

SEX OFFENSE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses sex offense management and treatment.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Sex Offense Management Board;
- ▶ describes the duties of the Sex Offense Management Board;
- ▶ clarifies the process the Department of Corrections follows to establish standards

for sex offender treatment; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

64-13-25, as last amended by Laws of Utah 2015, Chapter 412

77-18-103, as last amended by Laws of Utah 2022, Chapter 115

ENACTS:

63M-7-801, Utah Code Annotated 1953



28 [63M-7-802](#), Utah Code Annotated 1953
29 [63M-7-803](#), Utah Code Annotated 1953



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

32 Section 1. Section **63M-7-801** is enacted to read:

33 **Part 8. Sex Offense Management Board**

34 **63M-7-801. Definitions.**

35 As used in this part:

36 (1) "Board" means the Sex Offense Management Board created in Section [63M-7-802](#).

37 (2) "Commission" means the State Commission on Criminal and Juvenile Justice
38 created in Section [63M-7-201](#).

39 (3) "Registry" means the registry established in Title 77, Chapter 41, Sex and Kidnap
40 Offender Registry.

41 Section 2. Section **63M-7-802** is enacted to read:

42 **63M-7-802. Sex Offense Management Board - Creation - Members appointment -**
43 **Qualifications - Terms.**

44 (1) There is created within the commission the Sex Offense Management Board
45 consisting of the following members:

46 (a) the executive director of the Department of Corrections, or the executive director's
47 designee;

48 (b) an officer with the adult probation and parole section of the Department of
49 Corrections with experience supervising adults convicted of sex offenses, appointed by the
50 executive director of the Department of Corrections;

51 (c) the executive director of the Department of Health and Human Services, or the
52 executive director's designee;

53 (d) an individual who represents the Administrative Office of the Courts appointed by
54 the state court administrator;

55 (e) the director of the Utah Office for Victims of Crime, or the director's designee;

56 (f) the director of the Division of Juvenile Justice Services, or the director's designee;

57 (g) the chair of the Board of Pardons and Parole, or the chair's designee; and

58 (h) eight individuals appointed by the executive director of the commission, including:

59 (i) the following two individuals licensed under Title 58, Chapter 60, Mental Health
60 Professional Practices Act:

61 (A) an individual with experience in the treatment of adults convicted of sex offenses
62 in the community;

63 (B) an individual with experience in the treatment of juveniles adjudicated of sex
64 offenses in the community;

65 (ii) an individual who represents an association of criminal defense attorneys;

66 (iii) an individual who represents an association of prosecuting attorneys;

67 (iv) an individual who represents law enforcement;

68 (v) an individual who represents an association of criminal justice victim advocates;

69 (vi) an individual who is a clinical polygraph examiner experienced in providing
70 polygraph examinations to individuals convicted of sex offenses; and

71 (vii) an individual who has been previously convicted of a sex offense and has
72 successfully completed treatment and supervision for the offense.

73 (2) (a) A member described in Subsection (1)(h) shall serve a four-year term.

74 (b) If a vacancy occurs among a member described in Subsection (1)(h), the executive
75 director of the commission may appoint a new individual to fill the remainder of the term.

76 (c) When a term of a member described in Subsection (1)(h) expires, the executive
77 director of the commission shall appoint a new member or reappoint the member whose term
78 has expired to a new four-year term.

79 (3) The members of the board shall vote on a chair and co-chair of the board from
80 among the members described in Subsection (1) to serve a two-year term.

81 (4) A majority of the board constitutes a quorum.

82 (5) A board member may not receive compensation or benefits for the member's
83 service on the board, but may receive per diem and reimbursement for travel expenses incurred
84 as a board member at rates established by the Division of Finance under:

85 (a) Sections [63A-3-106](#) and [63A-3-107](#); and

86 (b) rules made by the Division of Finance under Sections [63A-3-106](#) and [63A-3-107](#).

87 (6) The commission shall provide staff support to the board.

88 (7) The board shall meet at least six times per year on dates the board sets.

89 Section 3. Section **63M-7-803** is enacted to read:

90 **63M-7-803. Board duties.**91 The board shall:92 (1) review research regarding treatment, risk assessment, and supervision practices for
93 individuals on the registry;94 (2) advise and make recommendations to other councils, boards, and offices within the
95 commission regarding evidence-based:96 (a) sentencing and treatment practices for individuals on the registry to reduce
97 recidivism and promote public safety;98 (b) policies to promote public safety and protect victims of sex offenses; and99 (c) practices related to the registry that promote public safety, account for risk, and
100 protect the rights of individuals on the registry; and101 (3) advise and make recommendations to the Department of Corrections and the
102 Department of Health and Human Services regarding:103 (a) evidence-based standards for supervision of individuals on the registry;104 (b) evidence-based standards for training, certification, and evaluation of community
105 treatment providers, polygraph examiners, evaluators, and other professionals who provide
106 treatment and related services to individuals on the registry; and107 (c) implementation of the treatment standards and other duties described in Section
108 64-13-25 related to sex offenses.109 Section 4. Section **64-13-25** is amended to read:110 **64-13-25. Standards for programs -- Audits.**111 (1) (a) To promote accountability and to ensure safe and professional operation of
112 correctional programs, the department shall establish minimum standards for the organization
113 and operation of ~~[its]~~ the department's programs, including collaborating with the Department
114 of Health and Human Services to establish minimum standards for programs providing
115 assistance for individuals involved in the criminal justice system.116 ~~[(a)]~~ (b) (i) The department shall promulgate the standards ~~[shall be promulgated]~~
117 according to state rulemaking provisions.118 (ii) Those standards that apply to offenders are exempt from the provisions of Title
119 63G, Chapter 3, Utah Administrative Rulemaking Act.120 (iii) Offenders are not a class of persons under ~~[that act.]~~ Title 63G, Chapter 3, Utah

121 Administrative Rulemaking Act.

122 ~~[(b)]~~ (c) ~~[Standards]~~ The standards shall provide for inquiring into and processing
123 offender complaints.

124 ~~[(c)]~~

125 ~~[(i)]~~ (d) (i) The department shall establish minimum standards and qualifications for
126 treatment programs provided in county jails to which persons committed to the state prison are
127 placed by jail contract under Section [64-13e-103](#).

128 (ii) In establishing the standards and qualifications for the treatment programs, the
129 department shall:

130 (A) consult and collaborate with the county sheriffs and the ~~[Division of Substance~~
131 ~~Abuse]~~ Office of Substance Use and Mental Health; and

132 (B) include programs demonstrated by recognized scientific research to reduce
133 recidivism by addressing an offender's criminal risk factors as determined by a risk and needs
134 assessment.

135 (iii) All jails contracting to house offenders committed to the state prison shall meet the
136 minimum standards for treatment programs as established under this Subsection ~~[(1)(c)]~~ (1)(d).

137 ~~[(d)]~~

138 ~~[(i)]~~ (e) (i) The department shall establish minimum standards ~~[of treatment for sex~~
139 ~~offenders]~~ for sex offense treatment, which shall include the requirements under Subsection
140 [64-13-7.5\(3\)](#) regarding licensure and competency.

141 (ii) The standards shall require the use of ~~[the most current best practices demonstrated~~
142 ~~by recognized scientific research to address an offender's]~~ evidence-based practices to address
143 criminal risk factors as determined by validated assessments.

144 (iii) The department shall collaborate with the ~~[Division of Substance Abuse]~~ Office of
145 Substance Use and Mental Health to develop and effectively distribute the standards to jails
146 and to mental health professionals who desire to provide mental health treatment for sex
147 offenders.

148 (iv) The department shall establish the standards by administrative rule ~~[pursuant to]~~ in
149 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

150 ~~[(2)]~~ ~~The department shall establish an audit for compliance with standards established~~
151 ~~under this section according to policies and procedures established by the department, for~~

152 continued operation of correctional and treatment programs provided to offenders committed to
153 the department's custody, including inmates housed in county jails by contract with the
154 Department of Corrections.]

155 ~~[(a) At least every three years, the department shall internally audit all programs for
156 compliance with established standards.]~~

157 ~~[(b) All financial statements and accounts of the department shall be reviewed during
158 the audit. Written review shall be provided to the managers of the programs and the executive
159 director of the department.]~~

160 ~~[(c) The reports shall be classified as confidential internal working papers and access is
161 available at the discretion of the executive director or the governor, or upon court order.]~~

162 ~~[(3)]~~ (2) (a) The department shall establish a certification ~~[program]~~ process for public
163 and private providers of treatment for sex offenders on probation or parole that requires the
164 providers' sex ~~[offender]~~ offense treatment practices meet the standards and practices
165 established under Subsection ~~[(1)(d) to reduce]~~ (1)(e)(i) with the goal of reducing sex offender
166 recidivism.

167 ~~[(a)]~~ (b) The department shall collaborate with the ~~[Division of Substance Abuse]~~
168 Office of Substance Use and Mental Health to develop, coordinate, and implement the
169 certification ~~[program]~~ process.

170 ~~[(b)]~~ (c) The department shall base the certification ~~[program shall be based]~~ process
171 on the standards under Subsection ~~[(1)(d) and shall]~~ (1)(e)(i) and require renewal of
172 certification every two years.

173 ~~[(c)]~~ (d) All public and private providers of sex ~~[offender]~~ offense treatment, including
174 those providing treatment to offenders housed in county jails by contract under Section
175 64-13e-103, shall comply with ~~[these]~~ the standards ~~[on and after July 1, 2016,]~~ in order to
176 begin receiving or continue receiving payment from the department to provide sex ~~[offender~~
177 treatment on or after July 1, 2016] offense treatment.

178 ~~[(d)]~~ (e) The department shall establish the certification program by administrative rule
179 ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

180 (3) (a) The department shall establish an audit procedure to ensure compliance with sex
181 offense and substance use treatment standards established under this section and according to
182 the department's policies and procedures.

183 (b) At lease every three years, the department shall internally audit sex offense and
184 substance use treatment programs for compliance with established standards.

185 (c) The individuals undertaking the audit shall:

186 (i) review all financial statements and accounts of the department; and

187 (ii) provide a written report to the managers of the programs audited and to the
188 executive director of the department.

189 (d) The reports created under Subsection (3)(c) shall:

190 (i) be classified as confidential internal working papers; and

191 (ii) be accessible at the discretion of the executive director or the governor, or upon
192 court order.

193 (4) The department:

194 (a) shall establish performance goals and outcome measurements for all programs that
195 are subject to the minimum standards established under this section and ~~shall~~ collect data to
196 analyze and evaluate whether the goals and measurements are attained[-];

197 ~~(a)~~ (b) ~~[The department]~~ shall collaborate with the ~~[Division of Substance Abuse]~~
198 Office of Substance Use and Mental Health to develop and coordinate the performance goals
199 and outcome measurements, including recidivism rates and treatment success and failure
200 rates[-];

201 ~~(b)~~ (c) ~~[The department]~~ may use ~~[these]~~ the data collected under Subsection (4)(b) to
202 make decisions on the use of funds to provide treatment for which standards are established
203 under this section[-];

204 ~~(c)~~ (d) ~~[The department]~~ shall collaborate with the ~~[Division of Substance Abuse]~~
205 Office of Substance Use and Mental Health to track a subgroup of participants to determine if
206 there is a net positive result from the use of treatment as an alternative to incarceration[-];

207 ~~(d)~~ (e) ~~[The department]~~ shall collaborate with the ~~[Division of Substance Abuse]~~
208 Office of Substance Use and Mental Health to evaluate the costs, including any additional
209 costs, and the resources needed to attain the performance goals established for the use of
210 treatment as an alternative to incarceration[-]; and

211 ~~(e)~~ (f) ~~[The department]~~ shall annually provide data collected under this Subsection
212 (4) to the State Commission on Criminal and Juvenile Justice on or before August 31.

213 (5) The ~~[commission]~~ State Commission on Criminal and Juvenile Justice shall

214 compile a written report of the findings based on the data collected under Subsection (4) and
215 [~~shall~~] provide the report to the legislative Judiciary Interim Committee, the Health and Human
216 Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee,
217 and the related appropriations subcommittees.

218 Section 5. Section **77-18-103** is amended to read:

219 **77-18-103. Presentence investigation report -- Classification of presentence**
220 **investigation report -- Evidence or other information at sentencing.**

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

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

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

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

232 (a) any impact statement provided by a victim as described in Subsection
233 **77-38b-203(3)(c)**;

234 (b) information on restitution as described in Subsections **77-38b-203(3)(a)** and (b);

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

237 (d) recommendations for treatment for the defendant; and

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

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

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

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

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

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

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

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

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

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

263 (5) The contents of the presentence investigation report are protected and not available
264 except by court order for purposes of sentencing as provided by rule of the Judicial Council or
265 for use by the department or law enforcement agency.

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

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

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

272 (a) ordered by the court in accordance with Subsection [63G-2-202\(7\)](#);

273 (b) requested by a law enforcement agency or other agency approved by the department
274 for purposes of supervision, confinement, and treatment of a defendant;

275 (c) requested by the board;

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

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

281 (i) statements or materials provided by the victim;

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

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

284 (f) requested by a sex offender treatment provider:

285 (i) who is certified to provide treatment under the certification program established in
286 Subsection [~~64-13-25(3)~~] 64-13-25(2);

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

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

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

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

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

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

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