

HB0268S01 compared with HB0268

~~deleted text~~ shows text that was in HB0268 but was deleted in HB0268S01.

inserted text shows text that was not in HB0268 but was inserted into HB0268S01.

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Representative Andrew Stoddard proposes the following substitute bill:

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

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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

63M-7-802, Utah Code Annotated 1953

63M-7-803, Utah Code Annotated 1953

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

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

Part 8. Sex Offense Management Board

63M-7-801. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) an individual who represents law enforcement;

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

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

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

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

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

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

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

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

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

(a) Sections 63A-3-106 and 63A-3-107; and

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

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

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

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

63M-7-803. Board duties.

The board shall:

(1) review research regarding treatment, risk assessment, and supervision practices for individuals on the registry or individuals ordered to complete sex offense treatment;

(2) advise and make recommendations to other councils, boards, and offices within the commission regarding evidence-based:

(a) sentencing and treatment practices for individuals on the registry or individuals ordered to complete sex offense treatment to reduce recidivism and promote public safety;

(b) policies to promote public safety and protect victims of sex offenses; and

(c) practices related to the registry that promote public safety, account for risk, and protect the rights of individuals on the registry or individuals ordered to complete sex offense treatment; and

(3) advise and make recommendations to the Department of Corrections and the Department of Health and Human Services regarding:

(a) evidence-based standards for supervision of individuals on the registry or individuals ordered to complete sex offense treatment;

(b) evidence-based standards for training, certification, and evaluation of community treatment providers, polygraph examiners, evaluators, and other professionals who provide treatment and related services to individuals on the registry or individuals ordered to complete sex offense treatment; and

(c) implementation of the treatment standards and other duties described in Section 64-13-25 related to sex offenses.

Section 4. Section **64-13-25** is amended to read:

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64-13-25. Standards for programs -- Audits.

(1) ~~(a)~~ To promote accountability and to ensure safe and professional operation of correctional programs, the department shall establish minimum standards for the organization and operation of ~~[its]~~ the department's programs, including collaborating with the Department of Health and Human Services to establish minimum standards for programs providing assistance for individuals involved in the criminal justice system.

~~[(a)]~~ ~~(b)~~ (i) The department shall promulgate the standards ~~[shall be promulgated]~~ according to state rulemaking provisions.

~~(ii)~~ Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(iii)~~ Offenders are not a class of persons under ~~[that act.]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

~~[(c)]~~

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

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

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

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

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

~~[(d)]~~

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

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

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

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

~~[(2) The department shall establish an audit for compliance with standards established under this section according to policies and procedures established by the department, for continued operation of correctional and treatment programs provided to offenders committed to the department's custody, including inmates housed in county jails by contract with the Department of Corrections.]~~

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

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

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

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

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

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

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certification every two years.

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

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

(3) (a) The department shall establish an audit ~~{procedure}~~ process to ensure compliance with sex offense and substance use treatment standards established under this section ~~{and according to}~~ in accordance with the department's policies and procedures.

(b) At ~~{lease}~~ least every three years, the department shall internally audit sex offense and substance use treatment programs for compliance with standards established ~~{standards}~~ under this section.

(c) The individuals undertaking the audit shall ~~{~~

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

~~—— (ii) } provide a written report to the managers of the programs audited and to the executive director of the department.~~

(d) The department's internal audit reports ~~{ created under Subsection (3)(c) }~~ shall:

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

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

(4) The department:

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

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

~~[(b)]~~ (c) ~~[The department]~~ may use ~~[these]~~ the data collected under Subsection (4)(b) to

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make decisions on the use of funds to provide treatment for which standards are established under this section[-];

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

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

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

(5) The ~~[commission]~~ State Commission on Criminal and Juvenile Justice shall compile a written report of the findings based on the data collected under Subsection (4) and ~~[shall]~~ provide the report to the legislative Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

Section 5. 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 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

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77-38b-203(3)(c);

(b) information on restitution as described in Subsections 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

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except by court order for purposes of sentencing as provided by rule of the Judicial Council or 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)~~] 64-13-25(2);

(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

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appropriate sentence.

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