

HB0028S02 compared with HB0028S01

~~{deleted text}~~ shows text that was in HB0028S01 but was deleted in HB0028S02.

inserted text shows text that was not in HB0028S01 but was inserted into HB0028S02.

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~~{Representative Karianne Lisonbee}~~Senator Michael S. Kennedy proposes the following substitute bill:

OFFENDER SUPERVISION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Michael S. Kennedy

LONG TITLE

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 the information a court and the Board of Pardons and Parole shall consider under the sentencing guidelines when an individual violates a provision 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

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services;

- ▶ clarifies which offenders, the department of corrections, a local government agency, or a private probation provider may supervise;
- ▶ modifies the duties of private probation providers;
- ▶ requires law enforcement agencies to perform certain tasks regarding supervision and presentence investigation reports;
- ▶ requires the department of corrections to provide a victim notice regarding:
 - the expiration of an offender's probation or parole term; and
 - the victim's ability to obtain a continuous protective order;
- ▶ allows a court and the Board of Pardons and Parole to impose a period of incarceration that differs from the sentencing guidelines; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-5.5, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

58-50-9, as last amended by Laws of Utah 2021, Chapter 260

63M-7-404, as last amended by Laws of Utah 2021, Chapter 173

64-13-14.7, as last amended by Laws of Utah 2008, Chapter 382

64-13-29, as last amended by Laws of Utah 2021, Chapter 173

77-18-103, as enacted by Laws of Utah 2021, Chapter 260

77-18-105, as enacted by Laws of Utah 2021, Chapter 260 and last amended by
Coordination Clause, Laws of Utah 2021, Chapter 246

77-18-108, as enacted by Laws of Utah 2021, Chapter 260 and last amended by
Coordination Clause, Laws of Utah 2021, Chapter 260

~~{ **77-18-109**, as enacted by Laws of Utah 2021, Chapter 260~~

‡ **77-27-11**, as last amended by Laws of Utah 2021, Chapter 260

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

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

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

(1) (a) Except as provided in Subsection (4), a county sheriff shall determine:

(i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail facility under the sheriff's control;

(ii) the nature of each program conducted at a jail facility under the sheriff's control;
and

(iii) the internal operation of a jail facility under the sheriff's control.

(b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any applicable zoning ordinance or conditional use permit of the county or municipality.

(2) Except as provided in Subsection (4), each county sheriff shall:

(a) with the approval of the county legislative body, establish a maximum operating capacity for each jail facility under the sheriff's control, based on facility design and staffing;
and

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

(i) transfer prisoners to another appropriate facility:

(A) under the sheriff's control; or

(B) available to the sheriff by contract;

(ii) release prisoners:

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

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

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

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

(b) The sheriff shall make these records available upon request to the Department of

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Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

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

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

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

(i) the individual is on supervised probation or parole and that information is reasonably available; and

(ii) the individual was arrested for:

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

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

(b) The jail facility shall notify the entity supervising the individual's probation or parole that the individual is being detained.

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

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

(B) if a court or magistrate orders release.

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

Section 2. Section **58-50-9** is amended to read:

58-50-9. Standards of conduct for private probation providers -- Contracts --

Reports.

(1) The private probation provider:

~~(+)~~ (a) shall maintain impartiality toward all parties;

~~(-)~~ (b) shall ensure that all parties understand the nature of the process, the procedure, the particular role of the private probation provider, and the parties' relationship to the private probation provider;

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~~[(3)]~~ (c) shall maintain confidentiality or, in cases where confidentiality is not protected, the private probation provider shall so advise the parties;

~~[(4)]~~ (d) shall disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may reasonably raise a question as to the private probation provider's impartiality; if the contract probation supervisor perceives or believes a conflict of interest to exist, the contract probation supervisor shall refrain from entering into those probation services;

~~[(5)]~~ (e) shall adhere to the standards regarding private probation services adopted by the licensing board;

~~[(6)]~~ (f) shall comply with orders of court and perform services as directed by judges in individual cases; ~~[and]~~

~~[(7)]~~ (g) shall perform duties established under Section 77-18-105, as ordered by the court[-];

(h) beginning July 1, 2022, may not provide private probation in a county where an agency of local government provides probation services unless the private probation provider has entered into a contract with the agency of local government; and

(i) shall provide a report each month to each county sheriff where the private probation provider provides private probation identifying:

(i) each individual currently supervised in the county by the private probation provider;

(ii) the crimes each individual supervised committed;

(iii) the level of supervision that is being provided for each individual; and

(iv) any other information related to the provision of private probation that the county sheriff determines is relevant.

(2) A contract described in Subsection (1)(h) shall include a description of the fees the private probation provider will charge a defendant who is supervised by the private probation provider.

Section 3. Section **63M-7-404** is amended to read:

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

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

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

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- (i) respond to public comment;
- (ii) relate sentencing practices and correctional resources;
- (iii) increase equity in criminal sentencing;
- (iv) better define responsibility in criminal sentencing; and
- (v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority;

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

- (i) increase equity in criminal supervision lengths;
- (ii) respond to public comment;
- (iii) relate the length of supervision to an offender's progress;
- (iv) take into account an offender's risk of offending again;
- (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and

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

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

- (i) treatment and intervention completion determinations based on individualized case action plans;

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

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

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

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

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

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

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

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

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

- (i) who have violated one or more conditions of probation; and
- (ii) whose probation has been revoked by the court.

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

- (i) the seriousness of [the] any violation of the [conditions] condition of probation[;];
- (ii) the probationer's conduct while on probation[;]; and
- (iii) the probationer's criminal history.

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

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

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

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

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

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and incarceration, including:

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

action plan;

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

(d) a range of sanctions that may not exceed a period of incarceration of more than:

- (i) three consecutive days; and
- (ii) a total of five days in a period of 30 days.

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

- (a) compliance with the terms of probation or parole; and
- (b) positive conduct that exceeds those terms.

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

- (i) nonjudicially adjusted;
- (ii) placed on diversion;
- (iii) placed on probation;
- (iv) placed on community supervision;
- (v) placed in an out-of-home placement; or
- (vi) placed in a secure care facility.

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

- (i) the seriousness of the negative and positive behavior;
- (ii) the juvenile's conduct post-adjudication; and
- (iii) the delinquency history of the juvenile.

(c) The guidelines shall include:

- (i) responses that are swift and certain;
- (ii) a continuum of community-based options for juveniles living at home;
- (iii) responses that target the individual's criminogenic risk and needs; and
- (iv) incentives for compliance, including earned discharge credits.

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

Section 4. Section **64-13-14.7** is amended to read:

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

(1) As used in this section:

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

(b) "Victim" means a person against whom an offender committed criminally injurious conduct as defined in Section 63M-7-502, and who is entitled to notice of hearings regarding the offender's parole under Section 77-27-9.5. "Victim" includes the legal guardian of a victim, or the representative of the family of a victim who is deceased.

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

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

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

(b) (i) [~~The~~] Subject to Subsection (3)(b)(ii), the department shall advise the victim of an offender's release or escape under Subsection (2)(a), in writing.

(ii) [~~However, if~~] If written notice is not feasible because the release is immediate or the offender escapes, the department shall make a reasonable attempt to notify the victim by telephone if the victim has provided a telephone number under Subsection (2)(a) and shall follow up with a written notice.

(3) (a) Notice of victim rights under this section shall be provided to the victim in the

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notice of hearings regarding parole under Section 77-27-9.5.

(b) The department shall coordinate with the Board of Pardons and Parole to ensure the notice is implemented.

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

(a) to the offender under any circumstances; or

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

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

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

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

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

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

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

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

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

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

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

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

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there is probable cause to believe that a violation has occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Section **77-18-103** is amended to read:

77-18-103. Presentence investigation report -- Classification of presentence investigation report -- Evidence or other information at sentencing.

(1) Before the imposition of a sentence, the court may:

(a) upon agreement of the defendant, continue the date for the imposition of the sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department [~~or information from other sources~~] or a law enforcement agency, or information from any other source about the defendant; and

(b) if the defendant is convicted of a felony or a class A misdemeanor, request that the department or a law enforcement agency prepare a presentence investigation report for the defendant.

(2) If a presentence investigation report is required under the standards established by the department described in Section 77-18-109, the presentence investigation report under Subsection (1) shall include:

(a) any impact statement provided by a victim as described in Subsection 77-38b-203(3)(c);

(b) information on restitution as described in [~~Subsection~~] Subsections

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77-38b-203(3)(a) and (b);

(c) findings from any screening and any assessment of the defendant conducted under Section 77-18-104;

(d) recommendations for treatment for the defendant; and

(e) the number of days since the commission of the offense that the defendant has spent in the custody of the jail and the number of days, if any, the defendant was released to a supervised release program or an alternative incarceration program under Section 17-22-5.5.

(3) The department or law enforcement agency shall provide the presentence investigation report to the defendant's attorney, or the defendant if the defendant is not represented by counsel, the prosecuting attorney, and the court for review within three working days before the day on which the defendant is sentenced.

(4) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that is not resolved by the parties and the department or law enforcement agency before sentencing:

(A) the alleged inaccuracy shall be brought to the attention of the court at sentencing; and

(B) the court may grant an additional 10 working days after the day on which the alleged inaccuracy is brought to the court's attention to allow the parties and the department to resolve the alleged inaccuracy in the presentence investigation report.

(ii) If the court does not grant additional time under Subsection (4)(a)(i)(B), or the alleged inaccuracy cannot be resolved after 10 working days, and if the court finds that there is an inaccuracy in the presentence investigation report, the court shall:

(A) enter a written finding as to the relevance and accuracy of the challenged portion of the presentence investigation report; and

(B) provide the written finding to the Division of Adult Probation and Parole or the law enforcement agency.

(b) The Division of Adult Probation and Parole shall attach the written finding to the presentence investigation report as an addendum.

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

(5) The contents of the presentence investigation report are protected and not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or

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for use by the department or law enforcement agency.

(6) (a) A presentence investigation report is classified as protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report.

(7) Except for disclosure at the time of sentencing in accordance with this section, the department or law enforcement agency may disclose a presentence investigation only when:

(a) ordered by the court in accordance with 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 a defendant;

(c) requested by the board;

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

(e) requested by the victim of the offense discussed in the presentence investigation report, or the victim's authorized representative, if the disclosure is only information relating to:

(i) statements or materials provided by the victim;

(ii) the circumstances of the offense, including statements by the defendant; or

(iii) the impact of the offense on the victim or the victim's household; or

(f) requested by a sex offender treatment provider:

(i) who is certified to provide treatment under the certification program established in Subsection 64-13-25(3);

(ii) who is providing, at the time of the request, sex offender treatment to the offender who is the subject of the presentence investigation report; and

(iii) who provides written assurance to the department that the report:

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

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

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

(8) (a) At the time of sentence, the court shall receive any testimony, evidence, or information that the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.

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(b) Testimony, evidence, or information under Subsection (8)(a) shall be presented in open court on record and in the presence of the defendant.

Section 7. Section 77-18-105 is amended to read:

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

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

- (a) in accordance with Chapter 2a, Pleas in Abeyance; and
- (b) under the terms of the plea in abeyance agreement.

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

- (a) shall impose a sentence in accordance with Section 76-3-201; and
- (b) subject to Subsection (5), may suspend the execution of the sentence and place the

defendant:

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

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

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

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

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

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

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

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

~~[(5) A court may not order the department to supervise the probation of an individual~~

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~~who is convicted of a class B or C misdemeanor or an infraction.]~~

(5) (a) Before ordering supervised probation, the court shall consider the supervision costs to the defendant for each entity that can supervise the defendant.

(b) (i) A court may order an agency of a local government to supervise the probation for an individual convicted of any crime ~~if~~ if:

(A) the agency has the capacity to supervise the individual; and

(B) the individual's supervision needs will be met by the agency.

(ii) A court may only order:

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

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

(c) A court may not order a specific private organization to supervise an individual unless there is only one private organization that can provide the specific supervision services required to meet the individual's supervision needs.

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

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

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

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

(iv) if the defendant is on probation for a felony offense, to serve a period of time as an initial condition of probation that does not 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;

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

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

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

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(viii) to pay a criminal accounts receivable established for the defendant under Section 77-32b-103; or

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

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

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

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

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

(ii) 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

(iii) 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.

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

(c) 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 in accordance with Section 64-13-21 regarding earned credits.

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

(8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal accounts receivable for the defendant upon termination of the probation period for the

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defendant under Subsection (7), the court may require the defendant to continue to make payments towards the criminal accounts receivable in accordance with the payment schedule established by the court under Section 77-32b-103.

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

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

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

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

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

(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.

Section 8. Section **77-18-108** is amended to read:

77-18-108. Termination, revocation, modification, or extension of probation -- Violation of probation -- Hearing on violation.

(1) (a) The department shall notify the court and the prosecuting attorney, in writing:

- (i) when the department is requesting termination of supervision for a defendant; or
- (ii) before a defendant's supervision will be terminated by law.

(b) The notification under this Subsection (1) shall include a probation progress report.

(c) If a defendant's probation is being terminated, and the defendant's criminal accounts receivable has an unpaid balance or there is any outstanding debt with the department, the department shall notify the Office of State Debt Collection that the defendant's criminal

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accounts receivable has an unpaid balance or there is an outstanding debt with the department.

(2) (a) The court may modify the defendant's probation in accordance with the supervision length guidelines and the graduated and evidence-based responses and graduated incentives developed by the Utah Sentencing Commission under Section 63M-7-404.

(b) The court may not:

(i) extend the length of a defendant's probation, except upon:

(A) waiver of a hearing by the defendant; or

(B) a hearing and a finding by the court that the defendant has violated the terms of probation;

(ii) revoke a defendant's probation, except upon a hearing and a finding by the court that the terms of probation have been violated; or

(iii) terminate a defendant's probation before expiration of the probation period until the court enters a finding of whether the defendant owes restitution under Section 77-38b-205.

(3) (a) 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 terms of a defendant's probation, the court shall determine if the affidavit or unsworn written declaration establishes probable cause to believe that revocation, modification, or extension of the defendant's probation is justified.

(b) (i) If the court determines there is probable cause, the court shall order that the defendant be served with:

(A) a warrant for the defendant's arrest or a copy of the affidavit or unsworn written declaration; and

(B) an order to show cause as to why the defendant's probation should not be revoked, modified, or extended.

(ii) The order under Subsection (3)(b)(i)(B) shall:

(A) be served upon the defendant at least five days before the day on which the hearing is held;

(B) specify the time and place of the hearing; and

(C) inform the defendant of the right to be represented by counsel at the hearing, the right to have counsel appointed if the defendant is indigent, and the right to present evidence at

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the hearing.

(iii) The defendant shall show good cause for a continuance of the hearing.

(c) At the hearing, the defendant shall admit or deny the allegations of the affidavit or unsworn written declaration.

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

(ii) If the affidavit, or unsworn written declaration, alleges that a defendant is delinquent, or in default, on a criminal accounts receivable, the prosecuting attorney shall present evidence to establish, by a preponderance of the evidence, that the defendant:

(A) was aware of the defendant's obligation to pay the balance of the criminal accounts receivable;

(B) failed to pay on the balance of the criminal accounts receivable as ordered by the court; and

(C) had the ability to make a payment on the balance of the criminal accounts receivable if the defendant opposes an order to show cause, in writing, and presents evidence that the defendant was unable to make a payment on the balance of the criminal accounts receivable.

(e) 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.

(f) At the hearing, the defendant may:

(i) call witnesses;

(ii) appear and speak in the defendant's own behalf; and

(iii) present evidence.

(g) (i) After the hearing, the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the terms of the defendant's probation, the court may order

~~(A) } the defendant's probation terminated, revoked, modified, continued, or reinstated for all or a portion of the original term of probation ~~(f) } (j); or~~~~

~~(B) treatment services that are immediately available in the community for a defendant that needs substance abuse or mental health treatment, as determined by a screening and~~

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assessment.

(4) (a) (i) Except as provided in Subsection 77-18-105(7), 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.

(ii) Except as provided in Subsection 77-18-105(7), if a defendant's probation is revoked and later reinstated, the total time of all periods of probation that the defendant serves, in relation to the same sentence, may not exceed the defendant's maximum sentence.

~~[(b) If a period of incarceration is imposed for a violation of the defendant's probation, the defendant shall be sentenced within]~~

(b) If the court orders a ~~{period of incarceration}~~sanction for a ~~{probation violation}~~defendant who violated terms of probation, the court may:

(i) order a period of incarceration that is consistent with the guidelines established by the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4)~~[- unless the court determines that:];~~

~~[(i) the defendant needs substance abuse or mental health treatment, as determined by a screening and an assessment, that warrants treatment services that are immediately available in the community; or]~~

(ii) order a period of incarceration that deviates from the guidelines with an explanation for the deviation on the record; ~~{~~or

~~— [(ii)] (iii)~~

(iii) order treatment services that are immediately available in the community for a defendant that needs substance abuse or mental health treatment, as determined by a screening and assessment;

~~[(iii)] (iv) execute the sentence previously imposed [shall be executed.]; ~~{~~or~~

(v) order any other appropriate sanction.

(c) If the defendant had, before the imposition of a term of incarceration or the execution of the previously imposed sentence under this section, served time in jail as a term of probation or due to a violation of probation, the time that the defendant served in jail constitutes service of time toward the sentence previously imposed.

(5) (a) Any time served by a defendant:

(i) outside of confinement after having been charged with a probation violation, and

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before a hearing to revoke probation, does not constitute service of time toward the total probation term, unless the defendant is exonerated at a hearing to revoke the defendant's probation;

(ii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation does not constitute service of time toward the total probation term, unless the defendant is exonerated at the hearing to revoke probation; or

(iii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated and evidence-based response imposed under the guidelines established by the Utah Sentencing Commission in accordance with Section 63M-7-404.

(b) The running of the probation period is tolled upon:

(i) the filing of a report with the court alleging a violation of the terms of the defendant's probation; or

(ii) the issuance of an order or a warrant under Subsection (3).

Section 9. Section ~~{77-18-109}~~77-27-11 is amended to read:

~~{~~ ~~77-18-109. Standards for supervision and presentence investigation.~~

~~—— (1) The department shall establish supervision and presentence investigation standards for all individuals referred to the department or supervising law enforcement agency based on:~~

~~—— (a) the type of offense;~~

~~—— (b) the results of a screening and an assessment;~~

~~—— (c) the demand for services;~~

~~—— (d) the availability of agency resources;~~

~~—— (e) public safety; and~~

~~—— (f) other criteria established by the department to determine what level of services shall be provided.~~

~~—— (2) The department or supervising law enforcement agency shall submit proposed supervision and presentence investigation standards annually to the Judicial Council and the board for review and comment before the department adopts the standards.~~

~~—— (3) The Judicial Council [and the], department, and supervising law enforcement agency shall establish procedures to implement the supervision and presentence investigation~~

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~~standards.~~

~~—— (4) The Judicial Council [and the], department, and supervising law enforcement agency shall annually consider modifications to the standards based upon criteria in Subsection (1) and other criteria as the Judicial Council and the department consider appropriate.~~

~~—— (5) The Judicial Council and the department shall:~~

~~—— (a) annually prepare an impact report; and~~

~~—— (b) submit the impact report to the appropriate legislative appropriations subcommittee.~~

~~—— Section 10. Section 77-27-11 is amended to read:~~

‡ **77-27-11. Revocation of parole.**

(1) The board may revoke the parole of any individual who is found to have violated any condition of the individual's parole.

(2) (a) If a parolee is confined by the department or any law enforcement official for a suspected violation of parole, the department:

(i) shall immediately report the alleged violation to the board, by means of an incident report; and

(ii) make any recommendation regarding the incident.

(b) A parolee may not be held for a period longer than 72 hours, excluding weekends and holidays, without first obtaining a warrant.

(3) Any member of the board may:

(a) issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee; and

(b) upon arrest of the parolee, determine, or direct the department to determine, if there is probable cause to believe that the parolee has violated the conditions of the parolee's parole.

(4) Upon a finding of probable cause, a parolee may be further detained or imprisoned again pending a hearing by the board or the board's appointed examiner.

(5) (a) The board or the board's appointed examiner shall conduct a hearing on the alleged violation, and the parolee shall have written notice of the time and location of the hearing, the alleged violation of parole, and a statement of the evidence against the parolee.

(b) The board or the board's appointed examiner shall provide the parolee the opportunity:

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(i) to be present;
(ii) to be heard;
(iii) to present witnesses and documentary evidence;
(iv) to confront and cross-examine adverse witnesses, absent a showing of good cause for not allowing the confrontation; and

(v) to be represented by counsel when the parolee is mentally incompetent or pleading not guilty.

(c) (i) If heard by an appointed examiner, the examiner shall make a written decision which shall include a statement of the facts relied upon by the examiner in determining the guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the alleged violation occurred.

(ii) The appointed examiner shall then refer the case to the board for disposition.

(d) (i) A final decision shall be reached by a majority vote of the sitting members of the board.

(ii) A parolee shall be promptly notified in writing of the board's findings and decision.

(6) (a) If a parolee is found to have violated the terms of parole, the board, at the board's discretion, may:

(i) return the parolee to parole;

(ii) modify the payment schedule for the parolee's criminal accounts receivable in accordance with Section 77-32b-105;

(iii) order the parolee to pay pecuniary damages that are proximately caused by a defendant's violation of the terms of the defendant's parole;

(iv) order the parolee to be imprisoned, but not to exceed the maximum term of imprisonment for the parolee's sentence; or

(v) order any other conditions for the parolee.

(b) If the board returns the parolee to parole, the length of parole may not be for a period of time that exceeds the length of the parolee's maximum sentence.

(c) If the board revokes parole for a violation and orders incarceration, the board [~~shall impose a period of incarceration~~] may impose a period of incarceration:

(i) consistent with the guidelines under Subsection 63M-7-404(5)[:]; or

(ii) subject to Subsection (6)(a)(iv), impose a period of incarceration that differs from

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the guidelines.

(d) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)(c):

(i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and

(ii) time served in jail by a parolee due to a violation of parole under Subsection 64-13-6(2).