

1 **SENTENCING COMMISSION REQUIREMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel W. Thatcher**

5 House Sponsor: Marsha Judkins

7 **LONG TITLE**

8 **General Description:**

9 This bill provides requirements for the Utah Sentencing Commission regarding the
10 collateral consequences for a conviction or an adjudication of an offense.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ requires the Utah Sentencing Commission to identify any provision of state law that
15 imposes a collateral consequence for a conviction or an adjudication of an offense;
- 16 ▶ requires the Utah Sentencing Commission to prepare and update a guide with
17 collateral consequences that are identified by the Utah Sentencing Commission;
- 18 ▶ requires the guide to contain specific statements regarding the guide's application;
- 19 and
- 20 ▶ provides a reporting requirement for the Utah Sentencing Commission regarding the
21 guide.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63M-7-405**, as last amended by Laws of Utah 2018, Chapter 334

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

31 Section 1. Section **63M-7-405** is amended to read:

32 **63M-7-405. Compensation of members -- Reports to the Legislature, the courts,**
33 **and the governor -- Collateral consequences guide.**

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

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

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

38 (iii) rules made by the Division of Finance according to Sections [63A-3-106](#) and
39 [63A-3-107](#).

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

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

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

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

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

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

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

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

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

58 and

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

61 (5) As used in Subsection (6):

62 (a) "Adjudication" means an adjudication, as that term is defined in Section
63 78A-6-105, of an offense under Section 78A-6-117.

64 (b) "Civil disability" means a legal right or privilege that is revoked as a result of the
65 individual's conviction or adjudication.

66 (c) "Collateral consequence" means:

67 (i) a discretionary disqualification; or

68 (ii) a mandatory sanction.

69 (d) "Conviction" means the same as that term is defined in Section 77-38a-102.

70 (e) "Disadvantage" means any legal or regulatory restriction that:

71 (i) is imposed on an individual as a result of the individual's conviction or adjudication;

72 and

73 (ii) is not a civil disability or a legal penalty.

74 (f) "Discretionary disqualification" means a penalty, a civil disability, or a disadvantage
75 that a court in a civil proceeding, or a federal, state, or local government agency or official,
76 may impose on an individual as a result of the individual's adjudication or conviction for an
77 offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically
78 designated as a penalty, a civil disability, or a disadvantage.

79 (g) "Mandatory sanction" means a penalty, a civil disability, or a disadvantage that:

80 (i) is imposed on an individual as a result of the individual's adjudication or conviction
81 for an offense regardless of whether the penalty, the civil disability, or the disadvantage is
82 specifically designated as a penalty, a civil disability, or a disadvantage; and

83 (ii) is not included in the judgment for the adjudication or conviction.

84 (h) "Offense" means a felony, a misdemeanor, an infraction, or an adjudication under
85 the laws of this state, another state, or the United States.

86 (i) "Penalty" means an administrative, civil, or criminal sanction imposed to punish the
87 individual for the individual's conviction or adjudication.

88 (6) (a) The commission shall:

89 (i) identify any provision of state law, including the Utah Constitution, and any
90 administrative rule that imposes a collateral consequence;

91 (ii) prepare and compile a guide that contains all the provisions identified in
92 Subsection (6)(a)(i) on or before October 1, 2022; and

93 (iii) update the guide described in Subsection (6)(a)(ii) annually.

94 (b) The commission shall state in the guide described in Subsection (6)(a) that:

95 (i) the guide has not been enacted into law;

96 (ii) the guide does not have the force of law;

97 (iii) the guide is for informational purposes only;

98 (iv) an error or omission in the guide, or in any reference in the guide:

99 (A) has no effect on a plea, an adjudication, a conviction, a sentence, or a disposition;

100 and

101 (B) does not prevent a collateral consequence from being imposed;

102 (v) any laws or regulations for a county, a municipality, another state, or the United
103 States, imposing a collateral consequence are not included in the guide; and

104 (vi) the guide does not include any provision of state law or any administrative rule
105 imposing a collateral consequence that is enacted on or after March 31 of each year.

106 (c) The commission shall:

107 (i) place the statements described in Subsection (6)(b) in a prominent place at the
108 beginning of the guide; and

109 (ii) make the guide available to the public on the commission's website.

110 (d) The commission shall:

111 (i) present the updated guide described in Subsection (6)(a)(iii) annually to the Law
112 Enforcement and Criminal Justice Interim Committee; and

113 (ii) identify and recommend legislation on collateral consequences to the Law

114 Enforcement and Criminal Justice Interim Committee.