

PROBATION AND PAROLE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the revocation of probation or parole.

Highlighted Provisions:

This bill:

- ▶ limits the circumstances under which a government entity may revoke an individual's probation or parole; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

64-13-29, as last amended by Laws of Utah 2020, Chapter 227

77-18-1, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354

77-27-11, as last amended by Laws of Utah 2018, Chapter 334

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

Section 1. Section **64-13-29** is amended to read:

64-13-29. Violation of parole or probation -- Detention -- Hearing.



28 (1) (a) The department or local law enforcement agency shall ensure that the court is
29 notified of violations of the terms and conditions of probation in the case of probationers under
30 the supervision of the department, the local law enforcement agency, or the Board of Pardons
31 and Parole in the case of parolees under the department's supervision when:

32 (i) a sanction of incarceration is recommended; or

33 (ii) the department or local law enforcement agency determines that a graduated
34 sanction is not an appropriate response to the offender's violation and recommends revocation
35 of probation or parole.

36 ~~[(b) In cases where the department desires to detain an offender alleged to have
37 violated his parole or probation and where it is unlikely that the Board of Pardons and Parole or
38 court will conduct a hearing within a reasonable time to determine if the offender has violated
39 his conditions of parole or probation, the department shall hold an administrative hearing
40 within a reasonable time, unless the hearing is waived by the parolee or probationer, to
41 determine if there is probable cause to believe that a violation has occurred.]~~

42 (b) The department may detain an offender alleged to have violated the conditions of
43 the offender's parole or probation by committing a misdemeanor offense or a felony offense, if:

44 (i) it is unlikely that the Board of Pardons and Parole or the court will conduct a
45 hearing within a reasonable time to determine whether the offender violated the conditions of
46 the offender's parole or probation by committing a misdemeanor offense or a felony offense;
47 and

48 (ii) the department holds an administrative hearing within a reasonable time to
49 determine whether there is probable cause to believe the offender violated the conditions of the
50 offender's parole or probation by committing a misdemeanor offense or a felony offense, unless
51 the offender waives the hearing.

52 (c) If there is a conviction for a crime based on the same charges as the probation or
53 parole violation, ~~[or a finding by a federal or state court that there is probable cause to believe
54 that an offender has committed a crime based on the same charges as the probation or parole
55 violation,]~~ the department need not hold an administrative hearing.

56 (2) The appropriate officer or officers of the department shall, as soon as practical
57 following the department's administrative hearing, report to the court or the Board of Pardons
58 and Parole, furnishing a summary of the hearing, and may make recommendations regarding

59 the disposition to be made of the parolee or probationer.

60 (3) Pending [~~any proceeding under this section~~] an administrative hearing described in
61 Subsection (2), the department may take custody of and detain the parolee or probationer
62 involved for a period not to exceed 72 hours excluding weekends and holidays.

63 (4) In [~~cases where probationers are~~] a case where the probationer is supervised by a
64 local law enforcement agency, the agency may take custody of and detain the probationer
65 involved for a period not to exceed 72 hours excluding weekends and holidays if:

66 (a) the probationer [~~commits a major violation or repeated violations of probation, and~~]
67 violates the conditions of the probationer's probation by committing a misdemeanor offense or
68 a felony offense;

69 (b) it is unlikely that the court will conduct a hearing within a reasonable time to
70 determine if the offender has [~~violated the conditions of probation~~] violated the conditions of
71 the probationer's probation by committing a misdemeanor offense or a felony offense; and

72 (c) the law enforcement agency conducts an administrative hearing within a reasonable
73 time to determine if there is probable cause to believe the offender has [~~violated the conditions~~
74 ~~of probation~~] violated the conditions of the probationer's probation by committing a
75 misdemeanor offense or a felony offense, unless the hearing is waived by the probationer.

76 (5) If the requirements for Subsection (4) are met, the local law enforcement agency
77 shall ensure the proper court is notified.

78 (6) If the hearing officer determines that there is probable cause to believe that the
79 offender has violated the conditions of [~~his~~] the offender's parole or probation by committing a
80 misdemeanor offense or a felony offense, the department may detain the offender for a
81 reasonable period of time after the hearing or waiver, as necessary to arrange for the
82 incarceration of the offender. A written order of the department is sufficient authorization for
83 any peace officer to incarcerate the offender. The department may promulgate rules for the
84 implementation of this section.

85 (7) A written order from the local law enforcement agency is sufficient authorization
86 for any peace officer to incarcerate the offender if:

87 (a) the [~~probationers are~~] offender is supervised by a local law enforcement agency;
88 and

89 (b) the appropriate officer or officers determine that there is probable cause to believe

90 that the offender has violated the conditions of probation by committing a misdemeanor
91 offense or a felony offense.

92 (8) If a probationer supervised by a local law enforcement agency commits a violation
93 outside of the jurisdiction of the supervising agency, the arresting agency is not required to
94 hold or transport the probationer for the supervising agency.

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

96 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
97 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
98 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
99 **monitoring.**

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

103 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any
104 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
105 and place the defendant:

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

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

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

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

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

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

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

119 (c) Supervised probation services provided by the department, an agency of local
120 government, or a private organization shall specifically address the offender's risk of

121 reoffending as identified by a validated risk and needs screening or assessment.

122 (3) (a) The department shall establish supervision and presentence investigation
123 standards for all individuals referred to the department based on:

124 (i) the type of offense;

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

126 (iii) the demand for services;

127 (iv) the availability of agency resources;

128 (v) public safety; and

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

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

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

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

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

141 (4) Notwithstanding other provisions of law, the department is not required to
142 supervise the probation of an individual convicted of a class B or C misdemeanor or an
143 infraction or to conduct presentence investigation reports on a class C misdemeanor or
144 infraction. However, the department may supervise the probation of a class B misdemeanant in
145 accordance with department standards.

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

150 (b) The presentence investigation report shall include:

151 (i) a victim impact statement according to guidelines set in Section [77-38a-203](#)

152 describing the effect of the crime on the victim and the victim's family;

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

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

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

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

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

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

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

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

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

181 (a) provide for the support of others for whose support the defendant is legally liable;

182 (b) participate in available treatment programs, including any treatment program in

183 which the defendant is currently participating, if the program is acceptable to the court;

184 (c) if on probation for a felony offense, serve a period of time, as an initial condition of
185 probation, not to exceed one year, in a county jail designated by the department, after
186 considering any recommendation by the court as to which jail the court finds most appropriate:

187 (i) the court may modify probation to include a period of time served in a county jail
188 immediately prior to the termination of probation as long as the terminal period of time does
189 not exceed one year; and

190 (ii) jail days ordered as a sanction for probation violations do not apply to the
191 limitation on jail days described in Subsection (8)(c) or (8)(c)(i);

192 (d) serve a term of home confinement, which may include the use of electronic
193 monitoring;

194 (e) participate in compensatory service restitution programs, including the
195 compensatory service program provided in Section 76-6-107.1;

196 (f) pay for the costs of investigation, probation, and treatment services;

197 (g) make restitution or reparation to the victim or victims with interest in accordance
198 with Chapter 38a, Crime Victims Restitution Act; and

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

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

203 (a) the parole period and any extension of that period in accordance with Subsection
204 77-27-6(4); and

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

207 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), probation of an individual
208 placed on probation after December 31, 2018:

209 (A) may not exceed the individual's maximum sentence;

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

213 (C) shall be terminated in accordance with the supervision length guidelines

214 established by the Utah Sentencing Commission under Section [63M-7-404](#), to the extent the
215 guidelines are consistent with the requirements of the law.

216 (ii) Probation of an individual placed on probation after December 31, 2018, whose
217 maximum sentence is one year or less may not exceed 36 months.

218 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
219 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
220 completion without violation of 36 months probation in felony or class A misdemeanor cases,
221 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
222 Section [64-13-21](#) regarding earned credits.

223 (b) (i) If, upon expiration or termination of the probation period under Subsection
224 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
225 [77-32a-101](#), the court may retain jurisdiction of the case and continue the defendant on bench
226 probation for the limited purpose of enforcing the payment of the account receivable. If the
227 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
228 the court the costs associated with continued probation under this Subsection (10).

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

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

235 (c) Subsections (10)(a) and (b) do not apply to Section [76-7-201](#), criminal nonsupport.

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

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

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

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

248 (iii) Any time served in confinement awaiting a hearing or decision concerning
249 revocation of probation constitutes service of time toward a term of incarceration imposed as a
250 result of the revocation of probation or a graduated sanction imposed under Section
251 [63M-7-404](#).

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

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

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

261 (iii) Probation may not be revoked except upon:

262 (A) a hearing in court; and

263 (B) a finding that the probationer violated the conditions of probation [~~have been~~
264 ~~violated~~] by committing a misdemeanor offense or a felony offense.

265 (b) (i) Upon the filing of an affidavit, or an unsworn written declaration executed in
266 substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act,
267 alleging with particularity facts asserted to constitute violation of the conditions of probation,
268 the court shall determine if the affidavit or unsworn written declaration establishes probable
269 cause to believe that revocation, modification, or extension of probation is justified.

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

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

276 (ii) The defendant shall show good cause for a continuance.
277 (iii) The order to show cause shall inform the defendant of a right to be represented by
278 counsel at the hearing and to have counsel appointed if the defendant is indigent.
279 (iv) The order shall also inform the defendant of a right to present evidence.
280 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit
281 or unsworn written declaration.
282 (ii) If the defendant denies the allegations of the affidavit or unsworn written
283 declaration, the prosecuting attorney shall present evidence on the allegations.
284 (iii) The persons who have given adverse information on which the allegations are
285 based shall be presented as witnesses subject to questioning by the defendant unless the court
286 for good cause otherwise orders.
287 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
288 and present evidence.
289 (e) (i) After the hearing the court shall make findings of fact.
290 (ii) (A) Upon a finding that the defendant violated the conditions of probation, the
291 court may order the probation [~~revoked,~~] modified, continued, or reinstated for all or a portion
292 of the original term of probation.
293 (B) Upon a finding that the defendant violated the conditions of probation by
294 committing a misdemeanor offense or a felony offense, the court may revoke the defendant's
295 probation.
296 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a
297 defendant to remain on probation for a period of time that exceeds the length of the defendant's
298 maximum sentence.
299 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked
300 and later reinstated, the total time of all periods of probation the defendant serves, relating to
301 the same sentence, may not exceed the defendant's maximum sentence.
302 (iv) If a period of incarceration is imposed for a violation, the defendant shall be
303 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to
304 Subsection 63M-7-404(4), unless the judge determines that:
305 (A) the defendant needs substance abuse or mental health treatment, as determined by a
306 validated risk and needs screening and assessment, that warrants treatment services that are

307 immediately available in the community; or

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

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

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

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

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

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

322 (14) Presentence investigation reports are classified protected in accordance with Title
323 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
324 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
325 presentence investigation report. Except for disclosure at the time of sentencing pursuant to this
326 section, the department may disclose the presentence investigation only when:

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

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

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

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

333 (e) requested by the victim of the crime discussed in the presentence investigation
334 report or the victim's authorized representative, provided that the disclosure to the victim shall
335 include only information relating to statements or materials provided by the victim, to the
336 circumstances of the crime including statements by the defendant, or to the impact of the crime
337 on the victim or the victim's household; or

338 (f) requested by a sex offender treatment provider who is certified to provide treatment
339 under the program established in Subsection 64-13-25(3) and who, at the time of the request:

340 (i) is providing sex offender treatment to the offender who is the subject of the
341 presentence investigation report; and

342 (ii) provides written assurance to the department that the report:

343 (A) is necessary for the treatment of the offender;

344 (B) will be used solely for the treatment of the offender; and

345 (C) will not be disclosed to an individual or entity other than the offender.

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

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

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

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

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

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

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

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

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

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

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

368 (e) The department shall pay the costs of home confinement through electronic

369 monitoring only for an individual who is determined to be indigent by the court.

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

372 Section 3. Section **77-27-11** is amended to read:

373 **77-27-11. Revocation of parole.**

374 (1) The board may revoke the parole of ~~[any]~~ an individual who is found to have
375 violated any condition of the individual's parole by committing a misdemeanor offense or a
376 felony offense.

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

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

383 (3) Any member of the board may issue a warrant based upon a certified warrant
384 request to a peace officer or other persons authorized to arrest, detain, and return to actual
385 custody a parolee, and may upon arrest or otherwise direct the Department of Corrections to
386 determine if there is probable cause to believe that the parolee has violated the conditions of
387 the parolee's parole by committing a misdemeanor offense or a felony offense.

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

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

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

394 (i) to be present;

395 (ii) to be heard;

396 (iii) to present witnesses and documentary evidence;

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

399 (v) to be represented by counsel when the parolee is mentally incompetent or pleading

400 not guilty.

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

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

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

413 (6) (a) If the board finds that a parolee violated the conditions of parole, the board may
414 order that the parolee:

415 (i) return to parole;

416 (ii) pay restitution;

417 (iii) is subject to other conditions of parole, if the conditions are within the board's
418 discretion to order; or

419 (iv) if the violation constituted a misdemeanor offense or a felony offense, be
420 imprisoned for a term determined by the board, not to exceed the maximum term.

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

423 (c) If the board revokes parole for a violation and orders incarceration, the board shall
424 impose a period of incarceration consistent with the guidelines under Subsection
425 [63M-7-404\(5\)](#).

426 (d) The following periods of time constitute service of time toward the period of
427 incarceration imposed under Subsection (6)(c):

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

430 (ii) time served in jail by a parolee due to a violation of parole under Subsection

431 64-13-6(2).