

HB0126S02 compared with HB0126S01

~~deleted text~~ shows text that was in HB0126S01 but was deleted in HB0126S02.

inserted text shows text that was not in HB0126S01 but was inserted into HB0126S02.

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

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;

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- ▶ 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:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

Rulemaking authority -- Investigation and reporting of sexual assault.

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

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

(a) require education and training, including:

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

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

(b) require reporting of sexual assault, including:

(i) ensuring the confidentiality of inmate sexual assault complaints and the protection

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of inmates who make complaints of sexual assault; and

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

(c) require safety and care for ~~{}~~ victims ~~{} inmates who make complaints of sexual assault~~, including:

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

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

(iii) providing confidential mental health counseling for ~~{}~~ victims ~~{} inmates who make complaints~~ of sexual assault, including:

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

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

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

(d) require investigations and staff discipline, including:

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

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

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

(iv) requiring employees to be subject to disciplinary sanctions up to and including termination for violating agency sexual assault policies, with termination the presumptive disciplinary sanction for employees who have engaged in sexual assault, consistent with

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constitutional due process protections and state personnel laws and rules; and

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

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

(b) The investigation shall include:

- (i) using a forensic rape kit, if appropriate;
- (ii) questioning suspects and witnesses; and
- (iii) gathering and preserving relevant evidence.

(4) The department shall:

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

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

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

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

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

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

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

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

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

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

(a) that govern the operation of prevention and early intervention programs, youth service programs, juvenile receiving centers, and other programs described in Section

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80-5-401; and

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

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

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

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

(4) The policies and procedures described in Subsection (1)(d) shall:

(a) require education and training, including:

(i) providing to minors detained in secure care and detention facilities, at intake and periodically, easy-to-understand information, which is developed and approved by the division, on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in sexual assault prevention, treatment, reporting, and counseling; and

(ii) providing training specific to sexual assault to division mental health professionals and all division employees who have direct contact with minors regarding treatment and methods of prevention and investigation;

(b) require reporting of any incident of sexual assault, including:

(i) ensuring the confidentiality of sexual assault reports from minors and the protection of minors who report sexual assault; and

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

(c) require safety and care for minors who report sexual assault, including:

(i) providing, in situations in which there is reason to believe that a sexual assault has occurred, reasonable and appropriate measures to ensure the minor's safety by separating the minor from the minor's assailant, if known;

(ii) providing acute trauma care for minors who report sexual assault, including treatment of injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;

(iii) providing confidential mental health counseling for minors who report sexual assault, including:

(A) access to outside community groups or victim advocates that have expertise in

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sexual assault counseling; and

(B) enabling confidential communication between minors and community groups and victim advocates; and

(iv) monitoring minors who report sexual assault for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences resulting from the sexual assault;

(d) require staff reporting of sexual assault and staff discipline for failure to report or for violating sexual assault policies, including:

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

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

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

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

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

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

Section 3. **Effective date.**

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

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