

SENTENCING MODIFICATION AMENDMENTS

2020 SIXTH SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill enacts and amends provisions related to the modification of an individual's jail sentence in a public health emergency.

Highlighted Provisions:

This bill:

- ▶ enacts the Sentence Modification in Emergencies Act;
- ▶ defines terms;
- ▶ allows for an individual who is committed to a county jail and for whom probation has been terminated, or a prosecuting attorney, to file a petition for extraordinary relief for modification of the individual's sentence in a declared emergency;
- ▶ provides the requirements for filing a petition to modify an individual's sentence;
- ▶ provides the grounds for which a court may modify an individual's sentence;
- ▶ requires that notice of a petition and hearing is given to certain individuals;
- ▶ allows for a hearing on the petition when there is an objection by a party or victim;
- ▶ allows an indigent individual to request the appointment of counsel for a hearing on a petition to modify the individual's sentence;
- ▶ provides a sunset date for the Sentence Modification in Emergencies Act;
- ▶ amends provisions of the Post Conviction Remedies Act relating to applicability; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63I-1-253**, as last amended by Laws of Utah 2020, Chapters 154, 174, 214, 234, 242, 269,
34 335, and 354

35 **78B-9-102**, as last amended by Laws of Utah 2017, Chapter 450

36 ENACTS:

37 **53-2d-101**, Utah Code Annotated 1953

38 **53-2d-102**, Utah Code Annotated 1953

39 **53-2d-103**, Utah Code Annotated 1953

40 **53-2d-104**, Utah Code Annotated 1953



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

43 Section 1. Section **53-2d-101** is enacted to read:

44 **CHAPTER 2d. SENTENCE MODIFICATION IN EMERGENCIES ACT**

45 **53-2d-101. Title.**

46 This chapter is known as the "Sentence Modification in Emergencies Act."

47 Section 2. Section **53-2d-102** is enacted to read:

48 **53-2d-102. Definitions.**

49 As used in this chapter:

50 (1) "Declared emergency" means the period of time that:

51 (a) begins on the day on which a state of emergency is declared by the governor under
52 Section 53-2a-206 in response to a public health emergency and ends on the day on which the
53 state of emergency expires or terminates under Section 53-2a-206;

54 (b) begins on the day on which a local emergency is declared by the chief executive
55 officer of a municipality or county under Section 53-2a-208 in response to a public health
56 emergency and ends the day on which the local emergency expires or is terminated by the chief
57 executive officer or the governing body of the municipality or county; or

58 (c) begins on the day on which the executive director of the department issues an order
59 under Section 26-1-10 in response to a public health emergency and ends on the day on which the
60 order expires or is terminated by the executive director of the department.

61 (2) "Department" means the Department of Health created in Section 26-1-4.

62 (3) "Epidemic or pandemic disease":

63 (a) means the occurrence, in a community or region, of cases of an illness clearly in
64 excess of normal expectancy; and

65 (b) includes diseases designated by the department that have the potential to cause
66 serious illness or death.

67 (4) (a) "Jail inmate" means an individual:

68 (i) who is committed to a county jail; and

69 (ii) for whom probation has been terminated.

70 (b) "Jail inmate" does not include an individual:

71 (i) under the jurisdiction of the Board of Pardons and Parole; or

72 (ii) who is committed to a county jail with a statutory minimum jail or prison term.

73 (5) "Public health emergency" means an occurrence or imminent credible threat of an
74 illness or health condition:

75 (a) that is caused by epidemic or pandemic disease;

76 (b) that poses a substantial risk of a significant number of human fatalities or incidents of
77 permanent or long-term disability; and

78 (c) (i) for which, under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery
79 Act:

80 (A) the governor has declared a state of emergency; or

81 (B) a chief executive officer of a municipality or county has declared a local emergency;

82 or

83 (ii) for which the executive director of the department has issued an order under Section
84 26-1-10.

85 (6) "Prosecuting attorney" means:

86 (a) the attorney general and any assistant attorney general;

87 (b) any district attorney or deputy district attorney;

88 (c) any county attorney or assistant county attorney; and

89 (d) any municipal attorney.

90 (7) "Restitution" means the same as that term is defined in Section 77-38a-102.

91 (8) (a) "Sentence" means a commitment order for incarceration in a county jail.

92 (b) "Sentence" does not include an order for restitution, a fine, a fee, or any costs.

93 Section 3. Section **53-2d-103** is enacted to read:

94 **53-2d-103. Petition for sentence modification in public health emergencies --**

95 **Requirements -- Grounds for granting petition.**

96 (1) In a declared emergency, a jail inmate, or a prosecuting attorney, may file a petition
97 for extraordinary relief to modify the jail inmate's sentence.

98 (2) The petition under Subsection (1) shall:

99 (a) contain a specific statement on the factors described in Subsection (3) for which the
100 court may grant relief; and

101 (b) comply with the Utah Rules of Civil Procedure, Rule 65B.

102 (3) (a) If a petition is filed under Subsection (1), the court may grant relief to a jail inmate
103 if the court finds, based on the totality of the circumstances, that modifying the jail inmate's
104 sentence is in the interest of justice, including the following factors:

105 (i) whether the jail inmate has served a majority of the jail inmate's sentence;

106 (ii) whether the release of the jail inmate poses a risk to public safety; and

107 (iii) whether the public health emergency presents a risk to the jail inmate's health,
108 including the jail inmate's susceptibility to the public health emergency due to:

109 (A) the jail inmate's underlying medical condition; or

110 (B) the age of the jail inmate.

111 (b) A court may only grant relief for a petition under this chapter by modifying the jail
112 inmate's sentence.

113 Section 4. Section **53-2d-104** is enacted to read:

114 **53-2d-104. Notice -- Hearing -- Appointment of counsel.**

115 (1) If a jail inmate files a petition under Subsection 53-2d-103(1), the jail inmate shall
116 serve a copy of the petition on the prosecuting attorney who obtained the conviction of the offense
117 that resulted in the sentence that the jail inmate seeks to modify.

118 (2) If a prosecuting attorney files a petition under Subsection 53-2d-103(1), the

119 prosecuting attorney shall:

120 (a) serve a copy of the petition on the jail inmate for whom the petition concerns; and

121 (b) provide notice of the petition and any proceeding for the petition to the victim of the

122 offense that resulted in the jail inmate's sentence for which the prosecuting attorney seeks to

123 modify.

124 (3) If a party or the victim files an objection to the petition, the court may set a hearing

125 and notify the parties and the victim of the date set for the hearing.

126 (4) If a petition is brought properly before a court in accordance with this chapter, the

127 court may, upon the request of an indigent jail inmate, appoint counsel on a pro bono basis to

128 represent the jail inmate in a hearing on the petition.

129 Section 5. Section **63I-1-253** is amended to read:

130 **63I-1-253. Repeal dates, Titles 53 through 53G.**

131 (1) Section **53-2a-105**, which creates the Emergency Management Administration

132 Council, is repealed July 1, 2021.

133 (2) Sections **53-2a-1103** and **53-2a-1104**, which create the Search and Rescue Advisory

134 Board, are repealed July 1, 2022.

135 (3) Title 53, Chapter 2d, Sentence Modification in Emergencies Act, is repealed May 5,

136 2021.

137 [~~(3)~~] (4) Section **53-5-703**, which creates the Concealed Firearm Review Board, is

138 repealed July 1, 2023.

139 [~~(4)~~] (5) Subsection **53-6-203(1)(b)(ii)**, regarding being 19 years old at certification, is

140 repealed July 1, 2027.

141 [~~(5)~~] (6) Subsection **53-13-104(6)(a)**, regarding being 19 years old at certification, is

142 repealed July 1, 2027.

143 [~~(6)~~] (7) Section **53B-6-105.5**, which creates the Technology Initiative Advisory Board, is

144 repealed July 1, 2024.

145 [~~(7)~~] (8) Title 53B, Chapter 17, Part 11, USTAR Researchers, is repealed July 1, 2028.

146 [~~(8)~~] (9) Section **53B-17-1203**, which creates the SafeUT and School Safety Commission,

147 is repealed January 1, 2025.

148 [~~(9)~~] (10) Section **53B-18-1501** is repealed July 1, 2021.

149 [~~(10)~~] (11) Title 53B, Chapter 18, Part 16, USTAR Researchers, is repealed July 1, 2028.

150 ~~[(11)]~~ (12) Title 53B, Chapter 24, Part 4, Rural Residency Training Program, is repealed
151 July 1, 2025.

152 ~~[(12)]~~ (13) Subsection [53C-3-203](#)(4)(b)(vii), which provides for the distribution of money
153 from the Land Exchange Distribution Account to the Geological Survey for test wells and other
154 hydrologic studies in the West Desert, is repealed July 1, 2030.

155 ~~[(13)]~~ (14) Section [53E-3-515](#) is repealed January 1, 2023.

156 ~~[(14)]~~ (15) In relation to a standards review committee, on January 1, 2023:

157 (a) in Subsection [53E-4-202](#)(8), the language "by a standards review committee and the
158 recommendations of a standards review committee established under Section [53E-4-203](#)" is
159 repealed; and

160 (b) Section [53E-4-203](#) is repealed.

161 ~~[(15)]~~ (16) Subsections [53E-3-503](#)(5) and (6), which create coordinating councils for
162 youth in custody, are repealed July 1, 2027.

163 ~~[(16)]~~ (17) Section [53E-4-402](#), which creates the State Instructional Materials
164 Commission, is repealed July 1, 2022.

165 ~~[(17)]~~ (18) Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory
166 Commission, is repealed July 1, 2023.

167 ~~[(18)]~~ (19) Subsection [53E-8-204](#)(4), which creates the advisory council for the Utah
168 Schools for the Deaf and the Blind, is repealed July 1, 2021.

169 ~~[(19)]~~ (20) Section [53F-2-514](#) is repealed July 1, 2020.

170 ~~[(20)]~~ (21) Section [53F-5-203](#) is repealed July 1, 2024.

171 ~~[(21)]~~ (22) Section [53F-5-212](#) is repealed July 1, 2024.

172 ~~[(22)]~~ (23) Section [53F-5-213](#) is repealed July 1, 2023.

173 ~~[(23)]~~ (24) Section [53F-5-214](#), in relation to a grant for professional learning, is repealed
174 July 1, 2025.

175 ~~[(24)]~~ (25) Section [53F-5-215](#), in relation to an elementary teacher preparation grant is
176 repealed July 1, 2025.

177 ~~[(25)]~~ (26) Subsection [53F-9-203](#)(7), which creates the Charter School Revolving
178 Account Committee, is repealed July 1, 2024.

179 ~~[(26)]~~ (27) Section [53F-9-501](#) is repealed January 1, 2023.

180 ~~[(27)]~~ (28) Subsections [53G-4-608](#)(2)(b) and (4)(b), related to the Utah Seismic Safety

181 Commission, are repealed January 1, 2025.

182 ~~[(28)]~~ (29) Subsection 53G-8-211(5), regarding referrals of a minor to court for a class C
183 misdemeanor, is repealed July 1, 2022.

184 Section 6. Section 78B-9-102 is amended to read:

185 **78B-9-102. Replacement of prior remedies.**

186 (1) (a) This chapter establishes the sole remedy for any person who challenges a
187 conviction or sentence for a criminal offense and who has exhausted all other legal remedies,
188 including a direct appeal except as provided in Subsection (2).

189 (b) This chapter replaces all prior remedies for review, including extraordinary or
190 common law writs.

191 (c) Proceedings under this chapter are civil and are governed by the ~~[rules of civil
192 procedure]~~ Utah Rules of Civil Procedure.

193 (d) Procedural provisions for filing and commencement of a petition are found in Rule
194 65C, Utah Rules of Civil Procedure.

195 ~~[(b)]~~ (e) A court may not enter an order to withdraw, modify, vacate or otherwise set
196 aside a plea unless it is in conformity with this chapter or Section 77-13-6.

197 (2) This chapter does not apply to:

198 (a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal
199 offense;

200 (b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal
201 Procedure; ~~[or]~~

202 (c) actions taken by the Board of Pardons and Parole~~[-]; or~~

203 (d) petitions for modifying a sentence under Title 53, Chapter 2d, Sentence Modification
204 in Emergencies Act.

205 Section 7. **Effective date.**

206 If approved by two-thirds of all the members elected to each house, this bill takes effect
207 upon approval by the governor, or the day following the constitutional time limit of Utah
208 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the
209 date of veto override.