 hours; or
- 91 (B) impose a jail sentence of not less than 120 hours in addition to home confinement
- 92 of not fewer than 720 consecutive hours through the use of electronic monitoring that includes
- 93 a substance abuse testing instrument in accordance with Section 41-6a-506;
- 94 (ii) order the [person] individual to participate in a screening;
- 95 (iii) order the [person] individual to participate in an assessment, if it is found
- 96 appropriate by a screening under Subsection (2)(a)(ii);
- 97 (iv) order the [person] individual to participate in an educational series if the court does
- 98 not order substance abuse treatment as described under Subsection (2)(b);
- 99 (v) impose a fine of not less than \$800;
- 100 (vi) order probation for the [person] individual in accordance with Section 41-6a-507;
- 101 (vii) (A) order the [person] individual to pay the administrative impound fee described
- 102 in Section 41-6a-1406; or
- 103 (B) if the administrative impound fee was paid by a party described in Subsection
- 104 41-6a-1406(5)(a), other than the [person] individual sentenced, order the [person] individual
- 105 sentenced to reimburse the party; or
- 106 (viii) (A) order the [person] individual to pay the towing and storage fees described in
- 107 Section 72-9-603; or
- 108 (B) if the towing and storage fees were paid by a party described in Subsection
- 109 41-6a-1406(5)(a), other than the [person] individual sentenced, order the [person] individual
- 110 sentenced to reimburse the party; and
- 111 (b) the court may:
  - 112 (i) order the [person] individual to obtain substance abuse treatment if the substance
  - 113 abuse treatment program determines that substance abuse treatment is appropriate;
  - 114 (ii) order the [person] individual to participate in a 24-7 sobriety program as defined in
  - 115 Section 41-6a-515.5 if the [person] individual is 21 years of age or older; or
  - 116 (iii) order a combination of Subsections (2)(b)(i) and (ii).
- 117 (3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison
- 118 sentence and places the defendant on probation, the court shall impose:
  - 119 (a) a fine of not less than \$1,500;
  - 120 (b) a jail sentence of not less than 1,500 hours; and

121 (c) supervised probation.

122 (4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court:

123 (a) shall impose an order requiring the [person] individual to obtain a screening and  
124 assessment for alcohol and substance abuse, and treatment as appropriate; and

125 (b) may impose an order requiring the [person] individual to participate in a 24-7  
126 sobriety program as defined in Section 41-6a-515.5 if the [person] individual is 21 years of age  
127 or older.

128 (5) ~~(a)~~ The requirements of Subsections (1)(a), (2)(a), (3)(a), and (4) may not be  
129 suspended.

130 ~~[(b) Probation or parole resulting from a conviction for a violation under this section  
131 may not be terminated.]~~

132 (6) If ~~[a person]~~ an individual is convicted of a violation of Section 41-6a-502 and  
133 there is admissible evidence that the [person] individual had a blood alcohol level of .16 or  
134 higher, the court shall order the following, or describe on record why the order or orders are not  
135 appropriate:

136 (a) treatment as described under Subsection (1)(b), (2)(b), or (4); and

137 (b) one or more of the following:

138 (i) the installation of an ignition interlock system as a condition of probation for the  
139 [person] individual in accordance with Section 41-6a-518;

140 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring  
141 device as a condition of probation for the [person] individual; or

142 (iii) the imposition of home confinement through the use of electronic monitoring in  
143 accordance with Section 41-6a-506.

144 Section 2. Section 63M-7-404 (Superseded 07/01/18) is amended to read:

145 **63M-7-404 (Superseded 07/01/18). Purpose -- Duties.**

146 (1) The purpose of the commission ~~[shall be]~~ is to develop guidelines and propose  
147 recommendations to the Legislature, the governor, and the Judicial Council ~~[about]~~ regarding:

148 (a) the sentencing and release of juvenile and adult offenders in order to:

149 ~~[(a)]~~ (i) respond to public comment;

150 ~~[(b)]~~ (ii) relate sentencing practices and correctional resources;

151 ~~[(c)]~~ (iii) increase equity in criminal sentencing;

152           ~~(d)~~ (iv) better define responsibility in criminal sentencing; and  
153           ~~(e)~~ (v) enhance the discretion of sentencing judges while preserving the role of the  
154 Board of Pardons and Parole and the Youth Parole Authority~~[-]; and~~

155           (b) the length of supervision of adult offenders on probation or parole in order to:

156           (i) increase equity in criminal supervision lengths;

157           (ii) relate the length of supervision to an offender's progress;

158           (iii) take into account an offender's risk of offending again; and

159           (iv) relate the length of supervision to the amount of time an offender has remained  
160 under supervision in the community.

161           (2) (a) The commission shall modify the sentencing guidelines and supervision length  
162 guidelines for adult offenders to implement the recommendations of the Commission on  
163 Criminal and Juvenile Justice for reducing recidivism.

164           (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting  
165 the public and ensuring efficient use of state funds.

166           (3) (a) The commission shall modify the criminal history score in the sentencing  
167 guidelines for adult offenders to implement the recommendations of the Commission on  
168 Criminal and Juvenile Justice for reducing recidivism.

169           (b) The modifications to the criminal history score under Subsection (3)(a) shall  
170 include factors in an offender's criminal history that are relevant to the accurate determination  
171 of an individual's risk of offending again.

172           (4) (a) The commission shall establish sentencing guidelines for periods of  
173 incarceration for individuals who are on probation and:

174           (i) who have violated one or more conditions of probation; and

175           (ii) whose probation has been revoked by the court.

176           (b) The guidelines shall consider the seriousness of the violation of the conditions of  
177 probation, the probationer's conduct while on probation, and the probationer's criminal history.

178           (5) (a) The commission shall establish sentencing guidelines for periods of  
179 incarceration for individuals who are on parole and:

180           (i) who have violated a condition of parole; and

181           (ii) whose parole has been revoked by the Board of Pardons and Parole.

182           (b) The guidelines shall consider the seriousness of the violation of the conditions of

183 parole, the individual's conduct while on parole, and the individual's criminal history.

184 (6) The commission shall establish graduated sanctions to facilitate the prompt and  
 185 effective response to an individual's violation of the terms of probation or parole by the adult  
 186 probation and parole section of the Department of Corrections in order to implement the  
 187 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism,  
 188 including:

189 (a) sanctions to be used in response to a violation of the terms of probation or parole;

190 (b) when violations should be reported to the court or the Board of Pardons and Parole;

191 and

192 (c) a range of sanctions that may not exceed a period of incarceration of more than:

193 (i) three consecutive days; and

194 (ii) a total of five days in a period of 30 days.

195 (7) The commission shall establish graduated incentives to facilitate a prompt and  
 196 effective response by the adult probation and parole section of the Department of Corrections  
 197 to an offender's:

198 (a) compliance with the terms of probation or parole; and

199 (b) positive conduct that exceeds those terms.

200 (8) The commission shall establish supervision length guidelines in accordance with  
 201 this section before October 1, 2018.

202 Section 3. Section **63M-7-404 (Effective 07/01/18)** is amended to read:

203 **63M-7-404 (Effective 07/01/18). Purpose -- Duties.**

204 (1) The purpose of the commission [~~shall be~~] is to develop guidelines and propose  
 205 recommendations to the Legislature, the governor, and the Judicial Council [~~about~~] regarding:

206 (a) the sentencing and release of juvenile and adult offenders in order to:

207 [~~(a)~~] (i) respond to public comment;

208 [~~(b)~~] (ii) relate sentencing practices and correctional resources;

209 [~~(c)~~] (iii) increase equity in criminal sentencing;

210 [~~(d)~~] (iv) better define responsibility in criminal sentencing; and

211 [~~(e)~~] (v) enhance the discretion of sentencing judges while preserving the role of the  
 212 Board of Pardons and Parole and the Youth Parole Authority[-]; and

213 (b) the length of supervision of adult offenders on probation or parole in order to:

- 214            (i) increase equity in criminal supervision lengths;
- 215            (ii) relate the length of supervision to an offender's progress;
- 216            (iii) take into account an offender's risk of offending again; and
- 217            (iv) relate the length of supervision to the amount of time an offender has remained
- 218 under supervision in the community.

219            (2) (a) The commission shall modify the sentencing guidelines and supervision length

220 guidelines for adult offenders to implement the recommendations of the Commission on

221 Criminal and Juvenile Justice for reducing recidivism.

222            (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting

223 the public and ensuring efficient use of state funds.

224            (3) (a) The commission shall modify the criminal history score in the sentencing

225 guidelines for adult offenders to implement the recommendations of the Commission on

226 Criminal and Juvenile Justice for reducing recidivism.

227            (b) The modifications to the criminal history score under Subsection (3)(a) shall

228 include factors in an offender's criminal history that are relevant to the accurate determination

229 of an individual's risk of offending again.

230            (4) (a) The commission shall establish sentencing guidelines for periods of

231 incarceration for individuals who are on probation and:

- 232            (i) who have violated one or more conditions of probation; and
- 233            (ii) whose probation has been revoked by the court.

234            (b) The guidelines shall consider the seriousness of the violation of the conditions of

235 probation, the probationer's conduct while on probation, and the probationer's criminal history.

236            (5) (a) The commission shall establish sentencing guidelines for periods of

237 incarceration for individuals who are on parole and:

- 238            (i) who have violated a condition of parole; and
- 239            (ii) whose parole has been revoked by the Board of Pardons and Parole.

240            (b) The guidelines shall consider the seriousness of the violation of the conditions of

241 parole, the individual's conduct while on parole, and the individual's criminal history.

242            (6) The commission shall establish graduated sanctions to facilitate the prompt and

243 effective response to an individual's violation of the terms of probation or parole by the adult

244 probation and parole section of the Department of Corrections in order to implement the



245 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism,  
246 including:

- 247 (a) sanctions to be used in response to a violation of the terms of probation or parole;
- 248 (b) when violations should be reported to the court or the Board of Pardons and Parole;

249 and

- 250 (c) a range of sanctions that may not exceed a period of incarceration of more than:
  - 251 (i) three consecutive days; and
  - 252 (ii) a total of five days in a period of 30 days.

253 (7) The commission shall establish graduated incentives to facilitate a prompt and  
254 effective response by the adult probation and parole section of the Department of Corrections  
255 to an offender's:

- 256 (a) compliance with the terms of probation or parole; and
- 257 (b) positive conduct that exceeds those terms.

258 (8) (a) The commission shall establish guidelines, including sanctions and incentives,  
259 to appropriately respond to negative and positive behavior of juveniles who are:

- 260 (i) nonjudicially adjusted;
- 261 (ii) placed on diversion;
- 262 (iii) placed on probation;
- 263 (iv) placed on community supervision;
- 264 (v) placed in an out-of-home placement; or
- 265 (vi) placed in a secure care facility.

266 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

- 267 (i) the seriousness of the negative and positive behavior;
- 268 (ii) the juvenile's conduct post-adjudication; and
- 269 (iii) the delinquency history of the juvenile.

270 (c) The guidelines shall include:

- 271 (i) responses that are swift and certain;
- 272 (ii) a continuum of community-based options for juveniles living at home;
- 273 (iii) responses that target the individual's criminogenic risk and needs; and
- 274 (iv) incentives for compliance, including earned discharge credits.

275 (9) The commission shall establish supervision length guidelines in accordance with

276 this section before October 1, 2018.

277 Section 4. Section **63M-7-405** is amended to read:

278 **63M-7-405. Compensation of members -- Reports to the Legislature, the courts,**  
279 **and the governor.**

280 (1) (a) A member who is not a legislator may not receive compensation or benefits for  
281 the member's service, but may receive per diem and travel expenses as allowed in:

282 (i) Section [63A-3-106](#);

283 (ii) Section [63A-3-107](#); and

284 (iii) rules made by the Division of Finance according to Sections [63A-3-106](#) and  
285 [63A-3-107](#).

286 (b) Compensation and expenses of a member who is a legislator are governed by  
287 Section [36-2-2](#) and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

288 (2) (a) The commission shall submit to the Legislature, the courts, and the governor at  
289 least 60 days before the annual general session of the Legislature the commission's reports and  
290 recommendations for sentencing guidelines and supervision length guidelines and  
291 amendments.

292 (b) The commission shall use existing data and resources from state criminal justice  
293 agencies.

294 (c) The commission may employ professional assistance and other staff members as it  
295 considers necessary or desirable.

296 (3) The commission shall assist and respond to questions from all three branches of  
297 government, but is part of the Commission on Criminal and Juvenile Justice for coordination  
298 on criminal and juvenile justice issues, budget, and administrative support.

299 (4) (a) As used in this Subsection (4), "master offense list" means a document that  
300 contains all offenses that exist in statute and each offense's associated penalty.

301 (b) No later than May 1, 2017, the commission shall create a master offense list.

302 (c) No later than June 30 of each calendar year, the commission shall:

303 (i) after the last day of the general legislative session, update the master offense list;

304 and

305 (ii) present the updated master offense list to the Law Enforcement and Criminal  
306 Justice Interim Committee.

307 Section 5. Section **64-13-21** is amended to read:

308 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**  
309 **-- POST certified parole or probation officers and peace officers -- Duties -- Supervision**  
310 **fee.**

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

315 (b) ~~[Standards]~~ The department shall establish standards for the supervision of  
316 offenders ~~[shall be established by the department]~~ in accordance with sentencing guidelines and  
317 supervision length guidelines, including the graduated sanctions matrix, established by the  
318 Utah Sentencing Commission, giving priority, based on available resources, to felony offenders  
319 and offenders sentenced pursuant to Subsection [58-37-8\(2\)\(b\)\(ii\)](#).

320 (2) The department shall apply graduated sanctions established by the Utah Sentencing  
321 Commission to facilitate a prompt and appropriate response to an individual's violation of the  
322 terms of probation or parole, including:

323 (a) sanctions to be used in response to a violation of the terms of probation or parole;  
324 and

325 (b) requesting approval from the court or Board of Pardons and Parole to impose a  
326 sanction for an individual's violation of the terms of probation or parole, for a period of  
327 incarceration of not more than three consecutive days and not more than a total of five days  
328 within a period of 30 days.

329 (3) The department shall implement a program of graduated incentives as established  
330 by the Utah Sentencing Commission to facilitate the department's prompt and appropriate  
331 response to an offender's:

332 (a) compliance with the terms of probation or parole; or

333 (b) positive conduct that exceeds those terms.

334 (4) (a) The department shall, in collaboration with the Commission on Criminal and  
335 Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and  
336 procedures for the collection of information, including cost savings related to recidivism  
337 reduction and the reduction in the number of inmates, related to the use of the graduated

338 sanctions and incentives, and offenders' outcomes.

339 (b) The collected information shall be provided to the Commission on Criminal and  
340 Juvenile Justice not less frequently than annually on or before August 31.

341 (5) Employees of the department who are POST certified as law enforcement officers  
342 or correctional officers and who are designated as parole and probation officers by the  
343 executive director have the following duties:

344 (a) monitoring, investigating, and supervising a parolee's or probationer's compliance  
345 with the conditions of the parole or probation agreement;

346 (b) investigating or apprehending any offender who has escaped from the custody of  
347 the department or absconded from supervision;

348 (c) providing investigative services for the courts, the department, or the Board of  
349 Pardons and Parole;

350 (d) supervising any offender during transportation; or

351 (e) collecting DNA specimens when the specimens are required under Section  
352 [53-10-404](#).

353 (6) (a) A monthly supervision fee of \$30 shall be collected from each offender on  
354 probation or parole. The fee may be suspended or waived by the department upon a showing  
355 by the offender that imposition would create a substantial hardship or if the offender owes  
356 restitution to a victim.

357 (b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
358 Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the  
359 supervision fee and the circumstances under which an offender may request a hearing.

360 (ii) In determining whether the imposition of the supervision fee would constitute a  
361 substantial hardship, the department shall consider the financial resources of the offender and  
362 the burden that the fee would impose, with regard to the offender's other obligations.

363 (7) (a) ~~[The]~~ For offenders placed on probation under Section [77-18-1](#) or parole under  
364 Subsection [76-3-202\(1\)\(a\)](#) on or after October 1, 2015, but before January 1, 2019, the  
365 department shall establish a program allowing an offender ~~[on probation under Section [77-18-1](#)~~  
366 ~~or on parole under Subsection [76-3-202\(1\)\(a\)](#)]~~ to earn credits for the offender's compliance  
367 with the terms of the offender's probation or parole, which shall be applied to reducing the  
368 period of probation or parole as provided in this Subsection (7).

369 (b) The program shall provide that an offender earns a reduction credit of 30 days from  
370 the offender's period of probation or parole for each month the offender completes without any  
371 violation of the terms of the offender's probation or parole agreement, including the case action  
372 plan.

373 (c) The department shall maintain a record of credits earned by an offender under this  
374 Subsection (7) and shall request from the court or the Board of Pardons and Parole the  
375 termination of probation or parole not fewer than 30 days prior to the termination date that  
376 reflects the credits earned under this Subsection (7).

377 (d) This Subsection (7) does not prohibit the department from requesting a termination  
378 date earlier than the termination date established by earned credits under Subsection (7)(c).

379 (e) The court or the Board of Pardons and Parole shall terminate an offender's  
380 probation or parole upon completion of the period of probation or parole accrued by time  
381 served and credits earned under this Subsection (7) unless the court or the Board of Pardons  
382 and Parole finds that termination would interrupt the completion of a necessary treatment  
383 program, in which case the termination of probation or parole shall occur when the treatment  
384 program is completed.

385 (f) The department shall report annually to the Commission on Criminal and Juvenile  
386 Justice on or before August 31:

387 (i) the number of offenders who have earned probation or parole credits under this  
388 Subsection (7) in one or more months of the preceding fiscal year and the percentage of the  
389 offenders on probation or parole during that time that this number represents;

390 (ii) the average number of credits earned by those offenders who earned credits;

391 (iii) the number of offenders who earned credits by county of residence while on  
392 probation or parole;

393 (iv) the cost savings associated with sentencing reform programs and practices; and

394 (v) a description of how the savings will be invested in treatment and

395 early-intervention programs and practices at the county and state levels.

396 Section 6. Section **76-3-202** is amended to read:

397 **76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time**  
398 **served on parole -- Discretion of Board of Pardons and Parole.**

399 (1) Every individual committed to the state prison to serve an indeterminate term and,

400 after December 31, 2018, released on parole shall complete a term of parole that extends  
401 through the expiration of the individual's maximum sentence unless the parole is earlier  
402 terminated by the Board of Pardons and Parole in accordance with Subsection 77-27-5(7).

403 ~~[(1)]~~ (2) (a) Except as provided in Subsection ~~[(1)]~~ (2)(b), every ~~[person]~~ individual  
404 committed to the state prison to serve an indeterminate term and ~~[later]~~ released on parole on or  
405 after October 1, 2015, but before January 1, 2019, shall, upon completion of three years on  
406 parole outside of confinement and without violation, be terminated from the ~~[person's]~~  
407 individual's sentence unless the parole is earlier terminated by the Board of Pardons and Parole  
408 or is terminated pursuant to Section 64-13-21.

409 (b) Every ~~[person]~~ individual committed to the state prison to serve an indeterminate  
410 term and later released on parole on or after July 1, 2008, but before January 1, 2019, and who  
411 was convicted of any felony offense under Title 76, Chapter 5, Offenses Against the Person, or  
412 any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a  
413 term of parole that extends through the expiration of the ~~[person's]~~ individual's maximum  
414 sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.

415 ~~[(2)]~~ (3) Every ~~[person]~~ individual convicted of a second degree felony for violating  
416 Section 76-5-404, forcible sexual abuse, or 76-5-404.1, sexual abuse of a child and aggravated  
417 sexual abuse of a child, or attempting, conspiring, or soliciting the commission of a violation of  
418 any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10  
419 years parole outside of confinement and without violation, be terminated from the sentence  
420 unless the ~~[person]~~ individual is earlier terminated by the Board of Pardons and Parole.

421 ~~[(3)(a) Every person convicted of a first degree felony for committing any offense~~  
422 ~~listed in Subsection (3)(b), or attempting, conspiring, or soliciting the commission of a~~  
423 ~~violation of any of those sections, shall complete a term of lifetime parole outside of~~  
424 ~~confinement and without violation unless the person is earlier terminated by the Board of~~  
425 ~~Pardons and Parole.]~~

426 ~~[(b) The offenses referred to in Subsection (3)(a) are:]~~

427 ~~[(i) Section 76-5-301.1, child kidnapping;]~~

428 ~~[(ii) Subsection 76-5-302(1)(b)(vi), aggravated kidnapping involving a sexual offense;]~~

429 ~~[(iii) Section 76-5-402, rape;]~~

430 ~~[(iv) Section 76-5-402.1, rape of a child;]~~

431 ~~[(v) Section 76-5-402.2, object rape;]~~  
 432 ~~[(vi) Section 76-5-402.3, object rape of a child;]~~  
 433 ~~[(vii) Subsection 76-5-403(2), forcible sodomy;]~~  
 434 ~~[(viii) Section 76-5-403.1, sodomy on a child;]~~  
 435 ~~[(ix) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a~~  
 436 ~~child; or]~~  
 437 ~~[(x) Section 76-5-405, aggravated sexual assault.]~~

438 (4) ~~[Any person]~~ An individual who violates the terms of parole, while serving parole,  
 439 for any offense under Subsection (1)[;] or (2), ~~[or (3);]~~ shall at the discretion of the Board of  
 440 Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as  
 441 determined by the Board of Pardons and Parole, but not to exceed the maximum term.

442 ~~[(5) In order for a parolee convicted on or after May 5, 1997, to be eligible for early~~  
 443 ~~termination from parole, the parolee must provide to the Board of Pardons and Parole:]~~

444 ~~[(a) evidence that the parolee has completed high school classwork and has obtained a~~  
 445 ~~high school graduation diploma, a GED certificate, or a vocational certificate; or]~~

446 ~~[(b) documentation of the inability to obtain one of the items listed in Subsection (5)(a)~~  
 447 ~~because of:]~~

448 ~~[(i) a diagnosed learning disability; or]~~

449 ~~[(ii) other justified cause.]~~

450 ~~[(6)]~~ (5) ~~[Any person]~~ An individual paroled following a former parole revocation may  
 451 not be discharged from the ~~[person's]~~ individual's sentence until:

452 (a) the ~~[person]~~ individual has served the applicable period of parole under this section  
 453 outside of confinement ~~[and without violation];~~

454 (b) the ~~[person's]~~ individual's maximum sentence has expired; or

455 (c) the Board of Pardons and Parole orders the ~~[person]~~ individual to be discharged  
 456 from the sentence.

457 ~~[(7)]~~ (6) (a) All time served on parole, outside of confinement and without violation,  
 458 constitutes service ~~[of]~~ toward the total sentence ~~[but does not preclude the requirement of~~  
 459 ~~serving the applicable period of parole under this section, outside of confinement and without~~  
 460 ~~violation].~~

461 (b) Any time ~~[a person]~~ an individual spends outside of confinement after commission

462 of a parole violation does not constitute service ~~[of]~~ toward the total sentence unless the  
463 ~~[person]~~ individual is exonerated at a parole revocation hearing.

464 (c) (i) Any time ~~[a person]~~ an individual spends in confinement awaiting a hearing  
465 before the Board of Pardons and Parole or a decision by the board concerning revocation of  
466 parole constitutes service ~~[of the]~~ toward the total sentence.

467 (ii) In the case of exonerated by the board, the time spent is included in computing the  
468 total parole term.

469 ~~[(8)]~~ (7) When ~~[any]~~ a parolee causes the parolee's absence from the state without  
470 authority from the Board of Pardons and Parole ~~[absents himself from the state]~~ or avoids or  
471 evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

472 ~~[(9)]~~ (8) (a) While on parole, time spent in confinement outside the state may not be  
473 credited toward the service of any Utah sentence.

474 (b) Time in confinement outside the state or in the custody of any tribal authority or the  
475 United States government for a conviction obtained in another jurisdiction tolls the expiration  
476 of the Utah sentence.

477 ~~[(10)]~~ (9) This section does not preclude the Board of Pardons and Parole from  
478 paroling or discharging an inmate at any time within the discretion of the Board of Pardons and  
479 Parole unless otherwise specifically provided by law.

480 ~~[(11)]~~ (10) A parolee sentenced to lifetime parole may petition the Board of Pardons  
481 and Parole for termination of lifetime parole.

482 Section 7. Section **77-16a-201** is amended to read:

483 **77-16a-201. Probation.**

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

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



493 (2) The period of probation for a felony offense committed by a [person] defendant  
494 who has been found guilty with a mental illness at the time of the offense [~~may be for no less~~  
495 ~~than five years. Probation for those offenders~~] may not be subsequently reduced by the  
496 sentencing court without consideration of an updated report on the mental health status of the  
497 defendant.

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

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

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

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

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

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

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

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

518 Section 8. Section **77-16a-205** is amended to read:

519 **77-16a-205. Parole.**

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

523 (2) Before setting a parole date, the board shall request that its mental health adviser

524 prepare a report regarding the offender with a mental illness, including:

- 525 (a) all available clinical facts;
- 526 (b) the diagnosis;
- 527 (c) the course of treatment received at the mental health facility;
- 528 (d) the prognosis for remission of symptoms;
- 529 (e) potential for recidivism;
- 530 (f) an estimation of the dangerousness of the offender with a mental illness either to
- 531 self or others; and
- 532 (g) recommendations for future treatment.

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

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

542 (5) [~~The period of parole may be no less than five years, or until expiration of the~~  
543 ~~defendant's sentence, whichever occurs first.] The board may not subsequently reduce the  
544 period of parole without considering an updated report on the offender's current mental  
545 condition.~~

546 Section 9. Section **77-18-1** is amended to read:

547 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**  
548 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**  
549 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
550 **monitoring.**

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

554 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any

555 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence  
556 and place the defendant [~~on probation. The court may place the defendant~~]:

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

559 (ii) on probation under the supervision of an agency of local government or with a  
560 private organization; or

561 (iii) on court probation under the jurisdiction of the sentencing court.

562 (b) (i) The legal custody of all probationers under the supervision of the department is  
563 with the department.

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

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

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

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

573 (3) (a) The department shall establish supervision and presentence investigation  
574 standards for all individuals referred to the department[~~. These standards shall be~~] based on:

575 (i) the type of offense;

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

577 (iii) the demand for services;

578 (iv) the availability of agency resources;

579 (v) public safety; and

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

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

585 (c) The Judicial Council and the department shall establish procedures to implement

586 the supervision and investigation standards.

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

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

592 (4) Notwithstanding other provisions of law, the department is not required to  
593 supervise the probation of ~~[persons]~~ an individual convicted of a class B or C ~~[misdemeanors~~  
594 ~~or infractions]~~ misdemeanor or an infraction or to conduct presentence investigation reports on  
595 a class C ~~[misdemeanors or infractions]~~ misdemeanor or infraction. However, the department  
596 may supervise the probation of a class B ~~[misdemeanants]~~ misdemeanant in accordance with  
597 department standards.

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

602 (b) The presentence investigation report shall include:

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

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

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

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

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

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

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

625 (b) If a party fails to challenge the accuracy of the presentence investigation report at  
626 the time of sentencing, that matter shall be considered to be waived.

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

631 (8) While on probation, and as a condition of probation, the court may require that  
632 ~~the~~ a defendant~~[-(a)]~~ perform any or all of the following:

633 ~~[(i)]~~ (a) provide for the support of others for whose support the defendant is legally  
634 liable;

635 ~~[(ii)]~~ (b) participate in available treatment programs, including any treatment program  
636 in which the defendant is currently participating, if the program is acceptable to the court;

637 ~~[(iii)]~~ (c) if on probation for a felony offense, serve a period of time, not to exceed one  
638 year, in a county jail designated by the department, after considering any recommendation by  
639 the court as to which jail the court finds most appropriate;

640 ~~[(iv)]~~ (d) serve a term of home confinement, which may include the use of electronic  
641 monitoring;

642 ~~[(v)]~~ (e) participate in compensatory service restitution programs, including the  
643 compensatory service program provided in Section 76-6-107.1;

644 ~~[(vi)]~~ (f) pay for the costs of investigation, probation, and treatment services;

645 ~~[(vii)]~~ (g) make restitution or reparation to the victim or victims with interest in  
646 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

647 ~~[(viii)]~~ (h) comply with other terms and conditions the court considers appropriate to

648 ensure public safety or increase a defendant's likelihood of success on probation[; and].  
649 ~~[(b) if convicted on or after May 5, 1997:]~~  
650 ~~[(i) complete high school classwork and obtain a high school graduation diploma, a~~  
651 ~~GED certificate, or a vocational certificate at the defendant's own expense if the defendant has~~  
652 ~~not received the diploma, GED certificate, or vocational certificate prior to being placed on~~  
653 ~~probation; or]~~  
654 ~~[(ii) provide documentation of the inability to obtain one of the items listed in~~  
655 ~~Subsection (8)(b)(i) because of:]~~  
656 ~~[(A) a diagnosed learning disability; or]~~  
657 ~~[(B) other justified cause.]~~  
658 (9) The department shall collect and disburse the accounts receivable as defined by  
659 Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:  
660 (a) the parole period and any extension of that period in accordance with Subsection  
661 77-27-6(4); and  
662 (b) the probation period in cases for which the court orders supervised probation and  
663 any extension of that period by the department in accordance with Subsection (10).  
664 (10) (a) (i) Probation Except as provided in Subsection (10)(a)(ii), probation of an  
665 individual placed on probation after December 31, 2018, shall be:  
666 (A) for a period of time equal to the individual's maximum sentence unless the court  
667 terminates probation earlier or modifies, revokes, or extends probation in accordance with  
668 Subsection (12); and  
669 (B) terminated in accordance with the supervision length guidelines established by the  
670 Utah Sentencing Commission pursuant to Section 63M-7-404, to the extent the guidelines are  
671 consistent with the requirements of the law.  
672 (ii) Probation of an individual placed on probation after December 31, 2018, whose  
673 maximum sentence is one year or less may be for a period up to 36 months.  
674 (iii) Probation of an individual placed on probation on or after October 1, 2015, but  
675 before January 1, 2019, may be terminated at any time at the discretion of the court or upon  
676 completion without violation of 36 months probation in felony or class A misdemeanor cases,  
677 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to  
678 Section 64-13-21 regarding earned credits.

679           ~~[(ii)-(A)]~~ (b) (i) If, upon expiration or termination of the probation period under  
680 Subsection (10)(a)~~[(i)]~~, there remains an unpaid balance upon the accounts receivable as  
681 defined in Section 77-32a-101, the court may retain jurisdiction of the case and continue the  
682 defendant on bench probation for the limited purpose of enforcing the payment of the account  
683 receivable. If the court retains jurisdiction for this limited purpose, the court may order the  
684 defendant to pay to the court the costs associated with continued probation under this  
685 Subsection (10).

686           ~~[(B)]~~ (ii) In accordance with Section 77-18-6, the court shall record in the registry of  
687 civil judgments any unpaid balance not already recorded and immediately transfer  
688 responsibility to collect the account to the Office of State Debt Collection.

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

692           ~~[(b)]~~ (c) (i) The department shall notify the sentencing court, the Office of State Debt  
693 Collection, and the prosecuting attorney in writing in advance in all cases when termination of  
694 supervised probation is being requested by the department or will occur by law.

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

697           (11) (a) (i) Any time served by a probationer outside of confinement after having been  
698 charged with a probation violation and prior to a hearing to revoke probation does not  
699 constitute service of time toward the total probation term unless the probationer is exonerated  
700 at a hearing to revoke the probation.

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

704           (iii) Any time served in confinement awaiting a hearing or decision concerning  
705 revocation of probation constitutes service of time toward a term of incarceration imposed as a  
706 result of the revocation of probation or a graduated sanction imposed under Section  
707 63M-7-404.

708           (b) The running of the probation period is tolled upon the filing of a violation report  
709 with the court alleging a violation of the terms and conditions of probation or upon the issuance

710 of an order to show cause or warrant by the court.

711 (12) (a) (i) Probation may be modified as is consistent with the [~~graduated sanctions~~  
712 ~~and incentives~~] supervision length guidelines and the graduated sanctions and incentives  
713 developed by the Utah Sentencing Commission under Section 63M-7-404[~~, but the~~].

714 (ii) The length of probation may not be extended, except upon waiver of a hearing by  
715 the probationer or upon a hearing and a finding in court that the probationer has violated the  
716 conditions of probation.

717 [~~(ii)~~] (iii) Probation may not be revoked except upon a hearing in court and a finding  
718 that the conditions of probation have been violated.

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

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

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

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

729 (iii) The order to show cause shall inform the defendant of a right to be represented by  
730 counsel at the hearing and to have counsel appointed if the defendant is indigent.

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

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

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

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

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

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



741 (ii) Upon a finding that the defendant violated the conditions of probation, the court  
742 may order the probation revoked, modified, continued, or reinstated for all or a portion of the  
743 original term of probation.

744 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a  
745 defendant to remain on probation for a period of time that exceeds the length of the defendant's  
746 maximum sentence.

747 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked  
748 and later reinstated, the total time of all periods of probation the defendant serves, relating to  
749 the same sentence, may not exceed the defendant's maximum sentence.

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

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

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

757 [(iv)] (v) If the defendant had, prior to the imposition of a term of incarceration or the  
758 execution of the previously imposed sentence under this Subsection (12), served time in jail as  
759 a condition of probation or due to a violation of probation under Subsection (12)(e)[(iii)](iv),  
760 the time the probationer served in jail constitutes service of time toward the sentence  
761 previously imposed.

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

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

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

768 (c) [~~persons~~] individuals described in Subsection 62A-15-610(2)(g) are receiving  
769 priority for treatment over the defendants described in this Subsection (13).

770 (14) Presentence investigation reports are classified protected in accordance with Title  
771 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections

772 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a  
773 presentence investigation report. Except for disclosure at the time of sentencing pursuant to  
774 this section, the department may disclose the presentence investigation only when:

- 775 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- 776 (b) requested by a law enforcement agency or other agency approved by the department  
777 for purposes of supervision, confinement, and treatment of the offender;
- 778 (c) requested by the Board of Pardons and Parole;
- 779 (d) requested by the subject of the presentence investigation report or the subject's  
780 authorized representative; or
- 781 (e) requested by the victim of the crime discussed in the presentence investigation  
782 report or the victim's authorized representative, provided that the disclosure to the victim shall  
783 include only information relating to statements or materials provided by the victim, to the  
784 circumstances of the crime including statements by the defendant, or to the impact of the crime  
785 on the victim or the victim's household.

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

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

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

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

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

- 797 (i) the defendant to wear an electronic monitoring device at all times; and
- 798 (ii) that a device be placed in the home of the defendant, so that the defendant's  
799 compliance with the court's order may be monitored.

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

- 802 (i) place the defendant on probation under the supervision of the Department of

803 Corrections;

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

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

808 (e) The department shall pay the costs of home confinement through electronic  
809 monitoring only for ~~[those persons who have been]~~ an individual who is determined to be  
810 indigent by the court.

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

813 Section 10. Section ~~77-27-5~~ is amended to read:

814 **77-27-5. Board of Pardons and Parole authority.**

815 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and  
816 under what conditions, subject to this chapter and other laws of the state, ~~[persons]~~ individuals  
817 committed to serve sentences in class A misdemeanor cases at penal or correctional facilities  
818 which are under the jurisdiction of the Department of Corrections, and all felony cases except  
819 treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned,  
820 ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their  
821 sentences commuted or terminated.

822 (b) The board may sit together or in panels to conduct hearings. The chair shall  
823 appoint members to the panels in any combination and in accordance with rules ~~[promulgated]~~  
824 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the  
825 board, except in hearings involving commutation and pardons. The chair may participate on  
826 any panel and when doing so is chair of the panel. The chair of the board may designate the  
827 chair for any other panel.

828 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,  
829 pardon, or commutation granted or sentence terminated, except after a full hearing before the  
830 board or the board's appointed examiner in open session. Any action taken under this  
831 subsection other than by a majority of the board shall be affirmed by a majority of the board.

832 (d) A commutation or pardon may be granted only after a full hearing before the board.

833 (e) The board may determine restitution as provided in Section ~~77-27-6~~ and Subsection

834 77-38a-302(5)(d)(iii)(A).

835 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation  
836 hearings, timely prior notice of the time and location of the hearing shall be given to the  
837 defendant, the county or district attorney's office responsible for prosecution of the case, the  
838 sentencing court, law enforcement officials responsible for the defendant's arrest and  
839 conviction, and whenever possible, the victim or the victim's family.

840 (b) Notice to the victim, the victim's representative, or the victim's family shall include  
841 information provided in Section 77-27-9.5, and any related rules made by the board under that  
842 section. This information shall be provided in terms that are reasonable for the lay person to  
843 understand.

844 (3) Decisions of the board in cases involving paroles, pardons, commutations or  
845 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not  
846 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a  
847 civil judgment, including restitution as provided in Section 77-27-6.

848 (4) This chapter may not be construed as a denial of or limitation of the governor's  
849 power to grant respite or reprieves in all cases of convictions for offenses against the state,  
850 except treason or conviction on impeachment. However, respites or reprieves may not extend  
851 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall  
852 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the  
853 offense as provided. In the case of conviction for treason, the governor may suspend execution  
854 of the sentence until the case is reported to the Legislature at its next session. The Legislature  
855 shall then either pardon or commute the sentence, or direct its execution.

856 (5) In determining when, where, and under what conditions [~~offenders serving~~  
857 ~~sentences~~] an offender serving a sentence may be paroled, pardoned, have restitution ordered,  
858 or have [~~their~~] the offender's fines or forfeitures remitted, or [~~their sentences~~] the offender's  
859 sentence commuted or terminated, the board shall:

860 (a) consider whether the [~~persons have~~] offender has made or [~~are~~] is prepared to make  
861 restitution as ascertained in accordance with the standards and procedures of Section  
862 77-38a-302, as a condition of any parole, pardon, remission of fines or forfeitures, or  
863 commutation or termination of sentence; and

864 (b) develop and use a list of criteria for making determinations under this Subsection

865 (5).

866 (6) In determining whether parole may be terminated, the board shall consider:

867 (a) the offense committed by the parolee[-]; and

868 (b) the parole period as provided in Section [76-3-202](#), and in accordance with Section  
869 [77-27-13](#).

870 (7) For offenders placed on parole after December 31, 2018, the board shall terminate  
871 parole in accordance with the supervision length guidelines established by the Utah Sentencing  
872 Commission under Section [63M-7-404](#), to the extent the guidelines are consistent with the  
873 requirements of the law.

874 Section 11. Section [77-27-7](#) is amended to read:

875 **[77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --](#)**  
876 **[Mental competency.](#)**

877 (1) The Board of Pardons and Parole shall determine within six months after the date  
878 of an offender's commitment to the custody of the Department of Corrections, for serving a  
879 sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the  
880 offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and  
881 shall promptly notify the offender of the date.

882 (2) Before reaching a final decision to release any offender under this chapter, the chair  
883 shall cause the offender to appear before the board, its panel, or any appointed hearing officer,  
884 who shall personally interview the offender to consider the offender's fitness for release and  
885 verify as far as possible information furnished from other sources. Any offender may waive a  
886 personal appearance before the board. Any offender outside of the state shall, if ordered by the  
887 board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in  
888 which the offender is housed in lieu of an appearance before the board. The offender shall be  
889 promptly notified in writing of the board's decision.

890 (3) (a) In the case of an offender convicted of violating or attempting to violate any of  
891 the provisions of Section [76-5-301.1](#), Subsection [76-5-302\(1\)\(b\)\(vi\)](#), Section [76-5-402](#),  
892 [76-5-402.1](#), [76-5-402.2](#), [76-5-402.3](#), [76-5-403](#), [76-5-403.1](#), [76-5-404](#), [76-5-404.1](#), or [76-5-405](#),  
893 the chair may appoint one or more alienists who shall examine the offender within six months  
894 prior to a hearing at which an original parole date is granted on any offense listed in this  
895 Subsection (3).

896 (b) The alienists shall report in writing the results of the examination to the board prior  
897 to the hearing. The report of the appointed alienists shall specifically address the question of  
898 the offender's current mental condition and attitudes as they relate to any danger the offender  
899 may pose to children or others if the offender is released on parole.

900 (4) ~~[The]~~ A parolee may petition the board for termination of lifetime parole as  
901 provided in Section 76-3-202 in the case of a ~~[person]~~ parolee convicted of a first degree felony  
902 violation, or convicted of attempting to violate Section 76-5-301.1, Subsection  
903 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403,  
904 76-5-403.1, 76-5-404.1, or 76-5-405, and released on parole before January 1, 2019.

905 (5) In any case where an offender's mental competency is questioned by the board, the  
906 chair may appoint one or more alienists to examine the offender and report in writing to the  
907 board, specifically addressing the issue of competency.

908 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
909 board shall make rules governing:

- 910 (a) the hearing process;
- 911 (b) alienist examination; and
- 912 (c) parolee petitions for termination of parole.

913 Section 12. Section 77-27-9 is amended to read:

914 **77-27-9. Parole proceedings.**

915 (1) (a) The Board of Pardons and Parole may pardon or parole any offender or  
916 commute or terminate the sentence of any offender committed to a penal or correctional facility  
917 under the jurisdiction of the Department of Corrections for a felony or class A misdemeanor  
918 except as provided in Subsection (2).

919 (b) The board may not release any offender before the minimum term has been served  
920 unless the board finds mitigating circumstances which justify the release and unless the board  
921 has granted a full hearing, in open session, after previous notice of the time and location of the  
922 hearing, and recorded the proceedings and decisions of the board.

923 (c) The board may not pardon or parole any offender or commute or terminate the  
924 sentence of any offender unless the board has granted a full hearing, in open session, after  
925 previous notice of the time and location of the hearing, and recorded the proceedings and  
926 decisions of the board.

927 (d) The release of an offender shall be at the initiative of the board, which shall  
928 consider each case as the offender becomes eligible. However, a prisoner may submit the  
929 prisoner's own application, subject to the rules of the board promulgated in accordance with  
930 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

931 (2) (a) [~~A person~~] An individual sentenced to prison prior to April 29, 1996, for a first  
932 degree felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated  
933 kidnapping, a violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1;  
934 object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of  
935 Section 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection  
936 76-5-404.1(4); aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as  
937 described in Section 76-3-407, may not be eligible for release on parole by the Board of  
938 Pardons and Parole until the offender has fully completed serving the minimum mandatory  
939 sentence imposed by the court. This Subsection (2)(a) supersedes any other provision of law.

940 (b) The board may not parole any offender or commute or terminate the sentence of  
941 any offender before the offender has served the minimum term for the offense, if the offender  
942 was sentenced prior to April 29, 1996, and if:

943 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,  
944 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined  
945 in Title 76, Chapter 5, Offenses Against the Person; and

946 (ii) the victim of the offense was under 18 years of age at the time the offense was  
947 committed.

948 (c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the  
949 board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as  
950 provided in this section.

951 (d) The board may not pardon or parole any offender or commute or terminate the  
952 sentence of any offender who is sentenced to life in prison without parole except as provided in  
953 Subsection (6).

954 (e) On or after April 27, 1992, the board may commute a sentence of death only to a  
955 sentence of life in prison without parole.

956 (f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come  
957 before the Board of Pardons and Parole on or after April 27, 1992.

958 (3) (a) The board may issue subpoenas to compel the attendance of witnesses and the  
959 production of evidence, to administer oaths, and to take testimony for the purpose of any  
960 investigation by the board or any of its members or by a designated hearing examiner in the  
961 performance of its duties.

962 (b) A person who willfully disobeys a properly served subpoena issued by the board is  
963 guilty of a class B misdemeanor.

964 (4) (a) The board may adopt rules consistent with law for its government, meetings and  
965 hearings, the conduct of proceedings before it, the parole and pardon of offenders, the  
966 commutation and termination of sentences, and the general conditions under which parole may  
967 be granted and revoked.

968 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings  
969 held under this chapter, as provided in Section 77-27-9.5.

970 (c) The rules may allow the board to establish reasonable and equitable time limits on  
971 the presentations by all participants in hearings held under this chapter.

972 (5) The board does not provide counseling or therapy for victims as a part of their  
973 participation in any hearing under this chapter.

974 (6) The board may parole a person sentenced to life in prison without parole if the  
975 board finds by clear and convincing evidence that the person is permanently incapable of being  
976 a threat to the safety of society.

977 Section 13. Section 77-27-11 is amended to read:

978 **77-27-11. Revocation of parole.**

979 (1) The board may revoke the parole of any [person] individual who is found to have  
980 violated any condition of [his] the individual's parole.

981 (2) (a) If a parolee is confined by the Department of Corrections or any law  
982 enforcement official for a suspected violation of parole, the Department of Corrections shall  
983 immediately report the alleged violation to the board, by means of an incident report, and make  
984 any recommendation regarding the incident.

985 (b) No parolee may be held for a period longer than 72 hours, excluding weekends and  
986 holidays, without first obtaining a warrant.

987 (3) Any member of the board may issue a warrant based upon a certified warrant  
988 request to a peace officer or other persons authorized to arrest, detain, and return to actual



989 custody a parolee, and may upon arrest or otherwise direct the Department of Corrections to  
990 determine if there is probable cause to believe that the parolee has violated the conditions of  
991 ~~his~~ the parolee's parole.

992 (4) Upon a finding of probable cause, a parolee may be further detained or imprisoned  
993 again pending a hearing by the board or its appointed examiner.

994 (5) (a) The board or its appointed examiner shall conduct a hearing on the alleged  
995 violation, and the parolee shall have written notice of the time and location of the hearing, the  
996 alleged violation of parole, and a statement of the evidence against ~~him~~ the parolee.

997 (b) The board or its appointed examiner shall provide the parolee the opportunity:

998 (i) to be present;

999 (ii) to be heard;

1000 (iii) to present witnesses and documentary evidence;

1001 (iv) to confront and cross-examine adverse witnesses, absent a showing of good cause  
1002 for not allowing the confrontation; and

1003 (v) to be represented by counsel when the parolee is mentally incompetent or pleading  
1004 not guilty.

1005 (c) If heard by an appointed examiner, the examiner shall make a written decision  
1006 which shall include a statement of the facts relied upon by the examiner in determining the  
1007 guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the  
1008 alleged violation occurred. The appointed examiner shall then refer the case to the board for  
1009 disposition.

1010 (d) Final decisions shall be reached by majority vote of the members of the board  
1011 sitting and the parolee shall be promptly notified in writing of the board's findings and  
1012 decision.

1013 (6) (a) Parolees found to have violated the conditions of parole may, at the discretion of  
1014 the board, be returned to parole, have restitution ordered, or be imprisoned again as determined  
1015 by the board, not to exceed the maximum term, or be subject to any other conditions the board  
1016 may impose within its discretion.

1017 (b) If the board returns the parolee to parole, the length of parole may not be for a  
1018 period of time that exceeds the length of the parolee's maximum sentence.

1019 ~~(b)~~ (c) If the board revokes parole for a violation and orders incarceration, the board

1020 shall impose a period of incarceration consistent with the guidelines under Subsection  
1021 [63M-7-404\(5\)](#).  
1022       ~~(e)~~ (d) The following periods of time constitute service of time toward the period of  
1023 incarceration imposed under Subsection (6)~~(b)~~(c):  
1024       (i) time served in jail by a parolee awaiting a hearing or decision concerning revocation  
1025 of parole; and  
1026       (ii) time served in jail by a parolee due to a violation of parole under Subsection  
1027 [64-13-6\(2\)](#).  
1028       Section 14. **Effective date.**  
1029       This bill takes effect on May 8, 2018, except that the amendments to Section  
1030 [63M-7-404](#) (Effective 07/01/18) take effect on July 1, 2018.

---

---

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**