

SB0139S02 compared with SB0139S01

~~text~~ shows text that was in SB0139S01 but was deleted in SB0139S02.

text shows text that was not in SB0139S01 but was inserted into SB0139S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Derrin R. Owens proposes the following substitute bill:

UTAH STATE CORRECTIONAL FACILITY OPERATIONAL AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Corrections to offer offenders program opportunities that are evidence-based and evidence-informed;
- ▶ requires the Department of Corrections to implement direct supervision where appropriate to reduce violence and enhance offenders' voluntary participation in

SB0139S02 compared with SB0139S01

program opportunities;

- ▶ requires the Department of Corrections to develop an individual case action plan for each offender that includes program priorities based on assessments of the offender's risk, needs, and responsivity;
- ▶ requires the Department of Corrections to share an individual's case action plan, including changes to or progress made in the plan, with the sentencing and release authority;
- ▶ requires the sentencing and release authority to consider an individual's case action plan when making decisions;
- ▶ requires the Department of Corrections to provide training in direct supervision and trauma-informed care; and
- ▶ exempts the Department of Corrections shooting ranges from public access.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

Utah Code Sections Affected by Coordination Clause:

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

77-18-105, Utah Code Annotated 1953

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

SB0139S02 compared with SB0139S01

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

47-3-305. Exceptions and prohibitions.

(1) This part does not apply to:

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

(b) shooting ranges that are operated as a public shooting range staffed by and operated by Division of Wildlife Resources;

(c) the Utah National Guard ranges located at Camp Williams and the Salt Lake International Airport; ~~and~~

(d) Department of Corrections ranges; and

~~(d)~~ (e) ranges owned, operated, or currently leased as of March 26, 2013, by a state or local public safety agency.

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

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

(4) Group range use is a lawful, approved activity under Subsection 76-10-505.5(4)(a).

Section 2. Section **64-13-1** is amended to read:

64-13-1. Definitions.

As used in this chapter:

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

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

(b) clearly defined completion requirements.

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

SB0139S02 compared with SB0139S01

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

- (a) by the department; or
- (b) under a contract with the department.

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

- (a) affect that person's risk of engaging in criminal behavior; and
- (b) are diminished when addressed by effective treatment, supervision, and other

support resources, resulting in a reduced risk of criminal behavior.

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

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

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

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

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

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

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

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

- (a) committed to the custody of the department;
- (b) on probation; or
- (c) on parole.

~~[(10)]~~ (13) "Risk and needs assessment" means an actuarial tool validated on criminal

SB0139S02 compared with SB0139S01

offenders that determines:

- (a) an individual's risk of reoffending; and
- (b) the criminal risk factors that, when addressed, reduce the individual's risk of reoffending.

~~[(11)]~~ (14) "Secure correctional facility" means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain them if they attempt to leave the institution without authorization.

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 evidence-based and evidence-informed program opportunities for offenders designed to reduce offenders' criminogenic and recidivism risks, including behavioral, cognitive, educational, and career-readiness program opportunities;

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

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

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

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

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

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

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

SB0139S02 compared with SB0139S01

~~[(†)]~~ (k) 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;

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

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

(i) (A) 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

~~[(††)]~~ (B) 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]~~

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

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

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

~~[(†)]~~ (n) ensure that any training or certification required of a public official or public 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 established by the Utah Sentencing Commission under Subsection 63M-7-404(6), for 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

SB0139S02 compared with SB0139S01

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

(b) Beginning in the 2022 interim, the department shall provide an annual report to the Law Enforcement and Criminal Justice Interim Committee regarding the department's implementation of and offender participation in evidence-based and evidence-informed treatment and program opportunities designed to reduce the criminogenic and recidivism risks of offenders over time.

~~(5)~~ (6) 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 during the time periods established in Subsection 77-18-1(9).

SB0139S02 compared with SB0139S01

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

64-13-14. Secure correctional facilities.

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

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

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

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

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

(a) reducing offender violence;

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

(c) managing and reducing offender risk;

(d) promoting pro-social offender behaviors;

(e) providing a tiered-housing structure that:

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

(ii) houses similarly behaving offenders together; and

(f) reducing departmental costs.

(6) A direct supervision system shall include the following elements:

(a) department staff will interact continuously with offenders to actively manage offenders' behavior and to identify problems at early stages;

(b) department staff will use management techniques designed to prevent and discourage negative offender behavior and encourage positive offender behavior;

(c) department staff will establish and maintain a professional supervisory relationship with offenders; and

(d) barriers separating department staff and offenders shall be removed.

SB0139S02 compared with SB0139S01

(7) Beginning in the 2022 interim, the department shall provide an annual report to the Law Enforcement and Criminal Justice Interim Committee regarding the status of the implementation of direct supervision.

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

64-13-24. Standards for staff training.

To assure the safe and professional operation of correctional programs, the department shall establish policies setting minimum standards for the basic training of all staff upon employment, and the subsequent regular training of staff, including training on direct supervision and trauma-informed care. The training standards of correctional officers who are designated as peace officers shall be not less than those established by the Peace Officer Standards and Training Council.

Section 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.

SB0139S02 compared with SB0139S01

(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:

(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 misdemeanor in accordance with department standards.

SB0139S02 compared with SB0139S01

(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 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

SB0139S02 compared with SB0139S01

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 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

SB0139S02 compared with SB0139S01

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 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.

SB0139S02 compared with SB0139S01

(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.

(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 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 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 a hearing in court and a finding that the conditions of probation have been violated.

(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

SB0139S02 compared with SB0139S01

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.

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

SB0139S02 compared with SB0139S01

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 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

SB0139S02 compared with SB0139S01

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 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.

SB0139S02 compared with SB0139S01

(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.

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

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

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

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

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

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

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

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

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

SB0139S02 compared with SB0139S01

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

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

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

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

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

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

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

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

(b) develop and use a list of criteria for making determinations under this Subsection

SB0139S02 compared with SB0139S01

(5)[-]:

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

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

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

(a) the offense committed by the parolee; and

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

(7) For offenders placed on parole after December 31, 2018, the board shall terminate parole 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.

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

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

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

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

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