

1                   **UTAH STATE CORRECTIONAL FACILITY OPERATIONAL**  
2   **AMENDMENTS**

3   2021 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Derrin R. Owens**

6   House Sponsor: V. Lowry Snow

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill addresses Department of Corrections operations, including treatment and  
11 program opportunities for offenders.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ defines terms;
- 15                   ▶ requires the Department of Corrections to offer offenders program opportunities that  
16 are evidence-based and evidence-informed;
- 17                   ▶ requires the Department of Corrections to implement direct supervision where  
18 appropriate to reduce violence and enhance offenders' voluntary participation in  
19 program opportunities;
- 20                   ▶ requires the Department of Corrections to develop an individual case action plan for  
21 each offender that includes program priorities based on assessments of the  
22 offender's risk, needs, and responsivity;
- 23                   ▶ requires the Department of Corrections to share an individual's case action plan,  
24 including changes to or progress made in the plan, with the sentencing and release  
25 authority;
- 26                   ▶ requires the sentencing and release authority to consider an individual's case action  
27 plan when making decisions;
- 28                   ▶ requires the Department of Corrections to provide training in direct supervision and  
29 trauma-informed care; and

30           ▶ exempts the Department of Corrections shooting ranges from public access.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill provides a coordination clause.

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **47-3-305**, as enacted by Laws of Utah 2013, Chapter 155 and further amended by  
38 Revisor Instructions, Laws of Utah 2013, Chapter 155

39           **64-13-1**, as last amended by Laws of Utah 2016, Chapter 243

40           **64-13-6**, as last amended by Laws of Utah 2018, Chapter 200

41           **64-13-14**, as last amended by Laws of Utah 2007, Chapter 306

42           **64-13-24**, as last amended by Laws of Utah 1987, Chapter 116

43           **77-18-1**, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354

44           **77-27-5**, as last amended by Laws of Utah 2019, Chapter 148

45 **Utah Code Sections Affected by Coordination Clause:**

46           **77-18-1**, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354

47           **77-18-105**, Utah Code Annotated 1953



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

50           Section 1. Section **47-3-305** is amended to read:

51           **47-3-305. Exceptions and prohibitions.**

52           (1) This part does not apply to:

53           (a) shooting ranges that are otherwise open to the public;

54           (b) shooting ranges that are operated as a public shooting range staffed by and operated

55 by Division of Wildlife Resources;

56           (c) the Utah National Guard ranges located at Camp Williams and the Salt Lake

57 International Airport; [~~and~~]

58            (d) Department of Corrections ranges; and  
59            ~~[(d)]~~ (e) ranges owned, operated, or currently leased as of March 26, 2013, by a state or  
60 local public safety agency.

61            (2) Firearms may not be allowed in a school building, except under the provision of  
62 Section 76-10-505.5, unless there is an outdoor entrance to the shooting range and the most  
63 direct access to the range is used. An outdoor entrance to a shooting range may not be blocked  
64 by fences, structures, or gates for the purpose of blocking the outdoor entrance.

65            (3) Only air guns may be used in public ranges where the ventilation systems do not  
66 meet current OSHA standards as applied to the duration of exposure of the participants. For  
67 the purposes of this part, an air gun does not include larger caliber pneumatic weapons,  
68 paintball guns, or air shotguns.

69            (4) Group range use is a lawful, approved activity under Subsection 76-10-505.5(4)(a).  
70 Section 2. Section **64-13-1** is amended to read:

71            **64-13-1. Definitions.**

72            As used in this chapter:

73            (1) "Case action plan" means a document developed by the Department of Corrections  
74 that identifies:

75            (a) the program priorities for the treatment of the offender, including the criminal risk  
76 factors as determined by ~~[a risk and needs assessment]~~ risk, needs, and responsivity  
77 assessments conducted by the department[-]; and

78            (b) clearly defined completion requirements.

79            (2) "Community correctional center" means a nonsecure correctional facility operated  
80 by the department.

81            (3) "Correctional facility" means any facility operated to house offenders, either in a  
82 secure or nonsecure setting:

83            (a) by the department; or

84            (b) under a contract with the department.

85            (4) "Criminal risk factors" means a person's characteristics and behaviors that:

86 (a) affect that person's risk of engaging in criminal behavior; and

87 (b) are diminished when addressed by effective treatment, supervision, and other  
88 support resources, resulting in a reduced risk of criminal behavior.

89 (5) "Department" means the Department of Corrections.

90 (6) "Direct supervision" means a housing and supervision system that is designed to  
91 meet the goals described in Subsection [64-13-14\(5\)](#) and has the elements described in  
92 Subsection [64-13-14\(6\)](#).

93 [~~6~~] (7) "Emergency" means any riot, disturbance, homicide, inmate violence  
94 occurring in any correctional facility, or any situation that presents immediate danger to the  
95 safety, security, and control of the department.

96 (8) "Evidence-based" means a program or practice that has had multiple randomized  
97 control studies or a meta-analysis demonstrating that the program or practice is effective for a  
98 specific population or has been rated as effective by a standardized program evaluation tool.

99 (9) "Evidence-informed" means a program or practice that is based on research and the  
100 experience and expertise of the department.

101 [~~7~~] (10) "Executive director" means the executive director of the Department of  
102 Corrections.

103 [~~8~~] (11) "Inmate" means any person who is committed to the custody of the  
104 department and who is housed at a correctional facility or at a county jail at the request of the  
105 department.

106 [~~9~~] (12) "Offender" means any person who has been convicted of a crime for which  
107 he may be committed to the custody of the department and is at least one of the following:

108 (a) committed to the custody of the department;

109 (b) on probation; or

110 (c) on parole.

111 [~~10~~] (13) "Risk and needs assessment" means an actuarial tool validated on criminal  
112 offenders that determines:

113 (a) an individual's risk of reoffending; and

114 (b) the criminal risk factors that, when addressed, reduce the individual's risk of  
115 reoffending.

116 [~~(H)~~] (14) "Secure correctional facility" means any prison, penitentiary, or other  
117 institution operated by the department or under contract for the confinement of offenders,  
118 where force may be used to restrain them if they attempt to leave the institution without  
119 authorization.

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

121 **64-13-6. Department duties.**

122 (1) The department shall:

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

125 (b) implement court-ordered punishment of offenders;

126 (c) provide evidence-based and evidence-informed program opportunities for offenders  
127 designed to reduce offenders' criminogenic and recidivism risks, including behavioral,  
128 cognitive, educational, and career-readiness program opportunities;

129 (d) ensure that offender participation in all program opportunities described in  
130 Subsection (1)(c) is voluntary;

131 (e) where appropriate, utilize offender volunteers as mentors in the program  
132 opportunities described in Subsection (1)(c);

133 [~~(d)~~] (f) provide treatment for sex offenders who are found to be treatable based upon  
134 criteria developed by the department;

135 [~~(e)~~] (g) provide the results of ongoing clinical assessment of sex offenders and  
136 objective diagnostic testing to sentencing and release authorities;

137 [~~(f)~~] (h) manage programs that take into account the needs and interests of victims,  
138 where reasonable;

139 [~~(g)~~] (i) supervise probationers and parolees as directed by statute and implemented by  
140 the courts and the Board of Pardons and Parole;

141 [~~(h)~~] (j) subject to Subsection (2), investigate criminal conduct involving offenders

142 incarcerated in a state correctional facility;

143 ~~[(†)]~~ (k) cooperate and exchange information with other state, local, and federal law  
144 enforcement agencies to achieve greater success in prevention and detection of crime and  
145 apprehension of criminals;

146 ~~[(†)]~~ (l) implement the provisions of Title 77, Chapter 28c, Interstate Compact for  
147 Adult Offender Supervision;

148 ~~[(†)]~~ (m) establish a case action plan based on appropriate validated risk, needs, and  
149 responsivity assessments for each offender as follows:

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

153 ~~[(†)]~~ (B) if the offender is committed to the custody of the department, the case action  
154 plan shall be established for the offender not more than 120 days after the commitment; ~~[and]~~

155 (ii) each case action plan shall integrate an individualized, evidence-based, and  
156 evidence-informed treatment and program plan with clearly defined completion requirements;

157 (iii) the department shall share each newly established case action plan with the  
158 sentencing and release authority within 30 days after the day on which the case action plan is  
159 established; and

160 (iv) the department shall share any changes to a case action plan, including any change  
161 in an offender's risk assessment, with the sentencing and release authority within 30 days after  
162 the day of the change; and

163 ~~[(†)]~~ (n) ensure that any training or certification required of a public official or public  
164 employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter  
165 22, State Training and Certification Requirements, if the training or certification is required:

166 (i) under this title;

167 (ii) by the department; or

168 (iii) by an agency or division within the department.

169 (2) The department may in the course of supervising probationers and parolees:

170 (a) impose graduated sanctions, as established by the Utah Sentencing Commission  
171 under Subsection 63M-7-404(6), for an individual's violation of one or more terms of the  
172 probation or parole; and

173 (b) upon approval by the court or the Board of Pardons and Parole, impose as a  
174 sanction for an individual's violation of the terms of probation or parole a period of  
175 incarceration of not more than three consecutive days and not more than a total of five days  
176 within a period of 30 days.

177 (3) (a) By following the procedures in Subsection (3)(b), the department may  
178 investigate the following occurrences at state correctional facilities:

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

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

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

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

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

192 (5) (a) The executive director of the department, or the executive director's designee if  
193 the designee possesses expertise in correctional programming, shall consult at least annually  
194 with cognitive and career-readiness staff experts from the Utah system of higher education and  
195 the State Board of Education to review the department's evidence-based and evidence-informed  
196 treatment and program opportunities.

197 (b) Beginning in the 2022 interim, the department shall provide an annual report to the

198 Law Enforcement and Criminal Justice Interim Committee regarding the department's  
199 implementation of and offender participation in evidence-based and evidence-informed  
200 treatment and program opportunities designed to reduce the criminogenic and recidivism risks  
201 of offenders over time.

202 [~~5~~] (6) The Department of Corrections shall collect accounts receivable ordered by  
203 the district court as a result of prosecution for a criminal offense according to the requirements  
204 and during the time periods established in Subsection 77-18-1(9).

205 Section 4. Section 64-13-14 is amended to read:

206 **64-13-14. Secure correctional facilities.**

207 (1) The department shall maintain and operate secure correctional facilities for the  
208 incarceration of offenders.

209 (2) For each compound of secure correctional facilities, as established by the executive  
210 director, wardens shall be appointed as the chief administrative officers by the executive  
211 director.

212 (3) The department may transfer offenders from one correctional facility to another and  
213 may, with the consent of the sheriff, transfer any offender to a county jail.

214 (4) Where new or modified facilities are designed appropriately, the department shall  
215 implement an evidence-based direct supervision system in accordance with Subsections (5) and  
216 (6).

217 (5) A direct supervision system shall be designed to meet the goals of:

218 (a) reducing offender violence;

219 (b) enhancing offenders' participation in treatment, program, and work opportunities;

220 (c) managing and reducing offender risk;

221 (d) promoting pro-social offender behaviors;

222 (e) providing a tiered-housing structure that:

223 (i) rewards an offender's pro-social behaviors and progress toward the completion  
224 requirements of the offender's individual case action plan with less restrictive housing and  
225 increased privileges; and



- 226           (ii) houses similarly behaving offenders together; and
- 227           (f) reducing departmental costs.
- 228           (6) A direct supervision system shall include the following elements:
- 229           (a) department staff will interact continuously with offenders to actively manage
- 230 offenders' behavior and to identify problems at early stages;
- 231           (b) department staff will use management techniques designed to prevent and
- 232 discourage negative offender behavior and encourage positive offender behavior;
- 233           (c) department staff will establish and maintain a professional supervisory relationship
- 234 with offenders; and
- 235           (d) barriers separating department staff and offenders shall be removed.
- 236           (7) Beginning in the 2022 interim, the department shall provide an annual report to the
- 237 Law Enforcement and Criminal Justice Interim Committee regarding the status of the
- 238 implementation of direct supervision.

239           Section 5. Section **64-13-24** is amended to read:

240           **64-13-24. Standards for staff training.**

241           To assure the safe and professional operation of correctional programs, the department

242 shall establish policies setting minimum standards for the basic training of all staff upon

243 employment, and the subsequent regular training of staff, including training on direct

244 supervision and trauma-informed care. The training standards of correctional officers who are

245 designated as peace officers shall be not less than those established by the Peace Officer

246 Standards and Training Council.

247           Section 6. Section **77-18-1** is amended to read:

248           **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**

249 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**

250 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**

251 **monitoring.**

252           (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea

253 in abeyance agreement, the court may hold the plea in abeyance as provided in Chapter 2a,

254 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

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

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

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

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

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

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

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

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

271 (c) Supervised probation services provided by the department, an agency of local  
272 government, or a private organization shall specifically address the offender's risk of  
273 reoffending as identified by a validated risk and needs screening or assessment.

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

276 (i) the type of offense;

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

278 (iii) the demand for services;

279 (iv) the availability of agency resources;

280 (v) public safety; and

281 (vi) other criteria established by the department to determine what level of services

282 shall be provided.

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

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

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

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

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

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

302 (b) The presentence investigation report shall include:

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

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

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

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

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

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

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

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

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

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

334 (b) participate in available treatment programs, including any treatment program in  
335 which the defendant is currently participating, if the program is acceptable to the court;

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

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

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

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

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

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

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

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

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

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

355 (a) the parole period and any extension of that period in accordance with Subsection  
356 77-27-6(4); and

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

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

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

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

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

366 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the  
367 guidelines are consistent with the requirements of the law.

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

370 (iii) Probation of an individual placed on probation on or after October 1, 2015, but  
371 before January 1, 2019, may be terminated at any time at the discretion of the court or upon  
372 completion without violation of 36 months probation in felony or class A misdemeanor cases,  
373 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to  
374 Section 64-13-21 regarding earned credits.

375 (b) (i) If, upon expiration or termination of the probation period under Subsection  
376 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section  
377 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench  
378 probation for the limited purpose of enforcing the payment of the account receivable. If the  
379 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to  
380 the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

393 (11) (a) (i) Any time served by a probationer outside of confinement after having been

394 charged with a probation violation and prior to a hearing to revoke probation does not  
395 constitute service of time toward the total probation term unless the probationer is exonerated  
396 at a hearing to revoke the probation.

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

400 (iii) Any time served in confinement awaiting a hearing or decision concerning  
401 revocation of probation constitutes service of time toward a term of incarceration imposed as a  
402 result of the revocation of probation or a graduated sanction imposed under Section  
403 [63M-7-404](#).

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

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

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

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

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

420 (ii) If the court determines there is probable cause, it shall cause to be served on the  
421 defendant a warrant for the defendant's arrest or a copy of the affidavit or unsworn written

422 declaration and an order to show cause why the defendant's probation should not be revoked,  
423 modified, or extended.

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

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

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

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

430 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit  
431 or unsworn written declaration.

432 (ii) If the defendant denies the allegations of the affidavit or unsworn written  
433 declaration, the prosecuting attorney shall present evidence on the allegations.

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

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

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

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

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

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

449 (iv) If a period of incarceration is imposed for a violation, the defendant shall be



450 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to  
451 Subsection 63M-7-404(4), unless the judge determines that:

452 (A) the defendant needs substance abuse or mental health treatment, as determined by a  
453 validated risk and needs screening and assessment, that warrants treatment services that are  
454 immediately available in the community; or

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

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

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

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

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

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

469 (14) Presentence investigation reports are classified protected in accordance with Title  
470 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections  
471 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a  
472 presentence investigation report. Except for disclosure at the time of sentencing pursuant to  
473 this section, the department may disclose the presentence investigation only when:

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

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

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

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

480 (e) requested by the victim of the crime discussed in the presentence investigation  
481 report or the victim's authorized representative, provided that the disclosure to the victim shall  
482 include only information relating to statements or materials provided by the victim, to the  
483 circumstances of the crime including statements by the defendant, or to the impact of the crime  
484 on the victim or the victim's household; or

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

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

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

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

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

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

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

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

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

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

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

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

505 (ii) that a device be placed in the home of the defendant, so that the defendant's

506 compliance with the court's order may be monitored.

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

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

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

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

515 (e) The department shall pay the costs of home confinement through electronic  
516 monitoring only for an individual who is determined to be indigent by the court.

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

519 (17) When making any decision regarding probation, the court shall consider  
520 information provided by the Department of Corrections regarding a defendant's individual case  
521 action plan, including any progress the defendant has made in satisfying the case action plan's  
522 completion requirements.

523 Section 7. Section 77-27-5 is amended to read:

524 **77-27-5. Board of Pardons and Parole authority.**

525 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and  
526 under what conditions any convictions, except for treason or impeachment, may be pardoned or  
527 commuted, subject to this chapter and other laws of the state.

528 (b) The Board of Pardons and Parole shall determine by majority decision when and  
529 under what conditions, subject to this chapter and other laws of the state, individuals  
530 committed to serve sentences at penal or correctional facilities that are under the jurisdiction of  
531 the Department of Corrections, except treason or impeachment convictions or as otherwise  
532 limited by law, may be released upon parole, ordered to pay restitution, or have their fines,  
533 forfeitures, or restitution remitted, or their sentences terminated.

534 (c) The board may sit together or in panels to conduct hearings. The chair shall appoint  
535 members to the panels in any combination and in accordance with rules made in accordance  
536 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the board. The chair may  
537 participate on any panel and when doing so is chair of the panel. The chair of the board may  
538 designate the chair for any other panel.

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

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

544 (f) The board may determine restitution as provided in Section 77-27-6 and Subsection  
545 77-38a-302(5)(d)(iii)(A).

546 (2) (a) In the case of any hearings, timely prior notice of the time and location of the  
547 hearing shall be given to the offender.

548 (b) The county or district attorney's office responsible for prosecution of the case, the  
549 sentencing court, and law enforcement officials responsible for the defendant's arrest and  
550 conviction shall be notified of any board hearings through the board's website.

551 (c) Whenever possible, the victim or the victim's representative, if designated, shall be  
552 notified of original hearings and any hearing after that if notification is requested and current  
553 contact information has been provided to the board.

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

557 (3) Decisions of the board in cases involving paroles, pardons, commutations or  
558 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not  
559 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a  
560 civil judgment, including restitution as provided in Section 77-27-6.

561 (4) This chapter may not be construed as a denial of or limitation of the governor's

562 power to grant respite or reprieves in all cases of convictions for offenses against the state,  
563 except treason or conviction on impeachment. However, respites or reprieves may not extend  
564 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall  
565 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the  
566 offense as provided. In the case of conviction for treason, the governor may suspend execution  
567 of the sentence until the case is reported to the Legislature at its next session. The Legislature  
568 shall then either pardon or commute the sentence, or direct its execution.

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

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

576 (b) develop and use a list of criteria for making determinations under this Subsection  
577 (5)~~[-]~~;

578 (c) consider information provided by the Department of Corrections regarding an  
579 offender's individual case action plan; and

580 (d) review an offender's status within 60 days after the day on which the board receives  
581 notice from the Department of Corrections that the offender has completed all of the offender's  
582 case action plan components that relate to activities that can be accomplished while the  
583 offender is imprisoned.

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

585 (a) the offense committed by the parolee; and

586 (b) the parole period as provided in Section 76-3-202, and in accordance with Section  
587 77-27-13.

588 (7) For offenders placed on parole after December 31, 2018, the board shall terminate  
589 parole in accordance with the supervision length guidelines established by the Utah Sentencing

590 Commission under Section [63M-7-404](#), to the extent the guidelines are consistent with the  
591 requirements of the law.

592 Section 8. **Coordinating S.B. 139 with H.B. 260 -- Technical and substantive**  
593 **amendments.**

594 If this S.B. 139 and H.B. 260, Criminal Justice Modifications, both pass and become  
595 law, it is the intent of the Legislature that the Office of Legislative Research and General  
596 Counsel shall prepare the Utah Code database for publication by:

597 (1) not making the changes to Section [77-18-1](#) in this S.B.139; and

598 (2) adding a new subsection (9) to Section 77-18-105 in H.B. 260:

599 "(9) When making any decision regarding probation, the court shall consider  
600 information provided by the Department of Corrections regarding a defendant's individual case  
601 action plan, including any progress the defendant has made in satisfying the case action plan's  
602 completion requirements."