

Representative Angela Romero proposes the following substitute bill:

**DIVISION OF JUVENILE JUSTICE SERVICES AND DEPARTMENT
OF CORRECTIONS RULEMAKING AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses rulemaking authority by the Division of Juvenile Justice Services and the Department of Corrections.

Highlighted Provisions:

This bill:

- ▶ amends rulemaking authority for the Department of Corrections regarding sexual assaults in correctional facilities;
- ▶ requires the Division of Juvenile Justice Services to create rules regarding policies and procedures to prevent, detect, and respond to sexual assaults of minors in detention and secure care facilities;
- ▶ requires the Division of Juvenile Justice Services to create rules regarding the collection and reporting of data regarding sexual assaults of minors in detention and secure care facilities; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **64-13-47 (Effective 07/01/22)**, as enacted by Laws of Utah 2021, Chapter 44

30 **80-5-202**, as enacted by Laws of Utah 2021, Chapter 261



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

32 Section 1. Section **64-13-47 (Effective 07/01/22)** is amended to read:

33 **64-13-47 (Effective 07/01/22). Policies and procedures on prison sexual assault --**

34 **Rulemaking authority -- Investigation and reporting of sexual assault.**

35 (1) The department shall, in accordance with Title 63G, Chapter 3, Utah
36 Administrative Rulemaking Act, make rules [~~establishing~~] requiring the establishment of
37 policies and procedures regarding sexual assaults that occur in correctional facilities.

38 (2) The [~~rules~~] policies and procedures described in Subsection (1) shall:

39 (a) require education and training, including:

40 (i) providing to inmates, at intake and periodically, department-approved,
41 easy-to-understand information developed by the department on sexual assault prevention,
42 treatment, reporting, and counseling in consultation with community groups with expertise in
43 sexual assault prevention, treatment, reporting, and counseling; and

44 (ii) providing sexual-assault-specific training to department mental health professionals
45 and all employees who have direct contact with inmates regarding treatment and methods of
46 prevention and investigation;

47 (b) require reporting of sexual assault, including:

48 (i) ensuring the confidentiality of inmate sexual assault complaints and the protection
49 of inmates who make complaints of sexual assault; and

50 (ii) prohibiting retaliation and disincentives for reporting sexual assault;

51 (c) require safety and care for [~~victims~~] inmates who make complaints of sexual
52 assault, including:

53 (i) providing, in situations in which there is reason to believe that a sexual assault has
54 occurred, reasonable and appropriate measures to ensure the [~~victim's~~] inmate's safety by
55 separating the [~~victim~~] inmate from the inmate's assailant, if known;

57 (ii) providing acute trauma care for [~~sexual assault victims~~] inmates who make
58 complaints of sexual assault, including treatment of injuries, HIV prophylaxis measures, and
59 testing for sexually transmitted infections;

60 (iii) providing confidential mental health counseling for [~~victims~~] inmates who make
61 complaints of sexual assault, including:

62 (A) access to outside community groups or victim advocates that have expertise in
63 sexual assault counseling[;]; and

64 (B) enable confidential communication between inmates and those organizations and
65 advocates; and

66 (iv) monitoring [~~victims~~] inmates who make complaints of sexual assault for suicidal
67 impulses, post-traumatic stress disorder, depression, and other mental health consequences
68 resulting from the sexual assault;

69 (d) require investigations and staff discipline, including:

70 (i) requiring all employees to report any knowledge, suspicion, or information
71 regarding an incident of sexual assault to the executive director or designee, and require
72 disciplinary action for employees who fail to report as required;

73 (ii) requiring investigations described in Subsection (3);

74 (iii) requiring corrections investigators to submit all completed sexual assault
75 allegations to the executive director or the executive director's designee, who must then submit
76 any substantiated findings that may constitute a crime under state law to the district attorney
77 with jurisdiction over the facility in which the alleged sexual assault occurred; and

78 (iv) requiring employees to be subject to disciplinary sanctions up to and including
79 termination for violating agency sexual assault policies, with termination the presumptive
80 disciplinary sanction for employees who have engaged in sexual assault, consistent with
81 constitutional due process protections and state personnel laws and rules; and

82 (e) require data collection and reporting, including as provided in Subsection (4).

83 (3) (a) An investigator trained in the investigation of sex crimes shall conduct the
84 investigation of a sexual assault involving an inmate.

85 (b) The investigation shall include:

86 (i) using a forensic rape kit, if appropriate;

87 (ii) questioning suspects and witnesses; and

88 (iii) gathering and preserving relevant evidence.

89 (4) The department shall:

90 (a) collect and report data regarding all allegations of sexual assault from each
91 correctional facility in accordance with the federal Prison Rape Elimination Act of 2003, Pub.
92 L 108-79, as amended; and

93 (b) annually report the data described in Subsection (4)(a) to the Law Enforcement and
94 Criminal Justice Interim Committee.

95 Section 2. Section **80-5-202** is amended to read:

96 **80-5-202. Division rulemaking authority -- Reports on sexual assault.**

97 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
98 division shall make rules to:

99 (a) [~~establishing~~] establish standards for the admission of a minor to detention;

100 (b) [~~that~~] describe good behavior for which credit may be earned under Subsection
101 [80-6-704\(4\)](#); [~~and~~]

102 (c) [~~that~~] establish a formula, in consultation with the Office of the Legislative Fiscal
103 Analyst, to calculate savings from General Fund appropriations under 2017 Laws of Utah,
104 Chapter 330, resulting from the reduction in out-of-home placements for juvenile offenders
105 with the division[~~;~~]; and

106 (d) require the establishment of policies and procedures regarding sexual assaults that
107 occur in detention and secure care facilities.

108 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
109 division may make rules:

110 (a) that govern the operation of prevention and early intervention programs, youth
111 service programs, juvenile receiving centers, and other programs described in Section
112 [80-5-401](#); and

113 (b) that govern the operation of detention and secure care facilities.

114 (3) A rule made by the division under Subsection (1)(a):

115 (a) may not permit secure detention based solely on the existence of multiple status
116 offenses, misdemeanors, or infractions arising out of a single criminal episode; and

117 (b) shall prioritize use of home detention for a minor who might otherwise be held in
118 secure detention.

119 (4) The policies and procedures described in Subsection (1)(d) shall:
120 (a) require education and training, including:
121 (i) providing to minors detained in secure care and detention facilities, at intake and
122 periodically, easy-to-understand information, which is developed and approved by the division,
123 on sexual assault prevention, treatment, reporting, and counseling in consultation with
124 community groups with expertise in sexual assault prevention, treatment, reporting, and
125 counseling; and
126 (ii) providing training specific to sexual assault to division mental health professionals
127 and all division employees who have direct contact with minors regarding treatment and
128 methods of prevention and investigation;
129 (b) require reporting of any incident of sexual assault, including:
130 (i) ensuring the confidentiality of sexual assault reports from minors and the protection
131 of minors who report sexual assault; and
132 (ii) prohibiting retaliation and disincentives for reporting sexual assault;
133 (c) require safety and care for minors who report sexual assault, including:
134 (i) providing, in situations in which there is reason to believe that a sexual assault has
135 occurred, reasonable and appropriate measures to ensure the minor's safety by separating the
136 minor from the minor's assailant, if known;
137 (ii) providing acute trauma care for minors who report sexual assault, including
138 treatment of injuries, HIV prophylaxis measures, and testing for sexually transmitted
139 infections;
140 (iii) providing confidential mental health counseling for minors who report sexual
141 assault, including:
142 (A) access to outside community groups or victim advocates that have expertise in
143 sexual assault counseling; and
144 (B) enabling confidential communication between minors and community groups and
145 victim advocates; and
146 (iv) monitoring minors who report sexual assault for suicidal impulses, post-traumatic
147 stress disorder, depression, and other mental health consequences resulting from the sexual
148 assault;
149 (d) require staff reporting of sexual assault and staff discipline for failure to report or

150 for violating sexual assault policies, including:

151 (i) requiring all division employees to report any knowledge, suspicion, or information
152 regarding an incident of sexual assault to the director or the director's designee;

153 (ii) requiring disciplinary action for a division employee who fails to report as required;
154 and

155 (iii) requiring division employees to be subject to disciplinary sanctions up to and
156 including termination for violating agency sexual assault policies, with termination the
157 presumptive disciplinary sanction for division employees who have engaged in sexual assault,
158 consistent with constitutional due process protections and state personnel laws and rules;

159 (e) require that any report of an incident of sexual assault be referred to the Division of
160 Child and Family Services or a law enforcement agency with jurisdiction over the detention or
161 secure facility in which the alleged sexual assault occurred; and

162 (f) require data collection and reporting of all incidents of sexual assault from each
163 detention and secure care facility.

164 (5) The division shall annually report the data described in Section (4)(f) to the Law
165 Enforcement and Criminal Justice Interim Committee.

166 **Section 3. Effective date.**

167 (1) Except as provided in Subsection (2), this bill takes effect on May 4, 2022.

168 (2) The amendments to Section [64-13-47](#) (Effective 07/01/22) take effect on July 1,
169 2022.