

HB0291S01 compared with HB0291

~~deleted text~~ shows text that was in HB0291 but was deleted in HB0291S01.

Inserted text shows text that was not in HB0291 but was inserted into HB0291S01.

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Representative Eric K. Hutchings proposes the following substitute bill:

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;

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- ▶ 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 Sentencing Commission; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

41-6a-505, as last amended by Laws of Utah 2017, Chapters 445 and 446

63M-7-404 (Superseded 07/01/18), as last amended by Laws of Utah 2015, Chapter 412

63M-7-404 (Effective 07/01/18), as last amended by Laws of Utah 2017, Chapter 330

63M-7-405, as last amended by Laws of Utah 2017, Chapter 377

64-13-21, as last amended by Laws of Utah 2015, Chapter 412

76-3-202, as last amended by Laws of Utah 2015, Chapter 412

77-16a-201, as last amended by Laws of Utah 2011, Chapter 366

77-16a-205, as last amended by Laws of Utah 2011, Chapter 366

77-18-1, as last amended by Laws of Utah 2017, Chapter 304

77-27-5, as last amended by Laws of Utah 2017, Chapter 475

77-27-7, as last amended by Laws of Utah 2008, Chapter 382

77-27-9, as last amended by Laws of Utah 2010, Chapter 110

77-27-11, as last amended by Laws of Utah 2015, Chapter 412

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

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

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

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

(a) the court shall:

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

(B) require the [person] individual to work in a compensatory-service work program for not less than 48 hours;

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

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

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

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

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

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

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

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

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

(b) the court may:

(i) order the [person] individual to obtain substance abuse treatment if the substance

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abuse treatment program determines that substance abuse treatment is appropriate;

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

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

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

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

(a) the court shall:

(i) (A) impose a jail sentence of not less than 240 hours; or

(B) impose a jail sentence of not less than 120 hours in addition to home confinement of not fewer than 720 consecutive hours through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506;

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

(iii) order the ~~[person]~~ individual to participate in an assessment, if it is found appropriate by a screening under Subsection (2)(a)(ii);

(iv) order the ~~[person]~~ individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (2)(b);

(v) impose a fine of not less than \$800;

(vi) order probation for the ~~[person]~~ individual in accordance with Section 41-6a-507;

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

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

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

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

(b) the court may:

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- (i) order the ~~[person]~~ individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;
 - (ii) order the ~~[person]~~ individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the ~~[person]~~ individual is 21 years of age or older; or
 - (iii) order a combination of Subsections (2)(b)(i) and (ii).
- (3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison sentence and places the defendant on probation, the court shall impose:
- (a) a fine of not less than \$1,500;
 - (b) a jail sentence of not less than 1,500 hours; and
 - (c) supervised probation.
- (4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court:
- (a) shall impose an order requiring the ~~[person]~~ individual to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate; and
 - (b) may impose an order requiring the ~~[person]~~ individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the ~~[person]~~ individual is 21 years of age or older.
- (5) ~~[(a)]~~ The requirements of Subsections (1)(a), (2)(a), (3)(a), and (4) may not be suspended.
- ~~[(b) Probation or parole resulting from a conviction for a violation under this section may not be terminated.]~~
- (6) If ~~[a person]~~ an individual is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the ~~[person]~~ individual had a blood alcohol level of .16 or higher, the court shall order the following, or describe on record why the order or orders are not appropriate:
- (a) treatment as described under Subsection (1)(b), (2)(b), or (4); and
 - (b) one or more of the following:
 - (i) the installation of an ignition interlock system as a condition of probation for the ~~[person]~~ individual in accordance with Section 41-6a-518;
 - (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the ~~[person]~~ individual; or
 - (iii) the imposition of home confinement through the use of electronic monitoring in

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accordance with Section 41-6a-506.

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

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

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

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

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

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

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

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

~~[(e)]~~ (v) enhance the discretion of sentencing judges while preserving the role of the

Board of Pardons and Parole and the Youth Parole Authority~~[-]; and~~

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

(i) increase equity in criminal supervision lengths;

(ii) respond to public comment;

~~[(iii)]~~ (iii) relate the length of supervision to an offender's progress;

~~[(iv)]~~ (iv) take into account an offender's risk of offending again;~~[- and -]~~

~~[(v)]~~ (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community~~[-]; and~~

(vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole.

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

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

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

(b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination

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of an individual's risk of offending again.

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

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

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

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

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

(b) The guidelines shall consider the seriousness of the violation of the conditions of parole, the individual's conduct while on parole, and the individual's criminal history.

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

~~[(e)]~~ (v) enhance the discretion of sentencing judges while preserving the role of the

Board of Pardons and Parole and the Youth Parole Authority~~[-]; and~~

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

(i) increase equity in criminal supervision lengths;

(ii) respond to public comment;

~~[(iii)]~~ (iii) relate the length of supervision to an offender's progress;

~~[(iv)]~~ (iv) take into account an offender's risk of offending again;~~{ and }~~

~~[(v)]~~ (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community~~{ and }~~

(vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole.

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

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

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

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

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

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

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

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

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

(b) The guidelines shall consider the seriousness of the violation of the conditions of parole, the individual's conduct while on parole, and the individual's criminal history.

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

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

and

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

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

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

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

- (i) nonjudicially adjusted;

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- (ii) placed on diversion;
- (iii) placed on probation;
- (iv) placed on community supervision;
- (v) placed in an out-of-home placement; or
- (vi) placed in a secure care facility.
- (b) In establishing guidelines under this Subsection (8), the commission shall consider:
 - (i) the seriousness of the negative and positive behavior;
 - (ii) the juvenile's conduct post-adjudication; and
 - (iii) the delinquency history of the juvenile.
- (c) The guidelines shall include:
 - (i) responses that are swift and certain;
 - (ii) a continuum of community-based options for juveniles living at home;
 - (iii) responses that target the individual's criminogenic risk and needs; and
 - (iv) incentives for compliance, including earned discharge credits.

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

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

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

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

- (i) Section 63A-3-106;
- (ii) Section 63A-3-107; and
- (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) supervising any offender during transportation; or

(e) collecting DNA specimens when the specimens are required under Section 53-10-404.

(6) (a) A monthly supervision fee of \$30 shall be collected from each offender on

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probation or parole. The fee may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

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

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

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

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

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

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

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

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

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

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

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

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

(v) a description of how the savings will be invested in treatment and early-intervention programs and practices at the county and state levels.

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

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

(1) Every individual committed to the state prison to serve an indeterminate term and, after December 31, 2018, released on parole shall complete a term of parole that extends through the expiration of the individual's maximum sentence unless the parole is earlier terminated by the Board of Pardons and Parole in accordance with Subsection 77-27-5(7).

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

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

~~[(2)]~~ (3) Every ~~[person]~~ individual convicted of a second degree felony for violating

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Section 76-5-404, forcible sexual abuse, or 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child, or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the ~~[person]~~ individual is earlier terminated by the Board of Pardons and Parole.

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

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

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

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

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

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

~~[(v) Section 76-5-402.2, object rape;]~~

~~[(vi) Section 76-5-402.3, object rape of a child;]~~

~~[(vii) Subsection 76-5-403(2), forcible sodomy;]~~

~~[(viii) Section 76-5-403.1, sodomy on a child;]~~

~~[(ix) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child; or]~~

~~[(x) Section 76-5-405, aggravated sexual assault.]~~

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

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

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

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

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~~because of:]~~

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

~~[(ii) other justified cause:]~~

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

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

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

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

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

(b) Any time ~~[a person]~~ an individual spends outside of confinement after commission of a parole violation does not constitute service ~~[of]~~ toward the total sentence unless the ~~[person]~~ individual is exonerated at a parole revocation hearing.

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

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

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

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

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

~~[(10)]~~ (9) This section does not preclude the Board of Pardons and Parole from

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paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.

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

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

77-16a-201. Probation.

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

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

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

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

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

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

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

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

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

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

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

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

77-16a-205. Parole.

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

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

(a) all available clinical facts;

(b) the diagnosis;

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

(d) the prognosis for remission of symptoms;

(e) potential for recidivism;

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

(g) recommendations for future treatment.

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

(4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental illness who has been placed on parole. UDC may provide treatment by

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contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Supervised probation services provided by the department, an agency of local

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government, or a private organization shall specifically address the offender's risk of reoffending as identified by a validated risk and needs screening or assessment.

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

- (i) the type of offense;
- (ii) the results of a risk and needs assessment;
- (iii) the demand for services;
- (iv) the availability of agency resources;
- (v) public safety; and
- (vi) other criteria established by the department to determine what level of services

shall be provided.

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

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

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

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

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

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

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(b) The presentence investigation report shall include:

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

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

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

(iv) recommendations for treatment of the offender; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(b) if convicted on or after May 5, 1997:]~~

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

~~[(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:]~~

~~[(A) a diagnosed learning disability; or]~~

~~[(B) other justified cause.]~~

(9) The department shall collect and disburse the accounts receivable as defined by Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

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

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

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(10) (a) (i) ~~[Probation]~~ Except as provided in Subsection (10)(a)(ii), probation of an individual placed on probation after December 31, 2018~~, shall be~~:

(A) ~~{for a period of time equal to}~~ may not exceed the individual's maximum sentence~~{unless the court terminates probation earlier or modifies, revokes, or extends probation}~~:

(B) shall be for a period of time that is in accordance with ~~{Subsection (12); and~~
~~(B)}~~ the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law; and

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

(ii) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less may ~~{be for a period up to}~~ not exceed 36 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the defendant needs substance abuse or mental health treatment, as determined by a

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validated risk and needs screening and assessment, that warrants treatment services that are immediately available in the community; or

(B) the sentence previously imposed shall be executed.

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

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

- (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- (b) treatment space at the hospital is available for the defendant; and
- (c) ~~[persons]~~ individuals described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

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

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

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on the victim or the victim's household.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) The Board of Pardons and Parole shall determine by majority decision when and

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under what conditions, subject to this chapter and other laws of the state, [~~persons~~] individuals committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

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

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

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

(e) The board may determine restitution as provided in Section 77-27-6 and Subsection 77-38a-302(5)(d)(iii)(A).

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

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

(3) Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a

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civil judgment, including restitution as provided in Section 77-27-6.

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

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

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

(b) develop and use a list of criteria for making determinations under this Subsection (5).

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

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

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

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

Section 11. Section 77-27-7 is amended to read:

77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.

(1) The Board of Pardons and Parole shall determine within six months after the date

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of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

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

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

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

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

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

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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board shall make rules governing:

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

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

77-27-9. Parole proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The rules may allow the board to establish reasonable and equitable time limits on

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the presentations by all participants in hearings held under this chapter.

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

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

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

77-27-11. Revocation of parole.

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

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

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

(3) Any member of the board may issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee, and may upon arrest or otherwise direct the Department of Corrections to determine if there is probable cause to believe that the parolee has violated the conditions of [~~his~~] the parolee's parole.

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

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

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

(i) to be present;

(ii) to be heard;

(iii) to present witnesses and documentary evidence;

(iv) to confront and cross-examine adverse witnesses, absent a showing of good cause

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for not allowing the confrontation; and

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

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

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

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

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

~~[(b)]~~ (c) If the board revokes parole for a violation and orders incarceration, the board shall impose a period of incarceration consistent with the guidelines under Subsection 63M-7-404(5).

~~[(c)]~~ (d) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)~~[(b)]~~(c):

(i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and

(ii) time served in jail by a parolee due to a violation of parole under Subsection 64-13-6(2).

Section 14. **Effective date.**

This bill takes effect on May 8, 2018, except that the amendments to Section 63M-7-404 (Effective 07/01/18) take effect on July 1, 2018.

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~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel~~