

OFFENDER SUPERVISION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Michael S. Kennedy

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 5 absent

General Description:

This bill amends provisions regarding individuals subject to probation and parole.

Highlighted Provisions:

This bill:

- ▶ allows a jail to hold a parolee or probationer under certain circumstances;
- ▶ clarifies information contained in the sentencing guidelines including:
 - the information a court shall consider when an individual violates a provision of probation or parole; and
 - a limitation on the guidelines recommending caps for periods of incarceration when an individual violates a condition of probation or parole;
- ▶ requires the department of corrections to detain an individual who violates a condition of probation or parole if the violation was a particular type of offense;
- ▶ requires a court to review costs that a defendant will be charged for supervisory services;
- ▶ clarifies which offenders, the department of corrections, a local government agency, or a private probation provider may supervise;
- ▶ requires the department of corrections to provide a victim notice regarding:



- 28 • the expiration of an offender's probation or parole term; and
- 29 • the victim's ability to obtain a continuous protective order; and
- 30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **17-22-5.5**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4
- 38 **63M-7-404**, as last amended by Laws of Utah 2021, Chapter 173
- 39 **64-13-14.7**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **64-13-29**, as last amended by Laws of Utah 2021, Chapter 173
- 41 **77-18-105**, as enacted by Laws of Utah 2021, Chapter 260 and last amended by
- 42 Coordination Clause, Laws of Utah 2021, Chapter 246



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

45 Section 1. Section **17-22-5.5** is amended to read:

46 **17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity**
47 **of jail facilities -- Transfer or release of prisoners -- Limitation -- Records regarding**
48 **release.**

- 49 (1) (a) Except as provided in Subsection (4), a county sheriff shall determine:
 - 50 (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail
 - 51 facility under the sheriff's control;
 - 52 (ii) the nature of each program conducted at a jail facility under the sheriff's control;
 - 53 and
 - 54 (iii) the internal operation of a jail facility under the sheriff's control.
- 55 (b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any
- 56 applicable zoning ordinance or conditional use permit of the county or municipality.
- 57 (2) Except as provided in Subsection (4), each county sheriff shall:
 - 58 (a) with the approval of the county legislative body, establish a maximum operating

59 capacity for each jail facility under the sheriff's control, based on facility design and staffing;
60 and

61 (b) upon a jail facility reaching the jail facility's maximum operating capacity:

62 (i) transfer prisoners to another appropriate facility:

63 (A) under the sheriff's control; or

64 (B) available to the sheriff by contract;

65 (ii) release prisoners:

66 (A) to a supervised release program, according to release criteria established by the
67 sheriff; or

68 (B) to another alternative incarceration program developed by the sheriff; or

69 (iii) admit prisoners in accordance with law and a uniform admissions policy imposed
70 equally upon all entities using the county jail.

71 (3) (a) The sheriff shall keep records of the release status and the type of release
72 program or alternative incarceration program for any prisoner released under Subsection
73 (2)(b)(ii).

74 (b) The sheriff shall make these records available upon request to the Department of
75 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

76 (4) This section may not be construed to authorize a sheriff to modify provisions of a
77 contract with the Department of Corrections to house in a county jail an individual sentenced to
78 the Department of Corrections.

79 (5) Regardless of whether a jail facility has reached the jail facility's maximum
80 operating capacity under Subsection (2), a sheriff may release an individual from a jail facility
81 in accordance with Section [77-20-203](#) or [77-20-204](#).

82 (6) (a) Subject to Subsection (6)(c), a jail facility shall detain an individual for up to 24
83 hours if:

84 (i) the individual is on probation or parole; and

85 (ii) the individual was arrested for:

86 (A) a violent felony as defined in Section [76-3-203.5](#); or

87 (B) a qualifying domestic violence offense as defined in Subsection [77-36-1.1\(4\)](#) that
88 is not a criminal mischief offense.

89 (b) The jail facility shall notify the entity supervising the individual's probation or

90 parole that the individual is being detained.

91 (c) (i) The jail facility shall release the individual:

92 (A) to the Department of Corrections if the Department of Corrections supervises the
93 individual and requests the individual's release; or

94 (B) if a court orders release.

95 (ii) Nothing in this Subsection (6) prohibits a jail facility from holding the individual in
96 accordance with Title 77, Chapter 20, Bail, for new criminal conduct.

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

98 **63M-7-404. Purpose -- Duties.**

99 (1) The purpose of the commission is to develop guidelines and propose
100 recommendations to the Legislature, the governor, and the Judicial Council regarding:

101 (a) the sentencing and release of juvenile and adult offenders in order to:

102 (i) respond to public comment;

103 (ii) relate sentencing practices and correctional resources;

104 (iii) increase equity in criminal sentencing;

105 (iv) better define responsibility in criminal sentencing; and

106 (v) enhance the discretion of sentencing judges while preserving the role of the Board
107 of Pardons and Parole and the Youth Parole Authority;

108 (b) the length of supervision of adult offenders on probation or parole in order to:

109 (i) increase equity in criminal supervision lengths;

110 (ii) respond to public comment;

111 (iii) relate the length of supervision to an offender's progress;

112 (iv) take into account an offender's risk of offending again;

113 (v) relate the length of supervision to the amount of time an offender has remained
114 under supervision in the community; and

115 (vi) enhance the discretion of the sentencing judges while preserving the role of the
116 Board of Pardons and Parole;

117 (c) appropriate, evidence-based probation and parole supervision policies and services
118 that assist individuals in successfully completing supervision and reduce incarceration rates
119 from community supervision programs while ensuring public safety, including:

120 (i) treatment and intervention completion determinations based on individualized case

121 action plans;

122 (ii) measured and consistent processes for addressing violations of conditions of
123 supervision;

124 (iii) processes that include using positive reinforcement to recognize an individual's
125 progress in supervision;

126 (iv) engaging with social services agencies and other stakeholders who provide
127 services that meet offender needs; and

128 (v) identifying community violations that may not warrant revocation of probation or
129 parole.

130 (2) (a) The commission shall modify the sentencing guidelines and supervision length
131 guidelines for adult offenders to implement the recommendations of the Commission on
132 Criminal and Juvenile Justice for reducing recidivism.

133 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting
134 the public and ensuring efficient use of state funds.

135 (3) (a) The commission shall modify the criminal history score in the sentencing
136 guidelines for adult offenders to implement the recommendations of the Commission on
137 Criminal and Juvenile Justice for reducing recidivism.

138 (b) The modifications to the criminal history score under Subsection (3)(a) shall
139 include factors in an offender's criminal history that are relevant to the accurate determination
140 of an individual's risk of offending again.

141 (4) (a) The commission shall establish sentencing guidelines for periods of
142 incarceration for individuals who are on probation and:

143 (i) who have violated one or more conditions of probation; and

144 (ii) whose probation has been revoked by the court.

145 (b) ~~[The guidelines shall consider]~~ For a situation described in Subsection (4)(a), the
146 guidelines shall recommend that a court consider:

147 (i) the seriousness of ~~[the]~~ any violation of the ~~[conditions]~~ condition of probation~~;~~;

148 (ii) the probationer's conduct while on probation~~;~~; and

149 (iii) the probationer's criminal history.

150 (c) The guidelines described in this Subsection (4) may include a cap on a period of
151 incarceration if the cap:

- 152 (i) is at least 90 days; and
- 153 (ii) the guidelines include a public safety exception that a court may consider when
- 154 imposing a period of incarceration.

155 (5) (a) The commission shall establish sentencing guidelines for periods of
 156 incarceration for individuals who are on parole and:

- 157 (i) who have violated a condition of parole; and
- 158 (ii) whose parole has been revoked by the Board of Pardons and Parole.

159 (b) ~~[The guidelines shall consider]~~ For a situation described in Subsection (5)(a), the
 160 guidelines shall recommend that the Board of Pardons and Parole consider:

- 161 (i) the seriousness of ~~[the]~~ any violation of the ~~[conditions]~~ condition of parole~~];~~;
- 162 (ii) the individual's conduct while on parole~~];~~ and
- 163 (iii) the individual's criminal history.

164 (c) The guidelines described in this Subsection (5) may include a cap on a period of
 165 incarceration if the cap:

- 166 (i) is at least 180 days; and
- 167 (ii) the guidelines include a public safety exception that the Board of Pardons and
 168 Parole may consider when imposing a period of incarceration.

169 (6) The commission shall establish graduated and evidence-based processes to
 170 facilitate the prompt and effective response to an individual's progress in or violation of the
 171 terms of probation or parole by the adult probation and parole section of the Department of
 172 Corrections, or other supervision services provider, ~~[in order]~~ to implement the
 173 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism
 174 and incarceration, including:

- 175 (a) responses to be used when an individual violates a condition of probation or parole;
- 176 (b) responses to recognize positive behavior and progress related to an individual's case
 177 action plan;

178 (c) when a violation of a condition of probation or parole should be reported to the
 179 court or the Board of Pardons and Parole; and

- 180 (d) a range of sanctions that may not exceed a period of incarceration of more than:
- 181 (i) three consecutive days; and
- 182 (ii) a total of five days in a period of 30 days.

183 (7) The commission shall establish graduated incentives to facilitate a prompt and
184 effective response by the adult probation and parole section of the Department of Corrections
185 to an offender's:

186 (a) compliance with the terms of probation or parole; and

187 (b) positive conduct that exceeds those terms.

188 (8) (a) The commission shall establish guidelines, including sanctions and incentives,
189 to appropriately respond to negative and positive behavior of juveniles who are:

190 (i) nonjudicially adjusted;

191 (ii) placed on diversion;

192 (iii) placed on probation;

193 (iv) placed on community supervision;

194 (v) placed in an out-of-home placement; or

195 (vi) placed in a secure care facility.

196 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

197 (i) the seriousness of the negative and positive behavior;

198 (ii) the juvenile's conduct post-adjudication; and

199 (iii) the delinquency history of the juvenile.

200 (c) The guidelines shall include:

201 (i) responses that are swift and certain;

202 (ii) a continuum of community-based options for juveniles living at home;

203 (iii) responses that target the individual's criminogenic risk and needs; and

204 (iv) incentives for compliance, including earned discharge credits.

205 (9) The commission shall establish and maintain supervision length guidelines in
206 accordance with this section [~~before October 1, 2018~~].

207 Section 3. Section **64-13-14.7** is amended to read:

208 **64-13-14.7. Victim notification of offender's release.**

209 (1) As used in this section:

210 (a) "Offender" means a person who committed an act of criminally injurious conduct
211 against the victim and has been sentenced to incarceration in the custody of the department.

212 (b) "Victim" means a person against whom an offender committed criminally injurious
213 conduct as defined in Section **63M-7-502**, and who is entitled to notice of hearings regarding

214 the offender's parole under Section 77-27-9.5. "Victim" includes the legal guardian of a victim,
215 or the representative of the family of a victim who is deceased.

216 (2) (a) (i) ~~[A]~~ Upon submitting a signed written request of notification to the
217 Department of Corrections, a victim shall be notified of an offender's release under Sections
218 64-13-14.5 and 64-13-14.7, or any other release to or from a half-way house, to a program
219 outside of the prison such as a rehabilitation program, state hospital, community center other
220 than a release on parole, commutation or termination for which notice is provided under
221 Sections 77-27-9.5 and 77-27-9.7, transfer of the offender to an out-of-state facility, ~~[or]~~ an
222 offender's escape, ~~[upon submitting a signed written request of notification to the Department~~
223 ~~of Corrections]~~ or an offender's termination from probation or parole.

224 (ii) The request shall include a current mailing address and may include current
225 telephone numbers if the victim chooses.

226 (iii) The notice for an offender's termination from probation or parole shall notify the
227 victim that the victim may petition the court for the appropriate continuous protective order
228 under Subsection 78B-7-804(5) or 78B-7-805(5).

229 (b) The department shall advise the victim of an offender's release or escape under
230 Subsection (2)(a), in writing. However, if written notice is not feasible because the release is
231 immediate or the offender escapes, the department shall make a reasonable attempt to notify
232 the victim by telephone if the victim has provided a telephone number under Subsection (2)(a)
233 and shall follow up with a written notice.

234 (3) Notice of victim rights under this section shall be provided to the victim in the
235 notice of hearings regarding parole under Section 77-27-9.5. The department shall coordinate
236 with the Board of Pardons and Parole to ensure the notice is implemented.

237 (4) A victim's request for notification under this section and any notification to a victim
238 under this section is private information that the department may not release:

239 (a) to the offender under any circumstances; or

240 (b) to any other party without the written consent of the victim.

241 (5) The department may make rules as necessary to implement this section.

242 (6) The department or its employees acting within the scope of their employment are
243 not civilly or criminally liable for failure to provide notice or improper notice under this section
244 unless the failure or impropriety is willful or grossly negligent.

245 Section 4. Section **64-13-29** is amended to read:

246 **64-13-29. Violation of parole or probation -- Detention -- Hearing.**

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

251 (i) a sanction of incarceration is recommended; [~~or~~]

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

255 (iii) there is probable cause that the conduct that led to a violation of parole or
256 probation is:

257 (A) a violent felony as defined in Section 76-3-203.5; or

258 (B) a qualifying domestic violence offense as defined in Subsection 77-36-1.1(4) that
259 is not a criminal mischief offense.

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

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

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

274 (3) (a) Pending any proceeding under this section for a violation of probation or parole,
275 the department:

276 (i) except as provided in Subsection (3)(b), may take custody of and detain the parolee
277 or probationer [involved] who committed the violation for a period not to exceed 72 hours
278 excluding weekends and holidays[-]; and

279 (ii) if the department or the department's agent has probable cause that the conduct that
280 led to the violation is an offense described in Subsection (1)(a)(iii), shall take custody of and
281 detain the parolee or probationer who committed the violation for a period not to exceed 72
282 hours excluding weekends and holidays.

283 (b) The 72-hour period described in this Subsection (3) is reduced by the amount of
284 time a probationer or parolee is detained under Subsection 17-22-5.5(6).

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

288 (a) the probationer commits a major violation or repeated violations of probation;

289 (b) it is unlikely that the court will conduct a hearing within a reasonable time to
290 determine if the offender has violated the conditions of probation; and

291 (c) the law enforcement agency conducts an administrative hearing within a reasonable
292 time to determine if there is probable cause to believe the offender has violated the conditions
293 of probation, unless the hearing is waived by the probationer.

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

296 (6) If the hearing officer determines that there is probable cause to believe that the
297 offender has violated the conditions of the offender's parole or probation, the department may
298 detain the offender for a reasonable period of time after the hearing or waiver, as necessary to
299 arrange for the incarceration of the offender. A written order of the department is sufficient
300 authorization for any peace officer to incarcerate the offender. The department may promulgate
301 rules for the implementation of this section.

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

304 (a) the probationers are supervised by a local law enforcement agency; and

305 (b) the appropriate officer or officers determine that there is probable cause to believe
306 that the offender has violated the conditions of probation.

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

310 Section 5. Section **77-18-105** is amended to read:

311 **77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**
312 **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench**
313 **supervision for payments on criminal accounts receivable.**

314 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in
315 abeyance agreement, the court may hold the plea in abeyance:

316 (a) in accordance with Chapter 2a, Pleas in Abeyance; and

317 (b) under the terms of the plea in abeyance agreement.

318 (2) If a defendant is convicted, the court:

319 (a) shall impose a sentence in accordance with Section [76-3-201](#); and

320 (b) subject to Subsection (5), may suspend the execution of the sentence and place the
321 defendant:

322 (i) on probation under the supervision of the department~~[, except as provided in~~
323 ~~Subsection (5)]~~;

324 (ii) on probation under the supervision of an agency of a local government or a private
325 organization; or

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

327 (3) (a) The legal custody of all probationers under the supervision of the department is
328 with the department.

329 (b) The legal custody of all probationers under the jurisdiction of the sentencing court
330 is vested as ordered by the court.

331 (c) The court has continuing jurisdiction over all probationers.

332 (4) (a) Court probation may include an administrative level of services, including
333 notification to the sentencing court of scheduled periodic reviews of the probationer's
334 compliance with conditions.

335 (b) Supervised probation services provided by the department, an agency of a local
336 government, or a private organization shall specifically address the defendant's risk of
337 reoffending as identified by a screening or an assessment.

338 ~~[(5) A court may not order the department to supervise the probation of an individual~~
339 ~~who is convicted of a class B or C misdemeanor or an infraction.]~~

340 (5) (a) Before ordering probation, the court shall review the estimated costs for
341 supervision of the defendant by each of the following:

- 342 (i) the department;
- 343 (ii) an agency of a local government; and
- 344 (iii) a private organization.

345 (b) (i) A court may order an agency of a local government to supervise the probation
346 for an individual convicted of any crime.

347 (ii) A court may only order:

348 (A) the department to supervise the probation for an individual convicted of a class A
349 misdemeanor or any felony; or

350 (B) a private organization to supervise the probation for an individual convicted of a
351 class B or C misdemeanor or an infraction.

352 (6) (a) If a defendant is placed on probation, the court may order the defendant as a
353 condition of the defendant's probation:

354 (i) to provide for the support of persons for whose support the defendant is legally
355 liable;

356 (ii) to participate in available treatment programs, including any treatment program in
357 which the defendant is currently participating if the program is acceptable to the court;

358 (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and
359 Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

360 (iv) if the defendant is on probation for a felony offense, to serve a period of time as an
361 initial condition of probation that does not exceed one year in a county jail designated by the
362 department, after considering any recommendation by the court as to which jail the court finds
363 most appropriate;

364 (v) to serve a term of home confinement in accordance with Section 77-18-107;

365 (vi) to participate in compensatory service programs, including the compensatory
366 service program described in Section 76-6-107.1;

367 (vii) to pay for the costs of investigation, probation, or treatment services;

368 (viii) to pay a criminal accounts receivable established for the defendant under Section

369 77-32b-103; or

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

372 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a
373 defendant to include a period of time that is served in a county jail immediately before the
374 termination of probation as long as that period of time does not exceed one year.

375 (ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation
376 violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply
377 to the period of time that the court orders the defendant to serve in a county jail under this
378 Subsection (6)(b)(ii).

379 (7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on
380 probation after December 31, 2018:

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

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

385 (iii) shall be terminated in accordance with the supervision length guidelines
386 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
387 guidelines are consistent with the requirements of the law.

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

390 (c) Probation of an individual placed on probation on or after October 1, 2015, but
391 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
392 completion without violation of 36 months probation in felony or class A misdemeanor cases,
393 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance
394 with Section 64-13-21 regarding earned credits.

395 (d) This Subsection (7) does not apply to the probation of an individual convicted of an
396 offense for criminal nonsupport under Section 76-7-201.

397 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal
398 accounts receivable for the defendant upon termination of the probation period for the
399 defendant under Subsection (7), the court may require the defendant to continue to make

400 payments towards the criminal accounts receivable in accordance with the payment schedule
401 established by the court under Section 77-32b-103.

402 (b) A court may not require the defendant to make payments as described in Subsection
403 (8)(a) beyond the expiration of the defendant's sentence.

404 (c) If the court requires a defendant to continue to pay in accordance with the payment
405 schedule for the criminal accounts receivable under this Subsection (8) and the defendant
406 defaults on the criminal accounts receivable, the court shall proceed with an order for a civil
407 judgment of restitution and a civil accounts receivable for the defendant as described in Section
408 77-18-114.

409 (d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's
410 own motion, the court may require a defendant to show cause as to why the defendant's failure
411 to pay in accordance with the payment schedule should not be treated as contempt of court.

412 (ii) A court may hold a defendant in contempt for failure to make payments for a
413 criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

414 (e) This Subsection (8) does not apply to the probation of an individual convicted of an
415 offense for criminal nonsupport under Section 76-7-201.

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