

**INMATE AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Luz Escamilla**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill amends and enacts provisions related to inmates in correctional facilities.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ changes the words "inmate" and "prisoner" to "incarcerated individual" throughout the Utah Code;
- ▶ addresses the supervision of emergency medical technicians providing medical services in a correctional facility;
- ▶ requires the Department of Health and Human Services to establish a pilot program for medical monitoring;
- ▶ requires the notification of an inmate's designated medical contact in certain circumstances; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides revisor instructions.

**Utah Code Sections Affected:**

AMENDS:



- 28 **10-8-58.5**, as last amended by Laws of Utah 2010, Chapter 378
- 29 **13-26-11**, as last amended by Laws of Utah 2022, Chapter 324
- 30 **13-45-301**, as enacted by Laws of Utah 2006, Chapter 344
- 31 **17-18a-506**, as enacted by Laws of Utah 2021, Chapter 142
- 32 **17-22-2**, as last amended by Laws of Utah 2022, Chapter 335
- 33 **17-22-2.5**, as last amended by Laws of Utah 2018, Chapter 86
- 34 **17-22-3**, as Utah Code Annotated 1953
- 35 **17-22-5**, as last amended by Laws of Utah 2004, Chapter 301
- 36 **17-22-5.5**, as last amended by Laws of Utah 2022, Chapter 115
- 37 **17-22-6**, as last amended by Laws of Utah 2011, Chapter 297
- 38 **17-22-7**, as last amended by Laws of Utah 1993, Chapter 227
- 39 **17-22-8**, as last amended by Laws of Utah 2022, Chapter 123
- 40 **17-22-9**, as Utah Code Annotated 1953
- 41 **17-22-19**, as Utah Code Annotated 1953
- 42 **17-22-28**, as enacted by Laws of Utah 1996, Chapter 94
- 43 **17-22-29**, as enacted by Laws of Utah 1996, Chapter 237
- 44 **17-22-32**, as last amended by Laws of Utah 2022, Chapter 187
- 45 **17-22-33**, as enacted by Laws of Utah 2020, Chapter 65
- 46 **17-25-3**, as renumbered and amended by Laws of Utah 2001, Chapter 46
- 47 **17-50-319**, as last amended by Laws of Utah 2021, Chapter 260
- 48 **17-53-311**, as last amended by Laws of Utah 2011, Chapter 297
- 49 **17D-1-201**, as last amended by Laws of Utah 2021, Chapter 339
- 50 **26-18-3**, as last amended by Laws of Utah 2021, Chapter 422
- 51 **26-18-421**, as enacted by Laws of Utah 2020, Chapter 159
- 52 **26-40-105**, as last amended by Laws of Utah 2019, Chapter 393
- 53 **31A-35-701**, as last amended by Laws of Utah 2016, Chapter 234
- 54 **34-40-104**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **35A-4-205**, as last amended by Laws of Utah 2006, Chapter 22
- 56 **39A-5-111**, as renumbered and amended by Laws of Utah 2022, Chapter 373
- 57 **39A-5-112**, as renumbered and amended by Laws of Utah 2022, Chapter 373
- 58 **51-7-4**, as last amended by Laws of Utah 2020, Chapter 365

59           **53-2a-602**, as last amended by Laws of Utah 2016, Chapters 83, 134  
60           **53-10-404**, as last amended by Laws of Utah 2021, Chapter 262  
61           **53-13-104**, as last amended by Laws of Utah 2022, Chapter 10  
62           **53B-7-103**, as last amended by Laws of Utah 2022, Chapter 421  
63           **58-37-8**, as last amended by Laws of Utah 2022, Chapters 116, 415 and 430  
64           **59-12-402.1**, as last amended by Laws of Utah 2017, Chapter 422  
65           **62A-2-120**, as last amended by Laws of Utah 2022, Chapters 185, 335, 430, and 468  
66           **62A-15-103**, as last amended by Laws of Utah 2022, Chapters 187, 255 and 415  
67           **62A-15-605.5**, as renumbered and amended by Laws of Utah 2002, Fifth Special  
68 Session, Chapter 8  
69           **62A-15-902**, as last amended by Laws of Utah 2011, Chapter 366  
70           **63A-16-1002**, as enacted by Laws of Utah 2022, Chapter 390 and last amended by  
71 Coordination Clause, Laws of Utah 2022, Chapter 390  
72           **63A-17-301**, as last amended by Laws of Utah 2022, Chapter 209  
73           **63A-17-307**, as last amended by Laws of Utah 2022, Chapters 169, 209  
74           **63B-6-502**, as last amended by Laws of Utah 2021, Chapter 280  
75           **63B-12-301**, as enacted by Laws of Utah 2003, Chapter 302  
76           **63G-2-301**, as last amended by Laws of Utah 2020, Chapters 255, 399  
77           **63G-3-201**, as last amended by Laws of Utah 2020, Chapter 408  
78           **63G-4-102**, as last amended by Laws of Utah 2022, Chapter 307  
79           **63J-1-602.1**, as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415,  
80 and 451  
81           **63M-7-204**, as last amended by Laws of Utah 2022, Chapter 187  
82           **63M-7-526**, as enacted by Laws of Utah 2020, Chapter 230  
83           **64-9b-1**, as last amended by Laws of Utah 2011, Chapter 366  
84           **64-9b-2**, as last amended by Laws of Utah 1999, Chapter 21  
85           **64-9b-3**, as last amended by Laws of Utah 1997, Chapter 158  
86           **64-9b-4**, as last amended by Laws of Utah 1997, Chapter 158  
87           **64-9b-5**, as last amended by Laws of Utah 1997, Chapter 158  
88           **64-13-1**, as last amended by Laws of Utah 2021, Chapters 85, 246 and 260  
89           **64-13-14.5**, as last amended by Laws of Utah 2015, Chapter 412

- 90 [64-13-15](#), as last amended by Laws of Utah 1991, Chapter 124
- 91 [64-13-16](#), as last amended by Laws of Utah 1997, Chapters 10, 375
- 92 [64-13-17](#), as last amended by Laws of Utah 2008, Chapter 382
- 93 [64-13-21](#), as last amended by Laws of Utah 2022, Chapter 187
- 94 [64-13-25](#), as last amended by Laws of Utah 2015, Chapter 412
- 95 [64-13-30](#), as last amended by Laws of Utah 2016, Chapter 243
- 96 [64-13-30.5](#), as enacted by Laws of Utah 2009, Chapter 258
- 97 [64-13-32](#), as last amended by Laws of Utah 1993, Chapter 49
- 98 [64-13-34](#), as last amended by Laws of Utah 1987, Chapter 116
- 99 [64-13-36](#), as last amended by Laws of Utah 1994, Chapters 12, 148
- 100 [64-13-38](#), as last amended by Laws of Utah 2012, Chapter 21
- 101 [64-13-39.5](#), as last amended by Laws of Utah 2009, Chapter 355
- 102 [64-13-40](#), as enacted by Laws of Utah 1996, Chapter 88
- 103 [64-13-42](#), as last amended by Laws of Utah 2018, Chapter 415
- 104 [64-13-43](#), as enacted by Laws of Utah 2008, Chapter 368
- 105 [64-13-44](#), as enacted by Laws of Utah 2013, Chapter 256
- 106 [64-13-45](#), as last amended by Laws of Utah 2019, Chapters 311, 385
- 107 [64-13-46](#), as enacted by Laws of Utah 2019, Chapter 385
- 108 [64-13-47](#), as enacted by Laws of Utah 2021, Chapter 44
- 109 [64-13-48](#), as enacted by Laws of Utah 2022, Chapter 144
- 110 [64-13d-103](#), as enacted by Laws of Utah 1999, Chapter 288
- 111 [64-13d-104](#), as enacted by Laws of Utah 1999, Chapter 288
- 112 [64-13d-105](#), as enacted by Laws of Utah 1999, Chapter 288
- 113 [64-13d-106](#), as enacted by Laws of Utah 1999, Chapter 288
- 114 [64-13d-107](#), as enacted by Laws of Utah 1999, Chapter 288
- 115 [64-13e-102](#), as last amended by Laws of Utah 2022, Chapter 370
- 116 [64-13e-103](#), as last amended by Laws of Utah 2022, Chapter 187
- 117 [64-13e-103.2](#), as enacted by Laws of Utah 2021, Chapter 366
- 118 [64-13e-104](#), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
- 119 [64-13e-105](#), as last amended by Laws of Utah 2021, Chapters 366, 382
- 120 [64-13g-101](#), as enacted by Laws of Utah 2022, Chapter 393

121           **76-3-201**, as repealed and reenacted by Laws of Utah 2021, Chapter 260 and last  
122 amended by Coordination Clause, Laws of Utah 2021, Chapter 261  
123           **76-3-202**, as last amended by Laws of Utah 2022, Chapter 181  
124           **76-3-203.5**, as last amended by Laws of Utah 2022, Chapters 181, 185 and 418  
125           **76-3-203.6**, as last amended by Laws of Utah 2022, Chapter 181  
126           **76-3-403**, as last amended by Laws of Utah 1998, Chapter 91  
127           **76-3-403.5**, as last amended by Laws of Utah 2007, Chapter 148  
128           **76-5-101**, as last amended by Laws of Utah 2022, Chapter 181  
129           **76-5-102.5**, as last amended by Laws of Utah 2022, Chapter 181  
130           **76-5-102.6**, as last amended by Laws of Utah 2022, Chapter 181  
131           **76-5-102.7**, as last amended by Laws of Utah 2022, Chapters 117, 181  
132           **76-5-103.5**, as last amended by Laws of Utah 2022, Chapter 181  
133           **76-5-412**, as last amended by Laws of Utah 2022, Chapter 181  
134           **76-8-309**, as last amended by Laws of Utah 2022, Chapter 181  
135           **76-8-311.3**, as last amended by Laws of Utah 2020, Chapters 302, 347  
136           **76-8-318**, as last amended by Laws of Utah 2022, Chapters 181, 335  
137           **77-16b-102**, as last amended by Laws of Utah 2021, Chapter 262  
138           **77-16b-103**, as enacted by Laws of Utah 2012, Chapter 355  
139           **77-16b-104**, as enacted by Laws of Utah 2012, Chapter 355  
140           **77-18-112**, as renumbered and amended by Laws of Utah 2021, Chapter 260  
141           **77-18a-1**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4  
142           **77-19-3**, as last amended by Laws of Utah 2007, Chapter 148  
143           **77-19-4**, as last amended by Laws of Utah 2007, Chapters 148, 306  
144           **77-19-5**, as enacted by Laws of Utah 1980, Chapter 15  
145           **77-19-201**, as last amended by Laws of Utah 2005, Chapter 71  
146           **77-19-202**, as last amended by Laws of Utah 2008, Chapter 382  
147           **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137  
148           **77-19-204**, as enacted by Laws of Utah 2004, Chapter 137  
149           **77-19-205**, as enacted by Laws of Utah 2004, Chapter 137  
150           **77-19-206**, as enacted by Laws of Utah 2004, Chapter 137  
151           **77-23-301**, as enacted by Laws of Utah 2008, Chapter 357

- 152 [77-27-1](#), as last amended by Laws of Utah 2021, Chapters 21, 260
- 153 [77-27-1.5](#), as enacted by Laws of Utah 2010, Chapter 110
- 154 [77-27-5.3](#), as last amended by Laws of Utah 2011, Chapter 366
- 155 [77-27-8](#), as last amended by Laws of Utah 2010, Chapter 110
- 156 [77-27-9](#), as last amended by Laws of Utah 2022, Chapter 430
- 157 [77-27-10](#), as last amended by Laws of Utah 2022, Chapter 430
- 158 [77-28b-5](#), as enacted by Laws of Utah 1990, Chapter 324
- 159 [77-28b-6](#), as enacted by Laws of Utah 1990, Chapter 324
- 160 [77-28b-7](#), as enacted by Laws of Utah 1990, Chapter 324
- 161 [77-28b-8](#), as enacted by Laws of Utah 1990, Chapter 324
- 162 [77-28b-9](#), as enacted by Laws of Utah 1990, Chapter 324
- 163 [77-30-10](#), as enacted by Laws of Utah 1980, Chapter 15
- 164 [77-30-12](#), as enacted by Laws of Utah 1980, Chapter 15
- 165 [77-30-18](#), as last amended by Laws of Utah 2018, Chapter 281
- 166 [77-33-2](#), as enacted by Laws of Utah 1980, Chapter 15
- 167 [77-33-6](#), as enacted by Laws of Utah 1980, Chapter 15
- 168 [77-38-2](#), as last amended by Laws of Utah 1997, Chapter 103
- 169 [77-38-4](#), as last amended by Laws of Utah 2011, Chapter 28
- 170 [78A-2-302](#), as last amended by Laws of Utah 2022, Chapter 272
- 171 [78A-2-305](#), as last amended by Laws of Utah 2022, Chapter 272
- 172 [78B-2-302](#), as last amended by Laws of Utah 2017, Chapter 204
- 173 [78B-6-603](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 174 [78B-8-401](#), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16
- 175 [78B-8-402](#), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16
- 176 [78B-22-404](#), as last amended by Laws of Utah 2022, Chapter 451
- 177 [78B-22-452](#), as last amended by Laws of Utah 2021, Chapter 228
- 178 [78B-22-454](#), as last amended by Laws of Utah 2022, Chapter 451
- 179 [78B-22-455](#), as last amended by Laws of Utah 2022, Chapter 451
- 180 [78B-22-701](#), as last amended by Laws of Utah 2022, Chapters 281, 451
- 181 [80-6-204](#), as renumbered and amended by Laws of Utah 2021, Chapter 261

182 ENACTS:

183 **26B-4-301**, Utah Code Annotated 1953

184 **64-13-39.4**, Utah Code Annotated 1953

185 **64-13-49**, Utah Code Annotated 1953

186 REPEALS:

187 **77-16b-101**, as enacted by Laws of Utah 2012, Chapter 355



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

190 Section 1. Section **10-8-58.5** is amended to read:

191 **10-8-58.5. Contracting for management, maintenance, operation, or construction**  
192 **of jails.**

193 (1) (a) The governing body of a city or town may contract with private contractors for  
194 management, maintenance, operation, and construction of city jails.

195 (b) The governing body may include a provision in the contract that requires that any  
196 jail facility meet any federal, state, or local standards for the construction of jails.

197 (2) If the governing body contracts only for the management, maintenance, or  
198 operation of a jail, the governing body shall include provisions in the contract that:

199 (a) require the private contractor to post a performance bond in the amount set by the  
200 governing body;

201 (b) establish training standards that shall be met by jail personnel;

202 (c) require the private contractor to provide and fund training for jail personnel so that  
203 the personnel meet the standards established in the contract and any other federal, state, or local  
204 standards for the operation of jails and the treatment of ~~[jail prisoners]~~ an incarcerated  
205 individual;

206 (d) require the private contractor to indemnify the city or town for errors, omissions,  
207 defalcations, and other activities committed by the private contractor that result in liability to  
208 the city or town;

209 (e) require the private contractor to show evidence of liability insurance protecting the  
210 city or town and its officers, employees, and agents from liability arising from the construction,  
211 operation, or maintenance of the jail, in an amount not less than those specified in Title 63G,  
212 Chapter 7, Governmental Immunity Act of Utah;

213 (f) require the private contractor to:

214 (i) receive all [~~prisoners~~] incarcerated individuals committed to the jail by competent  
215 authority; and

216 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed  
217 by the governing body; and

218 (g) prohibit the use of [~~inmates~~] incarcerated individuals by the private contractor for  
219 private business purposes of any kind.

220 (3) A contractual provision requiring the private contractor to maintain liability  
221 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,  
222 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on  
223 damages recoverable from a governmental entity or its employees established by that chapter.

224 Section 2. Section **13-26-11** is amended to read:

225 **13-26-11. Prohibited practices.**

226 (1) It is unlawful for a seller to:

227 (a) solicit a prospective purchaser if the seller is not registered with the division or  
228 exempt from registration under this chapter;

229 (b) in connection with a telephone solicitation or a filing with the division, make or  
230 cause to be made a false material statement or fail to disclose a material fact necessary to make  
231 the seller's statement not misleading;

232 (c) make or authorize the making of a misrepresentation to a purchaser or prospective  
233 purchaser about the seller's compliance with this chapter;

234 (d) fail to refund within 30 days any amount due a purchaser who exercises the right to  
235 cancel under Section [13-26-5](#);

236 (e) unless the seller is exempt under Section [13-26-4](#), fail to orally advise a purchaser  
237 of the purchaser's right to cancel under Section [13-26-5](#);

238 (f) employ an [~~inmate~~] incarcerated individual in a correctional facility for telephone  
239 soliciting operations when the employment would give the [~~inmate~~] incarcerated individual  
240 access to an individual's personal data, including the individual's name, address, telephone  
241 number, Social Security number, credit card information, or physical description; or

242 (g) cause or permit a solicitor to violate a provision of this chapter.

243 (2) It is unlawful for a solicitor to:

244 (a) use a fictitious personal name in connection with a telephone solicitation;



245 (b) in connection with a telephone solicitation, make or cause to be made a false  
 246 material statement or fail to disclose a material fact necessary to make the solicitor's statement  
 247 not misleading;

248 (c) make a misrepresentation to a purchaser or prospective purchaser about the  
 249 solicitor's compliance with this chapter; or

250 (d) unless the solicitor is exempt under Section 13-26-4, fail to orally advise a  
 251 purchaser of the purchaser's right to cancel under Section 13-26-5.

252 (3) If a person knows or has reason to know that a seller or solicitor is engaged in an  
 253 act or practice that violates this chapter, it is unlawful for the person to:

254 (a) benefit from the seller's or solicitor's services; or

255 (b) provide substantial assistance or support to the seller or solicitor.

256 Section 3. Section 13-45-301 is amended to read:

257 **13-45-301. Protection of personal information.**

258 (1) Except as allowed by other law, a person may not display a Social Security number  
 259 in a manner or location that is likely to be open to public view.

260 (2) The state, or a branch, agency, or political subdivision of the state, may not employ  
 261 or contract for the employment of an [inmate] incarcerated individual in [any] a Department of  
 262 Corrections facility or county jail in any capacity that would allow [any inmate] an incarcerated  
 263 individual access to [any other] another person's personal information.

264 Section 4. Section 17-18a-506 is amended to read:

265 **17-18a-506. Correctional facility telephone service contracts -- Approval by civil**  
 266 **counsel -- Required rates.**

267 (1) As used in this section:

268 (a) "Civil counsel" means the attorney, as that term is defined in Section 17-18a-102,  
 269 who is exercising the attorney's civil duties for the county.

270 (b) "Correctional facility" means the same as that term is defined in Section  
 271 77-16b-102.

272 (c) "Correctional facility telephone service" means a public telecommunications  
 273 service provided to a correctional facility for [inmate] an incarcerated individual's use.

274 (d) ["Inmate"] "Incarcerated individual" means an individual who is committed to the  
 275 custody of or housed in a correctional facility.

276 (e) [~~inmate telephone rate~~] "Incarcerated individual telephone rate" means any  
277 amount a correctional facility or a service provider charges an [~~inmate~~] incarcerated individual  
278 for use of a correctional facility telephone service, including each per-minute rate or surcharge  
279 for:

280 (i) a collect call, a prepaid phone card, or any other method by which a correctional  
281 facility allows an [~~inmate~~] incarcerated individual to access a correctional facility telephone  
282 service; or

283 (ii) a local or a long-distance phone call.

284 (f) "Service provider" means a public entity or a private entity that provides a  
285 correctional facility telephone service.

286 (2) (a) A correctional facility shall consider the importance of [~~inmate~~] incarcerated  
287 individual access to telephones in preserving family connections and reducing recidivism when  
288 proposing an [~~inmate~~] incarcerated individual telephone rate in a new or renewed contract for  
289 correctional facility telephone service.

290 (b) A correctional facility or other state entity may not enter into or renew a contract  
291 for a correctional facility telephone service, unless the contract is approved by the civil counsel.

292 (c) To obtain approval of a contract described in Subsection (2)(b), a correctional  
293 facility or other state entity shall submit to the civil counsel:

294 (i) the proposed contract;

295 (ii) documentation that the correctional facility or other state entity has confirmed that:

296 (A) the provisions of the contract, other than the rates described in Subsection (3)(a),  
297 are consistent with correctional facility telephone service contracts throughout the state; and

298 (B) the contract provides for adequate services that meet the needs of the correctional  
299 facility; and

300 (iii) any additional information the civil counsel requires to analyze the contract.

301 (3) (a) The civil counsel shall review a contract and any additional information  
302 described in Subsection (2)(b) to determine whether:

303 (i) each [~~inmate~~] incarcerated individual telephone rate for interstate calls provided in  
304 the contract exceeds the corresponding [~~inmate~~] incarcerated individual telephone service  
305 monetary cap per-use rate established and published by the Federal Communications  
306 Commission; and

307 (ii) each [~~inmate~~] incarcerated individual telephone rate for intrastate calls provided in  
308 the contract exceeds the greater of:

309 (A) 25% higher than the corresponding [~~inmate~~] incarcerated individual telephone  
310 service monetary cap per-use rate established and published by the Federal Communications  
311 Commission; or

312 (B) the corresponding [~~inmate~~] incarcerated individual telephone system rate  
313 established and published by the Utah Department of Corrections.

314 (b) (i) After receiving and reviewing the proposed contract and additional information,  
315 the civil counsel shall approve the contract if the proposed contract meets the requirements  
316 described in Subsection (3)(a).

317 (ii) The civil counsel shall inform the correctional facility or other state entity of the  
318 civil counsel's determination.

319 Section 5. Section 17-22-2 is amended to read:

320 **17-22-2. Sheriff -- General duties.**

321 (1) The sheriff shall:

322 (a) preserve the peace;

323 (b) make all lawful arrests;

324 (c) attend in person or by deputy the Supreme Court and the Court of Appeals when  
325 required or when the court is held within [~~his~~] the sheriff's county, all courts of record, and  
326 court commissioner and referee sessions held within [~~his~~] the sheriff's county, obey [~~their~~] the  
327 court's lawful orders and directions, and comply with the court security rule, Rule 3-414, of the  
328 Utah Code of Judicial Administration;

329 (d) upon request of the juvenile court, aid the court in maintaining order during  
330 hearings and transport a minor to and from youth corrections facilities, other institutions, or  
331 other designated places;

332 (e) attend county justice courts if the judge finds that the matter before the court  
333 requires the sheriff's attendance for security, transportation, and escort of [~~jail prisoners in his~~]  
334 incarcerated individuals in the sheriff's custody, or for the custody of jurors;

335 (f) command the aid of as many inhabitants of [~~his~~] the sheriff's county as [~~he~~] the  
336 sheriff considers necessary in the execution of these duties;

337 (g) take charge of and keep the county jail and the [~~jail prisoners~~] incarcerated

338 individuals in the jail;

339 (h) receive and safely keep all [~~persons~~] individuals committed to [~~his~~] the sheriff's  
340 custody, file and preserve the commitments of those [~~persons~~] individuals, and record the  
341 name, age, place of birth, and description of each [~~person~~] individual committed;

342 (i) release on the record all attachments of real property when the attachment [~~he~~] the  
343 sheriff receives has been released or discharged;

344 (j) endorse on all process and notices the year, month, day, hour, and minute of  
345 reception, and, upon payment of fees, issue a certificate to the [~~person~~] individual delivering  
346 process or notice showing the names of the parties, title of paper, and the time of receipt;

347 (k) serve all process and notices as prescribed by law;

348 (l) if [~~he~~] the sheriff makes service of process or notice, certify on the process or  
349 notices the manner, time, and place of service, or, if [~~he~~] the sheriff fails to make service,  
350 certify the reason upon the process or notice, and return them without delay;

351 (m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public  
352 land within his county;

353 (n) perform as required by any contracts between the county and private contractors for  
354 management, maintenance, operation, and construction of county jails entered into under the  
355 authority of Section [17-53-311](#);

356 (o) for [~~the sheriff of~~] a county of the second through sixth class that enters into an  
357 interlocal agreement for law enforcement service under Title 11, Chapter 13, Interlocal  
358 Cooperation Act, provide law enforcement service as provided in the interlocal agreement;

359 (p) manage search and rescue services in his county;

360 (q) obtain saliva DNA specimens as required under Section [53-10-404](#);

361 (r) [~~on or before January 1, 2003,~~] adopt a written policy that prohibits the stopping,  
362 detention, or search of [~~any person~~] an individual when the action is solely motivated by  
363 considerations of race, color, ethnicity, age, or gender;

364 (s) as applicable, select a representative of law enforcement to serve as a member of a  
365 child protection team, as defined in Section [80-1-102](#); and

366 (t) perform any other duties that are required by law.

367 (2) (a) Violation of Subsection (1)(j) is a class C misdemeanor.

368 (b) Violation of any other subsection under Subsection (1) is a class A misdemeanor.

369 (3) (a) As used in this Subsection (3):

370 (i) "Police interlocal entity" has the same meaning as defined in Sections 17-30-3 and  
371 17-30a-102.

372 (ii) "Police local district" has the same meaning as defined in Section 17-30-3.

373 (b) Except as provided in Subsections (3)(c) and 11-13-202(4), a sheriff in a county  
374 which includes within [its] the county boundary a police local district or police interlocal  
375 entity, or both:

376 (i) serves as the chief executive officer of each police local district and police interlocal  
377 entity within the county with respect to the provision of law enforcement service within the  
378 boundary of the police local district or police interlocal entity, respectively; and

379 (ii) is subject to the direction of the police local district board of trustees or police  
380 interlocal entity governing body, as the case may be, as and to the extent provided by  
381 agreement between the police local district or police interlocal entity, respectively, and the  
382 sheriff.

383 (c) Notwithstanding Subsection (3)(b), and except as provided in Subsection  
384 11-13-202(4), if a police interlocal entity or police local district enters an interlocal agreement  
385 with a public agency, as defined in Section 11-13-103, for the provision of law enforcement  
386 service, the sheriff:

387 (i) does not serve as the chief executive officer of any interlocal entity created under  
388 that interlocal agreement, unless the agreement provides for the sheriff to serve as the chief  
389 executive officer; and

390 (ii) shall provide law enforcement service under that interlocal agreement as provided  
391 in the agreement.

392 Section 6. Section 17-22-2.5 is amended to read:

393 **17-22-2.5. Fees of sheriff.**

394 (1) (a) The legislative body of a county may set a fee for a service described in this  
395 section and charged by the county sheriff:

396 (i) in an ordinance adopted under Section 17-53-223; and

397 (ii) in an amount reasonably related to, but not exceeding, the actual cost of providing  
398 the service.

399 (b) If the legislative body of a county does not under Subsection (1)(a) set a fee

400 charged by the county sheriff, the sheriff shall charge a fee in accordance with Subsections (2)  
401 through (7).

402 (2) Unless under Subsection (1) the legislative body of a county sets a fee amount for a  
403 fee described in this Subsection (2), the sheriff shall charge the following fees:

404 (a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and  
405 complaint, or garnishee execution, or other process by which an action or proceeding is  
406 commenced, on each defendant, including copies when furnished by plaintiff, \$20;

407 (b) for taking or approving a bond or undertaking in any case in which he is authorized  
408 to take or approve a bond or undertaking, including justification, \$5;

409 (c) for a copy of any writ, process or other paper when demanded or required by law,  
410 for each folio, 50 cents;

411 (d) for serving an attachment on property, or levying an execution, or executing an  
412 order of arrest or an order for the delivery of personal property, including copies when  
413 furnished by plaintiff, \$50;

414 (e) for taking and keeping possession of and preserving property under attachment or  
415 execution or other process, the amount the court orders to a maximum of \$15 per day;

416 (f) for advertising property for sale on execution, or any judgment, or order of sale,  
417 exclusive of the cost of publication, \$15;

418 (g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive  
419 of acknowledgment, \$15, to be paid by the grantee;

420 (h) for recording each deed, conveyance, or other instrument affecting real estate,  
421 exclusive of the cost of recording, \$10, to be paid by the grantee;

422 (i) for serving a writ of possession or restitution, and putting any person entitled to  
423 possession into possession of premises, and removing occupant, \$50;

424 (j) for holding each trial of right of property, to include all services in the matter,  
425 except mileage, \$35;

426 (k) for conducting, postponing, or canceling a sale of property, \$15;

427 (l) for taking [~~a prisoner~~] an incarcerated individual in civil cases from prison before a  
428 court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100  
429 miles, \$2.50;

430 (m) for taking [~~a prisoner~~] an incarcerated individual from the place of arrest to prison,

431 in civil cases, or before a court or magistrate, for each mile necessarily traveled, in going only,  
432 to a maximum of 100 miles, \$2.50;

433 (n) for receiving and paying over money on execution or other process, as follows:

434 (i) if the amount collected does not exceed \$1,000, 2% of this amount, with a  
435 minimum of \$1; and

436 (ii) if the amount collected exceeds \$1,000, 2% on the first \$1,000 and 1-1/2% on the  
437 balance; and

438 (o) for executing in duplicate a certificate of sale, exclusive of filing it, \$10.

439 (3) The fees allowed by Subsection (2)(f) for the levy of execution and for advertising  
440 shall be collected from the judgment debtor as part of the execution in the same manner as the  
441 sum directed to be made.

442 (4) When serving an attachment on property, an order of arrest, or an order for the  
443 delivery of personal property, the sheriff may only collect traveling fees for the distance  
444 actually traveled beyond the distance required to serve the summons if the attachment or those  
445 orders:

446 (a) accompany the summons in the action; and

447 (b) may be executed at the time of the service of the summons.

448 (5) (a) (i) When traveling generally to serve notices, orders, process, or other papers,  
449 the sheriff may receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each  
450 mile necessarily traveled, in going only, computed from the courthouse for each person served,  
451 to a maximum of 100 miles.

452 (ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may  
453 receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each mile necessarily  
454 traveled, in going only, computed from the post office where received for each person served,  
455 to a maximum of 100 miles.

456 (b) The sheriff may only charge one mileage fee if any two or more papers are required  
457 to be served in the same action or proceeding at the same time and at the same address.

458 (c) If it is necessary to make more than one trip to serve any notice, order, process, or  
459 other paper, the sheriff may not collect more than two additional mileage charges.

460 (6) (a) For transporting a patient to the Utah State Hospital or to or from a hospital or a  
461 mental health facility, as defined in Section [62A-15-602](#), when the cost of transportation is

462 payable by private individuals, the sheriff may collect, except as otherwise provided under  
463 Subsection (1)(a), \$2.50 for each mile necessarily traveled, in going only, to a maximum of 100  
464 miles.

465 (b) If the sheriff requires assistance to transport the person, the sheriff may also charge  
466 the actual and necessary cost of that assistance.

467 (7) (a) Subject to Subsection (7)(b), for obtaining a saliva DNA specimen under  
468 Section 53-10-404, the sheriff shall collect the fee of \$150 in accordance with Section  
469 53-10-404.

470 (b) The fee amount described in Subsection (7)(a) may not be changed by a county  
471 legislative body under Subsection (1).

472 Section 7. Section 17-22-3 is amended to read:

473 **17-22-3. Transfer of incarcerated individuals to state prison.**

474 The sheriff of the county in which [~~a criminal~~] an individual is sentenced to  
475 confinement in the state prison, or is sentenced to death, shall cause [~~such convict~~] the  
476 incarcerated individual to be removed from the county jail within five days after the sentence  
477 and conveyed to the state prison and delivered to the warden thereof.

478 Section 8. Section 17-22-5 is amended to read:

479 **17-22-5. Sheriff's classification of jail incarcerated individuals -- Classification**  
480 **criteria -- Alternative incarceration programs -- Limitation.**

481 (1) (a) Except as provided in Subsection (4), the sheriff shall adopt and implement  
482 written policies for admission of [~~prisoners~~] incarcerated individuals to the county jail and the  
483 classification of [~~persons~~] individuals incarcerated in the jail which shall provide for the  
484 separation of [~~prisoners~~] incarcerated individuals by gender and by such other factors as may  
485 reasonably provide for the safety and well-being of [~~inmates~~] incarcerated individuals and the  
486 community.

487 (b) To the extent authorized by law, any written admission policies shall be applied  
488 equally to all entities using the county correctional facilities.

489 (2) Except as provided in Subsection (4), each county sheriff shall assign [~~prisoners~~]  
490 incarcerated individuals to a facility or section of a facility based on classification criteria that  
491 the sheriff develops and maintains.

492 (3) (a) Except as provided in Subsection (4), a county sheriff may develop and



493 implement alternative incarceration programs that may or may not involve housing [~~a prisoner~~]  
494 an incarcerated individual in a jail facility.

495 (b) [~~A prisoner~~] An incarcerated individual housed under an alternative incarceration  
496 program under Subsection (3)(a) shall be considered to be in the full custody and control of the  
497 sheriff for purposes of Section 76-8-309.

498 (c) [~~A prisoner~~] An incarcerated individual may not be placed in an alternative  
499 incarceration program under Subsection (3)(a) unless:

500 (i) the jail facility is at maximum operating capacity, as established under Subsection

501 17-22-5.5(2); or

502 (ii) ordered by the court.

503 (4) This section may not be construed to authorize a sheriff to modify provisions of a  
504 contract with the Department of Corrections to house in a county jail [~~persons~~] individuals  
505 sentenced to the Department of Corrections.

506 Section 9. Section 17-22-5.5 is amended to read:

507 **17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity**  
508 **of jail facilities -- Transfer or release of incarcerated individuals -- Limitation -- Records**  
509 **regarding release.**

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

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

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

514 and

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

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

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

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

521 and

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

523 (i) transfer [~~prisoners~~] incarcerated individuals to another appropriate facility:

- 524 (A) under the sheriff's control; or
- 525 (B) available to the sheriff by contract;
- 526 (ii) release [~~prisoners~~] incarcerated individuals:
- 527 (A) to a supervised release program, according to release criteria established by the
- 528 sheriff; or
- 529 (B) to another alternative incarceration program developed by the sheriff; or
- 530 (iii) admit [~~prisoners~~] incarcerated individuals in accordance with law and a uniform
- 531 admissions policy imposed equally upon all entities using the county jail.
- 532 (3) (a) The sheriff shall keep records of the release status and the type of release
- 533 program or alternative incarceration program for any [~~prisoner~~] incarcerated individual released
- 534 under Subsection (2)(b)(ii).
- 535 (b) The sheriff shall make these records available upon request to the Department of
- 536 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.
- 537 (4) This section may not be construed to authorize a sheriff to modify provisions of a
- 538 contract with the Department of Corrections to house in a county jail an individual sentenced to
- 539 the Department of Corrections.
- 540 (5) Regardless of whether a jail facility has reached the jail facility's maximum
- 541 operating capacity under Subsection (2), a sheriff may release an individual from a jail facility
- 542 in accordance with Section [77-20-203](#) or [77-20-204](#).
- 543 (6) (a) Subject to Subsection (6)(c), a jail facility shall detain an individual for up to 24
- 544 hours from booking if:
- 545 (i) the individual is on supervised probation or parole and that information is
- 546 reasonably available; and
- 547 (ii) the individual was arrested for:
- 548 (A) a violent felony as defined in Section [76-3-203.5](#); or
- 549 (B) a qualifying domestic violence offense as defined in Subsection [77-36-1.1](#)(4) that
- 550 is not a criminal mischief offense.
- 551 (b) The jail facility shall notify the entity supervising the individual's probation or
- 552 parole that the individual is being detained.
- 553 (c) (i) The jail facility shall release the individual:
- 554 (A) to the Department of Corrections if the Department of Corrections supervises the

555 individual and requests the individual's release; or

556 (B) if a court or magistrate orders release.

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

559 Section 10. Section **17-22-6** is amended to read:

560 **17-22-6. Service of process on incarcerated individuals -- Penalty.**

561 (1) A sheriff or jailer upon whom a paper in a judicial proceeding directed to [~~a~~  
562 ~~prisoner~~] an incarcerated individual in the sheriff's or jailer's custody is served shall forthwith  
563 deliver the paper to the [~~prisoner~~] incarcerated individual, with a note thereon of the time of  
564 [~~its~~] the paper service.

565 (2) A sheriff or jailer who neglects to comply with Subsection (1) is liable to the  
566 [~~prisoner~~] incarcerated individual for all damages occasioned by that neglect.

567 Section 11. Section **17-22-7** is amended to read:

568 **17-22-7. Special guards for jail.**

569 The sheriff when necessary may with the assent of the county executive employ a  
570 temporary guard for the protection of the county jail, or for the safekeeping of [~~prisoners~~]  
571 incarcerated individuals, and the expenses thereof shall be a county charge.

572 Section 12. Section **17-22-8** is amended to read:

573 **17-22-8. Care of incarcerated individual -- Funding of services -- Private**  
574 **contractor.**

575 (1) Except as provided in Subsection (5), a sheriff shall:

576 (a) receive each individual committed to jail by competent authority;

577 (b) provide each [~~prisoner~~] incarcerated individual with necessary food, clothing, and  
578 bedding in the manner prescribed by the county legislative body;

579 (c) provide each [~~prisoner~~] incarcerated individual medical care when:

580 (i) the [~~prisoner's~~] incarcerated individual's symptoms evidence a serious disease or  
581 injury;

582 (ii) the [~~prisoner's~~] incarcerated individual's disease or injury is curable or may be  
583 substantially alleviated; and

584 (iii) the potential for harm to the [~~person~~] individual by reason of delay or the denial of  
585 medical care would be substantial; and

586 (d) provide each [prisoner] incarcerated individual, as part of the intake process, with  
587 the option of continuing any of the following medically prescribed methods of contraception:

588 (i) an oral contraceptive;

589 (ii) an injectable contraceptive;

590 (iii) a patch;

591 (iv) a vaginal ring; or

592 (v) an intrauterine device, if the [prisoner] incarcerated individual was prescribed the  
593 intrauterine device because the [prisoner] incarcerated individual experiences serious and  
594 persistent adverse effects when using the methods of contraception described in Subsections  
595 (1)(d)(i) and (ii).

596 (2) A sheriff may provide the generic form of a contraceptive described in Subsection  
597 (1)(d)(i) or (ii).

598 (3) A sheriff shall follow:

599 (a) the provisions of Section 64-13-46 if ~~[a prisoner]~~ an incarcerated individual is  
600 pregnant and gives birth, including the reporting requirements in Subsection 64-13-45(2)(c)[-];  
601 and

602 (b) the medical notification provisions of Section 64-13-49.

603 (4) (a) Except as provided in Subsection (4)(b), the expense incurred in providing the  
604 services required by this section to [prisoners] incarcerated individuals shall be paid from the  
605 county treasury, except as provided in Section 17-22-10.

606 (b) The expense incurred in providing the services described in Subsection (1)(d) to  
607 [prisoners] incarcerated individuals shall be paid by the Department of Health and Human  
608 Services.

609 (5) If the county executive contracts with a private contractor to provide the services  
610 required by this section, the sheriff shall provide only those services required of the sheriff by  
611 the contract between the county and the private contractor.

612 Section 13. Section 17-22-9 is amended to read:

613 **17-22-9. Federal incarcerated individuals.**

614 [Persons] An individual convicted of crime in any of the courts of the United States in  
615 the state of Utah as well as [prisoners] an incarcerated individual held to answer before such  
616 courts for a violation of any of the laws of the United States shall be received and held in the

617 jail of any county under the same regulations and laws governing [~~prisoners~~] incarcerated  
618 individuals held under the authority of this state, and upon such terms as to compensation as  
619 may be agreed upon by the county and the United States.

620 Section 14. Section **17-22-19** is amended to read:

621 **17-22-19. Action for escape or rescue -- Defenses.**

622 An action [~~cannot~~] may not be maintained against the sheriff for a rescue or for an  
623 escape of [~~a person~~] an incarcerated individual arrested upon an execution or commitment, if  
624 after [~~his~~] the incarcerated individual's rescue or escape and before the commencement of the  
625 action the [~~prisoner~~] incarcerated individual returns to the jail or is retaken by the sheriff or by  
626 any other [~~person~~] individual.

627 Section 15. Section **17-22-28** is amended to read:

628 **17-22-28. Maintaining order -- Imposing restitution.**

629 (1) If [~~a prisoner~~] an incarcerated individual commits an act of violence against another  
630 [~~person~~] individual, attempts to damage jail property, attempts to escape, or refuses to obey a  
631 lawful order and reasonable command, an officer or other employee of the jail may use all  
632 reasonable means under the circumstances, including the use of a weapon, to defend [~~himself;~~  
633 ~~defend another~~] any individual, protect jail property, prevent escape, or enforce compliance  
634 with a lawful order and reasonable command.

635 (2) (a) A jail may request restitution from [~~a prisoner~~] an incarcerated individual for  
636 damaging jail property as part of an administrative disciplinary hearing.

637 (b) To enforce restitution, a jail may withdraw money from or place a hold on [~~a~~  
638 ~~prisoner's~~] an incarcerated individual's account.

639 Section 16. Section **17-22-29** is amended to read:

640 **17-22-29. Notice to county jail facilities.**

641 (1) Before an order is entered granting visitation or correspondence between [~~a person~~  
642 ~~and a prisoner~~] an individual and an incarcerated individual, the moving party shall provide  
643 notice to the facility administrator.

644 (2) The court shall:

645 (a) provide an opportunity to the facility representative to respond before the order is  
646 granted; and

647 (b) consider facility policy.

648 Section 17. Section 17-22-32 is amended to read:

649 **17-22-32. County jail reporting requirements.**

650 (1) As used in this section:

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

653 (b) (i) "In-custody death" means ~~[an inmate]~~ the death of an incarcerated individual  
654 that occurs while the ~~[inmate]~~ incarcerated individual is in the custody of a county jail.

655 (ii) "In-custody death" includes ~~[an inmate]~~ the death of an incarcerated individual that  
656 occurs while the ~~[inmate]~~ incarcerated individual is:

657 (A) being transported for medical care; or

658 (B) receiving medical care outside of a county jail.

659 (c) ~~["Inmate"]~~ "Incarcerated individual" means an individual who is processed or  
660 booked into custody or housed in a county jail in the state.

661 (d) "Opiate" means the same as that term is defined in Section 58-37-2.

662 (2) Each county jail shall submit a report to the commission before June 15 of each  
663 year that includes, for the preceding calendar year:

664 (a) the average daily ~~[inmate]~~ incarcerated individual population each month;

665 (b) the number of ~~[inmates]~~ incarcerated individuals in the county jail on the last day of  
666 each month who identify as each race or ethnicity included in the Standards for Transmitting  
667 Race and Ethnicity published by the United States Federal Bureau of Investigation;

668 (c) the number of ~~[inmates]~~ incarcerated individuals booked into the county jail;

669 (d) the number of ~~[inmates]~~ incarcerated individuals held in the county jail each month  
670 on behalf of each of the following entities:

671 (i) the Bureau of Indian Affairs;

672 (ii) a state prison;

673 (iii) a federal prison;

674 (iv) the United States Immigration and Customs Enforcement; and

675 (v) any other entity with which a county jail has entered a contract to house ~~[inmates]~~  
676 incarcerated individuals on the entity's behalf;

677 (e) the number of ~~[inmates]~~ incarcerated individuals that are denied pretrial release and  
678 held in the custody of the county jail while the ~~[inmate]~~ incarcerated individual awaited final

- 679 disposition of the [inmate's] incarcerated individual's criminal charges;
- 680 (f) for each [inmate] incarcerated individual booked into the county jail:
- 681 (i) the name of the agency that arrested the [inmate] incarcerated individual;
- 682 (ii) the date and time the [inmate] incarcerated individual was booked into and released
- 683 from the custody of the county jail;
- 684 (iii) if the [inmate] incarcerated individual was released from the custody of the county
- 685 jail, the reason the [inmate] incarcerated individual was released from the custody of the county
- 686 jail;
- 687 (iv) if the [inmate] incarcerated individual was released from the custody of the county
- 688 jail on a financial condition, whether the financial condition was set by a bail commissioner or
- 689 a court;
- 690 (v) the number of days the [inmate] incarcerated individual was held in the custody of
- 691 the county jail before disposition of the [inmate's] incarcerated individual's criminal charges;
- 692 (vi) whether the [inmate] incarcerated individual was released from the custody of the
- 693 county jail before final disposition of the [inmate's] incarcerated individual's criminal charges;
- 694 and
- 695 (vii) the state identification number of the [inmate] incarcerated individual;
- 696 (g) the number of in-custody deaths that occurred at the county jail;
- 697 (h) for each in-custody death[;]:
- 698 (i) the name, gender, race, ethnicity, age, and known or suspected medical diagnosis or
- 699 disability, if any, of the deceased;
- 700 (ii) the date, time, and location of death;
- 701 (iii) the law enforcement agency that detained, arrested, or was in the process of
- 702 arresting the deceased; and
- 703 (iv) a brief description of the circumstances surrounding the death;
- 704 (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of
- 705 each of the in-custody deaths described in Subsection (2)(g);
- 706 (j) the county jail's policy for notifying an [inmate's] incarcerated individual's next of
- 707 kin after the [inmate's] incarcerated individual's in-custody death;
- 708 (k) the county jail policies, procedures, and protocols:
- 709 (i) for treatment of an [inmate] incarcerated individual experiencing withdrawal from

710 alcohol or substance use, including use of opiates;

711 (ii) that relate to the county jail's provision, or lack of provision, of medications used to

712 treat, mitigate, or address an ~~[inmate's]~~ incarcerated individual's symptoms of withdrawal,

713 including methadone and all forms of buprenorphine and naltrexone; and

714 (iii) that relate to screening, assessment, and treatment of an ~~[inmate]~~ incarcerated

715 individual for a substance use or mental health disorder; and

716 (l) any report the county jail provides or is required to provide under federal law or

717 regulation relating to ~~[inmate deaths]~~ an in-custody death.

718 (3) (a) Subsection (2) does not apply to a county jail if the county jail:

719 (i) collects and stores the data described in Subsection (2); and

720 (ii) enters into a memorandum of understanding with the commission that allows the

721 commission to access the data described in Subsection (2).

722 (b) The memorandum of understanding described in Subsection (3)(a)(ii) shall include

723 a provision to protect any information related to an ongoing investigation and comply with all

724 applicable federal and state laws.

725 (c) If the commission accesses data from a county jail in accordance with Subsection

726 (3)(a), the commission may not release a report prepared from that data, unless:

727 (i) the commission provides the report for review to:

728 (A) the county jail; and

729 (B) any arresting agency that is named in the report; and

730 (ii) (A) the county jail approves the report for release;

731 (B) the county jail reviews the report and prepares a response to the report to be

732 published with the report; or

733 (C) the county jail fails to provide a response to the report within four weeks after the

734 day on which the commission provides the report to the county jail.

735 (4) The commission shall:

736 (a) compile the information from the reports described in Subsection (2);

737 (b) omit or redact any identifying information of an ~~[inmate]~~ incarcerated individual in

738 the compilation to the extent omission or redaction is necessary to comply with state and

739 federal law;

740 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim



741 Committee and the Utah Substance Use and Mental Health Advisory Council before November  
742 1 of each year; and

743 (d) submit the compilation to the protection and advocacy agency designated by the  
744 governor before November 1 of each year.

745 (5) The commission may not provide access to or use a county jail's policies,  
746 procedures, or protocols submitted under this section in a manner or for a purpose not  
747 described in this section.

748 (6) A report including only the names and causes of death of deceased [~~inmates~~]  
749 incarcerated individuals and the facility in which [~~they~~] the incarcerated individuals were being  
750 held in custody shall be made available to the public.

751 Section 18. Section ~~17-22-33~~ is amended to read:

752 **17-22-33. Commissary account disclosure requirements.**

753 (1) As used in this section:

754 (a) "Commissary account" means an account from which an [~~inmate~~] incarcerated  
755 individual may withdraw money, deposited by the [~~inmate~~] incarcerated individual or another  
756 individual, to purchase discretionary items for sale by a correctional facility.

757 (b) "Commissary purchase" means a transaction initiated by an [~~inmate~~] incarcerated  
758 individual by which the [~~inmate~~] incarcerated individual obtains an item or items offered for  
759 sale by the correctional facility in exchange for money withdrawn from the [~~inmate's~~]  
760 incarcerated individual's commissary account.

761 (c) "Correctional facility" means the same as that term is defined in Section  
762 ~~77-16b-102~~.

763 (d) [~~Inmate~~] "Incarcerated individual" means an individual in the custody of a  
764 correctional facility for criminal charges or a criminal conviction.

765 (2) A correctional facility that employs a policy or practice by which the correctional  
766 facility withdraws money from an [~~inmate's~~] incarcerated individual's commissary account, for  
767 any purpose other than a commissary purchase, must disclose that policy or practice to the  
768 [~~inmate~~] incarcerated individual or any other individual seeking to make a deposit of money  
769 into the [~~inmate's~~] incarcerated individual's commissary account before the correctional facility  
770 may accept and deposit the money into the [~~inmate's~~] incarcerated individual's commissary  
771 account.

772 Section 19. Section 17-25-3 is amended to read:

773 **17-25-3. Fees for constables -- Criminal.**

774 (1) (a) In criminal matters constables shall be paid for each copy of a summons,  
775 subpoena, notice, court order, or other criminal paper, except a warrant of arrest;

776 (i) \$5 for each defendant served; and

777 (ii) mileage of \$1 per mile for each mile necessarily traveled in going only, to be  
778 computed from either the courthouse, or when transmitted by mail, from the post office where  
779 received.

780 (b) If more than one trip is necessary to serve, or diligently attempt to serve, service of  
781 process, mileage charges for more than two trips may be collected only if the party requesting  
782 the service of process has approved the additional mileage charges.

783 (c) Each charge shall be individually documented on the affidavit of return of service.

784 (2) Lower charges may be established by contract for services under this section.

785 (3) If a constable serves process in a county other than the county where the process  
786 originated, travel expenses may not exceed the fee that would be charged if served by the  
787 sheriff of that county.

788 (4) (a) For each mile traveled for the purpose of serving, or to diligently attempt  
789 service of, a warrant of arrest, both in going to and returning from defendant's address, a fee of  
790 \$1 may be charged.

791 (b) If more than one trip is necessary to serve, or diligently attempt to serve, a warrant  
792 of arrest, no more than two additional mileage charges may be collected.

793 (c) Each charge shall be individually documented on the affidavit of return of service.

794 (5) For arresting each ~~[prisoner]~~ incarcerated individual and bringing ~~[him]~~ the  
795 incarcerated individual into court, or otherwise satisfying a warrant, a fee of \$15 may be  
796 charged.

797 Section 20. Section 17-50-319 is amended to read:

798 **17-50-319. County charges enumerated.**

799 (1) County charges are:

800 (a) charges incurred against the county by any law;

801 (b) the necessary expenses of the county attorney or district attorney incurred in  
802 criminal cases arising in the county, and all other expenses necessarily incurred by the county

803 or district attorney in the prosecution of criminal cases, except jury and witness fees;

804 (c) the expenses of medical care as described in Section 17-22-8, and other expenses  
805 necessarily incurred in the support of persons charged with or convicted of a criminal offense  
806 and committed to the county jail, except as provided in Subsection (2);

807 (d) for a county not within the state district court administrative system, the sum  
808 required by law to be paid jurors in civil cases;

809 (e) all charges and accounts for services rendered by any justice court judge for  
810 services in the trial and examination of persons charged with a criminal offense not otherwise  
811 provided for by law;

812 (f) the contingent expenses necessarily incurred for the use and benefit of the county;

813 (g) every other sum directed by law to be raised for any county purposes under the  
814 direction of the county legislative body or declared a county charge;

815 (h) the fees of constables for services rendered in criminal cases;

816 (i) the necessary expenses of the sheriff and deputies incurred in civil and criminal  
817 cases arising in the county, and all other expenses necessarily incurred by the sheriff and  
818 deputies in performing the duties imposed upon them by law;

819 (j) the sums required by law to be paid by the county to jurors and witnesses serving at  
820 inquests and in criminal cases in justice courts; and

821 (k) subject to Subsection (2), expenses incurred by a health care facility or provider in  
822 providing medical services, treatment, hospitalization, or related transportation, at the request  
823 of a county sheriff for:

824 (i) persons booked into a county jail on a charge of a criminal offense; or

825 (ii) persons convicted of a criminal offense and committed to a county jail.

826 (2) (a) Expenses described in Subsections (1)(c) and (1)(k) are a charge to the county  
827 only to the extent that they exceed any private insurance in effect that covers the expenses  
828 described in Subsections (1)(c) and (1)(k).

829 (b) The county may collect costs of medical care, treatment, hospitalization, and related  
830 transportation provided to the person described in Subsection (1)(k) who has the resources or  
831 the ability to pay, subject to the following priorities for payment:

832 (i) first priority shall be given to restitution; and

833 (ii) second priority shall be given to family support obligations.

834 (c) A county may seek reimbursement from a person described in Subsection (1)(k) for  
835 expenses incurred by the county in behalf of the [inmate] incarcerated individual for medical  
836 care, treatment, hospitalization, or related transportation by:

837 (i) deducting the cost from the [inmate's] incarcerated individual's cash account on  
838 deposit with the detention facility during the [inmate's] incarcerated individual's incarceration  
839 or during a subsequent incarceration if the subsequent incarceration occurs within the same  
840 county and the incarceration is within 10 years of the date of the expense in behalf of the  
841 [inmate] incarcerated individual;

842 (ii) placing a lien for the amount of the expense against the [inmate's] incarcerated  
843 individual's personal property held by the jail; and

844 (iii) adding the amount of expenses incurred to any other amount owed by the [inmate]  
845 incarcerated individual to the jail upon the [inmate's] incarcerated individual's release in  
846 accordance with Subsection 76-3-201(4)(d).

847 (d) An [inmate] incarcerated individual who receives medical care, treatment,  
848 hospitalization, or related transportation shall cooperate with the jail facility seeking payment  
849 or reimbursement under this section for the [inmate's] incarcerated individual's expenses.

850 (e) If there is no contract between a county jail and a health care facility or provider  
851 that establishes a fee schedule for medical services rendered, expenses under Subsection (1)(k)  
852 shall be commensurate with:

853 (i) for a health care facility, the current noncapitated state Medicaid rates; and

854 (ii) for a health care provider, 65% of the amount that would be paid to the health care  
855 provider:

856 (A) under the Public Employees' Benefit and Insurance Program, created in Section  
857 49-20-103; and

858 (B) if the person receiving the medical service were a covered employee under the  
859 Public Employees' Benefit and Insurance Program.

860 (f) Subsection (1)(k) does not apply to expenses of a person held at the jail at the  
861 request of an agency of the United States.

862 (g) A county that receives information from the Public Employees' Benefit and  
863 Insurance Program to enable the county to calculate the amount to be paid to a health care  
864 provider under Subsection (2)(e)(ii) shall keep that information confidential.

865 Section 21. Section 17-53-311 is amended to read:

866 **17-53-311. Contracting for management, maintenance, operation, or construction**  
867 **of jails.**

868 (1) (a) With the approval of the sheriff, a county executive may contract with private  
869 contractors for management, maintenance, operation, and construction of county jails.

870 (b) A county executive may include a provision in the contract that allows use of a  
871 building authority created under the provisions of Title 17D, Chapter 2, Local Building  
872 Authority Act, to construct or acquire a jail facility.

873 (c) A county executive may include a provision in the contract that requires that any  
874 jail facility meet any federal, state, or local standards for the construction of jails.

875 (2) If a county executive contracts only for the management, maintenance, or operation  
876 of a jail, the county executive shall include provisions in the contract that:

877 (a) require the private contractor to post a performance bond in the amount set by the  
878 county legislative body;

879 (b) establish training standards that shall be met by jail personnel;

880 (c) require the private contractor to provide and fund training for jail personnel so that  
881 the personnel meet the standards established in the contract and any other federal, state, or local  
882 standards for the operation of jails and the treatment of [~~jail prisoners~~] incarcerated individuals;

883 (d) require the private contractor to indemnify the county for errors, omissions,  
884 defalcations, and other activities committed by the private contractor that result in liability to  
885 the county;

886 (e) require the private contractor to show evidence of liability insurance protecting the  
887 county and its officers, employees, and agents from liability arising from the construction,  
888 operation, or maintenance of the jail, in an amount not less than those specified in Title 63G,  
889 Chapter 7, Governmental Immunity Act of Utah;

890 (f) require the private contractor to:

891 (i) receive all [~~prisoners~~] incarcerated individuals committed to the jail by competent  
892 authority; and

893 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed  
894 by the governing body; and

895 (g) prohibit the use of [~~inmates~~] incarcerated individuals by the private contractor for

896 private business purposes of any kind.

897 (3) A contractual provision requiring the private contractor to maintain liability  
898 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,  
899 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on  
900 damages recoverable from a governmental entity or its employees established by that chapter.

901 Section 22. Section **17D-1-201** is amended to read:

902 **17D-1-201. Services that a special service district may be created to provide.**

903 As provided in this part, a county or municipality may create a special service district to  
904 provide any combination of the following services:

905 (1) water;

906 (2) sewerage;

907 (3) drainage;

908 (4) flood control;

909 (5) garbage collection and disposal;

910 (6) health care;

911 (7) transportation, including the receipt of federal secure rural school funds under

912 Section [51-9-603](#) for the purposes of constructing, improving, repairing, or maintaining public  
913 roads;

914 (8) recreation;

915 (9) fire protection, including:

916 (a) emergency medical services, ambulance services, and search and rescue services, if  
917 fire protection service is also provided;

918 (b) Firewise Communities programs and the development of community wildfire  
919 protection plans; and

920 (c) the receipt of federal secure rural school funds as provided under Section [51-9-603](#)  
921 for the purposes of carrying out Firewise Communities programs, developing community  
922 wildfire protection plans, and performing emergency services, including firefighting on federal  
923 land and other services authorized under this Subsection (9);

924 (10) providing, operating, and maintaining correctional and rehabilitative facilities and  
925 programs for municipal, state, and other detainees and [prisoners] incarcerated individuals;

926 (11) street lighting;

- 927 (12) consolidated 911 and emergency dispatch;  
 928 (13) animal shelter and control;  
 929 (14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease  
 930 Funds, and expending those funds to be used in accordance with state and federal law;  
 931 (15) in a county of the first class, extended police protection;  
 932 (16) control or abatement of earth movement or a landslide;  
 933 (17) an energy efficiency upgrade, a renewable energy system, or electric vehicle  
 934 charging infrastructure as defined in Section 11-42a-102, in accordance with Title 11, Chapter  
 935 42a, Commercial Property Assessed Clean Energy Act; or  
 936 (18) cemetery.

937 Section 23. Section 26-18-3 is amended to read:

938 **26-18-3. Administration of Medicaid program by department -- Reporting to the**  
 939 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**  
 940 **standards -- Internal audits -- Health opportunity accounts.**

941 (1) The department shall be the single state agency responsible for the administration  
 942 of the Medicaid program in connection with the United States Department of Health and  
 943 Human Services pursuant to Title XIX of the Social Security Act.

944 (2) (a) The department shall implement the Medicaid program through administrative  
 945 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking  
 946 Act, the requirements of Title XIX, and applicable federal regulations.

947 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules  
 948 necessary to implement the program:

949 (i) the standards used by the department for determining eligibility for Medicaid  
 950 services;

951 (ii) the services and benefits to be covered by the Medicaid program;

952 (iii) reimbursement methodologies for providers under the Medicaid program; and

953 (iv) a requirement that:

954 (A) a person receiving Medicaid services shall participate in the electronic exchange of  
 955 clinical health records established in accordance with Section 26-1-37 unless the individual  
 956 opts out of participation;

957 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee

958 shall receive notice of enrollment in the electronic exchange of clinical health records and the  
959 right to opt out of participation at any time; and

960 (C) beginning July 1, 2012, when the program sends enrollment or renewal information  
961 to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive  
962 notice of the right to opt out of the electronic exchange of clinical health records.

963 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Social  
964 Services Appropriations Subcommittee when the department:

- 965 (i) implements a change in the Medicaid State Plan;
- 966 (ii) initiates a new Medicaid waiver;
- 967 (iii) initiates an amendment to an existing Medicaid waiver;
- 968 (iv) applies for an extension of an application for a waiver or an existing Medicaid  
969 waiver;

970 (v) applies for or receives approval for a change in any capitation rate within the  
971 Medicaid program; or

972 (vi) initiates a rate change that requires public notice under state or federal law.

973 (b) The report required by Subsection (3)(a) shall:

974 (i) be submitted to the Social Services Appropriations Subcommittee prior to the  
975 department implementing the proposed change; and

976 (ii) include:

977 (A) a description of the department's current practice or policy that the department is  
978 proposing to change;

979 (B) an explanation of why the department is proposing the change;

980 (C) the proposed change in services or reimbursement, including a description of the  
981 effect of the change;

982 (D) the effect of an increase or decrease in services or benefits on individuals and  
983 families;

984 (E) the degree to which any proposed cut may result in cost-shifting to more expensive  
985 services in health or human service programs; and

986 (F) the fiscal impact of the proposed change, including:

987 (I) the effect of the proposed change on current or future appropriations from the  
988 Legislature to the department;



989 (II) the effect the proposed change may have on federal matching dollars received by  
990 the state Medicaid program;

991 (III) any cost shifting or cost savings within the department's budget that may result  
992 from the proposed change; and

993 (IV) identification of the funds that will be used for the proposed change, including any  
994 transfer of funds within the department's budget.

995 (4) Any rules adopted by the department under Subsection (2) are subject to review and  
996 reauthorization by the Legislature in accordance with Section [63G-3-502](#).

997 (5) The department may, in its discretion, contract with the Department of Health and  
998 Human Services or other qualified agencies for services in connection with the administration  
999 of the Medicaid program, including:

1000 (a) the determination of the eligibility of individuals for the program;

1001 (b) recovery of overpayments; and

1002 (c) consistent with Section [26-20-13](#), and to the extent permitted by law and quality  
1003 control services, enforcement of fraud and abuse laws.

1004 (6) The department shall provide, by rule, disciplinary measures and sanctions for  
1005 Medicaid providers who fail to comply with the rules and procedures of the program, provided  
1006 that sanctions imposed administratively may not extend beyond:

1007 (a) termination from the program;

1008 (b) recovery of claim reimbursements incorrectly paid; and

1009 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

1010 (7) (a) Funds collected as a result of a sanction imposed under Section 1919 of Title  
1011 XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated  
1012 credits to be used by the division in accordance with the requirements of Section 1919 of Title  
1013 XIX of the federal Social Security Act.

1014 (b) In accordance with Section [63J-1-602.2](#), sanctions collected under this Subsection  
1015 (7) are nonlapsing.

1016 (8) (a) In determining whether an applicant or recipient is eligible for a service or  
1017 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department  
1018 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle  
1019 designated by the applicant or recipient.

- 1020 (b) Before Subsection (8)(a) may be applied:
- 1021 (i) the federal government shall:
- 1022 (A) determine that Subsection (8)(a) may be implemented within the state's existing
- 1023 public assistance-related waivers as of January 1, 1999;
- 1024 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or
- 1025 (C) determine that the state's waivers that permit dual eligibility determinations for
- 1026 cash assistance and Medicaid are no longer valid; and
- 1027 (ii) the department shall determine that Subsection (8)(a) can be implemented within
- 1028 existing funding.
- 1029 (9) (a) For purposes of this Subsection (9):
- 1030 (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as
- 1031 defined in 42 U.S.C. Sec. 1382c(a)(1); and
- 1032 (ii) "spend down" means an amount of income in excess of the allowable income
- 1033 standard that shall be paid in cash to the department or incurred through the medical services
- 1034 not paid by Medicaid.
- 1035 (b) In determining whether an applicant or recipient who is aged, blind, or has a
- 1036 disability is eligible for a service or benefit under this chapter, the department shall use 100%
- 1037 of the federal poverty level as:
- 1038 (i) the allowable income standard for eligibility for services or benefits; and
- 1039 (ii) the allowable income standard for eligibility as a result of spend down.
- 1040 (10) The department shall conduct internal audits of the Medicaid program.
- 1041 (11) (a) The department may apply for and, if approved, implement a demonstration
- 1042 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
- 1043 (b) A health opportunity account established under Subsection (11)(a) shall be an
- 1044 alternative to the existing benefits received by an individual eligible to receive Medicaid under
- 1045 this chapter.
- 1046 (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.
- 1047 (12) (a) (i) The department shall apply for, and if approved, implement an amendment
- 1048 to the state plan under this Subsection (12) for benefits for:
- 1049 (A) medically needy pregnant women;
- 1050 (B) medically needy children; and

- 1051 (C) medically needy parents and caretaker relatives.
- 1052 (ii) The department may implement the eligibility standards of Subsection (12)(b) for
- 1053 eligibility determinations made on or after the date of the approval of the amendment to the
- 1054 state plan.
- 1055 (b) In determining whether an applicant is eligible for benefits described in Subsection
- 1056 (12)(a)(i), the department shall:
- 1057 (i) disregard resources held in an account in the savings plan created under Title 53B,
- 1058 Chapter 8a, Utah Educational Savings Plan, if the beneficiary of the account is:
- 1059 (A) under the age of 26; and
- 1060 (B) living with the account owner, as that term is defined in Section 53B-8a-102, or
- 1061 temporarily absent from the residence of the account owner; and
- 1062 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as
- 1063 resources for a benefit determination, if the withdrawal was not used for qualified higher
- 1064 education costs as that term is defined in Section 53B-8a-102.5.
- 1065 (13) (a) The department may not deny or terminate eligibility for Medicaid solely
- 1066 because an individual is:
- 1067 (i) incarcerated; and
- 1068 (ii) not an ~~inmate~~ incarcerated individual as defined in Section 64-13-1.
- 1069 (b) Subsection (13)(a) does not require the Medicaid program to provide coverage for
- 1070 any services for an individual while the individual is incarcerated.
- 1071 (14) The department is a party to, and may intervene at any time in, any judicial or
- 1072 administrative action:
- 1073 (a) to which the Department of Workforce Services is a party; and
- 1074 (b) that involves medical assistance under:
- 1075 (i) Title 26, Chapter 18, Medical Assistance Act; or
- 1076 (ii) Title 26, Chapter 40, Utah Children's Health Insurance Act.
- 1077 Section 24. Section **26-18-421** is amended to read:
- 1078 **26-18-421. Medicaid waiver for coverage of qualified incarcerated individuals**
- 1079 **leaving prison or jail.**
- 1080 (1) As used in this section:
- 1081 (a) "Correctional facility" means:

- 1082 (i) a county jail;
- 1083 (ii) the Department of Corrections, created in Section 64-13-2; or
- 1084 (iii) a prison, penitentiary, or other institution operated by or under contract with the  
1085 Department of Corrections for the confinement of an offender, as defined in Section 64-13-1.
- 1086 (b) "Qualified [~~inmate~~] incarcerated individual" means an individual who:
- 1087 (i) is incarcerated in a correctional facility; and
- 1088 (ii) has:
- 1089 (A) a chronic physical or behavioral health condition;
- 1090 (B) a mental illness, as defined in Section 62A-15-602; or
- 1091 (C) an opioid use disorder.
- 1092 (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan  
1093 amendment with CMS to offer a program to provide Medicaid coverage to a qualified [~~inmate~~]  
1094 incarcerated individual for up to 30 days immediately before the day on which the qualified  
1095 [~~inmate~~] incarcerated individual is released from a correctional facility.
- 1096 (3) If the waiver or state plan amendment described in Subsection (2) is approved, the  
1097 department shall report to the Health and Human Services Interim Committee each year before  
1098 November 30 while the waiver or state plan amendment is in effect regarding:
- 1099 (a) the number of qualified [~~inmates~~] incarcerated individuals served under the  
1100 program;
- 1101 (b) the cost of the program; and
- 1102 (c) the effectiveness of the program, including:
- 1103 (i) any reduction in the number of emergency room visits or hospitalizations by  
1104 [~~inmates~~] incarcerated individuals after release from a correctional facility;
- 1105 (ii) any reduction in the number of [~~inmates~~] incarcerated individuals undergoing  
1106 inpatient treatment after release from a correctional facility;
- 1107 (iii) any reduction in overdose rates and deaths of [~~inmates~~] incarcerated individuals  
1108 after release from a correctional facility; and
- 1109 (iv) any other costs or benefits as a result of the program.
- 1110 (4) If the waiver or state plan amendment described in Subsection (2) is approved, a  
1111 county that is responsible for the cost of a qualified [~~inmate's~~] incarcerated individual's medical  
1112 care shall provide the required matching funds to the state for:

1113 (a) any costs to enroll the qualified [~~inmate~~] incarcerated individual for the Medicaid  
1114 coverage described in Subsection (2);

1115 (b) any administrative fees for the Medicaid coverage described in Subsection (2); and

1116 (c) the Medicaid coverage that is provided to the qualified [~~inmate~~] incarcerated  
1117 individual under Subsection (2).

1118 Section 25. Section **26-40-105** is amended to read:

1119 **26-40-105. Eligibility.**

1120 (1) A child is eligible to enroll in the program if the child:

1121 (a) is a bona fide Utah resident;

1122 (b) is a citizen or legal resident of the United States;

1123 (c) is under 19 years [~~of age~~] old;

1124 (d) does not have access to or coverage under other health insurance, including any  
1125 coverage available through a parent or legal guardian's employer;

1126 (e) is ineligible for Medicaid benefits;

1127 (f) resides in a household whose gross family income, as defined by rule, is at or below  
1128 200% of the federal poverty level; and

1129 (g) is not an [~~inmate~~] incarcerated individual of a public institution or a patient in an  
1130 institution for mental diseases.

1131 (2) A child who qualifies for enrollment in the program under Subsection (1) may not  
1132 be denied enrollment due to a diagnosis or pre-existing condition.

1133 (3) (a) The department shall determine eligibility and send notification of the eligibility  
1134 decision within 30 days after receiving the application for coverage.

1135 (b) If the department cannot reach a decision because the applicant fails to take a  
1136 required action, or because there is an administrative or other emergency beyond the  
1137 department's control, the department shall:

1138 (i) document the reason for the delay in the applicant's case record; and

1139 (ii) inform the applicant of the status of the application and time frame for completion.

1140 (4) The department may not close enrollment in the program for a child who is eligible  
1141 to enroll in the program under the provisions of Subsection (1).

1142 (5) The program shall:

1143 (a) apply for grants to make technology system improvements necessary to implement

1144 a simplified enrollment and renewal process in accordance with Subsection (5)(b); and  
1145 (b) if funding is available, implement a simplified enrollment and renewal process.  
1146 Section 26. Section **26B-4-301** is enacted to read:  
1147 **26B-4-301. Medical care for incarcerated individuals -- Reporting of statistics.**  
1148 As used in this section:  
1149 (1) "Correctional facility" means a facility operated to house incarcerated individuals in  
1150 a secure or nonsecure setting:  
1151 (a) by the Department of Corrections; or  
1152 (b) under a contract with the Department of Corrections.  
1153 (2) "Health care facility" means the same as that term is defined in Section [26-21-2](#).  
1154 (3) "Incarcerated individual" means an individual who is:  
1155 (a) committed to the custody of the department; and  
1156 (b) housed at a correctional facility or at a county jail at the request of the department.  
1157 (4) "Medical monitoring technology" means a device, application, or other technology  
1158 that can be used to improve health outcomes and the experience of care for patients, including  
1159 evidence-based clinically evaluated software and devices that can be used to monitor and treat  
1160 diseases and disorders.  
1161 (5) "Terminally ill" means the same as that term is defined in Section [31A-36-102](#).  
1162 (6) The department shall:  
1163 (a) for each health care facility owned or operated by the Department of Corrections,  
1164 assist the Department of Corrections in complying with Section [64-13-39](#);  
1165 (b) create policies and procedures for providing services to incarcerated individuals;  
1166 and  
1167 (c) in coordination with the Department of Corrections, develop standard population  
1168 indicators and performance measures relating to the health of incarcerated individuals.  
1169 (7) Beginning July 1, 2023, and ending June 30, 2024, the department shall:  
1170 (a) evaluate and study the use of medical monitoring technology and create a plan for a  
1171 pilot program that identifies:  
1172 (i) the types of medical monitoring technology that will be used during the pilot  
1173 program; and  
1174 (ii) eligibility for participation in the pilot program; and

1175 (b) make the indicators and performance measures described in Subsection (6)(c)  
1176 available to the public through the Department of Corrections and the department websites.

1177 (8) Beginning July 1, 2024, and ending June 30, 2029, the department shall implement  
1178 the pilot program.

1179 (9) The department shall submit to the Health and Human Services Interim Committee  
1180 and the Law Enforcement and Criminal Justice Interim Committee:

1181 (a) a report on or before October 1 of each year regarding the costs and benefits of the  
1182 pilot program;

1183 (b) a report that summarizes the indicators and performance measures described in  
1184 Subsection (6)(c) on or before October 1, 2024; and

1185 (c) an updated report before October 1 of each year that compares the indicators and  
1186 population measures of the most recent year to the initial report described in Subsection (9)(b).

1187 Section 27. Section **31A-35-701** is amended to read:

1188 **31A-35-701. Prohibited acts.**

1189 (1) A bail bond producer or bail bond agency may not:

1190 (a) solicit business in or about:

1191 (i) any place where persons in the custody of the state or any local law enforcement or  
1192 correctional agency are confined; or

1193 (ii) any court;

1194 (b) pay a fee or rebate or give or promise anything of value to any person in order to  
1195 secure a settlement, compromise, remission, or reduction of the amount of any undertaking or  
1196 bail bond;

1197 (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail  
1198 bond matter, except payment for legal services actually rendered for the bail bond producer or  
1199 bail bond agency;

1200 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone  
1201 in the principal's behalf; or

1202 (e) engage in any other act prohibited by the commissioner by rule.

1203 (2) The following persons may not act as bail bond producers and may not, directly or  
1204 indirectly, receive any benefits from the execution of any bail bond:

1205 (a) a person employed at any jail, correctional facility, or other facility used for the

- 1206 incarceration of persons;
- 1207 (b) a peace officer;
- 1208 (c) a judge; and
- 1209 (d) an [~~inmate incarcerated in any~~] incarcerated individual in a jail, correctional
- 1210 facility, or other facility used for the incarceration of persons.
- 1211 (3) A bail bond producer may not:
- 1212 (a) sign or countersign in blank any bail bond;
- 1213 (b) give the power of attorney to, or otherwise authorize anyone to, countersign in the
- 1214 bail bond producer's name to a bail bond; or
- 1215 (c) submit a bail bond to a jail or court in Utah without having completed a written
- 1216 agreement that:
- 1217 (i) states the terms of the bail agreement, contract, or undertaking;
- 1218 (ii) is signed by the bail bond producer; and
- 1219 (iii) is filed with the department.
- 1220 (4) A bail bond producer may not advertise or hold [~~himself or herself~~] the bail bond
- 1221 producer out to be a bail bond agency or surety insurer.
- 1222 (5) The following persons or members of their immediate families may not solicit
- 1223 business on behalf of a bail bond agency or bail bond producer:
- 1224 (a) a person employed at any jail, correctional facility, or other facility used for the
- 1225 incarceration of persons;
- 1226 (b) a peace officer;
- 1227 (c) a judge; or
- 1228 (d) an [~~inmate incarcerated in any~~] incarcerated individual in a jail, correctional
- 1229 facility, or other facility used for the incarceration of persons.
- 1230 Section 28. Section **34-40-104** is amended to read:
- 1231 **34-40-104. Exemptions.**
- 1232 (1) The minimum wage established in this chapter does not apply to:
- 1233 (a) [~~any~~] an employee who is entitled to a minimum wage as provided in 29 U.S.C.
- 1234 Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;
- 1235 (b) outside sales persons;
- 1236 (c) an employee who is a member of the employer's immediate family;



- 1237 (d) companionship service for [~~persons~~] individuals who, because of age or infirmity,  
1238 are unable to care for themselves;
- 1239 (e) casual and domestic employees as defined by the commission;
- 1240 (f) seasonal employees of nonprofit camping programs, religious or recreation  
1241 programs, and nonprofit educational and charitable organizations registered under Title 13,  
1242 Chapter 22, Charitable Solicitations Act;
- 1243 (g) an individual employed by the United States of America;
- 1244 (h) [~~any prisoner~~] an incarcerated individual employed through the penal system;
- 1245 (i) [~~any~~] an employee employed in agriculture if the employee:  
1246 (i) is principally engaged in the range production of livestock;  
1247 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation  
1248 that has been and is generally recognized by custom as having been paid on a piece rate basis in  
1249 the region of employment;
- 1250 (iii) was employed in agriculture less than 13 weeks during the preceding calendar  
1251 year; or
- 1252 (iv) is a retired or semiretired [~~person~~] individual performing part-time or incidental  
1253 work as a condition of the employee's residence on a farm or ranch;
- 1254 (j) registered apprentices or students employed by the educational institution in which  
1255 they are enrolled; or
- 1256 (k) [~~any~~] a seasonal hourly employee employed by a seasonal amusement  
1257 establishment with permanent structures and facilities if the other direct monetary  
1258 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay  
1259 is sufficient to cause the average hourly rate of total compensation for the season of seasonal  
1260 hourly employees who continue to work to the end of the operating season to equal the  
1261 applicable minimum wage if the seasonal amusement establishment:
- 1262 (i) does not operate for more than seven months in any calendar year; or  
1263 (ii) during the preceding calendar year its average receipts for any six months of that  
1264 year were not more than 33-1/3% of its average receipts for the other six months of that year.
- 1265 (2) (a) Persons with a disability whose earnings or productive capacities are impaired  
1266 by age, physical or mental deficiencies, or injury may be employed at wages that are lower than  
1267 the minimum wage, provided the wage is related to the employee's productivity.

1268 (b) The commission may establish and regulate the wages paid or wage scales for  
1269 persons with a disability.

1270 (3) The commission may establish or may set a lesser minimum wage for learners not  
1271 to exceed the first 160 hours of employment.

1272 (4) (a) An employer of a tipped employee shall pay the tipped employee at least the  
1273 minimum wage established by this chapter.

1274 (b) In computing a tipped employee's wage under this Subsection (4), an employer of a  
1275 tipped employee:

1276 (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;  
1277 and

1278 (ii) may compute the remainder of the tipped employee's wage using the tips or  
1279 gratuities the tipped employee actually receives.

1280 (c) An employee shall retain all tips and gratuities except to the extent that the  
1281 employee participates in a bona fide tip pooling or sharing arrangement with other tipped  
1282 employees.

1283 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1284 commission shall by rule establish the cash wage obligation in conjunction with its review of  
1285 the minimum wage under Section [34-40-103](#).

1286 Section 29. Section **35A-4-205** is amended to read:

1287 **35A-4-205. Exempt employment.**

1288 (1) If the services are also exempted under the Federal Unemployment Tax Act, as  
1289 amended, employment does not include:

1290 (a) service performed in the employ of the United States Government or an  
1291 instrumentality of the United States immune under the United States Constitution from the  
1292 contributions imposed by this chapter, except that, to the extent that the Congress of the United  
1293 States shall permit, this chapter shall apply to those instrumentalities and to services performed  
1294 for the instrumentalities to the same extent as to all other employers, employing units,  
1295 individuals and services; provided, that if this state is not certified for any year by the Secretary  
1296 of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304,  
1297 the payments required of the instrumentalities with respect to that year shall be refunded by the  
1298 division from the fund in the same manner and within the same period as is provided in

1299 Subsection 35A-4-306(5) with respect to contributions erroneously collected;

1300 (b) service performed by an individual as an employee or employee representative as

1301 defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;

1302 (c) agricultural labor as defined in Section 35A-4-206;

1303 (d) domestic service in a private home, local college club, or local chapter of a college

1304 fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

1305 (e) (i) service performed in the employ of a school, college, or university, if the service

1306 is performed:

1307 (A) by a student who is enrolled and is regularly attending classes at that school,

1308 college, or university; or

1309 (B) by the spouse of the student, if the spouse is advised, at the time the spouse

1310 commences to perform that service, that the employment of that spouse to perform that service

1311 is provided under a program to provide financial assistance to the student by the school,

1312 college, or university, and that the employment will not be covered by any program of

1313 unemployment insurance;

1314 (ii) service performed by an individual who is enrolled at a nonprofit or public

1315 educational institution, that normally maintains a regular faculty and curriculum and normally

1316 has a regularly organized body of students in attendance at the place where its educational

1317 activities are carried on, as a student in a full-time program taken for credit at the institution,

1318 that combines academic instruction with work experience, if the service is an integral part of

1319 the program and the institution has so certified to the employer, but this Subsection (1) does

1320 not apply to service performed in a program established for or on behalf of an employer or

1321 group of employers;

1322 (iii) service performed in the employ of a hospital, if the service is performed by a

1323 patient of the hospital; or

1324 (iv) service performed as a student nurse in the employ of a hospital or a nurses'

1325 training school by an individual who is enrolled and is regularly attending classes in a nurses'

1326 training school chartered or approved under state law;

1327 (f) service performed by an individual in the employ of the individual's son, daughter,

1328 or spouse, and service performed by a child under the age of 21 in the employ of the child's

1329 parent;

1330 (g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

1331 (i) in the employ of:

1332 (A) a church or convention or association of churches; or

1333 (B) an organization that is operated primarily for religious purposes and that is  
1334 operated, supervised, controlled, or principally supported by a church or convention or  
1335 association of churches;

1336 (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise  
1337 of the minister's ministry or by a member of a religious order in the exercise of duties required  
1338 by the order;

1339 (iii) in the employ of a governmental entity or Indian tribe referred to in Subsection  
1340 35A-4-204(2)(d) if the service is performed by an individual in the exercise of the individual's  
1341 duties:

1342 (A) as an elected official;

1343 (B) as a member of a legislative body or the judiciary;

1344 (C) as a member of the National Guard or Air National Guard;

1345 (D) as an employee serving on a temporary basis in case of fire, storm, snow,  
1346 earthquake, flood, or similar emergency;

1347 (E) in an advisory position or a policymaking position the performance of the duties of  
1348 which ordinarily does not require more than eight hours per week; or

1349 (F) as an election official or election worker if the amount of remuneration received by  
1350 the individual during the calendar year for services as an election official or election worker is  
1351 less than \$1,000;

1352 (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation  
1353 for individuals whose earning capacity is impaired by age, physical or mental deficiency,  
1354 injury, or providing a remunerative work for individuals who, because of their impaired  
1355 physical or mental capacity, cannot be readily absorbed in the competitive labor market by an  
1356 individual receiving that rehabilitation or remunerative work;

1357 (v) as part of an unemployment work-relief or work-training program, assisted or  
1358 financed in whole or in part by any federal agency or an agency of a state or political  
1359 subdivision of the state or of an Indian tribe, by an individual receiving the work-relief or  
1360 work-training; and

- 1361 (vi) by an ~~[inmate]~~ incarcerated individual of a custodial or penal institution;
- 1362 (h) casual labor not in the course of the employing unit's trade or business;
- 1363 (i) service performed in any calendar quarter in the employ of any organization exempt  
1364 from income tax under Subsection 501(a), Internal Revenue Code, other than an organization  
1365 described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for  
1366 the service is less than \$50;
- 1367 (j) service performed in the employ of a foreign government, including service as a  
1368 consular or other officer, other employee, or a nondiplomatic representative;
- 1369 (k) service performed in the employ of an instrumentality wholly owned by a foreign  
1370 government:
- 1371 (i) if the service is of a character similar to that performed in foreign countries by  
1372 employees of the United States government or its instrumentalities; and
- 1373 (ii) if the division finds that the United States Secretary of State has certified to the  
1374 United States Secretary of the Treasury that the foreign government with respect to whose  
1375 instrumentality exemption is claimed grants an equivalent exemption with respect to similar  
1376 service performed in the foreign country by employees of the United States government and its  
1377 instrumentalities;
- 1378 (l) service performed by an individual for a person as an insurance agent or as an  
1379 insurance solicitor, if all the service performed by the individual for that person is performed  
1380 for remuneration solely by way of commission;
- 1381 (m) service performed by an individual in the delivery or distribution of newspapers or  
1382 shopping news, not including delivery or distribution to any point for subsequent delivery or  
1383 distribution;
- 1384 (n) service covered by an arrangement between the division and the agency charged  
1385 with the administration of any other state or federal unemployment compensation law under  
1386 which all services performed by an individual for an employing unit during the period covered  
1387 by the employing unit's duly approved election, are considered to be performed entirely within  
1388 the agency's state or under the federal law;
- 1389 (o) service performed by lessees engaged in metal mining under lease agreements,  
1390 unless the individual lease agreement, or the practice in actual operation under the agreement,  
1391 is such as would constitute the lessees' employees of the lessor at common law; and

1392 (p) services as an outside salesman paid solely by way of commission if the services  
1393 were performed outside of all places of business of the enterprises for which the services are  
1394 performed except:

1395 (i) as provided in Subsection 35A-4-204(2)(i); or

1396 (ii) if the services would constitute employment at common law.

1397 (2) (a) "Included and excluded service" means if the services performed during 1/2 or  
1398 more of any pay period by an individual for the person employing the individual constitute  
1399 employment, all the services of the individual for the period are considered to be employment.

1400 (b) If the services performed during more than 1/2 of any pay period by an individual  
1401 for the person employing the individual do not constitute employment, then none of the  
1402 services of the individual for the period are considered to be employment.

1403 (c) As used in this Subsection (2), "pay period" means a period of not more than 31  
1404 consecutive days for which payment of remuneration is ordinarily made to the individual by the  
1405 person employing the individual.

1406 (3) The following services are exempt employment under the Utah Employment  
1407 Security Act:

1408 (a) service performed by an individual as a licensed real estate agent or salesman, if all  
1409 the service performed by the individual is performed for remuneration solely by way of  
1410 commission;

1411 (b) service performed by an individual as a licensed securities agent or salesman or a  
1412 registered representative, if all the service performed by the individual is performed for  
1413 remuneration solely by way of commission;

1414 (c) service performed by an individual as a telephone survey conductor or pollster if:

1415 (i) the individual does not perform the service on the principal's premises; and

1416 (ii) the individual is paid for the service solely on a piece-rate or commission basis; and

1417 (d) service performed by a nurse licensed or registered under Title 58, Chapter 31b,  
1418 Nurse Practice Act, if:

1419 (i) the service of the nurse is performed in the home of the patient;

1420 (ii) substantially all of the nurse's compensation for the service is from health insurance  
1421 proceeds; and

1422 (iii) no compensation or fee for the service is paid to an agency or company as a

1423 business furnishing nursing services.

1424 Section 30. Section **39A-5-111** is amended to read:

1425 **39A-5-111. Parties under obligation to keep an incarcerated individual --**  
1426 **Reporting.**

1427 (1) A provost marshal, sheriff, or officer of a city or county jail or penal institution  
1428 designated under Section **39A-5-110**, may not refuse to receive or keep [~~any prisoner~~] an  
1429 incarcerated individual if the committing officer provides a signed statement indicating the  
1430 offense charged against the [~~prisoner~~] incarcerated individual.

1431 (2) [~~Any~~] A party under Subsection (1) charged with keeping [~~a prisoner~~] an  
1432 incarcerated individual shall within 24 hours after commitment report to the commanding  
1433 officer of the [~~prisoner~~] incarcerated individual the name of the [~~prisoner~~] incarcerated  
1434 individual, the nature of the offense charged against [~~him~~] the incarcerated individual, and the  
1435 name of the individual who ordered or authorized the commitment.

1436 Section 31. Section **39A-5-112** is amended to read:

1437 **39A-5-112. Individual confined prior to trial -- Punishment limitations.**

1438 (1) Subject to Section **39A-5-110**, an individual in confinement prior to trial may not  
1439 be subjected to punishment or penalty other than arrest or confinement while the charges are  
1440 pending.

1441 (2) (a) The arrest or confinement imposed on [~~a prisoner~~] an incarcerated individual  
1442 may not be more rigorous than necessary to ensure the [~~prisoner's~~] incarcerated individual's  
1443 presence.

1444 (b) [~~However, the prisoner~~] Notwithstanding Subsection (2)(a), an incarcerated  
1445 individual may be:

1446 [~~(a)~~] (i) subjected to minor punishment during that period for discipline violations; and

1447 [~~(b)~~] (ii) required to perform labor as necessary for the policing and sanitation of the  
1448 [~~prisoner's~~] incarcerated individual's living conditions, immediately adjacent areas, or as  
1449 otherwise designated by regulations governing the housing of [~~a prisoner~~] an incarcerated  
1450 individual.

1451 Section 32. Section **51-7-4** is amended to read:

1452 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**  
1453 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

1454 (1) Unless otherwise required by the Utah Constitution or applicable federal law, the  
1455 functions, powers, and duties vested by law in each state officer, board, commission,  
1456 institution, department, division, agency, or other similar instrumentality relating to the deposit,  
1457 investment, or reinvestment of public funds, and the purchase, sale, or exchange of investments  
1458 or securities of, or for, funds or accounts under the control and management of each of these  
1459 instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

1460 (a) funds assigned to the Utah State Retirement Board for investment under Section  
1461 [49-11-302](#);

1462 (b) funds of member institutions of the state system of higher education:

1463 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

1464 (ii) derived from student fees or from income from operations of auxiliary enterprises,  
1465 which fees and income are pledged or otherwise dedicated to the payment of interest and  
1466 principal of bonds issued by an institution of higher education;

1467 (iii) subject to rules made by the council, under Section [51-7-18](#), deposited in a foreign  
1468 depository institution as defined in Section [7-1-103](#); and

1469 (iv) other funds that are not included in the institution's work program as approved by  
1470 the Utah Board of Higher Education;

1471 (c) ~~[inmate] incarcerated individual~~ funds as provided in Section [64-13-23](#) or in [~~Title~~  
1472 ~~64, Chapter 9b, Work Programs for Prisoners~~] Title 64, Chapter 9b, Work Programs for  
1473 Incarcerated Individuals;

1474 (d) trust funds established by judicial order;

1475 (e) funds of the Utah Housing Corporation;

1476 (f) endowment funds of higher education institutions; and

1477 (g) the funds of the Utah Educational Savings Plan.

1478 (2) All public funds held or administered by the state or its boards, commissions,  
1479 institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to  
1480 the state treasurer as provided by this section shall be:

1481 (a) deposited and invested by the custodian in accordance with this chapter, unless  
1482 otherwise required by statute or by applicable federal law; and

1483 (b) reported to the state treasurer in a form prescribed by the state treasurer.

1484 (3) Unless otherwise provided by the constitution or laws of this state or by contractual



1485 obligation, the income derived from the investment of state money by the state treasurer shall  
1486 be deposited into and become part of the General Fund.

1487 Section 33. Section **53-2a-602** is amended to read:

1488 **53-2a-602. Definitions.**

1489 (1) Unless otherwise defined in this section, the terms that are used in this part mean  
1490 the same as those terms are defined in Part 1, Emergency Management Act.

1491 (2) As used in this part:

1492 (a) "Agent of the state" means any representative of a state agency, local agency, or  
1493 non-profit entity that agrees to provide support to a requesting intrastate or interstate  
1494 government entity that has declared an emergency or disaster and has requested assistance  
1495 through the division.

1496 (b) "Declared disaster" means one or more events:

1497 (i) within the state;

1498 (ii) that occur within a limited period of time;

1499 (iii) that involve:

1500 (A) a significant number of [~~persons~~] individuals being at risk of bodily harm,  
1501 sickness, or death; or

1502 (B) a significant portion of real property at risk of loss;

1503 (iv) that are sudden in nature and generally occur less frequently than every three years;  
1504 and

1505 (v) that results in:

1506 (A) the president of the United States declaring an emergency or major disaster in the  
1507 state;

1508 (B) the governor declaring a state of emergency under Title 53, Chapter 2a, Part 2,  
1509 Disaster Response and Recovery Act; or

1510 (C) the chief executive officer of a local government declaring a local emergency under  
1511 Part 2, Disaster Response and Recovery Act.

1512 (c) "Disaster recovery account" means the State Disaster Recovery Restricted Account  
1513 created in Section [53-2a-603](#).

1514 (d) (i) "Emergency disaster services" means:

1515 (A) evacuation;

- 1516 (B) shelter;
- 1517 (C) medical triage;
- 1518 (D) emergency transportation;
- 1519 (E) repair of infrastructure;
- 1520 (F) safety services, including fencing or roadblocks;
- 1521 (G) sandbagging;
- 1522 (H) debris removal;
- 1523 (I) temporary bridges;
- 1524 (J) procurement and distribution of food, water, or ice;
- 1525 (K) procurement and deployment of generators;
- 1526 (L) rescue or recovery;
- 1527 (M) emergency protective measures; or
- 1528 (N) services similar to those described in Subsections (2)(d)(i)(A) through (M), as
- 1529 defined by the division by rule, that are generally required in response to a declared disaster.
- 1530 (ii) "Emergency disaster services" does not include:
- 1531 (A) emergency preparedness; or
- 1532 (B) notwithstanding whether or not a county participates in the Wildland Fire
- 1533 Suppression Fund created in Section [65A-8-204](#), any fire suppression or presuppression costs
- 1534 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the
- 1535 Wildland Fire Suppression Fund.
- 1536 (e) "Emergency preparedness" means the following done for the purpose of being
- 1537 prepared for an emergency as defined by the division by rule made in accordance with Title
- 1538 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 1539 (i) the purchase of equipment;
- 1540 (ii) the training of personnel; or
- 1541 (iii) the obtaining of a certification.
- 1542 (f) "Governing body" means:
- 1543 (i) for a county, city, or town, the legislative body of the county, city, or town;
- 1544 (ii) for a local district, the board of trustees of the local district; and
- 1545 (iii) for a special service district:
- 1546 (A) the legislative body of the county, city, or town that established the special service

- 1547 district, if no administrative control board has been appointed under Section 17D-1-301; or  
1548 (B) the administrative control board of the special service district, if an administrative  
1549 control board has been appointed under Section 17D-1-301.
- 1550 (g) "Local district" means the same as that term is defined in Section 17B-1-102.
- 1551 (h) "Local fund" means a local government disaster fund created in accordance with  
1552 Section 53-2a-605.
- 1553 (i) "Local government" means:
- 1554 (i) a county;
- 1555 (ii) a city or town; or
- 1556 (iii) a local district or special service district that:
- 1557 (A) operates a water system;
- 1558 (B) provides transportation service;
- 1559 (C) provides, operates, and maintains correctional and rehabilitative facilities and  
1560 programs for municipal, state, and other detainees and ~~[prisoners]~~ incarcerated individuals;
- 1561 (D) provides consolidated 911 and emergency dispatch service;
- 1562 (E) operates an airport; or
- 1563 (F) operates a sewage system.
- 1564 (j) "Special fund" means a fund other than a general fund of a local government that is  
1565 created for a special purpose established under the uniform system of budgeting, accounting,  
1566 and reporting.
- 1567 (k) "Special service district" means the same as that term is defined in Section  
1568 17D-1-102.
- 1569 (l) "State's prime interest rate" means the average interest rate paid by the state on  
1570 general obligation bonds issued during the most recent fiscal year in which bonds were sold.  
1571 Section 34. Section 53-10-404 is amended to read:
- 1572 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**
- 1573 (1) As used in this section, "person" refers to any person as described under Section  
1574 53-10-403.
- 1575 (2) (a) A person under Section 53-10-403 or any person required to register as a sex  
1576 offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, shall provide a DNA  
1577 specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for

1578 the cost of obtaining the DNA specimen unless:

1579 (i) the person was booked under Section 53-10-403 and is not required to reimburse the  
1580 agency under Section 53-10-404.5; or

1581 (ii) the agency determines the person lacks the ability to pay.

1582 (b) (i) (A) The responsible agencies shall establish guidelines and procedures for  
1583 determining if the person is able to pay the fee.

1584 (B) An agency's implementation of Subsection (2)(b)(i) meets an agency's obligation to  
1585 determine an [inmate's] incarcerated individual's ability to pay.

1586 (ii) An agency's guidelines and procedures may provide for the assessment of \$150 on  
1587 the [inmate's] incarcerated individual's county trust fund account and may allow a negative  
1588 balance in the account until the \$150 is paid in full.

1589 (3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA  
1590 Specimen Restricted Account created in Section 53-10-407, except that the agency collecting  
1591 the fee may retain not more than \$25 per individual specimen for the costs of obtaining the  
1592 saliva DNA specimen.

1593 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than  
1594 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

1595 (b) The responsible agency shall determine the method of collecting the DNA  
1596 specimen. Unless the responsible agency determines there are substantial reasons for using a  
1597 different method of collection or the person refuses to cooperate with the collection, the  
1598 preferred method of collection shall be obtaining a saliva specimen.

1599 (c) The responsible agency may use reasonable force, as established by its guidelines  
1600 and procedures, to collect the DNA sample if the person refuses to cooperate with the  
1601 collection.

1602 (d) If the judgment places the person on probation, the person shall submit to the  
1603 obtaining of a DNA specimen as a condition of the probation.

1604 (e) (i) Under this section a person is required to provide one DNA specimen and pay  
1605 the collection fee as required under this section.

1606 (ii) The person shall provide an additional DNA specimen only if the DNA specimen  
1607 previously provided is not adequate for analysis.

1608 (iii) The collection fee is not imposed for a second or subsequent DNA specimen

1609 collected under this section.

1610 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect  
1611 any outstanding amount of a fee due under this section from any person who owes any portion  
1612 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section  
1613 [53-10-407](#).

1614 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as  
1615 possible and transferred to the Department of Public Safety:

1616 (i) after a conviction or a finding of jurisdiction by the juvenile court;

1617 (ii) on and after January 1, 2011, through December 31, 2014, after the booking of a  
1618 person for any offense under Subsection [53-10-403\(1\)\(c\)](#); and

1619 (iii) on and after January 1, 2015, after the booking of a person for any felony offense,  
1620 as provided under Subsection [53-10-403\(1\)\(d\)\(ii\)](#).

1621 (b) On and after May 13, 2014, through December 31, 2014, the responsible agency  
1622 may cause a DNA specimen to be obtained and transferred to the Department of Public Safety  
1623 after the booking of a person for any felony offense, as provided under Subsection  
1624 [53-10-403\(1\)\(d\)\(i\)](#).

1625 (c) If notified by the Department of Public Safety that a DNA specimen is not adequate  
1626 for analysis, the agency shall, as soon as possible:

1627 (i) obtain and transmit an additional DNA specimen; or

1628 (ii) request that another agency that has direct access to the person and that is  
1629 authorized to collect DNA specimens under this section collect the necessary second DNA  
1630 specimen and transmit it to the Department of Public Safety.

1631 (d) Each agency that is responsible for collecting DNA specimens under this section  
1632 shall establish:

1633 (i) a tracking procedure to record the handling and transfer of each DNA specimen it  
1634 obtains; and

1635 (ii) a procedure to account for the management of all fees it collects under this section.

1636 (5) (a) The Department of Corrections is the responsible agency whenever the person is  
1637 committed to the custody of or is under the supervision of the Department of Corrections.

1638 (b) The juvenile court is the responsible agency regarding a minor under Subsection  
1639 [53-10-403\(3\)](#), but if the minor has been committed to the legal custody of the Division of

1640 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the  
1641 minor has not previously been obtained by the juvenile court under Section 80-6-608.

1642 (c) The sheriff operating a county jail is the responsible agency regarding the collection  
1643 of DNA specimens from persons who:

1644 (i) have pled guilty to or have been convicted of an offense listed under Subsection  
1645 53-10-403(2) but who have not been committed to the custody of or are not under the  
1646 supervision of the Department of Corrections;

1647 (ii) are incarcerated in the county jail:

1648 (A) as a condition of probation for a felony offense; or

1649 (B) for a misdemeanor offense for which collection of a DNA specimen is required;

1650 (iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail  
1651 for any offense under Subsection 53-10-403(1)(c).; and

1652 (iv) are booked at the county jail:

1653 (A) by a law enforcement agency that is obtaining a DNA specimen for any felony  
1654 offense on or after May 13, 2014, through December 31, 2014, under Subsection

1655 53-10-404(4)(b); or

1656 (B) on or after January 1, 2015, for any felony offense.

1657 (d) Each agency required to collect a DNA specimen under this section shall:

1658 (i) designate employees to obtain the saliva DNA specimens required under this  
1659 section; and

1660 (ii) ensure that employees designated to collect the DNA specimens receive appropriate  
1661 training and that the specimens are obtained in accordance with generally accepted protocol.

1662 (6) (a) As used in this Subsection (6), "department" means the Department of  
1663 Corrections.

1664 (b) Priority of obtaining DNA specimens by the department is:

1665 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody  
1666 of or under the supervision of the department before these persons are released from  
1667 incarceration, parole, or probation, if their release date is prior to that of persons under  
1668 Subsection (6)(b)(ii), but in no case later than July 1, 2004; and

1669 (ii) second, the department shall obtain DNA specimens from persons who are  
1670 committed to the custody of the department or who are placed under the supervision of the

1671 department after July 1, 2002, within 120 days after the commitment, if possible, but not later  
1672 than prior to release from incarceration if the person is imprisoned, or prior to the termination  
1673 of probation if the person is placed on probation.

1674 (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)  
1675 is:

1676 (i) first, persons on probation;

1677 (ii) second, persons on parole; and

1678 (iii) third, incarcerated persons.

1679 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the  
1680 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA  
1681 specimens from persons in the custody of or under the supervision of the Department of  
1682 Corrections as of July 1, 2002, prior to their release.

1683 (7) (a) As used in this Subsection (7):

1684 (i) "Court" means the juvenile court.

1685 (ii) "Division" means the Division of Juvenile Justice Services.

1686 (b) Priority of obtaining DNA specimens by the court from minors under Section  
1687 53-10-403 whose cases are under the jurisdiction of the court but who are not in the legal  
1688 custody of the division shall be:

1689 (i) first, to obtain specimens from minors whose cases, as of July 1, 2002, are under the  
1690 court's jurisdiction, before the court's jurisdiction over the minors' cases terminates; and

1691 (ii) second, to obtain specimens from minors whose cases are under the jurisdiction of  
1692 the court after July 1, 2002, within 120 days of the minor's case being found to be within the  
1693 court's jurisdiction, if possible, but no later than before the court's jurisdiction over the minor's  
1694 case terminates.

1695 (c) Priority of obtaining DNA specimens by the division from minors under Section  
1696 53-10-403 who are committed to the legal custody of the division shall be:

1697 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the  
1698 division's legal custody and who have not previously provided a DNA specimen under this  
1699 section, before termination of the division's legal custody of these minors; and

1700 (ii) second, to obtain specimens from minors who are placed in the legal custody of the  
1701 division after July 1, 2002, within 120 days of the minor's being placed in the custody of the

1702 division, if possible, but no later than before the termination of the court's jurisdiction over the  
1703 minor's case.

1704 (8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile  
1705 Justice Services, and all law enforcement agencies in the state shall by policy establish  
1706 procedures for obtaining saliva DNA specimens, and shall provide training for employees  
1707 designated to collect saliva DNA specimens.

1708 (b) (i) The department may designate correctional officers, including those employed  
1709 by the adult probation and parole section of the department, to obtain the saliva DNA  
1710 specimens required under this section.

1711 (ii) The department shall ensure that the designated employees receive appropriate  
1712 training and that the specimens are obtained in accordance with accepted protocol.

1713 (c) Blood DNA specimens shall be obtained in accordance with Section [53-10-405](#).

1714 Section 35. Section **53-13-104** is amended to read:

1715 **53-13-104. Correctional officer.**

1716 (1) (a) "Correctional officer" means a sworn and certified officer employed by the  
1717 Department of Corrections, any political subdivision of the state, or any private entity which  
1718 contracts with the state or ~~[its]~~ the state's political subdivisions to incarcerate ~~[inmates]~~  
1719 individuals who ~~[is]~~ are charged with the primary duty of providing community protection.

1720 (b) "Correctional officer" includes an individual assigned to carry out any of the  
1721 following types of functions:

1722 (i) controlling, transporting, supervising, and taking into custody of persons arrested or  
1723 convicted of crimes;

1724 (ii) supervising and preventing the escape of persons in state and local incarceration  
1725 facilities;

1726 (iii) guarding and managing ~~[inmates]~~ incarcerated individuals and providing security  
1727 and enforcement services at a correctional facility; and

1728 (iv) employees of the Board of Pardons and Parole serving on or before September 1,  
1729 1993, whose primary responsibility is to prevent and detect crime, enforce criminal statutes,  
1730 and provide security to the Board of Pardons and Parole, and who are designated by the Board  
1731 of Pardons and Parole, approved by the commissioner of public safety, and certified by the  
1732 Peace Officer Standards and Training Division.



1733 (2) (a) Correctional officers have peace officer authority only while on duty. The  
1734 authority of correctional officers employed by the Department of Corrections is regulated by  
1735 Title 64, Chapter 13, Department of Corrections - State Prison.

1736 (b) Correctional officers may carry firearms only if authorized by and under conditions  
1737 specified by the director of the Department of Corrections or the chief law enforcement officer  
1738 of the employing agency.

1739 (3) (a) An individual may not exercise the authority of an adult correctional officer  
1740 until the individual has satisfactorily completed a basic training program for correctional  
1741 officers and the director of the Department of Corrections has certified the completion of  
1742 training to the director of the division.

1743 (b) An individual may not exercise the authority of a county correctional officer until:

1744 (i) the individual has satisfactorily completed a basic training program for correctional  
1745 officers and any other specialized training required by the local law enforcement agency; and

1746 (ii) the chief administrator of the local law enforcement agency has certified the  
1747 completion of training to the director of the division.

1748 (4) (a) The Department of Corrections of the state shall establish and maintain a  
1749 correctional officer basic course and in-service training programs as approved by the director of  
1750 the division with the advice and consent of the council.

1751 (b) The in-service training shall:

1752 (i) consist of no fewer than 40 hours per year; and

1753 (ii) be conducted by the agency's own staff or other agencies.

1754 (5) The local law enforcement agencies may establish correctional officer basic,  
1755 advanced, or in-service training programs as approved by the director of the division with the  
1756 advice and consent of the council.

1757 (6) An individual shall be 19 years old or older before being certified or employed as a  
1758 correctional officer under this section.

1759 Section 36. Section **53B-7-103** is amended to read:

1760 **53B-7-103. Board designated state educational agent for federal contracts and**  
1761 **aid -- Individual research grants -- Powers of institutions or foundations under**  
1762 **authorized programs.**

1763 (1) (a) The board is the designated state educational agency authorized to negotiate and

1764 contract with the federal government and to accept financial or other assistance from the  
1765 federal government or any of its agencies in the name of and in behalf of the state of Utah,  
1766 under terms and conditions as may be prescribed by congressional enactment designed to  
1767 further higher education.

1768 (b) Nothing in this chapter alters or limits the authority of the Division of Facilities  
1769 Construction and Management to act as the designated state agency to administer programs on  
1770 behalf of and accept funds from federal, state, and other sources, for capital facilities for the  
1771 benefit of higher education.

1772 (2) (a) Subject to policies and procedures established by the board, an institution of  
1773 higher education and the institution of higher education's employees may apply for and receive  
1774 grants or research and development contracts within the educational role of the recipient  
1775 institution.

1776 (b) A program described in Subsection (2)(a) may be conducted by and through the  
1777 institution, or by and through any foundation or organization that is established for the purpose  
1778 of assisting the institution in the accomplishment of the institution's purposes.

1779 (3) An institution or the institution's foundation or organization engaged in a program  
1780 authorized by the board may do the following:

1781 (a) enter into contracts with federal, state, or local governments or their subsidiary  
1782 agencies or departments, with private organizations, companies, firms, or industries, or with  
1783 individuals for conducting the authorized programs;

1784 (b) subject to the approval of the controlling state agency, conduct authorized programs  
1785 within any of the penal, corrective, or custodial institutions of this state and engage the  
1786 voluntary participation of ~~[inmates]~~ an incarcerated individual in those programs;

1787 (c) accept contributions, grants, or gifts from, and enter into contracts and cooperative  
1788 agreements with, any private organization, company, firm, industry, or individual, or any  
1789 governmental agency or department, for support of authorized programs within the educational  
1790 role of the recipient institution, and may agree to provide matching funds with respect to those  
1791 programs from resources available to the institution; and

1792 (d) retain, accumulate, invest, commit, and expend the funds and proceeds from  
1793 programs funded under Subsection (3)(c), including the acquisition of real and personal  
1794 property reasonably required for their accomplishment, except that no portion of the funds and

1795 proceeds may be diverted from or used for purposes other than those authorized or undertaken  
1796 under Subsection (3)(c), or may ever become a charge upon or obligation of the state of Utah or  
1797 the general funds appropriated for the normal operations of the institution unless otherwise  
1798 permitted by law.

1799 (4) (a) Except as provided in Subsection (4)(b), all contracts and research or  
1800 development grants or contracts requiring the use or commitment of facilities, equipment, or  
1801 personnel under the control of an institution of higher education are subject to the approval of  
1802 the board.

1803 (b) (i) The board may delegate the approval of a contract or grant described in  
1804 Subsection (4)(a) to an institution of higher education board of trustees.

1805 (ii) If the board makes a delegation described in Subsection (4)(b)(i), the board of  
1806 trustees shall annually report to the board on all approved contracts or grants.

1807 Section 37. Section **58-37-8** is amended to read:

1808 **58-37-8. Prohibited acts -- Penalties.**

1809 (1) Prohibited acts A -- Penalties and reporting:

1810 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and  
1811 intentionally:

1812 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
1813 manufacture, or dispense, a controlled or counterfeit substance;

1814 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
1815 arrange to distribute a controlled or counterfeit substance;

1816 (iii) possess a controlled or counterfeit substance with intent to distribute; or

1817 (iv) engage in a continuing criminal enterprise where:

1818 (A) the person participates, directs, or engages in conduct that results in a violation of  
1819 Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act,  
1820 Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance  
1821 Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

1822 (B) the violation is a part of a continuing series of two or more violations of Chapter  
1823 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b,  
1824 Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act,  
1825 or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert

1826 with five or more persons with respect to whom the person occupies a position of organizer,  
1827 supervisor, or any other position of management.

1828 (b) A person convicted of violating Subsection (1)(a) with respect to:

1829 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled  
1830 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second  
1831 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or  
1832 subsequent conviction is guilty of a first degree felony;

1833 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
1834 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and  
1835 upon a second or subsequent conviction is guilty of a second degree felony; or

1836 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a  
1837 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree  
1838 felony.

1839 (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may  
1840 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of  
1841 fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the  
1842 person or in the person's immediate possession during the commission or in furtherance of the  
1843 offense, the court shall additionally sentence the person convicted for a term of one year to run  
1844 consecutively and not concurrently; and the court may additionally sentence the person  
1845 convicted for an indeterminate term not to exceed five years to run consecutively and not  
1846 concurrently.

1847 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
1848 felony punishable by imprisonment for an indeterminate term of not less than:

1849 (A) seven years and which may be for life; or

1850 (B) 15 years and which may be for life if the trier of fact determined that the defendant  
1851 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)  
1852 was under 18 years old.

1853 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
1854 not eligible for probation.

1855 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the  
1856 offense, was under 18 years old.

1857 (e) The Administrative Office of the Courts shall report to the Division of Professional  
1858 Licensing the name, case number, date of conviction, and if known, the date of birth of each  
1859 person convicted of violating Subsection (1)(a).

1860 (2) Prohibited acts B -- Penalties and reporting:

1861 (a) It is unlawful:

1862 (i) for a person knowingly and intentionally to possess or use a controlled substance  
1863 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
1864 directly from a practitioner while acting in the course of the person's professional practice, or as  
1865 otherwise authorized by this chapter;

1866 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,  
1867 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied  
1868 by persons unlawfully possessing, using, or distributing controlled substances in any of those  
1869 locations; or

1870 (iii) for a person knowingly and intentionally to possess an altered or forged  
1871 prescription or written order for a controlled substance.

1872 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

1873 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;  
1874 or

1875 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty  
1876 of a class A misdemeanor on a first or second conviction, and on a third or subsequent  
1877 conviction if each prior offense was committed within seven years before the date of the  
1878 offense upon which the current conviction is based is guilty of a third degree felony.

1879 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
1880 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater  
1881 penalty than provided in this Subsection (2).

1882 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
1883 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
1884 [58-37-4.2](#), or marijuana, is guilty of a class B misdemeanor.

1885 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior  
1886 offense was committed within seven years before the date of the offense upon which the  
1887 current conviction is based.

1888           (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony  
1889 if each prior offense was committed within seven years before the date of the offense upon  
1890 which the current conviction is based.

1891           (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior  
1892 boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a  
1893 public jail or other place of confinement shall be sentenced to a penalty one degree greater than  
1894 provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as  
1895 listed in:

1896           (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
1897 indeterminate term as provided by law, and:

1898           (A) the court shall additionally sentence the person convicted to a term of one year to  
1899 run consecutively and not concurrently; and

1900           (B) the court may additionally sentence the person convicted for an indeterminate term  
1901 not to exceed five years to run consecutively and not concurrently; and

1902           (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
1903 indeterminate term as provided by law, and the court shall additionally sentence the person  
1904 convicted to a term of six months to run consecutively and not concurrently.

1905           (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

1906           (i) on a first conviction, guilty of a class B misdemeanor;

1907           (ii) on a second conviction, guilty of a class A misdemeanor; and

1908           (iii) on a third or subsequent conviction, guilty of a third degree felony.

1909           (g) The Administrative Office of the Courts shall report to the Division of Professional  
1910 Licensing the name, case number, date of conviction, and if known, the date of birth of each  
1911 person convicted of violating Subsection (2)(a).

1912           (3) Prohibited acts C -- Penalties:

1913           (a) It is unlawful for a person knowingly and intentionally:

1914           (i) to use in the course of the manufacture or distribution of a controlled substance a  
1915 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
1916 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
1917 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
1918 person;

1919 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
1920 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be  
1921 attempting to acquire or obtain possession of, or to procure the administration of a controlled  
1922 substance by misrepresentation or failure by the person to disclose receiving a controlled  
1923 substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
1924 prescription or written order for a controlled substance, or the use of a false name or address;

1925 (iii) to make a false or forged prescription or written order for a controlled substance,  
1926 or to utter the same, or to alter a prescription or written order issued or written under the terms  
1927 of this chapter; or

1928 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to  
1929 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
1930 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
1931 so as to render a drug a counterfeit controlled substance.

1932 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
1933 misdemeanor.

1934 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
1935 degree felony.

1936 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

1937 (4) Prohibited acts D -- Penalties:

1938 (a) Notwithstanding other provisions of this section, a person not authorized under this  
1939 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is  
1940 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier  
1941 of fact finds the act is committed:

1942 (i) in a public or private elementary or secondary school or on the grounds of any of  
1943 those schools during the hours of 6 a.m. through 10 p.m.;

1944 (ii) in a public or private vocational school or postsecondary institution or on the  
1945 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

1946 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
1947 facility's hours of operation;

1948 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
1949 amusement park, arcade, or recreation center is open to the public;

1950 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;  
1951 (vi) in or on the grounds of a library when the library is open to the public;  
1952 (vii) within an area that is within 100 feet of any structure, facility, or grounds included  
1953 in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);  
1954 (viii) in the presence of a person younger than 18 years old, regardless of where the act  
1955 occurs; or  
1956 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
1957 distribution of a substance in violation of this section to an [inmate] incarcerated individual or  
1958 on the grounds of a correctional facility as defined in Section 76-8-311.3.  
1959 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
1960 and shall be imprisoned for a term of not less than five years if the penalty that would  
1961 otherwise have been established but for this Subsection (4) would have been a first degree  
1962 felony.  
1963 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
1964 not eligible for probation.  
1965 (c) If the classification that would otherwise have been established would have been  
1966 less than a first degree felony but for this Subsection (4), a person convicted under this  
1967 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
1968 offense.  
1969 (d) (i) If the violation is of Subsection (4)(a)(ix):  
1970 (A) the person may be sentenced to imprisonment for an indeterminate term as  
1971 provided by law, and the court shall additionally sentence the person convicted for a term of  
1972 one year to run consecutively and not concurrently; and  
1973 (B) the court may additionally sentence the person convicted for an indeterminate term  
1974 not to exceed five years to run consecutively and not concurrently; and  
1975 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with  
1976 the mental state required for the commission of an offense, directly or indirectly solicits,  
1977 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
1978 violation of Subsection (4)(a)(ix).  
1979 (e) It is not a defense to a prosecution under this Subsection (4) that:  
1980 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of



1981 the offense or was unaware of the individual's true age; or

1982 (ii) the actor mistakenly believed that the location where the act occurred was not as  
1983 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
1984 described in Subsection (4)(a).

1985 (5) A violation of this chapter for which no penalty is specified is a class B  
1986 misdemeanor.

1987 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
1988 guilty or no contest to a violation or attempted violation of this section or a plea which is held  
1989 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,  
1990 even if the charge has been subsequently reduced or dismissed in accordance with the plea in  
1991 abeyance agreement.

1992 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
1993 conviction that is:

1994 (i) from a separate criminal episode than the current charge; and

1995 (ii) from a conviction that is separate from any other conviction used to enhance the  
1996 current charge.

1997 (7) A person may be charged and sentenced for a violation of this section,  
1998 notwithstanding a charge and sentence for a violation of any other section of this chapter.

1999 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu  
2000 of, a civil or administrative penalty or sanction authorized by law.

2001 (b) When a violation of this chapter violates a federal law or the law of another state,  
2002 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
2003 prosecution in this state.

2004 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a  
2005 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
2006 substance or substances, is prima facie evidence that the person or persons did so with  
2007 knowledge of the character of the substance or substances.

2008 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
2009 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or  
2010 administering controlled substances or from causing the substances to be administered by an  
2011 assistant or orderly under the veterinarian's direction and supervision.

2012 (11) Civil or criminal liability may not be imposed under this section on:

2013 (a) a person registered under this chapter who manufactures, distributes, or possesses  
2014 an imitation controlled substance for use as a placebo or investigational new drug by a  
2015 registered practitioner in the ordinary course of professional practice or research; or

2016 (b) a law enforcement officer acting in the course and legitimate scope of the officer's  
2017 employment.

2018 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
2019 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide  
2020 traditional ceremonial purposes in connection with the practice of a traditional Indian religion  
2021 as defined in Section 58-37-2.

2022 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
2023 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported  
2024 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a  
2025 traditional Indian religion.

2026 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
2027 defense under this Subsection (12) as soon as practicable, but not later than 10 days before  
2028 trial.

2029 (ii) The notice shall include the specific claims of the affirmative defense.

2030 (iii) The court may waive the notice requirement in the interest of justice for good  
2031 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

2032 (d) The defendant shall establish the affirmative defense under this Subsection (12) by  
2033 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
2034 charges.

2035 (13) (a) It is an affirmative defense that the person produced, possessed, or  
2036 administered a controlled substance listed in Section 58-37-4.2 if the person was:

2037 (i) engaged in medical research; and

2038 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

2039 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed  
2040 a controlled substance listed in Section 58-37-4.2.

2041 (14) It is an affirmative defense that the person possessed, in the person's body, a  
2042 controlled substance listed in Section 58-37-4.2 if:

2043 (a) the person was the subject of medical research conducted by a holder of a valid  
2044 license to possess controlled substances under Section 58-37-6; and

2045 (b) the substance was administered to the person by the medical researcher.

2046 (15) The application of any increase in penalty under this section to a violation of  
2047 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
2048 Subsection (15) takes precedence over any conflicting provision of this section.

2049 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
2050 listed in Subsection (16)(b) that the person or bystander:

2051 (i) reasonably believes that the person or another person is experiencing an overdose  
2052 event due to the ingestion, injection, inhalation, or other introduction into the human body of a  
2053 controlled substance or other substance;

2054 (ii) reports, or assists a person who reports, in good faith the overdose event to a  
2055 medical provider, an emergency medical service provider as defined in Section 26-8a-102, a  
2056 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the  
2057 person is the subject of a report made under this Subsection (16);

2058 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
2059 actual location of the overdose event that facilitates responding to the person experiencing the  
2060 overdose event;

2061 (iv) remains at the location of the person experiencing the overdose event until a  
2062 responding law enforcement officer or emergency medical service provider arrives, or remains  
2063 at the medical care facility where the person experiencing an overdose event is located until a  
2064 responding law enforcement officer arrives;

2065 (v) cooperates with the responding medical provider, emergency medical service  
2066 provider, and law enforcement officer, including providing information regarding the person  
2067 experiencing the overdose event and any substances the person may have injected, inhaled, or  
2068 otherwise introduced into the person's body; and

2069 (vi) is alleged to have committed the offense in the same course of events from which  
2070 the reported overdose arose.

2071 (b) The offenses referred to in Subsection (16)(a) are:

2072 (i) the possession or use of less than 16 ounces of marijuana;

2073 (ii) the possession or use of a scheduled or listed controlled substance other than

2074 marijuana; and

2075 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
2076 Imitation Controlled Substances Act.

2077 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
2078 include seeking medical assistance under this section during the course of a law enforcement  
2079 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

2080 (17) If any provision of this chapter, or the application of any provision to any person  
2081 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
2082 invalid provision or application.

2083 (18) A legislative body of a political subdivision may not enact an ordinance that is  
2084 less restrictive than any provision of this chapter.

2085 (19) If a minor who is under 18 years old is found by a court to have violated this  
2086 section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to  
2087 complete:

2088 (a) a screening as defined in Section 41-6a-501;

2089 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an  
2090 assessment to be appropriate; and

2091 (c) an educational series as defined in Section 41-6a-501 or substance use disorder  
2092 treatment as indicated by an assessment.

2093 Section 38. Section 59-12-402.1 is amended to read:

2094 **59-12-402.1. State correctional facility sales and use tax -- Base -- Rate --**  
2095 **Collection fees -- Imposition -- Prohibition of military installation development authority**  
2096 **imposition of tax.**

2097 (1) As used in this section, "new state correctional facility" means a new prison in the  
2098 state:

2099 (a) that is operated by the Department of Corrections;

2100 (b) the construction of which begins on or after May 12, 2015; and

2101 (c) that provides a capacity of 2,500 or more [inmate] beds for incarcerated individuals.

2102 (2) Subject to the other provisions of this part, a city or town legislative body may  
2103 impose a tax under this section if the construction of a new state correctional facility has begun  
2104 within the boundaries of the city or town.

2105 (3) For purposes of this section, the tax rate may not exceed .5%.  
2106 (4) Except as provided in Subsection (5), a tax under this section shall be imposed on  
2107 the transactions described in Subsection 59-12-103(1) within the city or town.

2108 (5) A city or town may not impose a tax under this section on:

2109 (a) the sale of:

2110 (i) a motor vehicle;

2111 (ii) an aircraft;

2112 (iii) a watercraft;

2113 (iv) a modular home;

2114 (v) a manufactured home; or

2115 (vi) a mobile home;

2116 (b) the sales and uses described in Section 59-12-104 to the extent the sales and uses  
2117 are exempt under Section 59-12-104; and

2118 (c) except as provided in Subsection (7), amounts paid or charged for food and food  
2119 ingredients.

2120 (6) For purposes of this section, the location of a transaction shall be determined in  
2121 accordance with Sections 59-12-211 through 59-12-215.

2122 (7) A city or town that imposes a tax under this section shall impose the tax on the  
2123 purchase price or sales price for amounts paid or charged for food and food ingredients if the  
2124 food and food ingredients are sold as part of a bundled transaction attributable to food and food  
2125 ingredients and tangible personal property other than food and food ingredients.

2126 (8) A city or town may impose a tax under this section by majority vote of the  
2127 members of the city or town legislative body.

2128 (9) A city or town that imposes a tax under this section is not subject to Section  
2129 59-12-405.

2130 (10) A military installation development authority may not impose a tax under this  
2131 section.

2132 Section 39. Section 62A-2-120 is amended to read:

2133 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

2134 (1) As used in this section:

2135 (a) (i) "Applicant" means:

- 2136 (A) the same as that term is defined in Section [62A-2-101](#);
- 2137 (B) an individual who is associated with a licensee and has or will likely have direct
- 2138 access to a child or a vulnerable adult;
- 2139 (C) an individual who provides respite care to a foster parent or an adoptive parent on
- 2140 more than one occasion;
- 2141 (D) a department contractor;
- 2142 (E) an individual who transports a child for a youth transportation company;
- 2143 (F) a guardian submitting an application on behalf of an individual, other than the child
- 2144 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and
- 2145 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
- 2146 who is receiving services; or
- 2147 (G) a guardian submitting an application on behalf of an individual, other than the
- 2148 child or vulnerable adult who is receiving the service, if the individual is 12 years old or older
- 2149 and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
- 2150 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
- 2151 of the Division of Child and Family Services or the Division of Juvenile Justice Services.
- 2152 (b) "Application" means a background screening application to the office.
- 2153 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
- 2154 Public Safety, created in Section [53-10-201](#).
- 2155 (d) "Incidental care" means occasional care, not in excess of five hours per week and
- 2156 never overnight, for a foster child.
- 2157 (e) "Personal identifying information" means:
- 2158 (i) current name, former names, nicknames, and aliases;
- 2159 (ii) date of birth;
- 2160 (iii) physical address and email address;
- 2161 (iv) telephone number;
- 2162 (v) driver license or other government-issued identification;
- 2163 (vi) social security number;
- 2164 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
- 2165 by the office; and
- 2166 (viii) other information specified by the office by rule made in accordance with Title

2167 63G, Chapter 3, Utah Administrative Rulemaking Act.

2168 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall  
2169 submit the following to the office:

2170 (i) personal identifying information;

2171 (ii) a fee established by the office under Section 63J-1-504; and

2172 (iii) a disclosure form, specified by the office, for consent for:

2173 (A) an initial background check upon submission of the information described under  
2174 this Subsection (2)(a);

2175 (B) ongoing monitoring of fingerprints and registries until no longer associated with a  
2176 licensee for 90 days;

2177 (C) a background check when the office determines that reasonable cause exists; and

2178 (D) retention of personal identifying information, including fingerprints, for

2179 monitoring and notification as described in Subsections (3)(d) and (4).

2180 (b) In addition to the requirements described in Subsection (2)(a), if an applicant  
2181 resided outside of the United States and its territories during the five years immediately  
2182 preceding the day on which the information described in Subsection (2)(a) is submitted to the  
2183 office, the office may require the applicant to submit documentation establishing whether the  
2184 applicant was convicted of a crime during the time that the applicant resided outside of the  
2185 United States or its territories.

2186 (3) The office:

2187 (a) shall perform the following duties as part of a background check of an applicant:

2188 (i) check state and regional criminal background databases for the applicant's criminal  
2189 history by:

2190 (A) submitting personal identifying information to the bureau for a search; or

2191 (B) using the applicant's personal identifying information to search state and regional  
2192 criminal background databases as authorized under Section 53-10-108;

2193 (ii) submit the applicant's personal identifying information and fingerprints to the  
2194 bureau for a criminal history search of applicable national criminal background databases;

2195 (iii) search the Department of Health and Human Services, Division of Child and  
2196 Family Services' Licensing Information System described in Section 80-2-1002;

2197 (iv) search the Department of Health and Human Services, Division of Aging and

2198 Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section  
2199 62A-3-311.1;

2200 (v) search the juvenile court records for substantiated findings of severe child abuse or  
2201 neglect described in Section 80-3-404; and

2202 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided  
2203 under Section 78A-6-209;

2204 (b) shall conduct a background check of an applicant for an initial background check  
2205 upon submission of the information described under Subsection (2)(a);

2206 (c) may conduct all or portions of a background check of an applicant, as provided by  
2207 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative  
2208 Rulemaking Act:

2209 (i) for an annual renewal; or

2210 (ii) when the office determines that reasonable cause exists;

2211 (d) may submit an applicant's personal identifying information, including fingerprints,  
2212 to the bureau for checking, retaining, and monitoring of state and national criminal background  
2213 databases and for notifying the office of new criminal activity associated with the applicant;

2214 (e) shall track the status of an approved applicant under this section to ensure that an  
2215 approved applicant is not required to duplicate the submission of the applicant's fingerprints if  
2216 the applicant applies for:

2217 (i) more than one license;

2218 (ii) direct access to a child or a vulnerable adult in more than one human services  
2219 program; or

2220 (iii) direct access to a child or a vulnerable adult under a contract with the department;

2221 (f) shall track the status of each license and each individual with direct access to a child  
2222 or a vulnerable adult and notify the bureau within 90 days after the day on which the license  
2223 expires or the individual's direct access to a child or a vulnerable adult ceases;

2224 (g) shall adopt measures to strictly limit access to personal identifying information  
2225 solely to the individuals responsible for processing and entering the applications for  
2226 background checks and to protect the security of the personal identifying information the office  
2227 reviews under this Subsection (3);

2228 (h) as necessary to comply with the federal requirement to check a state's child abuse



2229 and neglect registry regarding any individual working in a congregate care program, shall:

2230 (i) search the Department of Health and Human Services, Division of Child and Family  
2231 Services' Licensing Information System described in Section 80-2-1002; and

2232 (ii) require the child abuse and neglect registry be checked in each state where an  
2233 applicant resided at any time during the five years immediately preceding the day on which the  
2234 applicant submits the information described in Subsection (2)(a) to the office; and

2235 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
2236 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background  
2237 checks.

2238 (4) (a) With the personal identifying information the office submits to the bureau under  
2239 Subsection (3), the bureau shall check against state and regional criminal background databases  
2240 for the applicant's criminal history.

2241 (b) With the personal identifying information and fingerprints the office submits to the  
2242 bureau under Subsection (3), the bureau shall check against national criminal background  
2243 databases for the applicant's criminal history.

2244 (c) Upon direction from the office, and with the personal identifying information and  
2245 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

2246 (i) maintain a separate file of the fingerprints for search by future submissions to the  
2247 local and regional criminal records databases, including latent prints; and

2248 (ii) monitor state and regional criminal background databases and identify criminal  
2249 activity associated with the applicant.

2250 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of  
2251 Investigation Next Generation Identification System, to be retained in the Federal Bureau of  
2252 Investigation Next Generation Identification System for the purpose of:

2253 (i) being searched by future submissions to the national criminal records databases,  
2254 including the Federal Bureau of Investigation Next Generation Identification System and latent  
2255 prints; and

2256 (ii) monitoring national criminal background databases and identifying criminal  
2257 activity associated with the applicant.

2258 (e) The Bureau shall notify and release to the office all information of criminal activity  
2259 associated with the applicant.

2260 (f) Upon notice from the office that a license has expired or an individual's direct  
2261 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

2262 (i) discard and destroy any retained fingerprints; and

2263 (ii) notify the Federal Bureau of Investigation when the license has expired or an  
2264 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau  
2265 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of  
2266 Investigation Next Generation Identification System.

2267 (5) (a) After conducting the background check described in Subsections (3) and (4), the  
2268 office shall deny an application to an applicant who, within three years before the day on which  
2269 the applicant submits information to the office under Subsection (2) for a background check,  
2270 has been convicted of any of the following, regardless of whether the offense is a felony, a  
2271 misdemeanor, or an infraction:

2272 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to  
2273 animals, or bestiality;

2274 (ii) a violation of any pornography law, including sexual exploitation of a minor or  
2275 aggravated sexual exploitation of a minor;

2276 (iii) prostitution;

2277 (iv) an offense included in:

2278 (A) Title 76, Chapter 5, Offenses Against the Individual;

2279 (B) Section 76-5b-201, Sexual Exploitation of a Minor;

2280 (C) Section 76-5b-201.1, Aggravated Sexual Exploitation of a Minor; or

2281 (D) Title 76, Chapter 7, Offenses Against the Family;

2282 (v) aggravated arson, as described in Section 76-6-103;

2283 (vi) aggravated burglary, as described in Section 76-6-203;

2284 (vii) aggravated robbery, as described in Section 76-6-302;

2285 (viii) identity fraud crime, as described in Section 76-6-1102; or

2286 (ix) a felony or misdemeanor offense committed outside of the state that, if committed  
2287 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)  
2288 through (viii).

2289 (b) If the office denies an application to an applicant based on a conviction described in  
2290 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in

2291 Subsection (6).

2292 (c) If the applicant will be working in a program serving only adults whose only  
2293 impairment is a mental health diagnosis, including that of a serious mental health disorder,  
2294 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)  
2295 do not apply, and the office shall conduct a comprehensive review as described in Subsection  
2296 (6).

2297 (6) (a) The office shall conduct a comprehensive review of an applicant's background  
2298 check if the applicant:

2299 (i) has an open court case or a conviction for any felony offense, not described in  
2300 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on  
2301 which the applicant submits the application;

2302 (ii) has an open court case or a conviction for a misdemeanor offense, not described in  
2303 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter  
2304 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day  
2305 on which the applicant submits information to the office under Subsection (2) for a background  
2306 check;

2307 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more  
2308 than three years before the day on which the applicant submitted information under Subsection  
2309 (2)(a);

2310 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense  
2311 described in Subsection (5)(a);

2312 (v) has a listing in the Department of Health and Human Services, Division of Child  
2313 and Family Services' Licensing Information System described in Section [80-2-1002](#);

2314 (vi) has a listing in the Department of Health and Human Services, Division of Aging  
2315 and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in  
2316 Section [62A-3-311.1](#);

2317 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse  
2318 or neglect described in Section [80-3-404](#);

2319 (viii) has a record of an adjudication in juvenile court for an act that, if committed by  
2320 an adult, would be a felony or misdemeanor, if the applicant is:

2321 (A) under 28 years old; or

2322 (B) 28 years old or older and has been convicted of, has pleaded no contest to, or is  
2323 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor  
2324 offense described in Subsection (5)(a);

2325 (ix) has a pending charge for an offense described in Subsection (5)(a); or

2326 (x) is an applicant described in Subsection (5)(c).

2327 (b) The comprehensive review described in Subsection (6)(a) shall include an  
2328 examination of:

2329 (i) the date of the offense or incident;

2330 (ii) the nature and seriousness of the offense or incident;

2331 (iii) the circumstances under which the offense or incident occurred;

2332 (iv) the age of the perpetrator when the offense or incident occurred;

2333 (v) whether the offense or incident was an isolated or repeated incident;

2334 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable  
2335 adult, including:

2336 (A) actual or threatened, nonaccidental physical, mental, or financial harm;

2337 (B) sexual abuse;

2338 (C) sexual exploitation; or

2339 (D) negligent treatment;

2340 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric  
2341 treatment received, or additional academic or vocational schooling completed;

2342 (viii) the applicant's risk of harm to clientele in the program or in the capacity for  
2343 which the applicant is applying; and

2344 (ix) any other pertinent information presented to or publicly available to the committee  
2345 members.

2346 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the  
2347 office shall deny an application to an applicant if the office finds that approval would likely  
2348 create a risk of harm to a child or a vulnerable adult.

2349 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the  
2350 office may not deny an application to an applicant solely because the applicant was convicted  
2351 of an offense that occurred 10 or more years before the day on which the applicant submitted  
2352 the information required under Subsection (2)(a) if:

2353 (i) the applicant has not committed another misdemeanor or felony offense after the  
2354 day on which the conviction occurred; and

2355 (ii) the applicant has never been convicted of an offense described in Subsection  
2356 (14)(c).

2357 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2358 office may make rules, consistent with this chapter, to establish procedures for the  
2359 comprehensive review described in this Subsection (6).

2360 (7) Subject to Subsection (10), the office shall approve an application to an applicant  
2361 who is not denied under Subsection (5), (6), or (14).

2362 (8) (a) The office may conditionally approve an application of an applicant, for a  
2363 maximum of 60 days after the day on which the office sends written notice to the applicant  
2364 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

2365 (i) is awaiting the results of the criminal history search of national criminal background  
2366 databases; and

2367 (ii) would otherwise approve an application of the applicant under Subsection (7).

2368 (b) The office may conditionally approve an application of an applicant, for a  
2369 maximum of one year after the day on which the office sends written notice to the applicant  
2370 under Subsection (12), without requiring that the applicant be directly supervised if the office:

2371 (i) is awaiting the results of an out-of-state registry for providers other than foster and  
2372 adoptive parents; and

2373 (ii) would otherwise approve an application of the applicant under Subsection (7).

2374 (c) Upon receiving the results of the criminal history search of a national criminal  
2375 background database, the office shall approve or deny the application of the applicant in  
2376 accordance with Subsections (5) through (7).

2377 (9) A licensee or department contractor may not permit an individual to have direct  
2378 access to a child or a vulnerable adult unless, subject to Subsection (10):

2379 (a) the individual is associated with the licensee or department contractor and:

2380 (i) the individual's application is approved by the office under this section;

2381 (ii) the individual's application is conditionally approved by the office under  
2382 Subsection (8); or

2383 (iii) (A) the individual has submitted the background check information described in

2384 Subsection (2) to the office;

2385 (B) the office has not determined whether to approve the applicant's application; and

2386 (C) the individual is directly supervised by an individual who has a current background

2387 screening approval issued by the office under this section and is associated with the licensee or

2388 department contractor;

2389 (b) (i) the individual is associated with the licensee or department contractor;

2390 (ii) the individual has a current background screening approval issued by the office

2391 under this section;

2392 (iii) one of the following circumstances, that the office has not yet reviewed under

2393 Subsection (6), applies to the individual:

2394 (A) the individual was charged with an offense described in Subsection (5)(a);

2395 (B) the individual is listed in the Licensing Information System, described in Section

2396 [80-2-1002](#);

2397 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation

2398 database, described in Section [62A-3-311.1](#);

2399 (D) the individual has a record in the juvenile court of a substantiated finding of severe

2400 child abuse or neglect, described in Section [80-3-404](#); or

2401 (E) the individual has a record of an adjudication in juvenile court for an act that, if

2402 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)

2403 or (6); and

2404 (iv) the individual is directly supervised by an individual who:

2405 (A) has a current background screening approval issued by the office under this

2406 section; and

2407 (B) is associated with the licensee or department contractor;

2408 (c) the individual:

2409 (i) is not associated with the licensee or department contractor; and

2410 (ii) is directly supervised by an individual who:

2411 (A) has a current background screening approval issued by the office under this

2412 section; and

2413 (B) is associated with the licensee or department contractor;

2414 (d) the individual is the parent or guardian of the child, or the guardian of the

2415 vulnerable adult;

2416 (e) the individual is approved by the parent or guardian of the child, or the guardian of  
2417 the vulnerable adult, to have direct access to the child or the vulnerable adult;

2418 (f) the individual is only permitted to have direct access to a vulnerable adult who  
2419 voluntarily invites the individual to visit; or

2420 (g) the individual only provides incidental care for a foster child on behalf of a foster  
2421 parent who has used reasonable and prudent judgment to select the individual to provide the  
2422 incidental care for the foster child.

2423 (10) An individual may not have direct access to a child or a vulnerable adult if the  
2424 individual is prohibited by court order from having that access.

2425 (11) Notwithstanding any other provision of this section, an individual for whom the  
2426 office denies an application may not have direct access to a child or vulnerable adult unless the  
2427 office approves a subsequent application by the individual.

2428 (12) (a) Within 30 days after the day on which the office receives the background  
2429 check information for an applicant, the office shall give notice of the clearance status to:

2430 (i) the applicant, and the licensee or department contractor, of the office's decision  
2431 regarding the background check and findings; and

2432 (ii) the applicant of any convictions and potentially disqualifying charges and  
2433 adjudications found in the search.

2434 (b) With the notice described in Subsection (12)(a), the office shall also give the  
2435 applicant the details of any comprehensive review conducted under Subsection (6).

2436 (c) If the notice under Subsection (12)(a) states that the applicant's application is  
2437 denied, the notice shall further advise the applicant that the applicant may, under Subsection  
2438 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to  
2439 challenge the office's decision.

2440 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2441 office shall make rules, consistent with this chapter:

2442 (i) defining procedures for the challenge of the office's background check decision  
2443 described in Subsection (12)(c); and

2444 (ii) expediting the process for renewal of a license under the requirements of this  
2445 section and other applicable sections.

2446 (13) An individual or a department contractor who provides services in an adults only  
2447 substance use disorder program, as defined by rule, is exempt from this section. This  
2448 exemption does not extend to a program director or a member, as defined by Section  
2449 [62A-2-108](#), of the program.

2450 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements  
2451 of this section, if the background check of an applicant is being conducted for the purpose of  
2452 giving clearance status to an applicant seeking a position in a congregate care program, an  
2453 applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or  
2454 an applicant seeking to provide a prospective adoptive home, the office shall:

2455 (i) check the child abuse and neglect registry in each state where each applicant resided  
2456 in the five years immediately preceding the day on which the applicant applied to be a foster  
2457 parent or adoptive parent, to determine whether the prospective foster parent or prospective  
2458 adoptive parent is listed in the registry as having a substantiated or supported finding of child  
2459 abuse or neglect; and

2460 (ii) check the child abuse and neglect registry in each state where each adult living in  
2461 the home of the applicant described in Subsection (14)(a)(i) resided in the five years  
2462 immediately preceding the day on which the applicant applied to be a foster parent or adoptive  
2463 parent, to determine whether the adult is listed in the registry as having a substantiated or  
2464 supported finding of child abuse or neglect.

2465 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

2466 (i) federal law or rule permits otherwise; or

2467 (ii) the requirements would prohibit the Division of Child and Family Services or a  
2468 court from placing a child with:

2469 (A) a noncustodial parent under Section [80-2a-301](#), [80-3-302](#), or [80-3-303](#); or

2470 (B) a relative, other than a noncustodial parent, under Section [80-2a-301](#), [80-3-302](#), or  
2471 [80-3-303](#), pending completion of the background check described in Subsection (5).

2472 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an  
2473 applicant seeking a position in a congregate care program, an applicant for a one-time adoption,  
2474 an applicant to become a prospective foster parent, or an applicant to become a prospective  
2475 adoptive parent if the applicant has been convicted of:

2476 (i) a felony involving conduct that constitutes any of the following:



- 2477 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
- 2478 (B) commission of domestic violence in the presence of a child, as described in Section
- 2479 76-5-114;
- 2480 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 2481 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- 2482 (E) aggravated murder, as described in Section 76-5-202;
- 2483 (F) murder, as described in Section 76-5-203;
- 2484 (G) manslaughter, as described in Section 76-5-205;
- 2485 (H) child abuse homicide, as described in Section 76-5-208;
- 2486 (I) homicide by assault, as described in Section 76-5-209;
- 2487 (J) kidnapping, as described in Section 76-5-301;
- 2488 (K) child kidnapping, as described in Section 76-5-301.1;
- 2489 (L) aggravated kidnapping, as described in Section 76-5-302;
- 2490 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 2491 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2492 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 2493 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 2494 (Q) aggravated arson, as described in Section 76-6-103;
- 2495 (R) aggravated burglary, as described in Section 76-6-203;
- 2496 (S) aggravated robbery, as described in Section 76-6-302; or
- 2497 (T) domestic violence, as described in Section 77-36-1; or
- 2498 (ii) an offense committed outside the state that, if committed in the state, would
- 2499 constitute a violation of an offense described in Subsection (14)(c)(i).
- 2500 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 2501 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 2502 five years immediately preceding the day on which the individual's application or license would
- 2503 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 2504 constitutes a violation of any of the following:
- 2505 (i) aggravated assault, as described in Section 76-5-103;
- 2506 (ii) aggravated assault by ~~[a prisoner]~~ an incarcerated individual, as described in
- 2507 Section 76-5-103.5;

- 2508 (iii) mayhem, as described in Section 76-5-105;
- 2509 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 2510 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 2511 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 2512 Act;
- 2513 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 2514 Precursor Act; or
- 2515 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

2516 (e) In addition to the circumstances described in Subsection (6)(a), the office shall  
2517 conduct the comprehensive review of an applicant's background check pursuant to this section  
2518 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a  
2519 child abuse and neglect registry of another state as having a substantiated or supported finding  
2520 of a severe type of child abuse or neglect as defined in Section 80-1-102.

2521 Section 40. Section 62A-15-103 is amended to read:

2522 **62A-15-103. Division -- Creation -- Responsibilities.**

2523 (1) (a) The division shall exercise responsibility over the policymaking functions,  
2524 regulatory and enforcement powers, rights, duties, and responsibilities outlined in state law that  
2525 were previously vested in the Division of Substance Abuse and Mental Health within the  
2526 department, under the administration and general supervision of the executive director.

2527 (b) The division is the substance abuse authority and the mental health authority for  
2528 this state.

2529 (2) The division shall:

2530 (a) (i) educate the general public regarding the nature and consequences of substance  
2531 abuse by promoting school and community-based prevention programs;

2532 (ii) render support and assistance to public schools through approved school-based  
2533 substance abuse education programs aimed at prevention of substance abuse;

2534 (iii) promote or establish programs for the prevention of substance abuse within the  
2535 community setting through community-based prevention programs;

2536 (iv) cooperate with and assist treatment centers, recovery residences, and other  
2537 organizations that provide services to individuals recovering from a substance abuse disorder,  
2538 by identifying and disseminating information about effective practices and programs;

- 2539 (v) promote integrated programs that address an individual's substance abuse, mental  
2540 health, and physical health;
- 2541 (vi) establish and promote an evidence-based continuum of screening, assessment,  
2542 prevention, treatment, and recovery support services in the community for individuals with a  
2543 substance use disorder or mental illness;
- 2544 (vii) evaluate the effectiveness of programs described in this Subsection (2);
- 2545 (viii) consider the impact of the programs described in this Subsection (2) on:
- 2546 (A) emergency department utilization;
- 2547 (B) jail and prison populations;
- 2548 (C) the homeless population; and
- 2549 (D) the child welfare system; and
- 2550 (ix) promote or establish programs for education and certification of instructors to  
2551 educate individuals convicted of driving under the influence of alcohol or drugs or driving with  
2552 any measurable controlled substance in the body;
- 2553 (b) (i) collect and disseminate information pertaining to mental health;
- 2554 (ii) provide direction over the state hospital including approval of the state hospital's  
2555 budget, administrative policy, and coordination of services with local service plans;
- 2556 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
2557 Rulemaking Act, to educate families concerning mental illness and promote family  
2558 involvement, when appropriate, and with patient consent, in the treatment program of a family  
2559 member; and
- 2560 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
2561 Rulemaking Act, to direct that an individual receiving services through a local mental health  
2562 authority or the Utah State Hospital be informed about and, if desired by the individual,  
2563 provided assistance in the completion of a declaration for mental health treatment in  
2564 accordance with Section [62A-15-1002](#);
- 2565 (c) (i) consult and coordinate with local substance abuse authorities and local mental  
2566 health authorities regarding programs and services;
- 2567 (ii) provide consultation and other assistance to public and private agencies and groups  
2568 working on substance abuse and mental health issues;
- 2569 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,

2570 medical and social agencies, public health authorities, law enforcement agencies, education and  
2571 research organizations, and other related groups;

2572 (iv) promote or conduct research on substance abuse and mental health issues, and  
2573 submit to the governor and the Legislature recommendations for changes in policy and  
2574 legislation;

2575 (v) receive, distribute, and provide direction over public funds for substance abuse and  
2576 mental health services;

2577 (vi) monitor and evaluate programs provided by local substance abuse authorities and  
2578 local mental health authorities;

2579 (vii) examine expenditures of local, state, and federal funds;

2580 (viii) monitor the expenditure of public funds by:

2581 (A) local substance abuse authorities;

2582 (B) local mental health authorities; and

2583 (C) in counties where they exist, a private contract provider that has an annual or  
2584 otherwise ongoing contract to provide comprehensive substance abuse or mental health  
2585 programs or services for the local substance abuse authority or local mental health authority;

2586 (ix) contract with local substance abuse authorities and local mental health authorities  
2587 to provide a comprehensive continuum of services that include community-based services for  
2588 individuals involved in the criminal justice system, in accordance with division policy, contract  
2589 provisions, and the local plan;

2590 (x) contract with private and public entities for special statewide or nonclinical  
2591 services, or services for individuals involved in the criminal justice system, according to  
2592 division rules;

2593 (xi) review and approve each local substance abuse authority's plan and each local  
2594 mental health authority's plan in order to ensure:

2595 (A) a statewide comprehensive continuum of substance abuse services;

2596 (B) a statewide comprehensive continuum of mental health services;

2597 (C) services result in improved overall health and functioning;

2598 (D) a statewide comprehensive continuum of community-based services designed to  
2599 reduce criminal risk factors for individuals who are determined to have substance abuse or  
2600 mental illness conditions or both, and who are involved in the criminal justice system;

2601 (E) compliance, where appropriate, with the certification requirements in Subsection  
2602 (2)(j); and

2603 (F) appropriate expenditure of public funds;

2604 (xii) review and make recommendations regarding each local substance abuse  
2605 authority's contract with the local substance abuse authority's provider of substance abuse  
2606 programs and services and each local mental health authority's contract with the local mental  
2607 health authority's provider of mental health programs and services to ensure compliance with  
2608 state and federal law and policy;

2609 (xiii) monitor and ensure compliance with division rules and contract requirements;  
2610 and

2611 (xiv) withhold funds from local substance abuse authorities, local mental health  
2612 authorities, and public and private providers for contract noncompliance, failure to comply  
2613 with division directives regarding the use of public funds, or for misuse of public funds or  
2614 money;

2615 (d) ensure that the requirements of this part are met and applied uniformly by local  
2616 substance abuse authorities and local mental health authorities across the state;

2617 (e) require each local substance abuse authority and each local mental health authority,  
2618 in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to  
2619 the division on or before May 15 of each year;

2620 (f) conduct an annual program audit and review of each local substance abuse authority  
2621 and each local substance abuse authority's contract provider, and each local mental health  
2622 authority and each local mental health authority's contract provider, including:

2623 (i) a review and determination regarding whether:

2624 (A) public funds allocated to the local substance abuse authority or the local mental  
2625 health authorities are consistent with services rendered by the authority or the authority's  
2626 contract provider, and with outcomes reported by the authority's contract provider; and

2627 (B) each local substance abuse authority and each local mental health authority is  
2628 exercising sufficient oversight and control over public funds allocated for substance use  
2629 disorder and mental health programs and services; and

2630 (ii) items determined by the division to be necessary and appropriate;

2631 (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,

2632 Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

2633 (h) (i) train and certify an adult as a peer support specialist, qualified to provide peer  
2634 supports services to an individual with:

2635 (A) a substance use disorder;

2636 (B) a mental health disorder; or

2637 (C) a substance use disorder and a mental health disorder;

2638 (ii) certify a person to carry out, as needed, the division's duty to train and certify an  
2639 adult as a peer support specialist;

2640 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
2641 Rulemaking Act, that:

2642 (A) establish training and certification requirements for a peer support specialist;

2643 (B) specify the types of services a peer support specialist is qualified to provide;

2644 (C) specify the type of supervision under which a peer support specialist is required to  
2645 operate; and

2646 (D) specify continuing education and other requirements for maintaining or renewing  
2647 certification as a peer support specialist; and

2648 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
2649 Rulemaking Act, that:

2650 (A) establish the requirements for a person to be certified to carry out, as needed, the  
2651 division's duty to train and certify an adult as a peer support specialist; and

2652 (B) specify how the division shall provide oversight of a person certified to train and  
2653 certify a peer support specialist;

2654 (i) collaborate with the State Commission on Criminal and Juvenile Justice to analyze  
2655 and provide recommendations to the Legislature regarding:

2656 (i) pretrial services and the resources needed to reduce recidivism;

2657 (ii) county jail and county behavioral health early-assessment resources needed for an  
2658 individual convicted of a class A or class B misdemeanor; and

2659 (iii) the replacement of federal dollars associated with drug interdiction law  
2660 enforcement task forces that are reduced;

2661 (j) establish performance goals and outcome measurements for a mental health or  
2662 substance use treatment program that is licensed under Chapter 2, Licensure of Programs and

2663 Facilities, and contracts with the department, including goals and measurements related to  
2664 employment and reducing recidivism of individuals receiving mental health or substance use  
2665 treatment who are involved with the criminal justice system;

2666 (k) annually, on or before November 30, submit a written report to the Judiciary  
2667 Interim Committee, the Health and Human Services Interim Committee, and the Law  
2668 Enforcement and Criminal Justice Interim Committee, that includes:

2669 (i) a description of the performance goals and outcome measurements described in  
2670 Subsection (2)(j); and

2671 (ii) information on the effectiveness of the goals and measurements in ensuring  
2672 appropriate and adequate mental health or substance use treatment is provided in a treatment  
2673 program described in Subsection (2)(j);

2674 (l) collaborate with the Administrative Office of the Courts, the Department of  
2675 Corrections, the Department of Workforce Services, and the Board of Pardons and Parole to  
2676 collect data on recidivism, including data on:

2677 (i) individuals who participate in a mental health or substance use treatment program  
2678 while incarcerated and are convicted of another offense within two years after release from  
2679 incarceration;

2680 (ii) individuals who are ordered by a criminal court or the Board of Pardons and Parole  
2681 to participate in a mental health or substance use treatment program and are convicted of  
2682 another offense while participating in the treatment program or within two years after the day  
2683 on which the treatment program ends;

2684 (iii) the type of treatment provided to, and employment of, the individuals described in  
2685 Subsections (2)(l)(i) and (ii); and

2686 (iv) cost savings associated with recidivism reduction and the reduction in the number  
2687 of ~~inmates~~ incarcerated individuals in the state;

2688 (m) at the division's discretion, use the data described in Subsection (2)(l) to make  
2689 decisions regarding the use of funds allocated to the division to provide treatment;

2690 (n) annually, on or before August 31, submit the data collected under Subsection (2)(l)  
2691 and any recommendations to improve the data collection to the State Commission on Criminal  
2692 and Juvenile Justice to be included in the report described in Subsection 63M-7-204(1)(x);

2693 (o) publish the following on the division's website:

2694 (i) the performance goals and outcome measurements described in Subsection (2)(j);  
2695 and

2696 (ii) a description of the services provided and the contact information for the mental  
2697 health and substance use treatment programs described in Subsection (2)(j) and residential,  
2698 vocational and life skills programs, as defined in Section 13-53-102; and

2699 (p) consult and coordinate with the Division of Child and Family Services to develop  
2700 and manage the operation of a program designed to reduce substance abuse during pregnancy  
2701 and by parents of a newborn child that includes:

2702 (i) providing education and resources to health care providers and individuals in the  
2703 state regarding prevention of substance abuse during pregnancy;

2704 (ii) providing training to health care providers in the state regarding screening of a  
2705 pregnant woman or pregnant minor to identify a substance abuse disorder; and

2706 (iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn  
2707 child in need of substance abuse treatment services to a facility that has the capacity to provide  
2708 the treatment services.

2709 (3) In addition to the responsibilities described in Subsection (2), the division shall,  
2710 within funds appropriated by the Legislature for this purpose, implement and manage the  
2711 operation of a firearm safety and suicide prevention program, in consultation with the Bureau  
2712 of Criminal Identification created in Section 53-10-201, including:

2713 (a) coordinating with local mental health and substance abuse authorities, a nonprofit  
2714 behavioral health advocacy group, and a representative from a Utah-based nonprofit  
2715 organization with expertise in the field of firearm use and safety that represents firearm owners,  
2716 to:

2717 (i) produce and periodically review and update a firearm safety brochure and other  
2718 educational materials with information about the safe handling and use of firearms that  
2719 includes:

2720 (A) information on safe handling, storage, and use of firearms in a home environment;

2721 (B) information about at-risk individuals and individuals who are legally prohibited  
2722 from possessing firearms;

2723 (C) information about suicide prevention awareness; and

2724 (D) information about the availability of firearm safety packets;



- 2725 (ii) procure cable-style gun locks for distribution under this section;
- 2726 (iii) produce a firearm safety packet that includes the firearm safety brochure and the  
2727 cable-style gun lock described in this Subsection (3); and
- 2728 (iv) create a suicide prevention education course that:
- 2729 (A) provides information for distribution regarding firearm safety education;
- 2730 (B) incorporates current information on how to recognize suicidal behaviors and  
2731 identify individuals who may be suicidal; and
- 2732 (C) provides information regarding crisis intervention resources;
- 2733 (b) distributing, free of charge, the firearm safety packet to the following persons, who  
2734 shall make the firearm safety packet available free of charge:
- 2735 (i) health care providers, including emergency rooms;
- 2736 (ii) mobile crisis outreach teams;
- 2737 (iii) mental health practitioners;
- 2738 (iv) other public health suicide prevention organizations;
- 2739 (v) entities that teach firearm safety courses;
- 2740 (vi) school districts for use in the seminar, described in Section [53G-9-702](#), for parents  
2741 of students in the school district; and
- 2742 (vii) firearm dealers to be distributed in accordance with Section [76-10-526](#);
- 2743 (c) creating and administering a rebate program that includes a rebate that offers  
2744 between \$10 and \$200 off the purchase price of a firearm safe from a participating firearms  
2745 dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah resident;
- 2746 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
2747 making rules that establish procedures for:
- 2748 (i) producing and distributing the suicide prevention education course and the firearm  
2749 safety brochures and packets;
- 2750 (ii) procuring the cable-style gun locks for distribution; and
- 2751 (iii) administering the rebate program; and
- 2752 (e) reporting to the Health and Human Services Interim Committee regarding  
2753 implementation and success of the firearm safety program and suicide prevention education  
2754 course at or before the November meeting each year.
- 2755 (4) (a) The division may refuse to contract with and may pursue legal remedies against

2756 any local substance abuse authority or local mental health authority that fails, or has failed, to  
2757 expend public funds in accordance with state law, division policy, contract provisions, or  
2758 directives issued in accordance with state law.

2759 (b) The division may withhold funds from a local substance abuse authority or local  
2760 mental health authority if the authority's contract provider of substance abuse or mental health  
2761 programs or services fails to comply with state and federal law or policy.

2762 (5) (a) Before reissuing or renewing a contract with any local substance abuse authority  
2763 or local mental health authority, the division shall review and determine whether the local  
2764 substance abuse authority or local mental health authority is complying with the oversight and  
2765 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and  
2766 17-43-309.

2767 (b) Nothing in this Subsection (5) may be used as a defense to the responsibility and  
2768 liability described in Section 17-43-303 and to the responsibility and liability described in  
2769 Section 17-43-203.

2770 (6) In carrying out the division's duties and responsibilities, the division may not  
2771 duplicate treatment or educational facilities that exist in other divisions or departments of the  
2772 state, but shall work in conjunction with those divisions and departments in rendering the  
2773 treatment or educational services that those divisions and departments are competent and able  
2774 to provide.

2775 (7) The division may accept in the name of and on behalf of the state donations, gifts,  
2776 devises, or bequests of real or personal property or services to be used as specified by the  
2777 donor.

2778 (8) The division shall annually review with each local substance abuse authority and  
2779 each local mental health authority the authority's statutory and contract responsibilities  
2780 regarding:

2781 (a) use of public funds;

2782 (b) oversight of public funds; and

2783 (c) governance of substance use disorder and mental health programs and services.

2784 (9) The Legislature may refuse to appropriate funds to the division upon the division's  
2785 failure to comply with the provisions of this part.

2786 (10) If a local substance abuse authority contacts the division under Subsection

2787 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant  
2788 minor, the division shall:

2789 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the  
2790 capacity to provide the treatment services; or

2791 (b) otherwise ensure that treatment services are made available to the pregnant woman  
2792 or pregnant minor.

2793 (11) The division shall employ a school-based mental health specialist to be housed at  
2794 the State Board of Education who shall work with the State Board of Education to:

2795 (a) provide coordination between a local education agency and local mental health  
2796 authority;

2797 (b) recommend evidence-based and evidence informed mental health screenings and  
2798 intervention assessments for a local education agency; and

2799 (c) coordinate with the local community, including local departments of health, to  
2800 enhance and expand mental health related resources for a local education agency.

2801 Section 41. Section **62A-15-605.5** is amended to read:

2802 **62A-15-605.5. Admission of person in custody of Department of Corrections to**  
2803 **state hospital -- Retransfer of person to Department of Corrections.**

2804 (1) The executive director of the Department of Corrections may request the director to  
2805 admit a person who is in the custody of the Department of Corrections to the state hospital, if  
2806 the clinical director within the Department of Corrections finds that the [inmate] incarcerated  
2807 individual has mentally deteriorated to the point that admission to the state hospital is  
2808 necessary to ensure adequate mental health treatment. In determining whether that [inmate]  
2809 incarcerated individual should be placed in the state hospital, the director of the division shall  
2810 consider:

2811 (a) the mental health treatment needs of the [inmate] incarcerated individual;

2812 (b) the treatment programs available at the state hospital; and

2813 (c) whether the [inmate] incarcerated individual meets the requirements of Subsection  
2814 **62A-15-610(2)**.

2815 (2) If the director denies the admission of an [inmate] incarcerated individual as  
2816 requested by the clinical director within the Department of Corrections, the Board of Pardons  
2817 and Parole shall determine whether the [inmate] incarcerated individual will be admitted to the

2818 state hospital. The Board of Pardons and Parole shall consider:

- 2819 (a) the mental health treatment needs of the [inmate] incarcerated individual;
- 2820 (b) the treatment programs available at the state hospital; and
- 2821 (c) whether the [inmate] incarcerated individual meets the requirements of Subsection
- 2822 [62A-15-610\(2\)](#).

2823 (3) The state hospital shall receive any person in the custody of the Department of

2824 Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to

2825 Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the

2826 custody of the Department of Corrections, and the state hospital shall act solely as the agent of

2827 the Department of Corrections.

2828 (4) [Inmates] Incarcerated individuals transferred to the state hospital pursuant to this

2829 section shall be transferred back to the Department of Corrections through negotiations

2830 between the director and the director of the Department of Corrections. If agreement between

2831 the director and the director of the Department of Corrections cannot be reached, the Board of

2832 Pardons and Parole shall have final authority in determining whether a person will be

2833 transferred back to the Department of Corrections. In making that determination, that board

2834 shall consider:

- 2835 (a) the mental health treatment needs of the [inmate] incarcerated individual;
- 2836 (b) the treatment programs available at the state hospital;
- 2837 (c) whether the person continues to meet the requirements of Subsection
- 2838 [62A-15-610\(2\)](#);
- 2839 (d) the ability of the state hospital to provide adequate treatment to the person, as well
- 2840 as safety and security to the public; and
- 2841 (e) whether, in the opinion of the director, in consultation with the clinical director of
- 2842 the state hospital, the person's treatment needs have been met.

2843 Section 42. Section **62A-15-902** is amended to read:

2844 **62A-15-902. Design and operation -- Security.**

- 2845 (1) The forensic mental health facility is a secure treatment facility.
- 2846 (2) (a) The forensic mental health facility accommodates the following populations:
- 2847 (i) [prison inmates] incarcerated individuals displaying mental illness, as defined in
- 2848 Section [62A-15-602](#), necessitating treatment in a secure mental health facility;

2849 (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a  
2850 mental illness at the time of the offense undergoing evaluation for mental illness under Title  
2851 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

2852 (iii) criminally adjudicated persons undergoing evaluation for competency or found  
2853 guilty with a mental illness or guilty with a mental illness at the time of the offense under Title  
2854 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who also have  
2855 an intellectual disability;

2856 (iv) persons undergoing evaluation for competency or found by a court to be  
2857 incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of  
2858 Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

2859 (v) persons who are civilly committed to the custody of a local mental health authority  
2860 in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health  
2861 Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack  
2862 of necessary security, as determined by the superintendent or the superintendent's designee; and

2863 (vi) persons ordered to commit themselves to the custody of the Division of Substance  
2864 Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or  
2865 stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

2866 (b) Placement of an offender in the forensic mental health facility under any category  
2867 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's  
2868 status as established by the court at the time of adjudication.

2869 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2870 department shall make rules providing for the allocation of beds to the categories described in  
2871 Subsection (2)(a).

2872 (3) The department shall:

2873 (a) own and operate the forensic mental health facility;

2874 (b) provide and supervise administrative and clinical staff; and

2875 (c) provide security staff who are trained as psychiatric technicians.

2876 (4) Pursuant to Subsection [62A-15-603\(3\)](#) the executive director shall designate  
2877 individuals to perform security functions for the state hospital.

2878 Section 43. Section [63A-16-1002](#) is amended to read:

2879 **[63A-16-1002](#). Criminal Justice Database.**

2880 (1) The commission shall oversee the creation and management of a Criminal Justice  
2881 Database for information and data required to be reported to the commission, organized by  
2882 county, and accessible to all criminal justice agencies in the state.

2883 (2) The division shall assist with the development and management of the database.

2884 (3) The division, in collaboration with the commission, shall create:

2885 (a) master standards and formats for information submitted to the database;

2886 (b) a portal, bridge, website, or other method for reporting entities to provide the  
2887 information;

2888 (c) a master data management index or system to assist in the retrieval of information  
2889 in the database;

2890 (d) a protocol for accessing information in the database that complies with state  
2891 privacy regulations; and

2892 (e) a protocol for real-time audit capability of all data accessed through the portal by  
2893 participating data source, data use entities, and regulators.

2894 (4) Each criminal justice agency charged with reporting information to the commission  
2895 shall provide the data or information to the database in a form prescribed by the commission.

2896 (5) The database shall be the repository for the statutorily required data described in:

2897 (a) Section 13-53-111, recidivism reporting requirements;

2898 (b) Section 17-22-32, county jail reporting requirements;

2899 (c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;

2900 (d) Section 24-4-118, forfeiture reporting requirements;

2901 (e) Section 41-6a-511, courts to collect and maintain data;

2902 (f) Section 63M-7-214, law enforcement agency grant reporting;

2903 (g) Section 63M-7-216, prosecutorial data collection;

2904 (h) Section 64-13-21, supervision of sentenced offenders placed in community;

2905 (i) Section 64-13-25, standards for programs;

2906 (j) Section 64-13-45, department reporting requirements;

2907 (k) Section 64-13e-104, housing of state probationary [~~inmates~~] incarcerated  
2908 individuals or state parole [~~inmates~~] incarcerated individuals;

2909 (l) Section 77-7-8.5, use of tactical groups;

2910 (m) Section 77-20-103, release data requirements;

2911 (n) Section 77-22-2.5, court orders for criminal investigations;  
2912 (o) Section 78A-2-109.5, court demographics reporting; and  
2913 (p) any other statutes which require the collection of specific data and the reporting of  
2914 that data to the commission.

2915 (6) The commission shall report:

2916 (a) progress on the database, including creation, configuration, and data entered, to the  
2917 Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and

2918 (b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal  
2919 Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing  
2920 Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing  
2921 Committee not later than January 16, 2023.

2922 Section 44. Section 63A-17-301 is amended to read:

2923 **63A-17-301. Career service -- Exempt positions -- Schedules for civil service**  
2924 **positions -- Coverage of career service provisions.**

2925 (1) Except as provided in Subsection (3)(d), the following positions are exempt from  
2926 the career service provisions of this chapter and are designated under the following schedules:

2927 (a) schedule AA includes the governor, members of the Legislature, and all other  
2928 elected state officers;

2929 (b) schedule AB includes appointed executives and board or commission executives  
2930 enumerated in Section 67-22-2;

2931 (c) schedule AC includes all employees and officers in:

2932 (i) the office and at the residence of the governor;

2933 (ii) the Public Lands Policy Coordinating Office;

2934 (iii) the Office of the State Auditor; and

2935 (iv) the Office of the State Treasurer;

2936 (d) schedule AD includes employees who:

2937 (i) are in a confidential relationship to an agency head or commissioner; and

2938 (ii) report directly to, and are supervised by, a department head, commissioner, or  
2939 deputy director of an agency or its equivalent;

2940 (e) schedule AE includes each employee of the State Board of Education that the State  
2941 Board of Education designates as exempt from the career service provisions of this chapter;

- 2942 (f) schedule AG includes employees in the Office of the Attorney General who are  
2943 under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- 2944 (g) schedule AH includes:
- 2945 (i) teaching staff of all state institutions; and
- 2946 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 2947 (A) educational interpreters as classified by the division; or
- 2948 (B) educators as defined by Section 53E-8-102;
- 2949 (h) schedule AN includes employees of the Legislature;
- 2950 (i) schedule AO includes employees of the judiciary;
- 2951 (j) schedule AP includes all judges in the judiciary;
- 2952 (k) schedule AQ includes:
- 2953 (i) members of state and local boards and councils appointed by the governor and  
2954 governing bodies of agencies;
- 2955 (ii) a water commissioner appointed under Section 73-5-1;
- 2956 (iii) other local officials serving in an ex officio capacity; and
- 2957 (iv) officers, faculty, and other employees of state universities and other state  
2958 institutions of higher education;
- 2959 (l) schedule AR includes employees in positions that involve responsibility:
- 2960 (i) for determining policy;
- 2961 (ii) for determining the way in which a policy is carried out; or
- 2962 (iii) of a type not appropriate for career service, as determined by the agency head with  
2963 the concurrence of the director;
- 2964 (m) schedule AS includes any other employee:
- 2965 (i) whose appointment is required by statute to be career service exempt;
- 2966 (ii) whose agency is not subject to this chapter; or
- 2967 (iii) whose agency has authority to make rules regarding the performance,  
2968 compensation, and bonuses for its employees;
- 2969 (n) schedule AT includes employees of the Division of Technology Services,  
2970 designated as executive/professional positions by the director of the Division of Technology  
2971 Services with the concurrence of the director of the division;
- 2972 (o) schedule AU includes patients and ~~[inmates]~~ incarcerated individuals employed in



2973 state institutions;

2974 (p) employees of the Department of Workforce Services, designated as schedule AW:

2975 (i) who are temporary employees that are federally funded and are required to work

2976 under federally qualified merit principles as certified by the director; or

2977 (ii) for whom substantially all of their work is repetitive, measurable, or transaction

2978 based, and who voluntarily apply for and are accepted by the Department of Workforce

2979 Services to work in a pay for performance program designed by the Department of Workforce

2980 Services with the concurrence of the director of the division;

2981 (q) subject to Subsection (6), schedule AX includes employees in positions that:

2982 (i) require the regular supervision and performance evaluation of one or more other

2983 employees; and

2984 (ii) are not designated exempt from career service under any other schedule described

2985 in this Subsection (1); and

2986 (r) for employees in positions that are temporary, seasonal, time limited, funding

2987 limited, or variable hour in nature, under schedule codes and parameters established by the

2988 division by administrative rule.

2989 (2) The civil service shall consist of two schedules as follows:

2990 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

2991 (ii) Removal from any appointive position under schedule A, unless otherwise

2992 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

2993 (b) Schedule B is the competitive career service schedule, consisting of:

2994 (i) all positions filled through competitive selection procedures as defined by the

2995 director; or

2996 (ii) positions filled through a division approved on-the-job examination intended to

2997 appoint a qualified person with a disability, or a veteran in accordance with Title 71, Chapter

2998 10, Veterans Preference.

2999 (3) (a) The director, after consultation with the heads of concerned executive branch

3000 departments and agencies and with the approval of the governor, shall allocate positions to the

3001 appropriate schedules under this section.

3002 (b) Agency heads shall make requests and obtain approval from the director before

3003 changing the schedule assignment and tenure rights of any position.

3004 (c) Unless the director's decision is reversed by the governor, when the director denies  
3005 an agency's request, the director's decision is final.

3006 (d) (i) An agency may file with the division a request to reschedule a position that  
3007 would otherwise be scheduled as a schedule A position.

3008 (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the  
3009 request only if the exception is necessary to conform to a requirement imposed as a condition  
3010 precedent to receipt of federal funds or grant of a tax benefit under federal law.

3011 (4) (a) Compensation for employees of the Legislature shall be established by the  
3012 directors of the legislative offices in accordance with Section [36-12-7](#).

3013 (b) Compensation for employees of the judiciary shall be established by the state court  
3014 administrator in accordance with Section [78A-2-107](#).

3015 (c) Compensation for officers, faculty, and other employees of state universities and  
3016 institutions of higher education shall be established as provided in Title 53B, Chapter 1,  
3017 Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of  
3018 Higher Education.

3019 (d) Unless otherwise provided by law, compensation for all other schedule A  
3020 employees shall be established by their appointing authorities, within ranges approved by, and  
3021 after consultation with the director.

3022 (5) An employee who is in a position designated schedule AC and who holds career  
3023 service status on June 30, 2010, shall retain the career service status if the employee:

3024 (a) remains in the position that the employee is in on June 30, 2010; and

3025 (b) does not elect to convert to career service exempt status in accordance with a rule  
3026 made by the division.

3027 (6) (a) An employee who is hired for a schedule AX position on or after July 1, 2022,  
3028 is exempt from career service status.

3029 (b) An employee who before July 1, 2022, is a career service employee employed in a  
3030 schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall  
3031 maintain the employee's career service status for the duration of the employee's employment in  
3032 the same position unless the employee voluntarily converts to career service exempt status  
3033 before July 1, 2023.

3034 (c) (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service

3035 status if:

3036 (A) before July 1, 2022, the employee was a probationary employee in a schedule B  
3037 position and had not completed the probationary period; and

3038 (B) on July 1, 2022, the schedule B position in which the probationary employee is  
3039 employed is rescheduled as a scheduled AX position.

3040 (ii) An employee described in Subsection (6)(c)(i):

3041 (A) is not a probationary employee on or after July 1, 2022; and

3042 (B) is exempt from career service status on and after July 1, 2022, unless the employee  
3043 changes employment to a schedule B position.

3044 (d) The division shall disseminate to each employee described in Subsection (6)(b)  
3045 information on financial and other incentives for voluntary conversion to career-service exempt  
3046 status.

3047 (e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in  
3048 consultation with the division, for agency review of recommendations that schedule AX  
3049 employees be suspended, demoted, or dismissed from employment.

3050 Section 45. Section 63A-17-307 is amended to read:

3051 **63A-17-307. State pay plans -- Applicability of section -- Exemptions -- Duties of**  
3052 **director.**

3053 (1) (a) This section, and the rules made by the division under this section, apply to each  
3054 career and noncareer employee not specifically exempted under Subsection (2).

3055 (b) If not exempted under Subsection (2), an employee is considered to be in classified  
3056 service.

3057 (2) The following employees are exempt from this section:

3058 (a) members of the Legislature and legislative employees;

3059 (b) members of the judiciary and judicial employees;

3060 (c) elected members of the executive branch and employees designated as schedule AC  
3061 as provided under Subsection 63A-17-301(1)(c);

3062 (d) employees of the State Board of Education;

3063 (e) officers, faculty, and other employees of state institutions of higher education;

3064 (f) employees in a position that is specified by statute to be exempt from this

3065 Subsection (2);

- 3066 (g) employees in the Office of the Attorney General;
- 3067 (h) department heads and other persons appointed by the governor under statute;
- 3068 (i) schedule AS employees as provided under Subsection 63A-17-301(1)(m);
- 3069 (j) department deputy directors, division directors, and other employees designated as  
3070 schedule AD as provided under Subsection 63A-17-301(1)(d);
- 3071 (k) employees that determine and execute policy designated as schedule AR as  
3072 provided under Subsection 63A-17-301(1)(l);
- 3073 (l) teaching staff, educational interpreters, and educators designated as schedule AH as  
3074 provided under Subsection 63A-17-301(1)(g);
- 3075 (m) temporary employees described in Subsection 63A-17-301(1)(r);
- 3076 (n) patients and ~~[inmates]~~ incarcerated individuals designated as schedule AU as  
3077 provided under Subsection 63A-17-301(1)(o) who are employed by state institutions; and
- 3078 (o) members of state and local boards and councils and other employees designated as  
3079 schedule AQ as provided under Subsection 63A-17-301(1)(k).
- 3080 (3) (a) The director shall prepare, maintain, and revise a position classification plan for  
3081 each employee position not exempted under Subsection (2) to provide equal pay for equal  
3082 work.
- 3083 (b) Classification of positions shall be based upon similarity of duties performed and  
3084 responsibilities assumed, so that the same job requirements and the same salary range, subject  
3085 to Section 63A-17-112, may be applied equitably to each position in the same class.
- 3086 (c) The director shall allocate or reallocate the position of each employee in classified  
3087 service to one of the classes in the classification plan.
- 3088 (d) (i) The division shall conduct periodic studies and interviews to provide that the  
3089 classification plan remains reasonably current and reflects the duties and responsibilities  
3090 assigned to and performed by employees.
- 3091 (ii) The director shall determine the need for studies and interviews after considering  
3092 factors such as changes in duties and responsibilities of positions or agency reorganizations.
- 3093 (4) (a) With the approval of the executive director and the governor, the director shall  
3094 develop and adopt pay plans for each position in classified service.
- 3095 (b) The director shall design each pay plan to achieve, to the degree that funds permit,  
3096 comparability of state salary ranges to the market using data obtained from private enterprise

3097 and other public employment for similar work.

3098 (c) The director shall adhere to the following in developing each pay plan:

3099 (i) each pay plan shall consist of sufficient salary ranges to:

3100 (A) permit adequate salary differential among the various classes of positions in the  
3101 classification plan; and

3102 (B) reflect the normal growth and productivity potential of employees in that class.

3103 (ii) The director shall issue rules for the administration of pay plans.

3104 (d) The establishing of a salary range is a nondelegable activity and is not appealable  
3105 under the grievance procedures of Part 6, Grievance Provisions, Title 67, Chapter 19a,  
3106 Grievance Procedures, or otherwise.

3107 (e) The director shall make rules, accordance with Title 63G, Chapter 3, Utah  
3108 Administrative Rulemaking Act, providing for:

3109 (i) agency approved salary adjustments within approved salary ranges, including an  
3110 administrative salary adjustment; and

3111 (ii) structure adjustments that modify salary ranges, including a cost of living  
3112 adjustment or market comparability adjustment.

3113 (5) (a) On or before October 31 of each year, the director shall submit an annual  
3114 compensation plan to the executive director and the governor for consideration in the executive  
3115 budget.

3116 (b) The plan described in Subsection (5)(a) may include recommendations, including:

3117 (i) salary increases that generally affect employees, including a general increase or  
3118 merit increase;

3119 (ii) salary increases that address compensation issues unique to an agency or  
3120 occupation;

3121 (iii) structure adjustments, including a cost of living adjustment or market  
3122 comparability adjustment; or

3123 (iv) changes to employee benefits.

3124 (c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the director shall incorporate the  
3125 results of a salary survey of a reasonable cross section of comparable positions in private and  
3126 public employment in the state into the annual compensation plan.

3127 (B) The salary survey for a law enforcement officer, as defined in Section [53-13-103](#), a

3128 correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section  
3129 53-6-102, shall at minimum include the three largest political subdivisions in the state that  
3130 employ, respectively, comparable positions.

3131 (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1,  
3132 Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit  
3133 Insurance Corporation, Federal Reserve, and National Credit Union Administration.

3134 (ii) The director may cooperate with or participate in any survey conducted by other  
3135 public and private employers.

3136 (iii) The director shall obtain information for the purpose of constructing the survey  
3137 from the Division of Workforce Information and Payment Services and shall include employer  
3138 name, number of persons employed by the employer, employer contact information and job  
3139 titles, county code, and salary if available.

3140 (iv) The division shall acquire and protect the needed records in compliance with the  
3141 provisions of Section 35A-4-312.

3142 (d) The director may incorporate any other relevant information in the plan described  
3143 in Subsection (5)(a), including information on staff turnover, recruitment data, or external  
3144 market trends.

3145 (e) The director shall:

3146 (i) establish criteria to assure the adequacy and accuracy of data used to make  
3147 recommendations described in this Subsection (5); and

3148 (ii) when preparing recommendations use accepted methodologies and techniques  
3149 similar to and consistent with those used in the private sector.

3150 (f) (i) Upon request and subject to Subsection (5)(f)(ii), the division shall make  
3151 available foundational information used by the division or director in the drafting of a plan  
3152 described in Subsection (5)(a), including:

3153 (A) demographic and labor market information;

3154 (B) information on employee turnover;

3155 (C) salary information;

3156 (D) information on recruitment; and

3157 (E) geographic data.

3158 (ii) The division may not provide under Subsection (5)(f)(i) information or other data

3159 that is proprietary or otherwise protected under the terms of a contract or by law.

3160 (g) The governor shall:

3161 (i) consider salary and structure adjustments recommended under Subsection (5)(b) in  
3162 preparing the executive budget and shall recommend the method of distributing the  
3163 adjustments;

3164 (ii) submit compensation recommendations to the Legislature; and

3165 (iii) support the recommendation with schedules indicating the cost to individual  
3166 departments and the source of funds.

3167 (h) If funding is approved by the Legislature in a general appropriations act, the  
3168 adjustments take effect on the July 1 following the enactment unless otherwise indicated.

3169 (6) (a) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah  
3170 Administrative Rulemaking Act, for the granting of incentive awards, including awards for cost  
3171 saving actions, awards for commendable actions by an employee, or a market-based award to  
3172 attract or retain employees.

3173 (b) An agency may not grant a market-based award unless the award is previously  
3174 approved by the division.

3175 (c) In accordance with Subsection (6)(b), an agency requesting the division's approval  
3176 of a market-based award shall submit a request and documentation, subject to Subsection  
3177 (6)(d), to the division.

3178 (d) In the documentation required in Subsection (6)(c), the requesting agency shall  
3179 identify for the division:

3180 (i) any benefit the market-based award would provide for the agency, including:

3181 (A) budgetary advantages; or

3182 (B) recruitment advantages;

3183 (ii) a mission critical need to attract or retain unique or hard to find skills in the market;

3184 or

3185 (iii) any other advantage the agency would gain through the utilization of a  
3186 market-based award.

3187 (7) (a) The director shall regularly evaluate the total compensation program of state  
3188 employees in the classified service.

3189 (b) The division shall determine if employee benefits are comparable to those offered

3190 by other private and public employers using information from:

- 3191 (i) a study conducted by a third-party consultant; or
- 3192 (ii) the most recent edition of a nationally recognized benefits survey.

3193 Section 46. Section **63B-6-502** is amended to read:

3194 **63B-6-502. Other capital facility authorizations and intent language.**

3195 (1) It is the intent of the Legislature that the University of Utah use institutional funds  
3196 to plan, design, and construct:

3197 (a) the Health Science Lab Building under the supervision of the director of the  
3198 Division of Facilities Construction and Management unless supervisory authority is delegated  
3199 by the director; and

3200 (b) the gymnastics facility under the supervision of the director of the Division of  
3201 Facilities Construction and Management unless supervisory authority is delegated by the  
3202 director.

3203 (2) It is the intent of the Legislature that Southern Utah University use institutional  
3204 funds to plan, design, and construct a science center addition under the supervision of the  
3205 director of the Division of Facilities Construction and Management unless supervisory  
3206 authority is delegated by the director.

3207 (3) It is the intent of the Legislature that Utah Valley State College use institutional  
3208 funds to plan, design, and construct a student center addition under the supervision of the  
3209 director of the Division of Facilities Construction and Management unless supervisory  
3210 authority is delegated by the director.

3211 (4) (a) It is the intent of the Legislature that the Division of Facilities Construction and  
3212 Management lease property at the Draper Prison to an entity for the purpose of constructing  
3213 recycling and transfer facilities to employ [~~inmates~~] incarcerated individuals if the following  
3214 conditions are satisfactorily met:

3215 (i) the entity assures continuous employment of state [~~inmates~~] incarcerated  
3216 individuals;

3217 (ii) the lease with the entity provides an appropriate return to the state;

3218 (iii) the lease has an initial term of not to exceed 20 years;

3219 (iv) the lease protects the state from all liability;

3220 (v) the entity guarantees that no adverse environmental impact will occur;



- 3221 (vi) the state retains the right to:
- 3222 (A) monitor the types of wastes that are processed; and
- 3223 (B) prohibit the processing of types of wastes that are considered to be a risk to the
- 3224 state or surrounding property uses;
- 3225 (vii) the lease provides for adequate security arrangements;
- 3226 (viii) the entity assumes responsibility for any taxes or fees associated with the facility;
- 3227 and
- 3228 (ix) the entity assumes responsibility for bringing utilities to the site and any state
- 3229 expenditures for roads, etc. are considered in establishing the return to the state.
- 3230 (b) Except as provided in Subsections (4)(c) and (d), the facility may be constructed
- 3231 without direct supervision by the Division of Facilities Construction and Management.
- 3232 (c) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and
- 3233 Management shall:
- 3234 (i) review the design, plans, and specifications of the project; and
- 3235 (ii) approve them if they are appropriate.
- 3236 (d) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and
- 3237 Management may:
- 3238 (i) require that the project be submitted to the local building official for plan review
- 3239 and inspection; and
- 3240 (ii) inspect the project.
- 3241 (5) It is the intent of the Legislature that:
- 3242 (a) the \$221,497.86 authorized for the Capitol Hill Day Care Center in Subsection (4)
- 3243 of Laws of Utah 1992, Chapter 304, Section 56, be used for general capital improvements; and
- 3244 (b) the Building Board should, in allocating the \$221,497.86, if appropriate under the
- 3245 Board's normal allocation and prioritization process, give preference to projects for the
- 3246 Division of State Parks, formerly known as the Division of Parks and Recreation.
- 3247 Section 47. Section **63B-12-301** is amended to read:
- 3248 **63B-12-301. Other capital facilities authorizations.**
- 3249 (1) It is the intent of the Legislature that:
- 3250 (a) Utah State University use institutional funds to plan, design, and construct an
- 3251 addition to the Laboratory Research Center under the direction of the director of the Division

3252 of Facilities Construction and Management unless supervisory authority has been delegated;

3253 (b) no state funds be used for any portion of this project; and

3254 (c) the university may request state funds for operations and maintenance to the extent

3255 that the university is able to demonstrate to the Board of Regents that the facility meets

3256 approved academic and training purposes under Board of Regents policy R710.

3257 (2) It is the intent of the Legislature that:

3258 (a) Utah State University use institutional funds to plan, design, and construct an

3259 addition to the Biology/Natural Resources Building under the direction of the director of the

3260 Division of Facilities Construction and Management unless supervisory authority has been

3261 delegated;

3262 (b) no state funds be used for any portion of this project; and

3263 (c) the university may request state funds for operations and maintenance to the extent

3264 that the university is able to demonstrate to the Board of Regents that the facility meets

3265 approved academic and training purposes under Board of Regents policy R710.

3266 (3) It is the intent of the Legislature that:

3267 (a) Snow College use grants and loans from the Community Impact Board together

3268 with other institutional funds to plan, design, and construct an addition to the Activities Center

3269 under the direction of the director of the Division of Facilities Construction and Management

3270 unless supervisory authority has been delegated;

3271 (b) no state funds be used for any portion of this project;

3272 (c) before proceeding with the project, the Board of Regents and the State Building

3273 Board review and approve the scope and funding of the project; and

3274 (d) the college may request state funds for operations and maintenance to the extent

3275 that the college is able to demonstrate to the Board of Regents that the facility meets approved

3276 academic and training purposes under Board of Regents policy R710.

3277 (4) (a) It is the intent of the Legislature that the Division of Facilities Construction and

3278 Management sell the state's interest in the Iron County Correction Facility to Iron County for

3279 \$2,000,000 according to the terms specified in this Subsection (4).

3280 (b) Iron County will pay the state \$1,550,000 in cash.

3281 (c) To pay the \$450,000 balance of the purchase price, Iron County will:

3282 (i) provide office space for the Department of Corrections' Adult Probation and Parole

3283 in the Iron County Correction Facility for 10 years at no cost to the state of Utah, at an  
3284 estimated value of \$45,000 per year for a total 10 year value of \$450,000; and

3285 (ii) contract with the Department of Corrections to house 15 state [~~prisoners~~]  
3286 incarcerated individuals in the Iron County Correctional Facility for at least five years.

3287 (d) (i) The Department of Corrections shall select the 15 [~~prisoners~~] incarcerated  
3288 individuals to house at the Iron County Correctional Facility from beds currently under contract  
3289 in other counties.

3290 (ii) Nothing in this section may be construed to authorize or require the Department of  
3291 Corrections to increase the number of [~~prisoners~~] incarcerated individuals currently housed in  
3292 county correctional facilities on state contract.

3293 (e) If the Department of Corrections' Adult Probation and Parole chooses, for whatever  
3294 reason, not to use the office space offered by Iron County, Iron County is not liable for, and  
3295 need not pay, the state the value of that estimated rent.

3296 Section 48. Section **63G-2-301** is amended to read:

3297 **63G-2-301. Public records.**

3298 (1) As used in this section:

3299 (a) "Business address" means a single address of a governmental agency designated for  
3300 the public to contact an employee or officer of the governmental agency.

3301 (b) "Business email address" means a single email address of a governmental agency  
3302 designated for the public to contact an employee or officer of the governmental agency.

3303 (c) "Business telephone number" means a single telephone number of a governmental  
3304 agency designated for the public to contact an employee or officer of the governmental agency.

3305 (d) "Correctional facility" means the same as that term is defined in Section  
3306 [77-16b-102](#).

3307 (2) The following records are public except to the extent they contain information  
3308 expressly permitted to be treated confidentially under the provisions of Subsections  
3309 [63G-2-201\(3\)\(b\)](#) and [\(6\)\(a\)](#):

3310 (a) laws;

3311 (b) the name, gender, gross compensation, job title, job description, business address,  
3312 business email address, business telephone number, number of hours worked per pay period,  
3313 dates of employment, and relevant education, previous employment, and similar job

3314 qualifications of a current or former employee or officer of the governmental entity, excluding:

3315 (i) undercover law enforcement personnel; and

3316 (ii) investigative personnel if disclosure could reasonably be expected to impair the  
3317 effectiveness of investigations or endanger any individual's safety;

3318 (c) final opinions, including concurring and dissenting opinions, and orders that are  
3319 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except  
3320 that if the proceedings were properly closed to the public, the opinion and order may be  
3321 withheld to the extent that they contain information that is private, controlled, or protected;

3322 (d) final interpretations of statutes or rules by a governmental entity unless classified as  
3323 protected as provided in Subsection [63G-2-305](#)(17) or (18);

3324 (e) information contained in or compiled from a transcript, minutes, or report of the  
3325 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open  
3326 and Public Meetings Act, including the records of all votes of each member of the  
3327 governmental entity;

3328 (f) judicial records unless a court orders the records to be restricted under the rules of  
3329 civil or criminal procedure or unless the records are private under this chapter;

3330 (g) unless otherwise classified as private under Section [63G-2-303](#), records or parts of  
3331 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning  
3332 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust  
3333 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or  
3334 other governmental entities that give public notice of:

3335 (i) titles or encumbrances to real property;

3336 (ii) restrictions on the use of real property;

3337 (iii) the capacity of persons to take or convey title to real property; or

3338 (iv) tax status for real and personal property;

3339 (h) records of the Department of Commerce that evidence incorporations, mergers,  
3340 name changes, and uniform commercial code filings;

3341 (i) data on individuals that would otherwise be private under this chapter if the  
3342 individual who is the subject of the record has given the governmental entity written  
3343 permission to make the records available to the public;

3344 (j) documentation of the compensation that a governmental entity pays to a contractor

3345 or private provider;

3346 (k) summary data;

3347 (l) voter registration records, including an individual's voting history, except for a voter  
3348 registration record or those parts of a voter registration record that are classified as private  
3349 under Subsections 63G-2-302(1)(j) through (m) or withheld under Subsection 20A-2-104(7);

3350 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if  
3351 available, and email address, if available, where that elected official may be reached as required  
3352 in Title 11, Chapter 47, Access to Elected Officials;

3353 (n) for a school community council member, a telephone number, if available, and  
3354 email address, if available, where that elected official may be reached directly as required in  
3355 Section 53G-7-1203;

3356 (o) annual audited financial statements of the Utah Educational Savings Plan described  
3357 in Section 53B-8a-111; and

3358 (p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as  
3359 defined in Section 20A-7-101, after the packet is submitted to a county clerk.

3360 (3) The following records are normally public, but to the extent that a record is  
3361 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),  
3362 Section 63G-2-302, 63G-2-304, or 63G-2-305:

3363 (a) administrative staff manuals, instructions to staff, and statements of policy;

3364 (b) records documenting a contractor's or private provider's compliance with the terms  
3365 of a contract with a governmental entity;

3366 (c) records documenting the services provided by a contractor or a private provider to  
3367 the extent the records would be public if prepared by the governmental entity;

3368 (d) contracts entered into by a governmental entity;

3369 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds  
3370 by a governmental entity;

3371 (f) records relating to government assistance or incentives publicly disclosed,  
3372 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a  
3373 business in Utah, except as provided in Subsection 63G-2-305(35);

3374 (g) chronological logs and initial contact reports;

3375 (h) correspondence by and with a governmental entity in which the governmental entity

3376 determines or states an opinion upon the rights of the state, a political subdivision, the public,  
3377 or any person;

3378 (i) empirical data contained in drafts if:

3379 (i) the empirical data is not reasonably available to the requester elsewhere in similar  
3380 form; and

3381 (ii) the governmental entity is given a reasonable opportunity to correct any errors or  
3382 make nonsubstantive changes before release;

3383 (j) drafts that are circulated to anyone other than:

3384 (i) a governmental entity;

3385 (ii) a political subdivision;

3386 (iii) a federal agency if the governmental entity and the federal agency are jointly  
3387 responsible for implementation of a program or project that has been legislatively approved;

3388 (iv) a government-managed corporation; or

3389 (v) a contractor or private provider;

3390 (k) drafts that have never been finalized but were relied upon by the governmental  
3391 entity in carrying out action or policy;

3392 (l) original data in a computer program if the governmental entity chooses not to  
3393 disclose the program;

3394 (m) arrest warrants after issuance, except that, for good cause, a court may order  
3395 restricted access to arrest warrants prior to service;

3396 (n) search warrants after execution and filing of the return, except that a court, for good  
3397 cause, may order restricted access to search warrants prior to trial;

3398 (o) records that would disclose information relating to formal charges or disciplinary  
3399 actions against a past or present governmental entity employee if:

3400 (i) the disciplinary action has been completed and all time periods for administrative  
3401 appeal have expired; and

3402 (ii) the charges on which the disciplinary action was based were sustained;

3403 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School  
3404 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that  
3405 evidence mineral production on government lands;

3406 (q) final audit reports;

- 3407 (r) occupational and professional licenses;
- 3408 (s) business licenses;
- 3409 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar
- 3410 records used to initiate proceedings for discipline or sanctions against persons regulated by a
- 3411 governmental entity, but not including records that initiate employee discipline; and
- 3412 (u) (i) records that disclose a standard, regulation, policy, guideline, or rule regarding
- 3413 the operation of a correctional facility or the care and control of [~~inmates~~] incarcerated
- 3414 individuals committed to the custody of a correctional facility; and
- 3415 (ii) records that disclose the results of an audit or other inspection assessing a
- 3416 correctional facility's compliance with a standard, regulation, policy, guideline, or rule
- 3417 described in Subsection (3)(u)(i).

3418 (4) The list of public records in this section is not exhaustive and should not be used to

3419 limit access to records.

3420 Section 49. Section 63G-3-201 is amended to read:

3421 **63G-3-201. When rulemaking is required.**

3422 (1) Each agency shall:

- 3423 (a) maintain a current version of its rules; and
- 3424 (b) make it available to the public for inspection during its regular business hours.

3425 (2) In addition to other rulemaking required by law, each agency shall make rules when

3426 agency action:

- 3427 (a) authorizes, requires, or prohibits an action;
- 3428 (b) provides or prohibits a material benefit;
- 3429 (c) applies to a class of persons or another agency; and
- 3430 (d) is explicitly or implicitly authorized by statute.

3431 (3) Rulemaking is also required when an agency issues a written interpretation of a

3432 state or federal legal mandate.

3433 (4) Rulemaking is not required when:

- 3434 (a) agency action applies only to internal agency management, [~~inmates~~] incarcerated
- 3435 individuals or residents of a state correctional, diagnostic, or detention facility, persons under
- 3436 state legal custody, patients admitted to a state hospital, members of the state retirement
- 3437 system, or, except as provided in Title 53B, Chapter 27, Part 3, Student Civil Liberties

3438 Protection Act, students enrolled in a state education institution;

3439 (b) a standardized agency manual applies only to internal fiscal or administrative  
3440 details of governmental entities supervised under statute;

3441 (c) an agency issues policy or other statements that are advisory, informative, or  
3442 descriptive, and do not conform to the requirements of Subsections (2) and (3); or

3443 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file  
3444 all nonsubstantive changes in a rule with the office.

3445 (5) (a) A rule shall enumerate any penalty authorized by statute that may result from its  
3446 violation, subject to Subsections (5)(b) and (c).

3447 (b) A violation of a rule may not be subject to the criminal penalty of a class C  
3448 misdemeanor or greater offense, except as provided under Subsection (5)(c).

3449 (c) A violation of a rule may be subject to a class C misdemeanor or greater criminal  
3450 penalty under Subsection (5)(a) when:

3451 (i) authorized by a specific state statute;

3452 (ii) a state law and programs under that law are established in order for the state to  
3453 obtain or maintain primacy over a federal program; or

3454 (iii) state civil or criminal penalties established by state statute regarding the program  
3455 are equivalent to or less than corresponding federal civil or criminal penalties.

3456 (6) Each agency shall enact rules incorporating the principles of law not already in its  
3457 rules that are established by final adjudicative decisions within 120 days after the decision is  
3458 announced in its cases.

3459 (7) (a) Each agency may enact a rule that incorporates by reference:

3460 (i) all or any part of another code, rule, or regulation that has been adopted by a federal  
3461 agency, an agency or political subdivision of this state, an agency of another state, or by a  
3462 nationally recognized organization or association;

3463 (ii) state agency implementation plans mandated by the federal government for  
3464 participation in the federal program;

3465 (iii) lists, tables, illustrations, or similar materials that are subject to frequent change,  
3466 fully described in the rule, and are available for public inspection; or

3467 (iv) lists, tables, illustrations, or similar materials that the director determines are too  
3468 expensive to reproduce in the administrative code.



3469 (b) Rules incorporating materials by reference shall:  
3470 (i) be enacted according to the procedures outlined in this chapter;  
3471 (ii) state that the referenced material is incorporated by reference;  
3472 (iii) state the date, issue, or version of the material being incorporated; and  
3473 (iv) define specifically what material is incorporated by reference and identify any  
3474 agency deviations from it.

3475 (c) The agency shall identify any substantive changes in the material incorporated by  
3476 reference by following the rulemaking procedures of this chapter.

3477 (d) The agency shall maintain a complete and current copy of the referenced material  
3478 available for public review at the agency and at the office.

3479 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within  
3480 the limits prescribed by statute or agency rule.

3481 (b) An agency may enact a rule creating a justified exception to a rule.

3482 (9) An agency may obtain assistance from the attorney general to ensure that its rules  
3483 meet legal and constitutional requirements.

3484 Section 50. Section **63G-4-102** is amended to read:

3485 **63G-4-102. Scope and applicability of chapter.**

3486 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute  
3487 superseding provisions of this chapter by explicit reference to this chapter, the provisions of  
3488 this chapter apply to every agency of the state and govern:

3489 (a) state agency action that determines the legal rights, duties, privileges, immunities,  
3490 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,  
3491 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

3492 (b) judicial review of the action.

3493 (2) This chapter does not govern:

3494 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

3495 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to  
3496 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the  
3497 issuance of a tax assessment, except that this chapter governs an agency action commenced by  
3498 a taxpayer or by another person authorized by law to contest the validity or correctness of the  
3499 action;

3500 (c) state agency action relating to extradition, to the granting of a pardon or parole, a  
3501 commutation or termination of a sentence, or to the rescission, termination, or revocation of  
3502 parole or probation, to the discipline of, resolution of a grievance of, supervision of,  
3503 confinement of, or the treatment of an ~~[inmate]~~ incarcerated individual or resident of a  
3504 correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person  
3505 in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a  
3506 person on probation or parole, or judicial review of the action;

3507 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a  
3508 student or teacher in a school or educational institution, or judicial review of the action;

3509 (e) an application for employment and internal personnel action within an agency  
3510 concerning its own employees, or judicial review of the action;

3511 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah  
3512 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that  
3513 this chapter governs an agency action commenced by the employer, licensee, or other person  
3514 authorized by law to contest the validity or correctness of the citation or assessment;

3515 (g) state agency action relating to management of state funds, the management and  
3516 disposal of school and institutional trust land assets, and contracts for the purchase or sale of  
3517 products, real property, supplies, goods, or services by or for the state, or by or for an agency of  
3518 the state, except as provided in those contracts, or judicial review of the action;

3519 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of  
3520 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution  
3521 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or  
3522 Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of  
3523 the action;

3524 (i) the initial determination of a person's eligibility for unemployment benefits, the  
3525 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'  
3526 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial  
3527 determination of a person's unemployment tax liability;

3528 (j) state agency action relating to the distribution or award of a monetary grant to or  
3529 between governmental units, or for research, development, or the arts, or judicial review of the  
3530 action;

3531 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah  
3532 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,  
3533 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,  
3534 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,  
3535 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used  
3536 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except  
3537 that this chapter governs an agency action commenced by a person authorized by law to contest  
3538 the validity or correctness of the notice or order;

3539 (l) state agency action, to the extent required by federal statute or regulation, to be  
3540 conducted according to federal procedures;

3541 (m) the initial determination of a person's eligibility for government or public  
3542 assistance benefits;

3543 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of  
3544 registration;

3545 (o) a license for use of state recreational facilities;

3546 (p) state agency action under Chapter 2, Government Records Access and Management  
3547 Act, except as provided in Section [63G-2-603](#);

3548 (q) state agency action relating to the collection of water commissioner fees and  
3549 delinquency penalties, or judicial review of the action;

3550 (r) state agency action relating to the installation, maintenance, and repair of headgates,  
3551 caps, valves, or other water controlling works and weirs, flumes, meters, or other water  
3552 measuring devices, or judicial review of the action;

3553 (s) the issuance and enforcement of an initial order under Section [73-2-25](#);

3554 (t) (i) a hearing conducted by the Division of Securities under Section [61-1-11.1](#); and

3555 (ii) an action taken by the Division of Securities under a hearing conducted under  
3556 Section [61-1-11.1](#), including a determination regarding the fairness of an issuance or exchange  
3557 of securities described in Subsection [61-1-11.1\(1\)](#);

3558 (u) state agency action relating to water well driller licenses, water well drilling  
3559 permits, water well driller registration, or water well drilling construction standards, or judicial  
3560 review of the action;

3561 (v) the issuance of a determination and order under Title 34A, Chapter 5, Utah

3562 Antidiscrimination Act;

3563 (w) state environmental studies and related decisions by the Department of  
3564 Transportation approving state or locally funded projects, or judicial review of the action;

3565 (x) the suspension of operations under Subsection [32B-1-304\(3\)](#); or

3566 (y) the issuance of a determination of violation by the Governor's Office of Economic  
3567 Opportunity under Section [11-41-104](#).

3568 (3) This chapter does not affect a legal remedy otherwise available to:

3569 (a) compel an agency to take action; or

3570 (b) challenge an agency's rule.

3571 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative  
3572 proceeding, or the presiding officer during an adjudicative proceeding from:

3573 (a) requesting or ordering a conference with parties and interested persons to:

3574 (i) encourage settlement;

3575 (ii) clarify the issues;

3576 (iii) simplify the evidence;

3577 (iv) facilitate discovery; or

3578 (v) expedite the proceeding; or

3579 (b) granting a timely motion to dismiss or for summary judgment if the requirements of  
3580 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,  
3581 except to the extent that the requirements of those rules are modified by this chapter.

3582 (5) (a) A declaratory proceeding authorized by Section [63G-4-503](#) is not governed by  
3583 this chapter, except as explicitly provided in that section.

3584 (b) Judicial review of a declaratory proceeding authorized by Section [63G-4-503](#) is  
3585 governed by this chapter.

3586 (6) This chapter does not preclude an agency from enacting a rule affecting or  
3587 governing an adjudicative proceeding or from following the rule, if the rule is enacted  
3588 according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if  
3589 the rule conforms to the requirements of this chapter.

3590 (7) (a) If the attorney general issues a written determination that a provision of this  
3591 chapter would result in the denial of funds or services to an agency of the state from the federal  
3592 government, the applicability of the provision to that agency shall be suspended to the extent

3593 necessary to prevent the denial.

3594 (b) The attorney general shall report the suspension to the Legislature at its next  
3595 session.

3596 (8) Nothing in this chapter may be interpreted to provide an independent basis for  
3597 jurisdiction to review final agency action.

3598 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good  
3599 cause shown, from lengthening or shortening a time period prescribed in this chapter, except  
3600 the time period established for judicial review.

3601 (10) Notwithstanding any other provision of this section, this chapter does not apply to  
3602 a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent  
3603 expressly provided in Section 19-1-301.5.

3604 (11) Subsection (2)(w), regarding action taken based on state environmental studies  
3605 and policies of the Department of Transportation, applies to any claim for which a court of  
3606 competent jurisdiction has not issued a final unappealable judgment or order before May 14,  
3607 2019.

3608 Section 51. Section **63J-1-602.1** is amended to read:

3609 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

3610 Appropriations made from the following accounts or funds are nonlapsing:

3611 (1) The Utah Intracurricular Student Organization Support for Agricultural Education  
3612 and Leadership Restricted Account created in Section 4-42-102.

3613 (2) The Native American Repatriation Restricted Account created in Section 9-9-407.

3614 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in  
3615 Section 9-18-102.

3616 (4) The National Professional Men's Soccer Team Support of Building Communities  
3617 Restricted Account created in Section 9-19-102.

3618 (5) Funds collected for directing and administering the C-PACE district created in  
3619 Section 11-42a-106.

3620 (6) Money received by the Utah Inland Port Authority, as provided in Section  
3621 11-58-105.

3622 (7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

3623 (8) The Clean Air Support Restricted Account created in Section 19-1-109.

- 3624 (9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in  
3625 Section [19-2a-106](#).
- 3626 (10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in  
3627 Section [19-5-126](#).
- 3628 (11) The "Support for State-Owned Shooting Ranges Restricted Account" created in  
3629 Section [23-14-13.5](#).
- 3630 (12) Award money under the State Asset Forfeiture Grant Program, as provided under  
3631 Section [24-4-117](#).
- 3632 (13) Funds collected from the program fund for local health department expenses  
3633 incurred in responding to a local health emergency under Section [26-1-38](#).
- 3634 (14) The Children with Cancer Support Restricted Account created in Section  
3635 [26-21a-304](#).
- 3636 (15) State funds for matching federal funds in the Children's Health Insurance Program  
3637 as provided in Section [26-40-108](#).
- 3638 (16) The Children with Heart Disease Support Restricted Account created in Section  
3639 [26-58-102](#).
- 3640 (17) The Technology Development Restricted Account created in Section [31A-3-104](#).
- 3641 (18) The Criminal Background Check Restricted Account created in Section  
3642 [31A-3-105](#).
- 3643 (19) The Captive Insurance Restricted Account created in Section [31A-3-304](#), except  
3644 to the extent that Section [31A-3-304](#) makes the money received under that section free revenue.
- 3645 (20) The Title Licensee Enforcement Restricted Account created in Section  
3646 [31A-23a-415](#).
- 3647 (21) The Health Insurance Actuarial Review Restricted Account created in Section  
3648 [31A-30-115](#).
- 3649 (22) The Insurance Fraud Investigation Restricted Account created in Section  
3650 [31A-31-108](#).
- 3651 (23) The Underage Drinking Prevention Media and Education Campaign Restricted  
3652 Account created in Section [32B-2-306](#).
- 3653 (24) The Drinking While Pregnant Prevention Media and Education Campaign  
3654 Restricted Account created in Section [32B-2-308](#).

- 3655 (25) The School Readiness Restricted Account created in Section [35A-15-203](#).
- 3656 (26) Money received by the Utah State Office of Rehabilitation for the sale of certain  
3657 products or services, as provided in Section [35A-13-202](#).
- 3658 (27) The Oil and Gas Administrative Penalties Account created in Section [40-6-11](#).
- 3659 (28) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
- 3660 (29) The Division of Oil, Gas, and Mining Restricted account created in Section  
3661 [40-6-23](#).
- 3662 (30) The Electronic Payment Fee Restricted Account created by Section [41-1a-121](#) to  
3663 the Motor Vehicle Division.
- 3664 (31) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account  
3665 created by Section [41-3-110](#) to the State Tax Commission.
- 3666 (32) The Utah Law Enforcement Memorial Support Restricted Account created in  
3667 Section [53-1-120](#).
- 3668 (33) The State Disaster Recovery Restricted Account to the Division of Emergency  
3669 Management, as provided in Section [53-2a-603](#).
- 3670 (34) The Post Disaster Recovery and Mitigation Restricted Account created in Section  
3671 [53-2a-1302](#).
- 3672 (35) The Department of Public Safety Restricted Account to the Department of Public  
3673 Safety, as provided in Section [53-3-106](#).
- 3674 (36) The Utah Highway Patrol Aero Bureau Restricted Account created in Section  
3675 [53-8-303](#).
- 3676 (37) The DNA Specimen Restricted Account created in Section [53-10-407](#).
- 3677 (38) The Canine Body Armor Restricted Account created in Section [53-16-201](#).
- 3678 (39) The Technical Colleges Capital Projects Fund created in Section [53B-2a-118](#).
- 3679 (40) The Higher Education Capital Projects Fund created in Section [53B-22-202](#).
- 3680 (41) A certain portion of money collected for administrative costs under the School  
3681 Institutional Trust Lands Management Act, as provided under Section [53C-3-202](#).
- 3682 (42) The Public Utility Regulatory Restricted Account created in Section [54-5-1.5](#),  
3683 subject to Subsection [54-5-1.5\(4\)\(d\)](#).
- 3684 (43) Funds collected from a surcharge fee to provide certain licensees with access to an  
3685 electronic reference library, as provided in Section [58-3a-105](#).

3686 (44) Certain fines collected by the Division of Professional Licensing for violation of  
3687 unlawful or unprofessional conduct that are used for education and enforcement purposes, as  
3688 provided in Section [58-17b-505](#).

3689 (45) Funds collected from a surcharge fee to provide certain licensees with access to an  
3690 electronic reference library, as provided in Section [58-22-104](#).

3691 (46) Funds collected from a surcharge fee to provide certain licensees with access to an  
3692 electronic reference library, as provided in Section [58-55-106](#).

3693 (47) Funds collected from a surcharge fee to provide certain licensees with access to an  
3694 electronic reference library, as provided in Section [58-56-3.5](#).

3695 (48) Certain fines collected by the Division of Professional Licensing for use in  
3696 education and enforcement of the Security Personnel Licensing Act, as provided in Section  
3697 [58-63-103](#).

3698 (49) The Relative Value Study Restricted Account created in Section [59-9-105](#).

3699 (50) The Cigarette Tax Restricted Account created in Section [59-14-204](#).

3700 (51) Funds paid to the Division of Real Estate for the cost of a criminal background  
3701 check for a mortgage loan license, as provided in Section [61-2c-202](#).

3702 (52) Funds paid to the Division of Real Estate for the cost of a criminal background  
3703 check for principal broker, associate broker, and sales agent licenses, as provided in Section  
3704 [61-2f-204](#).

3705 (53) Certain funds donated to the Department of Health and Human Services, as  
3706 provided in Section [26B-1-202](#).

3707 (54) The National Professional Men's Basketball Team Support of Women and  
3708 Children Issues Restricted Account created in Section [26B-1-302](#).

3709 (55) Certain funds donated to the Division of Child and Family Services, as provided  
3710 in Section [80-2-404](#).

3711 (56) The Choose Life Adoption Support Restricted Account created in Section  
3712 [80-2-502](#).

3713 (57) Funds collected by the Office of Administrative Rules for publishing, as provided  
3714 in Section [63G-3-402](#).

3715 (58) The Immigration Act Restricted Account created in Section [63G-12-103](#).

3716 (59) Money received by the military installation development authority, as provided in



- 3717 Section [63H-1-504](#).
- 3718 (60) The Computer Aided Dispatch Restricted Account created in Section [63H-7a-303](#).
- 3719 (61) The Unified Statewide 911 Emergency Service Account created in Section
- 3720 [63H-7a-304](#).
- 3721 (62) The Utah Statewide Radio System Restricted Account created in Section
- 3722 [63H-7a-403](#).
- 3723 (63) The Utah Capital Investment Restricted Account created in Section [63N-6-204](#).
- 3724 (64) The Motion Picture Incentive Account created in Section [63N-8-103](#).
- 3725 (65) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission,
- 3726 as provided under Section [63N-10-301](#).
- 3727 (66) Funds collected by the housing of state probationary [~~inmates~~] incarcerated
- 3728 individuals or state parole [~~inmates~~] incarcerated individuals, as provided in Subsection
- 3729 [64-13e-104\(2\)](#).
- 3730 (67) Certain forestry and fire control funds utilized by the Division of Forestry, Fire,
- 3731 and State Lands, as provided in Section [65A-8-103](#).
- 3732 (68) The Amusement Ride Safety Restricted Account, as provided in Section
- 3733 [72-16-204](#).
- 3734 (69) Certain funds received by the Office of the State Engineer for well drilling fines or
- 3735 bonds, as provided in Section [73-3-25](#).
- 3736 (70) The Water Resources Conservation and Development Fund, as provided in
- 3737 Section [73-23-2](#).
- 3738 (71) Funds donated or paid to a juvenile court by private sources, as provided in
- 3739 Subsection [78A-6-203\(1\)\(c\)](#).
- 3740 (72) Fees for certificate of admission created under Section [78A-9-102](#).
- 3741 (73) Funds collected for adoption document access as provided in Sections [78B-6-141](#),
- 3742 [78B-6-144](#), and [78B-6-144.5](#).
- 3743 (74) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4,
- 3744 Utah Indigent Defense Commission.
- 3745 (75) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in
- 3746 Section [79-3-403](#).
- 3747 (76) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State

3748 Park, and Green River State Park, as provided under Section 79-4-403.

3749 (77) Funds donated as described in Section 41-1a-422 for the State Park Fees  
3750 Restricted Account created in Section 79-4-402 for support of the Division of State Parks' dark  
3751 sky initiative.

3752 (78) Certain funds received by the Division of State Parks from the sale or disposal of  
3753 buffalo, as provided under Section 79-4-1001.

3754 Section 52. Section 63M-7-204 is amended to read:

3755 **63M-7-204. Duties of commission.**

3756 (1) The State Commission on Criminal and Juvenile Justice administration shall:

3757 (a) promote the commission's purposes as enumerated in Section 63M-7-201;

3758 (b) promote the communication and coordination of all criminal and juvenile justice  
3759 agencies;

3760 (c) study, evaluate, and report on the status of crime in the state and on the  
3761 effectiveness of criminal justice policies, procedures, and programs that are directed toward the  
3762 reduction of crime in the state;

3763 (d) study, evaluate, and report on programs initiated by state and local agencies to  
3764 address reducing recidivism, including changes in penalties and sentencing guidelines intended  
3765 to reduce recidivism, costs savings associated with the reduction in the number of [inmates]  
3766 incarcerated individuals, and evaluation of expenses and resources needed to meet goals  
3767 regarding the use of treatment as an alternative to incarceration, as resources allow;

3768 (e) study, evaluate, and report on policies, procedures, and programs of other  
3769 jurisdictions which have effectively reduced crime;

3770 (f) identify and promote the implementation of specific policies and programs the  
3771 commission determines will significantly reduce crime in Utah;

3772 (g) provide analysis and recommendations on all criminal and juvenile justice  
3773 legislation, state budget, and facility requests, including program and fiscal impact on all  
3774 components of the criminal and juvenile justice system;

3775 (h) provide analysis, accountability, recommendations, and supervision for state and  
3776 federal criminal justice grant money;

3777 (i) provide public information on the criminal and juvenile justice system and give  
3778 technical assistance to agencies or local units of government on methods to promote public

3779 awareness;

3780 (j) promote research and program evaluation as an integral part of the criminal and  
3781 juvenile justice system;

3782 (k) provide a comprehensive criminal justice plan annually;

3783 (l) review agency forecasts regarding future demands on the criminal and juvenile  
3784 justice systems, including specific projections for secure bed space;

3785 (m) promote the development of criminal and juvenile justice information systems that  
3786 are consistent with common standards for data storage and are capable of appropriately sharing  
3787 information with other criminal justice information systems by:

3788 (i) developing and maintaining common data standards for use by all state criminal  
3789 justice agencies;

3790 (ii) annually performing audits of criminal history record information maintained by  
3791 state criminal justice agencies to assess their accuracy, completeness, and adherence to  
3792 standards;

3793 (iii) defining and developing state and local programs and projects associated with the  
3794 improvement of information management for law enforcement and the administration of  
3795 justice; and

3796 (iv) establishing general policies concerning criminal and juvenile justice information  
3797 systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this  
3798 Subsection (1)(m);

3799 (n) allocate and administer grants, from money made available, for approved education  
3800 programs to help prevent the sexual exploitation of children;

3801 (o) allocate and administer grants for law enforcement operations and programs related  
3802 to reducing illegal drug activity and related criminal activity;

3803 (p) request, receive, and evaluate data and recommendations collected and reported by  
3804 agencies and contractors related to policies recommended by the commission regarding  
3805 recidivism reduction, including the data described in Section 13-53-111 and Subsection  
3806 62A-15-103(2)(l);

3807 (q) establish and administer a performance incentive grant program that allocates funds  
3808 appropriated by the Legislature to programs and practices implemented by counties that reduce  
3809 recidivism and reduce the number of offenders per capita who are incarcerated;

3810 (r) oversee or designate an entity to oversee the implementation of juvenile justice  
3811 reforms;

3812 (s) make rules and administer the juvenile holding room standards and juvenile jail  
3813 standards to align with the Juvenile Justice and Delinquency Prevention Act requirements  
3814 pursuant to 42 U.S.C. Sec. 5633;

3815 (t) allocate and administer grants, from money made available, for pilot qualifying  
3816 education programs;

3817 (u) oversee the trauma-informed justice program described in Section 63M-7-209;

3818 (v) request, receive, and evaluate the aggregate data collected from prosecutorial  
3819 agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216  
3820 and 78A-2-109.5;

3821 (w) report annually to the Law Enforcement and Criminal Justice Interim Committee  
3822 on the progress made on each of the following goals of the Justice Reinvestment Initiative:

3823 (i) ensuring oversight and accountability;

3824 (ii) supporting local corrections systems;

3825 (iii) improving and expanding reentry and treatment services; and

3826 (iv) strengthening probation and parole supervision;

3827 (x) compile a report of findings based on the data and recommendations provided  
3828 under Section 13-53-111 and Subsection 62A-15-103(2)(n) that:

3829 (i) separates the data provided under Section 13-53-111 by each residential, vocational  
3830 and life skills program; and

3831 (ii) separates the data provided under Subsection 62A-15-103(2)(n) by each mental  
3832 health or substance use treatment program; and

3833 (y) publish the report described in Subsection (1)(x) on the commission's website and  
3834 annually provide the report to the Judiciary Interim Committee, the Health and Human Services  
3835 Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the  
3836 related appropriations subcommittees.

3837 (2) If the commission designates an entity under Subsection (1)(r), the commission  
3838 shall ensure that the membership of the entity includes representation from the three branches  
3839 of government and, as determined by the commission, representation from relevant stakeholder  
3840 groups across all parts of the juvenile justice system, including county representation.

3841 Section 53. Section **63M-7-526** is amended to read:

3842 **63M-7-526. Crime Victims Reparations Fund.**

3843 (1) (a) There is created an expendable special revenue fund known as the "Crime  
3844 Victim Reparations Fund" to be administered and distributed as provided in this section by the  
3845 office in cooperation with the Division of Finance.

3846 (b) The fund shall consist of:

3847 (i) appropriations by the Legislature; and

3848 (ii) funds collected under Subsections (2) and (3).

3849 (c) Money deposited in this fund is for victim reparations, other victim services, and, as  
3850 appropriated, for administrative costs of the office.

3851 (2) (a) A percentage of the income earned by [inmates] incarcerated individuals  
3852 working for correctional industries in a federally certified private sector/prison industries  
3853 enhancement program shall be deposited [in] into the fund.

3854 (b) The percentage of income deducted from [inmate] incarcerated individual pay  
3855 under Subsection (2)(a) shall be determined by the executive director of the Department of  
3856 Corrections in accordance with the requirements of the private sector/prison industries  
3857 enhancement program.

3858 (3) (a) Judges are encouraged to, and may in their discretion, impose additional  
3859 reparations to be paid into the fund by convicted criminals.

3860 (b) The additional discretionary reparations may not exceed the statutory maximum  
3861 fine permitted by Title 76, Utah Criminal Code, for that offense.

3862 Section 54. Section **64-9b-1** is amended to read:

3863 **CHAPTER 9b. WORK PROGRAMS FOR INCARCERATED INDIVIDUALS**

3864 **64-9b-1. Legislative findings.**

3865 (1) The Legislature finds that it is in the best interest of the state for the department to:

3866 (a) develop job opportunities to further enhance the rehabilitation of [inmates]  
3867 incarcerated individuals of the Utah state prison;

3868 (b) establish and actively work toward the goal that all [inmates] incarcerated  
3869 individuals shall be productively involved in a treatment, education, or work program, or a  
3870 combination of these programs, as appropriate, except for [inmates] incarcerated individuals  
3871 who the department determines have a physical or mental disability, or pose a danger to the

3872 public, so that they are unable to engage in these activities; and

3873 (c) submit a comprehensive management plan outlining the department's plan to meet  
3874 this goal to the Legislature on or before November 1 of each even-numbered year, and the plan  
3875 shall include:

3876 (i) a cost-effective analysis of current [~~inmate~~] incarcerated individual education,  
3877 treatment, and work programs; and

3878 (ii) a study of the feasibility of expanding [~~inmate~~] incarcerated individual work  
3879 programs, particularly in regard to programs that:

3880 (A) are not capital intensive;

3881 (B) do not unfairly compete with existing Utah industry; and

3882 (C) are designed to increase the motivation, develop the work capabilities, and foster  
3883 the cooperation of [~~inmates~~] incarcerated individuals.

3884 (2) The Legislature further finds that a proper means to accomplish this is through a  
3885 liberal application of this chapter.

3886 Section 55. Section **64-9b-2** is amended to read:

3887 **64-9b-2. Definitions.**

3888 As used in this chapter:

3889 (1) "Department" means the Department of Corrections.

3890 (2) [~~"Inmate" means any man or woman~~] "Incarcerated individual" means an individual  
3891 who is under the jurisdiction of the department and who is assigned to the Utah state prison or  
3892 to a county jail.

3893 Section 56. Section **64-9b-3** is amended to read:

3894 **64-9b-3. Encouragement of private industry -- Types of employers to be sought.**

3895 (1) The department is authorized to encourage private industry to locate and provide  
3896 rehabilitative and job opportunities for [~~inmates~~] incarcerated individuals at the Utah state  
3897 prison and county jails housing [~~inmates~~] incarcerated individuals under the jurisdiction of the  
3898 department.

3899 (2) The department shall determine what type of employer is to be allowed to locate at  
3900 the prison or county jail, taking into consideration the physical facilities and space at the prison  
3901 or county jail, the abilities of the [~~inmates~~] incarcerated individuals, and the type of product to  
3902 be produced by the employer.

3903 Section 57. Section **64-9b-4** is amended to read:

3904 **64-9b-4. Work to be voluntary -- Payment of prevailing wages.**

3905 (1) Rehabilitative and job opportunities at the Utah state prison and participating  
3906 county jails shall not be forced upon any [~~inmate~~] incarcerated individual contrary to the Utah  
3907 Constitution, Article XVI, Section 3 (2), but instead shall be on a completely voluntary basis.

3908 (2) (a) Private businesses that manufacture products for sale in Utah or in interstate  
3909 commerce shall pay [~~inmates~~] incarcerated individuals the prevailing wage for similar work in  
3910 local private industry.

3911 (b) Private businesses that provide services, agricultural products, or manufactured  
3912 products for export shall pay [~~inmates~~] incarcerated individuals wages determined by the  
3913 department, but should not displace local Utah workers as a result of their employment of  
3914 [~~inmates~~] incarcerated individuals.

3915 Section 58. Section **64-9b-5** is amended to read:

3916 **64-9b-5. Intent of Legislature.**

3917 It is the legislative intent, and [~~inmates are encouraged, to use their~~] an incarcerated  
3918 individual is encouraged to use the incarcerated individual's personal earnings from jobs  
3919 created under this chapter for the following:

3920 (1) for restitution to the victims of the [~~inmate's~~] incarcerated individual's criminal  
3921 offense, where applicable;

3922 (2) for support of the [~~inmate's~~] incarcerated individual's family, where applicable;

3923 (3) for the [~~inmate's~~] incarcerated individual's personal use; and

3924 (4) for reimbursement of security, operational, and other costs incurred by the Utah  
3925 Correctional Industries Division of the department in administering these projects.

3926 Section 59. Section **64-13-1** is amended to read:

3927 **64-13-1. Definitions.**

3928 As used in this chapter:

3929 (1) "Behavioral health transition facility" means a nonsecure correctional facility  
3930 operated by the department for the purpose of providing a therapeutic environment for  
3931 offenders receiving mental health services.

3932 (2) "Case action plan" means a document developed by the Department of Corrections  
3933 that identifies:

3934 (a) the program priorities for the treatment of the offender, including the criminal risk  
3935 factors as determined by risk, needs, and responsivity assessments conducted by the  
3936 department; and

3937 (b) clearly defined completion requirements.

3938 (3) "Community correctional center" means a nonsecure correctional facility operated  
3939 by the department, but does not include a behavioral health transition facility for the purposes  
3940 of Section [64-13f-103](#).

3941 (4) "Correctional facility" means any facility operated to house offenders in a secure or  
3942 nonsecure setting:

3943 (a) by the department; or

3944 (b) under a contract with the department.

3945 (5) "Criminal risk factors" means an individual's characteristics and behaviors that:

3946 (a) affect the individual's risk of engaging in criminal behavior; and

3947 (b) are diminished when addressed by effective treatment, supervision, and other  
3948 support resources, resulting in a reduced risk of criminal behavior.

3949 (6) "Department" means the Department of Corrections.

3950 (7) "Direct supervision" means a housing and supervision system that is designed to  
3951 meet the goals described in Subsection [64-13-14\(5\)](#) and has the elements described in  
3952 Subsection [64-13-14\(6\)](#).

3953 (8) "Emergency" means any riot, disturbance, homicide, [~~inmate~~] incarcerated  
3954 individual violence occurring in any correctional facility, or any situation that presents  
3955 immediate danger to the safety, security, and control of the department.

3956 (9) "Evidence-based" means a program or practice that has had multiple randomized  
3957 control studies or a meta-analysis demonstrating that the program or practice is effective for a  
3958 specific population or has been rated as effective by a standardized program evaluation tool.

3959 (10) "Evidence-informed" means a program or practice that is based on research and  
3960 the experience and expertise of the department.

3961 (11) "Executive director" means the executive director of the Department of  
3962 Corrections.

3963 (12) [~~"Inmate"~~] "Incarcerated individual" means an individual who is:

3964 (a) committed to the custody of the department; and



3965 (b) housed at a correctional facility or at a county jail at the request of the department.

3966 (13) "Offender" means an individual who has been convicted of a crime for which the  
3967 individual may be committed to the custody of the department and is at least one of the  
3968 following:

3969 (a) committed to the custody of the department;

3970 (b) on probation; or

3971 (c) on parole.

3972 (14) "Restitution" means the same as that term is defined in Section [77-38b-102](#).

3973 (15) "Risk and needs assessment" means an actuarial tool validated on criminal  
3974 offenders that determines:

3975 (a) an individual's risk of reoffending; and

3976 (b) the criminal risk factors that, when addressed, reduce the individual's risk of  
3977 reoffending.

3978 (16) "Secure correctional facility" means any prison, penitentiary, or other institution  
3979 operated by the department or under contract for the confinement of offenders, where force  
3980 may be used to restrain an offender if the offender attempts to leave the institution without  
3981 authorization.

3982 (17) "Serious illness" means, as determined by the incarcerated individual's physician,  
3983 an illness that substantially impairs the incarcerated individual's quality of life.

3984 (18) "Serious injury" means, as determined by the incarcerated individual's physician,  
3985 bodily injury that involves a substantial risk of death, prolonged unconsciousness, prolonged  
3986 and obvious disfigurement, or prolonged loss or impairment of the function of a bodily  
3987 member, organ, or mental faculty.

3988 Section 60. Section **64-13-14.5** is amended to read:

3989 **64-13-14.5. Limits of confinement place -- Release status -- Work release.**

3990 (1) The department may extend the limits of the place of confinement of an [inmate]  
3991 incarcerated individual when, as established by department policies and procedures, there is  
3992 cause to believe the [inmate] incarcerated individual will honor the trust, by authorizing the  
3993 [inmate] incarcerated individual under prescribed conditions:

3994 (a) to leave temporarily for purposes specified by department policies and procedures  
3995 to visit specifically designated places for a period not to exceed 30 days;

3996 (b) to participate in a voluntary training program in the community while housed at a  
3997 correctional facility or to work at paid employment;

3998 (c) to be housed in a nonsecure community correctional center operated by the  
3999 department; or

4000 (d) to be housed in any other facility under contract with the department.

4001 (2) The department shall establish rules governing offenders on release status. A copy  
4002 of the rules shall be furnished to the offender and to any employer or other person participating  
4003 in the offender's release program. Any employer or other participating person shall agree in  
4004 writing to abide by the rules and to notify the department of the offender's discharge or other  
4005 release from a release program activity, or of any violation of the rules governing release status.

4006 (3) The willful failure of an [inmate] incarcerated individual to remain within the  
4007 extended limits of his confinement or to return within the time prescribed to an institution or  
4008 facility designated by the department is an escape from custody.

4009 (4) If an offender is arrested for the commission of a crime, the arresting authority shall  
4010 immediately notify the department of the arrest.

4011 (5) The department may impose appropriate sanctions pursuant to Section 64-13-21  
4012 upon offenders who violate guidelines established by the Utah Sentencing Commission,  
4013 including prosecution for escape under Section 76-8-309 and for unauthorized absence.

4014 (6) An [inmate] incarcerated individual who is housed at a nonsecure correctional  
4015 facility and on work release may not be required to work for less than the current federally  
4016 established minimum wage, or under substandard working conditions.

4017 Section 61. Section 64-13-15 is amended to read:

4018 **64-13-15. Property of offender -- Storage and disposal.**

4019 (1) (a) (i) Offenders may retain personal property at correctional facilities only as  
4020 authorized by the department.

4021 (ii) An offender's property which is retained by the department shall be inventoried and  
4022 placed in storage by the department and a receipt for the property shall be issued to the  
4023 offender.

4024 (iii) Offenders shall be required to arrange for disposal of property retained by the  
4025 department within a reasonable time under department rules.

4026 (iv) Property retained by the department shall be returned to the offender at discharge,

4027 or in accordance with Title 75, Utah Uniform Probate Code, in the case of death prior to  
4028 discharge.

4029 (b) If property is not claimed within one year of discharge, or it is not disposed of by  
4030 the offender within a reasonable time after the department's order to arrange for disposal, it  
4031 becomes property of the state and may be used for correctional purposes or donated to a charity  
4032 within the state.

4033 (c) If an [~~inmate's~~] incarcerated individual's property is not claimed within one year of  
4034 [~~his~~] the incarcerated individual's death, it becomes the property of the state in accordance with  
4035 Section 75-2-105.

4036 (d) (i) Funds which are contraband and in the physical custody of [~~any prisoner~~] an  
4037 incarcerated individual, whether in the form of currency and coin which are legal tender in any  
4038 jurisdiction or negotiable instruments drawn upon a personal or business account, shall be  
4039 subject to forfeiture following a hearing which accords with prevailing standards of due  
4040 process.

4041 (ii) All such forfeited funds shall be used by the department for purposes which  
4042 promote the general welfare of [~~prisoners~~] incarcerated individuals in the custody of the  
4043 department.

4044 (iii) Money and negotiable instruments taken from offenders' mail under department  
4045 rule and which are not otherwise contraband shall be placed in an account administered by the  
4046 department, to the credit of the offender who owns the money or negotiable instruments.

4047 (2) Upon discharge from a secure correctional facility, the department may give an  
4048 [~~inmate~~] incarcerated individual transition funds in an amount established by the department  
4049 with the approval of the director of the Division of Finance. At its discretion, the department  
4050 may spend the funds directly on the purchase of necessities or transportation for the discharged  
4051 [~~inmate~~] incarcerated individual.

4052 Section 62. Section **64-13-16** is amended to read:

4053 **64-13-16. Incarcerated individual employment.**

4054 (1) (a) The department may employ [~~inmates~~] incarcerated individuals, unless  
4055 incapable of employment because of sickness or other infirmity or for security reasons, to the  
4056 degree that funding and available resources allow.

4057 (b) An offender may not be employed on work which benefits any employee or officer

4058 of the department.

4059 (2) An offender employed under this section is not considered an employee, worker,  
4060 workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act,  
4061 except as required by federal statute or regulation.

4062 Section 63. Section **64-13-17** is amended to read:

4063 **64-13-17. Visitors to correctional facilities -- Correspondence.**

4064 (1) (a) The following persons may visit correctional facilities without the consent of  
4065 the department:

4066 (i) the governor;

4067 (ii) the attorney general;

4068 (iii) a justice or judge of the courts of record;

4069 (iv) members of the Board of Pardons and Parole;

4070 (v) members of the Legislature;

4071 (vi) the sheriff, district attorney, and county attorney for the county in which the  
4072 correctional facility is located; and

4073 (vii) any other persons authorized under rules prescribed by the department or court  
4074 order.

4075 (b) [~~Any~~] A person acting under a court order may visit or correspond with [~~any~~  
4076 ~~inmate~~] an incarcerated individual without the consent of the department provided the  
4077 department has received notice of, and is permitted to respond to, the court order. The court  
4078 shall consider department policy when making its order.

4079 (c) The department may limit access to correctional facilities when the department or  
4080 governor declares an emergency or when there is a riot or other disturbance.

4081 (2) (a) A person may not visit with any offender at any correctional facility, other than  
4082 under Subsection (1), without the consent of the department.

4083 (b) Offenders and all visitors, including those listed in Subsection (1), may be required  
4084 to submit to a search or inspection of their persons and properties as a condition of visitation.

4085 (3) The department shall make rules under Title 63G, Chapter 3, Utah Administrative  
4086 Rulemaking Act, establishing guidelines for providing written notice to visitors regarding  
4087 prohibited items and regarding the fact that under state law all visitors may be required to  
4088 submit to a search of their persons and properties as a condition of visitation.

4089 (4) Offenders housed at any correctional facility may send and receive correspondence,  
4090 subject to the rules of the department. All correspondence is subject to search, consistent with  
4091 department rules.

4092 Section 64. Section **64-13-21** is amended to read:

4093 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**  
4094 **-- POST certified parole or probation officers and peace officers -- Duties -- Supervision**  
4095 **fee.**

4096 (1) (a) The department, except as otherwise provided by law, shall supervise sentenced  
4097 offenders placed in the community on probation by the courts, on parole by the Board of  
4098 Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate  
4099 Compact for the Supervision of Parolees and Probationers.

4100 (b) If a sentenced offender participates in substance use treatment or a residential,  
4101 vocational and life skills program, as defined in Section [13-53-102](#), while under supervision on  
4102 probation or parole, the department shall monitor the offender's compliance with and  
4103 completion of the treatment or program.

4104 (c) The department shall establish standards for:

4105 (i) the supervision of offenders in accordance with sentencing guidelines and  
4106 supervision length guidelines, including the graduated and evidence-based responses,  
4107 established by the Utah Sentencing Commission, giving priority, based on available resources,  
4108 to felony offenders and offenders sentenced under Subsection [58-37-8](#) (2)(b)(ii); and

4109 (ii) the monitoring described in Subsection (1)(b).

4110 (2) The department shall apply the graduated and evidence-based responses established  
4111 by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an  
4112 individual's violation of the terms of probation or parole, including:

4113 (a) sanctions to be used in response to a violation of the terms of probation or parole;  
4114 and

4115 (b) requesting approval from the court or Board of Pardons and Parole to impose a  
4116 sanction for an individual's violation of the terms of probation or parole, for a period of  
4117 incarceration of not more than three consecutive days and not more than a total of five days  
4118 within a period of 30 days.

4119 (3) The department shall implement a program of graduated incentives as established

4120 by the Utah Sentencing Commission to facilitate the department's prompt and appropriate  
4121 response to an offender's:

- 4122 (a) compliance with the terms of probation or parole; or
- 4123 (b) positive conduct that exceeds those terms.

4124 (4) (a) The department shall, in collaboration with the State Commission on Criminal  
4125 and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards  
4126 and procedures for the collection of information, including cost savings related to recidivism  
4127 reduction and the reduction in the number of ~~[inmates]~~ incarcerated individuals, related to the  
4128 use of the graduated and evidence-based responses and graduated incentives, and offenders'  
4129 outcomes.

4130 (b) The collected information shall be provided to the State Commission on Criminal  
4131 and Juvenile Justice not less frequently than annually on or before August 31.

4132 (5) Employees of the department who are POST certified as law enforcement officers  
4133 or correctional officers and who are designated as parole and probation officers by the  
4134 executive director have the following duties:

4135 (a) monitoring, investigating, and supervising a parolee's or probationer's compliance  
4136 with the conditions of the parole or probation agreement;

4137 (b) investigating or apprehending any offender who has escaped from the custody of  
4138 the department or absconded from supervision;

4139 (c) supervising any offender during transportation; or

4140 (d) collecting DNA specimens when the specimens are required under Section  
4141 [53-10-404](#).

4142 (6) (a) (i) A monthly supervision fee of \$30 shall be collected from each offender on  
4143 probation or parole.

4144 (ii) The fee described in Subsection (6)(a)(i) may be suspended or waived by the  
4145 department upon a showing by the offender that imposition would create a substantial hardship  
4146 or if the offender owes restitution to a victim.

4147 (b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
4148 Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the  
4149 supervision fee and the circumstances under which an offender may request a hearing.

4150 (ii) In determining whether the imposition of the supervision fee would constitute a

4151 substantial hardship, the department shall consider the financial resources of the offender and  
4152 the burden that the fee would impose, with regard to the offender's other obligations.

4153 (7) (a) For offenders placed on probation under Section 77-18-105 or parole under  
4154 Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the  
4155 department shall establish a program allowing an offender to earn credits for the offender's  
4156 compliance with the terms of the offender's probation or parole, which shall be applied to  
4157 reducing the period of probation or parole as provided in this Subsection (7).

4158 (b) The program shall provide that an offender earns a reduction credit of 30 days from  
4159 the offender's period of probation or parole for each month the offender completes without any  
4160 violation of the terms of the offender's probation or parole agreement, including the case action  
4161 plan.

4162 (c) The department shall maintain a record of credits earned by an offender under this  
4163 Subsection (7) and shall request from the court or the Board of Pardons and Parole the  
4164 termination of probation or parole not fewer than 30 days prior to the termination date that  
4165 reflects the credits earned under this Subsection (7).

4166 (d) This Subsection (7) does not prohibit the department from requesting a termination  
4167 date earlier than the termination date established by earned credits under Subsection (7)(c).

4168 (e) The court or the Board of Pardons and Parole shall terminate an offender's  
4169 probation or parole upon completion of the period of probation or parole accrued by time  
4170 served and credits earned under this Subsection (7) unless the court or the Board of Pardons  
4171 and Parole finds that termination would interrupt the completion of a necessary treatment  
4172 program, in which case the termination of probation or parole shall occur when the treatment  
4173 program is completed.

4174 (f) The department shall report annually to the State Commission on Criminal and  
4175 Juvenile Justice on or before August 31:

4176 (i) the number of offenders who have earned probation or parole credits under this  
4177 Subsection (7) in one or more months of the preceding fiscal year and the percentage of the  
4178 offenders on probation or parole during that time that this number represents;

4179 (ii) the average number of credits earned by those offenders who earned credits;

4180 (iii) the number of offenders who earned credits by county of residence while on  
4181 probation or parole;

4182 (iv) the cost savings associated with sentencing reform programs and practices; and  
4183 (v) a description of how the savings will be invested in treatment and  
4184 early-intervention programs and practices at the county and state levels.

4185 Section 65. Section **64-13-25** is amended to read:

4186 **64-13-25. Standards for programs -- Audits.**

4187 (1) To promote accountability and to ensure safe and professional operation of  
4188 correctional programs, the department shall establish minimum standards for the organization  
4189 and operation of its programs, including collaborating with the Department of Health and  
4190 Human Services to establish minimum standards for programs providing assistance for  
4191 individuals involved in the criminal justice system.

4192 (a) The standards shall be promulgated according to state rulemaking provisions.  
4193 Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter  
4194 3, Utah Administrative Rulemaking Act. Offenders are not a class of persons under that act.

4195 (b) Standards shall provide for inquiring into and processing offender complaints.

4196 (c) (i) The department shall establish minimum standards and qualifications for  
4197 treatment programs provided in county jails to which persons committed to the state prison are  
4198 placed by jail contract under Section [64-13e-103](#).

4199 (ii) In establishing the standards and qualifications for the treatment programs, the  
4200 department shall:

4201 (A) consult and collaborate with the county sheriffs and the Division of Substance  
4202 Abuse and Mental Health; and

4203 (B) include programs demonstrated by recognized scientific research to reduce  
4204 recidivism by addressing an offender's criminal risk factors as determined by a risk and needs  
4205 assessment.

4206 (iii) All jails contracting to house offenders committed to the state prison shall meet the  
4207 minimum standards for treatment programs as established under this Subsection (1)(c).

4208 (d) (i) The department shall establish minimum standards of treatment for sex  
4209 offenders, which shall include the requirements under Subsection [64-13-7.5\(3\)](#) regarding  
4210 licensure and competency.

4211 (ii) The standards shall require the use of the most current best practices demonstrated  
4212 by recognized scientific research to address an offender's criminal risk factors.



4213 (iii) The department shall collaborate with the Division of Substance Abuse and  
4214 Mental Health to develop and effectively distribute the standards to jails and to mental health  
4215 professionals who desire to provide mental health treatment for sex offenders.

4216 (iv) The department shall establish the standards by administrative rule pursuant to  
4217 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4218 (2) The department shall establish an audit for compliance with standards established  
4219 under this section according to policies and procedures established by the department, for  
4220 continued operation of correctional and treatment programs provided to offenders committed to  
4221 the department's custody, including ~~[inmates]~~ incarcerated individuals housed in county jails by  
4222 contract with the Department of Corrections.

4223 (a) At least every three years, the department shall internally audit all programs for  
4224 compliance with established standards.

4225 (b) All financial statements and accounts of the department shall be reviewed during  
4226 the audit. Written review shall be provided to the managers of the programs and the executive  
4227 director of the department.

4228 (c) The reports shall be classified as confidential internal working papers and access is  
4229 available at the discretion of the executive director or the governor, or upon court order.

4230 (3) The department shall establish a certification program for public and private  
4231 providers of treatment for sex offenders on probation or parole that requires the providers' sex  
4232 offender treatment practices meet the standards and practices established under Subsection  
4233 (1)(d) to reduce sex offender recidivism.

4234 (a) The department shall collaborate with the Division of Substance Abuse and Mental  
4235 Health to develop, coordinate, and implement the certification program.

4236 (b) The certification program shall be based on the standards under Subsection (1)(d)  
4237 and shall require renewal of certification every two years.

4238 (c) All public and private providers of sex offender treatment, including those  
4239 providing treatment to offenders housed in county jails by contract under Section [64-13e-103](#),  
4240 shall comply with these standards on and after July 1, 2016, in order to begin receiving or  
4241 continue receiving payment from the department to provide sex offender treatment on or after  
4242 July 1, 2016.

4243 (d) The department shall establish the certification program by administrative rule

4244 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4245 (4) The department shall establish performance goals and outcome measurements for  
4246 all programs that are subject to the minimum standards established under this section and shall  
4247 collect data to analyze and evaluate whether the goals and measurements are attained.

4248 (a) The department shall collaborate with the Division of Substance Abuse and Mental  
4249 Health to develop and coordinate the performance goals and outcome measurements, including  
4250 recidivism rates and treatment success and failure rates.

4251 (b) The department may use these data to make decisions on the use of funds to  
4252 provide treatment for which standards are established under this section.

4253 (c) The department shall collaborate with the Division of Substance Abuse and Mental  
4254 Health to track a subgroup of participants to determine if there is a net positive result from the  
4255 use of treatment as an alternative to incarceration.

4256 (d) The department shall collaborate with the Division of Substance Abuse and Mental  
4257 Health to evaluate the costs, including any additional costs, and the resources needed to attain  
4258 the performance goals established for the use of treatment as an alternative to incarceration.

4259 (e) The department shall annually provide data collected under this Subsection (4) to  
4260 the Commission on Criminal and Juvenile Justice on or before August 31. The commission  
4261 shall compile a written report of the findings based on the data and shall provide the report to  
4262 the legislative Judiciary Interim Committee, the Health and Human Services Interim  
4263 Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related  
4264 appropriations subcommittees.

4265 Section 66. Section **64-13-30** is amended to read:

4266 **64-13-30. Expenses incurred by offenders -- Payment to department or county**  
4267 **jail -- Medical care expenses and copayments.**

4268 (1) (a) The department or county jail may require an [~~inmate~~] incarcerated individual to  
4269 make a copayment for medical and dental services provided by the department or county jail.

4270 (b) For services provided while in the custody of the department, the copayment by the  
4271 [~~inmate~~] incarcerated individual is \$5 for primary medical care, \$5 for dental care, and \$2 for  
4272 prescription medication.

4273 (c) For services provided outside of a prison facility while in the custody of the  
4274 department, the offender is responsible for 10% of the costs associated with hospital care with

4275 a cap on an [inmate's] incarcerated individual's share of hospital care expenses not to exceed  
4276 \$2,000 per fiscal year.

4277 (2) (a) An [inmate] incarcerated individual who has assets exceeding \$200,000, as  
4278 determined by the department upon entry into the department's custody, is responsible to pay  
4279 the costs of all medical and dental care up to 20% of the [inmate's] incarcerated individual's  
4280 total determined asset value.

4281 (b) After an [inmate] incarcerated individual has received medical and dental care  
4282 equal to 20% of the [inmate's] incarcerated individual's total asset value, the [inmate]  
4283 incarcerated individual is subject to the copayments provided in Subsection (1).

4284 (3) The department shall turn over to the Office of State Debt Collection any debt  
4285 under this section that is unpaid at the time the offender is released from parole.

4286 (4) An [inmate] incarcerated individual may not be denied medical treatment if the  
4287 [inmate] incarcerated individual is unable to pay for the treatment because of inadequate  
4288 financial resources.

4289 (5) When an offender in the custody of the department receives medical care that is  
4290 provided outside of a prison facility, the department shall pay the costs:

4291 (a) at the contracted rate; or

4292 (b) (i) if there is no contract between the department and a health care facility that  
4293 establishes a fee schedule for medical services rendered, expenses shall be at the noncapitated  
4294 state Medicaid rate in effect at the time the service was provided; and

4295 (ii) if there is no contract between the department and a health care provider that  
4296 establishes a fee schedule for medical services rendered, expenses shall be 65% of the amount  
4297 that would be paid under the Public Employees' Benefit and Insurance Program, created in  
4298 Section [49-20-103](#).

4299 (6) Expenses described in Subsection (5) are a cost to the department only to the extent  
4300 that they exceed an offender's private insurance that is in effect at the time of the service and  
4301 that covers those expenses.

4302 (7) (a) The Public Employees' Benefit and Insurance Program shall provide  
4303 information to the department that enables the department to calculate the amount to be paid to  
4304 a health care provider under Subsection (5)(b).

4305 (b) The department shall ensure that information provided under Subsection (7)(a) is

4306 confidential.

4307 Section 67. Section **64-13-30.5** is amended to read:

4308 **64-13-30.5. Payment by incarcerated individual for postsecondary educational**  
4309 **tuition.**

4310 (1) (a) ~~(a)~~ (i) An ~~inmate~~ incarcerated individual participating in a postsecondary  
4311 education program through the department shall pay to the department at the time of  
4312 enrollment 50% of the costs of the postsecondary education tuition.

4313 ~~(b)~~ (ii) If an ~~inmate~~ incarcerated individual desires to participate in the  
4314 postsecondary education program but is unable to pay the costs of the education because of  
4315 inadequate financial resources, the ~~inmate~~ incarcerated individual may participate in a  
4316 deferred tuition payment program under this section.

4317 ~~(c)~~ (iii) The department and the Office of State Debt Collection shall coordinate a  
4318 deferred postsecondary education tuition repayment program to provide ~~inmates~~ incarcerated  
4319 individuals a reasonable payment schedule and payment amount to allow for deferred payment  
4320 of the postsecondary educational tuition obligation the ~~inmate~~ incarcerated individual  
4321 incurred while under supervision of the department, which shall:

4322 ~~(i)~~ (A) account for all postsecondary education tuition costs incurred by the ~~inmate~~  
4323 incarcerated individual while under the supervision of the department;

4324 ~~(ii)~~ (B) establish an appropriate time for the ~~inmate~~ incarcerated individual to begin  
4325 payment of postsecondary education tuition costs, which shall require that payments start no  
4326 later than two years after termination of parole; and

4327 ~~(iii)~~ (C) establish a payment schedule and payment amounts, including prevailing  
4328 interest rates, commensurate with student loans currently being offered by local financial  
4329 institutions.

4330 ~~(d)~~ (iv) Neither the department nor the Office of State Debt Collection may relieve an  
4331 offender of the postsecondary tuition repayment responsibility.

4332 ~~(e)~~ (v) The department shall pay costs of postsecondary education not paid by the  
4333 offender at the time of participation in the program from the Prison Telephone Surcharge  
4334 Account.

4335 (2) (a) Of those tuition funds collected by the Office of State Debt Collection under  
4336 this section, 10% may be used by the Office of State Debt Collection for operation of the

4337 deferred payment program.

4338 (b) All other funds collected as repayment for postsecondary tuition costs shall be  
4339 deposited in the Prison Telephone Surcharge Account.

4340 (3) Only [inmates] an incarcerated individual lawfully present in the United States may  
4341 participate in the postsecondary educational program offered through the department.

4342 Section 68. Section **64-13-32** is amended to read:

4343 **64-13-32. Discipline of offenders -- Use of force.**

4344 (1) If an offender offers violence to an officer or other employee of the Department of  
4345 Corrections, or to another offender, or to any other person; attempts to damage or damages any  
4346 corrections property; attempts to escape; or resists or refuses to obey any lawful and reasonable  
4347 command; the officers and other employees of the department may use all reasonable means,  
4348 including the use of weapons, to defend themselves and department property and to enforce the  
4349 observance of discipline and prevent escapes.

4350 (2) (a) An [inmate] incarcerated individual who is housed in a secure correctional  
4351 facility and is in the act of escaping from that secure correctional facility or from the custody of  
4352 a peace or correctional officer is presumed to pose a threat of death or serious bodily injury to  
4353 an officer or others if apprehension is delayed.

4354 (b) Notwithstanding Section [76-2-404](#), a peace or correctional officer is justified in  
4355 using deadly force if he reasonably believes deadly force is necessary to apprehend the [inmate]  
4356 incarcerated individual.

4357 Section 69. Section **64-13-34** is amended to read:

4358 **64-13-34. Safety of offenders.**

4359 (1) In case of disaster or acts of God that threaten the safety of [inmates] incarcerated  
4360 individuals or the security of a secure correctional facility, [inmates] incarcerated individuals  
4361 may be moved to a suitable place of security.

4362 (2) [Inmates] Incarcerated individuals moved under Subsection (1) shall be returned to  
4363 a correctional facility as soon as it is practicable.

4364 Section 70. Section **64-13-36** is amended to read:

4365 **64-13-36. Testing of incarcerated individuals for AIDS and HIV infection --**  
4366 **Medical care -- Department authority.**

4367 (1) As used in this section[:(a) "~~Prisoner~~" means a person who has been adjudicated

4368 ~~and found guilty of a criminal offense and who is in the custody of and under the jurisdiction of~~  
4369 ~~the department.~~(b) "Test" or "testing" "test" or "testing" means a test or tests for Acquired  
4370 Immunodeficiency Syndrome or Human Immunodeficiency Virus infection in accordance with  
4371 standards recommended by the state Department of Health and Human Services.

4372 (2) (a) Within 90 days after July 1, 1989, the effective date of this act, the department  
4373 shall test or provide for testing of all [~~prisoners~~] incarcerated individuals who are under the  
4374 jurisdiction of the department, and subsequently test or provide for testing of all [~~prisoners~~]  
4375 incarcerated individuals who are committed to the jurisdiction of the department upon  
4376 admission or within a reasonable period after admission.

4377 (b) At the time test results are provided to [~~persons~~] incarcerated individuals tested, the  
4378 department shall provide education and counseling regarding Acquired Immunodeficiency  
4379 Syndrome and Human Immunodeficiency Virus infection.

4380 (3) (a) The results of tests conducted under Subsection (2) become part of the  
4381 [~~inmate's~~] incarcerated individual's medical file, accessible only to persons designated by  
4382 department rule and in accordance with any other legal requirement for reporting of Acquired  
4383 Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

4384 (b) Medical and epidemiological information regarding results of tests conducted under  
4385 Subsection (2) shall be provided to the state Department of Health and Human Services.

4386 (4) The department has authority to take action as medically indicated with regard to  
4387 any [~~prisoner~~] incarcerated individual who has tested positive for Acquired Immunodeficiency  
4388 Syndrome or Human Immunodeficiency Virus infection.

4389 (5) [~~Prisoners~~] incarcerated individuals who test positive for Acquired  
4390 Immunodeficiency Syndrome or Human Immunodeficiency Virus infection may not be  
4391 excluded from common areas of the prison that are accessible to other [~~prisoners~~] incarcerated  
4392 individuals solely on the basis of that condition, unless medically necessary for protection of  
4393 the general [~~prison~~] incarcerated individual population or staff.

4394 Section 71. Section ~~64-13-38~~ is amended to read:

4395 **64-13-38. Emergency release due to overcrowding.**

4396 (1) [~~Definitions~~] As used in this section:

4397 (a) "Maximum capacity" means every physical and funded prison bed is occupied by  
4398 an [~~inmate~~] incarcerated individual.

4399 (b) "Operational capacity" means 96.5% of every physical and funded bed is occupied  
4400 by an [~~inmate~~] incarcerated individual.

4401 (c) "Emergency release capacity" means 98% of every physical and funded bed is  
4402 occupied by an [~~inmate~~] incarcerated individual.

4403 (2) When the executive director of the department finds that either the male or female  
4404 [~~inmate~~] incarcerated individual population of the Utah State Prison has exceeded operational  
4405 capacity for at least 45 consecutive days, the executive director shall notify the governor, the  
4406 legislative leadership, and the Board of Pardons and Parole that the department is approaching  
4407 an overcrowding emergency and provide them with information relevant to that determination.

4408 (3) When the executive director of the department finds that either the male or female  
4409 [~~inmate~~] incarcerated individual population of the Utah State Prison has exceeded emergency  
4410 release capacity for at least 45 consecutive days, the executive director shall:

4411 (a) notify the governor and the legislative leadership that the emergency release  
4412 capacity has been reached and provide them with information relevant to that determination;  
4413 and

4414 (b) notify the Board of Pardons and Parole that the emergency release capacity has  
4415 been reached so that the board may commence the emergency release process pursuant to  
4416 Subsection (4).

4417 (4) Upon the department's notifying the governor and the legislative leadership of the  
4418 emergency release capacity under Subsection (3), the department shall:

4419 (a) notify the Board of Pardons and Parole of the number of [~~inmates~~] incarcerated  
4420 individuals who need to be released in order to return the prison [~~inmate~~] incarcerated  
4421 individual population to operational capacity; and

4422 (b) in cooperation and consultation with the Board of Pardons and Parole, compile a  
4423 list of [~~inmates~~] incarcerated individuals, the release of whom would be sufficient to return the  
4424 prison [~~inmate~~] incarcerated individual population to operational capacity.

4425 (5) After 45 consecutive days of emergency release capacity, the Board of Pardons and  
4426 Parole may order the release of a sufficient number of [~~inmates~~] incarcerated individuals  
4427 identified under Subsection (4) to return the prison [~~inmate~~] incarcerated individual population  
4428 to operational capacity.

4429 (6) The department shall inform the governor and the legislative leadership when the

4430 emergency release has been completed.

4431 (7) The Board of Pardons and Parole shall make rules in accordance with Title 63G,  
4432 Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

4433 Section 72. Section **64-13-39.4** is enacted to read:

4434 **64-13-39.4. Supervision of emergency medical provider in a correctional facility.**

4435 (1) As used in this section:

4436 (a) "Emergency medical service personnel" means an individual licensed under Section  
4437 26-8a-302.

4438 (b) "Registered nurse" means a registered nurse licensed under Title 58, Chapter 31b,  
4439 Nurse Practice Act.

4440 (2) If emergency medical service personnel provide medical services to an incarcerated  
4441 individual, the department shall ensure that a registered nurse supervises the emergency  
4442 medical service personnel.

4443 (3) A registered nurse providing supervision under Subsection (2) shall:

4444 (a) provide written or verbal instructions to the emergency medical service personnel  
4445 before the emergency medical service personnel perform employment responsibilities; and

4446 (b) be available at the correctional facility where the emergency medical service  
4447 personnel provides medical services.

4448 Section 73. Section **64-13-39.5** is amended to read:

4449 **64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders --**  
4450 **Notice to health care facility.**

4451 (1) As used in this section:

4452 (a) "Department or agency" means the Utah Department of Corrections or a department  
4453 of corrections or government entity responsible for placing an offender in a facility located in  
4454 Utah.

4455 (b) "Chronically ill" has the same meaning as in Section 31A-36-102.

4456 (c) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5) and  
4457 a nursing care facility as defined in Subsection 26-21-2(17), except that transitional care units  
4458 and other long term care beds owned or operated on the premises of acute care hospitals or  
4459 critical care hospitals are not facilities for the purpose of this section.

4460 (d) "Offender" means an [inmate] incarcerated individual whom the department or



4461 agency has given an early release, pardon, or parole due to a chronic or terminal illness.

4462 (e) "Terminally ill" has the same meaning as in Section [31A-36-102](#).

4463 (2) If an offender from Utah or any other state is admitted as a resident of a facility due  
4464 to the chronic or terminal illness, the department or agency placing the offender shall:

4465 (a) provide written notice to the administrator of the facility no later than 15 days prior  
4466 to the offender's admission as a resident of a facility, stating:

4467 (i) the offense for which the offender was convicted and a description of the actual  
4468 offense;

4469 (ii) the offender's status with the department or agency;

4470 (iii) that the information provided by the department or agency regarding the offender  
4471 shall be provided to employees of the facility no later than 10 days prior to the offender's  
4472 admission to the facility; and

4473 (iv) the contact information for:

4474 (A) the offender's parole officer and also a point of contact within the department or  
4475 agency, if the offender is on parole; and

4476 (B) a point of contact within the department or agency, if the offender is not under  
4477 parole supervision but was given an early release or pardon due to a chronic or terminal illness;

4478 (b) make available to the public on the Utah Department of Corrections' website and  
4479 upon request:

4480 (i) the name and address of the facility where the offender resides; and

4481 (ii) the date the offender was placed at the facility; and

4482 (c) provide a training program for employees who work in a facility where offenders  
4483 reside, and if the offender is placed at the facility by:

4484 (i) the Utah Department of Corrections, the department shall provide the training  
4485 program for the employees; and

4486 (ii) by a department or agency from another state, that state's department or agency  
4487 shall arrange with the Utah Department of Corrections to provide the training required by this  
4488 Subsection (2), if training has not already been provided by the Utah Department of  
4489 Corrections, and shall provide to the Utah Department of Corrections any necessary  
4490 compensation for this service.

4491 (3) The administrator of the facility shall:

4492 (a) provide residents of the facility or their guardians notice that a convicted felon is  
4493 being admitted to the facility no later than 10 days prior to the offender's admission to the  
4494 facility;

4495 (b) advise potential residents or their guardians of persons under Subsection (2) who  
4496 are current residents of the facility; and

4497 (c) provide training, offered by the Utah Department of Corrections, in the safe  
4498 management of offenders for all employees.

4499 (4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3,  
4500 Utah Administrative Rulemaking Act, establishing:

4501 (a) a consistent format and procedure for providing notification to facilities and  
4502 information to the public in compliance with Subsection (2); and

4503 (b) a training program, in compliance with Subsection (3) for employees, who work at  
4504 facilities where offenders reside to ensure the safety of facility residents and employees.

4505 Section 74. Section **64-13-40** is amended to read:

4506 **64-13-40. Worship for native American incarcerated individual.**

4507 (1) As used in this section:

4508 (a) "Items used in religious ceremonies" includes cedar, corn husks, corn pollen, corn  
4509 meal, eagle and other feathers, sage, sweet grass, tobacco, pipes, willow, drums, gourds, lava  
4510 rock, medicine bundles, bags or pouches, staffs, and other traditional items and materials.

4511 (b) "Native American" means an individual who is eligible for membership in a tribe  
4512 recognized by the federal government.

4513 (c) "Native American religion" means a religion or religious belief that is practiced by  
4514 a native American, the origin and interpretation of which is from a traditional native American  
4515 culture or community.

4516 (d) "Native American spiritual advisor" means a person who leads, instructs, or  
4517 facilitates a native American religious ceremony or service, or provides religious counseling,  
4518 and includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy  
4519 man or woman.

4520 (e) "Site of worship" means a site indoors or outdoors where a person can pray or  
4521 meditate, or where a sweat lodge ceremony, talking circle, or individual prayer can be made.

4522 (2) (a) At the request of any native American ~~[inmate]~~ incarcerated individual, a state

4523 correctional facility shall reasonably accommodate the practice of the native American  
4524 [inmate's] incarcerated individual's religion including a native American religion at each state  
4525 correctional facility, unless the [inmate] incarcerated individual is a maximum security  
4526 [inmate] incarcerated individual and accommodating the maximum security [inmate]  
4527 incarcerated individual would threaten the reasonable security of the state correctional facility.

4528 (b) In accommodating a native American religion, the state correctional facility shall:

4529 (i) permit access on a regular basis to:

4530 (A) a native American spiritual advisor; and

4531 (B) a site of worship on the grounds of the correctional facility, unless the [inmate]  
4532 incarcerated individual is a maximum security [inmate] incarcerated individual and permitting  
4533 access would threaten the reasonable security of the state correctional facility;

4534 (ii) permit access to items used in religious ceremonies during the religious  
4535 ceremonies; and

4536 (iii) provide a secure place at the site of worship to store the items used in religious  
4537 ceremonies.

4538 (3) Notwithstanding Subsection (2)(b)(iii), the state correctional facility is not required  
4539 to provide to the [inmate] incarcerated individual any item used in religious ceremonies.

4540 (4) A native American spiritual advisor shall have any privilege of access to [inmates]  
4541 incarcerated individuals and sites of worship provided to an individual functioning as a  
4542 religious leader or advisor at a state correctional facility.

4543 (5) An [inmate] incarcerated individual claiming to be a native American for purposes  
4544 of this section shall bear the burden of establishing to the state correctional facility that the  
4545 [inmate] incarcerated individual is a native American.

4546 (6) The department may not require a native American [inmate] incarcerated individual  
4547 to cut the [inmate's] incarcerated individual's hair if it conflicts with the [inmate's] incarcerated  
4548 individual's traditional native American religious beliefs.

4549 (7) A state correctional facility is required to comply with this section only to the  
4550 extent that it does not threaten the reasonable security of the state correctional facility.

4551 (8) This section may not be construed as requiring a state correctional facility to permit  
4552 access to peyote by a native American [inmate] incarcerated individual.

4553 Section 75. Section **64-13-42** is amended to read:

4554           **64-13-42. Prison Telephone Surcharge Account -- Funding incarcerated**  
4555 **individual and offender education and training programs.**

4556           (1) (a) There is created within the General Fund a restricted account known as the  
4557 Prison Telephone Surcharge Account.

4558           (b) The Prison Telephone Surcharge Account consists of:

4559           (i) beginning July 1, 2006, revenue generated by the state from pay telephone services  
4560 located at any correctional facility as defined in Section [64-13-1](#);

4561           (ii) interest on account money;

4562           (iii) (A) money paid by [~~inmates~~] incarcerated individuals participating in  
4563 postsecondary education provided by the department; and

4564           (B) money repaid by former [~~inmates~~] incarcerated individuals who have a written  
4565 agreement with the department to pay for a specified portion of the tuition costs under the  
4566 department's deferred tuition payment program;

4567           (iv) money collected by the Office of State Debt Collection for debt described in  
4568 Subsection (1)(b)(iii); and

4569           (v) money appropriated by the Legislature.

4570           (2) Upon appropriation by the Legislature, money from the Prison Telephone  
4571 Surcharge Account shall be used by the department for education and training programs for  
4572 offenders and [~~inmates~~] incarcerated individual as defined in Section [64-13-1](#).

4573           Section 76. Section **64-13-43** is amended to read:

4574           **64-13-43. Use of state vehicles by department personnel.**

4575           The department executive director may authorize the use of a state vehicle for official  
4576 and commute purposes for a department employee who:

4577           (1) supervises probationers or parolees; or

4578           (2) investigates the criminal activity of [~~inmates~~] incarcerated individuals,  
4579 probationers, or parolees.

4580           Section 77. Section **64-13-44** is amended to read:

4581           **64-13-44. Posthumous organ donations by incarcerated individuals.**

4582           (1) As used in this section:

4583           (a) "Document of gift" has the same meaning as in Section [26-28-102](#).

4584           (b) "Sign" has the same meaning as in Section [26-28-102](#).

4585 (2) (a) The Utah Department of Corrections shall make available to each [inmate]  
4586 incarcerated individual a document of gift form that allows an [inmate] incarcerated individual  
4587 to indicate the [inmate's] incarcerated individual's desire to make an anatomical gift if the  
4588 [inmate] incarcerated individual dies while in the custody of the department.

4589 (b) If the [inmate] incarcerated individual chooses to make an anatomical gift after  
4590 death, the [inmate] incarcerated individual shall complete a document of gift in accordance  
4591 with the requirements of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

4592 (c) The department shall maintain a record of the document of gift that an [inmate]  
4593 incarcerated individual provides to the department.

4594 (3) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
4595 Management Act, the department may, upon request, release to an organ procurement  
4596 organization, as defined in Section 26-28-102, the names and addresses of all [inmates]  
4597 incarcerated individuals who complete and sign the document of gift form indicating they  
4598 intend to make an anatomical gift.

4599 (4) The making of an anatomical gift by an [inmate] incarcerated individual under this  
4600 section shall comply with Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

4601 (5) Notwithstanding anything in this section, the department shall not be considered to  
4602 be an [inmate's] incarcerated individual's "guardian" for the purposes of Title 26, Chapter 28,  
4603 Revised Uniform Anatomical Gift Act.

4604 Section 78. Section 64-13-45 is amended to read:

4605 **64-13-45. Department reporting requirements.**

4606 (1) As used in this section:

4607 (a) (i) "In-custody death" means [~~an inmate~~] the death of an incarcerated individual that  
4608 occurs while the [inmate] incarcerated individual is in the custody of the department.

4609 (ii) "In-custody death" includes [~~an inmate~~] the death of an incarcerated individual that  
4610 occurs while the [inmate] incarcerated individual is:

4611 (A) being transported for medical care; or

4612 (B) receiving medical care outside of a correctional facility, other than a county jail.

4613 (b) [~~Inmate~~] "Incarcerated individual" means an individual who is processed or  
4614 booked into custody or housed in the department or a correctional facility other than a county  
4615 jail.

- 4616 (c) "Opiate" means the same as that term is defined in Section 58-37-2.
- 4617 (2) The department shall submit a report to the Commission on Criminal and Juvenile  
4618 Justice, created in Section 63M-7-201, before June 15 of each year that includes:
- 4619 (a) the number of in-custody deaths that occurred during the preceding calendar year,  
4620 including:
- 4621 (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of  
4622 each of the in-custody deaths described in Subsection (2)(a); and
- 4623 (ii) the department's policy for notifying an [inmate's] incarcerated individual's next of  
4624 kin after the [inmate's] incarcerated individual's in-custody death;
- 4625 (b) the department policies, procedures, and protocols:
- 4626 (i) for treatment of an [inmate] incarcerated individual experiencing withdrawal from  
4627 alcohol or substance use, including use of opiates;
- 4628 (ii) that relate to the department's provision, or lack of provision, of medications used  
4629 to treat, mitigate, or address an [inmate's] incarcerated individual's symptoms of withdrawal,  
4630 including methadone and all forms of buprenorphine and naltrexone; and
- 4631 (iii) that relate to screening, assessment, and treatment of an [inmate] incarcerated  
4632 individual for a substance use disorder or mental health disorder;
- 4633 (c) the number of [inmates] incarcerated individuals who gave birth and were  
4634 restrained in accordance with Section 64-13-46, including:
- 4635 (i) the types of restraints used; and
- 4636 (ii) whether the use of restraints was to prevent escape or to ensure the safety of the  
4637 [inmate] incarcerated individual, medical or corrections staff, or the public; and
- 4638 (d) any report the department provides or is required to provide under federal law or  
4639 regulation relating to [~~inmate deaths~~] an in-custody death.
- 4640 (3) The Commission on Criminal and Juvenile Justice shall:
- 4641 (a) compile the information from the reports described in Subsection (2);
- 4642 (b) omit or redact any identifying information of an [inmate] incarcerated individual in  
4643 the compilation to the extent omission or redaction is necessary to comply with state and  
4644 federal law; and
- 4645 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim  
4646 Committee and the Utah Substance Use and Mental Health Advisory Council before November

4647 1 of each year.

4648 (4) The Commission on Criminal and Juvenile Justice may not provide access to or use  
4649 the department's policies, procedures, or protocols submitted under this section in a manner or  
4650 for a purpose not described in this section.

4651 Section 79. Section **64-13-46** is amended to read:

4652 **64-13-46. Pregnant incarcerated individuals.**

4653 (1) (a) If the staff of a correctional facility knows or has reason to believe that an  
4654 [inmate] incarcerated individual is pregnant, the staff, when restraining the [inmate]  
4655 incarcerated individual, shall use the least restrictive restraints necessary to ensure the safety  
4656 and security of the [inmate] incarcerated individual and others.

4657 (b) This requirement shall continue during postpartum recovery and any transport to or  
4658 from a correctional facility.

4659 (2) The staff of a correctional facility may not use restraints on an [inmate] incarcerated  
4660 individual during labor and childbirth unless a correctional staff member makes an  
4661 individualized determination that there are compelling grounds to believe that the [inmate]  
4662 incarcerated individual presents:

4663 (a) an immediate and serious risk of harm to herself, medical staff, correctional staff, or  
4664 the public; or

4665 (b) a substantial risk of escape that cannot reasonably be reduced by the use of other  
4666 existing means.

4667 (3) Notwithstanding Subsection (1) or (2), under no circumstances may shackles, leg  
4668 restraints, or waist restraints be used on an [inmate] incarcerated individual during labor and  
4669 childbirth or postpartum recovery while in a medical facility.

4670 (4) Correctional staff present during labor or childbirth shall:

4671 (a) be stationed in a location that offers the maximum privacy to the [inmate]  
4672 incarcerated individual, while taking into consideration safety and security concerns; and

4673 (b) be female, if practicable.

4674 (5) If restraints are authorized under Subsection (1) or (2), a written record of the  
4675 decision and use of the restraints shall be made that includes:

4676 (a) the correctional staff member's determination on the use of restraints;

4677 (b) the circumstances that necessitated the use of restraints;

- 4678 (c) the type of restraints that were used; and
- 4679 (d) the length of time the restraints were used.
- 4680 (6) The record created in Subsection (5):
- 4681 (a) shall be retained by the correctional facility for five years;
- 4682 (b) shall be available for public inspection with individually identifying information
- 4683 redacted; and

4684 (c) may not be considered a medical record under state or federal law.

4685 (7) As used in this section:

4686 (a) "Postpartum recovery" means, as determined by her physician, the period  
4687 immediately following delivery, including the entire period a woman is in the hospital or  
4688 medical facility after birth.

4689 (b) "Restraints" means any physical restraint or mechanical device used to control the  
4690 movement of an ~~[inmate's]~~ incarcerated individual's body or limbs, including flex cuffs, soft  
4691 restraints, shackles, or a convex shield.

4692 (c) "Shackles" means metal or iron restraints and includes hard metal handcuffs, leg  
4693 irons, belly chains, or a security or tether chain.

4694 Section 80. Section ~~64-13-47~~ is amended to read:

4695 **64-13-47. Prison Sexual Assault Prevention Program.**

4696 (1) The department shall, in accordance with Title 63G, Chapter 3, Utah  
4697 Administrative Rulemaking Act, make rules establishing policies and procedures regarding  
4698 sexual assaults that occur in correctional facilities.

4699 (2) The rules described in Subsection (1) shall:

4700 (a) require education and training, including:

4701 (i) providing to ~~[inmates]~~ incarcerated individuals, at intake and periodically,  
4702 department-approved, easy-to-understand information developed by the department on sexual  
4703 assault prevention, treatment, reporting, and counseling in consultation with community groups  
4704 with expertise in sexual assault prevention, treatment, reporting, and counseling; and

4705 (ii) providing sexual-assault-specific training to department mental health professionals  
4706 and all employees who have direct contact with ~~[inmates]~~ incarcerated individuals regarding  
4707 treatment and methods of prevention and investigation;

4708 (b) require reporting of sexual assault, including:



- 4709 (i) ensuring the confidentiality of [inmate] incarcerated individual sexual assault  
4710 complaints and the protection of [inmates] incarcerated individuals who make complaints of  
4711 sexual assault; and
- 4712 (ii) prohibiting retaliation and disincentives for reporting sexual assault;
- 4713 (c) require safety and care for victims, including:
- 4714 (i) providing, in situations in which there is reason to believe that a sexual assault has  
4715 occurred, reasonable and appropriate measures to ensure the victim's safety by separating the  
4716 victim from the assailant, if known;
- 4717 (ii) providing acute trauma care for sexual assault victims, including treatment of  
4718 injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;
- 4719 (iii) providing confidential mental health counseling for victims of sexual assault,  
4720 including access to outside community groups or victim advocates that have expertise in sexual  
4721 assault counseling, and enable confidential communication between [inmates] incarcerated  
4722 individuals and those organizations and advocates; and
- 4723 (iv) monitoring victims of sexual assault for suicidal impulses, post-traumatic stress  
4724 disorder, depression, and other mental health consequences resulting from the sexual assault;
- 4725 (d) require investigations and staff discipline, including:
- 4726 (i) requiring all employees to report any knowledge, suspicion, or information  
4727 regarding an incident of sexual assault to the executive director or designee, and require  
4728 disciplinary action for employees who fail to report as required;
- 4729 (ii) requiring investigations described in Subsection (3);
- 4730 (iii) requiring corrections investigators to submit all completed sexual assault  
4731 allegations to the executive director or the executive director's designee, who must then submit  
4732 any substantiated findings that may constitute a crime under state law to the district attorney  
4733 with jurisdiction over the facility in which the alleged sexual assault occurred; and
- 4734 (iv) requiring employees to be subject to disciplinary sanctions up to and including  
4735 termination for violating agency sexual assault policies, with termination the presumptive  
4736 disciplinary sanction for employees who have engaged in sexual assault, consistent with  
4737 constitutional due process protections and state personnel laws and rules; and
- 4738 (e) require data collection and reporting, including as provided in Subsection (4).
- 4739 (3) (a) An investigator trained in the investigation of sex crimes shall conduct the

4740 investigation of a sexual assault involving an [inmate] incarcerated individual.

4741 (b) The investigation shall include:

4742 (i) using a forensic rape kit, if appropriate;

4743 (ii) questioning suspects and witnesses; and

4744 (iii) gathering and preserving relevant evidence.

4745 (4) The department shall:

4746 (a) collect and report data regarding all allegations of sexual assault from each  
4747 correctional facility in accordance with the federal Prison Rape Elimination Act of 2003, Pub.

4748 L 108-79, as amended; and

4749 (b) annually report the data described in Subsection (4)(a) to the Law Enforcement and  
4750 Criminal Justice Interim Committee.

4751 Section 81. Section ~~64-13-48~~ is amended to read:

4752 **64-13-48. Educational and career-readiness programs.**

4753 (1) The department shall, in accordance with Subsection ~~64-13-6(1)(c)~~, ensure that  
4754 appropriate evidence-based and evidence-informed educational or career-readiness programs  
4755 are made available to an [inmate] incarcerated individual as soon as practicable after the  
4756 creation of the [inmate's] incarcerated individual's case action plan.

4757 (2) The department shall provide incarcerated women with substantially equivalent  
4758 educational and career-readiness opportunities as incarcerated men.

4759 (3) Before an [inmate] incarcerated individual begins an educational or  
4760 career-readiness program, the department shall provide reasonable access to resources  
4761 necessary for an [inmate] incarcerated individual to apply for grants or other available financial  
4762 aid that may be available to pay for the [inmate's] incarcerated individual's program.

4763 (4) (a) The department shall consider an [inmate's] incarcerated individual's current  
4764 participation in an educational or career-readiness program when the department makes a  
4765 decision with regard to an [inmate's] incarcerated individual's:

4766 (i) transfer to another area or facility; or

4767 (ii) appropriate disciplinary sanction.

4768 (b) When possible, the department shall use best efforts to allow an [inmate]  
4769 incarcerated individual to continue the [inmate's] incarcerated individual's participation in an  
4770 educational or career-readiness program while the facility is under lockdown, quarantine, or a

4771 similar status.

4772 (5) (a) The department shall maintain records on an [inmate's] incarcerated individual's  
4773 educational progress, including completed life skills, certifications, and credit- and  
4774 non-credit-bearing courses, made while the [inmate] incarcerated individual is incarcerated.

4775 (b) The department shall facilitate the transfer of information related to the [inmate's]  
4776 incarcerated individual's educational process upon the [inmate's] incarcerated individual's  
4777 release, including the [inmate's] incarcerated individual's post-release contact information and  
4778 the records described in Subsection (5)(a), to:

4779 (i) the [inmate] incarcerated individual; or

4780 (ii) an entity that the [inmate] incarcerated individual has authorized to receive the  
4781 [inmate's] incarcerated individual's records or post-release contact information, including an  
4782 institution:

4783 (A) from which the [inmate] incarcerated individual received educational instruction  
4784 while the [inmate] incarcerated individual was incarcerated; or

4785 (B) at which the [inmate] incarcerated individual plans to continue the [inmate's]  
4786 incarcerated individual's post-incarceration education.

4787 (6) Beginning May 1, 2023, the department shall provide an annual report to the  
4788 Higher Education Appropriations Subcommittee regarding educational and career-readiness  
4789 programs for [inmates] incarcerated individuals, which shall include:

4790 (a) the number of [inmates] incarcerated individuals who are participating in an  
4791 educational or career-readiness program, including an accredited postsecondary education  
4792 program;

4793 (b) the percentage of [inmates] incarcerated individuals who are participating in an  
4794 educational or career-readiness program as compared to the total [inmate] incarcerated  
4795 individual population;

4796 (c) [inmate] incarcerated individual program completion and graduation data, including  
4797 the number of completions and graduations in each educational or career-readiness program;

4798 (d) the potential effect of educational or career-readiness programs on recidivism, as  
4799 determined by a comparison of:

4800 (i) the total number of [inmates] incarcerated individuals who return to incarceration  
4801 after a previous incarceration; and

4802 (ii) the number of [inmates] incarcerated individuals who return to incarceration after a  
4803 previous incarceration who participated in or completed an educational or career-readiness  
4804 program;

4805 (e) the number of [inmates] incarcerated individuals who were transferred to a different  
4806 facility while currently participating in an educational or career-readiness program, including  
4807 the number of [inmates] incarcerated individuals who were unable to continue a program after  
4808 a transfer to a different facility; and

4809 (f) the department's:

4810 (i) recommendation for resources that may increase [inmates'] incarcerated individuals'  
4811 access to and participation in an educational or career-readiness program; and

4812 (ii) estimate of how many additional [inmates] incarcerated individuals would  
4813 participate in an educational or career-readiness program if the resources were provided.

4814 (7) The department may make rules in accordance with Section [64-13-10](#) and Title  
4815 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this  
4816 section.

4817 Section 82. Section [64-13-49](#) is enacted to read:

4818 **[64-13-49](#). **Incarcerated individual medical notification.****

4819 (1)

4820 As used in this section, "health care facility" means the same as that term is defined in Section  
4821 [26-21-2](#).

4822 (2) Upon intake of an incarcerated individual, a correctional facility shall provide the  
4823 incarcerated individual with a form that allows the incarcerated individual to designate a  
4824 contact to whom the correctional facility may release the incarcerated individual's medical  
4825 information in compliance with applicable federal law and Title 63G, Chapter 2, Government  
4826 Records Access and Management Act.

4827 (3) A correctional facility shall, without compromising an investigation:

4828 (a) attempt to notify an incarcerated individual's designated contact that the  
4829 incarcerated individual sustained a serious injury or contracted a serious illness within five  
4830 days after:

4831 (i) the day on which the incarcerated individual sustains the serious injury or contracts  
4832 the serious illness; or

4833 (ii) if the incarcerated individual is transferred to a health care facility as a result of the  
4834 serious injury or serious illness, the day on which the incarcerated individual is released from  
4835 the health care facility;

4836 (b) attempt to notify the designated contact within 24 hours after the death of the  
4837 incarcerated individual and include the manner of death in the notification, if known; or

4838 (c) attempt to notify the designated contact if the incarcerated individual's physician  
4839 determines notification is necessary because the incarcerated individual has a medical  
4840 condition that:

4841 (i) renders the incarcerated individual incapable of making health care decisions; or

4842 (ii) may result in the incarcerated individual reaching end-of-life.

4843 (4) The notification described in Subsection (3)(a) shall, without compromising an  
4844 investigation, describe:

4845 (a) the serious injury or serious illness;

4846 (b) the extent of the serious injury or serious illness;

4847 (c) the medical treatment plan; and

4848 (d) if applicable, the medical treatment recovery plan.

4849 (5) The department shall create a policy that a staff member provide the notification  
4850 described in Subsection (3) in a compassionate and professional manner.

4851 Section 83. Section **64-13d-103** is amended to read:

4852 **64-13d-103. Private contracts.**

4853 (1) The department may contract with a contractor to finance, acquire, construct, lease,  
4854 or provide full or partial correctional services.

4855 (2) Before entering into a contract, the department shall:

4856 (a) hold a public hearing within the county or municipality where the facility is to be  
4857 sited for the purpose of obtaining public comment;

4858 (b) give consideration to the input received at the public hearing when making  
4859 decisions regarding the awarding of a contract and the contract process; and

4860 (c) have received written notification from the legislative body of the municipality or  
4861 county where the proposed facility is to be sited, stating that the legislative body has agreed to  
4862 the establishment of the facility within its boundaries.

4863 (3) Before entering into a contract, the department shall require that the contractor

4864 proposing to provide the services demonstrate that it has:

4865 (a) management personnel with the qualifications and experience necessary to carry out  
4866 the terms of the contract;

4867 (b) sufficient financial resources to:

4868 (i) complete and operate the facility;

4869 (ii) provide indemnification for liability arising from the operation of the facility; and

4870 (iii) provide reimbursement as required under Section [64-13d-105](#);

4871 (c) the ability and resources to meet applicable court orders, correctional standards as  
4872 defined by the department, and constitutional requirements; and

4873 (d) liability insurance adequate to protect the state, the political subdivision where the  
4874 facility is located, and the officers and employees of the facility from all claims and losses  
4875 incurred as a result of action or inaction by the contractor or its employees.

4876 (4) A contract awarded for the operation of a facility shall be consistent with  
4877 commonly accepted correctional practices as defined by the department and shall include:

4878 (a) adequate internal and perimeter security to protect the public, employees, and  
4879 ~~[inmates]~~ incarcerated individuals, based on the security level of the inmate population;

4880 (b) work, training, educational, and treatment programs for ~~[inmates]~~ incarcerated  
4881 individuals;

4882 (c) a minimum correctional officer to ~~[inmate]~~ incarcerated individual ratio;

4883 (d) imposition of ~~[inmate]~~ incarcerated individual discipline in accordance with  
4884 applicable state law and department policy; and

4885 (e) adequate food, clothing, housing, and medical care for ~~[inmates]~~ incarcerated  
4886 individuals.

4887 Section 84. Section **64-13d-104** is amended to read:

4888 **64-13d-104. Use of force -- Private prison employees.**

4889 (1) Employees of a facility contractor may use reasonable force to the extent allowed  
4890 by state law. The use of force, power, and authority shall be limited to:

4891 (a) the grounds of a facility operated in whole or in part by their employer;

4892 (b) when transporting ~~[inmates]~~ incarcerated individuals; and

4893 (c) when pursuing escapees from the facility.

4894 (2) Training standards for employees of a contractor shall be in accordance with the

4895 standards in Section 64-13-24.

4896 (3) Subsection (2) does not confer peace officer status on the contractor or its  
4897 employees.

4898 Section 85. Section 64-13d-105 is amended to read:

4899 **64-13d-105. Restricted powers and duties of contractors.**

4900 (1) A contract for correctional services may not authorize a contractor to perform the  
4901 following:

4902 (a) calculate or establish [inmate] incarcerated individual release and parole eligibility  
4903 dates;

4904 (b) grant, deny, or revoke sentence credit;

4905 (c) approve [inmates] incarcerated individuals for furlough, work release, or parole; or

4906 (d) approve the types of work [inmates] incarcerated individuals may perform.

4907 (2) A contractor shall reimburse amounts incurred by local and state agencies for  
4908 providing assistance with riots, escapes, transportation, medical services, and legal services  
4909 regarding the operation of the facility.

4910 (3) A contractor shall have in place a written plan approved by the department  
4911 regarding the reporting and management of escapes, riots, and other emergency situations.

4912 Section 86. Section 64-13d-106 is amended to read:

4913 **64-13d-106. Monitoring contracts.**

4914 (1) The executive director or his designee shall monitor the performance of all facilities  
4915 incarcerating [inmates] individuals under the jurisdiction of the department.

4916 (2) The executive director or his designee shall have unlimited access to all facilities,  
4917 records, and staff for monitoring purposes.

4918 (3) The executive director may appoint a monitor to inspect a facility. The monitor  
4919 shall have unlimited access to all facilities, records, and staff for monitoring purposes.

4920 (4) The department shall be reimbursed by the entity operating the facility for that  
4921 portion of the salary and expenses of the monitor attributable to monitoring the particular  
4922 facility.

4923 (5) Monitoring consists of ensuring that:

4924 (a) all state laws, department rules, and contractual obligations applicable to the facility  
4925 are being met; and

4926 (b) all operations are effective, efficient, and economical.

4927 Section 87. Section **64-13d-107** is amended to read:

4928 **64-13d-107. Facility construction -- Housing out-of-state incarcerated**  
4929 **individuals.**

4930 (1) A contractor may not expand its original housing capacity without the approval of  
4931 the:

4932 (a) Legislature; and

4933 (b) county or municipal legislative body within whose jurisdiction the facility is  
4934 located.

4935 (2) A contractor may not incarcerate out-of-state [~~inmates~~] incarcerated individuals in a  
4936 facility operated in the state, except in accordance with any interstate compact of which Utah is  
4937 a party.

4938 Section 88. Section **64-13e-102** is amended to read:

4939 **64-13e-102. Definitions.**

4940 As used in this chapter:

4941 (1) "Actual county daily incarceration rate" means the median amount of jail daily  
4942 incarceration costs based on the data submitted by counties in accordance with Section  
4943 [64-13e-104\(6\)\(b\)](#).

4944 (2) "Actual state daily incarceration rate" means the average daily incarceration rate,  
4945 calculated by the department based on the previous three fiscal years, that reflects the following  
4946 expenses incurred by the department for housing an [~~inmate~~] incarcerated individual:

4947 (a) executive overhead;

4948 (b) administrative overhead;

4949 (c) transportation overhead;

4950 (d) division overhead; and

4951 (e) motor pool expenses.

4952 (3) "Alternative treatment" means:

4953 (a) evidence-based cognitive behavioral therapy; or

4954 (b) a certificate-based program provided by:

4955 (i) an institution of higher education described in Subsection [53B-1-102\(1\)\(b\)](#); or

4956 (ii) a degree-granting institution acting in the degree-granting institution's technical



4957 education role described in Section [53B-2a-201](#).

4958 (4) "Annual [\[inmate\]](#) incarcerated individual jail days" means the total number of state  
4959 probationary [\[inmates\]](#) incarcerated individuals housed in a county jail each day for the  
4960 preceding fiscal year.

4961 (5) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in  
4962 Section [63M-7-201](#).

4963 (6) "Department" means the Department of Corrections.

4964 (7) "Division of Finance" means the Division of Finance, created in Section  
4965 [63A-3-101](#).

4966 (8) "Final county daily incarceration rate" means the amount equal to:

4967 (a) the amount appropriated by the Legislature for the purpose of making payments to  
4968 counties under Section [64-13e-104](#); divided by

4969 (b) the average annual [\[inmate\]](#) incarcerated individual jail days for the preceding five  
4970 fiscal years.

4971 (9) "Jail daily incarceration costs" means the following daily costs incurred by a county  
4972 jail for housing a state probationary [\[inmate\]](#) incarcerated individual on behalf of the  
4973 department:

4974 (a) executive overhead;

4975 (b) administrative overhead;

4976 (c) transportation overhead;

4977 (d) division overhead; and

4978 (e) motor pool expenses.

4979 (10) "State [\[inmate\]](#) incarcerated individual" means an individual, other than a state  
4980 probationary [\[inmate\]](#) incarcerated individual or state parole [\[inmate\]](#) incarcerated individual,  
4981 who is committed to the custody of the department.

4982 (11) "State parole [\[inmate\]](#) incarcerated individual" means an individual who is:

4983 (a) on parole, as defined in Section [77-27-1](#); and

4984 (b) housed in a county jail for a reason related to the individual's parole.

4985 (12) "State probationary [\[inmate\]](#) incarcerated individual" means a felony probationer  
4986 sentenced to time in a county jail under Subsection [77-18-105](#)(6).

4987 (13) "Treatment program" means:

- 4988 (a) an alcohol treatment program;  
4989 (b) a substance abuse treatment program;  
4990 (c) a sex offender treatment program; or  
4991 (d) an alternative treatment program.

4992 Section 89. Section **64-13e-103** is amended to read:

4993 **64-13e-103. Contracts for housing state incarcerated individuals.**

4994 (1) Subject to Subsection (6), the department may contract with a county to house state  
4995 [inmates] incarcerated individuals in a county or other correctional facility.

4996 (2) The department shall give preference for placement of state [inmates] incarcerated  
4997 individuals, over private entities, to county correctional facility bed spaces for which the  
4998 department has contracted under Subsection (1).

4999 (3) (a) The compensation rate for housing state [inmates] incarcerated individuals  
5000 pursuant to a contract described in Subsection (1) shall be:

5001 (i) except as provided in Subsection (3)(a)(ii), 83.19% of the actual state daily  
5002 incarceration rate for beds in a county that, pursuant to the contract, are dedicated to a  
5003 treatment program for state [inmates] incarcerated individuals, if the treatment program is  
5004 approved by the department under Subsection (3)(c);

5005 (ii) 74.18% of the actual state daily incarceration rate for beds in a county that,  
5006 pursuant to the contract, are dedicated to an alternative treatment program for state [inmates]  
5007 incarcerated individuals, if the alternative treatment program is approved by the department  
5008 under Subsection (3)(c); and

5009 (iii) 66.23% of the actual state daily incarceration rate for beds in a county other than  
5010 the beds described in Subsections (3)(a)(i) and (ii).

5011 (b) The department shall:

5012 (i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
5013 Rulemaking Act, that establish standards that a treatment program is required to meet before  
5014 the treatment program is considered for approval for the purpose of a county receiving payment  
5015 based on the rate described in Subsection (3)(a)(i) or (ii); and

5016 (ii) determine on an annual basis, based on appropriations made by the Legislature for  
5017 the contracts described in this section, whether to approve a treatment program that meets the  
5018 standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment

5019 based on the rate described in Subsection (3)(a)(i) or (ii).

5020 (c) The department may not approve a treatment program for the purpose of a county  
5021 receiving payment based on the rate described in Subsection (3)(a)(i) or (ii), unless:

5022 (i) the program meets the standards established under Subsection (3)(b)(i);

5023 (ii) the department determines that the Legislature has appropriated sufficient funds to:

5024 (A) pay the county that provides the treatment program at the rate described in  
5025 Subsection (3)(a)(i) or (ii); and

5026 (B) pay each county that does not provide a treatment program an amount per state  
5027 [inmate] incarcerated individual that is not less than the amount per state [inmate] incarcerated  
5028 individual received for the preceding fiscal year by a county that did not provide a treatment  
5029 program; and

5030 (iii) the department determines that the treatment program is needed by the department  
5031 at the location where the treatment program will be provided.

5032 (4) Compensation to a county for state [inmates] incarcerated individuals incarcerated  
5033 under this section shall be made by the department.

5034 (5) Counties that contract with the department under Subsection (1) shall, on or before  
5035 June 30 of each year, submit a report to the department that includes:

5036 (a) the number of state [inmates] incarcerated individuals the county housed under this  
5037 section; and

5038 (b) the total number of state [inmate] incarcerated individual days of incarceration that  
5039 were provided by the county.

5040 (6) Except as provided under Subsection (7), the department may not enter into a  
5041 contract described under Subsection (1), unless:

5042 (a) beginning July 1, 2023, the county jail within the county is in compliance with the  
5043 reporting requirements described in Subsection [17-22-32\(2\)](#); and

5044 (b) the Legislature has previously passed a joint resolution that includes the following  
5045 information regarding the proposed contract:

5046 (i) the approximate number of beds to be contracted;

5047 (ii) the daily rate at which the county is paid to house a state [inmate] incarcerated  
5048 individual;

5049 (iii) the approximate amount of the county's long-term debt; and

5050 (iv) the repayment time of the debt for the facility where the [inmates] incarcerated  
5051 individuals are to be housed.

5052 (7) The department may enter into a contract with a county government to house  
5053 [inmates] incarcerated individuals without complying with the approval process described in  
5054 Subsection (6) only if the county facility was under construction, or already in existence, on  
5055 March 16, 2001.

5056 (8) Any resolution passed by the Legislature under Subsection (6) does not bind or  
5057 obligate the Legislature or the department regarding the proposed contract.

5058 Section 90. Section **64-13e-103.2** is amended to read:

5059 **64-13e-103.2. State daily incarceration rate -- Limits -- Payments to jails.**

5060 (1) Notwithstanding Sections **64-13e-103** and **64-13e-103.1**, the actual state daily  
5061 incarceration rate shall be \$85.27. This rate shall apply to [inmates] incarcerated individuals  
5062 under Section **64-13e-103** and probationary and parole [inmates] incarcerated individuals under  
5063 Section **64-13e-104**.

5064 (2) Notwithstanding Subsection **64-13e-103**(3)(a), the number of jail beds contracted  
5065 for shall be 1450 at the base rate of 71.57%, with the exception of:

5066 (a) the beds set aside for Subsection **64-13e-103**(3)(a)(i) which shall be 434 beds and  
5067 shall be reimbursed at 88.53% of the actual state daily incarceration rate; and

5068 (b) the beds set aside for Subsection **64-13e-103**(3)(a)(ii) which shall be 235 beds and  
5069 shall be reimbursed at 79.52% of the actual state daily incarceration rate.

5070 (3) Notwithstanding Subsection **64-13e-104**(9), the five year average state probationary  
5071 or parole [inmate] incarcerated individual days is set at 300,000 days.

5072 (4) Notwithstanding Subsection **64-13e-104**(2), within funds appropriated by the  
5073 Legislature for this purpose, the Division of Finance shall pay a county that houses a state  
5074 probationary [inmate] incarcerated individual or a state parole [inmate] incarcerated individual  
5075 at a rate of 50% of the actual state daily incarceration rate.

5076 (5) Expenditures for Section **64-13e-103** shall be \$35,173,900 annually.

5077 (6) Expenditures for Section **64-13e-104** shall be \$12,790,700 annually.

5078 Section 91. Section **64-13e-104** is amended to read:

5079 **64-13e-104. Housing of state probationary incarcerated individuals or state**  
5080 **parole incarcerated individuals -- Payments.**

5081 (1) (a) A county shall accept and house a state probationary [~~inmate~~] incarcerated  
5082 individual or a state parole [~~inmate~~] incarcerated individual in a county correctional facility,  
5083 subject to available resources.

5084 (b) A county may release a number of [~~inmates~~] incarcerated individuals from a county  
5085 correctional facility, but not to exceed the number of state probationary [~~inmates~~] incarcerated  
5086 individuals in excess of the number of [~~inmates~~] incarcerated individuals funded by the  
5087 appropriation authorized in Subsection (2) if:

5088 (i) the state does not fully comply with the provisions of Subsection (9) for the most  
5089 current fiscal year; or

5090 (ii) funds appropriated by the Legislature for this purpose are less than 50% of the  
5091 actual county daily incarceration rate.

5092 (2) Within funds appropriated by the Legislature for this purpose, the Division of  
5093 Finance shall pay a county that houses a state probationary [~~inmate~~] incarcerated individual or  
5094 a state parole [~~inmate~~] incarcerated individual at a rate of 47.89% of the actual county daily  
5095 incarceration rate.

5096 (3) Funds appropriated by the Legislature under Subsection (2):

5097 (a) are nonlapsing;

5098 (b) may only be used for the purposes described in Subsection (2) and Subsection (10);

5099 and

5100 (c) may not be used for:

5101 (i) the costs of administering the payment described in this section; or

5102 (ii) payment of contract costs under Section [64-13e-103](#).

5103 (4) The costs described in Subsection (3)(c)(i) shall be covered by legislative  
5104 appropriation.

5105 (5) (a) The Division of Finance shall administer the payment described in Subsection  
5106 (2) and Subsection (10).

5107 (b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G,  
5108 Chapter 3, Utah Administrative Rulemaking Act, establish procedures for collecting data from  
5109 counties for the purpose of completing the calculations described in this section.

5110 (c) Notwithstanding any other provision of this section, CCJJ shall adjust the amount  
5111 of the payments described in Subsection (7)(b), on a pro rata basis, to ensure that the total

5112 amount of the payments made does not exceed the amount appropriated by the Legislature for  
5113 the payments.

5114 (6) Each county that receives the payment described in Subsection (2) and Subsection  
5115 (10) shall:

5116 (a) on at least a monthly basis, submit a report to CCJJ that includes:

5117 (i) the number of state probationary [~~inmates~~] incarcerated individuals and state parole  
5118 [~~inmates~~] incarcerated individuals the county housed under this section;

5119 (ii) the total number of state probationary [~~inmate~~] incarcerated individual days of  
5120 incarceration and state parole [~~inmate~~] incarcerated individual days of incarceration that were  
5121 provided by the county;

5122 (iii) the total number of offenders housed pursuant to Subsection 64-13-21(2)(b); and

5123 (iv) the total number of days of incarceration of offenders housed pursuant to  
5124 Subsection 64-13-21(2)(b); and

5125 (b) before September 15 of every third year beginning in 2022, calculate and inform  
5126 CCJJ of the county's jail daily incarceration costs for the preceding fiscal year.

5127 (7) (a) On or before September 30 of each year, CCJJ shall:

5128 (i) compile the information from the reports described in Subsection (6)(a) that relate  
5129 to the preceding state fiscal year and provide a copy of the compilation to each county that  
5130 submitted a report; and

5131 (ii) calculate:

5132 (A) the actual county incarceration rate, based on the most recent year that data was  
5133 reported in accordance with Subsection (6)(b); and

5134 (B) the final county incarceration rate.

5135 (b) On or before October 15 of each year, CCJJ shall inform the Division of Finance  
5136 and each county of:

5137 (i) the actual county incarceration rate;

5138 (ii) the final county incarceration rate; and

5139 (iii) the exact amount of the payment described in this section that shall be made to  
5140 each county.

5141 (8) On or before December 15 of each year, the Division of Finance shall distribute the  
5142 payment described in Subsection (7)(b) in a single payment to each county.

5143 (9) (a) The amount paid to each county under Subsection (8) shall be calculated on a  
5144 pro rata basis, based on the average number of state probationary [~~inmate~~] incarcerated  
5145 individual days of incarceration and the average state parole [~~inmate~~] incarcerated individual  
5146 days of incarceration that were provided by each county for the preceding five state fiscal  
5147 years; and

5148 (b) if funds are available, the total number of days of incarceration of offenders housed  
5149 pursuant to Subsection 64-13-21(2)(b).

5150 (10) If funds appropriated under Subsection (2) remain after payments are made  
5151 pursuant to Subsection (8), the Division of Finance shall pay a county that houses in its jail a  
5152 person convicted of a felony who is on probation or parole and who is incarcerated pursuant to  
5153 Subsection 64-13-21(2)(b) on a pro rata basis not to exceed 50% of the actual county daily  
5154 incarceration rate.

5155 Section 92. Section 64-13e-105 is amended to read:

5156 **64-13e-105. Subcommittee on Jail Contracting and Reimbursement -- Purpose --**  
5157 **Responsibilities -- Membership.**

5158 (1) There is created within the Commission on Criminal and Juvenile Justice, the  
5159 Subcommittee on Jail Contracting and Reimbursement consisting of the individuals listed in  
5160 Subsection (3).

5161 (2) The subcommittee shall meet at least quarterly to review, discuss, and make  
5162 recommendations for:

5163 (a) the state daily incarceration rate, described in Section 64-13e-103.1;

5164 (b) the county daily incarceration rate;

5165 (c) jail contracting and jail reimbursement processes and goals, including the creation  
5166 of a comprehensive statewide system of jail contracting and reimbursement;

5167 (d) developing a partnership between the state and counties to create common goals for  
5168 housing state [~~inmates~~] incarcerated individuals;

5169 (e) calculations for the projected number of beds needed;

5170 (f) programming for [~~inmates~~] incarcerated individuals while incarcerated;

5171 (g) proposals to reduce recidivism;

5172 (h) enhancing partnerships to improve law enforcement and incarceration programs;

5173 (i) [~~inmate~~] incarcerated individuals transportation costs; and

- 5174 (j) the compilation described in Subsection [64-13e-104](#)(7).
- 5175 (3) The membership of the subcommittee shall consist of the following nine members:
- 5176 (a) as designated by the Utah Sheriffs Association:
- 5177 (i) one sheriff of a county that is currently under contract with the department to house
- 5178 state ~~[inmates]~~ incarcerated individuals; and
- 5179 (ii) one sheriff of a county that is currently receiving reimbursement from the
- 5180 department for housing state probationary ~~[inmates]~~ incarcerated individuals or state parole
- 5181 ~~[inmates]~~ incarcerated individuals;
- 5182 (b) the executive director of the department or the executive director's designee;
- 5183 (c) as designated by the Utah Association of Counties:
- 5184 (i) one member of the legislative body of one county that is currently under contract
- 5185 with the department to house state ~~[inmates]~~ incarcerated individuals; and
- 5186 (ii) one member of the legislative body of one county that is currently receiving
- 5187 reimbursement from the department for housing ~~[state probationary inmates or state parole~~
- 5188 ~~inmates]~~ individuals on probation or individuals on parole;
- 5189 (d) the executive director of the Commission on Criminal and Juvenile Justice or the
- 5190 executive director's designee;
- 5191 (e) one member of the House of Representatives, appointed by the speaker of the
- 5192 House of Representatives;
- 5193 (f) one member of the Senate, appointed by the president of the Senate; and
- 5194 (g) the executive director of the Governor's Office of Planning and Budget or the
- 5195 executive director's designee.
- 5196 (4) The subcommittee shall report to the Law Enforcement and Criminal Justice
- 5197 Interim Committee in November 2022 and 2024 on progress and efforts to create a
- 5198 comprehensive statewide jail reimbursement and contracting system.
- 5199 (5) The subcommittee shall report to the Executive Offices and Criminal Justice
- 5200 Appropriations Subcommittee not later than October 31 in 2022, 2023, and 2024 on costs
- 5201 associated with creating a comprehensive statewide jail reimbursement and contracting system.
- 5202 (6) (a) A member who is not a legislator may not receive compensation or benefits for
- 5203 the member's service, but may receive per diem and travel expenses as allowed in:
- 5204 (i) Section [63A-3-106](#);



- 5205 (ii) Section 63A-3-107; and
- 5206 (iii) rules made by the Division of Finance according to Sections 63A-3-106 and
- 5207 63A-3-107.
- 5208 (b) Compensation and expenses of a member who is a legislator are governed by
- 5209 Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- 5210 Section 93. Section 64-13g-101 is amended to read:
- 5211 **64-13g-101. Definitions.**
- 5212 As used in this chapter:
- 5213 (1) "Average daily population" means the average daily number of individuals on
- 5214 parole or felony probation in the region during the applicable fiscal year.
- 5215 (2) "Baseline parole employment rate" means the average of the parole employment
- 5216 rates for fiscal years 2023, 2024, and 2025.
- 5217 (3) "Baseline probation employment rate" means the average of the probation
- 5218 employment rates for fiscal years 2023, 2024, and 2025.
- 5219 (4) "Department" means the Department of Corrections.
- 5220 (5) "Eligible employment" means an occupation, or combined occupations, that:
- 5221 (a) consist of at least 130 hours in a 30-day period; and
- 5222 (b) are verified via paystubs, employment letters, contracts, or other reliable methods,
- 5223 as determined by the department.
- 5224 (6) "Evidence-based" means a supervision policy, procedure, program, or practice
- 5225 demonstrated by scientific research to reduce recidivism of individuals on parole or felony
- 5226 probation.
- 5227 (7) "Marginal cost of incarceration" means the total costs of incarceration, per [inmate]
- 5228 incarcerated individual, that fluctuate based on [inmate] incarcerated individual population.
- 5229 (8) "Office" means the Governor's Office of Planning and Budget.
- 5230 (9) "Parole employment rate" means the percentage of individuals on parole who held
- 5231 eligible employment for at least nine months in a one-year period, if at least a portion of the
- 5232 nine-months was during the preceding fiscal year.
- 5233 (10) "Probation employment rate" means the percentage of individuals on felony
- 5234 probation who held eligible employment for at least nine months in a one-year period, if at
- 5235 least a portion of the nine-months was during the preceding fiscal year.

5236 (11) "Program" means the Adult Probation and Parole Employment Incentive Program,  
5237 created in Section [64-13g-102](#).

5238 (12) "Region" means one of the geographic regions into which the Department of  
5239 Corrections has divided the state for purposes of supervising adult probation and parole.

5240 (13) "Restricted account" means the Employment Incentive Restricted Account created  
5241 in Section [64-13g-103](#).

5242 Section 94. Section **76-3-201** is amended to read:

5243 **76-3-201. Sentences or combination of sentences allowed -- Restitution and other**  
5244 **costs -- Civil penalties.**

5245 (1) As used in this section:

5246 (a) (i) "Convicted" means:

5247 (A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a  
5248 mental illness; or

5249 (B) having received a judgment of guilty or a judgment of guilty with a mental illness.

5250 (ii) "Convicted" does not include an adjudication of an offense under Section [80-6-701](#).

5251 (b) "Restitution" means the same as that term is defined in Section [77-38b-102](#).

5252 (2) Within the limits provided by this chapter, a court may sentence an individual  
5253 convicted of an offense to any one of the following sentences, or combination of the following  
5254 sentences:

5255 (a) to pay a fine;

5256 (b) to removal or disqualification from public or private office;

5257 (c) except as otherwise provided by law, to probation in accordance with Section  
5258 [77-18-105](#);

5259 (d) to imprisonment;

5260 (e) on or after April 27, 1992, to life in prison without parole; or

5261 (f) to death.

5262 (3) (a) This chapter does not deprive a court of authority conferred by law:

5263 (i) to forfeit property;

5264 (ii) to dissolve a corporation;

5265 (iii) to suspend or cancel a license;

5266 (iv) to permit removal of an individual from office;

- 5267 (v) to cite for contempt; or
- 5268 (vi) to impose any other civil penalty.
- 5269 (b) A court may include a civil penalty in a sentence.
- 5270 (4) In addition to any other sentence that a sentencing court may impose, the court shall
- 5271 order an individual to:
- 5272 (a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution
- 5273 Act;
- 5274 (b) subject to Subsection (5) and Section 77-32b-104, pay the cost of any government
- 5275 transportation if the individual was:
- 5276 (i) transported, in accordance with a court order, from one county to another county
- 5277 within the state;
- 5278 (ii) charged with a felony or a misdemeanor; and
- 5279 (iii) convicted of an offense;
- 5280 (c) subject to Section 77-32b-104, pay the cost expended by an appropriate
- 5281 governmental entity under Section 77-30-24 for the extradition of the individual if the
- 5282 individual:
- 5283 (i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve
- 5284 pending criminal charges; and
- 5285 (ii) is convicted of an offense in the county for which the individual is returned;
- 5286 (d) subject to Subsection (6) and Subsections 77-32b-104(2), (3), and (4), pay the cost
- 5287 of medical care, treatment, hospitalization, and related transportation, as described in Section
- 5288 17-50-319, that is provided by a county to the individual while the individual is in a county
- 5289 correctional facility before and after sentencing if:
- 5290 (i) the individual is convicted of an offense that results in incarceration in the county
- 5291 correctional facility; and
- 5292 (ii) (A) the individual is not a state ~~prisoner~~ incarcerated individual housed in the
- 5293 county correctional facility through a contract with the Department of Corrections; or
- 5294 (B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104
- 5295 if the individual is ~~[a state probationary inmate or a state parole inmate]~~ on probation or parole;
- 5296 and
- 5297 (e) pay any other cost that the court determines is appropriate under Section

5298 77-32b-104.

5299 (5) (a) The court may not order an individual to pay the costs of government  
5300 transportation under Subsection (4)(b) if:

5301 (i) the individual is charged with an infraction or a warrant is issued for an infraction  
5302 on a subsequent failure to appear; or

5303 (ii) the individual was not transported in accordance with a court order.

5304 (b) (i) The cost of governmental transportation under Subsection (4)(b) shall be  
5305 calculated according to the following schedule:

5306 (A) \$100 for up to 100 miles that an individual is transported;

5307 (B) \$200 for 100 miles to 200 miles that an individual is transported; and

5308 (C) \$350 for 200 miles or more that an individual is transported.

5309 (ii) The schedule under Subsection (5)(b)(i) applies to each individual transported  
5310 regardless of the number of individuals transported in a single trip.

5311 (6) The cost of medical care under Subsection (4)(d) does not include expenses  
5312 incurred by the county correctional facility in providing reasonable accommodation for an  
5313 [inmate] incarcerated individual qualifying as an individual with a disability as defined and  
5314 covered by the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including  
5315 medical and mental health treatment for the [inmate's] incarcerated individual's disability.

5316 Section 95. Section **76-3-202** is amended to read:

5317 **76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time**  
5318 **served on parole -- Discretion of Board of Pardons and Parole.**

5319 (1) Every individual committed to the state prison to serve an indeterminate term and,  
5320 after December 31, 2018, released on parole shall complete a term of parole that extends  
5321 through the expiration of the individual's maximum sentence unless the parole is earlier  
5322 terminated by the Board of Pardons and Parole in accordance with the supervision length  
5323 guidelines established by the Utah Sentencing Commission under Section **63M-7-404**, as  
5324 described in Subsection **77-27-5(7)**, to the extent the guidelines are consistent with the  
5325 requirements of the law.

5326 (2) (a) Except as provided in Subsection (2)(b), every individual committed to the state  
5327 prison to serve an indeterminate term and released on parole on or after October 1, 2015, but  
5328 before January 1, 2019, shall, upon completion of three years on parole outside of confinement

5329 and without violation, be terminated from the individual's sentence unless the parole is earlier  
5330 terminated by the Board of Pardons and Parole or is terminated pursuant to Section 64-13-21.

5331 (b) Every individual committed to the state prison to serve an indeterminate term and  
5332 later released on parole on or after July 1, 2008, but before January 1, 2019, and who was  
5333 convicted of any felony offense under Chapter 5, Offenses Against the Individual, or any  
5334 attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a  
5335 term of parole that extends through the expiration of the individual's maximum sentence,  
5336 unless the parole is earlier terminated by the Board of Pardons and Parole.

5337 (3) Every individual convicted of a second degree felony for violating Section  
5338 76-5-404, forcible sexual abuse; Section 76-5-404.1, sexual abuse of a child; or Section  
5339 76-5-404.3, aggravated sexual abuse of a child; or attempting, conspiring, or soliciting the  
5340 commission of a violation of any of those sections, and who is paroled before July 1, 2008,  
5341 shall, upon completion of 10 years parole outside of confinement and without violation, be  
5342 terminated from the sentence unless the individual is earlier terminated by the Board of  
5343 Pardons and Parole.

5344 (4) An individual who violates the terms of parole, while serving parole, for any  
5345 offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and  
5346 Parole be recommitted to prison to serve the portion of the balance of the term as determined  
5347 by the Board of Pardons and Parole, but not to exceed the maximum term.

5348 (5) An individual paroled following a former parole revocation may not be discharged  
5349 from the individual's sentence until:

5350 (a) the individual has served the applicable period of parole under this section outside  
5351 of confinement;

5352 (b) the individual's maximum sentence has expired; or

5353 (c) the Board of Pardons and Parole orders the individual to be discharged from the  
5354 sentence.

5355 (6) (a) All time served on parole, outside of confinement and without violation,  
5356 constitutes service toward the total sentence.

5357 (b) Any time an individual spends outside of confinement after commission of a parole  
5358 violation does not constitute service toward the total sentence unless the individual is  
5359 exonerated at a parole revocation hearing.

5360 (c) (i) Any time an individual spends in confinement awaiting a hearing before the  
5361 Board of Pardons and Parole or a decision by the board concerning revocation of parole  
5362 constitutes service toward the total sentence.

5363 (ii) In the case of exoneration by the board, the time spent is included in computing the  
5364 total parole term.

5365 (7) When a parolee causes the parolee's absence from the state without authority from  
5366 the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence,  
5367 avoidance, or evasion tolls the parole period.

5368 (8) (a) While on parole, time spent in confinement outside the state may not be credited  
5369 toward the service of any Utah sentence.

5370 (b) Time in confinement outside the state or in the custody of any tribal authority or the  
5371 United States government for a conviction obtained in another jurisdiction tolls the expiration  
5372 of the Utah sentence.

5373 (9) This section does not preclude the Board of Pardons and Parole from paroling or  
5374 discharging an ~~[inmate]~~ incarcerated individual at any time within the discretion of the Board  
5375 of Pardons and Parole unless otherwise specifically provided by law.

5376 (10) A parolee sentenced to lifetime parole may petition the Board of Pardons and  
5377 Parole for termination of lifetime parole.

5378 Section 96. Section **76-3-203.5** is amended to read:

5379 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

5380 (1) As used in this section:

5381 (a) "Felony" means any violation of a criminal statute of the state, any other state, the  
5382 United States, or any district, possession, or territory of the United States for which the  
5383 maximum punishment the offender may be subjected to exceeds one year in prison.

5384 (b) "Habitual violent offender" means a person convicted within the state of any violent  
5385 felony and who on at least two previous occasions has been convicted of a violent felony and  
5386 committed to either prison in Utah or an equivalent correctional institution of another state or  
5387 of the United States either at initial sentencing or after revocation of probation.

5388 (c) "Violent felony" means:

5389 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit  
5390 any of the following offenses punishable as a felony:

- 5391 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,  
 5392 Chapter 6, Part 1, Property Destruction;
- 5393 (B) assault by ~~[prisoner]~~ incarcerated individual, Section 76-5-102.5;
- 5394 (C) disarming a police officer, Section 76-5-102.8;
- 5395 (D) aggravated assault, Section 76-5-103;
- 5396 (E) aggravated assault by ~~[prisoner]~~ incarcerated individual, Section 76-5-103.5;
- 5397 (F) mayhem, Section 76-5-105;
- 5398 (G) stalking, Subsection 76-5-106.5(2);
- 5399 (H) threat of terrorism, Section 76-5-107.3;
- 5400 (I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);
- 5401 (J) commission of domestic violence in the presence of a child, Section 76-5-114;
- 5402 (K) abuse or neglect of a child with a disability, Section 76-5-110;
- 5403 (L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2,  
 5404 76-5-111.3, or 76-5-111.4;
- 5405 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 5406 (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
- 5407 (O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3,  
 5408 Kidnapping, Trafficking, and Smuggling;
- 5409 (P) rape, Section 76-5-402;
- 5410 (Q) rape of a child, Section 76-5-402.1;
- 5411 (R) object rape, Section 76-5-402.2;
- 5412 (S) object rape of a child, Section 76-5-402.3;
- 5413 (T) forcible sodomy, Section 76-5-403;
- 5414 (U) sodomy on a child, Section 76-5-403.1;
- 5415 (V) forcible sexual abuse, Section 76-5-404;
- 5416 (W) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child,  
 5417 Section 76-5-404.3;
- 5418 (X) aggravated sexual assault, Section 76-5-405;
- 5419 (Y) sexual exploitation of a minor, Section 76-5b-201;
- 5420 (Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 5421 (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;

5422 (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary  
5423 and Criminal Trespass;

5424 (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;

5425 (DD) theft by extortion under Subsection 76-6-406(2)(a) or (b);

5426 (EE) tampering with a witness under Subsection 76-8-508(1);

5427 (FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;

5428 (GG) tampering with a juror under Subsection 76-8-508.5(2)(c);

5429 (HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any  
5430 threat or by use of force theft by extortion has been committed pursuant to Subsections  
5431 76-6-406(2)(a), (b), and (i);

5432 (II) possession, use, or removal of explosive, chemical, or incendiary devices under  
5433 Subsections 76-10-306(3) through (6);

5434 (JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section  
5435 76-10-307;

5436 (KK) purchase or possession of a dangerous weapon or handgun by a restricted person  
5437 under Section 76-10-503;

5438 (LL) unlawful discharge of a firearm under Section 76-10-508;

5439 (MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

5440 (NN) bus hijacking under Section 76-10-1504; and

5441 (OO) discharging firearms and hurling missiles under Section 76-10-1505; or

5442 (ii) any felony violation of a criminal statute of any other state, the United States, or  
5443 any district, possession, or territory of the United States which would constitute a violent  
5444 felony as defined in this Subsection (1) if committed in this state.

5445 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the  
5446 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender  
5447 under this section, the penalty for a:

5448 (a) third degree felony is as if the conviction were for a first degree felony;

5449 (b) second degree felony is as if the conviction were for a first degree felony; or

5450 (c) first degree felony remains the penalty for a first degree penalty except:

5451 (i) the convicted person is not eligible for probation; and

5452 (ii) the Board of Pardons and Parole shall consider that the convicted person is a



5453 habitual violent offender as an aggravating factor in determining the length of incarceration.

5454 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall  
5455 provide notice in the information or indictment that the defendant is subject to punishment as a  
5456 habitual violent offender under this section. Notice shall include the case number, court, and  
5457 date of conviction or commitment of any case relied upon by the prosecution.

5458 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant  
5459 intends to deny that:

5460 (A) the defendant is the person who was convicted or committed;

5461 (B) the defendant was represented by counsel or had waived counsel; or

5462 (C) the defendant's plea was understandingly or voluntarily entered.

5463 (ii) The notice of denial shall be served not later than five days prior to trial and shall  
5464 state in detail the defendant's contention regarding the previous conviction and commitment.

5465 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to  
5466 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,  
5467 of the:

5468 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
5469 in the Utah Rules of Evidence; or

5470 (ii) allegation against the defendant of being a habitual violent offender.

5471 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
5472 being an habitual violent offender by the same jury, if practicable, unless the defendant waives  
5473 the jury, in which case the allegation shall be tried immediately to the court.

5474 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section  
5475 applies.

5476 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
5477 and the defendant shall be afforded an opportunity to present any necessary additional  
5478 evidence.

5479 (iii) Before sentencing under this section, the trier of fact shall determine whether this  
5480 section is applicable beyond a reasonable doubt.

5481 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
5482 contest, there is a rebuttable presumption that the conviction and commitment were regular and  
5483 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the

5484 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution  
5485 to establish by a preponderance of the evidence that the defendant was then represented by  
5486 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea  
5487 was understandingly and voluntarily entered.

5488 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
5489 finding on the record and shall indicate in the order of judgment and commitment that the  
5490 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced  
5491 under this section.

5492 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
5493 provisions of this section.

5494 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
5495 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual  
5496 Offenses, to determine if the convicted person is a habitual violent offender.

5497 (6) The sentencing enhancement described in this section does not apply if:

5498 (a) the offense for which the person is being sentenced is:

5499 (i) a grievous sexual offense;

5500 (ii) child kidnapping, Section 76-5-301.1;

5501 (iii) aggravated kidnapping, Section 76-5-302; or

5502 (iv) forcible sexual abuse, Section 76-5-404; and

5503 (b) applying the sentencing enhancement provided for in this section would result in a  
5504 lower maximum penalty than the penalty provided for under the section that describes the  
5505 offense for which the person is being sentenced.

5506 Section 97. Section 76-3-203.6 is amended to read:

5507 **76-3-203.6. Enhanced penalty for certain offenses committed by an incarcerated**  
5508 **individual.**

5509 (1) As used in this section, "serving a sentence" means [~~a prisoner~~] an incarcerated  
5510 individual is sentenced and committed to the custody of the Department of Corrections, the  
5511 sentence has not been terminated or voided, and the [~~prisoner~~] incarcerated individual:

5512 (a) has not been paroled; or

5513 (b) is in custody after arrest for a parole violation.

5514 (2) If the trier of fact finds beyond a reasonable doubt that [~~a prisoner~~] an incarcerated

5515 individual serving a sentence for a capital felony or a first degree felony commits any offense  
5516 listed in Subsection (5), the offense is a first degree felony and the court shall sentence the  
5517 defendant to life in prison without parole.

5518 (3) Notwithstanding Subsection (2), the court may sentence the defendant to an  
5519 indeterminate prison term of not less than 20 years and that may be for life if the court finds  
5520 that the interests of justice would best be served and states the specific circumstances justifying  
5521 the disposition on the record.

5522 (4) Subsection (2) does not apply if the [~~prisoner~~] incarcerated individual is younger  
5523 than 18 years old at the time the offense listed in Subsection (5) is committed and is sentenced  
5524 on or after May 10, 2016.

5525 (5) Offenses referred to in Subsection (2) are:

5526 (a) aggravated assault by [~~a prisoner~~] an incarcerated individual, Section 76-5-103.5;

5527 (b) mayhem, Section 76-5-105;

5528 (c) attempted murder, Section 76-5-203;

5529 (d) kidnapping, Section 76-5-301;

5530 (e) child kidnapping, Section 76-5-301.1;

5531 (f) aggravated kidnapping, Section 76-5-302;

5532 (g) rape, Section 76-5-402;

5533 (h) rape of a child, Section 76-5-402.1;

5534 (i) object rape, Section 76-5-402.2;

5535 (j) object rape of a child, Section 76-5-402.3;

5536 (k) forcible sodomy, Section 76-5-403;

5537 (l) sodomy on a child, Section 76-5-403.1;

5538 (m) aggravated sexual abuse of a child, Section 76-5-404.3;

5539 (n) aggravated sexual assault, Section 76-5-405;

5540 (o) aggravated arson, Section 76-6-103;

5541 (p) aggravated burglary, Section 76-6-203; and

5542 (q) aggravated robbery, Section 76-6-302.

5543 (6) The sentencing enhancement described in this section does not apply if:

5544 (a) the offense for which the person is being sentenced is:

5545 (i) a grievous sexual offense;

5546 (ii) child kidnapping, Section 76-5-301.1; or  
5547 (iii) aggravated kidnapping, Section 76-5-302; and  
5548 (b) applying the sentencing enhancement provided for in this section would result in a  
5549 lower maximum penalty than the penalty provided for under the section that describes the  
5550 offense for which the person is being sentenced.

5551 Section 98. Section 76-3-403 is amended to read:

5552 **76-3-403. Credit for good behavior against jail sentence for misdemeanors and**  
5553 **certain felonies.**

5554 In any commitment for incarceration in a county jail or detention facility, other than the  
5555 Utah State Prison, the custodial authority may in its discretion and upon good behavior of the  
5556 [inmate] incarcerated individual allow up to 10 days credit against the sentence to be served for  
5557 every 30 days served or up to two days credit for every 10 days served when the period to be  
5558 served is less than 30 days if:

5559 (1) the incarceration is for a misdemeanor offense, and the sentencing judge has not  
5560 entered an order to the contrary; or

5561 (2) the incarceration is part of a probation agreement for a felony offense, and the  
5562 sentencing district judge has not entered an order to the contrary.

5563 Section 99. Section 76-3-403.5 is amended to read:

5564 **76-3-403.5. Work or school release from county jail or facility -- Conditions.**

5565 When an [inmate] individual is incarcerated in a county jail or in a detention facility,  
5566 the custodial authority may, in accordance with the release policy of the facility, allow the  
5567 [inmate] incarcerated individual to work outside of the jail or facility as part of a jail or facility  
5568 supervised work detail, to seek or work at employment, or to attend an educational institution,  
5569 if the [inmate's] incarcerated individual's incarceration:

5570 (1) is not for an offense for which release is prohibited under state law; and

5571 (2) (a) is for a misdemeanor offense, and the sentencing judge has not entered an order  
5572 prohibiting release under this section; or

5573 (b) is part of a probation agreement for a felony offense, and the sentencing district  
5574 judge has not entered an order prohibiting release under this section.

5575 Section 100. Section 76-5-101 is amended to read:

5576 **76-5-101. Definitions.**

5577 Unless otherwise provided, as used in this part:

5578 (1) "Detained individual" means an individual detained under Section 77-7-15.

5579 (2) [~~"Prisoner"~~] "Incarcerated individual" means an individual who is in custody of a  
5580 peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or  
5581 a facility used for confinement of delinquent juveniles operated by the Division of Juvenile  
5582 Justice Services regardless of whether the confinement is legal.

5583 Section 101. Section 76-5-102.5 is amended to read:

5584 **76-5-102.5. Assault by incarcerated individual.**

5585 (1) (a) As used in this section, "assault" means an offense under Section 76-5-102.

5586 (b) Terms defined in Section 76-1-101.5 apply to this section.

5587 (2) An actor commits assault by [~~prisoner~~] incarcerated individual if the actor:

5588 (a) is [~~a prisoner~~] an incarcerated individual; and

5589 (b) intending to cause bodily injury, commits an assault.

5590 (3) A violation of Subsection (2) is a third degree felony.

5591 Section 102. Section 76-5-102.6 is amended to read:

5592 **76-5-102.6. Propelling object or substance at a correctional or peace officer --**

5593 **Penalties.**

5594 (1) (a) As used in this section, "infectious agent" means the same as that term is  
5595 defined in Section 26-6-2.

5596 (b) Terms defined in Section 76-1-101.5 apply to this section.

5597 (2) An actor commits the offense of propelling an object or substance at a correctional  
5598 or peace officer if the actor:

5599 (a) is [~~a prisoner~~] an incarcerated individual or a detained individual; and

5600 (b) throws or otherwise propels an object or substance at a peace officer, a correctional  
5601 officer, or an employee or volunteer, including a health care provider.

5602 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

5603 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree  
5604 felony if:

5605 (i) the object or substance causes substantial bodily injury to the peace officer, the  
5606 correctional officer, or the employee or volunteer, including a health care provider; or

5607 (ii) (A) the object or substance is:

- 5608 (I) blood, urine, semen, or fecal material;
- 5609 (II) an infectious agent or a material that carries an infectious agent;
- 5610 (III) vomit or a material that carries vomit; or
- 5611 (IV) the actor's saliva, and the actor knows the actor is infected with HIV, hepatitis B,
- 5612 or hepatitis C; and

5613 (B) the object or substance comes into contact with any portion of the officer's,  
5614 employee's, volunteer's, or health care provider's face, including the eyes or mouth, or comes  
5615 into contact with any open wound on the officer's, employee's, volunteer's, or health care  
5616 provider's body.

5617 (4) If an offense committed under this section amounts to an offense subject to a  
5618 greater penalty under another provision of state law than under this section, this section does  
5619 not prohibit prosecution and sentencing for the more serious offense.

5620 Section 103. Section **76-5-102.7** is amended to read:

5621 **76-5-102.7. Assault or threat of violence against health care provider, emergency**  
5622 **medical service worker, or health facility employee, owner, or contractor -- Penalty.**

5623 (1) (a) As used in this section:

5624 (i) "Assault" means an offense under Section [76-5-102](#).

5625 (ii) "Emergency medical service worker" means an individual licensed under Section  
5626 [26-8a-302](#).

5627 (iii) "Health care provider" means the same as that term is defined in Section  
5628 [78B-3-403](#).

5629 (iv) "Health facility" means:

5630 (A) a health care facility as defined in Section [26-21-2](#); and

5631 (B) the office of a private health care provider, whether for individual or group  
5632 practice.

5633 (v) "Health facility employee" means an employee, owner, or contractor of a health  
5634 facility.

5635 (vi) "Threat of violence" means an offense under Section [76-5-107](#).

5636 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

5637 (2) (a) An actor commits assault or threat of violence against a health care provider or  
5638 emergency medical service worker if:

- 5639 (i) the actor is not [~~a prisoner~~] an incarcerated individual or a detained individual;
- 5640 (ii) the actor commits an assault or threat of violence;
- 5641 (iii) the actor knew that the victim was a health care provider or emergency medical
- 5642 service worker; and
- 5643 (iv) the health care provider or emergency medical service worker was performing
- 5644 emergency or life saving duties within the scope of his or her authority at the time of the assault
- 5645 or threat of violence.

5646 (b) An actor commits assault or threat of violence against a health facility employee if:

- 5647 (i) the actor is not [~~a prisoner~~] an incarcerated individual or a detained individual;
- 5648 (ii) the actor commits an assault or threat of violence;
- 5649 (iii) the actor knew that the victim was a health facility employee; and
- 5650 (iv) the health facility employee was acting within the scope of the health facility

5651 employee's duties for the health facility.

5652 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

5653 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree

5654 felony if the actor:

- 5655 (i) causes substantial bodily injury; and
- 5656 (ii) acts intentionally or knowingly.

5657 Section 104. Section **76-5-103.5** is amended to read:

5658 **76-5-103.5. Aggravated assault by incarcerated individual.**

5659 (1) (a) As used in this section, "aggravated assault" means an offense under Section

5660 [76-5-103](#).

5661 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

5662 (2) An actor commits aggravated assault by [~~prisoner~~] incarcerated individual if the

5663 actor:

- 5664 (a) is [~~a prisoner~~] an incarcerated individual; and
- 5665 (b) commits aggravated assault.

5666 (3) (a) A violation of Subsection (2) is a second degree felony.

5667 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a first degree

5668 felony if serious bodily injury was intentionally caused.

5669 Section 105. Section **76-5-412** is amended to read:

5670 **76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.**

5671 (1) (a) As used in this section:

5672 (i) "Actor" means:

5673 (A) a law enforcement officer, as defined in Section 53-13-103;

5674 (B) a correctional officer, as defined in Section 53-13-104;

5675 (C) a special function officer, as defined in Section 53-13-105; or

5676 (D) an employee of, or private provider or contractor for, the Department of

5677 Corrections or a county jail.

5678 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

5679 (iii) "Person in custody" means an individual, either an adult 18 years old or older, or a  
5680 minor younger than 18 years old, who is:

5681 (A) [~~a prisoner~~] an incarcerated individual, as defined in Section 76-5-101, and  
5682 includes [~~a prisoner~~] an incarcerated individual who is in the custody of the Department of  
5683 Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital  
5684 established under Section 62A-15-601 or other medical facility;

5685 (B) under correctional supervision, such as at a work release facility or as a parolee or  
5686 probationer; or

5687 (C) under lawful or unlawful arrest, either with or without a warrant.

5688 (iv) "Private provider or contractor" means a person that contracts with the Department  
5689 of Corrections or with a county jail to provide services or functions that are part of the  
5690 operation of the Department of Corrections or a county jail under state or local law.

5691 (b) Terms defined in Section 76-1-101.5 apply to this section.

5692 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts  
5693 under Subsection (2)(b):

5694 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
5695 offense under Subsection (4); and

5696 (ii) (A) the actor knows that the individual is a person in custody; or

5697 (B) a reasonable person in the actor's position should have known under the  
5698 circumstances that the individual was a person in custody.

5699 (b) Acts referred to in Subsection (2)(a) are:

5700 (i) having sexual intercourse with a person in custody;



- 5701 (ii) engaging in a sexual act with a person in custody involving the genitals of one  
5702 individual and the mouth or anus of another individual; or
- 5703 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a  
5704 person in custody by any foreign object, substance, instrument, or device, including a part of  
5705 the human body; and
- 5706 (B) intending to cause substantial emotional or bodily pain to any individual.
- 5707 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the  
5708 relevant element of a violation of Subsection (2)(a).
- 5709 (3) (a) A violation of Subsection (2) is a third degree felony.
- 5710 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18  
5711 years old, a violation of Subsection (2) is a second degree felony.
- 5712 (c) If the act committed under Subsection (3) amounts to an offense subject to a greater  
5713 penalty under another provision of state law than is provided under this Subsection (3), this  
5714 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.
- 5715 (4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i)  
5716 are:
- 5717 (a) Section 76-5-401, unlawful sexual activity with a minor;
- 5718 (b) Section 76-5-402, rape;
- 5719 (c) Section 76-5-402.1, rape of a child;
- 5720 (d) Section 76-5-402.2, object rape;
- 5721 (e) Section 76-5-402.3, object rape of a child;
- 5722 (f) Section 76-5-403, forcible sodomy;
- 5723 (g) Section 76-5-403.1, sodomy on a child;
- 5724 (h) Section 76-5-404, forcible sexual abuse;
- 5725 (i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated  
5726 sexual abuse of a child; or
- 5727 (j) Section 76-5-405, aggravated sexual assault.
- 5728 (5) (a) It is not a defense to the commission of, or the attempt to commit, the offense of  
5729 custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years  
5730 old, that the actor:
- 5731 (i) mistakenly believed the person in custody to be 18 years old or older at the time of

5732 the alleged offense; or

5733 (ii) was unaware of the true age of the person in custody.

5734 (b) Consent of the person in custody is not a defense to any violation or attempted  
5735 violation of Subsection (2).

5736 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the  
5737 result of compulsion, as the defense is described in Subsection 76-2-302(1).

5738 Section 106. Section 76-8-309 is amended to read:

5739 **76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.**

5740 (1) (a) (i) [~~A prisoner~~] An incarcerated individual is guilty of escape if the [~~prisoner~~]  
5741 incarcerated individual leaves official custody without lawful authorization.

5742 (ii) If [~~a prisoner~~] an incarcerated individual obtains authorization to leave official  
5743 custody by means of deceit, fraud, or other artifice, the [~~prisoner~~] incarcerated individual has  
5744 not received lawful authorization.

5745 (b) Escape under this Subsection (1) is a third degree felony except as provided under  
5746 Subsection (1)(c).

5747 (c) Escape under this Subsection (1) is a second degree felony if:

5748 (i) the actor escapes from a state prison; or

5749 (ii) (A) the actor is convicted as a party to the offense, as defined in Section 76-2-202;  
5750 and

5751 (B) the actor is an employee at or a volunteer of a law enforcement agency, the  
5752 Department of Corrections, a county or district attorney's office, the office of the state attorney  
5753 general, the Board of Pardons and Parole, or the courts, the Judicial Council, the  
5754 Administrative Office of the Courts, or similar administrative units in the judicial branch of  
5755 government.

5756 (2) (a) [~~A prisoner~~] An incarcerated individual is guilty of aggravated escape if in the  
5757 commission of an escape the [~~prisoner~~] incarcerated individual uses a dangerous weapon, as  
5758 defined in Section 76-1-101.5, or causes serious bodily injury to another.

5759 (b) Aggravated escape is a first degree felony.

5760 (3) [~~Any~~] A prison term imposed upon [~~a prisoner~~] an incarcerated individual for  
5761 escape under this section shall run consecutively with any other sentence.

5762 (4) [~~For the purposes of~~] As used in this section:

5763 (a) "Confinement" means the ~~[prisoner]~~ incarcerated individual is:

5764 (i) housed in a state prison or any other facility pursuant to a contract with the ~~[Utah~~  
5765 ]Department of Corrections after being sentenced and committed and the sentence has not been  
5766 terminated or voided or the ~~[prisoner]~~ incarcerated individual is not on parole;

5767 (ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county  
5768 jail after sentencing and commitment and the sentence has not been terminated or voided or the  
5769 ~~[prisoner]~~ incarcerated individual is not on parole; or

5770 (iii) lawfully detained following arrest.

5771 (b) "Escape" is considered to be a continuing activity commencing with the conception  
5772 of the design to escape and continuing until the escaping ~~[prisoner]~~ incarcerated individual is  
5773 returned to official custody or the ~~[prisoner's]~~ incarcerated individual's attempt to escape is  
5774 thwarted or abandoned.

5775 (c) "Official custody" means arrest, whether with or without warrant, or confinement in  
5776 a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement  
5777 pursuant to an order of the court or sentenced and committed and the sentence has not been  
5778 terminated or voided or the ~~[prisoner]~~ incarcerated individual is not on parole. ~~[A person]~~ An  
5779 individual is considered confined in the state prison if the ~~[person]~~ individual:

5780 (i) without authority fails to return to the person's place of confinement from work  
5781 release or home visit by the time designated for return;

5782 (ii) is in prehearing custody after arrest for parole violation;

5783 (iii) is being housed in a county jail, after felony commitment, pursuant to a contract  
5784 with the Department of Corrections; or

5785 (iv) is being transported as ~~[a prisoner]~~ an incarcerated individual in the state prison by  
5786 correctional officers.

5787 (d) ~~["Prisoner" means any person]~~ "Incarcerated individual" means an individual who  
5788 is in official custody and includes ~~[persons]~~ individuals under trusty status.

5789 (e) "Volunteer" means ~~[any person]~~ an individual who donates service without pay or  
5790 other compensation except expenses actually and reasonably incurred as approved by the  
5791 supervising agency.

5792 Section 107. Section **76-8-311.3** is amended to read:

5793 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

5794 **Penalties.**

5795 (1) As used in this section:

5796 (a) "Contraband" means any item not specifically prohibited for possession by  
5797 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

5798 (b) "Controlled substance" means any substance defined as a controlled substance  
5799 under Title 58, Chapter 37, Utah Controlled Substances Act.

5800 (c) "Correctional facility" means:

5801 (i) any facility operated by or contracting with the Department of Corrections to house  
5802 offenders in either a secure or nonsecure setting;

5803 (ii) any facility operated by a municipality or a county to house or detain criminal  
5804 offenders;

5805 (iii) any juvenile detention facility; and

5806 (iv) any building or grounds appurtenant to the facility or lands granted to the state,  
5807 municipality, or county for use as a correctional facility.

5808 (d) "Electronic cigarette product" means the same as that term is defined in Section  
5809 [76-10-101](#).

5810 (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,  
5811 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,  
5812 Chapter 37, Utah Controlled Substances Act.

5813 (f) "Mental health facility" means the same as that term is defined in Section  
5814 [62A-15-602](#).

5815 (g) "Nicotine product" means the same as that term is defined in Section [76-10-101](#).

5816 (h) "Offender" means a person in custody at a correctional facility.

5817 (i) "Secure area" means the same as that term is defined in Section [76-8-311.1](#).

5818 (j) "Tobacco product" means the same as that term is defined in Section [76-10-101](#).

5819 (2) Notwithstanding Section [76-10-500](#), a correctional or mental health facility may  
5820 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,  
5821 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any  
5822 quantity may be:

5823 (a) transported to or upon a correctional or mental health facility;

5824 (b) sold or given away at any correctional or mental health facility;

- 5825 (c) given to or used by any offender at a correctional or mental health facility; or  
5826 (d) knowingly or intentionally possessed at a correctional or mental health facility.
- 5827 (3) It is a defense to any prosecution under this section if the accused in committing the  
5828 act made criminal by this section with respect to:
- 5829 (a) a correctional facility operated by the Department of Corrections, acted in  
5830 conformity with departmental rule or policy;
- 5831 (b) a correctional facility operated by a municipality, acted in conformity with the  
5832 policy of the municipality;
- 5833 (c) a correctional facility operated by a county, acted in conformity with the policy of  
5834 the county; or
- 5835 (d) a mental health facility, acted in conformity with the policy of the mental health  
5836 facility.
- 5837 (4) (a) An individual who transports to or upon a correctional facility, or into a secure  
5838 area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of  
5839 escape with intent to provide or sell it to any offender, is guilty of a second degree felony.
- 5840 (b) An individual who provides or sells to any offender at a correctional facility, or any  
5841 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous  
5842 weapon, or implement of escape is guilty of a second degree felony.
- 5843 (c) An offender who possesses at a correctional facility, or a detainee who possesses at  
5844 a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or  
5845 implement of escape is guilty of a second degree felony.
- 5846 (d) An individual who, without the permission of the authority operating the  
5847 correctional facility or the secure area of a mental health facility, knowingly possesses at a  
5848 correctional facility or a secure area of a mental health facility any firearm, ammunition,  
5849 dangerous weapon, or implement of escape is guilty of a third degree felony.
- 5850 (e) An individual violates Section 76-10-306 who knowingly or intentionally  
5851 transports, possesses, distributes, or sells any explosive in a correctional facility or mental  
5852 health facility.
- 5853 (5) (a) An individual is guilty of a third degree felony who, without the permission of  
5854 the authority operating the correctional facility or secure area of a mental health facility,  
5855 knowingly transports to or upon a correctional facility or into a secure area of a mental health

5856 facility any:

5857 (i) spirituous or fermented liquor;

5858 (ii) medicine, whether or not lawfully prescribed for the offender; or

5859 (iii) poison in any quantity.

5860 (b) An individual is guilty of a third degree felony who knowingly violates correctional  
5861 or mental health facility policy or rule by providing or selling to any offender at a correctional  
5862 facility or detainee within a secure area of a mental health facility any:

5863 (i) spirituous or fermented liquor;

5864 (ii) medicine, whether or not lawfully prescribed for the offender; or

5865 (iii) poison in any quantity.

5866 (c) An ~~inmate~~ incarcerated individual is guilty of a third degree felony who, in  
5867 violation of correctional or mental health facility policy or rule, possesses at a correctional  
5868 facility or in a secure area of a mental health facility any:

5869 (i) spirituous or fermented liquor;

5870 (ii) medicine, other than medicine provided by the facility's health care providers in  
5871 compliance with facility policy; or

5872 (iii) poison in any quantity.

5873 (d) An individual is guilty of a class A misdemeanor who, with the intent to directly or  
5874 indirectly provide or sell any tobacco product, electronic cigarette product, or nicotine product  
5875 to an offender, directly or indirectly:

5876 (i) transports, delivers, or distributes any tobacco product, electronic cigarette product,  
5877 or nicotine product to an offender or on the grounds of any correctional facility;

5878 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another  
5879 person to transport any tobacco product, electronic cigarette product, or nicotine product to an  
5880 offender or on any correctional facility, if the person is acting with the mental state required for  
5881 the commission of an offense; or

5882 (iii) facilitates, arranges, or causes the transport of any tobacco product, electronic  
5883 cigarette product, or nicotine product in violation of this section to an offender or on the  
5884 grounds of any correctional facility.

5885 (e) An individual is guilty of a class A misdemeanor who, without the permission of  
5886 the authority operating the correctional or mental health facility, fails to declare or knowingly

5887 possesses at a correctional facility or in a secure area of a mental health facility any:

5888 (i) spirituous or fermented liquor;

5889 (ii) medicine; or

5890 (iii) poison in any quantity.

5891 (f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B  
5892 misdemeanor who, without the permission of the authority operating the correctional facility,  
5893 knowingly engages in any activity that would facilitate the possession of any contraband by an  
5894 offender in a correctional facility.

5895 (ii) The provisions of Subsection (5)(d) regarding any tobacco product, electronic  
5896 cigarette product, or nicotine product take precedence over this Subsection (5)(f).

5897 (g) Exemptions may be granted for worship for Native American [~~immates~~]  
5898 incarcerated individuals pursuant to Section 64-13-40.

5899 (6) The possession, distribution, or use of a controlled substance at a correctional  
5900 facility or in a secure area of a mental health facility shall be prosecuted in accordance with  
5901 Title 58, Chapter 37, Utah Controlled Substances Act.

5902 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative  
5903 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing  
5904 any tobacco product, electronic cigarette product, or nicotine product to offenders is a class A  
5905 misdemeanor.

5906 Section 108. Section **76-8-318** is amended to read:

5907 **76-8-318. Assault or threat of violence against child welfare worker -- Penalty.**

5908 (1) As used in this section:

5909 (a) "Assault" means the same as that term is defined in Section 76-5-102.

5910 (b) "Child welfare worker" means an employee of the Division of Child and Family  
5911 Services created in Section 80-2-201.

5912 (c) "Threat of violence" means the same as that term is defined in Section 76-5-107.

5913 (2) An individual who commits an assault or threat of violence against a child welfare  
5914 worker is guilty of a class A misdemeanor if:

5915 (a) the individual is not:

5916 (i) [~~a prisoner~~] an incarcerated individual or an individual detained under Section  
5917 77-7-15; or

5918 (ii) a minor in the custody of or receiving services from a division within the  
5919 Department of Health and Human Services;

5920 (b) the individual knew that the victim was a child welfare worker; and

5921 (c) the child welfare worker was acting within the scope of the child welfare worker's  
5922 authority at the time of the assault or threat of violence.

5923 (3) An individual who violates this section is guilty of a third degree felony if the  
5924 individual:

5925 (a) causes substantial bodily injury, as defined in Section [76-1-101.5](#); and

5926 (b) acts intentionally or knowingly.

5927 Section 109. Section **77-16b-102** is amended to read:

5928 **77-16b-102. Definitions.**

5929 As used in this chapter:

5930 (1) "Correctional facility" means:

5931 (a) a county jail;

5932 (b) a secure correctional facility as defined by Section [64-13-1](#); or

5933 (c) a secure care facility as defined in Section [80-1-102](#).

5934 (2) "Correctional facility administrator" means:

5935 (a) a county sheriff in charge of a county jail;

5936 (b) a designee of the executive director of the [~~Utah~~] Department of Corrections; or

5937 (c) a designee of the director of the Division of Juvenile Justice Services.

5938 (3) "Incarcerated individual" means an individual who:

5939 (a) is a pretrial detainee or who has been committed to the custody of a sheriff or the  
5940 Department of Corrections and is physically in a correctional facility; and

5941 (b) is 18 years old or older and younger than 21 years old and has been committed to  
5942 the custody of the Division of Juvenile Justice Services.

5943 [~~(3)~~] (4) "Medical supervision" means under the direction of a licensed physician,  
5944 physician assistant, or nurse practitioner.

5945 [~~(4)~~] (5) "Mental health therapist" means the same as that term is defined in Section  
5946 [58-60-102](#).

5947 [~~(5)~~] "Prisoner" means:]

5948 [~~(a) any individual who is a pretrial detainee or who has been committed to the custody~~]



5949 of a sheriff or the Utah Department of Corrections, and who is physically in a correctional  
5950 facility, and]

5951 [~~(b) any individual who is 18 years old or older and younger than 21 years old, and~~  
5952 ~~who has been committed to the custody of the Division of Juvenile Justice Services.]~~

5953 Section 110. Section **77-16b-103** is amended to read:

5954 **77-16b-103. Involuntary feeding or hydration of incarcerated individuals --**  
5955 **Petition procedures, venue -- Incarcerated individuals rights.**

5956 (1) A correctional facility administrator may petition the district court where the  
5957 correctional facility is located for an order permitting the involuntary feeding or hydration of  
5958 [~~any prisoner~~] an incarcerated individual who is likely to suffer severe harm or death by  
5959 refusing to accept sufficient nutrition or hydration.

5960 (2) Prior to the filing of a petition under this section, a mental health therapist who is  
5961 designated by the correctional facility administrator shall conduct a mental health evaluation of  
5962 the subject [~~prisoner~~] incarcerated individual.

5963 (3) Upon the filing of a petition, the district court shall hold a hearing within two  
5964 working days. The court:

5965 (a) shall confidentially review the [~~prisoner's~~] incarcerated individual's medical and  
5966 mental health records as they are available;

5967 (b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence,  
5968 concerning the circumstances of the [~~prisoner's~~] incarcerated individual's lack of nutrition or  
5969 hydration; and

5970 (c) may exclude from the hearing [~~any person~~] an individual whose presence is not  
5971 necessary for the purposes of the hearing, due to the introduction of personal medical and  
5972 mental health evidence.

5973 (4) After conducting the hearing under Subsection (3), the district court shall issue an  
5974 order to involuntarily feed or hydrate the [~~prisoner~~] incarcerated individual, if the court finds by  
5975 a preponderance of evidence that:

5976 (a) (i) the [~~prisoner~~] incarcerated individual is likely to suffer severe harm or death by  
5977 refusing to accept sufficient nutrition or hydration; and

5978 (ii) the correctional facility's medical or penological objectives are valid and outweigh  
5979 the [~~prisoner's~~] incarcerated individual's right to refuse treatment; or

5980 (b) the [prisoner] incarcerated individual is refusing sufficient nutrition or hydration  
5981 with the intent to obstruct or delay any judicial or administrative proceeding pending against  
5982 the [prisoner] incarcerated individual.

5983 (5) The district court shall state its findings of fact and conclusions of law on the  
5984 record.

5985 (6) The correctional facility administrator shall serve copies of the petition and a notice  
5986 of the district court hearing on the [prisoner] incarcerated individual and the [prisoner's]  
5987 incarcerated individual's counsel, if the [prisoner] incarcerated individual is represented by  
5988 counsel, at least 24 hours in advance of the hearing under Subsection (3).

5989 (7) The [prisoner] incarcerated individual has the right to attend the hearing, testify,  
5990 present evidence, and cross-examine witnesses.

5991 Section 111. Section **77-16b-104** is amended to read:

5992 **77-16b-104. Involuntary feeding or hydration of incarcerated individuals --**  
5993 **Standards, continuing jurisdiction, and records.**

5994 (1) Any involuntary nutrition or hydration of ~~[a prisoner pursuant to]~~ an incarcerated  
5995 individual under this chapter shall be conducted under immediate medical supervision and in a  
5996 medically recognized and acceptable manner.

5997 (2) Upon the filing of a petition ~~[pursuant to Section 77-16b-102]~~ under Section  
5998 77-16b-103, the court has the continuing jurisdiction to review the [prisoner's] incarcerated  
5999 individual's need for involuntary nutrition or hydration as long as the [prisoner] incarcerated  
6000 individual remains in custody of the correctional facility.

6001 (3) A correctional facility shall maintain records of any involuntary feeding or  
6002 hydration of [prisoners] incarcerated individuals under this chapter.

6003 (a) The records are classified as "controlled" under Section **63G-2-304**.

6004 (b) All medical or mental health records submitted to the court under this chapter shall  
6005 be kept under seal.

6006 Section 112. Section **77-18-112** is amended to read:

6007 **77-18-112. Reports by courts and prosecuting attorneys to Board of Pardons and**  
6008 **Parole.**

6009 In cases where an indeterminate sentence is imposed, the court and prosecuting attorney  
6010 may, within 30 days, mail a statement to the board setting forth the term for which the

6011 [~~prisoner~~] incarcerated individual ought to be imprisoned together with any information which  
6012 might aid the board in passing on the application for termination or commutation of the  
6013 sentence or for parole or pardon.

6014 Section 113. Section **77-18a-1** is amended to read:

6015 **77-18a-1. Appeals -- When proper.**

6016 (1) A defendant may, as a matter of right, appeal from:

6017 (a) a final judgment of conviction, whether by verdict or plea;

6018 (b) an order made after judgment that affects the substantial rights of the defendant;

6019 (c) an order adjudicating the defendant's competency to proceed further in a pending  
6020 prosecution; or

6021 (d) an order denying bail under Chapter 20, Bail.

6022 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek  
6023 discretionary appellate review of any interlocutory order.

6024 (3) The prosecution may, as a matter of right, appeal from:

6025 (a) a final judgment of dismissal, including a dismissal of a felony information  
6026 following a refusal to bind the defendant over for trial;

6027 (b) a pretrial order dismissing a charge on the ground that the court's suppression of  
6028 evidence has substantially impaired the prosecution's case;

6029 (c) an order granting a motion to withdraw a plea of guilty or no contest;

6030 (d) an order arresting judgment or granting a motion for merger;

6031 (e) an order terminating the prosecution because of a finding of double jeopardy or  
6032 denial of a speedy trial;

6033 (f) an order granting a new trial;

6034 (g) an order holding a statute or any part of it invalid;

6035 (h) an order adjudicating the defendant's competency to proceed further in a pending  
6036 prosecution;

6037 (i) an order finding, [~~pursuant to~~] under Title 77, Chapter 19, Part 2, Competency for  
6038 Execution, that an [~~inmate~~] incarcerated individual sentenced to death is incompetent to be  
6039 executed;

6040 (j) an order reducing the degree of offense pursuant to Section [76-3-402](#);

6041 (k) an illegal sentence; or

6042 (1) an order dismissing a charge pursuant to Subsection 76-2-309(3).

6043 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek  
6044 discretionary appellate review of any interlocutory order entered before jeopardy attaches.

6045 Section 114. Section 77-19-3 is amended to read:

6046 **77-19-3. Special release from city or county jail -- Purposes.**

6047 (1) Any person incarcerated in any city or county jail may, in accordance with the  
6048 release policy of the facility, be released from jail during those hours which are reasonable and  
6049 necessary to accomplish any of the purposes under Subsection (2) if:

6050 (a) the offense is not one for which release is prohibited under state law; and

6051 (b) the judge has not entered an order prohibiting a special release.

6052 (2) The custodial authority at the jail may release an ~~[inmate]~~ incarcerated individual  
6053 who qualifies under Subsection (1) for:

6054 (a) working at ~~[his]~~ the incarcerated individual's employment;

6055 (b) seeking employment;

6056 (c) attending an educational institution;

6057 (d) obtaining necessary medical treatment; or

6058 (e) any other reasonable purpose as determined by the custodial authority of the jail.

6059 Section 115. Section 77-19-4 is amended to read:

6060 **77-19-4. Special release from city or county jail -- Conditions and limitations.**

6061 (1) All released ~~[prisoners]~~ incarcerated individuals under Section 77-19-3 are in the  
6062 custody of the custodial authority and are subject at any time to being returned to jail, for good  
6063 cause.

6064 (2) The judge may order that the ~~[prisoner]~~ incarcerated individual:

6065 (a) pay money earned from employment during the jail term to those ~~[persons he]~~  
6066 individuals the incarcerated individual is legally responsible to support; or

6067 (b) retain sufficient money to pay ~~[his]~~ the incarcerated individual's costs of  
6068 transportation, meals, and other incidental and necessary expenses related to ~~[his]~~ the  
6069 incarcerated individual's special release.

6070 (3) The custodial authority of the jail shall establish all other conditions of special  
6071 release.

6072 (4) During ~~[at]~~ the hours when the ~~[prisoner]~~ incarcerated individual is not serving the

6073 function for which ~~[he]~~ the incarcerated individual is awarded release time, ~~[he]~~ the  
6074 incarcerated individual shall be confined to jail.

6075 (5) The ~~[prisoner]~~ incarcerated individual shall be responsible to obtain ~~[his own]~~  
6076 transportation to and from the place where ~~[he]~~ the incarcerated individual performs the  
6077 function for which ~~[he]~~ the incarcerated individual is released.

6078 Section 116. Section 77-19-5 is amended to read:

6079 **77-19-5. Special release from city or county jail -- Revocation.**

6080 The judge may, for good cause, revoke any release time previously awarded, and shall  
6081 notify the ~~[prisoner]~~ incarcerated individual that, if ~~[he]~~ the incarcerated individual makes  
6082 written request, a hearing shall be afforded to ~~[him]~~ the incarcerated individual to challenge the  
6083 revocation.

6084 Section 117. Section 77-19-201 is amended to read:

6085 **77-19-201. Definition.**

6086 As used in this part, "incompetent to be executed" means that, due to mental condition,  
6087 an ~~[inmate]~~ incarcerated individual is unaware of either the punishment ~~[he]~~ the incarcerated  
6088 individual is about to suffer or why ~~[he]~~ the incarcerated individual is to suffer ~~[it]~~ the  
6089 punishment.

6090 Section 118. Section 77-19-202 is amended to read:

6091 **77-19-202. Incompetency or pregnancy of person sentenced to death --**  
6092 **Procedures.**

6093 (1) If, after judgment of death, the executive director of the Department of Corrections  
6094 has good reason to believe that an ~~[inmate]~~ incarcerated individual sentenced to death is  
6095 pregnant, or has good reason to believe that an ~~[inmate's]~~ incarcerated individual's competency  
6096 to be executed under this chapter should be addressed by a court, the executive director of the  
6097 Department of Corrections or the executive director's designee shall immediately give written  
6098 notice to the court in which the judgment of death was rendered, to the prosecuting attorney,  
6099 and counsel for the inmate. The judgment shall be stayed pending further order of the court.

6100 (2) (a) On receipt of the notice under Subsection (1) of good reason for the court to  
6101 address an ~~[inmate's]~~ incarcerated individual's competency to be executed, the court shall order  
6102 that the mental condition of the ~~[inmate]~~ incarcerated individual shall be examined under the  
6103 provisions of Section 77-19-204.

6104 (b) If the [inmate] incarcerated individual is found incompetent, the court shall  
6105 immediately transmit a certificate of the findings to the Board of Pardons and Parole and  
6106 continue the stay of execution pending further order of the court.

6107 (c) If the [inmate] incarcerated individual is subsequently found competent at any time,  
6108 the judge shall immediately transmit a certificate of the findings to the Board of Pardons and  
6109 Parole, and shall draw and have delivered another warrant under Section 77-19-6, together with  
6110 a copy of the certificate of the findings. The warrant shall state an appointed day on which the  
6111 judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the  
6112 date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal  
6113 holiday, as defined in Section 63G-1-301.

6114 (3) (a) If the court finds the [inmate] incarcerated individual is pregnant, it shall  
6115 immediately transmit a certificate of the finding to the Board of Pardons and Parole and to the  
6116 executive director of the Department of Corrections or the executive director's designee, and  
6117 the court shall issue an order staying the execution of the judgment of death during the  
6118 pregnancy.

6119 (b) When the court determines the [inmate] incarcerated individual is no longer  
6120 pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and  
6121 Parole and draw and have delivered another warrant under Section 77-19-6, with a copy of the  
6122 certificate of the finding. The warrant shall state an appointed day on which the judgment is to  
6123 be executed, which may not be fewer than 30 nor more than 60 days from the date of the  
6124 drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined  
6125 in Section 63G-1-301.

6126 (4) The Department of Corrections shall determine the hour, within the appointed day,  
6127 at which the judgment is to be executed.

6128 Section 119. Section 77-19-203 is amended to read:

6129 **77-19-203. Petition for inquiry as to competency to be executed -- Filing --**  
6130 **Contents -- Successive petitions.**

6131 (1) If an [inmate] incarcerated individual who has been sentenced to death is or  
6132 becomes incompetent to be executed, a petition under Subsection (2) may be filed in the  
6133 district court of the county where the [inmate] incarcerated individual is confined.

6134 (2) The petition shall:

6135 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to  
6136 believe the [inmate] incarcerated individual is incompetent to be executed; and

6137 (b) contain a specific recital of the facts, observations, and conversations with the  
6138 [inmate] incarcerated individual that form the basis for the petition.

6139 (3) The petition may be based upon knowledge or information and belief and may be  
6140 filed by the [inmate] incarcerated individual alleged to be incompetent, legal counsel for the  
6141 [inmate] incarcerated individual, or by an attorney representing the state.

6142 (4) Before ruling on a petition filed by an [inmate] incarcerated individual or [his] the  
6143 incarcerated individual's legal counsel alleging that the [inmate] incarcerated individual is  
6144 incompetent to be executed, the court shall give the state and the Department of Corrections an  
6145 opportunity to respond to the allegations of incompetency.

6146 (5) If a petition is filed after an [inmate] incarcerated individual has previously been  
6147 found competent under either this chapter or under Title 77, Chapter 15, Inquiry into Sanity of  
6148 Defendant, no further hearing on competency may be granted unless the successive petition:

6149 (a) alleges with specificity a substantial change of circumstances subsequent to the  
6150 previous determination of competency; and

6151 (b) is sufficient to raise a significant question about the [inmate's] incarcerated  
6152 individual's competency to be executed.

6153 Section 120. Section **77-19-204** is amended to read:

6154 **77-19-204. Order for hearing -- Examinations of incarcerated individual -- Scope**  
6155 **of examination and report.**

6156 (1) When a court has good reason to believe an [inmate] incarcerated individual  
6157 sentenced to death is incompetent to be executed, it shall stay the execution and shall order the  
6158 Department of Health and Human Services to examine the [inmate] incarcerated individual and  
6159 report to the court concerning the [inmate's] incarcerated individual's mental condition.

6160 (2) (a) The [inmate] incarcerated individual subject to examination under Subsection  
6161 (1) shall be examined by at least two mental health experts who are not involved in the  
6162 [inmate's] incarcerated individual's current treatment.

6163 (b) The Department of Corrections shall provide information and materials to the  
6164 examiners relevant to a determination of the [inmate's] incarcerated individual's competency to  
6165 be executed.

6166 (3) The [inmate] incarcerated individual shall make [himself] the incarcerated  
6167 individual available and fully cooperate in the examination by the Department of Health and  
6168 Human Services and any other independent examiners for the defense or the state.

6169 (4) The examiners shall in the conduct of their examinations and in their reports to the  
6170 court consider and address, in addition to any other factors determined to be relevant by the  
6171 examiners:

6172 (a) the [inmate's] incarcerated individual's awareness of the fact of the [inmate's]  
6173 incarcerated individual's impending execution;

6174 (b) the [inmate's] incarcerated individual's understanding that the [inmate] incarcerated  
6175 individual is to be executed for the crime of murder;

6176 (c) the nature of the [inmate's] incarcerated individual's mental disorder, if any, and its  
6177 relationship to the factors relevant to the [inmate's] incarcerated individual's competency; and

6178 (d) whether psychoactive medication is necessary to maintain or restore the [inmate's]  
6179 incarcerated individual's competency.

6180 (5) (a) The examiners who are examining the [inmate] incarcerated individual shall  
6181 each provide an initial report to the court and the attorneys for the state and the [inmate]  
6182 incarcerated individual within 60 days of the receipt of the court's order.

6183 (b) The report shall inform the court of the examiner's opinion concerning the  
6184 competency of the [inmate] incarcerated individual to be executed, or, in the alternative, the  
6185 examiner may inform the court in writing that additional time is needed to complete the report.

6186 (c) If the examiner informs the court that additional time is needed, the examiner shall  
6187 have up to an additional 30 days to provide the report to the court and counsel.

6188 (d) The examiner shall provide the report within 90 days from the receipt of the court's  
6189 order unless, for good cause shown, the court authorizes an additional period of time to  
6190 complete the examination and provide the report.

6191 (6) (a) All interviews with the [inmate] incarcerated individual conducted by the  
6192 examiners shall be videotaped, unless otherwise ordered by the court for good cause shown.  
6193 The Department of Corrections shall provide the videotaping equipment and facilitate the  
6194 videotaping of the interviews.

6195 (b) Immediately following the videotaping, the videotape shall be provided to the  
6196 attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the



6197 competency determination is pending.

6198 (c) The court shall grant counsel for the state and for the [inmate] incarcerated  
6199 individual, and examiners who are examining the [inmate] incarcerated individual under this  
6200 part access to view the videotape at the court building where the court is located that is  
6201 conducting the competency determination under this part.

6202 (7) Any written report submitted by an examiner shall:

6203 (a) identify the specific matters referred for evaluation;

6204 (b) describe the procedures, techniques, and tests used in the examination and the  
6205 purpose or purposes for each;

6206 (c) state the examiner's clinical observations, findings, and opinions on each issue  
6207 referred for examination by the court, and indicate specifically those issues, if any, on which  
6208 the examiner could not give an opinion; and

6209 (d) identify the sources of information used by the examiner and present the basis for  
6210 the examiner's clinical findings and opinions.

6211 (8) (a) When the reports are received, the court shall set a date for a competency  
6212 hearing, which shall be held within not less than five and not more than 15 days, unless the  
6213 court extends the time for good cause.

6214 (b) Any examiner directed by the Department of Health and Human Services to  
6215 conduct the examination may be subpoenaed to provide testimony at the hearing. If the  
6216 examiners are in conflict as to the competency of the [inmate] incarcerated individual, all of  
6217 them should be called to testify at the hearing if they are reasonably available.

6218 (c) The court may call any examiner to testify at the hearing who is not called by the  
6219 parties. An examiner called by the court may be cross-examined by counsel for the parties.

6220 (9) (a) An [inmate] incarcerated individual shall be presumed competent to be executed  
6221 unless the court, by a preponderance of the evidence, finds the [inmate] incarcerated individual  
6222 incompetent to be executed. The burden of proof is upon the proponent of incompetency at the  
6223 hearing.

6224 (b) An adjudication of incompetency to be executed does not operate as an  
6225 adjudication of the [inmate's] incarcerated individual's incompetency to give informed consent  
6226 for medical treatment or for any other purpose, unless specifically set forth in the court order.

6227 (10) (a) If the court finds the [inmate] incarcerated individual incompetent to be

6228 executed, its order shall contain findings addressing each of the factors in Subsections (4)(a)  
6229 through (d).

6230 (b) The order finding the [inmate] incarcerated individual incompetent to be executed  
6231 shall be delivered to the Department of Health and Human Services, and shall be accompanied  
6232 by:

6233 (i) copies of the reports of the examiners filed with the court pursuant to the order of  
6234 examination, if not provided previously;

6235 (ii) copies of any of the psychiatric, psychological, or social work reports submitted to  
6236 the court relative to the mental condition of the [inmate] incarcerated individual; and

6237 (iii) any other documents made available to the court by either the defense or the state,  
6238 pertaining to the [inmate's] incarcerated individual's current or past mental condition.

6239 (c) A copy of the order finding the [inmate] incarcerated individual incompetent to be  
6240 executed shall be delivered to the Department of Corrections.

6241 Section 121. Section **77-19-205** is amended to read:

6242 **77-19-205. Procedures on finding of incompetency to be executed -- Subsequent**  
6243 **hearings -- Notice to attorneys.**

6244 (1) (a) (i) If after the hearing under Section **77-19-204** the [inmate] incarcerated  
6245 individual is found to be incompetent to be executed, the court shall continue the stay of  
6246 execution and the [inmate] incarcerated individual shall receive appropriate mental health  
6247 treatment.

6248 (ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the  
6249 forcible administration of psychoactive medication for the sole purpose of restoring the  
6250 [inmate's] incarcerated individual's competency to be executed.

6251 (b) The court shall order the executive director of the Department of Health and  
6252 Human Services to provide periodic assessments to the court regarding the [inmate's]  
6253 incarcerated individual's competency to be executed.

6254 (c) The [inmate] incarcerated individual shall be held in secure confinement, either at  
6255 the prison or the [~~State Hospital~~] state hospital, as agreed upon by the executive director of the  
6256 Department of Corrections and the executive director of the Department of Health and Human  
6257 Services. If the [inmate] incarcerated individual remains at the prison, the Department of  
6258 Health and Human Services shall consult with the Department of Corrections regarding the

6259 [inmate's] incarcerated individual's mental health treatment.

6260 (2) (a) The examiner or examiners designated by the executive director of the  
6261 Department of Health and Human Services to assess the [inmate's] incarcerated individual's  
6262 progress toward competency may not be involved in the routine treatment of the [inmate]  
6263 incarcerated individual.

6264 (b) The examiner or examiners shall each provide a full report to the court and counsel  
6265 for the state and the [inmate] incarcerated individual within 90 days of receipt of the court's  
6266 order. If any examiner is unable to complete the assessment within 90 days, that examiner  
6267 shall provide to the court and counsel for the state and the inmate a summary progress report  
6268 which informs the court that additional time is necessary to complete the assessment, in which  
6269 case the examiner has up to an additional 90 days to provide the full report, unless the court  
6270 enlarges the time for good cause. The full report shall assess:

6271 (i) the facility's or program's capacity to provide appropriate treatment for the [inmate]  
6272 incarcerated individual;

6273 (ii) the nature of treatments provided to the [inmate] incarcerated individual;

6274 (iii) what progress toward restoration of competency has been made;

6275 (iv) the [inmate's] incarcerated individual's current level of mental disorder and need  
6276 for treatment, if any; and

6277 (v) the likelihood of restoration of competency and the amount of time estimated to  
6278 achieve it.

6279 (3) The court on its own motion or upon motion by either party may order the  
6280 Department of Health and Human Services to appoint additional mental health examiners to  
6281 examine the [inmate] incarcerated individual and advise the court on the [inmate's]  
6282 incarcerated individual's current mental status and progress toward competency restoration.

6283 (4) (a) Upon receipt of the full report, the court shall hold a hearing to determine the  
6284 [inmate's] incarcerated individual's current status. At the hearing, the burden of proving that  
6285 the [inmate] incarcerated individual is competent is on the proponent of competency.

6286 (b) Following the hearing, the court shall determine by a preponderance of evidence  
6287 whether the [inmate] incarcerated individual is competent to be executed.

6288 (5) (a) If the court determines that the [inmate] incarcerated individual is competent to  
6289 be executed, it shall enter findings and shall proceed under Subsection [77-19-202\(2\)\(c\)](#).

6290 (b) (i) If the court determines the [inmate] incarcerated individual is still incompetent  
6291 to be executed, the [inmate] incarcerated individual shall continue to receive appropriate  
6292 mental health treatment, and the court shall hold hearings no less frequently than at 18-month  
6293 intervals for the purpose of determining the defendant's competency to be executed.

6294 (ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not  
6295 include the forcible administration of psychoactive medication for the sole purpose of restoring  
6296 the [inmate's] incarcerated individual's competency to be executed.

6297 (6) (a) If at any time the clinical director of the Utah State Hospital or the primary  
6298 treating mental health professional determines that the [inmate] incarcerated individual has  
6299 been restored to competency, he shall notify the court.

6300 (b) (i) The court shall conduct a hearing regarding the [inmate's] incarcerated  
6301 individual's competency to be executed within 30 working days of the receipt of the  
6302 notification under Subsection (6)(a), unless the court extends the time for good cause.

6303 (ii) The court may order a hearing or rehearing at any time on its own motion.

6304 (7) Notice of a hearing on competency to be executed shall be given to counsel for the  
6305 state and for the [inmate] incarcerated individual, as well as to the office of the prosecutor who  
6306 prosecuted the [inmate] incarcerated individual on the original capital charge.

6307 Section 122. Section **77-19-206** is amended to read:

6308 **77-19-206. Expenses -- Allocation.**

6309 The Department of Health and Human Services and the Department of Corrections  
6310 shall each pay 1/2 of the costs of any examination of the [inmate] incarcerated individual  
6311 conducted pursuant to Sections **77-19-204** and **77-19-205** to determine if an [inmate]  
6312 incarcerated individual is competent to be executed.

6313 Section 123. Section **77-23-301** is amended to read:

6314 **77-23-301. Warrantless searches regarding persons on parole.**

6315 (1) An [inmate] incarcerated individual who is eligible for release on parole shall, as a  
6316 condition of parole, sign an agreement as described in Subsection (2) that the [inmate]  
6317 incarcerated individual, while on parole, is subject to search or seizure of the [inmate's]  
6318 incarcerated individual's person, property, place of temporary or permanent residence, vehicle,  
6319 or personal effects while on parole:

6320 (a) by a parole officer at any time, with or without a search warrant, and with or

6321 without cause; and

6322 (b) by a law enforcement officer at any time, with or without a search warrant, and with  
6323 or without cause, but subject to Subsection (3).

6324 (2) (a) The terms of the agreement under Subsection (1) shall be stated in clear and  
6325 unambiguous language.

6326 (b) The agreement shall be signed by the parolee, indicating the parolee's  
6327 understanding of the terms of searches as allowed by Subsection (1).

6328 (3) (a) In order for a law enforcement officer to conduct a search of a parolee's  
6329 residence under Subsection (1) or a seizure pursuant to the search, the law enforcement officer  
6330 shall have obtained prior approval from a parole officer or shall have a warrant for the search.

6331 (b) If a law enforcement officer conducts a search of a parolee's person, personal  
6332 effects, or vehicle pursuant to a stop, the law enforcement officer shall notify a parole officer as  
6333 soon as reasonably possible after conducting the search.

6334 (4) A search conducted under this section may not be for the purpose of harassment.

6335 (5) Any [~~inmate~~] incarcerated individual who does not agree in writing to be subject to  
6336 search or seizure under Subsection (1) may not be paroled until the [~~inmate~~] incarcerated  
6337 individual enters into the agreement under Subsection (1).

6338 (6) This section applies only to an [~~inmate~~] incarcerated individual who is eligible for  
6339 release on parole on or after May 5, 2008.

6340 Section 124. Section 77-27-1 is amended to read:

6341 **77-27-1. Definitions.**

6342 As used in this chapter:

6343 (1) "Appearance" means any opportunity to address the board, a board member, a  
6344 panel, or hearing officer, including an interview.

6345 (2) "Board" means the Board of Pardons and Parole.

6346 (3) (a) "Case action plan" means a document developed by the Department of  
6347 Corrections that identifies the program priorities for the treatment of the offender.

6348 (b) "Case action plan" includes the criminal risk factors as determined by a risk and  
6349 needs assessment conducted by the department.

6350 (4) "Commission" means the State Commission on Criminal and Juvenile Justice  
6351 created in Section 63M-7-201.

- 6352 (5) "Commutation" is the change from a greater to a lesser punishment after  
6353 conviction.
- 6354 (6) "Criminal accounts receivable" means the same as that term is defined in Section  
6355 [77-32b-102](#).
- 6356 (7) "Criminal risk factors" means a person's characteristics and behaviors that:  
6357 (a) affect that person's risk of engaging in criminal behavior; and  
6358 (b) are diminished when addressed by effective treatment, supervision, and other  
6359 support resources resulting in reduced risk of criminal behavior.
- 6360 (8) (a) "Deliberative process" means the board or any number of the board's individual  
6361 members together engaging in discussions, whether written or verbal, regarding a parole, a  
6362 pardon, a commutation, termination of sentence, or fines, fees, or restitution in an individual  
6363 case.
- 6364 (b) "Deliberative process" includes the votes, mental processes, written notes, and  
6365 recommendations of individual board members and staff.
- 6366 (c) "Deliberative process" does not include:  
6367 (i) a hearing where the offender is present;  
6368 (ii) any factual record the board is considering, including records of the offender's  
6369 criminal convictions, records regarding the offender's current or previous incarceration and  
6370 supervision, and records regarding the offender's physical or mental health;  
6371 (iii) recommendations regarding the offender's incarceration or supervision from any  
6372 other individual, governmental entity, or agency;  
6373 (iv) testimony received by the board regarding the offender, whether written or verbal;  
6374 or  
6375 (v) the board's decision or rationale for the decision.
- 6376 (9) "Department" means the Department of Corrections.
- 6377 (10) "Expiration" means when the maximum sentence has run.
- 6378 (11) "Family" means any individual related to the victim as a spouse, child, sibling,  
6379 parent, or grandparent, or the victim's legal guardian.
- 6380 (12) "Hearing" or "full hearing" means an appearance before the board, a panel, a board  
6381 member or hearing examiner, at which an offender or ~~[inmate]~~ incarcerated individual is  
6382 afforded an opportunity to be present and address the board.

6383 (13) "Location," in reference to a hearing, means the physical location at which the  
6384 board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of  
6385 the location of any person participating by electronic means.

6386 (14) "Open session" means any hearing, before the board, a panel, a board member, or  
6387 a hearing examiner, that is open to the public, regardless of the location of any person  
6388 participating by electronic means.

6389 (15) "Panel" means members of the board assigned by the chairperson to a particular  
6390 case.

6391 (16) "Pardon" means:

6392 (a) an act of grace that forgives a criminal conviction and restores the rights and  
6393 privileges forfeited by or because of the criminal conviction;

6394 (b) the release of an offender from the entire punishment prescribed for a criminal  
6395 offense and from disabilities that are a consequence of the criminal conviction; and

6396 (c) the reinstatement of any civil rights lost as a consequence of conviction or  
6397 punishment for a criminal offense.

6398 (17) "Parole" means a release from imprisonment on prescribed conditions which, if  
6399 satisfactorily performed by the parolee, enables the parolee to obtain a termination of the  
6400 parolee's sentence.

6401 (18) "Payment schedule" means the same as that term is defined in Section  
6402 [77-32b-102](#).

6403 (19) "Pecuniary damages" means the same as that term is defined in Section  
6404 [77-38b-102](#).

6405 (20) "Probation" means an act of grace by the court suspending the imposition or  
6406 execution of a convicted offender's sentence upon prescribed conditions.

6407 (21) "Remit" or "remission" means the same as that term is defined in Section  
6408 [77-32b-102](#).

6409 (22) "Reprieve" or "respite" means the temporary suspension of the execution of the  
6410 sentence.

6411 (23) "Restitution" means the same as that term is defined in Section [77-38b-102](#).

6412 (24) "Termination" means the act of discharging from parole or concluding the  
6413 sentence of imprisonment before the expiration of the sentence.

6414 (25) "Victim" means:

6415 (a) a person against whom the defendant committed a felony or class A misdemeanor  
6416 offense for which a hearing is held under this chapter; or

6417 (b) the victim's family if the victim is deceased as a result of the offense for which a  
6418 hearing is held under this chapter.

6419 Section 125. Section **77-27-1.5** is amended to read:

6420 **77-27-1.5. Appearance by incarcerated individual, offender, or witness.**

6421 (1) (a) An appearance by an [~~inmate~~] incarcerated individual, offender, or witness  
6422 before the board, a panel, board member, or hearing officer may be in person, through  
6423 videoconferencing or other electronic means.

6424 (b) [~~Any~~] An appearance by videoconference or other electronic means shall be  
6425 recorded as provided in Section 77-27-8.

6426 (2) An [~~inmate's~~] incarcerated individual's or offender's electronic appearance by  
6427 telephone is permissible with the consent of the [~~inmate~~] incarcerated individual or offender,  
6428 when the [~~inmate~~] incarcerated individual or offender is incarcerated in a facility outside of this  
6429 state.

6430 Section 126. Section **77-27-5.3** is amended to read:

6431 **77-27-5.3. Meritless and bad faith litigation.**

6432 (1) For purposes of this section:

6433 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,  
6434 guilty with a mental illness, no contest, and conviction of any crime or offense.

6435 (b) [~~"Prisoner" means a person~~] "Incarcerated individual" means an individual who has  
6436 been convicted of a crime and is incarcerated for that crime or is being held in custody for trial  
6437 or sentencing.

6438 (2) In any case filed in state or federal court in which [~~a prisoner~~] an incarcerated  
6439 individual submits a claim that the court finds to be without merit and brought or asserted in  
6440 bad faith, the Board of Pardons and Parole and any county jail administrator may consider that  
6441 finding in any early release decisions concerning the [~~prisoner~~] incarcerated individual.

6442 Section 127. Section **77-27-8** is amended to read:

6443 **77-27-8. Record of hearing.**

6444 (1) A verbatim record of proceedings before the Board of Pardons and Parole shall be



6445 maintained by a suitable electronic recording device, except when the board dispenses with a  
6446 record in a particular hearing or a portion of the proceedings.

6447 (2) When the hearing involves the commutation of a death sentence, a certified  
6448 shorthand reporter, in addition to electronic means, shall record all proceedings except when  
6449 the board dispenses with a record for the purpose of deliberations in executive session. The  
6450 compensation of the reporter shall be determined by the board. The reporter shall immediately  
6451 file with the board the original record and when requested shall with reasonable diligence  
6452 furnish a transcription or copy of the record upon payment of reasonable fees as determined by  
6453 the board.

6454 (3) When an [~~inmate~~] incarcerated individual or offender affirms by affidavit that he is  
6455 unable to pay for a copy of the record, the board may furnish a copy of the record, at the  
6456 expense of the state, to the [~~inmate~~] incarcerated individual or offender.

6457 Section 128. Section ~~77-27-9~~ is amended to read:

6458 **77-27-9. Parole proceedings.**

6459 (1) (a) The Board of Pardons and Parole may parole any offender or terminate the  
6460 sentence of any offender committed to a penal or correctional facility under the jurisdiction of  
6461 the Department of Corrections except as provided in Subsection (2).

6462 (b) The board may not release any offender before the minimum term has been served  
6463 unless the board finds mitigating circumstances which justify the release and unless the board  
6464 has granted a full hearing, in open session, after previous notice of the time and location of the  
6465 hearing, and recorded the proceedings and decisions of the board.

6466 (c) The board may not parole any offender or terminate the sentence of any offender  
6467 unless the board has granted a full hearing, in open session, after previous notice of the time  
6468 and location of the hearing, and recorded the proceedings and decisions of the board.

6469 (d) The release of an offender shall be at the initiative of the board, which shall  
6470 consider each case as the offender becomes eligible. However, [~~a prisoner~~] an offender may  
6471 submit the [~~prisoner's~~] offender's own application, subject to the rules of the board promulgated  
6472 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6473 (2) (a) An individual sentenced to prison prior to April 29, 1996, for a first degree  
6474 felony involving child kidnapping, a violation of Section ~~76-5-301.1~~; aggravated kidnapping, a  
6475 violation of Section ~~76-5-302~~; rape of a child, a violation of Section ~~76-5-402.1~~; object rape of

6476 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section  
6477 76-5-403.1; aggravated sexual abuse of a child, a violation of Section 76-5-404.3; aggravated  
6478 sexual assault, a violation of Section 76-5-405; or a prior offense as described in Section  
6479 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole until the  
6480 offender has fully completed serving the minimum mandatory sentence imposed by the court.  
6481 This Subsection (2)(a) supersedes any other provision of law.

6482 (b) The board may not parole any offender or commute or terminate the sentence of  
6483 any offender before the offender has served the minimum term for the offense, if the offender  
6484 was sentenced prior to April 29, 1996, and if:

6485 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,  
6486 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined  
6487 in Title 76, Chapter 5, Offenses Against the Individual; and

6488 (ii) the victim of the offense was under 18 years old at the time the offense was  
6489 committed.

6490 (c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the  
6491 board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as  
6492 provided in this section.

6493 (d) The board may not pardon or parole any offender or commute or terminate the  
6494 sentence of any offender who is sentenced to life in prison without parole except as provided in  
6495 Subsection (7).

6496 (e) On or after April 27, 1992, the board may commute a sentence of death only to a  
6497 sentence of life in prison without parole.

6498 (f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come  
6499 before the Board of Pardons and Parole on or after April 27, 1992.

6500 (g) The board may not parole any offender convicted of a homicide unless:

6501 (i) the remains of the victim have been recovered; or

6502 (ii) the offender can demonstrate by a preponderance of the evidence that the offender  
6503 has cooperated in good faith in efforts to locate the remains.

6504 (h) Subsection (2)(g) applies to any offender convicted of a homicide after February  
6505 25, 2021, or any offender who was incarcerated in a correctional facility on or after February  
6506 25, 2021, for a homicide offense.

6507 (3) The board may rescind:

6508 (a) an [inmate's] incarcerated individual's prison release date prior to the [inmate]  
6509 incarcerated individual being released from custody; or

6510 (b) an offender's termination date from parole prior to the offender being terminated  
6511 from parole.

6512 (4) (a) The board may issue subpoenas to compel the attendance of witnesses and the  
6513 production of evidence, to administer oaths, and to take testimony for the purpose of any  
6514 investigation by the board or any of the board's members or by a designated hearing examiner  
6515 in the performance of the board's duties.

6516 (b) A person who willfully disobeys a properly served subpoena issued by the board is  
6517 guilty of a class B misdemeanor.

6518 (5) (a) The board may adopt rules consistent with law for the board's government,  
6519 meetings and hearings, the conduct of proceedings before the board, the parole and pardon of  
6520 offenders, the commutation and termination of sentences, and the general conditions under  
6521 which parole may be granted and revoked.

6522 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings  
6523 held under this chapter, as provided in Section [77-27-9.5](#).

6524 (c) The rules may allow the board to establish reasonable and equitable time limits on  
6525 the presentations by all participants in hearings held under this chapter.

6526 (6) The board does not provide counseling or therapy for victims as a part of their  
6527 participation in any hearing under this chapter.

6528 (7) The board may parole a person sentenced to life in prison without parole if the  
6529 board finds by clear and convincing evidence that the person is permanently incapable of being  
6530 a threat to the safety of society.

6531 Section 129. Section **77-27-10** is amended to read:

6532 **77-27-10. Conditions of parole -- Incarcerated individual agreement to warrant --**  
6533 **Rulemaking -- Intensive early release parole program.**

6534 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall  
6535 issue to the parolee a certificate setting forth the conditions of parole, including the graduated  
6536 and evidence-based responses to a violation of a condition of parole established by the  
6537 Sentencing Commission in accordance with Section [64-13-21](#), which the offender shall accept

6538 and agree to as evidenced by the offender's signature affixed to the agreement.

6539 (b) The parole agreement shall require that the [inmate] incarcerated individual agree  
6540 in writing that the board may issue a warrant and conduct a parole revocation hearing if:

6541 (i) the board determines after the grant of parole that the [inmate] incarcerated  
6542 individual willfully provided to the board false or inaccurate information that the board finds  
6543 was significant in the board's determination to grant parole; or

6544 (ii) (A) the [inmate] incarcerated individual has engaged in criminal conduct prior to  
6545 the granting of parole; and

6546 (B) the board did not have information regarding the conduct at the time parole was  
6547 granted.

6548 (c) A copy of the agreement shall be delivered to the Department of Corrections and a  
6549 copy shall be given to the parolee. The original shall remain with the board's file.

6550 (2) (a) If an offender convicted of violating or attempting to violate Section  
6551 [76-5-301.1](#), [76-5-302](#), [76-5-402](#), [76-5-402.1](#), [76-5-402.2](#), [76-5-402.3](#), [76-5-403](#), [76-5-403.1](#),  
6552 [76-5-404](#), [76-5-404.1](#), [76-5-404.3](#), or [76-5-405](#), is released on parole, the board shall order  
6553 outpatient mental health counseling and treatment as a condition of parole.

6554 (b) The board shall develop standards and conditions of parole under this Subsection  
6555 (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6556 (c) This Subsection (2) does not apply to intensive early release parole.

6557 (3) (a) In addition to the conditions set out in Subsection (1), the board may place  
6558 offenders in an intensive early release parole program. The board shall determine the  
6559 conditions of parole which are reasonably necessary to protect the community as well as to  
6560 protect the interests of the offender and to assist the offender to lead a law-abiding life.

6561 (b) The offender is eligible for this program only if the offender:

6562 (i) has not been convicted of a sexual offense; or

6563 (ii) has not been sentenced pursuant to Section [76-3-406](#).

6564 (c) The department shall:

6565 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
6566 Rulemaking Act, for operation of the program;

6567 (ii) adopt and implement internal management policies for operation of the program;

6568 (iii) determine whether or not to refer an offender into this program within 120 days

6569 from the date the offender is committed to prison by the sentencing court; and

6570 (iv) make the final recommendation to the board regarding the placement of an  
6571 offender into the program.

6572 (d) The department may not consider credit for time served in a county jail awaiting  
6573 trial or sentencing when calculating the 120-day period.

6574 (e) The prosecuting attorney or sentencing court may refer an offender for  
6575 consideration by the department for participation in the program.

6576 (f) The board shall determine whether or not to place an offender into this program  
6577 within 30 days of receiving the department's recommendation.

6578 (4) This program shall be implemented by the department within the existing budget.

6579 (5) During the time the offender is on parole, the department shall collect from the  
6580 offender the monthly supervision fee authorized by Section 64-13-21.

6581 (6) When a parolee commits a violation of the parole agreement, the department may:

6582 (a) respond in accordance with the graduated and evidence-based responses established  
6583 in accordance with Section 64-13-21; or

6584 (b) when the graduated and evidence-based responses established in accordance with  
6585 Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation  
6586 of parole.

6587 Section 130. Section 77-28b-5 is amended to read:

6588 **77-28b-5. Role of institution warden.**

6589 The warden shall sign Form III, Notice Regarding International Prisoner Transfer, and  
6590 forward the application and the material required in Section 77-28b-4 in triplicate to the  
6591 Department of Corrections [~~Inmate~~] Incarcerated Placement Program Bureau.

6592 Section 131. Section 77-28b-6 is amended to read:

6593 **77-28b-6. Role of Incarcerated Placement Program Bureau.**

6594 (1) The Department of Corrections [~~Inmate~~] Incarcerated Placement Program Bureau  
6595 shall:

6596 (a) investigate the request to ensure that all eligibility requirements are met;

6597 (b) request a records check to verify records listed in Section 77-28b-3;

6598 (c) review application and materials for completeness and compliance with treaty

6599 terms;

- 6600 (d) develop and recommend assurances, where indicated; and
- 6601 (e) provide written notification of the transfer request to the following entities and
- 6602 receive objections or other comments for 15 business days after sending the notification:
- 6603 (i) attorney general;
- 6604 (ii) prosecuting law enforcement agency;
- 6605 (iii) prosecutor; and
- 6606 (iv) sentencing court.
- 6607 (2) If the [inmate] Incarcerated Placement Program Bureau investigation determines
- 6608 that the application and materials are incomplete or do not comply with the terms of the treaty,
- 6609 the application shall be rejected and returned to the institution in which the [inmate]
- 6610 incarcerated individual is incarcerated.
- 6611 (3) If the investigation of the bureau determines the application and materials are
- 6612 complete and in compliance with the terms of the treaty, the application and materials shall be
- 6613 forwarded to the director of the Department of Corrections.
- 6614 Section 132. Section **77-28b-7** is amended to read:
- 6615 **77-28b-7. Role of director.**
- 6616 (1) (a) The director of the Department of Corrections shall review the application and
- 6617 materials.
- 6618 (b) Upon [his] the director's approval the application and materials shall be forwarded
- 6619 to the governor for authorization to transfer.
- 6620 (2) Applications that are not approved by the director shall be returned to the sending
- 6621 institution and the [inmate] incarcerated individual shall be notified.
- 6622 Section 133. Section **77-28b-8** is amended to read:
- 6623 **77-28b-8. Referral to the United States Department of Justice, Office of**
- 6624 **International Affairs.**
- 6625 (1) Upon receipt of the governor's authorization for international transfer, the
- 6626 application and materials shall be forwarded to the United States Department of Justice, Office
- 6627 of International Affairs, by the [inmate] Incarcerated Placement Program Bureau.
- 6628 (2) The bureau shall notify the [inmate] incarcerated individual and the warden of the
- 6629 sending institution of the decision of the application for international transfer.
- 6630 (3) All arrangements regarding the treaty process and proposed assurances shall be

6631 negotiated between the bureau and the United States Department of Justice, Office of  
6632 International Affairs.

6633 Section 134. Section **77-28b-9** is amended to read:

6634 **77-28b-9. Transfer of offender.**

6635 (1) If the [~~inmate~~] offender is accepted for international transfer by the United States  
6636 Department of Justice, Office of International Affairs, the offender shall be transported by the  
6637 Department of Corrections to the federal district court for a verification hearing to ensure the  
6638 offender consents to the international transfer.

6639 (2) The Department of Corrections shall then relinquish jurisdiction over the offender  
6640 to the United States Department of Justice.

6641 Section 135. Section **77-30-10** is amended to read:

6642 **77-30-10. Time to apply for habeas corpus allowed.**

6643 No [~~person~~] individual arrested upon such warrant shall be delivered over to the agent  
6644 whom the executive authority demanding [~~him~~] the individual shall have appointed to receive  
6645 [~~him unless he~~] the individual unless the individual shall first be taken forthwith before a judge  
6646 of a court of record in this state who shall inform [~~him~~] the individual of the demand made for  
6647 [~~his~~] the individual's surrender and of the crime with which [~~he~~] the individual is charged and  
6648 that [~~he~~] the individual has the right to demand and procure legal counsel and if the [~~prisoner~~]  
6649 individual or [~~his~~] the individual's counsel shall state that [~~he or they desire~~] the individual  
6650 desires to test the legality of [~~his~~] the individual's arrest, the judge of such court of record shall  
6651 fix a reasonable time to be allowed [~~him~~] the individual within which to apply for a writ of  
6652 habeas corpus. When such writ is applied for, notice thereof and the time and place of hearing  
6653 thereon shall be given to the prosecuting officer of the county in which the arrest is made and  
6654 in which the [~~accused~~] individual is in custody, and to the said agent of the demanding state.

6655 Section 136. Section **77-30-12** is amended to read:

6656 **77-30-12. Officers entitled to use local jails.**

6657 The officer or persons executing the governor's warrant of arrest or the agent of the  
6658 demanding state to whom the [~~prisoner~~] incarcerated individual may have been delivered may,  
6659 when necessary, confine the [~~prisoner~~] incarcerated individual in the jail of any county or city  
6660 through which [~~he~~] the officer, person, or agent may pass and the keeper of such jail must  
6661 receive and safely keep the [~~prisoner~~] incarcerated individual until the officer or person having

6662 charge of ~~[him]~~ the incarcerated individual is ready to proceed on his route, such officer or  
6663 person being chargeable with the expense of keeping.

6664 The officer or agent of a demanding state to whom ~~[a prisoner]~~ an incarcerated  
6665 individual may have been delivered following extradition proceedings in another state, or to  
6666 whom ~~[a prisoner]~~ an incarcerated individual may have been delivered after waiving  
6667 extradition in such other state, and who is passing through this state with such ~~[a prisoner]~~ an  
6668 incarcerated individual for the purpose of immediately returning such ~~[prisoner]~~ incarcerated  
6669 individual to the demanding state may, when necessary, confine the ~~[prisoner]~~ incarcerated  
6670 individual in the jail of any county or city through which ~~[he]~~ the officer or agent may pass, and  
6671 the keeper of such jail must receive and safely keep the ~~[prisoner]~~ incarcerated individual until  
6672 the officer or agent having charge of ~~[him]~~ the incarcerated individual is ready to proceed on  
6673 his route, such officer or agent being chargeable with the expense of keeping; provided, such  
6674 officer or agent shall produce and show to the keeper of such jail satisfactory written evidence  
6675 of the fact that ~~[he]~~ the officer or agent is actually transporting such ~~[prisoner]~~ incarcerated  
6676 individual to the demanding state after a requisition by the executive authority of such  
6677 demanding state. Such ~~[prisoner shall]~~ incarcerated individual may not be entitled to demand a  
6678 new requisition while in this state.

6679 Section 137. Section **77-30-18** is amended to read:

6680 **77-30-18. Forfeiture of bail.**

6681 (1) ~~[If the prisoner]~~ If an incarcerated individual is admitted to bail and fails to appear  
6682 and surrender according to the conditions of the ~~[prisoner's]~~ incarcerated individual's bond, the  
6683 judge or magistrate by proper order shall declare the bond forfeited and order the ~~[prisoner's]~~  
6684 immediate arrest of the incarcerated individual without a warrant if the ~~[prisoner]~~ incarcerated  
6685 individual is within this state.

6686 (2) Recovery may be had on such bond in the name of the state as in the case of other  
6687 bonds given by the accused in criminal proceedings within this state.

6688 Section 138. Section **77-33-2** is amended to read:

6689 **77-33-2. Summoning an incarcerated individual in this state to testify in another**  
6690 **state -- Certificate of out-of-state judge.**

6691 (1) A judge of a state court of record in another state, which by ~~[its]~~ the state's laws has  
6692 made provision for commanding ~~[persons]~~ individuals confined in penal institutions within that



6693 state to attend and testify in this state, may certify:

6694 ~~[(+)]~~ (a) that there is a criminal proceeding or investigation by a grand jury or a criminal  
6695 action pending in the court~~];~~];

6696 ~~(b)~~ ~~[(2)]~~ that ~~[a person]~~ an individual who is confined in a penal institution in this state  
6697 may be a material witness in the proceeding, investigation, or action~~];~~]; and

6698 ~~(c)~~ ~~[(3)]~~ that ~~[his]~~ the individual's presence will be required during a specified time.

6699 (2) Upon presentation of the certificate to any judge having jurisdiction over the  
6700 ~~[person]~~ individual confined, and upon notice to the attorney general, the judge in this state  
6701 shall fix a time and place for a hearing and shall make an order directed to the person having  
6702 custody of the ~~[prisoner]~~ incarcerated individual requiring that the ~~[prisoner]~~ incarcerated  
6703 individual be produced before ~~[him]~~ the judge at the hearing.

6704 Section 139. Section **77-33-6** is amended to read:

6705 **77-33-6. Incarcerated individual in another state summoned to testify in this state**  
6706 **-- Certificate of judge.**

6707 (1) If a person confined in a penal institution in any state may be a material witness in a  
6708 criminal action pending in a court of record or in a grand jury investigation in this state, a judge  
6709 of the court may certify:

6710 ~~[(+)]~~ (a) that there is a criminal proceeding or investigation by a grand jury or a  
6711 criminal action pending in the court~~];~~];

6712 ~~[(2)]~~ (b) that a person who is confined in a penal institution in another state may be a  
6713 material witness in the proceeding, investigation, or action~~];~~]; and

6714 ~~[(3)]~~ (c) that his presence will be required during a specified time.

6715 (2) The certificate shall be presented to a judge of a court of record in the other state  
6716 having jurisdiction over the ~~[prisoner]~~ incarcerated individual confined, and a notice shall be  
6717 given to the attorney general of the state in which the ~~[prisoner]~~ incarcerated individual is  
6718 confined.

6719 Section 140. Section **77-38-2** is amended to read:

6720 **77-38-2. Definitions.**

6721 For the purposes of this chapter and the Utah Constitution:

6722 (1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or  
6723 disparage.

- 6724 (2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.
- 6725 (3) "Fairness" means treating the crime victim reasonably, even-handedly, and  
6726 impartially.
- 6727 (4) "Harassment" means treating the crime victim in a persistently annoying manner.
- 6728 (5) "Important criminal justice hearings" or "important juvenile justice hearings" means  
6729 the following proceedings in felony criminal cases or cases involving a minor's conduct which  
6730 would be a felony if committed by an adult:
- 6731 (a) any preliminary hearing to determine probable cause;
- 6732 (b) any court arraignment where practical;
- 6733 (c) any court proceeding involving the disposition of charges against a defendant or  
6734 minor or the delay of a previously scheduled trial date but not including any unanticipated  
6735 proceeding to take an admission or a plea of guilty as charged to all charges previously filed or  
6736 any plea taken at an initial appearance;
- 6737 (d) any court proceeding to determine whether to release a defendant or minor and, if  
6738 so, under what conditions release may occur, excluding any such release determination made at  
6739 an initial appearance;
- 6740 (e) any criminal or delinquency trial, excluding any actions at the trial that a court  
6741 might take in camera, in chambers, or at a sidebar conference;
- 6742 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or  
6743 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or  
6744 restitution of a defendant; and
- 6745 (g) any public hearing concerning whether to grant a defendant or minor parole or other  
6746 form of discretionary release from confinement.
- 6747 (6) "Reliable information" means information worthy of confidence, including any  
6748 information whose use at sentencing is permitted by the United States Constitution.
- 6749 (7) "Representative of a victim" means [~~a person~~] an individual who is designated by  
6750 the victim or designated by the court and who represents the victim in the best interests of the  
6751 victim.
- 6752 (8) "Respect" means treating the crime victim with regard and value.
- 6753 (9) (a) "Victim of a crime" means [~~any natural person~~] an individual against whom the  
6754 charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or

6755 minor personally or as a party to the offense or conduct or, in the discretion of the court,  
6756 against whom a related crime or act is alleged to have been perpetrated or attempted, unless the  
6757 ~~[natural person]~~ individual is the accused or appears to be accountable or otherwise criminally  
6758 responsible for or criminally involved in the crime or conduct or a crime or act arising from the  
6759 same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

6760 (b) For purposes of the right to be present, "victim of a crime" does not mean [~~any~~  
6761 ~~person~~] an individual who is in custody as a pretrial detainee, as [~~a prisoner~~] an incarcerated  
6762 individual following conviction for an offense, or as a juvenile who has committed an act that  
6763 would be an offense if committed by an adult, or who is in custody for mental or psychological  
6764 treatment.

6765 (c) For purposes of the right to be present and heard at a public hearing as provided in  
6766 Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a),  
6767 "victim of a crime" includes any victim originally named in the allegation of criminal conduct  
6768 who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

6769 Section 141. Section 77-38-4 is amended to read:

6770 **77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal --**  
6771 **Control of disruptive acts or irrelevant statements -- Statements from individuals in**  
6772 **custody.**

6773 (1) The victim of a crime, the representative of the victim, or both shall have the right:

6774 (a) to be present at the important criminal or juvenile justice hearings provided in  
6775 Subsection 77-38-2(5);

6776 (b) to be heard at the important criminal or juvenile justice hearings provided in  
6777 Subsections 77-38-2(5)(b), (c), (d), (f), and (g);

6778 (c) to submit a written statement in any action on appeal related to that crime; and

6779 (d) upon request to the judge hearing the matter, to be present and heard at the initial  
6780 appearance of the [~~person~~] individual suspected of committing the conduct or criminal offense  
6781 against the victim on issues relating to whether to release a defendant or minor and, if so, under  
6782 what conditions release may occur.

6783 (2) This chapter shall not confer any right to the victim of a crime to be heard:

6784 (a) at any criminal trial, including the sentencing phase of a capital trial under Section  
6785 76-3-207 or at any preliminary hearing, unless called as a witness; and

6786 (b) at any delinquency trial or at any preliminary hearing in a minor's case, unless  
6787 called as a witness.

6788 (3) The right of a victim or representative of a victim to be present at trial is subject to  
6789 Rule 615 of the Utah Rules of Evidence.

6790 (4) Nothing in this chapter shall deprive the court of the right to prevent or punish  
6791 disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

6792 (5) The court shall have the right to limit any victim's statement to matters that are  
6793 relevant to the proceeding.

6794 (6) In all cases where the number of victims exceeds five, the court may limit the  
6795 in-court oral statements it receives from victims in its discretion to a few representative  
6796 statements.

6797 (7) Except as otherwise provided in this section, a victim's right to be heard may be  
6798 exercised at the victim's discretion in any appropriate fashion, including an oral, written,  
6799 audiotaped, or videotaped statement or direct or indirect information that has been provided to  
6800 be included in any presentence report.

6801 (8) If the victim of a crime is [~~a person~~] an individual who is in custody as a pretrial  
6802 detainee, as [~~a prisoner~~] an incarcerated individual following conviction for an offense, or as a  
6803 juvenile who has committed an act that would be an offense if committed by an adult, or who  
6804 is in custody for mental or psychological treatment, the right to be heard under this chapter  
6805 shall be exercised by submitting a written statement to the court.

6806 (9) The court may exclude any oral statement from a victim on the grounds of the  
6807 victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

6808 (10) Except in juvenile court cases, the Constitution may not be construed as limiting  
6809 the existing rights of the prosecution to introduce evidence in support of a capital sentence.

6810 Section 142. Section **78A-2-302** is amended to read:

6811 **78A-2-302. Indigent litigants -- Affidavit.**

6812 (1) As used in Sections **78A-2-302** through **78A-2-309**:

6813 (a) "Convicted" means:

6814 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental  
6815 illness, no contest; and

6816 (ii) a conviction of any crime or offense.

6817           ~~[(b) "Indigent" means an individual who is financially unable to pay fees and costs or~~  
6818 ~~give security.]~~

6819           ~~[(c)]~~ (b) "Incarcerated individual" means an individual who has been  
6820 convicted of a crime and is incarcerated for that crime or is being held in custody for trial or  
6821 sentencing.

6822           (c) "Indigent" means an individual who is financially unable to pay fees and costs or  
6823 give security.

6824           (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this  
6825 state without prepayment of fees and costs or security if the individual submits an affidavit  
6826 demonstrating that the individual is indigent.

6827           (3) A court shall find an individual indigent if the individual's affidavit under  
6828 Subsection (2) demonstrates:

6829           (a) the individual has an income level at or below 150% of the United States poverty  
6830 level as defined by the most recent poverty income guidelines published by the United States  
6831 Department of Health and Human Services;

6832           (b) the individual receives benefits from a means-tested government program,  
6833 including Temporary Assistance to Needy Families, Supplemental Security Income, the  
6834 Supplemental Nutrition Assistance Program, or Medicaid;

6835           (c) the individual receives legal services from a nonprofit provider or a pro bono  
6836 attorney through the Utah State Bar; or

6837           (d) the individual has insufficient income or other means to pay the necessary fees and  
6838 costs or security without depriving the individual, or the individual's family, of food, shelter,  
6839 clothing, or other necessities.

6840           (4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d)  
6841 shall contain complete information on the individual's:

6842           (a) identity and residence;

6843           (b) amount of income, including any government financial support, alimony, or child  
6844 support;

6845           (c) assets owned, including real and personal property;

6846           (d) business interests;

6847           (e) accounts receivable;

6848 (f) securities, checking and savings account balances;

6849 (g) debts; and

6850 (h) monthly expenses.

6851 (5) If the individual under Subsection (3) is [~~a prisoner~~] an incarcerated individual, the  
6852 [~~prisoner~~] incarcerated individual shall disclose the amount of money held in the [~~prisoner's~~]  
6853 incarcerated individual's trust account at the time the affidavit under Subsection (2) is executed  
6854 in accordance with Section [78A-2-305](#).

6855 (6) An affidavit of indigency under this section shall state the following:

6856 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear  
6857 the expenses of the action or legal proceedings which I am about to commence or the appeal  
6858 which I am about to take, and that I believe I am entitled to the relief sought by the action, legal  
6859 proceedings, or appeal.

6860 Section 143. Section [78A-2-305](#) is amended to read:

6861 **[78A-2-305](#). Effect of filing affidavit -- Procedure for review and collection.**

6862 (1) (a) Upon receipt of an affidavit of indigency under Section [78A-2-302](#) filed with  
6863 any Utah court by [~~a prisoner~~] an incarcerated individual, the court shall immediately request  
6864 the institution or facility where the [~~prisoner~~] incarcerated individual is incarcerated to provide  
6865 an account statement detailing all financial activities in the [~~prisoner's~~] incarcerated individual's  
6866 trust account for the previous six months or since the time of incarceration, whichever is  
6867 shorter.

6868 (b) The incarcerating facility shall:

6869 (i) prepare and produce to the court the [~~prisoner's~~] incarcerated individual's six-month  
6870 trust account statement, current trust account balance, and aggregate disposable income; and

6871 (ii) calculate aggregate disposable income by totaling all deposits made [~~in~~] into the  
6872 [~~prisoner's~~] incarcerated individual's trust account during the six-month period and subtracting  
6873 all funds automatically deducted or otherwise garnished from the account during the same  
6874 period.

6875 (2) The court shall:

6876 (a) review both the affidavit of indigency and the financial account statement; and

6877 (b) based upon the review, independently determine whether or not the [~~prisoner~~]  
6878 incarcerated individual is financially capable of paying all the regular fees and costs associated

6879 with filing the action.

6880 (3) When the court concludes that the [prisoner] incarcerated individual is unable to  
6881 pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the  
6882 [prisoner's] incarcerated individual's current trust account balance or 10% of the [prisoner's]  
6883 incarcerated individual's six-month aggregate disposable income, whichever is greater.

6884 (4) (a) After payment of the initial partial filing fee, the court shall require the  
6885 [prisoner] incarcerated individual to make monthly payments of 20% of the preceding month's  
6886 aggregate disposable income until the regular filing fee associated with the civil action is paid  
6887 in full.

6888 (b) The agency having custody of the [prisoner] incarcerated individual shall:

6889 (i) garnish the [prisoner's] incarcerated individual's account each month; and

6890 (ii) once the collected fees exceed \$10, forward payments to the clerk of the court until  
6891 the filing fees are paid.

6892 (c) Nothing in this section may be construed to prevent the agency having custody of  
6893 the [prisoner] incarcerated individual from withdrawing funds from the [prisoner's]  
6894 incarcerated individual's account to pay court-ordered restitution.

6895 (5) Collection of the filing fees continues despite dismissal of the action.

6896 (6) The filing fee collected may not exceed the amount of fees permitted by statute for  
6897 the commencement of a civil action or an appeal of a civil action.

6898 (7) If the [prisoner] incarcerated individual is filing an initial divorce action or an  
6899 action to obtain custody of the [prisoner's] incarcerated individual's children, the following  
6900 procedures shall apply for review and collection of fees and costs:

6901 (a) (i) Upon a filing of an affidavit of indigency under Section [78A-2-302](#) with any  
6902 Utah court by ~~a prisoner~~ an incarcerated individual, the court shall review the affidavit and  
6903 make an independent determination based on the information provided whether court costs and  
6904 fees should be paid in full or be waived in whole or in part.

6905 (ii) The court shall require a full or partial filing fee when the [prisoner's] incarcerated  
6906 individual's financial information demonstrates an ability to pay the applicable court fees or  
6907 costs.

6908 (b) (i) If ~~a prisoner's~~ an incarcerated individual's court fees or costs are completely  
6909 waived, and if the [prisoner] incarcerated individual files an appeal, the court shall immediately

6910 file any complaint or papers on appeal and complete all necessary action as promptly as if the  
6911 litigant had paid all the fees and costs in full.

6912 (ii) If [~~a prisoner~~] an incarcerated individual is indigent, the constable and sheriff shall  
6913 immediately serve any summonses, writs, process and subpoenas, and papers necessary in the  
6914 prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.

6915 (c) (i) If [~~a prisoner~~] an incarcerated individual files an affidavit of indigency, the judge  
6916 shall question the [~~prisoner~~] incarcerated individual at the time of the hearing on the merits of  
6917 the case as to the [~~prisoner's~~] incarcerated individual's ability to pay.

6918 (ii) If the judge determines that the [~~prisoner~~] incarcerated individual is reasonably able  
6919 to pay court fees and costs, the final order or decree shall be entered, however the [~~prisoner~~]  
6920 incarcerated individual may not seek enforcement or modification of the decree or order until  
6921 the [~~prisoner~~] incarcerated individual has paid the fees or costs in full.

6922 (iii) A judge may waive the restrictions placed on the [~~prisoner~~] incarcerated individual  
6923 in Subsection (7)(c)(ii) upon a showing of good cause.

6924 Section 144. Section **78B-2-302** is amended to read:

6925 **78B-2-302. Within one year.**

6926 An action may be brought within one year:

6927 (1) for liability created by the statutes of a foreign state;

6928 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,  
6929 or to an individual and the state, except when the statute imposing it prescribes a different  
6930 limitation;

6931 (3) except as provided in Section [78B-2-307.5](#), upon a statute, or upon an undertaking  
6932 in a criminal action, for a forfeiture or penalty to the state;

6933 (4) for libel, slander, false imprisonment, or seduction;

6934 (5) against a sheriff or other officer for the escape of [~~a prisoner~~] an incarcerated  
6935 individual arrested or imprisoned upon either civil or criminal process;

6936 (6) against a municipal corporation for damages or injuries to property caused by a  
6937 mob or riot;

6938 (7) except as otherwise expressly provided by statute, against a county legislative body  
6939 or a county executive to challenge a decision of the county legislative body or county  
6940 executive, respectively;



6941 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious  
6942 Land Use Act; or

6943 (9) for a claim for relief or a cause of action under Subsection [25-6-203\(2\)](#).

6944 Section 145. Section **78B-6-603** is amended to read:

6945 **78B-6-603. Recommitment after discharge forbidden -- Exceptions.**

6946 [~~A person~~] An individual who has been discharged by order of the court or judge upon  
6947 habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause,  
6948 except in the following cases:

6949 (1) if the [~~person~~] individual has been discharged from custody on a criminal charge  
6950 and is afterward committed for the same offense by legal order or process; or

6951 (2) if, after discharge for defect of proof or for any defect of the process, warrant or  
6952 commitment in a criminal case, the [~~prisoner~~] individual is again arrested on sufficient proof  
6953 and committed by legal process for the same offense.

6954 Section 146. Section **78B-8-401** is amended to read:

6955 **78B-8-401. Definitions.**

6956 As used in this part:

6957 (1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid,  
6958 pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and  
6959 vaginal secretions, and any body fluid visibly contaminated with blood.

6960 (2) "COVID-19" means the same as that term is defined in Section [78B-4-517](#).

6961 (3) "Disease" means Human Immunodeficiency Virus infection, acute or chronic  
6962 Hepatitis B infection, Hepatitis C infection, COVID-19 or another infectious disease that may  
6963 cause Severe Acute Respiratory Syndrome, and any other infectious disease specifically  
6964 designated by the Labor Commission, in consultation with the Department of Health and  
6965 Human Services, for the purposes of this part.

6966 (4) "Emergency services provider" means:

6967 (a) an individual licensed under Section [26-8a-302](#), a peace officer, local fire  
6968 department personnel, or personnel employed by the Department of Corrections or by a county  
6969 jail, who provide prehospital emergency care for an emergency services provider either as an  
6970 employee or as a volunteer; or

6971 (b) an individual who provides for the care, control, support, or transport of [~~a~~

6972 ~~prisoner]~~ an incarcerated individual.

6973 (5) "First aid volunteer" means a person who provides voluntary emergency assistance  
6974 or first aid medical care to an injured person prior to the arrival of an emergency medical  
6975 services provider or peace officer.

6976 (6) "Health care provider" means the same as that term is defined in Section  
6977 [78B-3-403](#).

6978 (7) "Incarcerated individual" means the same as that term is defined in Section  
6979 [76-5-101](#).

6980 ~~[(7)]~~ (8) "Medical testing procedure" means a nasopharyngeal swab, a nasal swab, a  
6981 capillary blood sample, a saliva test, or a blood draw.

6982 ~~[(8)]~~ (9) "Peace officer" means the same as that term is defined in Section [53-1-102](#).

6983 ~~[(9)]~~ "~~Prisoner~~" means the same as that term is defined in Section ~~[76-5-101](#)~~.]

6984 (10) "Significant exposure" and "significantly exposed" mean:

6985 (a) exposure of the body of one individual to the blood or body fluids of another  
6986 individual by:

6987 (i) percutaneous injury, including a needle stick, cut with a sharp object or instrument,  
6988 or a wound resulting from a human bite, scratch, or similar force; or

6989 (ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut,  
6990 abrasion, dermatitis, or other damage;

6991 (b) exposure of the body of one individual to the body fluids, including airborne  
6992 droplets, of another individual if:

6993 (i) the other individual displays symptoms known to be associated with COVID-19 or  
6994 another infectious disease that may cause Severe Acute Respiratory Syndrome; or

6995 (ii) other evidence exists that would lead a reasonable person to believe that the other  
6996 individual may be infected with COVID-19 or another infectious disease that may cause Severe  
6997 Acute Respiratory Syndrome; or

6998 (c) exposure that occurs by any other method of transmission defined by the Labor  
6999 Commission, in consultation with the Department of Health and Human Services, as a  
7000 significant exposure.

7001 Section 147. Section **78B-8-402** is amended to read:

7002 **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

7003 (1) An emergency services provider or first aid volunteer who is significantly exposed  
7004 during the course of performing the emergency services provider's duties or during the course  
7005 of performing emergency assistance or first aid, or a health care provider acting in the course  
7006 and scope of the health care provider's duties as a health care provider may:

7007 (a) request that the [~~person~~] individual to whom the emergency services provider, first  
7008 aid volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

7009 (b) petition the district court or a magistrate for an order requiring that the [~~person~~]  
7010 individual to whom the emergency services provider, first aid volunteer, or health care provider  
7011 was significantly exposed submit to testing to determine the presence of a disease and that the  
7012 results of that test be disclosed to the petitioner by the Department of Health and Human  
7013 Services.

7014 (2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic  
7015 or other means an ex parte request for a warrant ordering a medical testing procedure of the  
7016 respondent.

7017 (b) The court or magistrate shall issue a warrant ordering the respondent to submit to a  
7018 medical testing procedure within two hours, and that reasonable force may be used, if  
7019 necessary, if the court or magistrate finds that:

7020 (i) the petitioner was significantly exposed during the course of performing the  
7021 petitioner's duties as an emergency services provider, first aid volunteer, or health care  
7022 provider;

7023 (ii) the respondent refused to give consent to the medical testing procedure or is unable  
7024 to give consent;

7025 (iii) there may not be an opportunity to obtain a sample at a later date; and

7026 (iv) a delay in administering available FDA-approved post-exposure treatment or  
7027 prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

7028 (c) (i) If the petitioner requests that the court order the respondent to submit to a blood  
7029 draw, the petitioner shall request [~~a person~~] an individual authorized under Section [41-6a-523](#)  
7030 to perform the blood draw.

7031 (ii) If the petitioner requests that the court order the respondent to submit to a medical  
7032 testing procedure, other than a blood draw, the petitioner shall request that a qualified medical  
7033 professional, including a physician, a physician's assistant, a registered nurse, a licensed

7034 practical nurse, or a paramedic, perform the medical testing procedure.

7035 (d) (i) A sample drawn in accordance with a warrant following an ex parte request shall  
7036 be sent to the Department of Health and Human Services for testing.

7037 (ii) If the Department of Health and Human Services is unable to perform a medical  
7038 testing procedure ordered by the court under this section, a qualified medical laboratory may  
7039 perform the medical testing procedure if:

7040 (A) the Department of Health and Human Services requests that the medical laboratory  
7041 perform the medical testing procedure; and

7042 (B) the result of the medical testing procedure is provided to the Department of Health  
7043 and Human Services.

7044 (3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the  
7045 petitioner may file a petition with the district court seeking an order to submit to testing and to  
7046 disclose the results in accordance with this section.

7047 (4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in  
7048 which the petitioner certifies that the petitioner has been significantly exposed to the individual  
7049 who is the subject of the petition and describes that exposure.

7050 (b) The petitioner shall submit to testing to determine the presence of a disease, when  
7051 the petition is filed or within three days after the petition is filed.

7052 (5) The petitioner shall cause the petition required under this section to be served on  
7053 the [person] individual who the petitioner is requesting to be tested in a manner that will best  
7054 preserve the confidentiality of that [person] individual.

7055 (6) (a) The court shall set a time for a hearing on the matter within 10 days after the  
7056 petition is filed and shall give the petitioner and the individual who is the subject of the petition  
7057 notice of the hearing at least 72 hours prior to the hearing.

7058 (b) The individual who is the subject of the petition shall also be notified that the  
7059 individual may have an attorney present at the hearing and that the individual's attorney may  
7060 examine and cross-examine witnesses.

7061 (c) The hearing shall be conducted in camera.

7062 (7) The district court may enter an order requiring that an individual submit to testing,  
7063 including a medical testing procedure, for a disease if the court finds probable cause to believe:

7064 (a) the petitioner was significantly exposed; and

7065 (b) the exposure occurred during the course of the emergency services provider's  
7066 duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health  
7067 care provider acting in the course and scope of the provider's duties as a health care provider.

7068 (8) The court may order that the use of reasonable force is permitted to complete an  
7069 ordered test if the individual who is the subject of the petition is [~~a prisoner~~] an incarcerated  
7070 individual.

7071 (9) The court may order that additional, follow-up testing be conducted and that the  
7072 individual submit to that testing, as it determines to be necessary and appropriate.

7073 (10) The court is not required to order an individual to submit to a test under this  
7074 section if it finds that there is a substantial reason, relating to the life or health of the  
7075 individual, not to enter the order.

7076 (11) (a) Upon order of the district court that an individual submit to testing for a  
7077 disease, that individual shall report to the designated local health department to provide the  
7078 ordered specimen within five days after the day on which the court issues the order, and  
7079 thereafter as designated by the court, or be held in contempt of court.

7080 (b) The court shall send the order to the Department of Health and Human Services and  
7081 to the local health department ordered to conduct or oversee the test.

7082 (c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and  
7083 Human Services and a local health department may disclose the test results pursuant to a court  
7084 order as provided in this section.

7085 (d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not  
7086 satisfy the requirements of the court order.

7087 (12) The local health department or the Department of Health and Human Services  
7088 shall inform the subject of the petition and the petitioner of the results of the test and advise  
7089 both parties that the test results are confidential. That information shall be maintained as  
7090 confidential by all parties to the action.

7091 (13) The court, the court's personnel, the process server, the Department of Health and  
7092 Human Services, local health department, and petitioner shall maintain confidentiality of the  
7093 name and any other identifying information regarding the individual tested and the results of  
7094 the test as they relate to that individual, except as specifically authorized by this chapter.

7095 (14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment

7096 for each test performed in accordance with this section to the entity that performs the  
7097 procedure.

7098 (b) If the petitioner is an emergency services provider, the agency that employs the  
7099 emergency services provider shall remit payment for each test performed in accordance with  
7100 this section to the entity that performs the procedure.

7101 (15) The entity that obtains a specimen for a test ordered under this section shall cause  
7102 the specimen and the payment for the analysis of the specimen to be delivered to the  
7103 Department of Health and Human Services for analysis.

7104 (16) If the individual is incarcerated, the incarcerating authority shall either obtain a  
7105 specimen for a test ordered under this section or shall pay the expenses of having the specimen  
7106 obtained by a qualified individual who is not employed by the incarcerating authority.

7107 (17) The ex parte request or petition shall be sealed upon filing and made accessible  
7108 only to the petitioner, the subject of the petition, and their attorneys, upon court order.

7109 Section 148. Section **78B-22-404** is amended to read:

7110 **78B-22-404. Powers and duties of the commission.**

7111 (1) The commission shall:

7112 (a) adopt core principles for an indigent defense system to ensure the effective  
7113 representation of indigent individuals consistent with the requirements of the United States  
7114 Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall  
7115 address the following:

7116 (i) an indigent defense system shall ensure that in providing indigent defense services:

7117 (A) an indigent individual receives conflict-free indigent defense services; and

7118 (B) there is a separate contract for each type of indigent defense service; and

7119 (ii) an indigent defense system shall ensure an indigent defense service provider has:

7120 (A) the ability to exercise independent judgment without fear of retaliation and is free  
7121 to represent an indigent individual based on the indigent defense service provider's own  
7122 independent judgment;

7123 (B) adequate access to indigent defense resources;

7124 (C) the ability to provide representation to accused individuals in criminal cases at the  
7125 critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency  
7126 and child welfare proceedings;

7127 (D) a workload that allows for sufficient time to meet with clients, investigate cases,  
7128 file appropriate documents with the courts, and otherwise provide effective assistance of  
7129 counsel to each client;

7130 (E) adequate compensation without financial disincentives;

7131 (F) appropriate experience or training in the area for which the indigent defense service  
7132 provider is representing indigent individuals;

7133 (G) compensation for legal training and education in the areas of the law relevant to the  
7134 types of cases for which the indigent defense service provider is representing indigent  
7135 individuals; and

7136 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,  
7137 including expectations on client communications and managing conflicts of interest;

7138 (b) encourage and aid indigent defense systems in the state in the regionalization of  
7139 indigent defense services to provide for effective and efficient representation to the indigent  
7140 individuals;

7141 (c) emphasize the importance of ensuring constitutionally effective indigent defense  
7142 services;

7143 (d) encourage members of the judiciary to provide input regarding the delivery of  
7144 indigent defense services; and

7145 (e) oversee individuals and entities involved in providing indigent defense services.

7146 (2) The commission may:

7147 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
7148 Rulemaking Act, to carry out the commission's duties under this part;

7149 (b) assign duties related to indigent defense services to the office to assist the  
7150 commission with the commission's statutory duties;

7151 (c) request supplemental appropriations from the Legislature to address a deficit in the  
7152 Indigent [~~Inmate~~] Incarcerated Individual Fund created in Section [78B-22-455](#); and

7153 (d) request supplemental appropriations from the Legislature to address a deficit in the  
7154 Child Welfare Parental Representation Fund created in Section [78B-22-804](#).

7155 Section 149. Section **78B-22-452** is amended to read:

7156 **78B-22-452. Duties of the office.**

7157 (1) The office shall:

- 7158 (a) establish an annual budget for the office for the Indigent Defense Resources  
7159 Restricted Account created in Section [78B-22-405](#);
- 7160 (b) assist the commission in performing the commission's statutory duties described in  
7161 this chapter;
- 7162 (c) identify and collect data that is necessary for the commission to:
- 7163 (i) aid, oversee, and review compliance by indigent defense systems with the  
7164 commission's core principles for the effective representation of indigent individuals; and
- 7165 (ii) provide reports regarding the operation of the commission and the provision of  
7166 indigent defense services by indigent defense systems in the state;
- 7167 (d) assist indigent defense systems by reviewing contracts and other agreements, to  
7168 ensure compliance with the commission's core principles for effective representation of  
7169 indigent individuals;
- 7170 (e) establish procedures for the receipt and acceptance of complaints regarding the  
7171 provision of indigent defense services in the state;
- 7172 (f) establish procedures to award grants to indigent defense systems under Section  
7173 [78B-22-406](#) that are consistent with the commission's core principles;
- 7174 (g) create and enter into contracts consistent with Section [78B-22-454](#) to provide  
7175 indigent defense services for an indigent defense ~~[inmate]~~ incarcerated individual who:
- 7176 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth  
7177 class as classified in Section [17-50-501](#);
- 7178 (ii) is charged with having committed a crime within that state prison; and
- 7179 (iii) has been appointed counsel in accordance with Section [78B-22-203](#);
- 7180 (h) assist the commission in developing and reviewing advisory caseload guidelines  
7181 and procedures;
- 7182 (i) investigate, audit, and review the provision of indigent defense services to ensure  
7183 compliance with the commission's core principles for the effective representation of indigent  
7184 individuals;
- 7185 (j) administer the Child Welfare Parental Representation Program in accordance with  
7186 Part 8, Child Welfare Parental Representation Program;
- 7187 (k) annually report to the governor, Legislature, Judiciary Interim Committee, and  
7188 Judicial Council, regarding:



- 7189 (i) the operations of the commission;
- 7190 (ii) the operations of the indigent defense systems in the state; and
- 7191 (iii) compliance with the commission's core principles by indigent defense systems
- 7192 receiving grants from the commission;
- 7193 (l) submit recommendations to the commission for improving indigent defense services
- 7194 in the state;
- 7195 (m) publish an annual report on the commission's website; and
- 7196 (n) perform all other duties assigned by the commission related to indigent defense
- 7197 services.
- 7198 (2) The office may enter into contracts and accept, allocate, and administer funds and
- 7199 grants from any public or private person to accomplish the duties of the office.
- 7200 (3) Any contract entered into under this part shall require that indigent defense services
- 7201 are provided in a manner consistent with the commission's core principles implemented under
- 7202 Section [78B-22-404](#).
- 7203 Section 150. Section **78B-22-454** is amended to read:
- 7204 **78B-22-454. Defense of indigent incarcerated individuals.**
- 7205 (1) The office shall pay for indigent defense services for indigent [~~inmates~~]
- 7206 incarcerated individuals from the Indigent [~~Inmate~~] Incarcerated Individual Fund created in
- 7207 Section [78B-22-455](#).
- 7208 (2) A contract under this part shall ensure that indigent defense services are provided in
- 7209 a manner consistent with the core principles described in Section [78B-22-404](#).
- 7210 (3) The county attorney or district attorney of a county of the third, fourth, fifth, or
- 7211 sixth class shall function as the prosecuting entity.
- 7212 (4) (a) A county of the third, fourth, fifth, or sixth class where a state prison is located
- 7213 may impose an additional property tax levy by ordinance at .0001 per dollar of taxable value in
- 7214 the county.
- 7215 (b) If the county governing body imposes the additional property tax levy by ordinance,
- 7216 the revenue shall be deposited into the Indigent [~~Inmate~~] Incarcerated Individual Fund as
- 7217 provided in Section [78B-22-455](#) to fund the purposes of this part.
- 7218 (c) Upon notification that the fund has reached the amount specified in Subsection
- 7219 [78B-22-455](#)(6), a county shall deposit revenue derived from the property tax levy after the

7220 county receives the notice into a county account used exclusively to provide indigent defense  
7221 services.

7222 (d) A county that chooses not to impose the additional levy by ordinance may not  
7223 receive any benefit from the Indigent [~~Inmate~~] Incarcerated Individual Fund.

7224 Section 151. Section **78B-22-455** is amended to read:

7225 **78B-22-455. Indigent Incarcerated Individual Fund.**

7226 (1) There is created a custodial fund known as the "Indigent [~~Inmate~~] Incarcerated  
7227 Individual Fund" to be disbursed by the office in accordance with contracts entered into under  
7228 Subsection 78B-22-452(1)(g).

7229 (2) Money deposited into this fund shall only be used:

7230 (a) to pay indigent defense services for an indigent [~~inmate~~] incarcerated individual  
7231 who:

7232 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth  
7233 class as defined in Section 17-50-501;

7234 (ii) is charged with having committed a crime within that state prison; and

7235 (iii) has been appointed counsel in accordance with Section 78B-22-203; and

7236 (b) to cover costs of administering the Indigent [~~Inmate~~] Incarcerated Individual Fund.

7237 (3) The fund consists of:

7238 (a) proceeds received from counties that impose the additional tax levy by ordinance  
7239 under Subsection 78B-22-454(4), which shall be the total county obligation for payment of  
7240 costs listed in Subsection (2) for defense services for indigent [~~inmates~~] incarcerated  
7241 individuals;

7242 (b) appropriations made to the fund by the Legislature; and

7243 (c) interest and earnings from the investment of fund money.

7244 (4) Fund money shall be invested by the state treasurer with the earnings and interest  
7245 accruing to the fund.

7246 (5) (a) In any calendar year in which the fund has insufficient funding, or is projected  
7247 to have insufficient funding, the commission shall request a supplemental appropriation from  
7248 the Legislature in the following general session to provide sufficient funding.

7249 (b) The state shall pay any or all of the reasonable and necessary money to provide  
7250 sufficient funding into the Indigent [~~Inmate~~] Incarcerated Individual Fund.

7251 (6) The fund is capped at \$1,000,000.

7252 (7) The office shall notify the contributing counties when the fund approaches  
7253 \$1,000,000 and provide each county with the amount of the balance in the fund.

7254 (8) Upon notification by the office that the fund is near the limit imposed in Subsection  
7255 (6), the counties may contribute enough money to enable the fund to reach \$1,000,000 and  
7256 discontinue contributions until notified by the office that the balance has fallen below  
7257 \$1,000,000, at which time counties that meet the requirements of Section 78B-22-454 shall  
7258 resume contributions.

7259 Section 152. Section 78B-22-701 is amended to read:

7260 **78B-22-701. Establishment of Indigent Aggravated Murder Defense Fund -- Use**  
7261 **of fund -- Compensation for indigent legal defense from fund.**

7262 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense  
7263 Fund.

7264 (2) (a) There is established a custodial fund known as the "Indigent Aggravated Murder  
7265 Defense Fund."

7266 (b) The Division of Finance shall disburse money from the fund at the direction of the  
7267 board and subject to this chapter.

7268 (3) The fund consists of:

7269 (a) money received from participating counties as provided in Sections 78B-22-702  
7270 and 78B-22-703;

7271 (b) appropriations made to the fund by the Legislature as provided in Section  
7272 78B-22-703; and

7273 (c) interest and earnings from the investment of fund money.

7274 (4) The state treasurer shall invest fund money with the earnings and interest accruing  
7275 to the fund.

7276 (5) The fund shall be used to assist participating counties with financial resources, as  
7277 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the  
7278 provision of constitutionally effective defense for indigent individuals prosecuted for the  
7279 violation of state laws in cases involving aggravated murder.

7280 (6) Money allocated to or deposited in this fund shall be used only:

7281 (a) to reimburse participating counties for expenditures made for an attorney appointed

7282 to represent an indigent individual, other than a state [inmate] incarcerated individual in a state  
7283 prison, prosecuted for aggravated murder in a participating county; and

7284 (b) for administrative costs pursuant to Section [78B-22-501](#).

7285 Section 153. Section **80-6-204** is amended to read:

7286 **80-6-204. Detention or confinement of a minor -- Restrictions.**

7287 (1) Except as provided in Subsection (2) or this chapter, if a child is apprehended by a  
7288 peace officer, or brought before a court for examination under state law, the child may not be  
7289 confined:

7290 (a) in a jail, lockup, or cell used for an adult who is charged with a crime; or

7291 (b) in secure care .

7292 (2) (a) The division shall detain a child in accordance with Sections [80-6-502](#),  
7293 [80-6-504](#), and [80-6-505](#) if:

7294 (i) the child is charged with an offense under Section [80-6-502](#) or [80-6-503](#);

7295 (ii) the district court has obtained jurisdiction over the offense because the child is  
7296 bound over to the district court under Section [80-6-504](#); and

7297 (iii) the juvenile or district court orders the detention of the child.

7298 (b) (i) If a child is detained before a detention hearing, or a preliminary hearing under  
7299 Section [80-6-504](#) if a criminal information is filed for the child under Section [80-6-503](#), the  
7300 child may only be held in certified juvenile detention accommodations in accordance with rules  
7301 made by the commission.

7302 (ii) The commission's rules shall include rules for acceptable sight and sound  
7303 separation from adult [inmates] incarcerated individuals.

7304 (iii) The commission shall certify that a correctional facility is in compliance with the  
7305 commission's rules.

7306 (iv) This Subsection (2)(b) does not apply to a child held in a correctional facility in  
7307 accordance with Subsection (2)(a).

7308 (3) (a) In an area of low density population, the commission may, by rule, approve a  
7309 juvenile detention accommodation within a correctional facility that has acceptable sight and  
7310 sound separation.

7311 (b) An accommodation described in Subsection (3)(a) shall be used only:

7312 (i) for short-term holding of a child who is alleged to have committed an act that would

- 7313 be a criminal offense if committed by an adult; and
- 7314 (ii) for a maximum confinement period of six hours.
- 7315 (c) A child may only be held in an accommodation described in Subsection (3)(a) for:
- 7316 (i) identification;
- 7317 (ii) notification of a juvenile court official;
- 7318 (iii) processing; and
- 7319 (iv) allowance of adequate time for evaluation of needs and circumstances regarding
- 7320 the release or transfer of the child to a shelter or detention facility.
- 7321 (d) This Subsection (3) does not apply to a child held in a correctional facility in
- 7322 accordance with Subsection (2)(a).
- 7323 (4) (a) If a child is alleged to have committed an act that would be a criminal offense if
- 7324 committed by an adult, the child may be detained in a holding room in a local law enforcement
- 7325 agency facility:
- 7326 (i) for a maximum of two hours; and
- 7327 (ii) (A) for identification or interrogation; or
- 7328 (B) while awaiting release to a parent or other responsible adult.
- 7329 (b) A holding room described in Subsection (4)(a) shall be certified by the commission
- 7330 in accordance with the commission's rules.
- 7331 (c) The commission's rules shall include provisions for constant supervision and for
- 7332 sight and sound separation from adult ~~[inmates]~~ incarcerated individuals.
- 7333 (5) Willful failure to comply with this section is a class B misdemeanor.
- 7334 (6) (a) The division is responsible for the custody and detention of:
- 7335 (i) a child who requires detention before trial or examination, or is placed in secure
- 7336 detention after an adjudication under Section [80-6-704](#); and
- 7337 (ii) a juvenile offender under Subsection [80-6-806\(7\)](#).
- 7338 (b) Subsection (6)(a) does not apply to a child held in a correctional facility in
- 7339 accordance with Subsection (2)(a).
- 7340 (c) (i) The commission shall provide standards for custody or detention under
- 7341 Subsections (2)(b), (3), and (4).
- 7342 (ii) The division shall determine and set standards for conditions of care and
- 7343 confinement of children in detention facilities.

7344 (d) (i) The division, or a public or private agency willing to undertake temporary  
7345 custody or detention upon agreed terms in a contract with the division, shall provide all other  
7346 custody or detention in suitable premises distinct and separate from the general jails, lockups,  
7347 or cells used in law enforcement and corrections systems.

7348 (ii) This Subsection (6)(d) does not apply to a child held in a correctional facility in  
7349 accordance with Subsection (2)(a).

7350 (7) Except as otherwise provided by this chapter, if an individual who is, or appears to  
7351 be, under 18 years old is received at a correctional facility, the sheriff, warden, or other official,  
7352 in charge of the correctional facility shall:

7353 (a) immediately notify the juvenile court of the individual; and

7354 (b) make arrangements for the transfer of the individual to a detention facility, unless  
7355 otherwise ordered by the juvenile court.

7356 Section 154. **Repealer.**

7357 This bill repeals:

7358 Section **77-16b-101, Title.**

7359 Section 155. **Revisor instructions.**

7360 The Legislature intends that the Office of Legislative Research and General Counsel, in  
7361 preparing the Utah Code database for publication, replace the terms "prisoner" and "inmate"  
7362 with "incarcerated individual" in any new language added to the Utah Code by legislation  
7363 passed during the 2023 General Session.