

HB0290S01 compared with HB0290

~~{deleted text}~~ shows text that was in HB0290 but was deleted in HB0290S01.

inserted text shows text that was not in HB0290 but was inserted into HB0290S01.

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Representative Keven J. Stratton proposes the following substitute bill:

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}~~Sentencing Commission.

Highlighted Provisions:

This bill:

- ▶ ~~{limits the circumstances under which a government entity may revoke}~~modifies the membership and duties of the Sentencing Commission (commission) by:
 - adding a member to the commission;
 - requiring the commission to make recommendations regarding policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs; and
 - directing the commission to establish processes for responding to and

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recognizing an individual's ~~{probation or parole}~~ progress and positive behavior while under supervision; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-401, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-404, as last amended by Laws of Utah 2018, Chapter 334

64-13-6, as last amended by Laws of Utah 2018, Chapter 200

64-13-21, as last amended by Laws of Utah 2019, Chapter 27

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}~~ 77-27-10, as last amended by Laws of Utah ~~{2018}~~ 2015, Chapter ~~{334}~~ 412

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

Section 1. Section 63M-7-401 is amended to read:

63M-7-401. Creation -- Members -- Appointment -- Qualifications.

(1) There is created a state commission to be known as the Sentencing Commission composed of ~~[27]~~ 28 members. The commission shall develop by-laws and rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and elect its officers.

(2) The commission's members shall be:

(a) two members of the House of Representatives, appointed by the speaker of the House and not of the same political party;

(b) two members of the Senate, appointed by the president of the Senate and not of the same political party;

(c) the executive director of the Department of Corrections or a designee appointed by the executive director;

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(d) the director of the Division of Juvenile Justice Services or a designee appointed by the director;

(e) the executive director of the Commission on Criminal and Juvenile Justice or a designee appointed by the executive director;

(f) the chair of the Board of Pardons and Parole or a designee appointed by the chair;

(g) the chair of the Youth Parole Authority or a designee appointed by the chair;

(h) two trial judges and an appellate judge appointed by the chair of the Judicial Council;

(i) two juvenile court judges designated by the chair of the Judicial Council;

(j) an attorney in private practice who is a member of the Utah State Bar, experienced in criminal defense, and appointed by the Utah Bar Commission;

(k) an attorney who is a member of the Utah State Bar, experienced in the defense of minors in juvenile court, and appointed by the Utah Bar Commission;

(l) the director of Salt Lake Legal Defenders or a designee appointed by the director;

(m) the attorney general or a designee appointed by the attorney general;

(n) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;

(o) a juvenile court prosecutor appointed by the Statewide Association of Public Attorneys;

(p) a representative of the Utah Sheriff's Association appointed by the governor;

(q) a chief of police appointed by the governor;

(r) a licensed professional appointed by the governor who assists in the rehabilitation of adult offenders;

(s) a licensed professional appointed by the governor who assists in the rehabilitation of juvenile offenders;

(t) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population; ~~and~~

(u) one member from the public at large appointed by the governor~~[-]; and~~

(v) a representative of an organization that specializes in civil rights or civil liberties litigation on behalf of incarcerated individuals appointed by the governor.

Section 2. Section 63M-7-404 is amended to read:

63M-7-404. Purpose -- Duties.

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- (1) The purpose of the commission is to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council regarding:
- (a) the sentencing and release of juvenile and adult offenders in order to:
 - (i) respond to public comment;
 - (ii) relate sentencing practices and correctional resources;
 - (iii) increase equity in criminal sentencing;
 - (iv) better define responsibility in criminal sentencing; and
 - (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) relate the length of supervision to an offender's progress;
 - (iv) take into account an offender's risk of offending again;
 - (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~~[-];~~
 - (c) appropriate, evidence-based probation and parole supervision policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:
 - (i) treatment and intervention completion determinations based on individualized case action plans;
 - (ii) measured and consistent processes for addressing violations of conditions of supervision;
 - (iii) processes that include using positive reinforcement to recognize an individual's progress in supervision;
 - (iv) engaging with social services agencies and other stakeholders who provide services that meet offender needs; and
 - (v) identifying community violations that may not warrant revocation of probation or parole.

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(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.

(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 and evidence-based processes to facilitate the prompt and effective response to an individual's progress in or violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections, or other supervision services provider, in order to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration, including:

- ~~[(a) sanctions to be used in response to a violation of the terms of probation or parole;~~
- ~~(b) when violations]~~

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(a) responses to be used when an individual violates a condition of probation or parole;

(b) responses to recognize positive behavior and progress related to an individual's case action plan;

[(b)] (c) when [violations] a violation of a condition of probation or parole should be reported to the court or the Board of Pardons and Parole; and

[(c)] (d) 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;
- (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.

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

Section 3. Section 64-13-6 is amended to read:

64-13-6. Department duties.

(1) The department shall:

(a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;

(b) implement court-ordered punishment of offenders;

(c) provide program opportunities for offenders;

(d) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;

(e) provide the results of ongoing assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;

(f) manage programs that take into account the needs and interests of victims, where reasonable;

(g) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;

(h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;

(i) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals;

(j) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision;

(k) establish a case action plan for each offender as follows:

(i) if an offender is to be supervised in the community, the case action plan shall be established for the offender not more than 90 days after supervision by the department begins; and

(ii) if the offender is committed to the custody of the department, the case action plan shall be established for the offender not more than 120 days after the commitment; and

(l) ensure that any training or certification required of a public official or public

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employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

- (i) under this title;
 - (ii) by the department; or
 - (iii) by an agency or division within the department.
- (2) The department may in the course of supervising probationers and parolees:

(a) ~~[impose graduated sanctions, as]~~ respond in accordance with the graduated and evidence-based processes established by the Utah Sentencing Commission under Subsection 63M-7-404(6), ~~[for]~~ to an individual's violation of one or more terms of the probation or parole; and

(b) upon approval by the court or the Board of Pardons and Parole, impose as a sanction for an individual's violation of the terms of probation or parole 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) (a) By following the procedures in Subsection (3)(b), the department may investigate the following occurrences at state correctional facilities:

- (i) criminal conduct of departmental employees;
- (ii) felony crimes resulting in serious bodily injury;
- (iii) death of any person; or
- (iv) aggravated kidnaping.

(b) Prior to investigating any occurrence specified in Subsection (3)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (3)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (3)(a).

(4) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

(5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and

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during the time periods established in Subsection 77-18-1(9).

Section 4. 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) The department shall establish standards for the supervision of offenders in accordance with sentencing guidelines and supervision length guidelines, including the graduated ~~[sanctions matrix]~~ and evidence-based responses, 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]~~ the graduated and evidence-based responses 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:

(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

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reduction and the reduction in the number of inmates, related to the use of the graduated [sanctions] and evidence-based responses and graduated 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) supervising any offender during transportation; or

(d) 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 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) For offenders placed on probation under Section 77-18-1 or parole under Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the department shall establish a program allowing an offender 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

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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.

(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 ~~44~~5. Section **64-13-29** is amended to read:

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

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

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(i) a sanction of incarceration is recommended; or

(ii) the department or local law enforcement agency determines that a graduated ~~[sanction]~~ and evidence-based response is not an appropriate response to the offender's violation and recommends revocation of probation or parole.

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

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

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

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

~~‡~~

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

(2) The appropriate officer or officers of the department shall, as soon as practical following the department's administrative hearing, report to the court or the Board of Pardons and Parole, furnishing a summary of the hearing, and may make recommendations regarding the disposition to be made of the parolee or probationer.

(3) Pending ~~}}~~ any proceeding under this section ~~}}~~ an administrative hearing described in Subsection (2)}, the department may take custody of and detain the parolee or probationer

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involved for a period not to exceed 72 hours excluding weekends and holidays.

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

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

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

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

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

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

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

(a) the ~~{}~~ probationers are ~~{ offender is }~~ supervised by a local law enforcement agency; and

(b) the appropriate officer or officers determine that there is probable cause to believe that the offender has violated the conditions of probation ~~{ by committing a misdemeanor offense or a felony offense }~~.

(8) If a probationer supervised by a local law enforcement agency commits a violation

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outside of the jurisdiction of the supervising agency, the arresting agency is not required to hold or transport the probationer for the supervising agency.

Section ~~2}6~~. 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 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:

(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 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 based on:

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- (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 an individual convicted of a class B or C misdemeanor or an infraction or to conduct presentence investigation reports on a class C misdemeanor or infraction. However, the department may supervise the probation of a class B 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.

(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

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accordance with 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 a defendant perform any or all of the following:

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

(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;

(c) if on probation for a felony offense, serve a period of time, as an initial condition of probation, not to exceed one year, in a county jail designated by the department, after

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considering any recommendation by the court as to which jail the court finds most appropriate:

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

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

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

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

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

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

(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.

(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).

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

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

(B) shall be for a period of time that is 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; and

(C) shall be terminated 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.

(ii) Probation of an individual placed on probation after December 31, 2018, whose

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maximum sentence is one year or less may 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.

(b) (i) If, upon expiration or termination of the probation period under Subsection (10)(a), 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).

(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.

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

(d) (i) The department shall notify the 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.

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(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]~~ and evidence-based response 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 supervision length guidelines and the graduated ~~[sanctions]~~ and evidence-based responses and graduated incentives developed by the Utah Sentencing Commission under Section 63M-7-404.

(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) Probation may not be revoked except upon ~~the~~
~~—— (A) } a hearing in court {2} and {~~
~~—— (B) } a finding that { the probationer violated } the conditions of probation { } have been violated { } by committing a misdemeanor offense or a felony offense.~~

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

(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 or unsworn written declaration 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.

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(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 or unsworn written declaration.

(ii) If the defendant denies the allegations of the affidavit or unsworn written declaration, 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) ~~(A)~~ Upon a finding that the defendant violated the conditions of probation, the court may order the probation ~~(f)~~ revoked, ~~(f)~~ modified, continued, or reinstated for all or a portion of the original term of probation.

~~{ (B) Upon a finding that the defendant violated the conditions of probation by committing a misdemeanor offense or a felony offense, the court may revoke the defendant's 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.

(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 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.

(v) If the defendant had, prior to the imposition of a term of incarceration or the

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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)(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 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) 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;

(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 on the victim or the victim's household; or

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

- (i) is providing sex offender treatment to the offender who is the subject of the

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presentence investigation report; and

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

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

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

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

(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 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.

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Section 7. Section 77-27-10 is amended to read:

77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking -- Intensive early release parole program.

(1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole, including the ~~use of graduated sanctions pursuant to~~ graduated and evidence-based responses to a violation of a condition of parole established by the Sentencing Commission in accordance with Section 64-13-21, which the offender shall accept and agree to as evidenced by the offender's signature affixed to the agreement.

(b) The parole agreement shall require that the inmate agree in writing that the board may issue a warrant and conduct a parole revocation hearing if:

(i) the board determines after the grant of parole that the inmate willfully provided to the board false or inaccurate information that the board finds was significant in the board's determination to grant parole; or

(ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and
(B) the board did not have information regarding the conduct at the time parole was granted.

(c) A copy of the agreement shall be delivered to the Department of Corrections and a copy shall be given to the parolee. The original shall remain with the board's file.

(2) (a) If an offender convicted of violating or attempting to violate Section 76-5-301.1, Subsection 76-5-302(1), 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, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole.

(b) The board shall develop standards and conditions of parole under this Subsection (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) This Subsection (2) does not apply to intensive early release parole.

(3) (a) In addition to the conditions set out in Subsection (1), the board may place offenders in an intensive early release parole program. The board shall determine the conditions of parole which are reasonably necessary to protect the community as well as to protect the interests of the offender and to assist the offender to lead a law-abiding life.

(b) The offender is eligible for this program only if the offender:

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- (i) has not been convicted of a sexual offense; or
 - (ii) has not been sentenced pursuant to Section 76-3-406.
 - (c) The department shall:
 - (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for operation of the program;
 - (ii) adopt and implement internal management policies for operation of the program;
 - (iii) determine whether or not to refer an offender into this program within 120 days from the date the offender is committed to prison by the sentencing court; and
 - (iv) make the final recommendation to the board regarding the placement of an offender into the program.
 - (d) The department may not consider credit for time served in a county jail awaiting trial or sentencing when calculating the 120-day period.
 - (e) The prosecuting attorney or sentencing court may refer an offender for consideration by the department for participation in the program.
 - (f) The board shall determine whether or not to place an offender into this program within 30 days of receiving the department's recommendation.
 - (4) This program shall be implemented by the department within the existing budget.
 - (5) During the time the offender is on parole, the department shall collect from the offender the monthly supervision fee authorized by Section 64-13-21.
 - (6) When a parolee commits a violation of the parole agreement, the department may:
 - (a) ~~impose a graduated sanction pursuant to~~ respond in accordance with the graduated and evidence-based responses established in accordance with Section 64-13-21; or
 - (b) when ~~the graduated sanctions matrix under Subsection 63M-7-404(6) indicates~~ the graduated and evidence-based responses established in accordance with Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation of parole.
- ~~{ Section 3. Section 77-27-11 is amended to read:~~
- ~~77-27-11. Revocation of parole.~~
- ~~(1) The board may revoke the parole of [any] an individual who is found to have violated any condition of the individual's parole by committing a misdemeanor offense or a felony offense.~~
- ~~(2) (a) If a parolee is confined by the Department of Corrections or any law~~

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~~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 the parolee's parole by committing a misdemeanor offense or a felony offense.~~

~~—— (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 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 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.~~

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~~—— [(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.]~~

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

~~—— (i) return to parole;~~

~~—— (ii) pay restitution;~~

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

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

~~—— (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.~~

~~—— (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).~~

~~—— (d) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)(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).~~

~~}~~