

Senator Luz Escamilla proposes the following substitute bill:

INMATE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: Ryan D. Wilcox

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;
- ▶ 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:



26 [10-8-58.5](#), as last amended by Laws of Utah 2010, Chapter 378
27 [13-26-11](#), as last amended by Laws of Utah 2022, Chapter 324
28 [13-45-301](#), as enacted by Laws of Utah 2006, Chapter 344
29 [17-18a-506](#), as enacted by Laws of Utah 2021, Chapter 142
30 [17-22-2](#), as last amended by Laws of Utah 2022, Chapter 335
31 [17-22-2.5](#), as last amended by Laws of Utah 2018, Chapter 86
32 [17-22-3](#), as Utah Code Annotated 1953
33 [17-22-5](#), as last amended by Laws of Utah 2004, Chapter 301
34 [17-22-5.5](#), as last amended by Laws of Utah 2022, Chapter 115
35 [17-22-6](#), as last amended by Laws of Utah 2011, Chapter 297
36 [17-22-7](#), as last amended by Laws of Utah 1993, Chapter 227
37 [17-22-8](#), as last amended by Laws of Utah 2022, Chapter 123
38 [17-22-9](#), as Utah Code Annotated 1953
39 [17-22-19](#), as Utah Code Annotated 1953
40 [17-22-28](#), as enacted by Laws of Utah 1996, Chapter 94
41 [17-22-29](#), as enacted by Laws of Utah 1996, Chapter 237
42 [17-22-32](#), as last amended by Laws of Utah 2022, Chapter 187
43 [17-22-33](#), as enacted by Laws of Utah 2020, Chapter 65
44 [17-25-3](#), as renumbered and amended by Laws of Utah 2001, Chapter 46
45 [17-50-319](#), as last amended by Laws of Utah 2021, Chapter 260
46 [17-53-311](#), as last amended by Laws of Utah 2011, Chapter 297
47 [17D-1-201](#), as last amended by Laws of Utah 2021, Chapter 339
48 [26-18-3](#), as last amended by Laws of Utah 2021, Chapter 422
49 [26-18-421](#), as enacted by Laws of Utah 2020, Chapter 159
50 [26-40-105](#), as last amended by Laws of Utah 2019, Chapter 393
51 [31A-35-701](#), as last amended by Laws of Utah 2016, Chapter 234
52 [34-40-104](#), as last amended by Laws of Utah 2008, Chapter 382
53 [35A-4-205](#), as last amended by Laws of Utah 2006, Chapter 22
54 [39A-5-111](#), as renumbered and amended by Laws of Utah 2022, Chapter 373
55 [39A-5-112](#), as renumbered and amended by Laws of Utah 2022, Chapter 373
56 [51-7-4](#), as last amended by Laws of Utah 2020, Chapter 365

- 57 [53-2a-602](#), as last amended by Laws of Utah 2016, Chapters 83, 134
- 58 [53-10-404](#), as last amended by Laws of Utah 2021, Chapter 262
- 59 [53-13-104](#), as last amended by Laws of Utah 2022, Chapter 10
- 60 [53B-7-103](#), as last amended by Laws of Utah 2022, Chapter 421
- 61 [58-37-8](#), as last amended by Laws of Utah 2022, Chapters 116, 415 and 430
- 62 [59-12-402.1](#), as last amended by Laws of Utah 2017, Chapter 422
- 63 [62A-2-120](#), as last amended by Laws of Utah 2022, Chapters 185, 335, 430, and 468
- 64 [62A-15-103](#), as last amended by Laws of Utah 2022, Chapters 187, 255 and 415
- 65 [62A-15-605.5](#), as renumbered and amended by Laws of Utah 2002, Fifth Special
- 66 Session, Chapter 8
- 67 [62A-15-902](#), as last amended by Laws of Utah 2011, Chapter 366
- 68 [63A-16-1002](#), as enacted by Laws of Utah 2022, Chapter 390 and last amended by
- 69 Coordination Clause, Laws of Utah 2022, Chapter 390
- 70 [63A-17-301](#), as last amended by Laws of Utah 2022, Chapter 209
- 71 [63A-17-307](#), as last amended by Laws of Utah 2022, Chapters 169, 209
- 72 [63B-6-502](#), as last amended by Laws of Utah 2021, Chapter 280
- 73 [63B-12-301](#), as enacted by Laws of Utah 2003, Chapter 302
- 74 [63G-2-301](#), as last amended by Laws of Utah 2020, Chapters 255, 399
- 75 [63G-3-201](#), as last amended by Laws of Utah 2020, Chapter 408
- 76 [63G-4-102](#), as last amended by Laws of Utah 2022, Chapter 307
- 77 [63J-1-602.1](#), as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415,
- 78 and 451
- 79 [63M-7-204](#), as last amended by Laws of Utah 2022, Chapter 187
- 80 [63M-7-526](#), as enacted by Laws of Utah 2020, Chapter 230
- 81 [64-9b-1](#), as last amended by Laws of Utah 2011, Chapter 366
- 82 [64-9b-2](#), as last amended by Laws of Utah 1999, Chapter 21
- 83 [64-9b-3](#), as last amended by Laws of Utah 1997, Chapter 158
- 84 [64-9b-4](#), as last amended by Laws of Utah 1997, Chapter 158
- 85 [64-9b-5](#), as last amended by Laws of Utah 1997, Chapter 158
- 86 [64-13-1](#), as last amended by Laws of Utah 2021, Chapters 85, 246 and 260
- 87 [64-13-14.5](#), as last amended by Laws of Utah 2015, Chapter 412

- 88 [64-13-15](#), as last amended by Laws of Utah 1991, Chapter 124
- 89 [64-13-16](#), as last amended by Laws of Utah 1997, Chapters 10, 375
- 90 [64-13-17](#), as last amended by Laws of Utah 2008, Chapter 382
- 91 [64-13-21](#), as last amended by Laws of Utah 2022, Chapter 187
- 92 [64-13-25](#), as last amended by Laws of Utah 2015, Chapter 412
- 93 [64-13-30](#), as last amended by Laws of Utah 2016, Chapter 243
- 94 [64-13-30.5](#), as enacted by Laws of Utah 2009, Chapter 258
- 95 [64-13-32](#), as last amended by Laws of Utah 1993, Chapter 49
- 96 [64-13-34](#), as last amended by Laws of Utah 1987, Chapter 116
- 97 [64-13-36](#), as last amended by Laws of Utah 1994, Chapters 12, 148
- 98 [64-13-38](#), as last amended by Laws of Utah 2012, Chapter 21
- 99 [64-13-39.5](#), as last amended by Laws of Utah 2009, Chapter 355
- 100 [64-13-40](#), as enacted by Laws of Utah 1996, Chapter 88
- 101 [64-13-42](#), as last amended by Laws of Utah 2018, Chapter 415
- 102 [64-13-43](#), as enacted by Laws of Utah 2008, Chapter 368
- 103 [64-13-44](#), as enacted by Laws of Utah 2013, Chapter 256
- 104 [64-13-45](#), as last amended by Laws of Utah 2019, Chapters 311, 385
- 105 [64-13-46](#), as enacted by Laws of Utah 2019, Chapter 385
- 106 [64-13-47](#), as enacted by Laws of Utah 2021, Chapter 44
- 107 [64-13-48](#), as enacted by Laws of Utah 2022, Chapter 144
- 108 [64-13d-103](#), as enacted by Laws of Utah 1999, Chapter 288
- 109 [64-13d-104](#), as enacted by Laws of Utah 1999, Chapter 288
- 110 [64-13d-105](#), as enacted by Laws of Utah 1999, Chapter 288
- 111 [64-13d-106](#), as enacted by Laws of Utah 1999, Chapter 288
- 112 [64-13d-107](#), as enacted by Laws of Utah 1999, Chapter 288
- 113 [64-13e-102](#), as last amended by Laws of Utah 2022, Chapter 370
- 114 [64-13e-103](#), as last amended by Laws of Utah 2022, Chapter 187
- 115 [64-13e-103.2](#), as enacted by Laws of Utah 2021, Chapter 366
- 116 [64-13e-104](#), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
- 117 [64-13e-105](#), as last amended by Laws of Utah 2021, Chapters 366, 382
- 118 [64-13g-101](#), as enacted by Laws of Utah 2022, Chapter 393

119 **76-3-201**, as repealed and reenacted by Laws of Utah 2021, Chapter 260 and last
120 amended by Coordination Clause, Laws of Utah 2021, Chapter 261
121 **76-3-202**, as last amended by Laws of Utah 2022, Chapter 181
122 **76-3-203.5**, as last amended by Laws of Utah 2022, Chapters 181, 185 and 418
123 **76-3-203.6**, as last amended by Laws of Utah 2022, Chapter 181
124 **76-3-403**, as last amended by Laws of Utah 1998, Chapter 91
125 **76-3-403.5**, as last amended by Laws of Utah 2007, Chapter 148
126 **76-5-101**, as last amended by Laws of Utah 2022, Chapter 181
127 **76-5-102.5**, as last amended by Laws of Utah 2022, Chapter 181
128 **76-5-102.6**, as last amended by Laws of Utah 2022, Chapter 181
129 **76-5-102.7**, as last amended by Laws of Utah 2022, Chapters 117, 181
130 **76-5-103.5**, as last amended by Laws of Utah 2022, Chapter 181
131 **76-5-412**, as last amended by Laws of Utah 2022, Chapter 181
132 **76-8-309**, as last amended by Laws of Utah 2022, Chapter 181
133 **76-8-311.3**, as last amended by Laws of Utah 2020, Chapters 302, 347
134 **76-8-318**, as last amended by Laws of Utah 2022, Chapters 181, 335
135 **77-16b-102**, as last amended by Laws of Utah 2021, Chapter 262
136 **77-16b-103**, as enacted by Laws of Utah 2012, Chapter 355
137 **77-16b-104**, as enacted by Laws of Utah 2012, Chapter 355
138 **77-18-112**, as renumbered and amended by Laws of Utah 2021, Chapter 260
139 **77-18a-1**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4
140 **77-19-3**, as last amended by Laws of Utah 2007, Chapter 148
141 **77-19-4**, as last amended by Laws of Utah 2007, Chapters 148, 306
142 **77-19-5**, as enacted by Laws of Utah 1980, Chapter 15
143 **77-19-201**, as last amended by Laws of Utah 2005, Chapter 71
144 **77-19-202**, as last amended by Laws of Utah 2008, Chapter 382
145 **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137
146 **77-19-204**, as enacted by Laws of Utah 2004, Chapter 137
147 **77-19-205**, as enacted by Laws of Utah 2004, Chapter 137
148 **77-19-206**, as enacted by Laws of Utah 2004, Chapter 137
149 **77-23-301**, as enacted by Laws of Utah 2008, Chapter 357

- 150 77-27-1, as last amended by Laws of Utah 2021, Chapters 21, 260
- 151 77-27-1.5, as enacted by Laws of Utah 2010, Chapter 110
- 152 77-27-5.3, as last amended by Laws of Utah 2011, Chapter 366
- 153 77-27-8, as last amended by Laws of Utah 2010, Chapter 110
- 154 77-27-9, as last amended by Laws of Utah 2022, Chapter 430
- 155 77-27-10, as last amended by Laws of Utah 2022, Chapter 430
- 156 77-28b-5, as enacted by Laws of Utah 1990, Chapter 324
- 157 77-28b-6, as enacted by Laws of Utah 1990, Chapter 324
- 158 77-28b-7, as enacted by Laws of Utah 1990, Chapter 324
- 159 77-28b-8, as enacted by Laws of Utah 1990, Chapter 324
- 160 77-28b-9, as enacted by Laws of Utah 1990, Chapter 324
- 161 77-30-10, as enacted by Laws of Utah 1980, Chapter 15
- 162 77-30-12, as enacted by Laws of Utah 1980, Chapter 15
- 163 77-30-18, as last amended by Laws of Utah 2018, Chapter 281
- 164 77-33-2, as enacted by Laws of Utah 1980, Chapter 15
- 165 77-33-6, as enacted by Laws of Utah 1980, Chapter 15
- 166 77-38-2, as last amended by Laws of Utah 1997, Chapter 103
- 167 77-38-4, as last amended by Laws of Utah 2011, Chapter 28
- 168 78A-2-302, as last amended by Laws of Utah 2022, Chapter 272
- 169 78A-2-305, as last amended by Laws of Utah 2022, Chapter 272
- 170 78B-2-302, as last amended by Laws of Utah 2017, Chapter 204
- 171 78B-6-603, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 172 78B-8-401, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16
- 173 78B-8-402, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16
- 174 78B-22-404, as last amended by Laws of Utah 2022, Chapter 451
- 175 78B-22-452, as last amended by Laws of Utah 2021, Chapter 228
- 176 78B-22-454, as last amended by Laws of Utah 2022, Chapter 451
- 177 78B-22-455, as last amended by Laws of Utah 2022, Chapter 451
- 178 78B-22-701, as last amended by Laws of Utah 2022, Chapters 281, 451
- 179 80-6-204, as renumbered and amended by Laws of Utah 2021, Chapter 261

180 ENACTS:

181 **26B-4-301**, Utah Code Annotated 1953

182 **64-13-49**, Utah Code Annotated 1953

183 REPEALS:

184 **77-16b-101**, as enacted by Laws of Utah 2012, Chapter 355



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

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

188 **10-8-58.5. Contracting for management, maintenance, operation, or construction**
189 **of jails.**

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

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

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

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

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

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

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

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

210 (f) require the private contractor to:

211 (i) receive all [~~prisoners~~] incarcerated individuals committed to the jail by competent

212 authority; and

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

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

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

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

222 **13-26-11. Prohibited practices.**

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

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

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

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

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

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

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

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

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

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

242 (b) in connection with a telephone solicitation, make or cause to be made a false

243 material statement or fail to disclose a material fact necessary to make the solicitor's statement
244 not misleading;

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

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

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

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

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

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

254 **13-45-301. Protection of personal information.**

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

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

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

262 **17-18a-506. Correctional facility telephone service contracts -- Approval by civil**
263 **counsel -- Required rates.**

264 (1) As used in this section:

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

267 (b) "Correctional facility" means the same as that term is defined in Section
268 77-16b-102.

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

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

273 (e) ~~["Inmate telephone rate"]~~ "Incarcerated individual telephone rate" means any

274 amount a correctional facility or a service provider charges an [~~inmate~~] incarcerated individual
275 for use of a correctional facility telephone service, including each per-minute rate or surcharge
276 for:

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

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

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

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

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

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

291 (i) the proposed contract;

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

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

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

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

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

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

304 (ii) each [~~inmate~~] incarcerated individual telephone rate for intrastate calls provided in

305 the contract exceeds the greater of:

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

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

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

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

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

317 **17-22-2. Sheriff -- General duties.**

318 (1) The sheriff shall:

319 (a) preserve the peace;

320 (b) make all lawful arrests;

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

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

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

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

334 (g) take charge of and keep the county jail and the [~~jail prisoners~~] incarcerated
335 individuals in the jail;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

367 (i) "Police interlocal entity" has the same meaning as defined in Sections 17-30-3 and
368 17-30a-102.

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

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

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

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

380 (c) Notwithstanding Subsection (3)(b), and except as provided in Subsection
381 11-13-202(4), if a police interlocal entity or police local district enters an interlocal agreement
382 with a public agency, as defined in Section 11-13-103, for the provision of law enforcement
383 service, the sheriff:

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

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

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

390 **17-22-2.5. Fees of sheriff.**

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

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

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

396 (b) If the legislative body of a county does not under Subsection (1)(a) set a fee
397 charged by the county sheriff, the sheriff shall charge a fee in accordance with Subsections (2)

398 through (7).

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

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

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

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

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

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

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

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

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

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

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

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

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

427 (m) for taking [~~a prisoner~~] an incarcerated individual from the place of arrest to prison,
428 in civil cases, or before a court or magistrate, for each mile necessarily traveled, in going only,

429 to a maximum of 100 miles, \$2.50;

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

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

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

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

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

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

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

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

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

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

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

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

457 (6) (a) For transporting a patient to the Utah State Hospital or to or from a hospital or a
458 mental health facility, as defined in Section [62A-15-602](#), when the cost of transportation is
459 payable by private individuals, the sheriff may collect, except as otherwise provided under

460 Subsection (1)(a), \$2.50 for each mile necessarily traveled, in going only, to a maximum of 100
461 miles.

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

464 (7) (a) Subject to Subsection (7)(b), for obtaining a saliva DNA specimen under
465 Section 53-10-404, the sheriff shall collect the fee of \$150 in accordance with Section
466 53-10-404.

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

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

470 **17-22-3. Transfer of incarcerated individuals to state prison.**

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

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

476 **17-22-5. Sheriff's classification of jail incarcerated individuals -- Classification**
477 **criteria -- Alternative incarceration programs -- Limitation.**

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

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

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

489 (3) (a) Except as provided in Subsection (4), a county sheriff may develop and
490 implement alternative incarceration programs that may or may not involve housing [~~a prisoner~~]

491 an incarcerated individual in a jail facility.

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

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

497 (i) the jail facility is at maximum operating capacity, as established under Subsection
498 17-22-5.5(2); or

499 (ii) ordered by the court.

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

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

504 **17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity**
505 **of jail facilities -- Transfer or release of incarcerated individuals -- Limitation -- Records**
506 **regarding release.**

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

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

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

511 and

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

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

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

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

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

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

521 (A) under the sheriff's control; or

522 (B) available to the sheriff by contract;

523 (ii) release [~~prisoners~~] incarcerated individuals:

524 (A) to a supervised release program, according to release criteria established by the

525 sheriff; or

526 (B) to another alternative incarceration program developed by the sheriff; or

527 (iii) admit [~~prisoners~~] incarcerated individuals in accordance with law and a uniform

528 admissions policy imposed equally upon all entities using the county jail.

529 (3) (a) The sheriff shall keep records of the release status and the type of release

530 program or alternative incarceration program for any [~~prisoner~~] incarcerated individual released

531 under Subsection (2)(b)(ii).

532 (b) The sheriff shall make these records available upon request to the Department of

533 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

534 (4) This section may not be construed to authorize a sheriff to modify provisions of a

535 contract with the Department of Corrections to house in a county jail an individual sentenced to

536 the Department of Corrections.

537 (5) Regardless of whether a jail facility has reached the jail facility's maximum

538 operating capacity under Subsection (2), a sheriff may release an individual from a jail facility

539 in accordance with Section [77-20-203](#) or [77-20-204](#).

540 (6) (a) Subject to Subsection (6)(c), a jail facility shall detain an individual for up to 24

541 hours from booking if:

542 (i) the individual is on supervised probation or parole and that information is

543 reasonably available; and

544 (ii) the individual was arrested for:

545 (A) a violent felony as defined in Section [76-3-203.5](#); or

546 (B) a qualifying domestic violence offense as defined in Subsection [77-36-1.1\(4\)](#) that

547 is not a criminal mischief offense.

548 (b) The jail facility shall notify the entity supervising the individual's probation or

549 parole that the individual is being detained.

550 (c) (i) The jail facility shall release the individual:

551 (A) to the Department of Corrections if the Department of Corrections supervises the

552 individual and requests the individual's release; or

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

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

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

557 **17-22-6. Service of process on incarcerated individuals -- Penalty.**

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

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

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

565 **17-22-7. Special guards for jail.**

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

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

570 **17-22-8. Care of incarcerated individual -- Funding of services -- Private**
571 **contractor.**

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

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

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

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

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

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

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

583 (d) provide each [~~prisoner~~] incarcerated individual, as part of the intake process, with

584 the option of continuing any of the following medically prescribed methods of contraception:

585 (i) an oral contraceptive;

586 (ii) an injectable contraceptive;

587 (iii) a patch;

588 (iv) a vaginal ring; or

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

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

595 (3) A sheriff shall follow:

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

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

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

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

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

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

610 **17-22-9. Federal incarcerated individuals.**

611 ~~[Persons-]~~ An individual convicted of crime in any of the courts of the United States in
612 the state of Utah as well as ~~[prisoners]~~ an incarcerated individual held to answer before such
613 courts for a violation of any of the laws of the United States shall be received and held in the
614 jail of any county under the same regulations and laws governing ~~[prisoners]~~ incarcerated

615 individuals held under the authority of this state, and upon such terms as to compensation as
616 may be agreed upon by the county and the United States.

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

618 **17-22-19. Action for escape or rescue -- Defenses.**

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

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

625 **17-22-28. Maintaining order -- Imposing restitution.**

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

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

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

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

637 **17-22-29. Notice to county jail facilities.**

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

641 (2) The court shall:

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

644 (b) consider facility policy.

645 Section 17. Section **17-22-32** is amended to read:

646 **17-22-32. County jail reporting requirements.**

647 (1) As used in this section:

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

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

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

654 (A) being transported for medical care; or

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

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

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

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

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

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

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

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

668 (i) the Bureau of Indian Affairs;

669 (ii) a state prison;

670 (iii) a federal prison;

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

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

674 (e) the number of [~~inmates~~] incarcerated individuals that are denied pretrial release and
675 held in the custody of the county jail while the [~~inmate~~] incarcerated individual awaited final
676 disposition of the [~~inmate's~~] incarcerated individual's criminal charges;

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

708 (ii) that relate to the county jail's provision, or lack of provision, of medications used to
709 treat, mitigate, or address an ~~[inmate's]~~ incarcerated individual's symptoms of withdrawal,
710 including methadone and all forms of buprenorphine and naltrexone; and

711 (iii) that relate to screening, assessment, and treatment of an ~~[inmate]~~ incarcerated
712 individual for a substance use or mental health disorder; and

713 (l) any report the county jail provides or is required to provide under federal law or
714 regulation relating to ~~[inmate deaths]~~ an in-custody death.

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

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

717 (ii) enters into a memorandum of understanding with the commission that allows the
718 commission to access the data described in Subsection (2).

719 (b) The memorandum of understanding described in Subsection (3)(a)(ii) shall include
720 a provision to protect any information related to an ongoing investigation and comply with all
721 applicable federal and state laws.

722 (c) If the commission accesses data from a county jail in accordance with Subsection
723 (3)(a), the commission may not release a report prepared from that data, unless:

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

725 (A) the county jail; and

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

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

728 (B) the county jail reviews the report and prepares a response to the report to be
729 published with the report; or

730 (C) the county jail fails to provide a response to the report within four weeks after the
731 day on which the commission provides the report to the county jail.

732 (4) The commission shall:

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

734 (b) omit or redact any identifying information of an ~~[inmate]~~ incarcerated individual in
735 the compilation to the extent omission or redaction is necessary to comply with state and
736 federal law;

737 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
738 Committee and the Utah Substance Use and Mental Health Advisory Council before November

739 1 of each year; and

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

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

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

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

749 **17-22-33. Commissary account disclosure requirements.**

750 (1) As used in this section:

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

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

758 (c) "Correctional facility" means the same as that term is defined in Section
759 [77-16b-102](#).

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

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

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

770 **17-25-3. Fees for constables -- Criminal.**

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

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

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

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

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

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

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

785 (4) (a) For each mile traveled for the purpose of serving, or to diligently attempt
786 service of, a warrant of arrest, both in going to and returning from defendant's address, a fee of
787 \$1 may be charged.

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

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

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

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

795 **17-50-319. County charges enumerated.**

796 (1) County charges are:

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

798 (b) the necessary expenses of the county attorney or district attorney incurred in
799 criminal cases arising in the county, and all other expenses necessarily incurred by the county
800 or district attorney in the prosecution of criminal cases, except jury and witness fees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

831 (c) A county may seek reimbursement from a person described in Subsection (1)(k) for

832 expenses incurred by the county in behalf of the [inmate] incarcerated individual for medical
833 care, treatment, hospitalization, or related transportation by:

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

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

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

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

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

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

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

853 (A) under the Public Employees' Benefit and Insurance Program, created in Section
854 49-20-103; and

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

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

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

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

863 **17-53-311. Contracting for management, maintenance, operation, or construction**
864 **of jails.**

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

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

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

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

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

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

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

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

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

887 (f) require the private contractor to:

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

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

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

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

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

899 **17D-1-201. Services that a special service district may be created to provide.**

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

902 (1) water;

903 (2) sewerage;

904 (3) drainage;

905 (4) flood control;

906 (5) garbage collection and disposal;

907 (6) health care;

908 (7) transportation, including the receipt of federal secure rural school funds under
909 Section [51-9-603](#) for the purposes of constructing, improving, repairing, or maintaining public
910 roads;

911 (8) recreation;

912 (9) fire protection, including:

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

915 (b) Firewise Communities programs and the development of community wildfire
916 protection plans; and

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

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

923 (11) street lighting;

924 (12) consolidated 911 and emergency dispatch;

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

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

935 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
936 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
937 **standards -- Internal audits -- Health opportunity accounts.**

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

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

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

946 (i) the standards used by the department for determining eligibility for Medicaid
947 services;

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

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

950 (iv) a requirement that:

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

954 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee
955 shall receive notice of enrollment in the electronic exchange of clinical health records and the

956 right to opt out of participation at any time; and

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

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

962 (i) implements a change in the Medicaid State Plan;

963 (ii) initiates a new Medicaid waiver;

964 (iii) initiates an amendment to an existing Medicaid waiver;

965 (iv) applies for an extension of an application for a waiver or an existing Medicaid
966 waiver;

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

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

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

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

973 (ii) include:

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

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

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

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

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

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

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

986 (II) the effect the proposed change may have on federal matching dollars received by

987 the state Medicaid program;

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

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

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

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

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

998 (b) recovery of overpayments; and

999 (c) consistent with Section [26-20-13](#), and to the extent permitted by law and quality
1000 control services, enforcement of fraud and abuse laws.

1001 (6) The department shall provide, by rule, disciplinary measures and sanctions for
1002 Medicaid providers who fail to comply with the rules and procedures of the program, provided
1003 that sanctions imposed administratively may not extend beyond:

1004 (a) termination from the program;

1005 (b) recovery of claim reimbursements incorrectly paid; and

1006 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

1007 (7) (a) Funds collected as a result of a sanction imposed under Section 1919 of Title
1008 XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated
1009 credits to be used by the division in accordance with the requirements of Section 1919 of Title
1010 XIX of the federal Social Security Act.

1011 (b) In accordance with Section [63J-1-602.2](#), sanctions collected under this Subsection
1012 (7) are nonlapsing.

1013 (8) (a) In determining whether an applicant or recipient is eligible for a service or
1014 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
1015 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle
1016 designated by the applicant or recipient.

1017 (b) Before Subsection (8)(a) may be applied:

- 1018 (i) the federal government shall:
- 1019 (A) determine that Subsection (8)(a) may be implemented within the state's existing
- 1020 public assistance-related waivers as of January 1, 1999;
- 1021 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or
- 1022 (C) determine that the state's waivers that permit dual eligibility determinations for
- 1023 cash assistance and Medicaid are no longer valid; and
- 1024 (ii) the department shall determine that Subsection (8)(a) can be implemented within
- 1025 existing funding.
- 1026 (9) (a) For purposes of this Subsection (9):
- 1027 (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as
- 1028 defined in 42 U.S.C. Sec. 1382c(a)(1); and
- 1029 (ii) "spend down" means an amount of income in excess of the allowable income
- 1030 standard that shall be paid in cash to the department or incurred through the medical services
- 1031 not paid by Medicaid.
- 1032 (b) In determining whether an applicant or recipient who is aged, blind, or has a
- 1033 disability is eligible for a service or benefit under this chapter, the department shall use 100%
- 1034 of the federal poverty level as:
- 1035 (i) the allowable income standard for eligibility for services or benefits; and
- 1036 (ii) the allowable income standard for eligibility as a result of spend down.
- 1037 (10) The department shall conduct internal audits of the Medicaid program.
- 1038 (11) (a) The department may apply for and, if approved, implement a demonstration
- 1039 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
- 1040 (b) A health opportunity account established under Subsection (11)(a) shall be an
- 1041 alternative to the existing benefits received by an individual eligible to receive Medicaid under
- 1042 this chapter.
- 1043 (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.
- 1044 (12) (a) (i) The department shall apply for, and if approved, implement an amendment
- 1045 to the state plan under this Subsection (12) for benefits for:
- 1046 (A) medically needy pregnant women;
- 1047 (B) medically needy children; and
- 1048 (C) medically needy parents and caretaker relatives.

1049 (ii) The department may implement the eligibility standards of Subsection (12)(b) for
1050 eligibility determinations made on or after the date of the approval of the amendment to the
1051 state plan.

1052 (b) In determining whether an applicant is eligible for benefits described in Subsection
1053 (12)(a)(i), the department shall:

1054 (i) disregard resources held in an account in the savings plan created under Title 53B,
1055 Chapter 8a, Utah Educational Savings Plan, if the beneficiary of the account is:

1056 (A) under the age of 26; and

1057 (B) living with the account owner, as that term is defined in Section 53B-8a-102, or
1058 temporarily absent from the residence of the account owner; and

1059 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as
1060 resources for a benefit determination, if the withdrawal was not used for qualified higher
1061 education costs as that term is defined in Section 53B-8a-102.5.

1062 (13) (a) The department may not deny or terminate eligibility for Medicaid solely
1063 because an individual is:

1064 (i) incarcerated; and

1065 (ii) not an ~~inmate~~ incarcerated individual as defined in Section 64-13-1.

1066 (b) Subsection (13)(a) does not require the Medicaid program to provide coverage for
1067 any services for an individual while the individual is incarcerated.

1068 (14) The department is a party to, and may intervene at any time in, any judicial or
1069 administrative action:

1070 (a) to which the Department of Workforce Services is a party; and

1071 (b) that involves medical assistance under:

1072 (i) Title 26, Chapter 18, Medical Assistance Act; or

1073 (ii) Title 26, Chapter 40, Utah Children's Health Insurance Act.

1074 Section 24. Section 26-18-421 is amended to read:

1075 **26-18-421. Medicaid waiver for coverage of qualified incarcerated individuals**
1076 **leaving prison or jail.**

1077 (1) As used in this section:

1078 (a) "Correctional facility" means:

1079 (i) a county jail;

- 1080 (ii) the Department of Corrections, created in Section 64-13-2; or
- 1081 (iii) a prison, penitentiary, or other institution operated by or under contract with the
- 1082 Department of Corrections for the confinement of an offender, as defined in Section 64-13-1.
- 1083 (b) "Qualified ~~[inmate]~~ incarcerated individual" means an individual who:
- 1084 (i) is incarcerated in a correctional facility; and
- 1085 (ii) has:
- 1086 (A) a chronic physical or behavioral health condition;
- 1087 (B) a mental illness, as defined in Section 62A-15-602; or
- 1088 (C) an opioid use disorder.
- 1089 (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan
- 1090 amendment with CMS to offer a program to provide Medicaid coverage to a qualified ~~[inmate]~~
- 1091 incarcerated individual for up to 30 days immediately before the day on which the qualified
- 1092 ~~[inmate]~~ incarcerated individual is released from a correctional facility.
- 1093 (3) If the waiver or state plan amendment described in Subsection (2) is approved, the
- 1094 department shall report to the Health and Human Services Interim Committee each year before
- 1095 November 30 while the waiver or state plan amendment is in effect regarding:
- 1096 (a) the number of qualified ~~[inmates]~~ incarcerated individuals served under the
- 1097 program;
- 1098 (b) the cost of the program; and
- 1099 (c) the effectiveness of the program, including:
- 1100 (i) any reduction in the number of emergency room visits or hospitalizations by
- 1101 ~~[inmates]~~ incarcerated individuals after release from a correctional facility;
- 1102 (ii) any reduction in the number of ~~[inmates]~~ incarcerated individuals undergoing
- 1103 inpatient treatment after release from a correctional facility;
- 1104 (iii) any reduction in overdose rates and deaths of ~~[inmates]~~ incarcerated individuals
- 1105 after release from a correctional facility; and
- 1106 (iv) any other costs or benefits as a result of the program.
- 1107 (4) If the waiver or state plan amendment described in Subsection (2) is approved, a
- 1108 county that is responsible for the cost of a qualified ~~[inmate's]~~ incarcerated individual's medical
- 1109 care shall provide the required matching funds to the state for:
- 1110 (a) any costs to enroll the qualified ~~[inmate]~~ incarcerated individual for the Medicaid

1111 coverage described in Subsection (2);

1112 (b) any administrative fees for the Medicaid coverage described in Subsection (2); and

1113 (c) the Medicaid coverage that is provided to the qualified [~~inmate~~] incarcerated

1114 individual under Subsection (2).

1115 Section 25. Section **26-40-105** is amended to read:

1116 **26-40-105. Eligibility.**

1117 (1) A child is eligible to enroll in the program if the child:

1118 (a) is a bona fide Utah resident;

1119 (b) is a citizen or legal resident of the United States;

1120 (c) is under 19 years [~~of age~~] old;

1121 (d) does not have access to or coverage under other health insurance, including any

1122 coverage available through a parent or legal guardian's employer;

1123 (e) is ineligible for Medicaid benefits;

1124 (f) resides in a household whose gross family income, as defined by rule, is at or below

1125 200% of the federal poverty level; and

1126 (g) is not an [~~inmate~~] incarcerated individual of a public institution or a patient in an

1127 institution for mental diseases.

1128 (2) A child who qualifies for enrollment in the program under Subsection (1) may not

1129 be denied enrollment due to a diagnosis or pre-existing condition.

1130 (3) (a) The department shall determine eligibility and send notification of the eligibility

1131 decision within 30 days after receiving the application for coverage.

1132 (b) If the department cannot reach a decision because the applicant fails to take a

1133 required action, or because there is an administrative or other emergency beyond the

1134 department's control, the department shall:

1135 (i) document the reason for the delay in the applicant's case record; and

1136 (ii) inform the applicant of the status of the application and time frame for completion.

1137 (4) The department may not close enrollment in the program for a child who is eligible

1138 to enroll in the program under the provisions of Subsection (1).

1139 (5) The program shall:

1140 (a) apply for grants to make technology system improvements necessary to implement

1141 a simplified enrollment and renewal process in accordance with Subsection (5)(b); and

1142 (b) if funding is available, implement a simplified enrollment and renewal process.

1143 Section 26. Section **26B-4-301** is enacted to read:

1144 **26B-4-301. Medical care for incarcerated individuals -- Reporting of statistics.**

1145 As used in this section:

1146 (1) "Correctional facility" means a facility operated to house incarcerated individuals in
1147 a secure or nonsecure setting:

1148 (a) by the Department of Corrections; or

1149 (b) under a contract with the Department of Corrections.

1150 (2) "Health care facility" means the same as that term is defined in Section [26-21-2](#).

1151 (3) "Incarcerated individual" means an individual who is:

1152 (a) committed to the custody of the Department of Corrections; and

1153 (b) housed at a correctional facility or at a county jail at the request of the Department
1154 of Corrections.

1155 (4) "Medical monitoring technology" means a device, application, or other technology
1156 that can be used to improve health outcomes and the experience of care for patients, including
1157 evidence-based clinically evaluated software and devices that can be used to monitor and treat
1158 diseases and disorders.

1159 (5) "Terminally ill" means the same as that term is defined in Section [31A-36-102](#).

1160 (6) The department shall:

1161 (a) for each health care facility owned or operated by the Department of Corrections,
1162 assist the Department of Corrections in complying with Section [64-13-39](#);

1163 (b) create policies and procedures for providing services to incarcerated individuals;
1164 and

1165 (c) in coordination with the Department of Corrections, develop standard population
1166 indicators and performance measures relating to the health of incarcerated individuals.

1167 (7) Beginning July 1, 2023, and ending June 30, 2024, the department shall:

1168 (a) evaluate and study the use of medical monitoring technology and create a plan for a
1169 pilot program that identifies:

1170 (i) the types of medical monitoring technology that will be used during the pilot
1171 program; and

1172 (ii) eligibility for participation in the pilot program; and

- 1173 (b) make the indicators and performance measures described in Subsection (6)(c)
1174 available to the public through the Department of Corrections and the department websites.
- 1175 (8) Beginning July 1, 2024, and ending June 30, 2029, the department shall implement
1176 the pilot program.
- 1177 (9) The department shall submit to the Health and Human Services Interim Committee
1178 and the Law Enforcement and Criminal Justice Interim Committee:
- 1179 (a) a report on or before October 1 of each year regarding the costs and benefits of the
1180 pilot program;
- 1181 (b) a report that summarizes the indicators and performance measures described in
1182 Subsection (6)(c) on or before October 1, 2024; and
- 1183 (c) an updated report before October 1 of each year that compares the indicators and
1184 population measures of the most recent year to the initial report described in Subsection (9)(b).
- 1185 Section 27. Section **31A-35-701** is amended to read:
- 1186 **31A-35-701. Prohibited acts.**
- 1187 (1) A bail bond producer or bail bond agency may not:
- 1188 (a) solicit business in or about:
- 1189 (i) any place where persons in the custody of the state or any local law enforcement or
1190 correctional agency are confined; or
- 1191 (ii) any court;
- 1192 (b) pay a fee or rebate or give or promise anything of value to any person in order to
1193 secure a settlement, compromise, remission, or reduction of the amount of any undertaking or
1194 bail bond;
- 1195 (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail
1196 bond matter, except payment for legal services actually rendered for the bail bond producer or
1197 bail bond agency;
- 1198 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone
1199 in the principal's behalf; or
- 1200 (e) engage in any other act prohibited by the commissioner by rule.
- 1201 (2) The following persons may not act as bail bond producers and may not, directly or
1202 indirectly, receive any benefits from the execution of any bail bond:
- 1203 (a) a person employed at any jail, correctional facility, or other facility used for the

- 1204 incarceration of persons;
- 1205 (b) a peace officer;
- 1206 (c) a judge; and
- 1207 (d) an [~~inmate incarcerated in any~~] incarcerated individual in a jail, correctional
- 1208 facility, or other facility used for the incarceration of persons.
- 1209 (3) A bail bond producer may not:
- 1210 (a) sign or countersign in blank any bail bond;
- 1211 (b) give the power of attorney to, or otherwise authorize anyone to, countersign in the
- 1212 bail bond producer's name to a bail bond; or
- 1213 (c) submit a bail bond to a jail or court in Utah without having completed a written
- 1214 agreement that:
- 1215 (i) states the terms of the bail agreement, contract, or undertaking;
- 1216 (ii) is signed by the bail bond producer; and
- 1217 (iii) is filed with the department.
- 1218 (4) A bail bond producer may not advertise or hold [~~himself or herself~~] the bail bond
- 1219 producer out to be a bail bond agency or surety insurer.
- 1220 (5) The following persons or members of their immediate families may not solicit
- 1221 business on behalf of a bail bond agency or bail bond producer:
- 1222 (a) a person employed at any jail, correctional facility, or other facility used for the
- 1223 incarceration of persons;
- 1224 (b) a peace officer;
- 1225 (c) a judge; or
- 1226 (d) an [~~inmate incarcerated in any~~] incarcerated individual in a jail, correctional
- 1227 facility, or other facility used for the incarceration of persons.
- 1228 Section 28. Section **34-40-104** is amended to read:
- 1229 **34-40-104. Exemptions.**
- 1230 (1) The minimum wage established in this chapter does not apply to:
- 1231 (a) [~~any~~] an employee who is entitled to a minimum wage as provided in 29 U.S.C.
- 1232 Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;
- 1233 (b) outside sales persons;
- 1234 (c) an employee who is a member of the employer's immediate family;

- 1235 (d) companionship service for [~~persons~~] an individual who, because of age or infirmity,
1236 [~~are~~] is unable to care for [~~themselves~~] the individual's self;
- 1237 (e) casual and domestic employees as defined by the commission;
- 1238 (f) seasonal employees of nonprofit camping programs, religious or recreation
1239 programs, and nonprofit educational and charitable organizations registered under Title 13,
1240 Chapter 22, Charitable Solicitations Act;
- 1241 (g) an individual employed by the United States of America;
- 1242 (h) [~~any prisoner~~] an incarcerated individual employed through the penal system;
- 1243 (i) [~~any~~] an employee employed in agriculture if the employee:
1244 (i) is principally engaged in the range production of livestock;
1245 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation
1246 that has been and is generally recognized by custom as having been paid on a piece rate basis in
1247 the region of employment;
- 1248 (iii) was employed in agriculture less than 13 weeks during the preceding calendar
1249 year; or
- 1250 (iv) is a retired or semiretired [~~person~~] individual performing part-time or incidental
1251 work as a condition of the employee's residence on a farm or ranch;
- 1252 (j) registered apprentices or students employed by the educational institution in which
1253 they are enrolled; or
- 1254 (k) [~~any~~] a seasonal hourly employee employed by a seasonal amusement
1255 establishment with permanent structures and facilities if the other direct monetary
1256 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay
1257 is sufficient to cause the average hourly rate of total compensation for the season of seasonal
1258 hourly employees who continue to work to the end of the operating season to equal the
1259 applicable minimum wage if the seasonal amusement establishment:
- 1260 (i) does not operate for more than seven months in any calendar year; or
1261 (ii) during the preceding calendar year its average receipts for any six months of that
1262 year were not more than 33-1/3% of its average receipts for the other six months of that year.
- 1263 (2) (a) Persons with a disability whose earnings or productive capacities are impaired
1264 by age, physical or mental deficiencies, or injury may be employed at wages that are lower than
1265 the minimum wage, provided the wage is related to the employee's productivity.

1266 (b) The commission may establish and regulate the wages paid or wage scales for
1267 persons with a disability.

1268 (3) The commission may establish or may set a lesser minimum wage for learners not
1269 to exceed the first 160 hours of employment.

1270 (4) (a) An employer of a tipped employee shall pay the tipped employee at least the
1271 minimum wage established by this chapter.

1272 (b) In computing a tipped employee's wage under this Subsection (4), an employer of a
1273 tipped employee:

1274 (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;
1275 and

1276 (ii) may compute the remainder of the tipped employee's wage using the tips or
1277 gratuities the tipped employee actually receives.

1278 (c) An employee shall retain all tips and gratuities except to the extent that the
1279 employee participates in a bona fide tip pooling or sharing arrangement with other tipped
1280 employees.

1281 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1282 commission shall by rule establish the cash wage obligation in conjunction with its review of
1283 the minimum wage under Section [34-40-103](#).

1284 Section 29. Section **35A-4-205** is amended to read:

1285 **35A-4-205. Exempt employment.**

1286 (1) If the services are also exempted under the Federal Unemployment Tax Act, as
1287 amended, employment does not include:

1288 (a) service performed in the employ of the United States Government or an
1289 instrumentality of the United States immune under the United States Constitution from the
1290 contributions imposed by this chapter, except that, to the extent that the Congress of the United
1291 States shall permit, this chapter shall apply to those instrumentalities and to services performed
1292 for the instrumentalities to the same extent as to all other employers, employing units,
1293 individuals and services; provided, that if this state is not certified for any year by the Secretary
1294 of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304,
1295 the payments required of the instrumentalities with respect to that year shall be refunded by the
1296 division from the fund in the same manner and within the same period as is provided in

- 1297 Subsection 35A-4-306(5) with respect to contributions erroneously collected;
- 1298 (b) service performed by an individual as an employee or employee representative as
1299 defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;
- 1300 (c) agricultural labor as defined in Section 35A-4-206;
- 1301 (d) domestic service in a private home, local college club, or local chapter of a college
1302 fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);
- 1303 (e) (i) service performed in the employ of a school, college, or university, if the service
1304 is performed:
- 1305 (A) by a student who is enrolled and is regularly attending classes at that school,
1306 college, or university; or
- 1307 (B) by the spouse of the student, if the spouse is advised, at the time the spouse
1308 commences to perform that service, that the employment of that spouse to perform that service
1309 is provided under a program to provide financial assistance to the student by the school,
1310 college, or university, and that the employment will not be covered by any program of
1311 unemployment insurance;
- 1312 (ii) service performed by an individual who is enrolled at a nonprofit or public
1313 educational institution, that normally maintains a regular faculty and curriculum and normally
1314 has a regularly organized body of students in attendance at the place where its educational
1315 activities are carried on, as a student in a full-time program taken for credit at the institution,
1316 that combines academic instruction with work experience, if the service is an integral part of
1317 the program and the institution has so certified to the employer, but this Subsection (1) does
1318 not apply to service performed in a program established for or on behalf of an employer or
1319 group of employers;
- 1320 (iii) service performed in the employ of a hospital, if the service is performed by a
1321 patient of the hospital; or
- 1322 (iv) service performed as a student nurse in the employ of a hospital or a nurses'
1323 training school by an individual who is enrolled and is regularly attending classes in a nurses'
1324 training school chartered or approved under state law;
- 1325 (f) service performed by an individual in the employ of the individual's son, daughter,
1326 or spouse, and service performed by a child under the age of 21 in the employ of the child's
1327 parent;

- 1328 (g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:
- 1329 (i) in the employ of:
- 1330 (A) a church or convention or association of churches; or
- 1331 (B) an organization that is operated primarily for religious purposes and that is
- 1332 operated, supervised, controlled, or principally supported by a church or convention or
- 1333 association of churches;
- 1334 (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise
- 1335 of the minister's ministry or by a member of a religious order in the exercise of duties required
- 1336 by the order;
- 1337 (iii) in the employ of a governmental entity or Indian tribe referred to in Subsection
- 1338 35A-4-204(2)(d) if the service is performed by an individual in the exercise of the individual's
- 1339 duties:
- 1340 (A) as an elected official;
- 1341 (B) as a member of a legislative body or the judiciary;
- 1342 (C) as a member of the National Guard or Air National Guard;
- 1343 (D) as an employee serving on a temporary basis in case of fire, storm, snow,
- 1344 earthquake, flood, or similar emergency;
- 1345 (E) in an advisory position or a policymaking position the performance of the duties of
- 1346 which ordinarily does not require more than eight hours per week; or
- 1347 (F) as an election official or election worker if the amount of remuneration received by
- 1348 the individual during the calendar year for services as an election official or election worker is
- 1349 less than \$1,000;
- 1350 (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation
- 1351 for individuals whose earning capacity is impaired by age, physical or mental deficiency,
- 1352 injury, or providing a remunerative work for individuals who, because of their impaired
- 1353 physical or mental capacity, cannot be readily absorbed in the competitive labor market by an
- 1354 individual receiving that rehabilitation or remunerative work;
- 1355 (v) as part of an unemployment work-relief or work-training program, assisted or
- 1356 financed in whole or in part by any federal agency or an agency of a state or political
- 1357 subdivision of the state or of an Indian tribe, by an individual receiving the work-relief or
- 1358 work-training; and

- 1359 (vi) by an ~~[inmate]~~ incarcerated individual of a custodial or penal institution;
- 1360 (h) casual labor not in the course of the employing unit's trade or business;
- 1361 (i) service performed in any calendar quarter in the employ of any organization exempt
1362 from income tax under Subsection 501(a), Internal Revenue Code, other than an organization
1363 described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for
1364 the service is less than \$50;
- 1365 (j) service performed in the employ of a foreign government, including service as a
1366 consular or other officer, other employee, or a nondiplomatic representative;
- 1367 (k) service performed in the employ of an instrumentality wholly owned by a foreign
1368 government:
- 1369 (i) if the service is of a character similar to that performed in foreign countries by
1370 employees of the United States government or its instrumentalities; and
- 1371 (ii) if the division finds that the United States Secretary of State has certified to the
1372 United States Secretary of the Treasury that the foreign government with respect to whose
1373 instrumentality exemption is claimed grants an equivalent exemption with respect to similar
1374 service performed in the foreign country by employees of the United States government and its
1375 instrumentalities;
- 1376 (l) service performed by an individual for a person as an insurance agent or as an
1377 insurance solicitor, if all the service performed by the individual for that person is performed
1378 for remuneration solely by way of commission;
- 1379 (m) service performed by an individual in the delivery or distribution of newspapers or
1380 shopping news, not including delivery or distribution to any point for subsequent delivery or
1381 distribution;
- 1382 (n) service covered by an arrangement between the division and the agency charged
1383 with the administration of any other state or federal unemployment compensation law under
1384 which all services performed by an individual for an employing unit during the period covered
1385 by the employing unit's duly approved election, are considered to be performed entirely within
1386 the agency's state or under the federal law;
- 1387 (o) service performed by lessees engaged in metal mining under lease agreements,
1388 unless the individual lease agreement, or the practice in actual operation under the agreement,
1389 is such as would constitute the lessees' employees of the lessor at common law; and

1390 (p) services as an outside salesman paid solely by way of commission if the services
1391 were performed outside of all places of business of the enterprises for which the services are
1392 performed except:

1393 (i) as provided in Subsection 35A-4-204(2)(i); or

1394 (ii) if the services would constitute employment at common law.

1395 (2) (a) "Included and excluded service" means if the services performed during 1/2 or
1396 more of any pay period by an individual for the person employing the individual constitute
1397 employment, all the services of the individual for the period are considered to be employment.

1398 (b) If the services performed during more than 1/2 of any pay period by an individual
1399 for the person employing the individual do not constitute employment, then none of the
1400 services of the individual for the period are considered to be employment.

1401 (c) As used in this Subsection (2), "pay period" means a period of not more than 31
1402 consecutive days for which payment of remuneration is ordinarily made to the individual by the
1403 person employing the individual.

1404 (3) The following services are exempt employment under the Utah Employment
1405 Security Act:

1406 (a) service performed by an individual as a licensed real estate agent or salesman, if all
1407 the service performed by the individual is performed for remuneration solely by way of
1408 commission;

1409 (b) service performed by an individual as a licensed securities agent or salesman or a
1410 registered representative, if all the service performed by the individual is performed for
1411 remuneration solely by way of commission;

1412 (c) service performed by an individual as a telephone survey conductor or pollster if:

1413 (i) the individual does not perform the service on the principal's premises; and

1414 (ii) the individual is paid for the service solely on a piece-rate or commission basis; and

1415 (d) service performed by a nurse licensed or registered under Title 58, Chapter 31b,
1416 Nurse Practice Act, if:

1417 (i) the service of the nurse is performed in the home of the patient;

1418 (ii) substantially all of the nurse's compensation for the service is from health insurance
1419 proceeds; and

1420 (iii) no compensation or fee for the service is paid to an agency or company as a

1421 business furnishing nursing services.

1422 Section 30. Section **39A-5-111** is amended to read:

1423 **39A-5-111. Parties under obligation to keep an incarcerated individual --**

1424 **Reporting.**

1425 (1) A provost marshal, sheriff, or officer of a city or county jail or penal institution
1426 designated under Section **39A-5-110**, may not refuse to receive or keep [~~any prisoner~~] an
1427 incarcerated individual if the committing officer provides a signed statement indicating the
1428 offense charged against the [~~prisoner~~] incarcerated individual.

1429 (2) [~~Any~~] A party under Subsection (1) charged with keeping [~~a prisoner~~] an
1430 incarcerated individual shall within 24 hours after commitment report to the commanding
1431 officer of the [~~prisoner~~] incarcerated individual the name of the [~~prisoner~~] incarcerated
1432 individual, the nature of the offense charged against [~~him~~] the incarcerated individual, and the
1433 name of the individual who ordered or authorized the commitment.

1434 Section 31. Section **39A-5-112** is amended to read:

1435 **39A-5-112. Individual confined prior to trial -- Punishment limitations.**

1436 (1) Subject to Section **39A-5-110**, an individual in confinement prior to trial may not
1437 be subjected to punishment or penalty other than arrest or confinement while the charges are
1438 pending.

1439 (2) (a) The arrest or confinement imposed on [~~a prisoner~~] an incarcerated individual
1440 may not be more rigorous than necessary to ensure the [~~prisoner's~~] incarcerated individual's
1441 presence.

1442 (b) [~~However, the prisoner~~] Notwithstanding Subsection (2)(a), an incarcerated
1443 individual may be:

1444 [~~(a)~~] (i) subjected to minor punishment during that period for discipline violations; and

1445 [~~(b)~~] (ii) required to perform labor as necessary for the policing and sanitation of the
1446 [~~prisoner's~~] incarcerated individual's living conditions, immediately adjacent areas, or as
1447 otherwise designated by regulations governing the housing of [~~a prisoner~~] an incarcerated
1448 individual.

1449 Section 32. Section **51-7-4** is amended to read:

1450 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**
1451 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

1452 (1) Unless otherwise required by the Utah Constitution or applicable federal law, the
1453 functions, powers, and duties vested by law in each state officer, board, commission,
1454 institution, department, division, agency, or other similar instrumentality relating to the deposit,
1455 investment, or reinvestment of public funds, and the purchase, sale, or exchange of investments
1456 or securities of, or for, funds or accounts under the control and management of each of these
1457 instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

1458 (a) funds assigned to the Utah State Retirement Board for investment under Section
1459 [49-11-302](#);

1460 (b) funds of member institutions of the state system of higher education:

1461 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

1462 (ii) derived from student fees or from income from operations of auxiliary enterprises,
1463 which fees and income are pledged or otherwise dedicated to the payment of interest and
1464 principal of bonds issued by an institution of higher education;

1465 (iii) subject to rules made by the council, under Section [51-7-18](#), deposited in a foreign
1466 depository institution as defined in Section [7-1-103](#); and

1467 (iv) other funds that are not included in the institution's work program as approved by
1468 the Utah Board of Higher Education;

1469 (c) ~~[inmate] incarcerated individual~~ funds as provided in Section [64-13-23](#) or in [~~Title~~
1470 ~~64, Chapter 9b, Work Programs for Prisoners~~] Title 64, Chapter 9b, Work Programs for
1471 Incarcerated Individuals;

1472 (d) trust funds established by judicial order;

1473 (e) funds of the Utah Housing Corporation;

1474 (f) endowment funds of higher education institutions; and

1475 (g) the funds of the Utah Educational Savings Plan.

1476 (2) All public funds held or administered by the state or its boards, commissions,
1477 institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to
1478 the state treasurer as provided by this section shall be:

1479 (a) deposited and invested by the custodian in accordance with this chapter, unless
1480 otherwise required by statute or by applicable federal law; and

1481 (b) reported to the state treasurer in a form prescribed by the state treasurer.

1482 (3) Unless otherwise provided by the constitution or laws of this state or by contractual

1483 obligation, the income derived from the investment of state money by the state treasurer shall
1484 be deposited into and become part of the General Fund.

1485 Section 33. Section **53-2a-602** is amended to read:

1486 **53-2a-602. Definitions.**

1487 (1) Unless otherwise defined in this section, the terms that are used in this part mean
1488 the same as those terms are defined in Part 1, Emergency Management Act.

1489 (2) As used in this part:

1490 (a) "Agent of the state" means any representative of a state agency, local agency, or
1491 non-profit entity that agrees to provide support to a requesting intrastate or interstate
1492 government entity that has declared an emergency or disaster and has requested assistance
1493 through the division.

1494 (b) "Declared disaster" means one or more events:

1495 (i) within the state;

1496 (ii) that occur within a limited period of time;

1497 (iii) that involve:

1498 (A) a significant number of [~~persons~~] individuals being at risk of bodily harm,
1499 sickness, or death; or

1500 (B) a significant portion of real property at risk of loss;

1501 (iv) that are sudden in nature and generally occur less frequently than every three years;
1502 and

1503 (v) that results in:

1504 (A) the president of the United States declaring an emergency or major disaster in the
1505 state;

1506 (B) the governor declaring a state of emergency under Title 53, Chapter 2a, Part 2,
1507 Disaster Response and Recovery Act; or

1508 (C) the chief executive officer of a local government declaring a local emergency under
1509 Part 2, Disaster Response and Recovery Act.

1510 (c) "Disaster recovery account" means the State Disaster Recovery Restricted Account
1511 created in Section [53-2a-603](#).

1512 (d) (i) "Emergency disaster services" means:

1513 (A) evacuation;

- 1514 (B) shelter;
- 1515 (C) medical triage;
- 1516 (D) emergency transportation;
- 1517 (E) repair of infrastructure;
- 1518 (F) safety services, including fencing or roadblocks;
- 1519 (G) sandbagging;
- 1520 (H) debris removal;
- 1521 (I) temporary bridges;
- 1522 (J) procurement and distribution of food, water, or ice;
- 1523 (K) procurement and deployment of generators;
- 1524 (L) rescue or recovery;
- 1525 (M) emergency protective measures; or
- 1526 (N) services similar to those described in Subsections (2)(d)(i)(A) through (M), as
- 1527 defined by the division by rule, that are generally required in response to a declared disaster.
- 1528 (ii) "Emergency disaster services" does not include:
- 1529 (A) emergency preparedness; or
- 1530 (B) notwithstanding whether or not a county participates in the Wildland Fire
- 1531 Suppression Fund created in Section [65A-8-204](#), any fire suppression or presuppression costs
- 1532 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the
- 1533 Wildland Fire Suppression Fund.
- 1534 (e) "Emergency preparedness" means the following done for the purpose of being
- 1535 prepared for an emergency as defined by the division by rule made in accordance with Title
- 1536 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 1537 (i) the purchase of equipment;
- 1538 (ii) the training of personnel; or
- 1539 (iii) the obtaining of a certification.
- 1540 (f) "Governing body" means:
- 1541 (i) for a county, city, or town, the legislative body of the county, city, or town;
- 1542 (ii) for a local district, the board of trustees of the local district; and
- 1543 (iii) for a special service district:
- 1544 (A) the legislative body of the county, city, or town that established the special service

1545 district, if no administrative control board has been appointed under Section 17D-1-301; or

1546 (B) the administrative control board of the special service district, if an administrative
1547 control board has been appointed under Section 17D-1-301.

1548 (g) "Local district" means the same as that term is defined in Section 17B-1-102.

1549 (h) "Local fund" means a local government disaster fund created in accordance with
1550 Section 53-2a-605.

1551 (i) "Local government" means:

1552 (i) a county;

1553 (ii) a city or town; or

1554 (iii) a local district or special service district that:

1555 (A) operates a water system;

1556 (B) provides transportation service;

1557 (C) provides, operates, and maintains correctional and rehabilitative facilities and
1558 programs for municipal, state, and other detainees and ~~[prisoners]~~ incarcerated individuals;

1559 (D) provides consolidated 911 and emergency dispatch service;

1560 (E) operates an airport; or

1561 (F) operates a sewage system.

1562 (j) "Special fund" means a fund other than a general fund of a local government that is
1563 created for a special purpose established under the uniform system of budgeting, accounting,
1564 and reporting.

1565 (k) "Special service district" means the same as that term is defined in Section
1566 17D-1-102.

1567 (l) "State's prime interest rate" means the average interest rate paid by the state on
1568 general obligation bonds issued during the most recent fiscal year in which bonds were sold.

1569 Section 34. Section 53-10-404 is amended to read:

1570 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

1571 (1) As used in this section, "person" refers to any person as described under Section
1572 53-10-403.

1573 (2) (a) A person under Section 53-10-403 or any person required to register as a sex
1574 offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, shall provide a DNA
1575 specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for

1576 the cost of obtaining the DNA specimen unless:

1577 (i) the person was booked under Section 53-10-403 and is not required to reimburse the
1578 agency under Section 53-10-404.5; or

1579 (ii) the agency determines the person lacks the ability to pay.

1580 (b) (i) (A) The responsible agencies shall establish guidelines and procedures for
1581 determining if the person is able to pay the fee.

1582 (B) An agency's implementation of Subsection (2)(b)(i) meets an agency's obligation to
1583 determine an [inmate's] incarcerated individual's ability to pay.

1584 (ii) An agency's guidelines and procedures may provide for the assessment of \$150 on
1585 the [inmate's] incarcerated individual's county trust fund account and may allow a negative
1586 balance in the account until the \$150 is paid in full.

1587 (3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA
1588 Specimen Restricted Account created in Section 53-10-407, except that the agency collecting
1589 the fee may retain not more than \$25 per individual specimen for the costs of obtaining the
1590 saliva DNA specimen.

1591 (ii) The agency collecting the \$150 fee may not retain from each separate fee more than
1592 \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

1593 (b) The responsible agency shall determine the method of collecting the DNA
1594 specimen. Unless the responsible agency determines there are substantial reasons for using a
1595 different method of collection or the person refuses to cooperate with the collection, the
1596 preferred method of collection shall be obtaining a saliva specimen.

1597 (c) The responsible agency may use reasonable force, as established by its guidelines
1598 and procedures, to collect the DNA sample if the person refuses to cooperate with the
1599 collection.

1600 (d) If the judgment places the person on probation, the person shall submit to the
1601 obtaining of a DNA specimen as a condition of the probation.

1602 (e) (i) Under this section a person is required to provide one DNA specimen and pay
1603 the collection fee as required under this section.

1604 (ii) The person shall provide an additional DNA specimen only if the DNA specimen
1605 previously provided is not adequate for analysis.

1606 (iii) The collection fee is not imposed for a second or subsequent DNA specimen

1607 collected under this section.

1608 (f) Any agency that is authorized to obtain a DNA specimen under this part may collect
1609 any outstanding amount of a fee due under this section from any person who owes any portion
1610 of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section
1611 53-10-407.

1612 (4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as
1613 possible and transferred to the Department of Public Safety:

1614 (i) after a conviction or a finding of jurisdiction by the juvenile court;

1615 (ii) on and after January 1, 2011, through December 31, 2014, after the booking of a
1616 person for any offense under Subsection 53-10-403(1)(c); and

1617 (iii) on and after January 1, 2015, after the booking of a person for any felony offense,
1618 as provided under Subsection 53-10-403(1)(d)(ii).

1619 (b) On and after May 13, 2014, through December 31, 2014, the responsible agency
1620 may cause a DNA specimen to be obtained and transferred to the Department of Public Safety
1621 after the booking of a person for any felony offense, as provided under Subsection
1622 53-10-403(1)(d)(i).

1623 (c) If notified by the Department of Public Safety that a DNA specimen is not adequate
1624 for analysis, the agency shall, as soon as possible:

1625 (i) obtain and transmit an additional DNA specimen; or

1626 (ii) request that another agency that has direct access to the person and that is
1627 authorized to collect DNA specimens under this section collect the necessary second DNA
1628 specimen and transmit it to the Department of Public Safety.

1629 (d) Each agency that is responsible for collecting DNA specimens under this section
1630 shall establish:

1631 (i) a tracking procedure to record the handling and transfer of each DNA specimen it
1632 obtains; and

1633 (ii) a procedure to account for the management of all fees it collects under this section.

1634 (5) (a) The Department of Corrections is the responsible agency whenever the person is
1635 committed to the custody of or is under the supervision of the Department of Corrections.

1636 (b) The juvenile court is the responsible agency regarding a minor under Subsection
1637 53-10-403(3), but if the minor has been committed to the legal custody of the Division of

1638 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
1639 minor has not previously been obtained by the juvenile court under Section 80-6-608.

1640 (c) The sheriff operating a county jail is the responsible agency regarding the collection
1641 of DNA specimens from persons who:

1642 (i) have pled guilty to or have been convicted of an offense listed under Subsection
1643 53-10-403(2) but who have not been committed to the custody of or are not under the
1644 supervision of the Department of Corrections;

1645 (ii) are incarcerated in the county jail:

1646 (A) as a condition of probation for a felony offense; or

1647 (B) for a misdemeanor offense for which collection of a DNA specimen is required;

1648 (iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail
1649 for any offense under Subsection 53-10-403(1)(c).; and

1650 (iv) are booked at the county jail:

1651 (A) by a law enforcement agency that is obtaining a DNA specimen for any felony
1652 offense on or after May 13, 2014, through December 31, 2014, under Subsection

1653 53-10-404(4)(b); or

1654 (B) on or after January 1, 2015, for any felony offense.

1655 (d) Each agency required to collect a DNA specimen under this section shall:

1656 (i) designate employees to obtain the saliva DNA specimens required under this
1657 section; and

1658 (ii) ensure that employees designated to collect the DNA specimens receive appropriate
1659 training and that the specimens are obtained in accordance with generally accepted protocol.

1660 (6) (a) As used in this Subsection (6), "department" means the Department of
1661 Corrections.

1662 (b) Priority of obtaining DNA specimens by the department is:

1663 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
1664 of or under the supervision of the department before these persons are released from
1665 incarceration, parole, or probation, if their release date is prior to that of persons under
1666 Subsection (6)(b)(ii), but in no case later than July 1, 2004; and

1667 (ii) second, the department shall obtain DNA specimens from persons who are
1668 committed to the custody of the department or who are placed under the supervision of the

1669 department after July 1, 2002, within 120 days after the commitment, if possible, but not later
1670 than prior to release from incarceration if the person is imprisoned, or prior to the termination
1671 of probation if the person is placed on probation.

1672 (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)
1673 is:

1674 (i) first, persons on probation;

1675 (ii) second, persons on parole; and

1676 (iii) third, incarcerated persons.

1677 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
1678 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
1679 specimens from persons in the custody of or under the supervision of the Department of
1680 Corrections as of July 1, 2002, prior to their release.

1681 (7) (a) As used in this Subsection (7):

1682 (i) "Court" means the juvenile court.

1683 (ii) "Division" means the Division of Juvenile Justice Services.

1684 (b) Priority of obtaining DNA specimens by the court from minors under Section
1685 53-10-403 whose cases are under the jurisdiction of the court but who are not in the legal
1686 custody of the division shall be:

1687 (i) first, to obtain specimens from minors whose cases, as of July 1, 2002, are under the
1688 court's jurisdiction, before the court's jurisdiction over the minors' cases terminates; and

1689 (ii) second, to obtain specimens from minors whose cases are under the jurisdiction of
1690 the court after July 1, 2002, within 120 days of the minor's case being found to be within the
1691 court's jurisdiction, if possible, but no later than before the court's jurisdiction over the minor's
1692 case terminates.

1693 (c) Priority of obtaining DNA specimens by the division from minors under Section
1694 53-10-403 who are committed to the legal custody of the division shall be:

1695 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the
1696 division's legal custody and who have not previously provided a DNA specimen under this
1697 section, before termination of the division's legal custody of these minors; and

1698 (ii) second, to obtain specimens from minors who are placed in the legal custody of the
1699 division after July 1, 2002, within 120 days of the minor's being placed in the custody of the

1700 division, if possible, but no later than before the termination of the court's jurisdiction over the
1701 minor's case.

1702 (8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile
1703 Justice Services, and all law enforcement agencies in the state shall by policy establish
1704 procedures for obtaining saliva DNA specimens, and shall provide training for employees
1705 designated to collect saliva DNA specimens.

1706 (b) (i) The department may designate correctional officers, including those employed
1707 by the adult probation and parole section of the department, to obtain the saliva DNA
1708 specimens required under this section.

1709 (ii) The department shall ensure that the designated employees receive appropriate
1710 training and that the specimens are obtained in accordance with accepted protocol.

1711 (c) Blood DNA specimens shall be obtained in accordance with Section [53-10-405](#).

1712 Section 35. Section **53-13-104** is amended to read:

1713 **53-13-104. Correctional officer.**

1714 (1) (a) "Correctional officer" means a sworn and certified officer employed by the
1715 Department of Corrections, any political subdivision of the state, or any private entity which
1716 contracts with the state or ~~[its]~~ the state's political subdivisions to incarcerate~~[-inmates]~~
1717 individuals who ~~[is-]~~ are charged with the primary duty of providing community protection.

1718 (b) "Correctional officer" includes an individual assigned to carry out any of the
1719 following types of functions:

1720 (i) controlling, transporting, supervising, and taking into custody of persons arrested or
1721 convicted of crimes;

1722 (ii) supervising and preventing the escape of persons in state and local incarceration
1723 facilities;

1724 (iii) guarding and managing ~~[inmates]~~ incarcerated individuals and providing security
1725 and enforcement services at a correctional facility; and

1726 (iv) employees of the Board of Pardons and Parole serving on or before September 1,
1727 1993, whose primary responsibility is to prevent and detect crime, enforce criminal statutes,
1728 and provide security to the Board of Pardons and Parole, and who are designated by the Board
1729 of Pardons and Parole, approved by the commissioner of public safety, and certified by the
1730 Peace Officer Standards and Training Division.

1731 (2) (a) Correctional officers have peace officer authority only while on duty. The
1732 authority of correctional officers employed by the Department of Corrections is regulated by
1733 Title 64, Chapter 13, Department of Corrections - State Prison.

1734 (b) Correctional officers may carry firearms only if authorized by and under conditions
1735 specified by the director of the Department of Corrections or the chief law enforcement officer
1736 of the employing agency.

1737 (3) (a) An individual may not exercise the authority of an adult correctional officer
1738 until the individual has satisfactorily completed a basic training program for correctional
1739 officers and the director of the Department of Corrections has certified the completion of
1740 training to the director of the division.

1741 (b) An individual may not exercise the authority of a county correctional officer until:

1742 (i) the individual has satisfactorily completed a basic training program for correctional
1743 officers and any other specialized training required by the local law enforcement agency; and

1744 (ii) the chief administrator of the local law enforcement agency has certified the
1745 completion of training to the director of the division.

1746 (4) (a) The Department of Corrections of the state shall establish and maintain a
1747 correctional officer basic course and in-service training programs as approved by the director of
1748 the division with the advice and consent of the council.

1749 (b) The in-service training shall:

1750 (i) consist of no fewer than 40 hours per year; and

1751 (ii) be conducted by the agency's own staff or other agencies.

1752 (5) The local law enforcement agencies may establish correctional officer basic,
1753 advanced, or in-service training programs as approved by the director of the division with the
1754 advice and consent of the council.

1755 (6) An individual shall be 19 years old or older before being certified or employed as a
1756 correctional officer under this section.

1757 Section 36. Section **53B-7-103** is amended to read:

1758 **53B-7-103. Board designated state educational agent for federal contracts and**
1759 **aid -- Individual research grants -- Powers of institutions or foundations under**
1760 **authorized programs.**

1761 (1) (a) The board is the designated state educational agency authorized to negotiate and

1762 contract with the federal government and to accept financial or other assistance from the
1763 federal government or any of its agencies in the name of and in behalf of the state of Utah,
1764 under terms and conditions as may be prescribed by congressional enactment designed to
1765 further higher education.

1766 (b) Nothing in this chapter alters or limits the authority of the Division of Facilities
1767 Construction and Management to act as the designated state agency to administer programs on
1768 behalf of and accept funds from federal, state, and other sources, for capital facilities for the
1769 benefit of higher education.

1770 (2) (a) Subject to policies and procedures established by the board, an institution of
1771 higher education and the institution of higher education's employees may apply for and receive
1772 grants or research and development contracts within the educational role of the recipient
1773 institution.

1774 (b) A program described in Subsection (2)(a) may be conducted by and through the
1775 institution, or by and through any foundation or organization that is established for the purpose
1776 of assisting the institution in the accomplishment of the institution's purposes.

1777 (3) An institution or the institution's foundation or organization engaged in a program
1778 authorized by the board may do the following:

1779 (a) enter into contracts with federal, state, or local governments or their subsidiary
1780 agencies or departments, with private organizations, companies, firms, or industries, or with
1781 individuals for conducting the authorized programs;

1782 (b) subject to the approval of the controlling state agency, conduct authorized programs
1783 within any of the penal, corrective, or custodial institutions of this state and engage the
1784 voluntary participation of ~~[inmates]~~ an incarcerated individual in those programs;

1785 (c) accept contributions, grants, or gifts from, and enter into contracts and cooperative
1786 agreements with, any private organization, company, firm, industry, or individual, or any
1787 governmental agency or department, for support of authorized programs within the educational
1788 role of the recipient institution, and may agree to provide matching funds with respect to those
1789 programs from resources available to the institution; and

1790 (d) retain, accumulate, invest, commit, and expend the funds and proceeds from
1791 programs funded under Subsection (3)(c), including the acquisition of real and personal
1792 property reasonably required for their accomplishment, except that no portion of the funds and

1793 proceeds may be diverted from or used for purposes other than those authorized or undertaken
1794 under Subsection (3)(c), or may ever become a charge upon or obligation of the state of Utah or
1795 the general funds appropriated for the normal operations of the institution unless otherwise
1796 permitted by law.

1797 (4) (a) Except as provided in Subsection (4)(b), all contracts and research or
1798 development grants or contracts requiring the use or commitment of facilities, equipment, or
1799 personnel under the control of an institution of higher education are subject to the approval of
1800 the board.

1801 (b) (i) The board may delegate the approval of a contract or grant described in
1802 Subsection (4)(a) to an institution of higher education board of trustees.

1803 (ii) If the board makes a delegation described in Subsection (4)(b)(i), the board of
1804 trustees shall annually report to the board on all approved contracts or grants.

1805 Section 37. Section **58-37-8** is amended to read:

1806 **58-37-8. Prohibited acts -- Penalties.**

1807 (1) Prohibited acts A -- Penalties and reporting:

1808 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and
1809 intentionally:

1810 (i) produce, manufacture, or dispense, or to possess with intent to produce,
1811 manufacture, or dispense, a controlled or counterfeit substance;

1812 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
1813 arrange to distribute a controlled or counterfeit substance;

1814 (iii) possess a controlled or counterfeit substance with intent to distribute; or

1815 (iv) engage in a continuing criminal enterprise where:

1816 (A) the person participates, directs, or engages in conduct that results in a violation of
1817 Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act,
1818 Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance
1819 Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

1820 (B) the violation is a part of a continuing series of two or more violations of Chapter
1821 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b,
1822 Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act,
1823 or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert

1824 with five or more persons with respect to whom the person occupies a position of organizer,
1825 supervisor, or any other position of management.

1826 (b) A person convicted of violating Subsection (1)(a) with respect to:

1827 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
1828 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
1829 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
1830 subsequent conviction is guilty of a first degree felony;

1831 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
1832 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and
1833 upon a second or subsequent conviction is guilty of a second degree felony; or

1834 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
1835 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
1836 felony.

1837 (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may
1838 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of
1839 fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the
1840 person or in the person's immediate possession during the commission or in furtherance of the
1841 offense, the court shall additionally sentence the person convicted for a term of one year to run
1842 consecutively and not concurrently; and the court may additionally sentence the person
1843 convicted for an indeterminate term not to exceed five years to run consecutively and not
1844 concurrently.

1845 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
1846 felony punishable by imprisonment for an indeterminate term of not less than:

1847 (A) seven years and which may be for life; or

1848 (B) 15 years and which may be for life if the trier of fact determined that the defendant
1849 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)
1850 was under 18 years old.

1851 (ii) Imposition or execution of the sentence may not be suspended, and the person is
1852 not eligible for probation.

1853 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
1854 offense, was under 18 years old.

1855 (e) The Administrative Office of the Courts shall report to the Division of Professional
1856 Licensing the name, case number, date of conviction, and if known, the date of birth of each
1857 person convicted of violating Subsection (1)(a).

1858 (2) Prohibited acts B -- Penalties and reporting:

1859 (a) It is unlawful:

1860 (i) for a person knowingly and intentionally to possess or use a controlled substance
1861 analog or a controlled substance, unless it was obtained under a valid prescription or order,
1862 directly from a practitioner while acting in the course of the person's professional practice, or as
1863 otherwise authorized by this chapter;

1864 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,
1865 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
1866 by persons unlawfully possessing, using, or distributing controlled substances in any of those
1867 locations; or

1868 (iii) for a person knowingly and intentionally to possess an altered or forged
1869 prescription or written order for a controlled substance.

1870 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

1871 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
1872 or

1873 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
1874 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
1875 conviction if each prior offense was committed within seven years before the date of the
1876 offense upon which the current conviction is based is guilty of a third degree felony.

1877 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
1878 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
1879 penalty than provided in this Subsection (2).

1880 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
1881 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
1882 [58-37-4.2](#), or marijuana, is guilty of a class B misdemeanor.

1883 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
1884 offense was committed within seven years before the date of the offense upon which the
1885 current conviction is based.

1886 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
1887 if each prior offense was committed within seven years before the date of the offense upon
1888 which the current conviction is based.

1889 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior
1890 boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a
1891 public jail or other place of confinement shall be sentenced to a penalty one degree greater than
1892 provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as
1893 listed in:

1894 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
1895 indeterminate term as provided by law, and:

1896 (A) the court shall additionally sentence the person convicted to a term of one year to
1897 run consecutively and not concurrently; and

1898 (B) the court may additionally sentence the person convicted for an indeterminate term
1899 not to exceed five years to run consecutively and not concurrently; and

1900 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
1901 indeterminate term as provided by law, and the court shall additionally sentence the person
1902 convicted to a term of six months to run consecutively and not concurrently.

1903 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

1904 (i) on a first conviction, guilty of a class B misdemeanor;

1905 (ii) on a second conviction, guilty of a class A misdemeanor; and

1906 (iii) on a third or subsequent conviction, guilty of a third degree felony.

1907 (g) The Administrative Office of the Courts shall report to the Division of Professional
1908 Licensing the name, case number, date of conviction, and if known, the date of birth of each
1909 person convicted of violating Subsection (2)(a).

1910 (3) Prohibited acts C -- Penalties:

1911 (a) It is unlawful for a person knowingly and intentionally:

1912 (i) to use in the course of the manufacture or distribution of a controlled substance a
1913 license number which is fictitious, revoked, suspended, or issued to another person or, for the
1914 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
1915 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
1916 person;

1917 (ii) to acquire or obtain possession of, to procure or attempt to procure the
1918 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
1919 attempting to acquire or obtain possession of, or to procure the administration of a controlled
1920 substance by misrepresentation or failure by the person to disclose receiving a controlled
1921 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
1922 prescription or written order for a controlled substance, or the use of a false name or address;

1923 (iii) to make a false or forged prescription or written order for a controlled substance,
1924 or to utter the same, or to alter a prescription or written order issued or written under the terms
1925 of this chapter; or

1926 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to
1927 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
1928 device of another or any likeness of any of the foregoing upon any drug or container or labeling
1929 so as to render a drug a counterfeit controlled substance.

1930 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
1931 misdemeanor.

1932 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
1933 degree felony.

1934 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

1935 (4) Prohibited acts D -- Penalties:

1936 (a) Notwithstanding other provisions of this section, a person not authorized under this
1937 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is
1938 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier
1939 of fact finds the act is committed:

1940 (i) in a public or private elementary or secondary school or on the grounds of any of
1941 those schools during the hours of 6 a.m. through 10 p.m.;

1942 (ii) in a public or private vocational school or postsecondary institution or on the
1943 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

1944 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
1945 facility's hours of operation;

1946 (iv) in a public park, amusement park, arcade, or recreation center when the public or
1947 amusement park, arcade, or recreation center is open to the public;

- 1948 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 1949 (vi) in or on the grounds of a library when the library is open to the public;
- 1950 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
- 1951 in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);
- 1952 (viii) in the presence of a person younger than 18 years old, regardless of where the act
- 1953 occurs; or
- 1954 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 1955 distribution of a substance in violation of this section to an ~~inmate~~ incarcerated individual or
- 1956 on the grounds of a correctional facility as defined in Section 76-8-311.3.
- 1957 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
- 1958 and shall be imprisoned for a term of not less than five years if the penalty that would
- 1959 otherwise have been established but for this Subsection (4) would have been a first degree
- 1960 felony.
- 1961 (ii) Imposition or execution of the sentence may not be suspended, and the person is
- 1962 not eligible for probation.
- 1963 (c) If the classification that would otherwise have been established would have been
- 1964 less than a first degree felony but for this Subsection (4), a person convicted under this
- 1965 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
- 1966 offense.
- 1967 (d) (i) If the violation is of Subsection (4)(a)(ix):
- 1968 (A) the person may be sentenced to imprisonment for an indeterminate term as
- 1969 provided by law, and the court shall additionally sentence the person convicted for a term of
- 1970 one year to run consecutively and not concurrently; and
- 1971 (B) the court may additionally sentence the person convicted for an indeterminate term
- 1972 not to exceed five years to run consecutively and not concurrently; and
- 1973 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
- 1974 the mental state required for the commission of an offense, directly or indirectly solicits,
- 1975 requests, commands, coerces, encourages, or intentionally aids another person to commit a
- 1976 violation of Subsection (4)(a)(ix).
- 1977 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 1978 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of

1979 the offense or was unaware of the individual's true age; or

1980 (ii) the actor mistakenly believed that the location where the act occurred was not as
1981 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
1982 described in Subsection (4)(a).

1983 (5) A violation of this chapter for which no penalty is specified is a class B
1984 misdemeanor.

1985 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
1986 guilty or no contest to a violation or attempted violation of this section or a plea which is held
1987 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
1988 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
1989 abeyance agreement.

1990 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
1991 conviction that is:

1992 (i) from a separate criminal episode than the current charge; and

1993 (ii) from a conviction that is separate from any other conviction used to enhance the
1994 current charge.

1995 (7) A person may be charged and sentenced for a violation of this section,
1996 notwithstanding a charge and sentence for a violation of any other section of this chapter.

1997 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
1998 of, a civil or administrative penalty or sanction authorized by law.

1999 (b) When a violation of this chapter violates a federal law or the law of another state,
2000 conviction or acquittal under federal law or the law of another state for the same act is a bar to
2001 prosecution in this state.

2002 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
2003 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
2004 substance or substances, is prima facie evidence that the person or persons did so with
2005 knowledge of the character of the substance or substances.

2006 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
2007 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or
2008 administering controlled substances or from causing the substances to be administered by an
2009 assistant or orderly under the veterinarian's direction and supervision.

2010 (11) Civil or criminal liability may not be imposed under this section on:

2011 (a) a person registered under this chapter who manufactures, distributes, or possesses
2012 an imitation controlled substance for use as a placebo or investigational new drug by a
2013 registered practitioner in the ordinary course of professional practice or research; or

2014 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
2015 employment.

2016 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
2017 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
2018 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
2019 as defined in Section 58-37-2.

2020 (b) In a prosecution alleging violation of this section regarding peyote as defined in
2021 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported
2022 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a
2023 traditional Indian religion.

2024 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
2025 defense under this Subsection (12) as soon as practicable, but not later than 10 days before
2026 trial.

2027 (ii) The notice shall include the specific claims of the affirmative defense.

2028 (iii) The court may waive the notice requirement in the interest of justice for good
2029 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

2030 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
2031 a preponderance of the evidence. If the defense is established, it is a complete defense to the
2032 charges.

2033 (13) (a) It is an affirmative defense that the person produced, possessed, or
2034 administered a controlled substance listed in Section 58-37-4.2 if the person was:

2035 (i) engaged in medical research; and

2036 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

2037 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed
2038 a controlled substance listed in Section 58-37-4.2.

2039 (14) It is an affirmative defense that the person possessed, in the person's body, a
2040 controlled substance listed in Section 58-37-4.2 if:

2041 (a) the person was the subject of medical research conducted by a holder of a valid
2042 license to possess controlled substances under Section 58-37-6; and

2043 (b) the substance was administered to the person by the medical researcher.

2044 (15) The application of any increase in penalty under this section to a violation of
2045 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
2046 Subsection (15) takes precedence over any conflicting provision of this section.

2047 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
2048 listed in Subsection (16)(b) that the person or bystander:

2049 (i) reasonably believes that the person or another person is experiencing an overdose
2050 event due to the ingestion, injection, inhalation, or other introduction into the human body of a
2051 controlled substance or other substance;

2052 (ii) reports, or assists a person who reports, in good faith the overdose event to a
2053 medical provider, an emergency medical service provider as defined in Section 26-8a-102, a
2054 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the
2055 person is the subject of a report made under this Subsection (16);

2056 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
2057 actual location of the overdose event that facilitates responding to the person experiencing the
2058 overdose event;

2059 (iv) remains at the location of the person experiencing the overdose event until a
2060 responding law enforcement officer or emergency medical service provider arrives, or remains
2061 at the medical care facility where the person experiencing an overdose event is located until a
2062 responding law enforcement officer arrives;

2063 (v) cooperates with the responding medical provider, emergency medical service
2064 provider, and law enforcement officer, including providing information regarding the person
2065 experiencing the overdose event and any substances the person may have injected, inhaled, or
2066 otherwise introduced into the person's body; and

2067 (vi) is alleged to have committed the offense in the same course of events from which
2068 the reported overdose arose.

2069 (b) The offenses referred to in Subsection (16)(a) are:

2070 (i) the possession or use of less than 16 ounces of marijuana;

2071 (ii) the possession or use of a scheduled or listed controlled substance other than

2072 marijuana; and

2073 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
2074 Imitation Controlled Substances Act.

2075 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
2076 include seeking medical assistance under this section during the course of a law enforcement
2077 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

2078 (17) If any provision of this chapter, or the application of any provision to any person
2079 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
2080 invalid provision or application.

2081 (18) A legislative body of a political subdivision may not enact an ordinance that is
2082 less restrictive than any provision of this chapter.

2083 (19) If a minor who is under 18 years old is found by a court to have violated this
2084 section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to
2085 complete:

2086 (a) a screening as defined in Section 41-6a-501;

2087 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
2088 assessment to be appropriate; and

2089 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
2090 treatment as indicated by an assessment.

2091 Section 38. Section 59-12-402.1 is amended to read:

2092 **59-12-402.1. State correctional facility sales and use tax -- Base -- Rate --**
2093 **Collection fees -- Imposition -- Prohibition of military installation development authority**
2094 **imposition of tax.**

2095 (1) As used in this section, "new state correctional facility" means a new prison in the
2096 state:

2097 (a) that is operated by the Department of Corrections;

2098 (b) the construction of which begins on or after May 12, 2015; and

2099 (c) that provides a capacity of 2,500 or more [inmate] beds for incarcerated individuals.

2100 (2) Subject to the other provisions of this part, a city or town legislative body may
2101 impose a tax under this section if the construction of a new state correctional facility has begun
2102 within the boundaries of the city or town.

- 2103 (3) For purposes of this section, the tax rate may not exceed .5%.
- 2104 (4) Except as provided in Subsection (5), a tax under this section shall be imposed on
2105 the transactions described in Subsection 59-12-103(1) within the city or town.
- 2106 (5) A city or town may not impose a tax under this section on:
- 2107 (a) the sale of:
- 2108 (i) a motor vehicle;
- 2109 (ii) an aircraft;
- 2110 (iii) a watercraft;
- 2111 (iv) a modular home;
- 2112 (v) a manufactured home; or
- 2113 (vi) a mobile home;
- 2114 (b) the sales and uses described in Section 59-12-104 to the extent the sales and uses
2115 are exempt under Section 59-12-104; and
- 2116 (c) except as provided in Subsection (7), amounts paid or charged for food and food
2117 ingredients.
- 2118 (6) For purposes of this section, the location of a transaction shall be determined in
2119 accordance with Sections 59-12-211 through 59-12-215.
- 2120 (7) A city or town that imposes a tax under this section shall impose the tax on the
2121 purchase price or sales price for amounts paid or charged for food and food ingredients if the
2122 food and food ingredients are sold as part of a bundled transaction attributable to food and food
2123 ingredients and tangible personal property other than food and food ingredients.
- 2124 (8) A city or town may impose a tax under this section by majority vote of the
2125 members of the city or town legislative body.
- 2126 (9) A city or town that imposes a tax under this section is not subject to Section
2127 59-12-405.
- 2128 (10) A military installation development authority may not impose a tax under this
2129 section.
- 2130 Section 39. Section 62A-2-120 is amended to read:
- 2131 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**
- 2132 (1) As used in this section:
- 2133 (a) (i) "Applicant" means:

- 2134 (A) the same as that term is defined in Section [62A-2-101](#);
- 2135 (B) an individual who is associated with a licensee and has or will likely have direct
- 2136 access to a child or a vulnerable adult;
- 2137 (C) an individual who provides respite care to a foster parent or an adoptive parent on
- 2138 more than one occasion;
- 2139 (D) a department contractor;
- 2140 (E) an individual who transports a child for a youth transportation company;
- 2141 (F) a guardian submitting an application on behalf of an individual, other than the child
- 2142 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and
- 2143 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
- 2144 who is receiving services; or
- 2145 (G) a guardian submitting an application on behalf of an individual, other than the
- 2146 child or vulnerable adult who is receiving the service, if the individual is 12 years old or older
- 2147 and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
- 2148 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
- 2149 of the Division of Child and Family Services or the Division of Juvenile Justice Services.
- 2150 (b) "Application" means a background screening application to the office.
- 2151 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
- 2152 Public Safety, created in Section [53-10-201](#).
- 2153 (d) "Incidental care" means occasional care, not in excess of five hours per week and
- 2154 never overnight, for a foster child.
- 2155 (e) "Personal identifying information" means:
- 2156 (i) current name, former names, nicknames, and aliases;
- 2157 (ii) date of birth;
- 2158 (iii) physical address and email address;
- 2159 (iv) telephone number;
- 2160 (v) driver license or other government-issued identification;
- 2161 (vi) social security number;
- 2162 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
- 2163 by the office; and
- 2164 (viii) other information specified by the office by rule made in accordance with Title

2165 63G, Chapter 3, Utah Administrative Rulemaking Act.

2166 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
2167 submit the following to the office:

2168 (i) personal identifying information;

2169 (ii) a fee established by the office under Section 63J-1-504; and

2170 (iii) a disclosure form, specified by the office, for consent for:

2171 (A) an initial background check upon submission of the information described under
2172 this Subsection (2)(a);

2173 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
2174 licensee for 90 days;

2175 (C) a background check when the office determines that reasonable cause exists; and

2176 (D) retention of personal identifying information, including fingerprints, for

2177 monitoring and notification as described in Subsections (3)(d) and (4).

2178 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
2179 resided outside of the United States and its territories during the five years immediately
2180 preceding the day on which the information described in Subsection (2)(a) is submitted to the
2181 office, the office may require the applicant to submit documentation establishing whether the
2182 applicant was convicted of a crime during the time that the applicant resided outside of the
2183 United States or its territories.

2184 (3) The office:

2185 (a) shall perform the following duties as part of a background check of an applicant:

2186 (i) check state and regional criminal background databases for the applicant's criminal
2187 history by:

2188 (A) submitting personal identifying information to the bureau for a search; or

2189 (B) using the applicant's personal identifying information to search state and regional
2190 criminal background databases as authorized under Section 53-10-108;

2191 (ii) submit the applicant's personal identifying information and fingerprints to the
2192 bureau for a criminal history search of applicable national criminal background databases;

2193 (iii) search the Department of Health and Human Services, Division of Child and
2194 Family Services' Licensing Information System described in Section 80-2-1002;

2195 (iv) search the Department of Health and Human Services, Division of Aging and

2196 Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section
2197 62A-3-311.1;

2198 (v) search the juvenile court records for substantiated findings of severe child abuse or
2199 neglect described in Section 80-3-404; and

2200 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
2201 under Section 78A-6-209;

2202 (b) shall conduct a background check of an applicant for an initial background check
2203 upon submission of the information described under Subsection (2)(a);

2204 (c) may conduct all or portions of a background check of an applicant, as provided by
2205 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
2206 Rulemaking Act:

2207 (i) for an annual renewal; or

2208 (ii) when the office determines that reasonable cause exists;

2209 (d) may submit an applicant's personal identifying information, including fingerprints,
2210 to the bureau for checking, retaining, and monitoring of state and national criminal background
2211 databases and for notifying the office of new criminal activity associated with the applicant;

2212 (e) shall track the status of an approved applicant under this section to ensure that an
2213 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
2214 the applicant applies for:

2215 (i) more than one license;

2216 (ii) direct access to a child or a vulnerable adult in more than one human services
2217 program; or

2218 (iii) direct access to a child or a vulnerable adult under a contract with the department;

2219 (f) shall track the status of each license and each individual with direct access to a child
2220 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
2221 expires or the individual's direct access to a child or a vulnerable adult ceases;

2222 (g) shall adopt measures to strictly limit access to personal identifying information
2223 solely to the individuals responsible for processing and entering the applications for
2224 background checks and to protect the security of the personal identifying information the office
2225 reviews under this Subsection (3);

2226 (h) as necessary to comply with the federal requirement to check a state's child abuse

2227 and neglect registry regarding any individual working in a congregate care program, shall:

2228 (i) search the Department of Health and Human Services, Division of Child and Family
2229 Services' Licensing Information System described in Section 80-2-1002; and

2230 (ii) require the child abuse and neglect registry be checked in each state where an
2231 applicant resided at any time during the five years immediately preceding the day on which the
2232 applicant submits the information described in Subsection (2)(a) to the office; and

2233 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
2234 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
2235 checks.

2236 (4) (a) With the personal identifying information the office submits to the bureau under
2237 Subsection (3), the bureau shall check against state and regional criminal background databases
2238 for the applicant's criminal history.

2239 (b) With the personal identifying information and fingerprints the office submits to the
2240 bureau under Subsection (3), the bureau shall check against national criminal background
2241 databases for the applicant's criminal history.

2242 (c) Upon direction from the office, and with the personal identifying information and
2243 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

2244 (i) maintain a separate file of the fingerprints for search by future submissions to the
2245 local and regional criminal records databases, including latent prints; and

2246 (ii) monitor state and regional criminal background databases and identify criminal
2247 activity associated with the applicant.

2248 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
2249 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
2250 Investigation Next Generation Identification System for the purpose of:

2251 (i) being searched by future submissions to the national criminal records databases,
2252 including the Federal Bureau of Investigation Next Generation Identification System and latent
2253 prints; and

2254 (ii) monitoring national criminal background databases and identifying criminal
2255 activity associated with the applicant.

2256 (e) The Bureau shall notify and release to the office all information of criminal activity
2257 associated with the applicant.

2258 (f) Upon notice from the office that a license has expired or an individual's direct
2259 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

2260 (i) discard and destroy any retained fingerprints; and

2261 (ii) notify the Federal Bureau of Investigation when the license has expired or an
2262 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
2263 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
2264 Investigation Next Generation Identification System.

2265 (5) (a) After conducting the background check described in Subsections (3) and (4), the
2266 office shall deny an application to an applicant who, within three years before the day on which
2267 the applicant submits information to the office under Subsection (2) for a background check,
2268 has been convicted of any of the following, regardless of whether the offense is a felony, a
2269 misdemeanor, or an infraction:

2270 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
2271 animals, or bestiality;

2272 (ii) a violation of any pornography law, including sexual exploitation of a minor or
2273 aggravated sexual exploitation of a minor;

2274 (iii) prostitution;

2275 (iv) an offense included in:

2276 (A) Title 76, Chapter 5, Offenses Against the Individual;

2277 (B) Section 76-5b-201, Sexual Exploitation of a Minor;

2278 (C) Section 76-5b-201.1, Aggravated Sexual Exploitation of a Minor; or

2279 (D) Title 76, Chapter 7, Offenses Against the Family;

2280 (v) aggravated arson, as described in Section 76-6-103;

2281 (vi) aggravated burglary, as described in Section 76-6-203;

2282 (vii) aggravated robbery, as described in Section 76-6-302;

2283 (viii) identity fraud crime, as described in Section 76-6-1102; or

2284 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
2285 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
2286 through (viii).

2287 (b) If the office denies an application to an applicant based on a conviction described in
2288 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in

2289 Subsection (6).

2290 (c) If the applicant will be working in a program serving only adults whose only
2291 impairment is a mental health diagnosis, including that of a serious mental health disorder,
2292 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
2293 do not apply, and the office shall conduct a comprehensive review as described in Subsection
2294 (6).

2295 (6) (a) The office shall conduct a comprehensive review of an applicant's background
2296 check if the applicant:

2297 (i) has an open court case or a conviction for any felony offense, not described in
2298 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on
2299 which the applicant submits the application;

2300 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
2301 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
2302 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
2303 on which the applicant submits information to the office under Subsection (2) for a background
2304 check;

2305 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
2306 than three years before the day on which the applicant submitted information under Subsection
2307 (2)(a);

2308 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
2309 described in Subsection (5)(a);

2310 (v) has a listing in the Department of Health and Human Services, Division of Child
2311 and Family Services' Licensing Information System described in Section [80-2-1002](#);

2312 (vi) has a listing in the Department of Health and Human Services, Division of Aging
2313 and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in
2314 Section [62A-3-311.1](#);

2315 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
2316 or neglect described in Section [80-3-404](#);

2317 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
2318 an adult, would be a felony or misdemeanor, if the applicant is:

2319 (A) under 28 years old; or

2320 (B) 28 years old or older and has been convicted of, has pleaded no contest to, or is
2321 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
2322 offense described in Subsection (5)(a);

2323 (ix) has a pending charge for an offense described in Subsection (5)(a); or

2324 (x) is an applicant described in Subsection (5)(c).

2325 (b) The comprehensive review described in Subsection (6)(a) shall include an
2326 examination of:

2327 (i) the date of the offense or incident;

2328 (ii) the nature and seriousness of the offense or incident;

2329 (iii) the circumstances under which the offense or incident occurred;

2330 (iv) the age of the perpetrator when the offense or incident occurred;

2331 (v) whether the offense or incident was an isolated or repeated incident;

2332 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
2333 adult, including:

2334 (A) actual or threatened, nonaccidental physical, mental, or financial harm;

2335 (B) sexual abuse;

2336 (C) sexual exploitation; or

2337 (D) negligent treatment;

2338 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
2339 treatment received, or additional academic or vocational schooling completed;

2340 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
2341 which the applicant is applying; and

2342 (ix) any other pertinent information presented to or publicly available to the committee
2343 members.

2344 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
2345 office shall deny an application to an applicant if the office finds that approval would likely
2346 create a risk of harm to a child or a vulnerable adult.

2347 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
2348 office may not deny an application to an applicant solely because the applicant was convicted
2349 of an offense that occurred 10 or more years before the day on which the applicant submitted
2350 the information required under Subsection (2)(a) if:

2351 (i) the applicant has not committed another misdemeanor or felony offense after the
2352 day on which the conviction occurred; and

2353 (ii) the applicant has never been convicted of an offense described in Subsection
2354 (14)(c).

2355 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2356 office may make rules, consistent with this chapter, to establish procedures for the
2357 comprehensive review described in this Subsection (6).

2358 (7) Subject to Subsection (10), the office shall approve an application to an applicant
2359 who is not denied under Subsection (5), (6), or (14).

2360 (8) (a) The office may conditionally approve an application of an applicant, for a
2361 maximum of 60 days after the day on which the office sends written notice to the applicant
2362 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

2363 (i) is awaiting the results of the criminal history search of national criminal background
2364 databases; and

2365 (ii) would otherwise approve an application of the applicant under Subsection (7).

2366 (b) The office may conditionally approve an application of an applicant, for a
2367 maximum of one year after the day on which the office sends written notice to the applicant
2368 under Subsection (12), without requiring that the applicant be directly supervised if the office:

2369 (i) is awaiting the results of an out-of-state registry for providers other than foster and
2370 adoptive parents; and

2371 (ii) would otherwise approve an application of the applicant under Subsection (7).

2372 (c) Upon receiving the results of the criminal history search of a national criminal
2373 background database, the office shall approve or deny the application of the applicant in
2374 accordance with Subsections (5) through (7).

2375 (9) A licensee or department contractor may not permit an individual to have direct
2376 access to a child or a vulnerable adult unless, subject to Subsection (10):

2377 (a) the individual is associated with the licensee or department contractor and:

2378 (i) the individual's application is approved by the office under this section;

2379 (ii) the individual's application is conditionally approved by the office under
2380 Subsection (8); or

2381 (iii) (A) the individual has submitted the background check information described in

2382 Subsection (2) to the office;

2383 (B) the office has not determined whether to approve the applicant's application; and

2384 (C) the individual is directly supervised by an individual who has a current background
2385 screening approval issued by the office under this section and is associated with the licensee or
2386 department contractor;

2387 (b) (i) the individual is associated with the licensee or department contractor;

2388 (ii) the individual has a current background screening approval issued by the office
2389 under this section;

2390 (iii) one of the following circumstances, that the office has not yet reviewed under
2391 Subsection (6), applies to the individual:

2392 (A) the individual was charged with an offense described in Subsection (5)(a);

2393 (B) the individual is listed in the Licensing Information System, described in Section
2394 [80-2-1002](#);

2395 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
2396 database, described in Section [62A-3-311.1](#);

2397 (D) the individual has a record in the juvenile court of a substantiated finding of severe
2398 child abuse or neglect, described in Section [80-3-404](#); or

2399 (E) the individual has a record of an adjudication in juvenile court for an act that, if
2400 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
2401 or (6); and

2402 (iv) the individual is directly supervised by an individual who:

2403 (A) has a current background screening approval issued by the office under this
2404 section; and

2405 (B) is associated with the licensee or department contractor;

2406 (c) the individual:

2407 (i) is not associated with the licensee or department contractor; and

2408 (ii) is directly supervised by an individual who:

2409 (A) has a current background screening approval issued by the office under this
2410 section; and

2411 (B) is associated with the licensee or department contractor;

2412 (d) the individual is the parent or guardian of the child, or the guardian of the

2413 vulnerable adult;

2414 (e) the individual is approved by the parent or guardian of the child, or the guardian of
2415 the vulnerable adult, to have direct access to the child or the vulnerable adult;

2416 (f) the individual is only permitted to have direct access to a vulnerable adult who
2417 voluntarily invites the individual to visit; or

2418 (g) the individual only provides incidental care for a foster child on behalf of a foster
2419 parent who has used reasonable and prudent judgment to select the individual to provide the
2420 incidental care for the foster child.

2421 (10) An individual may not have direct access to a child or a vulnerable adult if the
2422 individual is prohibited by court order from having that access.

2423 (11) Notwithstanding any other provision of this section, an individual for whom the
2424 office denies an application may not have direct access to a child or vulnerable adult unless the
2425 office approves a subsequent application by the individual.

2426 (12) (a) Within 30 days after the day on which the office receives the background
2427 check information for an applicant, the office shall give notice of the clearance status to:

2428 (i) the applicant, and the licensee or department contractor, of the office's decision
2429 regarding the background check and findings; and

2430 (ii) the applicant of any convictions and potentially disqualifying charges and
2431 adjudications found in the search.

2432 (b) With the notice described in Subsection (12)(a), the office shall also give the
2433 applicant the details of any comprehensive review conducted under Subsection (6).

2434 (c) If the notice under Subsection (12)(a) states that the applicant's application is
2435 denied, the notice shall further advise the applicant that the applicant may, under Subsection
2436 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to
2437 challenge the office's decision.

2438 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2439 office shall make rules, consistent with this chapter:

2440 (i) defining procedures for the challenge of the office's background check decision
2441 described in Subsection (12)(c); and

2442 (ii) expediting the process for renewal of a license under the requirements of this
2443 section and other applicable sections.

2444 (13) An individual or a department contractor who provides services in an adults only
2445 substance use disorder program, as defined by rule, is exempt from this section. This
2446 exemption does not extend to a program director or a member, as defined by Section
2447 [62A-2-108](#), of the program.

2448 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
2449 of this section, if the background check of an applicant is being conducted for the purpose of
2450 giving clearance status to an applicant seeking a position in a congregate care program, an
2451 applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or
2452 an applicant seeking to provide a prospective adoptive home, the office shall:

2453 (i) check the child abuse and neglect registry in each state where each applicant resided
2454 in the five years immediately preceding the day on which the applicant applied to be a foster
2455 parent or adoptive parent, to determine whether the prospective foster parent or prospective
2456 adoptive parent is listed in the registry as having a substantiated or supported finding of child
2457 abuse or neglect; and

2458 (ii) check the child abuse and neglect registry in each state where each adult living in
2459 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
2460 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
2461 parent, to determine whether the adult is listed in the registry as having a substantiated or
2462 supported finding of child abuse or neglect.

2463 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

2464 (i) federal law or rule permits otherwise; or

2465 (ii) the requirements would prohibit the Division of Child and Family Services or a
2466 court from placing a child with:

2467 (A) a noncustodial parent under Section [80-2a-301](#), [80-3-302](#), or [80-3-303](#); or

2468 (B) a relative, other than a noncustodial parent, under Section [80-2a-301](#), [80-3-302](#), or
2469 [80-3-303](#), pending completion of the background check described in Subsection (5).

2470 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an
2471 applicant seeking a position in a congregate care program, an applicant for a one-time adoption,
2472 an applicant to become a prospective foster parent, or an applicant to become a prospective
2473 adoptive parent if the applicant has been convicted of:

2474 (i) a felony involving conduct that constitutes any of the following:

- 2475 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
- 2476 (B) commission of domestic violence in the presence of a child, as described in Section
- 2477 76-5-114;
- 2478 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 2479 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- 2480 (E) aggravated murder, as described in Section 76-5-202;
- 2481 (F) murder, as described in Section 76-5-203;
- 2482 (G) manslaughter, as described in Section 76-5-205;
- 2483 (H) child abuse homicide, as described in Section 76-5-208;
- 2484 (I) homicide by assault, as described in Section 76-5-209;
- 2485 (J) kidnapping, as described in Section 76-5-301;
- 2486 (K) child kidnapping, as described in Section 76-5-301.1;
- 2487 (L) aggravated kidnapping, as described in Section 76-5-302;
- 2488 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 2489 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2490 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 2491 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 2492 (Q) aggravated arson, as described in Section 76-6-103;
- 2493 (R) aggravated burglary, as described in Section 76-6-203;
- 2494 (S) aggravated robbery, as described in Section 76-6-302; or
- 2495 (T) domestic violence, as described in Section 77-36-1; or
- 2496 (ii) an offense committed outside the state that, if committed in the state, would
- 2497 constitute a violation of an offense described in Subsection (14)(c)(i).
- 2498 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 2499 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 2500 five years immediately preceding the day on which the individual's application or license would
- 2501 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 2502 constitutes a violation of any of the following:
- 2503 (i) aggravated assault, as described in Section 76-5-103;
- 2504 (ii) aggravated assault by ~~[a prisoner]~~ an incarcerated individual, as described in
- 2505 Section 76-5-103.5;

- 2506 (iii) mayhem, as described in Section [76-5-105](#);
- 2507 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 2508 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 2509 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 2510 Act;
- 2511 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 2512 Precursor Act; or
- 2513 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

2514 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
2515 conduct the comprehensive review of an applicant's background check pursuant to this section
2516 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
2517 child abuse and neglect registry of another state as having a substantiated or supported finding
2518 of a severe type of child abuse or neglect as defined in Section [80-1-102](#).

2519 Section 40. Section **62A-15-103** is amended to read:

2520 **62A-15-103. Division -- Creation -- Responsibilities.**

2521 (1) (a) The division shall exercise responsibility over the policymaking functions,
2522 regulatory and enforcement powers, rights, duties, and responsibilities outlined in state law that
2523 were previously vested in the Division of Substance Abuse and Mental Health within the
2524 department, under the administration and general supervision of the executive director.

2525 (b) The division is the substance abuse authority and the mental health authority for
2526 this state.

2527 (2) The division shall:

2528 (a) (i) educate the general public regarding the nature and consequences of substance
2529 abuse by promoting school and community-based prevention programs;

2530 (ii) render support and assistance to public schools through approved school-based
2531 substance abuse education programs aimed at prevention of substance abuse;

2532 (iii) promote or establish programs for the prevention of substance abuse within the
2533 community setting through community-based prevention programs;

2534 (iv) cooperate with and assist treatment centers, recovery residences, and other
2535 organizations that provide services to individuals recovering from a substance abuse disorder,
2536 by identifying and disseminating information about effective practices and programs;

- 2537 (v) promote integrated programs that address an individual's substance abuse, mental
2538 health, and physical health;
- 2539 (vi) establish and promote an evidence-based continuum of screening, assessment,
2540 prevention, treatment, and recovery support services in the community for individuals with a
2541 substance use disorder or mental illness;
- 2542 (vii) evaluate the effectiveness of programs described in this Subsection (2);
- 2543 (viii) consider the impact of the programs described in this Subsection (2) on:
- 2544 (A) emergency department utilization;
- 2545 (B) jail and prison populations;
- 2546 (C) the homeless population; and
- 2547 (D) the child welfare system; and
- 2548 (ix) promote or establish programs for education and certification of instructors to
2549 educate individuals convicted of driving under the influence of alcohol or drugs or driving with
2550 any measurable controlled substance in the body;
- 2551 (b) (i) collect and disseminate information pertaining to mental health;
- 2552 (ii) provide direction over the state hospital including approval of the state hospital's
2553 budget, administrative policy, and coordination of services with local service plans;
- 2554 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
2555 Rulemaking Act, to educate families concerning mental illness and promote family
2556 involvement, when appropriate, and with patient consent, in the treatment program of a family
2557 member; and
- 2558 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
2559 Rulemaking Act, to direct that an individual receiving services through a local mental health
2560 authority or the Utah State Hospital be informed about and, if desired by the individual,
2561 provided assistance in the completion of a declaration for mental health treatment in
2562 accordance with Section [62A-15-1002](#);
- 2563 (c) (i) consult and coordinate with local substance abuse authorities and local mental
2564 health authorities regarding programs and services;
- 2565 (ii) provide consultation and other assistance to public and private agencies and groups
2566 working on substance abuse and mental health issues;
- 2567 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,

2568 medical and social agencies, public health authorities, law enforcement agencies, education and
2569 research organizations, and other related groups;

2570 (iv) promote or conduct research on substance abuse and mental health issues, and
2571 submit to the governor and the Legislature recommendations for changes in policy and
2572 legislation;

2573 (v) receive, distribute, and provide direction over public funds for substance abuse and
2574 mental health services;

2575 (vi) monitor and evaluate programs provided by local substance abuse authorities and
2576 local mental health authorities;

2577 (vii) examine expenditures of local, state, and federal funds;

2578 (viii) monitor the expenditure of public funds by:

2579 (A) local substance abuse authorities;

2580 (B) local mental health authorities; and

2581 (C) in counties where they exist, a private contract provider that has an annual or
2582 otherwise ongoing contract to provide comprehensive substance abuse or mental health
2583 programs or services for the local substance abuse authority or local mental health authority;

2584 (ix) contract with local substance abuse authorities and local mental health authorities
2585 to provide a comprehensive continuum of services that include community-based services for
2586 individuals involved in the criminal justice system, in accordance with division policy, contract
2587 provisions, and the local plan;

2588 (x) contract with private and public entities for special statewide or nonclinical
2589 services, or services for individuals involved in the criminal justice system, according to
2590 division rules;

2591 (xi) review and approve each local substance abuse authority's plan and each local
2592 mental health authority's plan in order to ensure:

2593 (A) a statewide comprehensive continuum of substance abuse services;

2594 (B) a statewide comprehensive continuum of mental health services;

2595 (C) services result in improved overall health and functioning;

2596 (D) a statewide comprehensive continuum of community-based services designed to
2597 reduce criminal risk factors for individuals who are determined to have substance abuse or
2598 mental illness conditions or both, and who are involved in the criminal justice system;

2599 (E) compliance, where appropriate, with the certification requirements in Subsection
2600 (2)(j); and

2601 (F) appropriate expenditure of public funds;

2602 (xii) review and make recommendations regarding each local substance abuse
2603 authority's contract with the local substance abuse authority's provider of substance abuse
2604 programs and services and each local mental health authority's contract with the local mental
2605 health authority's provider of mental health programs and services to ensure compliance with
2606 state and federal law and policy;

2607 (xiii) monitor and ensure compliance with division rules and contract requirements;
2608 and

2609 (xiv) withhold funds from local substance abuse authorities, local mental health
2610 authorities, and public and private providers for contract noncompliance, failure to comply
2611 with division directives regarding the use of public funds, or for misuse of public funds or
2612 money;

2613 (d) ensure that the requirements of this part are met and applied uniformly by local
2614 substance abuse authorities and local mental health authorities across the state;

2615 (e) require each local substance abuse authority and each local mental health authority,
2616 in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to
2617 the division on or before May 15 of each year;

2618 (f) conduct an annual program audit and review of each local substance abuse authority
2619 and each local substance abuse authority's contract provider, and each local mental health
2620 authority and each local mental health authority's contract provider, including:

2621 (i) a review and determination regarding whether:

2622 (A) public funds allocated to the local substance abuse authority or the local mental
2623 health authorities are consistent with services rendered by the authority or the authority's
2624 contract provider, and with outcomes reported by the authority's contract provider; and

2625 (B) each local substance abuse authority and each local mental health authority is
2626 exercising sufficient oversight and control over public funds allocated for substance use
2627 disorder and mental health programs and services; and

2628 (ii) items determined by the division to be necessary and appropriate;

2629 (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,

2630 Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;
2631 (h) (i) train and certify an adult as a peer support specialist, qualified to provide peer
2632 supports services to an individual with:
2633 (A) a substance use disorder;
2634 (B) a mental health disorder; or
2635 (C) a substance use disorder and a mental health disorder;
2636 (ii) certify a person to carry out, as needed, the division's duty to train and certify an
2637 adult as a peer support specialist;
2638 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
2639 Rulemaking Act, that:
2640 (A) establish training and certification requirements for a peer support specialist;
2641 (B) specify the types of services a peer support specialist is qualified to provide;
2642 (C) specify the type of supervision under which a peer support specialist is required to
2643 operate; and
2644 (D) specify continuing education and other requirements for maintaining or renewing
2645 certification as a peer support specialist; and
2646 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
2647 Rulemaking Act, that:
2648 (A) establish the requirements for a person to be certified to carry out, as needed, the
2649 division's duty to train and certify an adult as a peer support specialist; and
2650 (B) specify how the division shall provide oversight of a person certified to train and
2651 certify a peer support specialist;
2652 (i) collaborate with the State Commission on Criminal and Juvenile Justice to analyze
2653 and provide recommendations to the Legislature regarding:
2654 (i) pretrial services and the resources needed to reduce recidivism;
2655 (ii) county jail and county behavioral health early-assessment resources needed for an
2656 individual convicted of a class A or class B misdemeanor; and
2657 (iii) the replacement of federal dollars associated with drug interdiction law
2658 enforcement task forces that are reduced;
2659 (j) establish performance goals and outcome measurements for a mental health or
2660 substance use treatment program that is licensed under Chapter 2, Licensure of Programs and

2661 Facilities, and contracts with the department, including goals and measurements related to
2662 employment and reducing recidivism of individuals receiving mental health or substance use
2663 treatment who are involved with the criminal justice system;

2664 (k) annually, on or before November 30, submit a written report to the Judiciary
2665 Interim Committee, the Health and Human Services Interim Committee, and the Law
2666 Enforcement and Criminal Justice Interim Committee, that includes:

2667 (i) a description of the performance goals and outcome measurements described in
2668 Subsection (2)(j); and

2669 (ii) information on the effectiveness of the goals and measurements in ensuring
2670 appropriate and adequate mental health or substance use treatment is provided in a treatment
2671 program described in Subsection (2)(j);

2672 (l) collaborate with the Administrative Office of the Courts, the Department of
2673 Corrections, the Department of Workforce Services, and the Board of Pardons and Parole to
2674 collect data on recidivism, including data on:

2675 (i) individuals who participate in a mental health or substance use treatment program
2676 while incarcerated and are convicted of another offense within two years after release from
2677 incarceration;

2678 (ii) individuals who are ordered by a criminal court or the Board of Pardons and Parole
2679 to participate in a mental health or substance use treatment program and are convicted of
2680 another offense while participating in the treatment program or within two years after the day
2681 on which the treatment program ends;

2682 (iii) the type of treatment provided to, and employment of, the individuals described in
2683 Subsections (2)(l)(i) and (ii); and

2684 (iv) cost savings associated with recidivism reduction and the reduction in the number
2685 of ~~inmates~~ incarcerated individuals in the state;

2686 (m) at the division's discretion, use the data described in Subsection (2)(l) to make
2687 decisions regarding the use of funds allocated to the division to provide treatment;

2688 (n) annually, on or before August 31, submit the data collected under Subsection (2)(l)
2689 and any recommendations to improve the data collection to the State Commission on Criminal
2690 and Juvenile Justice to be included in the report described in Subsection [63M-7-204\(1\)\(x\)](#);

2691 (o) publish the following on the division's website:

2692 (i) the performance goals and outcome measurements described in Subsection (2)(j);
2693 and

2694 (ii) a description of the services provided and the contact information for the mental
2695 health and substance use treatment programs described in Subsection (2)(j) and residential,
2696 vocational and life skills programs, as defined in Section 13-53-102; and

2697 (p) consult and coordinate with the Division of Child and Family Services to develop
2698 and manage the operation of a program designed to reduce substance abuse during pregnancy
2699 and by parents of a newborn child that includes:

2700 (i) providing education and resources to health care providers and individuals in the
2701 state regarding prevention of substance abuse during pregnancy;

2702 (ii) providing training to health care providers in the state regarding screening of a
2703 pregnant woman or pregnant minor to identify a substance abuse disorder; and

2704 (iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn
2705 child in need of substance abuse treatment services to a facility that has the capacity to provide
2706 the treatment services.

2707 (3) In addition to the responsibilities described in Subsection (2), the division shall,
2708 within funds appropriated by the Legislature for this purpose, implement and manage the
2709 operation of a firearm safety and suicide prevention program, in consultation with the Bureau
2710 of Criminal Identification created in Section 53-10-201, including:

2711 (a) coordinating with local mental health and substance abuse authorities, a nonprofit
2712 behavioral health advocacy group, and a representative from a Utah-based nonprofit
2713 organization with expertise in the field of firearm use and safety that represents firearm owners,
2714 to:

2715 (i) produce and periodically review and update a firearm safety brochure and other
2716 educational materials with information about the safe handling and use of firearms that
2717 includes:

2718 (A) information on safe handling, storage, and use of firearms in a home environment;

2719 (B) information about at-risk individuals and individuals who are legally prohibited
2720 from possessing firearms;

2721 (C) information about suicide prevention awareness; and

2722 (D) information about the availability of firearm safety packets;

- 2723 (ii) procure cable-style gun locks for distribution under this section;
- 2724 (iii) produce a firearm safety packet that includes the firearm safety brochure and the
2725 cable-style gun lock described in this Subsection (3); and
- 2726 (iv) create a suicide prevention education course that:
- 2727 (A) provides information for distribution regarding firearm safety education;
- 2728 (B) incorporates current information on how to recognize suicidal behaviors and
2729 identify individuals who may be suicidal; and
- 2730 (C) provides information regarding crisis intervention resources;
- 2731 (b) distributing, free of charge, the firearm safety packet to the following persons, who
2732 shall make the firearm safety packet available free of charge:
- 2733 (i) health care providers, including emergency rooms;
- 2734 (ii) mobile crisis outreach teams;
- 2735 (iii) mental health practitioners;
- 2736 (iv) other public health suicide prevention organizations;
- 2737 (v) entities that teach firearm safety courses;
- 2738 (vi) school districts for use in the seminar, described in Section [53G-9-702](#), for parents
2739 of students in the school district; and
- 2740 (vii) firearm dealers to be distributed in accordance with Section [76-10-526](#);
- 2741 (c) creating and administering a rebate program that includes a rebate that offers
2742 between \$10 and \$200 off the purchase price of a firearm safe from a participating firearms
2743 dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah resident;
- 2744 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2745 making rules that establish procedures for:
- 2746 (i) producing and distributing the suicide prevention education course and the firearm
2747 safety brochures and packets;
- 2748 (ii) procuring the cable-style gun locks for distribution; and
- 2749 (iii) administering the rebate program; and
- 2750 (e) reporting to the Health and Human Services Interim Committee regarding
2751 implementation and success of the firearm safety program and suicide prevention education
2752 course at or before the November meeting each year.
- 2753 (4) (a) The division may refuse to contract with and may pursue legal remedies against

2754 any local substance abuse authority or local mental health authority that fails, or has failed, to
2755 expend public funds in accordance with state law, division policy, contract provisions, or
2756 directives issued in accordance with state law.

2757 (b) The division may withhold funds from a local substance abuse authority or local
2758 mental health authority if the authority's contract provider of substance abuse or mental health
2759 programs or services fails to comply with state and federal law or policy.

2760 (5) (a) Before reissuing or renewing a contract with any local substance abuse authority
2761 or local mental health authority, the division shall review and determine whether the local
2762 substance abuse authority or local mental health authority is complying with the oversight and
2763 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
2764 17-43-309.

2765 (b) Nothing in this Subsection (5) may be used as a defense to the responsibility and
2766 liability described in Section 17-43-303 and to the responsibility and liability described in
2767 Section 17-43-203.

2768 (6) In carrying out the division's duties and responsibilities, the division may not
2769 duplicate treatment or educational facilities that exist in other divisions or departments of the
2770 state, but shall work in conjunction with those divisions and departments in rendering the
2771 treatment or educational services that those divisions and departments are competent and able
2772 to provide.

2773 (7) The division may accept in the name of and on behalf of the state donations, gifts,
2774 devises, or bequests of real or personal property or services to be used as specified by the
2775 donor.

2776 (8) The division shall annually review with each local substance abuse authority and
2777 each local mental health authority the authority's statutory and contract responsibilities
2778 regarding:

2779 (a) use of public funds;

2780 (b) oversight of public funds; and

2781 (c) governance of substance use disorder and mental health programs and services.

2782 (9) The Legislature may refuse to appropriate funds to the division upon the division's
2783 failure to comply with the provisions of this part.

2784 (10) If a local substance abuse authority contacts the division under Subsection

2785 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant
2786 minor, the division shall:

2787 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
2788 capacity to provide the treatment services; or

2789 (b) otherwise ensure that treatment services are made available to the pregnant woman
2790 or pregnant minor.

2791 (11) The division shall employ a school-based mental health specialist to be housed at
2792 the State Board of Education who shall work with the State Board of Education to:

2793 (a) provide coordination between a local education agency and local mental health
2794 authority;

2795 (b) recommend evidence-based and evidence informed mental health screenings and
2796 intervention assessments for a local education agency; and

2797 (c) coordinate with the local community, including local departments of health, to
2798 enhance and expand mental health related resources for a local education agency.

2799 Section 41. Section **62A-15-605.5** is amended to read:

2800 **62A-15-605.5. Admission of person in custody of Department of Corrections to**
2801 **state hospital -- Retransfer of person to Department of Corrections.**

2802 (1) The executive director of the Department of Corrections may request the director to
2803 admit a person who is in the custody of the Department of Corrections to the state hospital, if
2804 the clinical director within the Department of Corrections finds that the [~~inmate~~] incarcerated
2805 individual has mentally deteriorated to the point that admission to the state hospital is
2806 necessary to ensure adequate mental health treatment. In determining whether that [~~inmate~~]
2807 incarcerated individual should be placed in the state hospital, the director of the division shall
2808 consider:

2809 (a) the mental health treatment needs of the [~~inmate~~] incarcerated individual;

2810 (b) the treatment programs available at the state hospital; and

2811 (c) whether the [~~inmate~~] incarcerated individual meets the requirements of Subsection
2812 **62A-15-610(2)**.

2813 (2) If the director denies the admission of an [~~inmate~~] incarcerated individual as
2814 requested by the clinical director within the Department of Corrections, the Board of Pardons
2815 and Parole shall determine whether the [~~inmate~~] incarcerated individual will be admitted to the

2816 state hospital. The Board of Pardons and Parole shall consider:

- 2817 (a) the mental health treatment needs of the [inmate] incarcerated individual;
- 2818 (b) the treatment programs available at the state hospital; and
- 2819 (c) whether the [inmate] incarcerated individual meets the requirements of Subsection
- 2820 [62A-15-610\(2\)](#).

2821 (3) The state hospital shall receive any person in the custody of the Department of

2822 Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to

2823 Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the

2824 custody of the Department of Corrections, and the state hospital shall act solely as the agent of

2825 the Department of Corrections.

2826 (4) [Inmates] Incarcerated individuals transferred to the state hospital pursuant to this

2827 section shall be transferred back to the Department of Corrections through negotiations

2828 between the director and the director of the Department of Corrections. If agreement between

2829 the director and the director of the Department of Corrections cannot be reached, the Board of

2830 Pardons and Parole shall have final authority in determining whether a person will be

2831 transferred back to the Department of Corrections. In making that determination, that board

2832 shall consider:

- 2833 (a) the mental health treatment needs of the [inmate] incarcerated individual;
- 2834 (b) the treatment programs available at the state hospital;
- 2835 (c) whether the person continues to meet the requirements of Subsection
- 2836 [62A-15-610\(2\)](#);
- 2837 (d) the ability of the state hospital to provide adequate treatment to the person, as well
- 2838 as safety and security to the public; and
- 2839 (e) whether, in the opinion of the director, in consultation with the clinical director of
- 2840 the state hospital, the person's treatment needs have been met.

2841 Section 42. Section **62A-15-902** is amended to read:

2842 **62A-15-902. Design and operation -- Security.**

- 2843 (1) The forensic mental health facility is a secure treatment facility.
- 2844 (2) (a) The forensic mental health facility accommodates the following populations:
 - 2845 (i) [prison inmates] incarcerated individuals displaying mental illness, as defined in
 - 2846 Section [62A-15-602](#), necessitating treatment in a secure mental health facility;

2847 (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a
2848 mental illness at the time of the offense undergoing evaluation for mental illness under Title
2849 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

2850 (iii) criminally adjudicated persons undergoing evaluation for competency or found
2851 guilty with a mental illness or guilty with a mental illness at the time of the offense under Title
2852 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who also have
2853 an intellectual disability;

2854 (iv) persons undergoing evaluation for competency or found by a court to be
2855 incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of
2856 Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

2857 (v) persons who are civilly committed to the custody of a local mental health authority
2858 in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health
2859 Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack
2860 of necessary security, as determined by the superintendent or the superintendent's designee; and

2861 (vi) persons ordered to commit themselves to the custody of the Division of Substance
2862 Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or
2863 stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

2864 (b) Placement of an offender in the forensic mental health facility under any category
2865 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's
2866 status as established by the court at the time of adjudication.

2867 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2868 department shall make rules providing for the allocation of beds to the categories described in
2869 Subsection (2)(a).

2870 (3) The department shall:

2871 (a) own and operate the forensic mental health facility;

2872 (b) provide and supervise administrative and clinical staff; and

2873 (c) provide security staff who are trained as psychiatric technicians.

2874 (4) Pursuant to Subsection [62A-15-603\(3\)](#) the executive director shall designate
2875 individuals to perform security functions for the state hospital.

2876 Section 43. Section [63A-16-1002](#) is amended to read:

2877 **[63A-16-1002](#). Criminal Justice Database.**

2878 (1) The commission shall oversee the creation and management of a Criminal Justice
2879 Database for information and data required to be reported to the commission, organized by
2880 county, and accessible to all criminal justice agencies in the state.

2881 (2) The division shall assist with the development and management of the database.

2882 (3) The division, in collaboration with the commission, shall create:

2883 (a) master standards and formats for information submitted to the database;

2884 (b) a portal, bridge, website, or other method for reporting entities to provide the
2885 information;

2886 (c) a master data management index or system to assist in the retrieval of information
2887 in the database;

2888 (d) a protocol for accessing information in the database that complies with state
2889 privacy regulations; and

2890 (e) a protocol for real-time audit capability of all data accessed through the portal by
2891 participating data source, data use entities, and regulators.

2892 (4) Each criminal justice agency charged with reporting information to the commission
2893 shall provide the data or information to the database in a form prescribed by the commission.

2894 (5) The database shall be the repository for the statutorily required data described in:

2895 (a) Section 13-53-111, recidivism reporting requirements;

2896 (b) Section 17-22-32, county jail reporting requirements;

2897 (c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;

2898 (d) Section 24-4-118, forfeiture reporting requirements;

2899 (e) Section 41-6a-511, courts to collect and maintain data;

2900 (f) Section 63M-7-214, law enforcement agency grant reporting;

2901 (g) Section 63M-7-216, prosecutorial data collection;

2902 (h) Section 64-13-21, supervision of sentenced offenders placed in community;

2903 (i) Section 64-13-25, standards for programs;

2904 (j) Section 64-13-45, department reporting requirements;

2905 (k) Section 64-13e-104, housing of state probationary [~~inmates~~] incarcerated
2906 individuals or state parole [~~inmates~~] incarcerated individuals;

2907 (l) Section 77-7-8.5, use of tactical groups;

2908 (m) Section 77-20-103, release data requirements;

2909 (n) Section 77-22-2.5, court orders for criminal investigations;
2910 (o) Section 78A-2-109.5, court demographics reporting; and
2911 (p) any other statutes which require the collection of specific data and the reporting of
2912 that data to the commission.

2913 (6) The commission shall report:
2914 (a) progress on the database, including creation, configuration, and data entered, to the
2915 Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and

2916 (b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal
2917 Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing
2918 Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing
2919 Committee not later than January 16, 2023.

2920 Section 44. Section 63A-17-301 is amended to read:

2921 **63A-17-301. Career service -- Exempt positions -- Schedules for civil service**
2922 **positions -- Coverage of career service provisions.**

2923 (1) Except as provided in Subsection (3)(d), the following positions are exempt from
2924 the career service provisions of this chapter and are designated under the following schedules:

2925 (a) schedule AA includes the governor, members of the Legislature, and all other
2926 elected state officers;

2927 (b) schedule AB includes appointed executives and board or commission executives
2928 enumerated in Section 67-22-2;

2929 (c) schedule AC includes all employees and officers in:

2930 (i) the office and at the residence of the governor;

2931 (ii) the Public Lands Policy Coordinating Office;

2932 (iii) the Office of the State Auditor; and

2933 (iv) the Office of the State Treasurer;

2934 (d) schedule AD includes employees who:

2935 (i) are in a confidential relationship to an agency head or commissioner; and

2936 (ii) report directly to, and are supervised by, a department head, commissioner, or
2937 deputy director of an agency or its equivalent;

2938 (e) schedule AE includes each employee of the State Board of Education that the State
2939 Board of Education designates as exempt from the career service provisions of this chapter;

- 2940 (f) schedule AG includes employees in the Office of the Attorney General who are
2941 under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- 2942 (g) schedule AH includes:
- 2943 (i) teaching staff of all state institutions; and
- 2944 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 2945 (A) educational interpreters as classified by the division; or
- 2946 (B) educators as defined by Section 53E-8-102;
- 2947 (h) schedule AN includes employees of the Legislature;
- 2948 (i) schedule AO includes employees of the judiciary;
- 2949 (j) schedule AP includes all judges in the judiciary;
- 2950 (k) schedule AQ includes:
- 2951 (i) members of state and local boards and councils appointed by the governor and
2952 governing bodies of agencies;
- 2953 (ii) a water commissioner appointed under Section 73-5-1;
- 2954 (iii) other local officials serving in an ex officio capacity; and
- 2955 (iv) officers, faculty, and other employees of state universities and other state
2956 institutions of higher education;
- 2957 (l) schedule AR includes employees in positions that involve responsibility:
- 2958 (i) for determining policy;
- 2959 (ii) for determining the way in which a policy is carried out; or
- 2960 (iii) of a type not appropriate for career service, as determined by the agency head with
2961 the concurrence of the director;
- 2962 (m) schedule AS includes any other employee:
- 2963 (i) whose appointment is required by statute to be career service exempt;
- 2964 (ii) whose agency is not subject to this chapter; or
- 2965 (iii) whose agency has authority to make rules regarding the performance,
2966 compensation, and bonuses for its employees;
- 2967 (n) schedule AT includes employees of the Division of Technology Services,
2968 designated as executive/professional positions by the director of the Division of Technology
2969 Services with the concurrence of the director of the division;
- 2970 (o) schedule AU includes patients and ~~inmates~~ incarcerated individuals employed in

2971 state institutions;

2972 (p) employees of the Department of Workforce Services, designated as schedule AW:

2973 (i) who are temporary employees that are federally funded and are required to work

2974 under federally qualified merit principles as certified by the director; or

2975 (ii) for whom substantially all of their work is repetitive, measurable, or transaction

2976 based, and who voluntarily apply for and are accepted by the Department of Workforce

2977 Services to work in a pay for performance program designed by the Department of Workforce

2978 Services with the concurrence of the director of the division;

2979 (q) subject to Subsection (6), schedule AX includes employees in positions that:

2980 (i) require the regular supervision and performance evaluation of one or more other

2981 employees; and

2982 (ii) are not designated exempt from career service under any other schedule described

2983 in this Subsection (1); and

2984 (r) for employees in positions that are temporary, seasonal, time limited, funding

2985 limited, or variable hour in nature, under schedule codes and parameters established by the

2986 division by administrative rule.

2987 (2) The civil service shall consist of two schedules as follows:

2988 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

2989 (ii) Removal from any appointive position under schedule A, unless otherwise

2990 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

2991 (b) Schedule B is the competitive career service schedule, consisting of:

2992 (i) all positions filled through competitive selection procedures as defined by the

2993 director; or

2994 (ii) positions filled through a division approved on-the-job examination intended to

2995 appoint a qualified person with a disability, or a veteran in accordance with Title 71, Chapter

2996 10, Veterans Preference.

2997 (3) (a) The director, after consultation with the heads of concerned executive branch

2998 departments and agencies and with the approval of the governor, shall allocate positions to the

2999 appropriate schedules under this section.

3000 (b) Agency heads shall make requests and obtain approval from the director before

3001 changing the schedule assignment and tenure rights of any position.

3002 (c) Unless the director's decision is reversed by the governor, when the director denies
3003 an agency's request, the director's decision is final.

3004 (d) (i) An agency may file with the division a request to reschedule a position that
3005 would otherwise be scheduled as a schedule A position.

3006 (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the
3007 request only if the exception is necessary to conform to a requirement imposed as a condition
3008 precedent to receipt of federal funds or grant of a tax benefit under federal law.

3009 (4) (a) Compensation for employees of the Legislature shall be established by the
3010 directors of the legislative offices in accordance with Section 36-12-7.

3011 (b) Compensation for employees of the judiciary shall be established by the state court
3012 administrator in accordance with Section 78A-2-107.

3013 (c) Compensation for officers, faculty, and other employees of state universities and
3014 institutions of higher education shall be established as provided in Title 53B, Chapter 1,
3015 Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of
3016 Higher Education.

3017 (d) Unless otherwise provided by law, compensation for all other schedule A
3018 employees shall be established by their appointing authorities, within ranges approved by, and
3019 after consultation with the director.

3020 (5) An employee who is in a position designated schedule AC and who holds career
3021 service status on June 30, 2010, shall retain the career service status if the employee:

3022 (a) remains in the position that the employee is in on June 30, 2010; and

3023 (b) does not elect to convert to career service exempt status in accordance with a rule
3024 made by the division.

3025 (6) (a) An employee who is hired for a schedule AX position on or after July 1, 2022,
3026 is exempt from career service status.

3027 (b) An employee who before July 1, 2022, is a career service employee employed in a
3028 schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall
3029 maintain the employee's career service status for the duration of the employee's employment in
3030 the same position unless the employee voluntarily converts to career service exempt status
3031 before July 1, 2023.

3032 (c) (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service

3033 status if:

3034 (A) before July 1, 2022, the employee was a probationary employee in a schedule B
3035 position and had not completed the probationary period; and

3036 (B) on July 1, 2022, the schedule B position in which the probationary employee is
3037 employed is rescheduled as a scheduled AX position.

3038 (ii) An employee described in Subsection (6)(c)(i):

3039 (A) is not a probationary employee on or after July 1, 2022; and

3040 (B) is exempt from career service status on and after July 1, 2022, unless the employee
3041 changes employment to a schedule B position.

3042 (d) The division shall disseminate to each employee described in Subsection (6)(b)
3043 information on financial and other incentives for voluntary conversion to career-service exempt
3044 status.

3045 (e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in
3046 consultation with the division, for agency review of recommendations that schedule AX
3047 employees be suspended, demoted, or dismissed from employment.

3048 Section 45. Section 63A-17-307 is amended to read:

3049 **63A-17-307. State pay plans -- Applicability of section -- Exemptions -- Duties of**
3050 **director.**

3051 (1) (a) This section, and the rules made by the division under this section, apply to each
3052 career and noncareer employee not specifically exempted under Subsection (2).

3053 (b) If not exempted under Subsection (2), an employee is considered to be in classified
3054 service.

3055 (2) The following employees are exempt from this section:

3056 (a) members of the Legislature and legislative employees;

3057 (b) members of the judiciary and judicial employees;

3058 (c) elected members of the executive branch and employees designated as schedule AC
3059 as provided under Subsection 63A-17-301(1)(c);

3060 (d) employees of the State Board of Education;

3061 (e) officers, faculty, and other employees of state institutions of higher education;

3062 (f) employees in a position that is specified by statute to be exempt from this

3063 Subsection (2);

- 3064 (g) employees in the Office of the Attorney General;
- 3065 (h) department heads and other persons appointed by the governor under statute;
- 3066 (i) schedule AS employees as provided under Subsection 63A-17-301(1)(m);
- 3067 (j) department deputy directors, division directors, and other employees designated as
- 3068 schedule AD as provided under Subsection 63A-17-301(1)(d);
- 3069 (k) employees that determine and execute policy designated as schedule AR as
- 3070 provided under Subsection 63A-17-301(1)(l);
- 3071 (l) teaching staff, educational interpreters, and educators designated as schedule AH as
- 3072 provided under Subsection 63A-17-301(1)(g);
- 3073 (m) temporary employees described in Subsection 63A-17-301(1)(r);
- 3074 (n) patients and ~~inmates~~ incarcerated individuals designated as schedule AU as
- 3075 provided under Subsection 63A-17-301(1)(o) who are employed by state institutions; and
- 3076 (o) members of state and local boards and councils and other employees designated as
- 3077 schedule AQ as provided under Subsection 63A-17-301(1)(k).
- 3078 (3) (a) The director shall prepare, maintain, and revise a position classification plan for
- 3079 each employee position not exempted under Subsection (2) to provide equal pay for equal
- 3080 work.
- 3081 (b) Classification of positions shall be based upon similarity of duties performed and
- 3082 responsibilities assumed, so that the same job requirements and the same salary range, subject
- 3083 to Section 63A-17-112, may be applied equitably to each position in the same class.
- 3084 (c) The director shall allocate or reallocate the position of each employee in classified
- 3085 service to one of the classes in the classification plan.
- 3086 (d) (i) The division shall conduct periodic studies and interviews to provide that the
- 3087 classification plan remains reasonably current and reflects the duties and responsibilities
- 3088 assigned to and performed by employees.
- 3089 (ii) The director shall determine the need for studies and interviews after considering
- 3090 factors such as changes in duties and responsibilities of positions or agency reorganizations.
- 3091 (4) (a) With the approval of the executive director and the governor, the director shall
- 3092 develop and adopt pay plans for each position in classified service.
- 3093 (b) The director shall design each pay plan to achieve, to the degree that funds permit,
- 3094 comparability of state salary ranges to the market using data obtained from private enterprise

3095 and other public employment for similar work.

3096 (c) The director shall adhere to the following in developing each pay plan:

3097 (i) each pay plan shall consist of sufficient salary ranges to:

3098 (A) permit adequate salary differential among the various classes of positions in the
3099 classification plan; and

3100 (B) reflect the normal growth and productivity potential of employees in that class.

3101 (ii) The director shall issue rules for the administration of pay plans.

3102 (d) The establishing of a salary range is a nondelegable activity and is not appealable
3103 under the grievance procedures of Part 6, Grievance Provisions, Title 67, Chapter 19a,
3104 Grievance Procedures, or otherwise.

3105 (e) The director shall make rules, accordance with Title 63G, Chapter 3, Utah
3106 Administrative Rulemaking Act, providing for:

3107 (i) agency approved salary adjustments within approved salary ranges, including an
3108 administrative salary adjustment; and

3109 (ii) structure adjustments that modify salary ranges, including a cost of living
3110 adjustment or market comparability adjustment.

3111 (5) (a) On or before October 31 of each year, the director shall submit an annual
3112 compensation plan to the executive director and the governor for consideration in the executive
3113 budget.

3114 (b) The plan described in Subsection (5)(a) may include recommendations, including:

3115 (i) salary increases that generally affect employees, including a general increase or
3116 merit increase;

3117 (ii) salary increases that address compensation issues unique to an agency or
3118 occupation;

3119 (iii) structure adjustments, including a cost of living adjustment or market
3120 comparability adjustment; or

3121 (iv) changes to employee benefits.

3122 (c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the director shall incorporate the
3123 results of a salary survey of a reasonable cross section of comparable positions in private and
3124 public employment in the state into the annual compensation plan.

3125 (B) The salary survey for a law enforcement officer, as defined in Section [53-13-103](#), a

3126 correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section
3127 53-6-102, shall at minimum include the three largest political subdivisions in the state that
3128 employ, respectively, comparable positions.

3129 (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1,
3130 Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit
3131 Insurance Corporation, Federal Reserve, and National Credit Union Administration.

3132 (ii) The director may cooperate with or participate in any survey conducted by other
3133 public and private employers.

3134 (iii) The director shall obtain information for the purpose of constructing the survey
3135 from the Division of Workforce Information and Payment Services and shall include employer
3136 name, number of persons employed by the employer, employer contact information and job
3137 titles, county code, and salary if available.

3138 (iv) The division shall acquire and protect the needed records in compliance with the
3139 provisions of Section 35A-4-312.

3140 (d) The director may incorporate any other relevant information in the plan described
3141 in Subsection (5)(a), including information on staff turnover, recruitment data, or external
3142 market trends.

3143 (e) The director shall:

3144 (i) establish criteria to assure the adequacy and accuracy of data used to make
3145 recommendations described in this Subsection (5); and

3146 (ii) when preparing recommendations use accepted methodologies and techniques
3147 similar to and consistent with those used in the private sector.

3148 (f) (i) Upon request and subject to Subsection (5)(f)(ii), the division shall make
3149 available foundational information used by the division or director in the drafting of a plan
3150 described in Subsection (5)(a), including:

3151 (A) demographic and labor market information;

3152 (B) information on employee turnover;

3153 (C) salary information;

3154 (D) information on recruitment; and

3155 (E) geographic data.

3156 (ii) The division may not provide under Subsection (5)(f)(i) information or other data

3157 that is proprietary or otherwise protected under the terms of a contract or by law.

3158 (g) The governor shall:

3159 (i) consider salary and structure adjustments recommended under Subsection (5)(b) in
3160 preparing the executive budget and shall recommend the method of distributing the
3161 adjustments;

3162 (ii) submit compensation recommendations to the Legislature; and

3163 (iii) support the recommendation with schedules indicating the cost to individual
3164 departments and the source of funds.

3165 (h) If funding is approved by the Legislature in a general appropriations act, the
3166 adjustments take effect on the July 1 following the enactment unless otherwise indicated.

3167 (6) (a) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah
3168 Administrative Rulemaking Act, for the granting of incentive awards, including awards for cost
3169 saving actions, awards for commendable actions by an employee, or a market-based award to
3170 attract or retain employees.

3171 (b) An agency may not grant a market-based award unless the award is previously
3172 approved by the division.

3173 (c) In accordance with Subsection (6)(b), an agency requesting the division's approval
3174 of a market-based award shall submit a request and documentation, subject to Subsection
3175 (6)(d), to the division.

3176 (d) In the documentation required in Subsection (6)(c), the requesting agency shall
3177 identify for the division:

3178 (i) any benefit the market-based award would provide for the agency, including:

3179 (A) budgetary advantages; or

3180 (B) recruitment advantages;

3181 (ii) a mission critical need to attract or retain unique or hard to find skills in the market;

3182 or

3183 (iii) any other advantage the agency would gain through the utilization of a
3184 market-based award.

3185 (7) (a) The director shall regularly evaluate the total compensation program of state
3186 employees in the classified service.

3187 (b) The division shall determine if employee benefits are comparable to those offered

3188 by other private and public employers using information from:

- 3189 (i) a study conducted by a third-party consultant; or
- 3190 (ii) the most recent edition of a nationally recognized benefits survey.

3191 Section 46. Section **63B-6-502** is amended to read:

3192 **63B-6-502. Other capital facility authorizations and intent language.**

3193 (1) It is the intent of the Legislature that the University of Utah use institutional funds
3194 to plan, design, and construct:

3195 (a) the Health Science Lab Building under the supervision of the director of the
3196 Division of Facilities Construction and Management unless supervisory authority is delegated
3197 by the director; and

3198 (b) the gymnastics facility under the supervision of the director of the Division of
3199 Facilities Construction and Management unless supervisory authority is delegated by the
3200 director.

3201 (2) It is the intent of the Legislature that Southern Utah University use institutional
3202 funds to plan, design, and construct a science center addition under the supervision of the
3203 director of the Division of Facilities Construction and Management unless supervisory
3204 authority is delegated by the director.

3205 (3) It is the intent of the Legislature that Utah Valley State College use institutional
3206 funds to plan, design, and construct a student center addition under the supervision of the
3207 director of the Division of Facilities Construction and Management unless supervisory
3208 authority is delegated by the director.

3209 (4) (a) It is the intent of the Legislature that the Division of Facilities Construction and
3210 Management lease property at the Draper Prison to an entity for the purpose of constructing
3211 recycling and transfer facilities to employ [~~inmates~~] incarcerated individuals if the following
3212 conditions are satisfactorily met:

3213 (i) the entity assures continuous employment of state [~~inmates~~] incarcerated
3214 individuals;

3215 (ii) the lease with the entity provides an appropriate return to the state;

3216 (iii) the lease has an initial term of not to exceed 20 years;

3217 (iv) the lease protects the state from all liability;

3218 (v) the entity guarantees that no adverse environmental impact will occur;

3219 (vi) the state retains the right to:
3220 (A) monitor the types of wastes that are processed; and
3221 (B) prohibit the processing of types of wastes that are considered to be a risk to the
3222 state or surrounding property uses;
3223 (vii) the lease provides for adequate security arrangements;
3224 (viii) the entity assumes responsibility for any taxes or fees associated with the facility;
3225 and
3226 (ix) the entity assumes responsibility for bringing utilities to the site and any state
3227 expenditures for roads, etc. are considered in establishing the return to the state.
3228 (b) Except as provided in Subsections (4)(c) and (d), the facility may be constructed
3229 without direct supervision by the Division of Facilities Construction and Management.
3230 (c) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and
3231 Management shall:
3232 (i) review the design, plans, and specifications of the project; and
3233 (ii) approve them if they are appropriate.
3234 (d) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and
3235 Management may:
3236 (i) require that the project be submitted to the local building official for plan review
3237 and inspection; and
3238 (ii) inspect the project.
3239 (5) It is the intent of the Legislature that:
3240 (a) the \$221,497.86 authorized for the Capitol Hill Day Care Center in Subsection (4)
3241 of Laws of Utah 1992, Chapter 304, Section 56, be used for general capital improvements; and
3242 (b) the Building Board should, in allocating the \$221,497.86, if appropriate under the
3243 Board's normal allocation and prioritization process, give preference to projects for the
3244 Division of State Parks, formerly known as the Division of Parks and Recreation.
3245 Section 47. Section **63B-12-301** is amended to read:
3246 **63B-12-301. Other capital facilities authorizations.**
3247 (1) It is the intent of the Legislature that:
3248 (a) Utah State University use institutional funds to plan, design, and construct an
3249 addition to the Laboratory Research Center under the direction of the director of the Division

3250 of Facilities Construction and Management unless supervisory authority has been delegated;

3251 (b) no state funds be used for any portion of this project; and

3252 (c) the university may request state funds for operations and maintenance to the extent

3253 that the university is able to demonstrate to the Board of Regents that the facility meets

3254 approved academic and training purposes under Board of Regents policy R710.

3255 (2) It is the intent of the Legislature that:

3256 (a) Utah State University use institutional funds to plan, design, and construct an

3257 addition to the Biology/Natural Resources Building under the direction of the director of the

3258 Division of Facilities Construction and Management unless supervisory authority has been

3259 delegated;

3260 (b) no state funds be used for any portion of this project; and

3261 (c) the university may request state funds for operations and maintenance to the extent

3262 that the university is able to demonstrate to the Board of Regents that the facility meets

3263 approved academic and training purposes under Board of Regents policy R710.

3264 (3) It is the intent of the Legislature that:

3265 (a) Snow College use grants and loans from the Community Impact Board together

3266 with other institutional funds to plan, design, and construct an addition to the Activities Center

3267 under the direction of the director of the Division of Facilities Construction and Management

3268 unless supervisory authority has been delegated;

3269 (b) no state funds be used for any portion of this project;

3270 (c) before proceeding with the project, the Board of Regents and the State Building

3271 Board review and approve the scope and funding of the project; and

3272 (d) the college may request state funds for operations and maintenance to the extent

3273 that the college is able to demonstrate to the Board of Regents that the facility meets approved

3274 academic and training purposes under Board of Regents policy R710.

3275 (4) (a) It is the intent of the Legislature that the Division of Facilities Construction and

3276 Management sell the state's interest in the Iron County Correction Facility to Iron County for

3277 \$2,000,000 according to the terms specified in this Subsection (4).

3278 (b) Iron County will pay the state \$1,550,000 in cash.

3279 (c) To pay the \$450,000 balance of the purchase price, Iron County will:

3280 (i) provide office space for the Department of Corrections' Adult Probation and Parole

3281 in the Iron County Correction Facility for 10 years at no cost to the state of Utah, at an
3282 estimated value of \$45,000 per year for a total 10 year value of \$450,000; and

3283 (ii) contract with the Department of Corrections to house 15 state [~~prisoners~~]
3284 incarcerated individuals in the Iron County Correctional Facility for at least five years.

3285 (d) (i) The Department of Corrections shall select the 15 [~~prisoners~~] incarcerated
3286 individuals to house at the Iron County Correctional Facility from beds currently under contract
3287 in other counties.

3288 (ii) Nothing in this section may be construed to authorize or require the Department of
3289 Corrections to increase the number of [~~prisoners~~] incarcerated individuals currently housed in
3290 county correctional facilities on state contract.

3291 (e) If the Department of Corrections' Adult Probation and Parole chooses, for whatever
3292 reason, not to use the office space offered by Iron County, Iron County is not liable for, and
3293 need not pay, the state the value of that estimated rent.

3294 Section 48. Section **63G-2-301** is amended to read:

3295 **63G-2-301. Public records.**

3296 (1) As used in this section:

3297 (a) "Business address" means a single address of a governmental agency designated for
3298 the public to contact an employee or officer of the governmental agency.

3299 (b) "Business email address" means a single email address of a governmental agency
3300 designated for the public to contact an employee or officer of the governmental agency.

3301 (c) "Business telephone number" means a single telephone number of a governmental
3302 agency designated for the public to contact an employee or officer of the governmental agency.

3303 (d) "Correctional facility" means the same as that term is defined in Section
3304 [77-16b-102](#).

3305 (2) The following records are public except to the extent they contain information
3306 expressly permitted to be treated confidentially under the provisions of Subsections
3307 [63G-2-201\(3\)\(b\)](#) and [\(6\)\(a\)](#):

3308 (a) laws;

3309 (b) the name, gender, gross compensation, job title, job description, business address,
3310 business email address, business telephone number, number of hours worked per pay period,
3311 dates of employment, and relevant education, previous employment, and similar job

3312 qualifications of a current or former employee or officer of the governmental entity, excluding:

3313 (i) undercover law enforcement personnel; and

3314 (ii) investigative personnel if disclosure could reasonably be expected to impair the
3315 effectiveness of investigations or endanger any individual's safety;

3316 (c) final opinions, including concurring and dissenting opinions, and orders that are
3317 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except
3318 that if the proceedings were properly closed to the public, the opinion and order may be
3319 withheld to the extent that they contain information that is private, controlled, or protected;

3320 (d) final interpretations of statutes or rules by a governmental entity unless classified as
3321 protected as provided in Subsection 63G-2-305(17) or (18);

3322 (e) information contained in or compiled from a transcript, minutes, or report of the
3323 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open
3324 and Public Meetings Act, including the records of all votes of each member of the
3325 governmental entity;

3326 (f) judicial records unless a court orders the records to be restricted under the rules of
3327 civil or criminal procedure or unless the records are private under this chapter;

3328 (g) unless otherwise classified as private under Section 63G-2-303, records or parts of
3329 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning
3330 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust
3331 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or
3332 other governmental entities that give public notice of:

3333 (i) titles or encumbrances to real property;

3334 (ii) restrictions on the use of real property;

3335 (iii) the capacity of persons to take or convey title to real property; or

3336 (iv) tax status for real and personal property;

3337 (h) records of the Department of Commerce that evidence incorporations, mergers,
3338 name changes, and uniform commercial code filings;

3339 (i) data on individuals that would otherwise be private under this chapter if the
3340 individual who is the subject of the record has given the governmental entity written
3341 permission to make the records available to the public;

3342 (j) documentation of the compensation that a governmental entity pays to a contractor

3343 or private provider;

3344 (k) summary data;

3345 (l) voter registration records, including an individual's voting history, except for a voter
3346 registration record or those parts of a voter registration record that are classified as private
3347 under Subsections 63G-2-302(1)(j) through (m) or withheld under Subsection 20A-2-104(7);

3348 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if
3349 available, and email address, if available, where that elected official may be reached as required
3350 in Title 11, Chapter 47, Access to Elected Officials;

3351 (n) for a school community council member, a telephone number, if available, and
3352 email address, if available, where that elected official may be reached directly as required in
3353 Section 53G-7-1203;

3354 (o) annual audited financial statements of the Utah Educational Savings Plan described
3355 in Section 53B-8a-111; and

3356 (p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as
3357 defined in Section 20A-7-101, after the packet is submitted to a county clerk.

3358 (3) The following records are normally public, but to the extent that a record is
3359 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
3360 Section 63G-2-302, 63G-2-304, or 63G-2-305:

3361 (a) administrative staff manuals, instructions to staff, and statements of policy;

3362 (b) records documenting a contractor's or private provider's compliance with the terms
3363 of a contract with a governmental entity;

3364 (c) records documenting the services provided by a contractor or a private provider to
3365 the extent the records would be public if prepared by the governmental entity;

3366 (d) contracts entered into by a governmental entity;

3367 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
3368 by a governmental entity;

3369 (f) records relating to government assistance or incentives publicly disclosed,
3370 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
3371 business in Utah, except as provided in Subsection 63G-2-305(35);

3372 (g) chronological logs and initial contact reports;

3373 (h) correspondence by and with a governmental entity in which the governmental entity

3374 determines or states an opinion upon the rights of the state, a political subdivision, the public,
3375 or any person;

3376 (i) empirical data contained in drafts if:

3377 (i) the empirical data is not reasonably available to the requester elsewhere in similar
3378 form; and

3379 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
3380 make nonsubstantive changes before release;

3381 (j) drafts that are circulated to anyone other than:

3382 (i) a governmental entity;

3383 (ii) a political subdivision;

3384 (iii) a federal agency if the governmental entity and the federal agency are jointly
3385 responsible for implementation of a program or project that has been legislatively approved;

3386 (iv) a government-managed corporation; or

3387 (v) a contractor or private provider;

3388 (k) drafts that have never been finalized but were relied upon by the governmental
3389 entity in carrying out action or policy;

3390 (l) original data in a computer program if the governmental entity chooses not to
3391 disclose the program;

3392 (m) arrest warrants after issuance, except that, for good cause, a court may order
3393 restricted access to arrest warrants prior to service;

3394 (n) search warrants after execution and filing of the return, except that a court, for good
3395 cause, may order restricted access to search warrants prior to trial;

3396 (o) records that would disclose information relating to formal charges or disciplinary
3397 actions against a past or present governmental entity employee if:

3398 (i) the disciplinary action has been completed and all time periods for administrative
3399 appeal have expired; and

3400 (ii) the charges on which the disciplinary action was based were sustained;

3401 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School
3402 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that
3403 evidence mineral production on government lands;

3404 (q) final audit reports;

- 3405 (r) occupational and professional licenses;
- 3406 (s) business licenses;
- 3407 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar
- 3408 records used to initiate proceedings for discipline or sanctions against persons regulated by a
- 3409 governmental entity, but not including records that initiate employee discipline; and
- 3410 (u) (i) records that disclose a standard, regulation, policy, guideline, or rule regarding
- 3411 the operation of a correctional facility or the care and control of [~~inmates~~] incarcerated
- 3412 individuals committed to the custody of a correctional facility; and
- 3413 (ii) records that disclose the results of an audit or other inspection assessing a
- 3414 correctional facility's compliance with a standard, regulation, policy, guideline, or rule
- 3415 described in Subsection (3)(u)(i).

3416 (4) The list of public records in this section is not exhaustive and should not be used to

3417 limit access to records.

3418 Section 49. Section 63G-3-201 is amended to read:

3419 **63G-3-201. When rulemaking is required.**

3420 (1) Each agency shall:

- 3421 (a) maintain a current version of its rules; and
- 3422 (b) make it available to the public for inspection during its regular business hours.

3423 (2) In addition to other rulemaking required by law, each agency shall make rules when

3424 agency action:

- 3425 (a) authorizes, requires, or prohibits an action;
- 3426 (b) provides or prohibits a material benefit;
- 3427 (c) applies to a class of persons or another agency; and
- 3428 (d) is explicitly or implicitly authorized by statute.

3429 (3) Rulemaking is also required when an agency issues a written interpretation of a

3430 state or federal legal mandate.

3431 (4) Rulemaking is not required when:

- 3432 (a) agency action applies only to internal agency management, [~~inmates~~] incarcerated
- 3433 individuals or residents of a state correctional, diagnostic, or detention facility, persons under
- 3434 state legal custody, patients admitted to a state hospital, members of the state retirement
- 3435 system, or, except as provided in Title 53B, Chapter 27, Part 3, Student Civil Liberties

3436 Protection Act, students enrolled in a state education institution;

3437 (b) a standardized agency manual applies only to internal fiscal or administrative
3438 details of governmental entities supervised under statute;

3439 (c) an agency issues policy or other statements that are advisory, informative, or
3440 descriptive, and do not conform to the requirements of Subsections (2) and (3); or

3441 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file
3442 all nonsubstantive changes in a rule with the office.

3443 (5) (a) A rule shall enumerate any penalty authorized by statute that may result from its
3444 violation, subject to Subsections (5)(b) and (c).

3445 (b) A violation of a rule may not be subject to the criminal penalty of a class C
3446 misdemeanor or greater offense, except as provided under Subsection (5)(c).

3447 (c) A violation of a rule may be subject to a class C misdemeanor or greater criminal
3448 penalty under Subsection (5)(a) when:

3449 (i) authorized by a specific state statute;

3450 (ii) a state law and programs under that law are established in order for the state to
3451 obtain or maintain primacy over a federal program; or

3452 (iii) state civil or criminal penalties established by state statute regarding the program
3453 are equivalent to or less than corresponding federal civil or criminal penalties.

3454 (6) Each agency shall enact rules incorporating the principles of law not already in its
3455 rules that are established by final adjudicative decisions within 120 days after the decision is
3456 announced in its cases.

3457 (7) (a) Each agency may enact a rule that incorporates by reference:

3458 (i) all or any part of another code, rule, or regulation that has been adopted by a federal
3459 agency, an agency or political subdivision of this state, an agency of another state, or by a
3460 nationally recognized organization or association;

3461 (ii) state agency implementation plans mandated by the federal government for
3462 participation in the federal program;

3463 (iii) lists, tables, illustrations, or similar materials that are subject to frequent change,
3464 fully described in the rule, and are available for public inspection; or

3465 (iv) lists, tables, illustrations, or similar materials that the director determines are too
3466 expensive to reproduce in the administrative code.

3467 (b) Rules incorporating materials by reference shall:
3468 (i) be enacted according to the procedures outlined in this chapter;
3469 (ii) state that the referenced material is incorporated by reference;
3470 (iii) state the date, issue, or version of the material being incorporated; and
3471 (iv) define specifically what material is incorporated by reference and identify any
3472 agency deviations from it.

3473 (c) The agency shall identify any substantive changes in the material incorporated by
3474 reference by following the rulemaking procedures of this chapter.

3475 (d) The agency shall maintain a complete and current copy of the referenced material
3476 available for public review at the agency and at the office.

3477 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within
3478 the limits prescribed by statute or agency rule.

3479 (b) An agency may enact a rule creating a justified exception to a rule.

3480 (9) An agency may obtain assistance from the attorney general to ensure that its rules
3481 meet legal and constitutional requirements.

3482 Section 50. Section **63G-4-102** is amended to read:

3483 **63G-4-102. Scope and applicability of chapter.**

3484 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
3485 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
3486 this chapter apply to every agency of the state and govern:

3487 (a) state agency action that determines the legal rights, duties, privileges, immunities,
3488 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
3489 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

3490 (b) judicial review of the action.

3491 (2) This chapter does not govern:

3492 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

3493 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
3494 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
3495 issuance of a tax assessment, except that this chapter governs an agency action commenced by
3496 a taxpayer or by another person authorized by law to contest the validity or correctness of the
3497 action;

3498 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
3499 commutation or termination of a sentence, or to the rescission, termination, or revocation of
3500 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
3501 confinement of, or the treatment of an [inmate] incarcerated individual or resident of a
3502 correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person
3503 in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a
3504 person on probation or parole, or judicial review of the action;

3505 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
3506 student or teacher in a school or educational institution, or judicial review of the action;

3507 (e) an application for employment and internal personnel action within an agency
3508 concerning its own employees, or judicial review of the action;

3509 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
3510 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that
3511 this chapter governs an agency action commenced by the employer, licensee, or other person
3512 authorized by law to contest the validity or correctness of the citation or assessment;

3513 (g) state agency action relating to management of state funds, the management and
3514 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
3515 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
3516 the state, except as provided in those contracts, or judicial review of the action;

3517 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of
3518 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
3519 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
3520 Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of
3521 the action;

3522 (i) the initial determination of a person's eligibility for unemployment benefits, the
3523 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
3524 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
3525 determination of a person's unemployment tax liability;

3526 (j) state agency action relating to the distribution or award of a monetary grant to or
3527 between governmental units, or for research, development, or the arts, or judicial review of the
3528 action;

3529 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
3530 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
3531 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
3532 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
3533 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
3534 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except
3535 that this chapter governs an agency action commenced by a person authorized by law to contest
3536 the validity or correctness of the notice or order;

3537 (l) state agency action, to the extent required by federal statute or regulation, to be
3538 conducted according to federal procedures;

3539 (m) the initial determination of a person's eligibility for government or public
3540 assistance benefits;

3541 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
3542 registration;

3543 (o) a license for use of state recreational facilities;

3544 (p) state agency action under Chapter 2, Government Records Access and Management
3545 Act, except as provided in Section [63G-2-603](#);

3546 (q) state agency action relating to the collection of water commissioner fees and
3547 delinquency penalties, or judicial review of the action;

3548 (r) state agency action relating to the installation, maintenance, and repair of headgates,
3549 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
3550 measuring devices, or judicial review of the action;

3551 (s) the issuance and enforcement of an initial order under Section [73-2-25](#);

3552 (t) (i) a hearing conducted by the Division of Securities under Section [61-1-11.1](#); and

3553 (ii) an action taken by the Division of Securities under a hearing conducted under
3554 Section [61-1-11.1](#), including a determination regarding the fairness of an issuance or exchange
3555 of securities described in Subsection [61-1-11.1\(1\)](#);

3556 (u) state agency action relating to water well driller licenses, water well drilling
3557 permits, water well driller registration, or water well drilling construction standards, or judicial
3558 review of the action;

3559 (v) the issuance of a determination and order under Title 34A, Chapter 5, Utah

3560 Antidiscrimination Act;

3561 (w) state environmental studies and related decisions by the Department of
3562 Transportation approving state or locally funded projects, or judicial review of the action;

3563 (x) the suspension of operations under Subsection 32B-1-304(3); or

3564 (y) the issuance of a determination of violation by the Governor's Office of Economic
3565 Opportunity under Section 11-41-104.

3566 (3) This chapter does not affect a legal remedy otherwise available to:

3567 (a) compel an agency to take action; or

3568 (b) challenge an agency's rule.

3569 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
3570 proceeding, or the presiding officer during an adjudicative proceeding from:

3571 (a) requesting or ordering a conference with parties and interested persons to:

3572 (i) encourage settlement;

3573 (ii) clarify the issues;

3574 (iii) simplify the evidence;

3575 (iv) facilitate discovery; or

3576 (v) expedite the proceeding; or

3577 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
3578 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
3579 except to the extent that the requirements of those rules are modified by this chapter.

3580 (5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by
3581 this chapter, except as explicitly provided in that section.

3582 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is
3583 governed by this chapter.

3584 (6) This chapter does not preclude an agency from enacting a rule affecting or
3585 governing an adjudicative proceeding or from following the rule, if the rule is enacted
3586 according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if
3587 the rule conforms to the requirements of this chapter.

3588 (7) (a) If the attorney general issues a written determination that a provision of this
3589 chapter would result in the denial of funds or services to an agency of the state from the federal
3590 government, the applicability of the provision to that agency shall be suspended to the extent

3591 necessary to prevent the denial.

3592 (b) The attorney general shall report the suspension to the Legislature at its next
3593 session.

3594 (8) Nothing in this chapter may be interpreted to provide an independent basis for
3595 jurisdiction to review final agency action.

3596 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
3597 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
3598 the time period established for judicial review.

3599 (10) Notwithstanding any other provision of this section, this chapter does not apply to
3600 a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent
3601 expressly provided in Section 19-1-301.5.

3602 (11) Subsection (2)(w), regarding action taken based on state environmental studies
3603 and policies of the Department of Transportation, applies to any claim for which a court of
3604 competent jurisdiction has not issued a final unappealable judgment or order before May 14,
3605 2019.

3606 Section 51. Section 63J-1-602.1 is amended to read:

3607 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

3608 Appropriations made from the following accounts or funds are nonlapsing:

3609 (1) The Utah Intracurricular Student Organization Support for Agricultural Education
3610 and Leadership Restricted Account created in Section 4-42-102.

3611 (2) The Native American Repatriation Restricted Account created in Section 9-9-407.

3612 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
3613 Section 9-18-102.

3614 (4) The National Professional Men's Soccer Team Support of Building Communities
3615 Restricted Account created in Section 9-19-102.

3616 (5) Funds collected for directing and administering the C-PACE district created in
3617 Section 11-42a-106.

3618 (6) Money received by the Utah Inland Port Authority, as provided in Section
3619 11-58-105.

3620 (7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

3621 (8) The Clean Air Support Restricted Account created in Section 19-1-109.

- 3622 (9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in
3623 Section [19-2a-106](#).
- 3624 (10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in
3625 Section [19-5-126](#).
- 3626 (11) The "Support for State-Owned Shooting Ranges Restricted Account" created in
3627 Section [23-14-13.5](#).
- 3628 (12) Award money under the State Asset Forfeiture Grant Program, as provided under
3629 Section [24-4-117](#).
- 3630 (13) Funds collected from the program fund for local health department expenses
3631 incurred in responding to a local health emergency under Section [26-1-38](#).
- 3632 (14) The Children with Cancer Support Restricted Account created in Section
3633 [26-21a-304](#).
- 3634 (15) State funds for matching federal funds in the Children's Health Insurance Program
3635 as provided in Section [26-40-108](#).
- 3636 (16) The Children with Heart Disease Support Restricted Account created in Section
3637 [26-58-102](#).
- 3638 (17) The Technology Development Restricted Account created in Section [31A-3-104](#).
- 3639 (18) The Criminal Background Check Restricted Account created in Section
3640 [31A-3-105](#).
- 3641 (19) The Captive Insurance Restricted Account created in Section [31A-3-304](#), except
3642 to the extent that Section [31A-3-304](#) makes the money received under that section free revenue.
- 3643 (20) The Title Licensee Enforcement Restricted Account created in Section
3644 [31A-23a-415](#).
- 3645 (21) The Health Insurance Actuarial Review Restricted Account created in Section
3646 [31A-30-115](#).
- 3647 (22) The Insurance Fraud Investigation Restricted Account created in Section
3648 [31A-31-108](#).
- 3649 (23) The Underage Drinking Prevention Media and Education Campaign Restricted
3650 Account created in Section [32B-2-306](#).
- 3651 (24) The Drinking While Pregnant Prevention Media and Education Campaign
3652 Restricted Account created in Section [32B-2-308](#).

- 3653 (25) The School Readiness Restricted Account created in Section [35A-15-203](#).
- 3654 (26) Money received by the Utah State Office of Rehabilitation for the sale of certain
3655 products or services, as provided in Section [35A-13-202](#).
- 3656 (27) The Oil and Gas Administrative Penalties Account created in Section [40-6-11](#).
- 3657 (28) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
- 3658 (29) The Division of Oil, Gas, and Mining Restricted account created in Section
3659 [40-6-23](#).
- 3660 (30) The Electronic Payment Fee Restricted Account created by Section [41-1a-121](#) to
3661 the Motor Vehicle Division.
- 3662 (31) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account
3663 created by Section [41-3-110](#) to the State Tax Commission.
- 3664 (32) The Utah Law Enforcement Memorial Support Restricted Account created in
3665 Section [53-1-120](#).
- 3666 (33) The State Disaster Recovery Restricted Account to the Division of Emergency
3667 Management, as provided in Section [53-2a-603](#).
- 3668 (34) The Post Disaster Recovery and Mitigation Restricted Account created in Section
3669 [53-2a-1302](#).
- 3670 (35) The Department of Public Safety Restricted Account to the Department of Public
3671 Safety, as provided in Section [53-3-106](#).
- 3672 (36) The Utah Highway Patrol Aero Bureau Restricted Account created in Section
3673 [53-8-303](#).
- 3674 (37) The DNA Specimen Restricted Account created in Section [53-10-407](#).
- 3675 (38) The Canine Body Armor Restricted Account created in Section [53-16-201](#).
- 3676 (39) The Technical Colleges Capital Projects Fund created in Section [53B-2a-118](#).
- 3677 (40) The Higher Education Capital Projects Fund created in Section [53B-22-202](#).
- 3678 (41) A certain portion of money collected for administrative costs under the School
3679 Institutional Trust Lands Management Act, as provided under Section [53C-3-202](#).
- 3680 (42) The Public Utility Regulatory Restricted Account created in Section [54-5-1.5](#),
3681 subject to Subsection [54-5-1.5\(4\)\(d\)](#).
- 3682 (43) Funds collected from a surcharge fee to provide certain licensees with access to an
3683 electronic reference library, as provided in Section [58-3a-105](#).

3684 (44) Certain fines collected by the Division of Professional Licensing for violation of
3685 unlawful or unprofessional conduct that are used for education and enforcement purposes, as
3686 provided in Section [58-17b-505](#).

3687 (45) Funds collected from a surcharge fee to provide certain licensees with access to an
3688 electronic reference library, as provided in Section [58-22-104](#).

3689 (46) Funds collected from a surcharge fee to provide certain licensees with access to an
3690 electronic reference library, as provided in Section [58-55-106](#).

3691 (47) Funds collected from a surcharge fee to provide certain licensees with access to an
3692 electronic reference library, as provided in Section [58-56-3.5](#).

3693 (48) Certain fines collected by the Division of Professional Licensing for use in
3694 education and enforcement of the Security Personnel Licensing Act, as provided in Section
3695 [58-63-103](#).

3696 (49) The Relative Value Study Restricted Account created in Section [59-9-105](#).

3697 (50) The Cigarette Tax Restricted Account created in Section [59-14-204](#).

3698 (51) Funds paid to the Division of Real Estate for the cost of a criminal background
3699 check for a mortgage loan license, as provided in Section [61-2c-202](#).

3700 (52) Funds paid to the Division of Real Estate for the cost of a criminal background
3701 check for principal broker, associate broker, and sales agent licenses, as provided in Section
3702 [61-2f-204](#).

3703 (53) Certain funds donated to the Department of Health and Human Services, as
3704 provided in Section [26B-1-202](#).

3705 (54) The National Professional Men's Basketball Team Support of Women and
3706 Children Issues Restricted Account created in Section [26B-1-302](#).

3707 (55) Certain funds donated to the Division of Child and Family Services, as provided
3708 in Section [80-2-404](#).

3709 (56) The Choose Life Adoption Support Restricted Account created in Section
3710 [80-2-502](#).

3711 (57) Funds collected by the Office of Administrative Rules for publishing, as provided
3712 in Section [63G-3-402](#).

3713 (58) The Immigration Act Restricted Account created in Section [63G-12-103](#).

3714 (59) Money received by the military installation development authority, as provided in

- 3715 Section [63H-1-504](#).
- 3716 (60) The Computer Aided Dispatch Restricted Account created in Section [63H-7a-303](#).
- 3717 (61) The Unified Statewide 911 Emergency Service Account created in Section
- 3718 [63H-7a-304](#).
- 3719 (62) The Utah Statewide Radio System Restricted Account created in Section
- 3720 [63H-7a-403](#).
- 3721 (63) The Utah Capital Investment Restricted Account created in Section [63N-6-204](#).
- 3722 (64) The Motion Picture Incentive Account created in Section [63N-8-103](#).
- 3723 (65) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission,
- 3724 as provided under Section [63N-10-301](#).
- 3725 (66) Funds collected by the housing of state probationary [~~inmates~~] incarcerated
- 3726 individuals or state parole [~~inmates~~] incarcerated individuals, as provided in Subsection
- 3727 [64-13e-104\(2\)](#).
- 3728 (67) Certain forestry and fire control funds utilized by the Division of Forestry, Fire,
- 3729 and State Lands, as provided in Section [65A-8-103](#).
- 3730 (68) The Amusement Ride Safety Restricted Account, as provided in Section
- 3731 [72-16-204](#).
- 3732 (69) Certain funds received by the Office of the State Engineer for well drilling fines or
- 3733 bonds, as provided in Section [73-3-25](#).
- 3734 (70) The Water Resources Conservation and Development Fund, as provided in
- 3735 Section [73-23-2](#).
- 3736 (71) Funds donated or paid to a juvenile court by private sources, as provided in
- 3737 Subsection [78A-6-203\(1\)\(c\)](#).
- 3738 (72) Fees for certificate of admission created under Section [78A-9-102](#).
- 3739 (73) Funds collected for adoption document access as provided in Sections [78B-6-141](#),
- 3740 [78B-6-144](#), and [78B-6-144.5](#).
- 3741 (74) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4,
- 3742 Utah Indigent Defense Commission.
- 3743 (75) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in
- 3744 Section [79-3-403](#).
- 3745 (76) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State

3746 Park, and Green River State Park, as provided under Section 79-4-403.

3747 (77) Funds donated as described in Section 41-1a-422 for the State Park Fees
3748 Restricted Account created in Section 79-4-402 for support of the Division of State Parks' dark
3749 sky initiative.

3750 (78) Certain funds received by the Division of State Parks from the sale or disposal of
3751 buffalo, as provided under Section 79-4-1001.

3752 Section 52. Section 63M-7-204 is amended to read:

3753 **63M-7-204. Duties of commission.**

3754 (1) The State Commission on Criminal and Juvenile Justice administration shall:

3755 (a) promote the commission's purposes as enumerated in Section 63M-7-201;

3756 (b) promote the communication and coordination of all criminal and juvenile justice
3757 agencies;

3758 (c) study, evaluate, and report on the status of crime in the state and on the
3759 effectiveness of criminal justice policies, procedures, and programs that are directed toward the
3760 reduction of crime in the state;

3761 (d) study, evaluate, and report on programs initiated by state and local agencies to
3762 address reducing recidivism, including changes in penalties and sentencing guidelines intended
3763 to reduce recidivism, costs savings associated with the reduction in the number of [~~inmates~~]
3764 incarcerated individuals, and evaluation of expenses and resources needed to meet goals
3765 regarding the use of treatment as an alternative to incarceration, as resources allow;

3766 (e) study, evaluate, and report on policies, procedures, and programs of other
3767 jurisdictions which have effectively reduced crime;

3768 (f) identify and promote the implementation of specific policies and programs the
3769 commission determines will significantly reduce crime in Utah;

3770 (g) provide analysis and recommendations on all criminal and juvenile justice
3771 legislation, state budget, and facility requests, including program and fiscal impact on all
3772 components of the criminal and juvenile justice system;

3773 (h) provide analysis, accountability, recommendations, and supervision for state and
3774 federal criminal justice grant money;

3775 (i) provide public information on the criminal and juvenile justice system and give
3776 technical assistance to agencies or local units of government on methods to promote public

3777 awareness;

3778 (j) promote research and program evaluation as an integral part of the criminal and
3779 juvenile justice system;

3780 (k) provide a comprehensive criminal justice plan annually;

3781 (l) review agency forecasts regarding future demands on the criminal and juvenile
3782 justice systems, including specific projections for secure bed space;

3783 (m) promote the development of criminal and juvenile justice information systems that
3784 are consistent with common standards for data storage and are capable of appropriately sharing
3785 information with other criminal justice information systems by:

3786 (i) developing and maintaining common data standards for use by all state criminal
3787 justice agencies;

3788 (ii) annually performing audits of criminal history record information maintained by
3789 state criminal justice agencies to assess their accuracy, completeness, and adherence to
3790 standards;

3791 (iii) defining and developing state and local programs and projects associated with the
3792 improvement of information management for law enforcement and the administration of
3793 justice; and

3794 (iv) establishing general policies concerning criminal and juvenile justice information
3795 systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this
3796 Subsection (1)(m);

3797 (n) allocate and administer grants, from money made available, for approved education
3798 programs to help prevent the sexual exploitation of children;

3799 (o) allocate and administer grants for law enforcement operations and programs related
3800 to reducing illegal drug activity and related criminal activity;

3801 (p) request, receive, and evaluate data and recommendations collected and reported by
3802 agencies and contractors related to policies recommended by the commission regarding
3803 recidivism reduction, including the data described in Section 13-53-111 and Subsection
3804 62A-15-103(2)(l);

3805 (q) establish and administer a performance incentive grant program that allocates funds
3806 appropriated by the Legislature to programs and practices implemented by counties that reduce
3807 recidivism and reduce the number of offenders per capita who are incarcerated;

3808 (r) oversee or designate an entity to oversee the implementation of juvenile justice
3809 reforms;

3810 (s) make rules and administer the juvenile holding room standards and juvenile jail
3811 standards to align with the Juvenile Justice and Delinquency Prevention Act requirements
3812 pursuant to 42 U.S.C. Sec. 5633;

3813 (t) allocate and administer grants, from money made available, for pilot qualifying
3814 education programs;

3815 (u) oversee the trauma-informed justice program described in Section 63M-7-209;

3816 (v) request, receive, and evaluate the aggregate data collected from prosecutorial
3817 agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216
3818 and 78A-2-109.5;

3819 (w) report annually to the Law Enforcement and Criminal Justice Interim Committee
3820 on the progress made on each of the following goals of the Justice Reinvestment Initiative:

3821 (i) ensuring oversight and accountability;

3822 (ii) supporting local corrections systems;

3823 (iii) improving and expanding reentry and treatment services; and

3824 (iv) strengthening probation and parole supervision;

3825 (x) compile a report of findings based on the data and recommendations provided
3826 under Section 13-53-111 and Subsection 62A-15-103(2)(n) that:

3827 (i) separates the data provided under Section 13-53-111 by each residential, vocational
3828 and life skills program; and

3829 (ii) separates the data provided under Subsection 62A-15-103(2)(n) by each mental
3830 health or substance use treatment program; and

3831 (y) publish the report described in Subsection (1)(x) on the commission's website and
3832 annually provide the report to the Judiciary Interim Committee, the Health and Human Services
3833 Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the
3834 related appropriations subcommittees.

3835 (2) If the commission designates an entity under Subsection (1)(r), the commission
3836 shall ensure that the membership of the entity includes representation from the three branches
3837 of government and, as determined by the commission, representation from relevant stakeholder
3838 groups across all parts of the juvenile justice system, including county representation.

3839 Section 53. Section **63M-7-526** is amended to read:

3840 **63M-7-526. Crime Victims Reparations Fund.**

3841 (1) (a) There is created an expendable special revenue fund known as the "Crime
3842 Victim Reparations Fund" to be administered and distributed as provided in this section by the
3843 office in cooperation with the Division of Finance.

3844 (b) The fund shall consist of:

3845 (i) appropriations by the Legislature; and

3846 (ii) funds collected under Subsections (2) and (3).

3847 (c) Money deposited in this fund is for victim reparations, other victim services, and, as
3848 appropriated, for administrative costs of the office.

3849 (2) (a) A percentage of the income earned by [inmates] incarcerated individuals
3850 working for correctional industries in a federally certified private sector/prison industries
3851 enhancement program shall be deposited [in] into the fund.

3852 (b) The percentage of income deducted from [inmate] incarcerated individual pay
3853 under Subsection (2)(a) shall be determined by the executive director of the Department of
3854 Corrections in accordance with the requirements of the private sector/prison industries
3855 enhancement program.

3856 (3) (a) Judges are encouraged to, and may in their discretion, impose additional
3857 reparations to be paid into the fund by convicted criminals.

3858 (b) The additional discretionary reparations may not exceed the statutory maximum
3859 fine permitted by Title 76, Utah Criminal Code, for that offense.

3860 Section 54. Section **64-9b-1** is amended to read:

3861 **CHAPTER 9b. WORK PROGRAMS FOR INCARCERATED INDIVIDUALS**

3862 **64-9b-1. Legislative findings.**

3863 (1) The Legislature finds that it is in the best interest of the state for the department to:

3864 (a) develop job opportunities to further enhance the rehabilitation of [inmates]
3865 incarcerated individuals of the Utah state prison;

3866 (b) establish and actively work toward the goal that all [inmates] incarcerated
3867 individuals shall be productively involved in a treatment, education, or work program, or a
3868 combination of these programs, as appropriate, except for [inmates] incarcerated individuals
3869 who the department determines have a physical or mental disability, or pose a danger to the

3870 public, so that they are unable to engage in these activities; and

3871 (c) submit a comprehensive management plan outlining the department's plan to meet
3872 this goal to the Legislature on or before November 1 of each even-numbered year, and the plan
3873 shall include:

3874 (i) a cost-effective analysis of current [~~inmate~~] incarcerated individual education,
3875 treatment, and work programs; and

3876 (ii) a study of the feasibility of expanding [~~inmate~~] incarcerated individual work
3877 programs, particularly in regard to programs that:

3878 (A) are not capital intensive;

3879 (B) do not unfairly compete with existing Utah industry; and

3880 (C) are designed to increase the motivation, develop the work capabilities, and foster
3881 the cooperation of [~~inmates~~] incarcerated individuals.

3882 (2) The Legislature further finds that a proper means to accomplish this is through a
3883 liberal application of this chapter.

3884 Section 55. Section **64-9b-2** is amended to read:

3885 **64-9b-2. Definitions.**

3886 As used in this chapter:

3887 (1) "Department" means the Department of Corrections.

3888 (2) [~~"Inmate" means any man or woman~~] "Incarcerated individual" means an individual
3889 who is under the jurisdiction of the department and who is assigned to the Utah state prison or
3890 to a county jail.

3891 Section 56. Section **64-9b-3** is amended to read:

3892 **64-9b-3. Encouragement of private industry -- Types of employers to be sought.**

3893 (1) The department is authorized to encourage private industry to locate and provide
3894 rehabilitative and job opportunities for [~~inmates~~] incarcerated individuals at the Utah state
3895 prison and county jails housing [~~inmates~~] incarcerated individuals under the jurisdiction of the
3896 department.

3897 (2) The department shall determine what type of employer is to be allowed to locate at
3898 the prison or county jail, taking into consideration the physical facilities and space at the prison
3899 or county jail, the abilities of the [~~inmates~~] incarcerated individuals, and the type of product to
3900 be produced by the employer.

3901 Section 57. Section **64-9b-4** is amended to read:

3902 **64-9b-4. Work to be voluntary -- Payment of prevailing wages.**

3903 (1) Rehabilitative and job opportunities at the Utah state prison and participating
3904 county jails shall not be forced upon any [~~inmate~~] incarcerated individual contrary to the Utah
3905 Constitution, Article XVI, Section 3 (2), but instead shall be on a completely voluntary basis.

3906 (2) (a) Private businesses that manufacture products for sale in Utah or in interstate
3907 commerce shall pay [~~inmates~~] incarcerated individuals the prevailing wage for similar work in
3908 local private industry.

3909 (b) Private businesses that provide services, agricultural products, or manufactured
3910 products for export shall pay [~~inmates~~] incarcerated individuals wages determined by the
3911 department, but should not displace local Utah workers as a result of their employment of
3912 [~~inmates~~] incarcerated individuals.

3913 Section 58. Section **64-9b-5** is amended to read:

3914 **64-9b-5. Intent of Legislature.**

3915 It is the legislative intent, and [~~inmates are encouraged, to use their~~] an incarcerated
3916 individual is encouraged to use the incarcerated individual's personal earnings from jobs
3917 created under this chapter for the following:

3918 (1) for restitution to the victims of the [~~inmate's~~] incarcerated individual's criminal
3919 offense, where applicable;

3920 (2) for support of the [~~inmate's~~] incarcerated individual's family, where applicable;

3921 (3) for the [~~inmate's~~] incarcerated individual's personal use; and

3922 (4) for reimbursement of security, operational, and other costs incurred by the Utah
3923 Correctional Industries Division of the department in administering these projects.

3924 Section 59. Section **64-13-1** is amended to read:

3925 **64-13-1. Definitions.**

3926 As used in this chapter:

3927 (1) "Behavioral health transition facility" means a nonsecure correctional facility
3928 operated by the department for the purpose of providing a therapeutic environment for
3929 offenders receiving mental health services.

3930 (2) "Case action plan" means a document developed by the Department of Corrections
3931 that identifies:

3932 (a) the program priorities for the treatment of the offender, including the criminal risk
3933 factors as determined by risk, needs, and responsivity assessments conducted by the
3934 department; and

3935 (b) clearly defined completion requirements.

3936 (3) "Community correctional center" means a nonsecure correctional facility operated
3937 by the department, but does not include a behavioral health transition facility for the purposes
3938 of Section [64-13f-103](#).

3939 (4) "Correctional facility" means any facility operated to house offenders in a secure or
3940 nonsecure setting:

3941 (a) by the department; or

3942 (b) under a contract with the department.

3943 (5) "Criminal risk factors" means an individual's characteristics and behaviors that:

3944 (a) affect the individual's risk of engaging in criminal behavior; and

3945 (b) are diminished when addressed by effective treatment, supervision, and other
3946 support resources, resulting in a reduced risk of criminal behavior.

3947 (6) "Department" means the Department of Corrections.

3948 (7) "Direct supervision" means a housing and supervision system that is designed to
3949 meet the goals described in Subsection [64-13-14\(5\)](#) and has the elements described in
3950 Subsection [64-13-14\(6\)](#).

3951 (8) "Emergency" means any riot, disturbance, homicide, [~~inmate~~] incarcerated
3952 individual violence occurring in any correctional facility, or any situation that presents
3953 immediate danger to the safety, security, and control of the department.

3954 (9) "Evidence-based" means a program or practice that has had multiple randomized
3955 control studies or a meta-analysis demonstrating that the program or practice is effective for a
3956 specific population or has been rated as effective by a standardized program evaluation tool.

3957 (10) "Evidence-informed" means a program or practice that is based on research and
3958 the experience and expertise of the department.

3959 (11) "Executive director" means the executive director of the Department of
3960 Corrections.

3961 (12) [~~Inmate~~] "Incarcerated individual" means an individual who is:

3962 (a) committed to the custody of the department; and

3963 (b) housed at a correctional facility or at a county jail at the request of the department.

3964 (13) "Offender" means an individual who has been convicted of a crime for which the
3965 individual may be committed to the custody of the department and is at least one of the
3966 following:

3967 (a) committed to the custody of the department;

3968 (b) on probation; or

3969 (c) on parole.

3970 (14) "Restitution" means the same as that term is defined in Section 77-38b-102.

3971 (15) "Risk and needs assessment" means an actuarial tool validated on criminal
3972 offenders that determines:

3973 (a) an individual's risk of reoffending; and

3974 (b) the criminal risk factors that, when addressed, reduce the individual's risk of
3975 reoffending.

3976 (16) "Secure correctional facility" means any prison, penitentiary, or other institution
3977 operated by the department or under contract for the confinement of offenders, where force
3978 may be used to restrain an offender if the offender attempts to leave the institution without
3979 authorization.

3980 (17) "Serious illness" means, as determined by the incarcerated individual's physician,
3981 an illness that substantially impairs the incarcerated individual's quality of life.

3982 (18) "Serious injury" means, as determined by the incarcerated individual's physician,
3983 bodily injury that involves a substantial risk of death, prolonged unconsciousness, prolonged
3984 and obvious disfigurement, or prolonged loss or impairment of the function of a bodily
3985 member, organ, or mental faculty.

3986 Section 60. Section 64-13-14.5 is amended to read:

3987 **64-13-14.5. Limits of confinement place -- Release status -- Work release.**

3988 (1) The department may extend the limits of the place of confinement of an [inmate]
3989 incarcerated individual when, as established by department policies and procedures, there is
3990 cause to believe the [inmate] incarcerated individual will honor the trust, by authorizing the
3991 [inmate] incarcerated individual under prescribed conditions:

3992 (a) to leave temporarily for purposes specified by department policies and procedures
3993 to visit specifically designated places for a period not to exceed 30 days;

3994 (b) to participate in a voluntary training program in the community while housed at a
3995 correctional facility or to work at paid employment;

3996 (c) to be housed in a nonsecure community correctional center operated by the
3997 department; or

3998 (d) to be housed in any other facility under contract with the department.

3999 (2) The department shall establish rules governing offenders on release status. A copy
4000 of the rules shall be furnished to the offender and to any employer or other person participating
4001 in the offender's release program. Any employer or other participating person shall agree in
4002 writing to abide by the rules and to notify the department of the offender's discharge or other
4003 release from a release program activity, or of any violation of the rules governing release status.

4004 (3) The willful failure of an [inmate] incarcerated individual to remain within the
4005 extended limits of his confinement or to return within the time prescribed to an institution or
4006 facility designated by the department is an escape from custody.

4007 (4) If an offender is arrested for the commission of a crime, the arresting authority shall
4008 immediately notify the department of the arrest.

4009 (5) The department may impose appropriate sanctions pursuant to Section 64-13-21
4010 upon offenders who violate guidelines established by the Utah Sentencing Commission,
4011 including prosecution for escape under Section 76-8-309 and for unauthorized absence.

4012 (6) An [inmate] incarcerated individual who is housed at a nonsecure correctional
4013 facility and on work release may not be required to work for less than the current federally
4014 established minimum wage, or under substandard working conditions.

4015 Section 61. Section 64-13-15 is amended to read:

4016 **64-13-15. Property of offender -- Storage and disposal.**

4017 (1) (a) (i) Offenders may retain personal property at correctional facilities only as
4018 authorized by the department.

4019 (ii) An offender's property which is retained by the department shall be inventoried and
4020 placed in storage by the department and a receipt for the property shall be issued to the
4021 offender.

4022 (iii) Offenders shall be required to arrange for disposal of property retained by the
4023 department within a reasonable time under department rules.

4024 (iv) Property retained by the department shall be returned to the offender at discharge,

4025 or in accordance with Title 75, Utah Uniform Probate Code, in the case of death prior to
4026 discharge.

4027 (b) If property is not claimed within one year of discharge, or it is not disposed of by
4028 the offender within a reasonable time after the department's order to arrange for disposal, it
4029 becomes property of the state and may be used for correctional purposes or donated to a charity
4030 within the state.

4031 (c) If an [~~inmate's~~] incarcerated individual's property is not claimed within one year of
4032 [~~his~~] the incarcerated individual's death, it becomes the property of the state in accordance with
4033 Section 75-2-105.

4034 (d) (i) Funds which are contraband and in the physical custody of [~~any prisoner~~] an
4035 incarcerated individual, whether in the form of currency and coin which are legal tender in any
4036 jurisdiction or negotiable instruments drawn upon a personal or business account, shall be
4037 subject to forfeiture following a hearing which accords with prevailing standards of due
4038 process.

4039 (ii) All such forfeited funds shall be used by the department for purposes which
4040 promote the general welfare of [~~prisoners~~] incarcerated individuals in the custody of the
4041 department.

4042 (iii) Money and negotiable instruments taken from offenders' mail under department
4043 rule and which are not otherwise contraband shall be placed in an account administered by the
4044 department, to the credit of the offender who owns the money or negotiable instruments.

4045 (2) Upon discharge from a secure correctional facility, the department may give an
4046 [~~inmate~~] incarcerated individual transition funds in an amount established by the department
4047 with the approval of the director of the Division of Finance. At its discretion, the department
4048 may spend the funds directly on the purchase of necessities or transportation for the discharged
4049 [~~inmate~~] incarcerated individual.

4050 Section 62. Section **64-13-16** is amended to read:

4051 **64-13-16. Incarcerated individual employment.**

4052 (1) (a) The department may employ [~~inmates~~] incarcerated individuals, unless
4053 incapable of employment because of sickness or other infirmity or for security reasons, to the
4054 degree that funding and available resources allow.

4055 (b) An offender may not be employed on work which benefits any employee or officer

4056 of the department.

4057 (2) An offender employed under this section is not considered an employee, worker,
4058 workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act,
4059 except as required by federal statute or regulation.

4060 Section 63. Section ~~64-13-17~~ is amended to read:

4061 **64-13-17. Visitors to correctional facilities -- Correspondence.**

4062 (1) (a) The following persons may visit correctional facilities without the consent of
4063 the department:

4064 (i) the governor;

4065 (ii) the attorney general;

4066 (iii) a justice or judge of the courts of record;

4067 (iv) members of the Board of Pardons and Parole;

4068 (v) members of the Legislature;

4069 (vi) the sheriff, district attorney, and county attorney for the county in which the
4070 correctional facility is located; and

4071 (vii) any other persons authorized under rules prescribed by the department or court
4072 order.

4073 (b) [~~Any~~] A person acting under a court order may visit or correspond with [~~any~~
4074 ~~inmate~~] an incarcerated individual without the consent of the department provided the
4075 department has received notice of, and is permitted to respond to, the court order. The court
4076 shall consider department policy when making its order.

4077 (c) The department may limit access to correctional facilities when the department or
4078 governor declares an emergency or when there is a riot or other disturbance.

4079 (2) (a) A person may not visit with any offender at any correctional facility, other than
4080 under Subsection (1), without the consent of the department.

4081 (b) Offenders and all visitors, including those listed in Subsection (1), may be required
4082 to submit to a search or inspection of their persons and properties as a condition of visitation.

4083 (3) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
4084 Rulemaking Act, establishing guidelines for providing written notice to visitors regarding
4085 prohibited items and regarding the fact that under state law all visitors may be required to
4086 submit to a search of their persons and properties as a condition of visitation.

4087 (4) Offenders housed at any correctional facility may send and receive correspondence,
4088 subject to the rules of the department. All correspondence is subject to search, consistent with
4089 department rules.

4090 Section 64. Section **64-13-21** is amended to read:

4091 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**
4092 **-- POST certified parole or probation officers and peace officers -- Duties -- Supervision**
4093 **fee.**

4094 (1) (a) The department, except as otherwise provided by law, shall supervise sentenced
4095 offenders placed in the community on probation by the courts, on parole by the Board of
4096 Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate
4097 Compact for the Supervision of Parolees and Probationers.

4098 (b) If a sentenced offender participates in substance use treatment or a residential,
4099 vocational and life skills program, as defined in Section [13-53-102](#), while under supervision on
4100 probation or parole, the department shall monitor the offender's compliance with and
4101 completion of the treatment or program.

4102 (c) The department shall establish standards for:

4103 (i) the supervision of offenders in accordance with sentencing guidelines and
4104 supervision length guidelines, including the graduated and evidence-based responses,
4105 established by the Utah Sentencing Commission, giving priority, based on available resources,
4106 to felony offenders and offenders sentenced under Subsection [58-37-8](#) (2)(b)(ii); and

4107 (ii) the monitoring described in Subsection (1)(b).

4108 (2) The department shall apply the graduated and evidence-based responses established
4109 by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an
4110 individual's violation of the terms of probation or parole, including:

4111 (a) sanctions to be used in response to a violation of the terms of probation or parole;
4112 and

4113 (b) requesting approval from the court or Board of Pardons and Parole to impose a
4114 sanction for an individual's violation of the terms of probation or parole, for a period of
4115 incarceration of not more than three consecutive days and not more than a total of five days
4116 within a period of 30 days.

4117 (3) The department shall implement a program of graduated incentives as established

4118 by the Utah Sentencing Commission to facilitate the department's prompt and appropriate
4119 response to an offender's:

- 4120 (a) compliance with the terms of probation or parole; or
- 4121 (b) positive conduct that exceeds those terms.

4122 (4) (a) The department shall, in collaboration with the State Commission on Criminal
4123 and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards
4124 and procedures for the collection of information, including cost savings related to recidivism
4125 reduction and the reduction in the number of ~~[inmates]~~ incarcerated individuals, related to the
4126 use of the graduated and evidence-based responses and graduated incentives, and offenders'
4127 outcomes.

4128 (b) The collected information shall be provided to the State Commission on Criminal
4129 and Juvenile Justice not less frequently than annually on or before August 31.

4130 (5) Employees of the department who are POST certified as law enforcement officers
4131 or correctional officers and who are designated as parole and probation officers by the
4132 executive director have the following duties:

4133 (a) monitoring, investigating, and supervising a parolee's or probationer's compliance
4134 with the conditions of the parole or probation agreement;

4135 (b) investigating or apprehending any offender who has escaped from the custody of
4136 the department or absconded from supervision;

4137 (c) supervising any offender during transportation; or

4138 (d) collecting DNA specimens when the specimens are required under Section
4139 [53-10-404](#).

4140 (6) (a) (i) A monthly supervision fee of \$30 shall be collected from each offender on
4141 probation or parole.

4142 (ii) The fee described in Subsection (6)(a)(i) may be suspended or waived by the
4143 department upon a showing by the offender that imposition would create a substantial hardship
4144 or if the offender owes restitution to a victim.

4145 (b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
4146 Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the
4147 supervision fee and the circumstances under which an offender may request a hearing.

4148 (ii) In determining whether the imposition of the supervision fee would constitute a

4149 substantial hardship, the department shall consider the financial resources of the offender and
4150 the burden that the fee would impose, with regard to the offender's other obligations.

4151 (7) (a) For offenders placed on probation under Section 77-18-105 or parole under
4152 Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the
4153 department shall establish a program allowing an offender to earn credits for the offender's
4154 compliance with the terms of the offender's probation or parole, which shall be applied to
4155 reducing the period of probation or parole as provided in this Subsection (7).

4156 (b) The program shall provide that an offender earns a reduction credit of 30 days from
4157 the offender's period of probation or parole for each month the offender completes without any
4158 violation of the terms of the offender's probation or parole agreement, including the case action
4159 plan.

4160 (c) The department shall maintain a record of credits earned by an offender under this
4161 Subsection (7) and shall request from the court or the Board of Pardons and Parole the
4162 termination of probation or parole not fewer than 30 days prior to the termination date that
4163 reflects the credits earned under this Subsection (7).

4164 (d) This Subsection (7) does not prohibit the department from requesting a termination
4165 date earlier than the termination date established by earned credits under Subsection (7)(c).

4166 (e) The court or the Board of Pardons and Parole shall terminate an offender's
4167 probation or parole upon completion of the period of probation or parole accrued by time
4168 served and credits earned under this Subsection (7) unless the court or the Board of Pardons
4169 and Parole finds that termination would interrupt the completion of a necessary treatment
4170 program, in which case the termination of probation or parole shall occur when the treatment
4171 program is completed.

4172 (f) The department shall report annually to the State Commission on Criminal and
4173 Juvenile Justice on or before August 31:

4174 (i) the number of offenders who have earned probation or parole credits under this
4175 Subsection (7) in one or more months of the preceding fiscal year and the percentage of the
4176 offenders on probation or parole during that time that this number represents;

4177 (ii) the average number of credits earned by those offenders who earned credits;

4178 (iii) the number of offenders who earned credits by county of residence while on
4179 probation or parole;

4180 (iv) the cost savings associated with sentencing reform programs and practices; and
4181 (v) a description of how the savings will be invested in treatment and
4182 early-intervention programs and practices at the county and state levels.

4183 Section 65. Section **64-13-25** is amended to read:

4184 **64-13-25. Standards for programs -- Audits.**

4185 (1) To promote accountability and to ensure safe and professional operation of
4186 correctional programs, the department shall establish minimum standards for the organization
4187 and operation of its programs, including collaborating with the Department of Health and
4188 Human Services to establish minimum standards for programs providing assistance for
4189 individuals involved in the criminal justice system.

4190 (a) The standards shall be promulgated according to state rulemaking provisions.
4191 Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter
4192 3, Utah Administrative Rulemaking Act. Offenders are not a class of persons under that act.

4193 (b) Standards shall provide for inquiring into and processing offender complaints.

4194 (c) (i) The department shall establish minimum standards and qualifications for
4195 treatment programs provided in county jails to which persons committed to the state prison are
4196 placed by jail contract under Section [64-13e-103](#).

4197 (ii) In establishing the standards and qualifications for the treatment programs, the
4198 department shall:

4199 (A) consult and collaborate with the county sheriffs and the Division of Substance
4200 Abuse and Mental Health; and

4201 (B) include programs demonstrated by recognized scientific research to reduce
4202 recidivism by addressing an offender's criminal risk factors as determined by a risk and needs
4203 assessment.

4204 (iii) All jails contracting to house offenders committed to the state prison shall meet the
4205 minimum standards for treatment programs as established under this Subsection (1)(c).

4206 (d) (i) The department shall establish minimum standards of treatment for sex
4207 offenders, which shall include the requirements under Subsection [64-13-7.5\(3\)](#) regarding
4208 licensure and competency.

4209 (ii) The standards shall require the use of the most current best practices demonstrated
4210 by recognized scientific research to address an offender's criminal risk factors.

4211 (iii) The department shall collaborate with the Division of Substance Abuse and
4212 Mental Health to develop and effectively distribute the standards to jails and to mental health
4213 professionals who desire to provide mental health treatment for sex offenders.

4214 (iv) The department shall establish the standards by administrative rule pursuant to
4215 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4216 (2) The department shall establish an audit for compliance with standards established
4217 under this section according to policies and procedures established by the department, for
4218 continued operation of correctional and treatment programs provided to offenders committed to
4219 the department's custody, including ~~[inmates]~~ incarcerated individuals housed in county jails by
4220 contract with the Department of Corrections.

4221 (a) At least every three years, the department shall internally audit all programs for
4222 compliance with established standards.

4223 (b) All financial statements and accounts of the department shall be reviewed during
4224 the audit. Written review shall be provided to the managers of the programs and the executive
4225 director of the department.

4226 (c) The reports shall be classified as confidential internal working papers and access is
4227 available at the discretion of the executive director or the governor, or upon court order.

4228 (3) The department shall establish a certification program for public and private
4229 providers of treatment for sex offenders on probation or parole that requires the providers' sex
4230 offender treatment practices meet the standards and practices established under Subsection
4231 (1)(d) to reduce sex offender recidivism.

4232 (a) The department shall collaborate with the Division of Substance Abuse and Mental
4233 Health to develop, coordinate, and implement the certification program.

4234 (b) The certification program shall be based on the standards under Subsection (1)(d)
4235 and shall require renewal of certification every two years.

4236 (c) All public and private providers of sex offender treatment, including those
4237 providing treatment to offenders housed in county jails by contract under Section [64-13e-103](#),
4238 shall comply with these standards on and after July 1, 2016, in order to begin receiving or
4239 continue receiving payment from the department to provide sex offender treatment on or after
4240 July 1, 2016.

4241 (d) The department shall establish the certification program by administrative rule

4242 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4243 (4) The department shall establish performance goals and outcome measurements for
4244 all programs that are subject to the minimum standards established under this section and shall
4245 collect data to analyze and evaluate whether the goals and measurements are attained.

4246 (a) The department shall collaborate with the Division of Substance Abuse and Mental
4247 Health to develop and coordinate the performance goals and outcome measurements, including
4248 recidivism rates and treatment success and failure rates.

4249 (b) The department may use these data to make decisions on the use of funds to
4250 provide treatment for which standards are established under this section.

4251 (c) The department shall collaborate with the Division of Substance Abuse and Mental
4252 Health to track a subgroup of participants to determine if there is a net positive result from the
4253 use of treatment as an alternative to incarceration.

4254 (d) The department shall collaborate with the Division of Substance Abuse and Mental
4255 Health to evaluate the costs, including any additional costs, and the resources needed to attain
4256 the performance goals established for the use of treatment as an alternative to incarceration.

4257 (e) The department shall annually provide data collected under this Subsection (4) to
4258 the Commission on Criminal and Juvenile Justice on or before August 31. The commission
4259 shall compile a written report of the findings based on the data and shall provide the report to
4260 the legislative Judiciary Interim Committee, the Health and Human Services Interim
4261 Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related
4262 appropriations subcommittees.

4263 Section 66. Section **64-13-30** is amended to read:

4264 **64-13-30. Expenses incurred by offenders -- Payment to department or county**
4265 **jail -- Medical care expenses and copayments.**

4266 (1) (a) The department or county jail may require an [~~inmate~~] incarcerated individual to
4267 make a copayment for medical and dental services provided by the department or county jail.

4268 (b) For services provided while in the custody of the department, the copayment by the
4269 [~~inmate~~] incarcerated individual is \$5 for primary medical care, \$5 for dental care, and \$2 for
4270 prescription medication.

4271 (c) For services provided outside of a prison facility while in the custody of the
4272 department, the offender is responsible for 10% of the costs associated with hospital care with

4273 a cap on an [inmate's] incarcerated individual's share of hospital care expenses not to exceed
4274 \$2,000 per fiscal year.

4275 (2) (a) An [inmate] incarcerated individual who has assets exceeding \$200,000, as
4276 determined by the department upon entry into the department's custody, is responsible to pay
4277 the costs of all medical and dental care up to 20% of the [inmate's] incarcerated individual's
4278 total determined asset value.

4279 (b) After an [inmate] incarcerated individual has received medical and dental care
4280 equal to 20% of the [inmate's] incarcerated individual's total asset value, the [inmate]
4281 incarcerated individual is subject to the copayments provided in Subsection (1).

4282 (3) The department shall turn over to the Office of State Debt Collection any debt
4283 under this section that is unpaid at the time the offender is released from parole.

4284 (4) An [inmate] incarcerated individual may not be denied medical treatment if the
4285 [inmate] incarcerated individual is unable to pay for the treatment because of inadequate
4286 financial resources.

4287 (5) When an offender in the custody of the department receives medical care that is
4288 provided outside of a prison facility, the department shall pay the costs:

4289 (a) at the contracted rate; or

4290 (b) (i) if there is no contract between the department and a health care facility that
4291 establishes a fee schedule for medical services rendered, expenses shall be at the noncapitated
4292 state Medicaid rate in effect at the time the service was provided; and

4293 (ii) if there is no contract between the department and a health care provider that
4294 establishes a fee schedule for medical services rendered, expenses shall be 65% of the amount
4295 that would be paid under the Public Employees' Benefit and Insurance Program, created in
4296 Section [49-20-103](#).

4297 (6) Expenses described in Subsection (5) are a cost to the department only to the extent
4298 that they exceed an offender's private insurance that is in effect at the time of the service and
4299 that covers those expenses.

4300 (7) (a) The Public Employees' Benefit and Insurance Program shall provide
4301 information to the department that enables the department to calculate the amount to be paid to
4302 a health care provider under Subsection (5)(b).

4303 (b) The department shall ensure that information provided under Subsection (7)(a) is

4304 confidential.

4305 Section 67. Section **64-13-30.5** is amended to read:

4306 **64-13-30.5. Payment by incarcerated individual for postsecondary educational**
4307 **tuition.**

4308 (1) (a) ~~(a)~~ (i) An ~~inmate~~ incarcerated individual participating in a postsecondary
4309 education program through the department shall pay to the department at the time of
4310 enrollment 50% of the costs of the postsecondary education tuition.

4311 ~~(b)~~ (ii) If an ~~inmate~~ incarcerated individual desires to participate in the
4312 postsecondary education program but is unable to pay the costs of the education because of
4313 inadequate financial resources, the ~~inmate~~ incarcerated individual may participate in a
4314 deferred tuition payment program under this section.

4315 ~~(c)~~ (iii) The department and the Office of State Debt Collection shall coordinate a
4316 deferred postsecondary education tuition repayment program to provide ~~inmates~~ incarcerated
4317 individuals a reasonable payment schedule and payment amount to allow for deferred payment
4318 of the postsecondary educational tuition obligation the ~~inmate~~ incarcerated individual
4319 incurred while under supervision of the department, which shall:

4320 ~~(i)~~ (A) account for all postsecondary education tuition costs incurred by the ~~inmate~~
4321 incarcerated individual while under the supervision of the department;

4322 ~~(ii)~~ (B) establish an appropriate time for the ~~inmate~~ incarcerated individual to begin
4323 payment of postsecondary education tuition costs, which shall require that payments start no
4324 later than two years after termination of parole; and

4325 ~~(iii)~~ (C) establish a payment schedule and payment amounts, including prevailing
4326 interest rates, commensurate with student loans currently being offered by local financial
4327 institutions.

4328 ~~(d)~~ (iv) Neither the department nor the Office of State Debt Collection may relieve an
4329 offender of the postsecondary tuition repayment responsibility.

4330 ~~(e)~~ (v) The department shall pay costs of postsecondary education not paid by the
4331 offender at the time of participation in the program from the Prison Telephone Surcharge
4332 Account.

4333 (2) (a) Of those tuition funds collected by the Office of State Debt Collection under
4334 this section, 10% may be used by the Office of State Debt Collection for operation of the

4335 deferred payment program.

4336 (b) All other funds collected as repayment for postsecondary tuition costs shall be
4337 deposited in the Prison Telephone Surcharge Account.

4338 (3) Only [inmates] an incarcerated individual lawfully present in the United States may
4339 participate in the postsecondary educational program offered through the department.

4340 Section 68. Section **64-13-32** is amended to read:

4341 **64-13-32. Discipline of offenders -- Use of force.**

4342 (1) If an offender offers violence to an officer or other employee of the Department of
4343 Corrections, or to another offender, or to any other person; attempts to damage or damages any
4344 corrections property; attempts to escape; or resists or refuses to obey any lawful and reasonable
4345 command; the officers and other employees of the department may use all reasonable means,
4346 including the use of weapons, to defend themselves and department property and to enforce the
4347 observance of discipline and prevent escapes.

4348 (2) (a) An [inmate] incarcerated individual who is housed in a secure correctional
4349 facility and is in the act of escaping from that secure correctional facility or from the custody of
4350 a peace or correctional officer is presumed to pose a threat of death or serious bodily injury to
4351 an officer or others if apprehension is delayed.

4352 (b) Notwithstanding Section [76-2-404](#), a peace or correctional officer is justified in
4353 using deadly force if he reasonably believes deadly force is necessary to apprehend the [inmate]
4354 incarcerated individual.

4355 Section 69. Section **64-13-34** is amended to read:

4356 **64-13-34. Safety of offenders.**

4357 (1) In case of disaster or acts of God that threaten the safety of [inmates]
4358 incarcerated individuals or the security of a secure correctional facility, [inmates] incarcerated
4359 individuals may be moved to a suitable place of security.

4360 (2) [Inmates] Incarcerated individuals moved under Subsection (1) shall be returned to
4361 a correctional facility as soon as it is practicable.

4362 Section 70. Section **64-13-36** is amended to read:

4363 **64-13-36. Testing of incarcerated individuals for AIDS and HIV infection --**
4364 **Medical care -- Department authority.**

4365 (1) As used in this section[;]

4366 ~~[(a) "Prisoner" means a person who has been adjudicated and found guilty of a criminal~~
4367 ~~offense and who is in the custody of and under the jurisdiction of the department.]~~

4368 ~~[(b) "Test" or "testing"] "test" or "testing" means a test or tests for Acquired~~
4369 ~~Immunodeficiency Syndrome or Human Immunodeficiency Virus infection in accordance with~~
4370 ~~standards recommended by the state Department of Health and Human Services.~~

4371 (2) (a) Within 90 days after July 1, 1989, the effective date of this act, the department
4372 shall test or provide for testing of all [~~prisoners~~] incarcerated individuals who are under the
4373 jurisdiction of the department, and subsequently test or provide for testing of all [~~prisoners~~]
4374 incarcerated individuals who are committed to the jurisdiction of the department upon
4375 admission or within a reasonable period after admission.

4376 (b) At the time test results are provided to [~~persons~~] incarcerated individuals tested, the
4377 department shall provide education and counseling regarding Acquired Immunodeficiency
4378 Syndrome and Human Immunodeficiency Virus infection.

4379 (3) (a) The results of tests conducted under Subsection (2) become part of the
4380 [~~inmate's~~] incarcerated individual's medical file, accessible only to persons designated by
4381 department rule and in accordance with any other legal requirement for reporting of Acquired
4382 Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

4383 (b) Medical and epidemiological information regarding results of tests conducted under
4384 Subsection (2) shall be provided to the state Department of Health and Human Services.

4385 (4) The department has authority to take action as medically indicated with regard to
4386 any [~~prisoner~~] incarcerated individual who has tested positive for Acquired Immunodeficiency
4387 Syndrome or Human Immunodeficiency Virus infection.

4388 (5) [~~Prisoners~~] incarcerated individuals who test positive for Acquired
4389 Immunodeficiency Syndrome or Human Immunodeficiency Virus infection may not be
4390 excluded from common areas of the prison that are accessible to other [~~prisoners~~] incarcerated
4391 individuals solely on the basis of that condition, unless medically necessary for protection of
4392 the general [~~prison~~] incarcerated individual population or staff.

4393 Section 71. Section ~~64-13-38~~ is amended to read:

4394 **64-13-38. Emergency release due to overcrowding.**

4395 (1) [~~Definitions~~] As used in this section:

4396 (a) "Maximum capacity" means every physical and funded prison bed is occupied by

4397 an [inmate] incarcerated individual.

4398 (b) "Operational capacity" means 96.5% of every physical and funded bed is occupied
4399 by an [inmate] incarcerated individual.

4400 (c) "Emergency release capacity" means 98% of every physical and funded bed is
4401 occupied by an [inmate] incarcerated individual.

4402 (2) When the executive director of the department finds that either the male or female
4403 [inmate] incarcerated individual population of the Utah State Prison has exceeded operational
4404 capacity for at least 45 consecutive days, the executive director shall notify the governor, the
4405 legislative leadership, and the Board of Pardons and Parole that the department is approaching
4406 an overcrowding emergency and provide them with information relevant to that determination.

4407 (3) When the executive director of the department finds that either the male or female
4408 [inmate] incarcerated individual population of the Utah State Prison has exceeded emergency
4409 release capacity for at least 45 consecutive days, the executive director shall:

4410 (a) notify the governor and the legislative leadership that the emergency release
4411 capacity has been reached and provide them with information relevant to that determination;
4412 and

4413 (b) notify the Board of Pardons and Parole that the emergency release capacity has
4414 been reached so that the board may commence the emergency release process pursuant to
4415 Subsection (4).

4416 (4) Upon the department's notifying the governor and the legislative leadership of the
4417 emergency release capacity under Subsection (3), the department shall:

4418 (a) notify the Board of Pardons and Parole of the number of [inmates] incarcerated
4419 individuals who need to be released in order to return the prison [inmate] incarcerated
4420 individual population to operational capacity; and

4421 (b) in cooperation and consultation with the Board of Pardons and Parole, compile a
4422 list of [inmates] incarcerated individuals, the release of whom would be sufficient to return the
4423 prison [inmate] incarcerated individual population to operational capacity.

4424 (5) After 45 consecutive days of emergency release capacity, the Board of Pardons and
4425 Parole may order the release of a sufficient number of [inmates] incarcerated individuals
4426 identified under Subsection (4) to return the prison [inmate] incarcerated individual population
4427 to operational capacity.

4428 (6) The department shall inform the governor and the legislative leadership when the
4429 emergency release has been completed.

4430 (7) The Board of Pardons and Parole shall make rules in accordance with Title 63G,
4431 Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

4432 Section 72. Section **64-13-39.5** is amended to read:

4433 **64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders --**
4434 **Notice to health care facility.**

4435 (1) As used in this section:

4436 (a) "Department or agency" means the Utah Department of Corrections or a department
4437 of corrections or government entity responsible for placing an offender in a facility located in
4438 Utah.

4439 (b) "Chronically ill" has the same meaning as in Section [31A-36-102](#).

4440 (c) "Facility" means an assisted living facility as defined in Subsection [26-21-2\(5\)](#) and
4441 a nursing care facility as defined in Subsection [26-21-2\(17\)](#), except that transitional care units
4442 and other long term care beds owned or operated on the premises of acute care hospitals or
4443 critical care hospitals are not facilities for the purpose of this section.

4444 (d) "Offender" means an ~~[inmate]~~ incarcerated individual whom the department or
4445 agency has given an early release, pardon, or parole due to a chronic or terminal illness.

4446 (e) "Terminally ill" has the same meaning as in Section [31A-36-102](#).

4447 (2) If an offender from Utah or any other state is admitted as a resident of a facility due
4448 to the chronic or terminal illness, the department or agency placing the offender shall:

4449 (a) provide written notice to the administrator of the facility no later than 15 days prior
4450 to the offender's admission as a resident of a facility, stating:

4451 (i) the offense for which the offender was convicted and a description of the actual
4452 offense;

4453 (ii) the offender's status with the department or agency;

4454 (iii) that the information provided by the department or agency regarding the offender
4455 shall be provided to employees of the facility no later than 10 days prior to the offender's
4456 admission to the facility; and

4457 (iv) the contact information for:

4458 (A) the offender's parole officer and also a point of contact within the department or

4459 agency, if the offender is on parole; and

4460 (B) a point of contact within the department or agency, if the offender is not under
4461 parole supervision but was given an early release or pardon due to a chronic or terminal illness;

4462 (b) make available to the public on the Utah Department of Corrections' website and
4463 upon request:

4464 (i) the name and address of the facility where the offender resides; and

4465 (ii) the date the offender was placed at the facility; and

4466 (c) provide a training program for employees who work in a facility where offenders
4467 reside, and if the offender is placed at the facility by:

4468 (i) the Utah Department of Corrections, the department shall provide the training
4469 program for the employees; and

4470 (ii) by a department or agency from another state, that state's department or agency
4471 shall arrange with the Utah Department of Corrections to provide the training required by this
4472 Subsection (2), if training has not already been provided by the Utah Department of
4473 Corrections, and shall provide to the Utah Department of Corrections any necessary
4474 compensation for this service.

4475 (3) The administrator of the facility shall:

4476 (a) provide residents of the facility or their guardians notice that a convicted felon is
4477 being admitted to the facility no later than 10 days prior to the offender's admission to the
4478 facility;

4479 (b) advise potential residents or their guardians of persons under Subsection (2) who
4480 are current residents of the facility; and

4481 (c) provide training, offered by the Utah Department of Corrections, in the safe
4482 management of offenders for all employees.

4483 (4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3,
4484 Utah Administrative Rulemaking Act, establishing:

4485 (a) a consistent format and procedure for providing notification to facilities and
4486 information to the public in compliance with Subsection (2); and

4487 (b) a training program, in compliance with Subsection (3) for employees, who work at
4488 facilities where offenders reside to ensure the safety of facility residents and employees.

4489 Section 73. Section **64-13-40** is amended to read:

4490 **64-13-40. Worship for native American incarcerated individual.**

4491 (1) As used in this section:

4492 (a) "Items used in religious ceremonies" includes cedar, corn husks, corn pollen, corn
4493 meal, eagle and other feathers, sage, sweet grass, tobacco, pipes, willow, drums, gourds, lava
4494 rock, medicine bundles, bags or pouches, staffs, and other traditional items and materials.4495 (b) "Native American" means an individual who is eligible for membership in a tribe
4496 recognized by the federal government.4497 (c) "Native American religion" means a religion or religious belief that is practiced by
4498 a native American, the origin and interpretation of which is from a traditional native American
4499 culture or community.4500 (d) "Native American spiritual advisor" means a person who leads, instructs, or
4501 facilitates a native American religious ceremony or service, or provides religious counseling,
4502 and includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy
4503 man or woman.4504 (e) "Site of worship" means a site indoors or outdoors where a person can pray or
4505 meditate, or where a sweat lodge ceremony, talking circle, or individual prayer can be made.4506 (2) (a) At the request of any native American ~~[inmate]~~ incarcerated individual, a state
4507 correctional facility shall reasonably accommodate the practice of the native American
4508 ~~[inmate's]~~ incarcerated individual's religion including a native American religion at each state
4509 correctional facility, unless the ~~[inmate]~~ incarcerated individual is a maximum security
4510 ~~[inmate]~~ incarcerated individual and accommodating the maximum security ~~[inmate]~~
4511 incarcerated individual would threaten the reasonable security of the state correctional facility.

4512 (b) In accommodating a native American religion, the state correctional facility shall:

4513 (i) permit access on a regular basis to:

4514 (A) a native American spiritual advisor; and

4515 (B) a site of worship on the grounds of the correctional facility, unless the ~~[inmate]~~
4516 incarcerated individual is a maximum security ~~[inmate]~~ incarcerated individual and permitting
4517 access would threaten the reasonable security of the state correctional facility;4518 (ii) permit access to items used in religious ceremonies during the religious
4519 ceremonies; and

4520 (iii) provide a secure place at the site of worship to store the items used in religious

4521 ceremonies.

4522 (3) Notwithstanding Subsection (2)(b)(iii), the state correctional facility is not required
4523 to provide to the [inmate] incarcerated individual any item used in religious ceremonies.

4524 (4) A native American spiritual advisor shall have any privilege of access to [inmates]
4525 incarcerated individuals and sites of worship provided to an individual functioning as a
4526 religious leader or advisor at a state correctional facility.

4527 (5) An [inmate] incarcerated individual claiming to be a native American for purposes
4528 of this section shall bear the burden of establishing to the state correctional facility that the
4529 [inmate] incarcerated individual is a native American.

4530 (6) The department may not require a native American [inmate] incarcerated individual
4531 to cut the [inmate's] incarcerated individual's hair if it conflicts with the [inmate's] incarcerated
4532 individual's traditional native American religious beliefs.

4533 (7) A state correctional facility is required to comply with this section only to the
4534 extent that it does not threaten the reasonable security of the state correctional facility.

4535 (8) This section may not be construed as requiring a state correctional facility to permit
4536 access to peyote by a native American [inmate] incarcerated individual.

4537 Section 74. Section **64-13-42** is amended to read:

4538 **64-13-42. Prison Telephone Surcharge Account -- Funding incarcerated**
4539 **individual and offender education and training programs.**

4540 (1) (a) There is created within the General Fund a restricted account known as the
4541 Prison Telephone Surcharge Account.

4542 (b) The Prison Telephone Surcharge Account consists of:

4543 (i) beginning July 1, 2006, revenue generated by the state from pay telephone services
4544 located at any correctional facility as defined in Section [64-13-1](#);

4545 (ii) interest on account money;

4546 (iii) (A) money paid by [inmates] incarcerated individuals participating in
4547 postsecondary education provided by the department; and

4548 (B) money repaid by former [inmates] incarcerated individuals who have a written
4549 agreement with the department to pay for a specified portion of the tuition costs under the
4550 department's deferred tuition payment program;

4551 (iv) money collected by the Office of State Debt Collection for debt described in

4552 Subsection (1)(b)(iii); and

4553 (v) money appropriated by the Legislature.

4554 (2) Upon appropriation by the Legislature, money from the Prison Telephone

4555 Surcharge Account shall be used by the department for education and training programs for

4556 offenders and [inmates] incarcerated individual as defined in Section [64-13-1](#).

4557 Section 75. Section ~~64-13-43~~ is amended to read:

4558 **64-13-43. Use of state vehicles by department personnel.**

4559 The department executive director may authorize the use of a state vehicle for official

4560 and commute purposes for a department employee who:

4561 (1) supervises probationers or parolees; or

4562 (2) investigates the criminal activity of [inmates] incarcerated individuals,

4563 probationers, or parolees.

4564 Section 76. Section ~~64-13-44~~ is amended to read:

4565 **64-13-44. Posthumous organ donations by incarcerated individuals.**

4566 (1) As used in this section:

4567 (a) "Document of gift" has the same meaning as in Section [26-28-102](#).

4568 (b) "Sign" has the same meaning as in Section [26-28-102](#).

4569 (2) (a) The Utah Department of Corrections shall make available to each [inmate]

4570 incarcerated individual a document of gift form that allows an [inmate] incarcerated individual

4571 to indicate the [inmate's] incarcerated individual's desire to make an anatomical gift if the

4572 [inmate] incarcerated individual dies while in the custody of the department.

4573 (b) If the [inmate] incarcerated individual chooses to make an anatomical gift after

4574 death, the [inmate] incarcerated individual shall complete a document of gift in accordance

4575 with the requirements of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

4576 (c) The department shall maintain a record of the document of gift that an [inmate]

4577 incarcerated individual provides to the department.

4578 (3) Notwithstanding Title 63G, Chapter 2, Government Records Access and

4579 Management Act, the department may, upon request, release to an organ procurement

4580 organization, as defined in Section [26-28-102](#), the names and addresses of all [inmates]

4581 incarcerated individuals who complete and sign the document of gift form indicating they

4582 intend to make an anatomical gift.

4583 (4) The making of an anatomical gift by an [inmate] incarcerated individual under this
4584 section shall comply with Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

4585 (5) Notwithstanding anything in this section, the department shall not be considered to
4586 be an [inmate's] incarcerated individual's "guardian" for the purposes of Title 26, Chapter 28,
4587 Revised Uniform Anatomical Gift Act.

4588 Section 77. Section ~~64-13-45~~ is amended to read:

4589 **64-13-45. Department reporting requirements.**

4590 (1) As used in this section:

4591 (a) (i) "In-custody death" means ~~[an inmate]~~ the death of an incarcerated individual that
4592 occurs while the [inmate] incarcerated individual is in the custody of the department.

4593 (ii) "In-custody death" includes ~~[an inmate]~~ the death of an incarcerated individual that
4594 occurs while the [inmate] incarcerated individual is:

4595 (A) being transported for medical care; or

4596 (B) receiving medical care outside of a correctional facility, other than a county jail.

4597 (b) ~~["Inmate"]~~ "Incarcerated individual" means an individual who is processed or
4598 booked into custody or housed in the department or a correctional facility other than a county
4599 jail.

4600 (c) "Opiate" means the same as that term is defined in Section [58-37-2](#).

4601 (2) The department shall submit a report to the Commission on Criminal and Juvenile
4602 Justice, created in Section [63M-7-201](#), before June 15 of each year that includes:

4603 (a) the number of in-custody deaths that occurred during the preceding calendar year,
4604 including:

4605 (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of
4606 each of the in-custody deaths described in Subsection (2)(a); and

4607 (ii) the department's policy for notifying an [inmate's] incarcerated individual's next of
4608 kin after the [inmate's] incarcerated individual's in-custody death;

4609 (b) the department policies, procedures, and protocols:

4610 (i) for treatment of an [inmate] incarcerated individual experiencing withdrawal from
4611 alcohol or substance use, including use of opiates;

4612 (ii) that relate to the department's provision, or lack of provision, of medications used
4613 to treat, mitigate, or address an [inmate's] incarcerated individual's symptoms of withdrawal,

4614 including methadone and all forms of buprenorphine and naltrexone; and

4615 (iii) that relate to screening, assessment, and treatment of an [inmate] incarcerated
4616 individual for a substance use disorder or mental health disorder;

4617 (c) the number of [inmates] incarcerated individuals who gave birth and were
4618 restrained in accordance with Section 64-13-46, including:

4619 (i) the types of restraints used; and

4620 (ii) whether the use of restraints was to prevent escape or to ensure the safety of the
4621 [inmate] incarcerated individual, medical or corrections staff, or the public; and

4622 (d) any report the department provides or is required to provide under federal law or
4623 regulation relating to [inmate deaths] an in-custody death.

4624 (3) The Commission on Criminal and Juvenile Justice shall:

4625 (a) compile the information from the reports described in Subsection (2);

4626 (b) omit or redact any identifying information of an [inmate] incarcerated individual in
4627 the compilation to the extent omission or redaction is necessary to comply with state and
4628 federal law; and

4629 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
4630 Committee and the Utah Substance Use and Mental Health Advisory Council before November
4631 1 of each year.

4632 (4) The Commission on Criminal and Juvenile Justice may not provide access to or use
4633 the department's policies, procedures, or protocols submitted under this section in a manner or
4634 for a purpose not described in this section.

4635 Section 78. Section 64-13-46 is amended to read:

4636 **64-13-46. Pregnant incarcerated individuals.**

4637 (1) (a) If the staff of a correctional facility knows or has reason to believe that an
4638 [inmate] incarcerated individual is pregnant, the staff, when restraining the [inmate]
4639 incarcerated individual, shall use the least restrictive restraints necessary to ensure the safety
4640 and security of the [inmate] incarcerated individual and others.

4641 (b) This requirement shall continue during postpartum recovery and any transport to or
4642 from a correctional facility.

4643 (2) The staff of a correctional facility may not use restraints on an [inmate] incarcerated
4644 individual during labor and childbirth unless a correctional staff member makes an

4645 individualized determination that there are compelling grounds to believe that the [inmate]
4646 incarcerated individual presents:

4647 (a) an immediate and serious risk of harm to herself, medical staff, correctional staff, or
4648 the public; or

4649 (b) a substantial risk of escape that cannot reasonably be reduced by the use of other
4650 existing means.

4651 (3) Notwithstanding Subsection (1) or (2), under no circumstances may shackles, leg
4652 restraints, or waist restraints be used on an [inmate] incarcerated individual during labor and
4653 childbirth or postpartum recovery while in a medical facility.

4654 (4) Correctional staff present during labor or childbirth shall:

4655 (a) be stationed in a location that offers the maximum privacy to the [inmate]
4656 incarcerated individual, while taking into consideration safety and security concerns; and

4657 (b) be female, if practicable.

4658 (5) If restraints are authorized under Subsection (1) or (2), a written record of the
4659 decision and use of the restraints shall be made that includes:

4660 (a) the correctional staff member's determination on the use of restraints;

4661 (b) the circumstances that necessitated the use of restraints;

4662 (c) the type of restraints that were used; and

4663 (d) the length of time the restraints were used.

4664 (6) The record created in Subsection (5):

4665 (a) shall be retained by the correctional facility for five years;

4666 (b) shall be available for public inspection with individually identifying information
4667 redacted; and

4668 (c) may not be considered a medical record under state or federal law.

4669 (7) As used in this section:

4670 (a) "Postpartum recovery" means, as determined by her physician, the period
4671 immediately following delivery, including the entire period a woman is in the hospital or
4672 medical facility after birth.

4673 (b) "Restraints" means any physical restraint or mechanical device used to control the
4674 movement of an [inmate's] incarcerated individual's body or limbs, including flex cuffs, soft
4675 restraints, shackles, or a convex shield.

4676 (c) "Shackles" means metal or iron restraints and includes hard metal handcuffs, leg
4677 irons, belly chains, or a security or tether chain.

4678 Section 79. Section **64-13-47** is amended to read:

4679 **64-13-47. Prison Sexual Assault Prevention Program.**

4680 (1) The department shall, in accordance with Title 63G, Chapter 3, Utah
4681 Administrative Rulemaking Act, make rules establishing policies and procedures regarding
4682 sexual assaults that occur in correctional facilities.

4683 (2) The rules described in Subsection (1) shall:

4684 (a) require education and training, including:

4685 (i) providing to [inmates] incarcerated individuals, at intake and periodically,
4686 department-approved, easy-to-understand information developed by the department on sexual
4687 assault prevention, treatment, reporting, and counseling in consultation with community groups
4688 with expertise in sexual assault prevention, treatment, reporting, and counseling; and

4689 (ii) providing sexual-assault-specific training to department mental health professionals
4690 and all employees who have direct contact with [inmates] incarcerated individuals regarding
4691 treatment and methods of prevention and investigation;

4692 (b) require reporting of sexual assault, including:

4693 (i) ensuring the confidentiality of [inmate] incarcerated individual sexual assault
4694 complaints and the protection of [inmates] incarcerated individuals who make complaints of
4695 sexual assault; and

4696 (ii) prohibiting retaliation and disincentives for reporting sexual assault;

4697 (c) require safety and care for victims, including:

4698 (i) providing, in situations in which there is reason to believe that a sexual assault has
4699 occurred, reasonable and appropriate measures to ensure the victim's safety by separating the
4700 victim from the assailant, if known;

4701 (ii) providing acute trauma care for sexual assault victims, including treatment of
4702 injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;

4703 (iii) providing confidential mental health counseling for victims of sexual assault,
4704 including access to outside community groups or victim advocates that have expertise in sexual
4705 assault counseling, and enable confidential communication between [inmates] incarcerated
4706 individuals and those organizations and advocates; and

- 4707 (iv) monitoring victims of sexual assault for suicidal impulses, post-traumatic stress
4708 disorder, depression, and other mental health consequences resulting from the sexual assault;
4709 (d) require investigations and staff discipline, including:
4710 (i) requiring all employees to report any knowledge, suspicion, or information
4711 regarding an incident of sexual assault to the executive director or designee, and require
4712 disciplinary action for employees who fail to report as required;
4713 (ii) requiring investigations described in Subsection (3);
4714 (iii) requiring corrections investigators to submit all completed sexual assault
4715 allegations to the executive director or the executive director's designee, who must then submit
4716 any substantiated findings that may constitute a crime under state law to the district attorney
4717 with jurisdiction over the facility in which the alleged sexual assault occurred; and
4718 (iv) requiring employees to be subject to disciplinary sanctions up to and including
4719 termination for violating agency sexual assault policies, with termination the presumptive
4720 disciplinary sanction for employees who have engaged in sexual assault, consistent with
4721 constitutional due process protections and state personnel laws and rules; and
4722 (e) require data collection and reporting, including as provided in Subsection (4).
4723 (3) (a) An investigator trained in the investigation of sex crimes shall conduct the
4724 investigation of a sexual assault involving an [inmate] incarcerated individual.
4725 (b) The investigation shall include:
4726 (i) using a forensic rape kit, if appropriate;
4727 (ii) questioning suspects and witnesses; and
4728 (iii) gathering and preserving relevant evidence.
4729 (4) The department shall:
4730 (a) collect and report data regarding all allegations of sexual assault from each
4731 correctional facility in accordance with the federal Prison Rape Elimination Act of 2003, Pub.
4732 L 108-79, as amended; and
4733 (b) annually report the data described in Subsection (4)(a) to the Law Enforcement and
4734 Criminal Justice Interim Committee.
4735 Section 80. Section **64-13-48** is amended to read:
4736 **64-13-48. Educational and career-readiness programs.**
4737 (1) The department shall, in accordance with Subsection **64-13-6(1)(c)**, ensure that

4738 appropriate evidence-based and evidence-informed educational or career-readiness programs
4739 are made available to an [inmate] incarcerated individual as soon as practicable after the
4740 creation of the [inmate's] incarcerated individual's case action plan.

4741 (2) The department shall provide incarcerated women with substantially equivalent
4742 educational and career-readiness opportunities as incarcerated men.

4743 (3) Before an [inmate] incarcerated individual begins an educational or
4744 career-readiness program, the department shall provide reasonable access to resources
4745 necessary for an [inmate] incarcerated individual to apply for grants or other available financial
4746 aid that may be available to pay for the [inmate's] incarcerated individual's program.

4747 (4) (a) The department shall consider an [inmate's] incarcerated individual's current
4748 participation in an educational or career-readiness program when the department makes a
4749 decision with regard to an [inmate's] incarcerated individual's:

4750 (i) transfer to another area or facility; or

4751 (ii) appropriate disciplinary sanction.

4752 (b) When possible, the department shall use best efforts to allow an [inmate]
4753 incarcerated individual to continue the [inmate's] incarcerated individual's participation in an
4754 educational or career-readiness program while the facility is under lockdown, quarantine, or a
4755 similar status.

4756 (5) (a) The department shall maintain records on an [inmate's] incarcerated individual's
4757 educational progress, including completed life skills, certifications, and credit- and
4758 non-credit-bearing courses, made while the [inmate] incarcerated individual is incarcerated.

4759 (b) The department shall facilitate the transfer of information related to the [inmate's]
4760 incarcerated individual's educational process upon the [inmate's] incarcerated individual's
4761 release, including the [inmate's] incarcerated individual's post-release contact information and
4762 the records described in Subsection (5)(a), to:

4763 (i) the [inmate] incarcerated individual; or

4764 (ii) an entity that the [inmate] incarcerated individual has authorized to receive the
4765 [inmate's] incarcerated individual's records or post-release contact information, including an
4766 institution:

4767 (A) from which the [inmate] incarcerated individual received educational instruction
4768 while the [inmate] incarcerated individual was incarcerated; or

4769 (B) at which the [inmate] incarcerated individual plans to continue the [inmate's]
4770 incarcerated individual's post-incarceration education.

4771 (6) Beginning May 1, 2023, the department shall provide an annual report to the
4772 Higher Education Appropriations Subcommittee regarding educational and career-readiness
4773 programs for [inmates] incarcerated individuals, which shall include:

4774 (a) the number of [inmates] incarcerated individuals who are participating in an
4775 educational or career-readiness program, including an accredited postsecondary education
4776 program;

4777 (b) the percentage of [inmates] incarcerated individuals who are participating in an
4778 educational or career-readiness program as compared to the total [inmate] incarcerated
4779 individual population;

4780 (c) [inmate] incarcerated individual program completion and graduation data, including
4781 the number of completions and graduations in each educational or career-readiness program;

4782 (d) the potential effect of educational or career-readiness programs on recidivism, as
4783 determined by a comparison of:

4784 (i) the total number of [inmates] incarcerated individuals who return to incarceration
4785 after a previous incarceration; and

4786 (ii) the number of [inmates] incarcerated individuals who return to incarceration after a
4787 previous incarceration who participated in or completed an educational or career-readiness
4788 program;

4789 (e) the number of [inmates] incarcerated individuals who were transferred to a different
4790 facility while currently participating in an educational or career-readiness program, including
4791 the number of [inmates] incarcerated individuals who were unable to continue a program after
4792 a transfer to a different facility; and

4793 (f) the department's:

4794 (i) recommendation for resources that may increase [inmates'] incarcerated individuals'
4795 access to and participation in an educational or career-readiness program; and

4796 (ii) estimate of how many additional [inmates] incarcerated individuals would
4797 participate in an educational or career-readiness program if the resources were provided.

4798 (7) The department may make rules in accordance with Section 64-13-10 and Title
4799 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this

4800 section.

4801 Section 81. Section **64-13-49** is enacted to read:

4802 **64-13-49. Incarcerated individual medical notification.**

4803 (1)

4804 As used in this section, "health care facility" means the same as that term is defined in Section
4805 26-21-2.

4806 (2) Upon intake of an incarcerated individual, a correctional facility shall provide the
4807 incarcerated individual with a form that allows the incarcerated individual to designate a
4808 contact to whom the correctional facility may release the incarcerated individual's medical
4809 information in compliance with applicable federal law and Title 63G, Chapter 2, Government
4810 Records Access and Management Act.

4811 (3) A correctional facility shall, without compromising an investigation:

4812 (a) attempt to notify an incarcerated individual's designated contact that the
4813 incarcerated individual sustained a serious injury or contracted a serious illness within five
4814 days after:

4815 (i) the day on which the incarcerated individual sustains the serious injury or contracts
4816 the serious illness; or

4817 (ii) if the incarcerated individual is transferred to a health care facility as a result of the
4818 serious injury or serious illness, the day on which the incarcerated individual is released from
4819 the health care facility;

4820 (b) attempt to notify the designated contact within 24 hours after the death of the
4821 incarcerated individual and include the manner of death in the notification, if known; or

4822 (c) attempt to notify the designated contact if the incarcerated individual's physician
4823 determines notification is necessary because the incarcerated individual has a medical
4824 condition that:

4825 (i) renders the incarcerated individual incapable of making health care decisions; or

4826 (ii) may result in the incarcerated individual reaching end-of-life.

4827 (4) The notification described in Subsection (3)(a) shall, without compromising an
4828 investigation, describe:

4829 (a) the serious injury or serious illness;

4830 (b) the extent of the serious injury or serious illness;

- 4831 (c) the medical treatment plan; and
- 4832 (d) if applicable, the medical treatment recovery plan.
- 4833 (5) The department shall create a policy that a staff member provide the notification
- 4834 described in Subsection (3) in a compassionate and professional manner.

4835 Section 82. Section **64-13d-103** is amended to read:

4836 **64-13d-103. Private contracts.**

4837 (1) The department may contract with a contractor to finance, acquire, construct, lease,

4838 or provide full or partial correctional services.

4839 (2) Before entering into a contract, the department shall:

4840 (a) hold a public hearing within the county or municipality where the facility is to be

4841 sited for the purpose of obtaining public comment;

4842 (b) give consideration to the input received at the public hearing when making

4843 decisions regarding the awarding of a contract and the contract process; and

4844 (c) have received written notification from the legislative body of the municipality or

4845 county where the proposed facility is to be sited, stating that the legislative body has agreed to

4846 the establishment of the facility within its boundaries.

4847 (3) Before entering into a contract, the department shall require that the contractor

4848 proposing to provide the services demonstrate that it has:

4849 (a) management personnel with the qualifications and experience necessary to carry out

4850 the terms of the contract;

4851 (b) sufficient financial resources to:

4852 (i) complete and operate the facility;

4853 (ii) provide indemnification for liability arising from the operation of the facility; and

4854 (iii) provide reimbursement as required under Section [64-13d-105](#);

4855 (c) the ability and resources to meet applicable court orders, correctional standards as

4856 defined by the department, and constitutional requirements; and

4857 (d) liability insurance adequate to protect the state, the political subdivision where the

4858 facility is located, and the officers and employees of the facility from all claims and losses

4859 incurred as a result of action or inaction by the contractor or its employees.

4860 (4) A contract awarded for the operation of a facility shall be consistent with

4861 commonly accepted correctional practices as defined by the department and shall include:

- 4862 (a) adequate internal and perimeter security to protect the public, employees, and
- 4863 [~~inmates~~] incarcerated individuals, based on the security level of the inmate population;
- 4864 (b) work, training, educational, and treatment programs for [~~inmates~~] incarcerated
- 4865 individuals;
- 4866 (c) a minimum correctional officer to [~~inmate~~] incarcerated individual ratio;
- 4867 (d) imposition of [~~inmate~~] incarcerated individual discipline in accordance with
- 4868 applicable state law and department policy; and
- 4869 (e) adequate food, clothing, housing, and medical care for [~~inmates~~] incarcerated
- 4870 individuals.

4871 Section 83. Section **64-13d-104** is amended to read:

4872 **64-13d-104. Use of force -- Private prison employees.**

- 4873 (1) Employees of a facility contractor may use reasonable force to the extent allowed
- 4874 by state law. The use of force, power, and authority shall be limited to:
- 4875 (a) the grounds of a facility operated in whole or in part by their employer;
- 4876 (b) when transporting [~~inmates~~] incarcerated individuals; and
- 4877 (c) when pursuing escapees from the facility.
- 4878 (2) Training standards for employees of a contractor shall be in accordance with the
- 4879 standards in Section [64-13-24](#).
- 4880 (3) Subsection (2) does not confer peace officer status on the contractor or its
- 4881 employees.

4882 Section 84. Section **64-13d-105** is amended to read:

4883 **64-13d-105. Restricted powers and duties of contractors.**

- 4884 (1) A contract for correctional services may not authorize a contractor to perform the
- 4885 following:
- 4886 (a) calculate or establish [~~inmate~~] incarcerated individual release and parole eligibility
- 4887 dates;
- 4888 (b) grant, deny, or revoke sentence credit;
- 4889 (c) approve [~~inmates~~] incarcerated individuals for furlough, work release, or parole; or
- 4890 (d) approve the types of work [~~inmates~~] incarcerated individuals may perform.
- 4891 (2) A contractor shall reimburse amounts incurred by local and state agencies for
- 4892 providing assistance with riots, escapes, transportation, medical services, and legal services

4893 regarding the operation of the facility.

4894 (3) A contractor shall have in place a written plan approved by the department
4895 regarding the reporting and management of escapes, riots, and other emergency situations.

4896 Section 85. Section **64-13d-106** is amended to read:

4897 **64-13d-106. Monitoring contracts.**

4898 (1) The executive director or his designee shall monitor the performance of all facilities
4899 incarcerating [~~inmates~~] individuals under the jurisdiction of the department.

4900 (2) The executive director or his designee shall have unlimited access to all facilities,
4901 records, and staff for monitoring purposes.

4902 (3) The executive director may appoint a monitor to inspect a facility. The monitor
4903 shall have unlimited access to all facilities, records, and staff for monitoring purposes.

4904 (4) The department shall be reimbursed by the entity operating the facility for that
4905 portion of the salary and expenses of the monitor attributable to monitoring the particular
4906 facility.

4907 (5) Monitoring consists of ensuring that:

4908 (a) all state laws, department rules, and contractual obligations applicable to the facility
4909 are being met; and

4910 (b) all operations are effective, efficient, and economical.

4911 Section 86. Section **64-13d-107** is amended to read:

4912 **64-13d-107. Facility construction -- Housing out-of-state incarcerated**
4913 **individuals.**

4914 (1) A contractor may not expand its original housing capacity without the approval of
4915 the:

4916 (a) Legislature; and

4917 (b) county or municipal legislative body within whose jurisdiction the facility is
4918 located.

4919 (2) A contractor may not incarcerate out-of-state [~~inmates~~] incarcerated individuals in a
4920 facility operated in the state, except in accordance with any interstate compact of which Utah is
4921 a party.

4922 Section 87. Section **64-13e-102** is amended to read:

4923 **64-13e-102. Definitions.**

4924 As used in this chapter:

4925 (1) "Actual county daily incarceration rate" means the median amount of jail daily
4926 incarceration costs based on the data submitted by counties in accordance with Section
4927 [64-13e-104\(6\)\(b\)](#).

4928 (2) "Actual state daily incarceration rate" means the average daily incarceration rate,
4929 calculated by the department based on the previous three fiscal years, that reflects the following
4930 expenses incurred by the department for housing an ~~[inmate]~~ incarcerated individual:

4931 (a) executive overhead;

4932 (b) administrative overhead;

4933 (c) transportation overhead;

4934 (d) division overhead; and

4935 (e) motor pool expenses.

4936 (3) "Alternative treatment" means:

4937 (a) evidence-based cognitive behavioral therapy; or

4938 (b) a certificate-based program provided by:

4939 (i) an institution of higher education described in Subsection [53B-1-102\(1\)\(b\)](#); or

4940 (ii) a degree-granting institution acting in the degree-granting institution's technical
4941 education role described in Section [53B-2a-201](#).

4942 (4) "Annual ~~[inmate]~~ incarcerated individual jail days" means the total number of state
4943 probationary ~~[inmates]~~ incarcerated individuals housed in a county jail each day for the
4944 preceding fiscal year.

4945 (5) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in
4946 Section [63M-7-201](#).

4947 (6) "Department" means the Department of Corrections.

4948 (7) "Division of Finance" means the Division of Finance, created in Section
4949 [63A-3-101](#).

4950 (8) "Final county daily incarceration rate" means the amount equal to:

4951 (a) the amount appropriated by the Legislature for the purpose of making payments to
4952 counties under Section [64-13e-104](#); divided by

4953 (b) the average annual ~~[inmate]~~ incarcerated individual jail days for the preceding five
4954 fiscal years.

4955 (9) "Jail daily incarceration costs" means the following daily costs incurred by a county
4956 jail for housing a state probationary [~~inmate~~] incarcerated individual on behalf of the
4957 department:

- 4958 (a) executive overhead;
- 4959 (b) administrative overhead;
- 4960 (c) transportation overhead;
- 4961 (d) division overhead; and
- 4962 (e) motor pool expenses.

4963 (10) "State [~~inmate~~] incarcerated individual" means an individual, other than a state
4964 probationary [~~inmate~~] incarcerated individual or state parole [~~inmate~~] incarcerated individual,
4965 who is committed to the custody of the department.

4966 (11) "State parole [~~inmate~~] incarcerated individual" means an individual who is:

- 4967 (a) on parole, as defined in Section 77-27-1; and
- 4968 (b) housed in a county jail for a reason related to the individual's parole.

4969 (12) "State probationary [~~inmate~~] incarcerated individual" means a felony probationer
4970 sentenced to time in a county jail under Subsection 77-18-105(6).

4971 (13) "Treatment program" means:

- 4972 (a) an alcohol treatment program;
- 4973 (b) a substance abuse treatment program;
- 4974 (c) a sex offender treatment program; or
- 4975 (d) an alternative treatment program.

4976 Section 88. Section **64-13e-103** is amended to read:

4977 **64-13e-103. Contracts for housing state incarcerated individuals.**

4978 (1) Subject to Subsection (6), the department may contract with a county to house state
4979 [~~inmates~~] incarcerated individuals in a county or other correctional facility.

4980 (2) The department shall give preference for placement of state [~~inmates~~] incarcerated
4981 individuals, over private entities, to county correctional facility bed spaces for which the
4982 department has contracted under Subsection (1).

4983 (3) (a) The compensation rate for housing state [~~inmates~~] incarcerated individuals
4984 pursuant to a contract described in Subsection (1) shall be:

- 4985 (i) except as provided in Subsection (3)(a)(ii), 83.19% of the actual state daily

4986 incarceration rate for beds in a county that, pursuant to the contract, are dedicated to a
4987 treatment program for state [inmates] incarcerated individuals, if the treatment program is
4988 approved by the department under Subsection (3)(c);

4989 (ii) 74.18% of the actual state daily incarceration rate for beds in a county that,
4990 pursuant to the contract, are dedicated to an alternative treatment program for state [inmates]
4991 incarcerated individuals, if the alternative treatment program is approved by the department
4992 under Subsection (3)(c); and

4993 (iii) 66.23% of the actual state daily incarceration rate for beds in a county other than
4994 the beds described in Subsections (3)(a)(i) and (ii).

4995 (b) The department shall:

4996 (i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
4997 Rulemaking Act, that establish standards that a treatment program is required to meet before
4998 the treatment program is considered for approval for the purpose of a county receiving payment
4999 based on the rate described in Subsection (3)(a)(i) or (ii); and

5000 (ii) determine on an annual basis, based on appropriations made by the Legislature for
5001 the contracts described in this section, whether to approve a treatment program that meets the
5002 standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment
5003 based on the rate described in Subsection (3)(a)(i) or (ii).

5004 (c) The department may not approve a treatment program for the purpose of a county
5005 receiving payment based on the rate described in Subsection (3)(a)(i) or (ii), unless:

5006 (i) the program meets the standards established under Subsection (3)(b)(i);

5007 (ii) the department determines that the Legislature has appropriated sufficient funds to:

5008 (A) pay the county that provides the treatment program at the rate described in
5009 Subsection (3)(a)(i) or (ii); and

5010 (B) pay each county that does not provide a treatment program an amount per state
5011 [inmate] incarcerated individual that is not less than the amount per state [inmate] incarcerated
5012 individual received for the preceding fiscal year by a county that did not provide a treatment
5013 program; and

5014 (iii) the department determines that the treatment program is needed by the department
5015 at the location where the treatment program will be provided.

5016 (4) Compensation to a county for state [inmates] incarcerated individuals incarcerated

5017 under this section shall be made by the department.

5018 (5) Counties that contract with the department under Subsection (1) shall, on or before
5019 June 30 of each year, submit a report to the department that includes:

5020 (a) the number of state [inmates] incarcerated individuals the county housed under this
5021 section; and

5022 (b) the total number of state [inmate] incarcerated individual days of incarceration that
5023 were provided by the county.

5024 (6) Except as provided under Subsection (7), the department may not enter into a
5025 contract described under Subsection (1), unless:

5026 (a) beginning July 1, 2023, the county jail within the county is in compliance with the
5027 reporting requirements described in Subsection 17-22-32(2); and

5028 (b) the Legislature has previously passed a joint resolution that includes the following
5029 information regarding the proposed contract:

5030 (i) the approximate number of beds to be contracted;

5031 (ii) the daily rate at which the county is paid to house a state [inmate] incarcerated
5032 individual;

5033 (iii) the approximate amount of the county's long-term debt; and

5034 (iv) the repayment time of the debt for the facility where the [inmates] incarcerated
5035 individuals are to be housed.

5036 (7) The department may enter into a contract with a county government to house
5037 [inmates] incarcerated individuals without complying with the approval process described in
5038 Subsection (6) only if the county facility was under construction, or already in existence, on
5039 March 16, 2001.

5040 (8) Any resolution passed by the Legislature under Subsection (6) does not bind or
5041 obligate the Legislature or the department regarding the proposed contract.

5042 Section 89. Section **64-13e-103.2** is amended to read:

5043 **64-13e-103.2. State daily incarceration rate -- Limits -- Payments to jails.**

5044 (1) Notwithstanding Sections 64-13e-103 and 64-13e-103.1, the actual state daily
5045 incarceration rate shall be \$85.27. This rate shall apply to [inmates] incarcerated individuals
5046 under Section 64-13e-103 and probationary and parole [inmates] incarcerated individuals under
5047 Section 64-13e-104.

5048 (2) Notwithstanding Subsection 64-13e-103(3)(a), the number of jail beds contracted
5049 for shall be 1450 at the base rate of 71.57%, with the exception of:

5050 (a) the beds set aside for Subsection 64-13e-103(3)(a)(i) which shall be 434 beds and
5051 shall be reimbursed at 88.53% of the actual state daily incarceration rate; and

5052 (b) the beds set aside for Subsection 64-13e-103(3)(a)(ii) which shall be 235 beds and
5053 shall be reimbursed at 79.52% of the actual state daily incarceration rate.

5054 (3) Notwithstanding Subsection 64-13e-104(9), the five year average state probationary
5055 or parole [inmate] incarcerated individual days is set at 300,000 days.

5056 (4) Notwithstanding Subsection 64-13e-104(2), within funds appropriated by the
5057 Legislature for this purpose, the Division of Finance shall pay a county that houses a state
5058 probationary [inmate] incarcerated individual or a state parole [inmate] incarcerated individual
5059 at a rate of 50% of the actual state daily incarceration rate.

5060 (5) Expenditures for Section 64-13e-103 shall be \$35,173,900 annually.

5061 (6) Expenditures for Section 64-13e-104 shall be \$12,790,700 annually.

5062 Section 90. Section 64-13e-104 is amended to read:

5063 **64-13e-104. Housing of state probationary incarcerated individuals or state**
5064 **parole incarcerated individuals -- Payments.**

5065 (1) (a) A county shall accept and house a state probationary [inmate] incarcerated
5066 individual or a state parole [inmate] incarcerated individual in a county correctional facility,
5067 subject to available resources.

5068 (b) A county may release a number of [inmates] incarcerated individuals from a county
5069 correctional facility, but not to exceed the number of state probationary [inmates] incarcerated
5070 individuals in excess of the number of [inmates] incarcerated individuals funded by the
5071 appropriation authorized in Subsection (2) if:

5072 (i) the state does not fully comply with the provisions of Subsection (9) for the most
5073 current fiscal year; or

5074 (ii) funds appropriated by the Legislature for this purpose are less than 50% of the
5075 actual county daily incarceration rate.

5076 (2) Within funds appropriated by the Legislature for this purpose, the Division of
5077 Finance shall pay a county that houses a state probationary [inmate] incarcerated individual or
5078 a state parole [inmate] incarcerated individual at a rate of 47.89% of the actual county daily

5079 incarceration rate.

5080 (3) Funds appropriated by the Legislature under Subsection (2):

5081 (a) are nonlapsing;

5082 (b) may only be used for the purposes described in Subsection (2) and Subsection (10);

5083 and

5084 (c) may not be used for:

5085 (i) the costs of administering the payment described in this section; or

5086 (ii) payment of contract costs under Section [64-13e-103](#).

5087 (4) The costs described in Subsection (3)(c)(i) shall be covered by legislative
5088 appropriation.

5089 (5) (a) The Division of Finance shall administer the payment described in Subsection
5090 (2) and Subsection (10).

5091 (b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G,
5092 Chapter 3, Utah Administrative Rulemaking Act, establish procedures for collecting data from
5093 counties for the purpose of completing the calculations described in this section.

5094 (c) Notwithstanding any other provision of this section, CCJJ shall adjust the amount
5095 of the payments described in Subsection (7)(b), on a pro rata basis, to ensure that the total
5096 amount of the payments made does not exceed the amount appropriated by the Legislature for
5097 the payments.

5098 (6) Each county that receives the payment described in Subsection (2) and Subsection
5099 (10) shall:

5100 (a) on at least a monthly basis, submit a report to CCJJ that includes:

5101 (i) the number of state probationary ~~[inmates]~~ incarcerated individuals and state parole
5102 ~~[inmates]~~ incarcerated individuals the county housed under this section;

5103 (ii) the total number of state probationary ~~[inmate]~~ incarcerated individual days of
5104 incarceration and state parole ~~[inmate]~~ incarcerated individual days of incarceration that were
5105 provided by the county;

5106 (iii) the total number of offenders housed pursuant to Subsection [64-13-21\(2\)\(b\)](#); and

5107 (iv) the total number of days of incarceration of offenders housed pursuant to
5108 Subsection [64-13-21\(2\)\(b\)](#); and

5109 (b) before September 15 of every third year beginning in 2022, calculate and inform

5110 CCJJ of the county's jail daily incarceration costs for the preceding fiscal year.

5111 (7) (a) On or before September 30 of each year, CCJJ shall:

5112 (i) compile the information from the reports described in Subsection (6)(a) that relate
5113 to the preceding state fiscal year and provide a copy of the compilation to each county that
5114 submitted a report; and

5115 (ii) calculate:

5116 (A) the actual county incarceration rate, based on the most recent year that data was
5117 reported in accordance with Subsection (6)(b); and

5118 (B) the final county incarceration rate.

5119 (b) On or before October 15 of each year, CCJJ shall inform the Division of Finance
5120 and each county of:

5121 (i) the actual county incarceration rate;

5122 (ii) the final county incarceration rate; and

5123 (iii) the exact amount of the payment described in this section that shall be made to
5124 each county.

5125 (8) On or before December 15 of each year, the Division of Finance shall distribute the
5126 payment described in Subsection (7)(b) in a single payment to each county.

5127 (9) (a) The amount paid to each county under Subsection (8) shall be calculated on a
5128 pro rata basis, based on the average number of state probationary [~~inmate~~] incarcerated
5129 individual days of incarceration and the average state parole [~~inmate~~] incarcerated individual
5130 days of incarceration that were provided by each county for the preceding five state fiscal
5131 years; and

5132 (b) if funds are available, the total number of days of incarceration of offenders housed
5133 pursuant to Subsection [64-13-21\(2\)\(b\)](#).

5134 (10) If funds appropriated under Subsection (2) remain after payments are made
5135 pursuant to Subsection (8), the Division of Finance shall pay a county that houses in its jail a
5136 person convicted of a felony who is on probation or parole and who is incarcerated pursuant to
5137 Subsection [64-13-21\(2\)\(b\)](#) on a pro rata basis not to exceed 50% of the actual county daily
5138 incarceration rate.

5139 Section 91. Section **64-13e-105** is amended to read:

5140 **64-13e-105. Subcommittee on Jail Contracting and Reimbursement -- Purpose --**

5141 **Responsibilities -- Membership.**

5142 (1) There is created within the Commission on Criminal and Juvenile Justice, the
5143 Subcommittee on Jail Contracting and Reimbursement consisting of the individuals listed in
5144 Subsection (3).

5145 (2) The subcommittee shall meet at least quarterly to review, discuss, and make
5146 recommendations for:

5147 (a) the state daily incarceration rate, described in Section [64-13e-103.1](#);

5148 (b) the county daily incarceration rate;

5149 (c) jail contracting and jail reimbursement processes and goals, including the creation
5150 of a comprehensive statewide system of jail contracting and reimbursement;

5151 (d) developing a partnership between the state and counties to create common goals for
5152 housing state ~~[inmates]~~ incarcerated individuals;

5153 (e) calculations for the projected number of beds needed;

5154 (f) programming for ~~[inmates]~~ incarcerated individuals while incarcerated;

5155 (g) proposals to reduce recidivism;

5156 (h) enhancing partnerships to improve law enforcement and incarceration programs;

5157 (i) ~~[inmate]~~ incarcerated individuals transportation costs; and

5158 (j) the compilation described in Subsection [64-13e-104](#)(7).

5159 (3) The membership of the subcommittee shall consist of the following nine members:

5160 (a) as designated by the Utah Sheriffs Association:

5161 (i) one sheriff of a county that is currently under contract with the department to house
5162 state ~~[inmates]~~ incarcerated individuals; and

5163 (ii) one sheriff of a county that is currently receiving reimbursement from the
5164 department for housing state probationary ~~[inmates]~~ incarcerated individuals or state parole
5165 ~~[inmates]~~ incarcerated individuals;

5166 (b) the executive director of the department or the executive director's designee;

5167 (c) as designated by the Utah Association of Counties:

5168 (i) one member of the legislative body of one county that is currently under contract
5169 with the department to house state ~~[inmates]~~ incarcerated individuals; and

5170 (ii) one member of the legislative body of one county that is currently receiving
5171 reimbursement from the department for housing ~~[state probationary inmates or state parole~~

5172 inmates] individuals on probation or individuals on parole;

5173 (d) the executive director of the Commission on Criminal and Juvenile Justice or the
5174 executive director's designee;

5175 (e) one member of the House of Representatives, appointed by the speaker of the
5176 House of Representatives;

5177 (f) one member of the Senate, appointed by the president of the Senate; and

5178 (g) the executive director of the Governor's Office of Planning and Budget or the
5179 executive director's designee.

5180 (4) The subcommittee shall report to the Law Enforcement and Criminal Justice
5181 Interim Committee in November 2022 and 2024 on progress and efforts to create a
5182 comprehensive statewide jail reimbursement and contracting system.

5183 (5) The subcommittee shall report to the Executive Offices and Criminal Justice
5184 Appropriations Subcommittee not later than October 31 in 2022, 2023, and 2024 on costs
5185 associated with creating a comprehensive statewide jail reimbursement and contracting system.

5186 (6) (a) A member who is not a legislator may not receive compensation or benefits for
5187 the member's service, but may receive per diem and travel expenses as allowed in:

5188 (i) Section [63A-3-106](#);

5189 (ii) Section [63A-3-107](#); and

5190 (iii) rules made by the Division of Finance according to Sections [63A-3-106](#) and
5191 [63A-3-107](#).

5192 (b) Compensation and expenses of a member who is a legislator are governed by
5193 Section [36-2-2](#) and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

5194 Section 92. Section **64-13g-101** is amended to read:

5195 **64-13g-101. Definitions.**

5196 As used in this chapter:

5197 (1) "Average daily population" means the average daily number of individuals on
5198 parole or felony probation in the region during the applicable fiscal year.

5199 (2) "Baseline parole employment rate" means the average of the parole employment
5200 rates for fiscal years 2023, 2024, and 2025.

5201 (3) "Baseline probation employment rate" means the average of the probation
5202 employment rates for fiscal years 2023, 2024, and 2025.

5203 (4) "Department" means the Department of Corrections.

5204 (5) "Eligible employment" means an occupation, or combined occupations, that:

5205 (a) consist of at least 130 hours in a 30-day period; and

5206 (b) are verified via paystubs, employment letters, contracts, or other reliable methods,

5207 as determined by the department.

5208 (6) "Evidence-based" means a supervision policy, procedure, program, or practice

5209 demonstrated by scientific research to reduce recidivism of individuals on parole or felony

5210 probation.

5211 (7) "Marginal cost of incarceration" means the total costs of incarceration, per [inmate]

5212 incarcerated individual, that fluctuate based on [inmate] incarcerated individual population.

5213 (8) "Office" means the Governor's Office of Planning and Budget.

5214 (9) "Parole employment rate" means the percentage of individuals on parole who held

5215 eligible employment for at least nine months in a one-year period, if at least a portion of the

5216 nine-months was during the preceding fiscal year.

5217 (10) "Probation employment rate" means the percentage of individuals on felony

5218 probation who held eligible employment for at least nine months in a one-year period, if at

5219 least a portion of the nine-months was during the preceding fiscal year.

5220 (11) "Program" means the Adult Probation and Parole Employment Incentive Program,

5221 created in Section [64-13g-102](#).

5222 (12) "Region" means one of the geographic regions into which the Department of

5223 Corrections has divided the state for purposes of supervising adult probation and parole.

5224 (13) "Restricted account" means the Employment Incentive Restricted Account created

5225 in Section [64-13g-103](#).

5226 Section 93. Section **76-3-201** is amended to read:

5227 **76-3-201. Sentences or combination of sentences allowed -- Restitution and other**
5228 **costs -- Civil penalties.**

5229 (1) As used in this section:

5230 (a) (i) "Convicted" means:

5231 (A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a

5232 mental illness; or

5233 (B) having received a judgment of guilty or a judgment of guilty with a mental illness.

- 5234 (ii) "Convicted" does not include an adjudication of an offense under Section 80-6-701.
- 5235 (b) "Restitution" means the same as that term is defined in Section 77-38b-102.
- 5236 (2) Within the limits provided by this chapter, a court may sentence an individual
- 5237 convicted of an offense to any one of the following sentences, or combination of the following
- 5238 sentences:
- 5239 (a) to pay a fine;
- 5240 (b) to removal or disqualification from public or private office;
- 5241 (c) except as otherwise provided by law, to probation in accordance with Section
- 5242 77-18-105;
- 5243 (d) to imprisonment;
- 5244 (e) on or after April 27, 1992, to life in prison without parole; or
- 5245 (f) to death.
- 5246 (3) (a) This chapter does not deprive a court of authority conferred by law:
- 5247 (i) to forfeit property;
- 5248 (ii) to dissolve a corporation;
- 5249 (iii) to suspend or cancel a license;
- 5250 (iv) to permit removal of an individual from office;
- 5251 (v) to cite for contempt; or
- 5252 (vi) to impose any other civil penalty.
- 5253 (b) A court may include a civil penalty in a sentence.
- 5254 (4) In addition to any other sentence that a sentencing court may impose, the court shall
- 5255 order an individual to:
- 5256 (a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution
- 5257 Act;
- 5258 (b) subject to Subsection (5) and Section 77-32b-104, pay the cost of any government
- 5259 transportation if the individual was:
- 5260 (i) transported, in accordance with a court order, from one county to another county
- 5261 within the state;
- 5262 (ii) charged with a felony or a misdemeanor; and
- 5263 (iii) convicted of an offense;
- 5264 (c) subject to Section 77-32b-104, pay the cost expended by an appropriate

5265 governmental entity under Section 77-30-24 for the extradition of the individual if the
5266 individual:

5267 (i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve
5268 pending criminal charges; and

5269 (ii) is convicted of an offense in the county for which the individual is returned;

5270 (d) subject to Subsection (6) and Subsections 77-32b-104(2), (3), and (4), pay the cost
5271 of medical care, treatment, hospitalization, and related transportation, as described in Section
5272 17-50-319, that is provided by a county to the individual while the individual is in a county
5273 correctional facility before and after sentencing if:

5274 (i) the individual is convicted of an offense that results in incarceration in the county
5275 correctional facility; and

5276 (ii) (A) the individual is not a state ~~prisoner~~ incarcerated individual housed in the
5277 county correctional facility through a contract with the Department of Corrections; or

5278 (B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104
5279 if the individual is ~~[a state probationary inmate or a state parole inmate]~~ on probation or parole;
5280 and

5281 (e) pay any other cost that the court determines is appropriate under Section
5282 77-32b-104.

5283 (5) (a) The court may not order an individual to pay the costs of government
5284 transportation under Subsection (4)(b) if:

5285 (i) the individual is charged with an infraction or a warrant is issued for an infraction
5286 on a subsequent failure to appear; or

5287 (ii) the individual was not transported in accordance with a court order.

5288 (b) (i) The cost of governmental transportation under Subsection (4)(b) shall be
5289 calculated according to the following schedule:

5290 (A) \$100 for up to 100 miles that an individual is transported;

5291 (B) \$200 for 100 miles to 200 miles that an individual is transported; and

5292 (C) \$350 for 200 miles or more that an individual is transported.

5293 (ii) The schedule under Subsection (5)(b)(i) applies to each individual transported
5294 regardless of the number of individuals transported in a single trip.

5295 (6) The cost of medical care under Subsection (4)(d) does not include expenses

5296 incurred by the county correctional facility in providing reasonable accommodation for an
5297 [inmate] incarcerated individual qualifying as an individual with a disability as defined and
5298 covered by the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including
5299 medical and mental health treatment for the [inmate's] incarcerated individual's disability.

5300 Section 94. Section **76-3-202** is amended to read:

5301 **76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time**
5302 **served on parole -- Discretion of Board of Pardons and Parole.**

5303 (1) Every individual committed to the state prison to serve an indeterminate term and,
5304 after December 31, 2018, released on parole shall complete a term of parole that extends
5305 through the expiration of the individual's maximum sentence unless the parole is earlier
5306 terminated by the Board of Pardons and Parole in accordance with the supervision length
5307 guidelines established by the Utah Sentencing Commission under Section [63M-7-404](#), as
5308 described in Subsection [77-27-5\(7\)](#), to the extent the guidelines are consistent with the
5309 requirements of the law.

5310 (2) (a) Except as provided in Subsection (2)(b), every individual committed to the state
5311 prison to serve an indeterminate term and released on parole on or after October 1, 2015, but
5312 before January 1, 2019, shall, upon completion of three years on parole outside of confinement
5313 and without violation, be terminated from the individual's sentence unless the parole is earlier
5314 terminated by the Board of Pardons and Parole or is terminated pursuant to Section [64-13-21](#).

5315 (b) Every individual committed to the state prison to serve an indeterminate term and
5316 later released on parole on or after July 1, 2008, but before January 1, 2019, and who was
5317 convicted of any felony offense under Chapter 5, Offenses Against the Individual, or any
5318 attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a
5319 term of parole that extends through the expiration of the individual's maximum sentence,
5320 unless the parole is earlier terminated by the Board of Pardons and Parole.

5321 (3) Every individual convicted of a second degree felony for violating Section
5322 [76-5-404](#), forcible sexual abuse; Section [76-5-404.1](#), sexual abuse of a child; or Section
5323 [76-5-404.3](#), aggravated sexual abuse of a child; or attempting, conspiring, or soliciting the
5324 commission of a violation of any of those sections, and who is paroled before July 1, 2008,
5325 shall, upon completion of 10 years parole outside of confinement and without violation, be
5326 terminated from the sentence unless the individual is earlier terminated by the Board of

5327 Pardons and Parole.

5328 (4) An individual who violates the terms of parole, while serving parole, for any
5329 offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and
5330 Parole be recommitted to prison to serve the portion of the balance of the term as determined
5331 by the Board of Pardons and Parole, but not to exceed the maximum term.

5332 (5) An individual paroled following a former parole revocation may not be discharged
5333 from the individual's sentence until:

5334 (a) the individual has served the applicable period of parole under this section outside
5335 of confinement;

5336 (b) the individual's maximum sentence has expired; or

5337 (c) the Board of Pardons and Parole orders the individual to be discharged from the
5338 sentence.

5339 (6) (a) All time served on parole, outside of confinement and without violation,
5340 constitutes service toward the total sentence.

5341 (b) Any time an individual spends outside of confinement after commission of a parole
5342 violation does not constitute service toward the total sentence unless the individual is
5343 exonerated at a parole revocation hearing.

5344 (c) (i) Any time an individual spends in confinement awaiting a hearing before the
5345 Board of Pardons and Parole or a decision by the board concerning revocation of parole
5346 constitutes service toward the total sentence.

5347 (ii) In the case of exoneration by the board, the time spent is included in computing the
5348 total parole term.

5349 (7) When a parolee causes the parolee's absence from the state without authority from
5350 the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence,
5351 avoidance, or evasion tolls the parole period.

5352 (8) (a) While on parole, time spent in confinement outside the state may not be credited
5353 toward the service of any Utah sentence.

5354 (b) Time in confinement outside the state or in the custody of any tribal authority or the
5355 United States government for a conviction obtained in another jurisdiction tolls the expiration
5356 of the Utah sentence.

5357 (9) This section does not preclude the Board of Pardons and Parole from paroling or

5358 discharging an ~~[inmate]~~ incarcerated individual at any time within the discretion of the Board
5359 of Pardons and Parole unless otherwise specifically provided by law.

5360 (10) A parolee sentenced to lifetime parole may petition the Board of Pardons and
5361 Parole for termination of lifetime parole.

5362 Section 95. Section **76-3-203.5** is amended to read:

5363 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

5364 (1) As used in this section:

5365 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
5366 United States, or any district, possession, or territory of the United States for which the
5367 maximum punishment the offender may be subjected to exceeds one year in prison.

5368 (b) "Habitual violent offender" means a person convicted within the state of any violent
5369 felony and who on at least two previous occasions has been convicted of a violent felony and
5370 committed to either prison in Utah or an equivalent correctional institution of another state or
5371 of the United States either at initial sentencing or after revocation of probation.

5372 (c) "Violent felony" means:

5373 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
5374 any of the following offenses punishable as a felony:

5375 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
5376 Chapter 6, Part 1, Property Destruction;

5377 (B) assault by ~~[prisoner]~~ incarcerated individual, Section [76-5-102.5](#);

5378 (C) disarming a police officer, Section [76-5-102.8](#);

5379 (D) aggravated assault, Section [76-5-103](#);

5380 (E) aggravated assault by ~~[prisoner]~~ incarcerated individual, Section [76-5-103.5](#);

5381 (F) mayhem, Section [76-5-105](#);

5382 (G) stalking, Subsection [76-5-106.5\(2\)](#);

5383 (H) threat of terrorism, Section [76-5-107.3](#);

5384 (I) aggravated child abuse, Subsection [76-5-109.2\(3\)\(a\)](#) or (b);

5385 (J) commission of domestic violence in the presence of a child, Section [76-5-114](#);

5386 (K) abuse or neglect of a child with a disability, Section [76-5-110](#);

5387 (L) abuse or exploitation of a vulnerable adult, Section [76-5-111](#), [76-5-111.2](#),

5388 [76-5-111.3](#), or [76-5-111.4](#);

- 5389 (M) endangerment of a child or vulnerable adult, Section [76-5-112.5](#);
- 5390 (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
- 5391 (O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3,
- 5392 Kidnapping, Trafficking, and Smuggling;
- 5393 (P) rape, Section [76-5-402](#);
- 5394 (Q) rape of a child, Section [76-5-402.1](#);
- 5395 (R) object rape, Section [76-5-402.2](#);
- 5396 (S) object rape of a child, Section [76-5-402.3](#);
- 5397 (T) forcible sodomy, Section [76-5-403](#);
- 5398 (U) sodomy on a child, Section [76-5-403.1](#);
- 5399 (V) forcible sexual abuse, Section [76-5-404](#);
- 5400 (W) sexual abuse of a child, Section [76-5-404.1](#), or aggravated sexual abuse of a child,
- 5401 Section [76-5-404.3](#);
- 5402 (X) aggravated sexual assault, Section [76-5-405](#);
- 5403 (Y) sexual exploitation of a minor, Section [76-5b-201](#);
- 5404 (Z) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);
- 5405 (AA) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 5406 (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary
- 5407 and Criminal Trespass;
- 5408 (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
- 5409 (DD) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b);
- 5410 (EE) tampering with a witness under Subsection [76-8-508\(1\)](#);
- 5411 (FF) retaliation against a witness, victim, or informant under Section [76-8-508.3](#);
- 5412 (GG) tampering with a juror under Subsection [76-8-508.5\(2\)\(c\)](#);
- 5413 (HH) extortion to dismiss a criminal proceeding under Section [76-8-509](#) if by any
- 5414 threat or by use of force theft by extortion has been committed pursuant to Subsections
- 5415 [76-6-406\(2\)\(a\)](#), (b), and (i);
- 5416 (II) possession, use, or removal of explosive, chemical, or incendiary devices under
- 5417 Subsections [76-10-306\(3\)](#) through (6);
- 5418 (JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 5419 [76-10-307](#);

5420 (KK) purchase or possession of a dangerous weapon or handgun by a restricted person
5421 under Section 76-10-503;

5422 (LL) unlawful discharge of a firearm under Section 76-10-508;

5423 (MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

5424 (NN) bus hijacking under Section 76-10-1504; and

5425 (OO) discharging firearms and hurling missiles under Section 76-10-1505; or

5426 (ii) any felony violation of a criminal statute of any other state, the United States, or

5427 any district, possession, or territory of the United States which would constitute a violent

5428 felony as defined in this Subsection (1) if committed in this state.

5429 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the

5430 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender

5431 under this section, the penalty for a:

5432 (a) third degree felony is as if the conviction were for a first degree felony;

5433 (b) second degree felony is as if the conviction were for a first degree felony; or

5434 (c) first degree felony remains the penalty for a first degree penalty except:

5435 (i) the convicted person is not eligible for probation; and

5436 (ii) the Board of Pardons and Parole shall consider that the convicted person is a

5437 habitual violent offender as an aggravating factor in determining the length of incarceration.

5438 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall

5439 provide notice in the information or indictment that the defendant is subject to punishment as a

5440 habitual violent offender under this section. Notice shall include the case number, court, and

5441 date of conviction or commitment of any case relied upon by the prosecution.

5442 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant

5443 intends to deny that:

5444 (A) the defendant is the person who was convicted or committed;

5445 (B) the defendant was represented by counsel or had waived counsel; or

5446 (C) the defendant's plea was understandingly or voluntarily entered.

5447 (ii) The notice of denial shall be served not later than five days prior to trial and shall

5448 state in detail the defendant's contention regarding the previous conviction and commitment.

5449 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to

5450 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,

5451 of the:

5452 (i) defendant's previous convictions for violent felonies, except as otherwise provided
5453 in the Utah Rules of Evidence; or

5454 (ii) allegation against the defendant of being a habitual violent offender.

5455 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
5456 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
5457 the jury, in which case the allegation shall be tried immediately to the court.

5458 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section
5459 applies.

5460 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
5461 and the defendant shall be afforded an opportunity to present any necessary additional
5462 evidence.

5463 (iii) Before sentencing under this section, the trier of fact shall determine whether this
5464 section is applicable beyond a reasonable doubt.

5465 (d) If any previous conviction and commitment is based upon a plea of guilty or no
5466 contest, there is a rebuttable presumption that the conviction and commitment were regular and
5467 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
5468 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
5469 to establish by a preponderance of the evidence that the defendant was then represented by
5470 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
5471 was understandingly and voluntarily entered.

5472 (e) If the trier of fact finds this section applicable, the court shall enter that specific
5473 finding on the record and shall indicate in the order of judgment and commitment that the
5474 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
5475 under this section.

5476 (5) (a) The sentencing enhancement provisions of Section [76-3-407](#) supersede the
5477 provisions of this section.

5478 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
5479 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual
5480 Offenses, to determine if the convicted person is a habitual violent offender.

5481 (6) The sentencing enhancement described in this section does not apply if:

- 5482 (a) the offense for which the person is being sentenced is:
- 5483 (i) a grievous sexual offense;
- 5484 (ii) child kidnapping, Section 76-5-301.1;
- 5485 (iii) aggravated kidnapping, Section 76-5-302; or
- 5486 (iv) forcible sexual abuse, Section 76-5-404; and
- 5487 (b) applying the sentencing enhancement provided for in this section would result in a
- 5488 lower maximum penalty than the penalty provided for under the section that describes the
- 5489 offense for which the person is being sentenced.

5490 Section 96. Section 76-3-203.6 is amended to read:

5491 **76-3-203.6. Enhanced penalty for certain offenses committed by an incarcerated**

5492 **individual.**

5493 (1) As used in this section, "serving a sentence" means [~~a prisoner~~] an incarcerated

5494 individual is sentenced and committed to the custody of the Department of Corrections, the

5495 sentence has not been terminated or voided, and the [~~prisoner~~] incarcerated individual:

- 5496 (a) has not been paroled; or
- 5497 (b) is in custody after arrest for a parole violation.

5498 (2) If the trier of fact finds beyond a reasonable doubt that [~~a prisoner~~] an incarcerated

5499 individual serving a sentence for a capital felony or a first degree felony commits any offense

5500 listed in Subsection (5), the offense is a first degree felony and the court shall sentence the

5501 defendant to life in prison without parole.

5502 (3) Notwithstanding Subsection (2), the court may sentence the defendant to an

5503 indeterminate prison term of not less than 20 years and that may be for life if the court finds

5504 that the interests of justice would best be served and states the specific circumstances justifying

5505 the disposition on the record.

5506 (4) Subsection (2) does not apply if the [~~prisoner~~] incarcerated individual is younger

5507 than 18 years old at the time the offense listed in Subsection (5) is committed and is sentenced

5508 on or after May 10, 2016.

5509 (5) Offenses referred to in Subsection (2) are:

- 5510 (a) aggravated assault by [~~a prisoner~~] an incarcerated individual, Section 76-5-103.5;
- 5511 (b) mayhem, Section 76-5-105;
- 5512 (c) attempted murder, Section 76-5-203;

- 5513 (d) kidnapping, Section 76-5-301;
- 5514 (e) child kidnapping, Section 76-5-301.1;
- 5515 (f) aggravated kidnapping, Section 76-5-302;
- 5516 (g) rape, Section 76-5-402;
- 5517 (h) rape of a child, Section 76-5-402.1;
- 5518 (i) object rape, Section 76-5-402.2;
- 5519 (j) object rape of a child, Section 76-5-402.3;
- 5520 (k) forcible sodomy, Section 76-5-403;
- 5521 (l) sodomy on a child, Section 76-5-403.1;
- 5522 (m) aggravated sexual abuse of a child, Section 76-5-404.3;
- 5523 (n) aggravated sexual assault, Section 76-5-405;
- 5524 (o) aggravated arson, Section 76-6-103;
- 5525 (p) aggravated burglary, Section 76-6-203; and
- 5526 (q) aggravated robbery, Section 76-6-302.
- 5527 (6) The sentencing enhancement described in this section does not apply if:
- 5528 (a) the offense for which the person is being sentenced is:
- 5529 (i) a grievous sexual offense;
- 5530 (ii) child kidnapping, Section 76-5-301.1; or
- 5531 (iii) aggravated kidnapping, Section 76-5-302; and
- 5532 (b) applying the sentencing enhancement provided for in this section would result in a
- 5533 lower maximum penalty than the penalty provided for under the section that describes the
- 5534 offense for which the person is being sentenced.

5535 Section 97. Section 76-3-403 is amended to read:

5536 **76-3-403. Credit for good behavior against jail sentence for misdemeanors and**
5537 **certain felonies.**

5538 In any commitment for incarceration in a county jail or detention facility, other than the
5539 Utah State Prison, the custodial authority may in its discretion and upon good behavior of the
5540 [inmate] incarcerated individual allow up to 10 days credit against the sentence to be served for
5541 every 30 days served or up to two days credit for every 10 days served when the period to be
5542 served is less than 30 days if:

- 5543 (1) the incarceration is for a misdemeanor offense, and the sentencing judge has not

5544 entered an order to the contrary; or

5545 (2) the incarceration is part of a probation agreement for a felony offense, and the
5546 sentencing district judge has not entered an order to the contrary.

5547 Section 98. Section ~~76-3-403.5~~ is amended to read:

5548 **76-3-403.5. Work or school release from county jail or facility -- Conditions.**

5549 When an [~~inmate~~] individual is incarcerated in a county jail or in a detention facility,
5550 the custodial authority may, in accordance with the release policy of the facility, allow the
5551 [~~inmate~~] incarcerated individual to work outside of the jail or facility as part of a jail or facility
5552 supervised work detail, to seek or work at employment, or to attend an educational institution,
5553 if the [~~inmate's~~] incarcerated individual's incarceration:

5554 (1) is not for an offense for which release is prohibited under state law; and

5555 (2) (a) is for a misdemeanor offense, and the sentencing judge has not entered an order
5556 prohibiting release under this section; or

5557 (b) is part of a probation agreement for a felony offense, and the sentencing district
5558 judge has not entered an order prohibiting release under this section.

5559 Section 99. Section ~~76-5-101~~ is amended to read:

5560 **76-5-101. Definitions.**

5561 Unless otherwise provided, as used in this part:

5562 (1) "Detained individual" means an individual detained under Section ~~77-7-15~~.

5563 (2) [~~"Prisoner"~~] "Incarcerated individual" means an individual who is in custody of a
5564 peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or
5565 a facility used for confinement of delinquent juveniles operated by the Division of Juvenile
5566 Justice Services regardless of whether the confinement is legal.

5567 Section 100. Section ~~76-5-102.5~~ is amended to read:

5568 **76-5-102.5. Assault by incarcerated individual.**

5569 (1) (a) As used in this section, "assault" means an offense under Section ~~76-5-102~~.

5570 (b) Terms defined in Section ~~76-1-101.5~~ apply to this section.

5571 (2) An actor commits assault by [~~prisoner~~] incarcerated individual if the actor:

5572 (a) is [~~a prisoner~~] an incarcerated individual; and

5573 (b) intending to cause bodily injury, commits an assault.

5574 (3) A violation of Subsection (2) is a third degree felony.

5575 Section 101. Section **76-5-102.6** is amended to read:

5576 **76-5-102.6. Propelling object or substance at a correctional or peace officer --**

5577 **Penalties.**

5578 (1) (a) As used in this section, "infectious agent" means the same as that term is

5579 defined in Section [26-6-2](#).

5580 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

5581 (2) An actor commits the offense of propelling an object or substance at a correctional
5582 or peace officer if the actor:

5583 (a) is [~~a prisoner~~] an incarcerated individual or a detained individual; and

5584 (b) throws or otherwise propels an object or substance at a peace officer, a correctional
5585 officer, or an employee or volunteer, including a health care provider.

5586 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

5587 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
5588 felony if:

5589 (i) the object or substance causes substantial bodily injury to the peace officer, the
5590 correctional officer, or the employee or volunteer, including a health care provider; or

5591 (ii) (A) the object or substance is:

5592 (I) blood, urine, semen, or fecal material;

5593 (II) an infectious agent or a material that carries an infectious agent;

5594 (III) vomit or a material that carries vomit; or

5595 (IV) the actor's saliva, and the actor knows the actor is infected with HIV, hepatitis B,
5596 or hepatitis C; and

5597 (B) the object or substance comes into contact with any portion of the officer's,
5598 employee's, volunteer's, or health care provider's face, including the eyes or mouth, or comes
5599 into contact with any open wound on the officer's, employee's, volunteer's, or health care
5600 provider's body.

5601 (4) If an offense committed under this section amounts to an offense subject to a
5602 greater penalty under another provision of state law than under this section, this section does
5603 not prohibit prosecution and sentencing for the more serious offense.

5604 Section 102. Section **76-5-102.7** is amended to read:

5605 **76-5-102.7. Assault or threat of violence against health care provider, emergency**

- 5606 **medical service worker, or health facility employee, owner, or contractor -- Penalty.**
- 5607 (1) (a) As used in this section:
- 5608 (i) "Assault" means an offense under Section 76-5-102.
- 5609 (ii) "Emergency medical service worker" means an individual licensed under Section
- 5610 26-8a-302.
- 5611 (iii) "Health care provider" means the same as that term is defined in Section
- 5612 78B-3-403.
- 5613 (iv) "Health facility" means:
- 5614 (A) a health care facility as defined in Section 26-21-2; and
- 5615 (B) the office of a private health care provider, whether for individual or group
- 5616 practice.
- 5617 (v) "Health facility employee" means an employee, owner, or contractor of a health
- 5618 facility.
- 5619 (vi) "Threat of violence" means an offense under Section 76-5-107.
- 5620 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 5621 (2) (a) An actor commits assault or threat of violence against a health care provider or
- 5622 emergency medical service worker if:
- 5623 (i) the actor is not [~~a prisoner~~] an incarcerated individual or a detained individual;
- 5624 (ii) the actor commits an assault or threat of violence;
- 5625 (iii) the actor knew that the victim was a health care provider or emergency medical
- 5626 service worker; and
- 5627 (iv) the health care provider or emergency medical service worker was performing
- 5628 emergency or life saving duties within the scope of his or her authority at the time of the assault
- 5629 or threat of violence.
- 5630 (b) An actor commits assault or threat of violence against a health facility employee if:
- 5631 (i) the actor is not [~~a prisoner~~] an incarcerated individual or a detained individual;
- 5632 (ii) the actor commits an assault or threat of violence;
- 5633 (iii) the actor knew that the victim was a health facility employee; and
- 5634 (iv) the health facility employee was acting within the scope of the health facility
- 5635 employee's duties for the health facility.
- 5636 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

5637 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
5638 felony if the actor:

- 5639 (i) causes substantial bodily injury; and
- 5640 (ii) acts intentionally or knowingly.

5641 Section 103. Section **76-5-103.5** is amended to read:

5642 **76-5-103.5. Aggravated assault by incarcerated individual.**

5643 (1) (a) As used in this section, "aggravated assault" means an offense under Section
5644 [76-5-103](#).

5645 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

5646 (2) An actor commits aggravated assault by [~~prisoner~~] incarcerated individual if the
5647 actor:

5648 (a) is [~~a prisoner~~] an incarcerated individual; and

5649 (b) commits aggravated assault.

5650 (3) (a) A violation of Subsection (2) is a second degree felony.

5651 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a first degree
5652 felony if serious bodily injury was intentionally caused.

5653 Section 104. Section **76-5-412** is amended to read:

5654 **76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.**

5655 (1) (a) As used in this section:

5656 (i) "Actor" means:

5657 (A) a law enforcement officer, as defined in Section [53-13-103](#);

5658 (B) a correctional officer, as defined in Section [53-13-104](#);

5659 (C) a special function officer, as defined in Section [53-13-105](#); or

5660 (D) an employee of, or private provider or contractor for, the Department of

5661 Corrections or a county jail.

5662 (ii) "Indecent liberties" means the same as that term is defined in Section [76-5-401.1](#).

5663 (iii) "Person in custody" means an individual, either an adult 18 years old or older, or a
5664 minor younger than 18 years old, who is:

5665 (A) [~~a prisoner~~] an incarcerated individual, as defined in Section [76-5-101](#), and

5666 includes [~~a prisoner~~] an incarcerated individual who is in the custody of the Department of

5667 Corrections created under Section [64-13-2](#), but who is being housed at the Utah State Hospital

5668 established under Section [62A-15-601](#) or other medical facility;

5669 (B) under correctional supervision, such as at a work release facility or as a parolee or
5670 probationer; or

5671 (C) under lawful or unlawful arrest, either with or without a warrant.

5672 (iv) "Private provider or contractor" means a person that contracts or enters into a
5673 memorandum of understanding with [~~the Department of Corrections~~] [~~or with a county jail~~] a
5674 governmental or private entity to provide services or functions that are part of the operation of
5675 the Department of Corrections or a county jail under state or local law.

5676 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

5677 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts
5678 under Subsection (2)(b):

5679 (i) under circumstances not amounting to commission of, or an attempt to commit, an
5680 offense under Subsection (4); and

5681 (ii) (A) the actor knows that the individual is a person in custody; or
5682 (B) a reasonable person in the actor's position should have known under the
5683 circumstances that the individual was a person in custody.

5684 (b) Acts referred to in Subsection (2)(a) are:

5685 (i) having sexual intercourse with a person in custody;

5686 (ii) engaging in a sexual act with a person in custody involving the genitals of one
5687 individual and the mouth or anus of another individual; or

5688 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a
5689 person in custody by any foreign object, substance, instrument, or device, including a part of
5690 the human body; and

5691 (B) intending to cause substantial emotional or bodily pain to any individual.

5692 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
5693 relevant element of a violation of Subsection (2)(a).

5694 (3) (a) A violation of Subsection (2) is a third degree felony.

5695 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18
5696 years old, a violation of Subsection (2) is a second degree felony.

5697 (c) If the act committed under Subsection (3) amounts to an offense subject to a greater
5698 penalty under another provision of state law than is provided under this Subsection (3), this

5699 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

5700 (4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i)
5701 are:

5702 (a) Section 76-5-401, unlawful sexual activity with a minor;

5703 (b) Section 76-5-402, rape;

5704 (c) Section 76-5-402.1, rape of a child;

5705 (d) Section 76-5-402.2, object rape;

5706 (e) Section 76-5-402.3, object rape of a child;

5707 (f) Section 76-5-403, forcible sodomy;

5708 (g) Section 76-5-403.1, sodomy on a child;

5709 (h) Section 76-5-404, forcible sexual abuse;

5710 (i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated
5711 sexual abuse of a child; or

5712 (j) Section 76-5-405, aggravated sexual assault.

5713 (5) (a) It is not a defense to the commission of, or the attempt to commit, the offense of
5714 custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years
5715 old, that the actor:

5716 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
5717 the alleged offense; or

5718 (ii) was unaware of the true age of the person in custody.

5719 (b) Consent of the person in custody is not a defense to any violation or attempted
5720 violation of Subsection (2).

5721 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
5722 result of compulsion, as the defense is described in Subsection 76-2-302(1).

5723 Section 105. Section 76-8-309 is amended to read:

5724 **76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.**

5725 (1) (a) (i) [~~A prisoner~~] An incarcerated individual is guilty of escape if the [~~prisoner~~]
5726 incarcerated individual leaves official custody without lawful authorization.

5727 (ii) If [~~a prisoner~~] an incarcerated individual obtains authorization to leave official
5728 custody by means of deceit, fraud, or other artifice, the [~~prisoner~~] incarcerated individual has
5729 not received lawful authorization.

5730 (b) Escape under this Subsection (1) is a third degree felony except as provided under
5731 Subsection (1)(c).

5732 (c) Escape under this Subsection (1) is a second degree felony if:

5733 (i) the actor escapes from a state prison; or

5734 (ii) (A) the actor is convicted as a party to the offense, as defined in Section 76-2-202;
5735 and

5736 (B) the actor is an employee at or a volunteer of a law enforcement agency, the
5737 Department of Corrections, a county or district attorney's office, the office of the state attorney
5738 general, the Board of Pardons and Parole, or the courts, the Judicial Council, the
5739 Administrative Office of the Courts, or similar administrative units in the judicial branch of
5740 government.

5741 (2) (a) [~~A prisoner~~] An incarcerated individual is guilty of aggravated escape if in the
5742 commission of an escape the [~~prisoner~~] incarcerated individual uses a dangerous weapon, as
5743 defined in Section 76-1-101.5, or causes serious bodily injury to another.

5744 (b) Aggravated escape is a first degree felony.

5745 (3) [~~Any~~] A prison term imposed upon [~~a prisoner~~] an incarcerated individual for
5746 escape under this section shall run consecutively with any other sentence.

5747 (4) [~~For the purposes of~~] As used in this section:

5748 (a) "Confinement" means the [~~prisoner~~] incarcerated individual is:

5749 (i) housed in a state prison or any other facility pursuant to a contract with the [~~Utah~~
5750]Department of Corrections after being sentenced and committed and the sentence has not been
5751 terminated or voided or the [~~prisoner~~] incarcerated individual is not on parole;

5752 (ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county
5753 jail after sentencing and commitment and the sentence has not been terminated or voided or the
5754 [~~prisoner~~] incarcerated individual is not on parole; or

5755 (iii) lawfully detained following arrest.

5756 (b) "Escape" is considered to be a continuing activity commencing with the conception
5757 of the design to escape and continuing until the escaping [~~prisoner~~] incarcerated individual is
5758 returned to official custody or the [~~prisoner's~~] incarcerated individual's attempt to escape is
5759 thwarted or abandoned.

5760 (c) "Official custody" means arrest, whether with or without warrant, or confinement in

5761 a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement
 5762 pursuant to an order of the court or sentenced and committed and the sentence has not been
 5763 terminated or voided or the [~~prisoner~~] incarcerated individual is not on parole. [~~A person~~] An
 5764 individual is considered confined in the state prison if the [~~person~~] individual:

5765 (i) without authority fails to return to the person's place of confinement from work
 5766 release or home visit by the time designated for return;

5767 (ii) is in prehearing custody after arrest for parole violation;

5768 (iii) is being housed in a county jail, after felony commitment, pursuant to a contract
 5769 with the Department of Corrections; or

5770 (iv) is being transported as [~~a prisoner~~] an incarcerated individual in the state prison by
 5771 correctional officers.

5772 (d) [~~"Prisoner" means any person~~] "Incarcerated individual" means an individual who
 5773 is in official custody and includes [~~persons~~] individuals under trusty status.

5774 (e) "Volunteer" means [~~any person~~] an individual who donates service without pay or
 5775 other compensation except expenses actually and reasonably incurred as approved by the
 5776 supervising agency.

5777 Section 106. Section **76-8-311.3** is amended to read:

5778 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

5779 **Penalties.**

5780 (1) As used in this section:

5781 (a) "Contraband" means any item not specifically prohibited for possession by
 5782 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

5783 (b) "Controlled substance" means any substance defined as a controlled substance
 5784 under Title 58, Chapter 37, Utah Controlled Substances Act.

5785 (c) "Correctional facility" means:

5786 (i) any facility operated by or contracting with the Department of Corrections to house
 5787 offenders in either a secure or nonsecure setting;

5788 (ii) any facility operated by a municipality or a county to house or detain criminal
 5789 offenders;

5790 (iii) any juvenile detention facility; and

5791 (iv) any building or grounds appurtenant to the facility or lands granted to the state,

5792 municipality, or county for use as a correctional facility.

5793 (d) "Electronic cigarette product" means the same as that term is defined in Section
5794 76-10-101.

5795 (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,
5796 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
5797 Chapter 37, Utah Controlled Substances Act.

5798 (f) "Mental health facility" means the same as that term is defined in Section
5799 62A-15-602.

5800 (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.

5801 (h) "Offender" means a person in custody at a correctional facility.

5802 (i) "Secure area" means the same as that term is defined in Section 76-8-311.1.

5803 (j) "Tobacco product" means the same as that term is defined in Section 76-10-101.

5804 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may
5805 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,
5806 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
5807 quantity may be:

5808 (a) transported to or upon a correctional or mental health facility;

5809 (b) sold or given away at any correctional or mental health facility;

5810 (c) given to or used by any offender at a correctional or mental health facility; or

5811 (d) knowingly or intentionally possessed at a correctional or mental health facility.

5812 (3) It is a defense to any prosecution under this section if the accused in committing the
5813 act made criminal by this section with respect to:

5814 (a) a correctional facility operated by the Department of Corrections, acted in
5815 conformity with departmental rule or policy;

5816 (b) a correctional facility operated by a municipality, acted in conformity with the
5817 policy of the municipality;

5818 (c) a correctional facility operated by a county, acted in conformity with the policy of
5819 the county; or

5820 (d) a mental health facility, acted in conformity with the policy of the mental health
5821 facility.

5822 (4) (a) An individual who transports to or upon a correctional facility, or into a secure

5823 area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of
5824 escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

5825 (b) An individual who provides or sells to any offender at a correctional facility, or any
5826 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous
5827 weapon, or implement of escape is guilty of a second degree felony.

5828 (c) An offender who possesses at a correctional facility, or a detainee who possesses at
5829 a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
5830 implement of escape is guilty of a second degree felony.

5831 (d) An individual who, without the permission of the authority operating the
5832 correctional facility or the secure area of a mental health facility, knowingly possesses at a
5833 correctional facility or a secure area of a mental health facility any firearm, ammunition,
5834 dangerous weapon, or implement of escape is guilty of a third degree felony.

5835 (e) An individual violates Section 76-10-306 who knowingly or intentionally
5836 transports, possesses, distributes, or sells any explosive in a correctional facility or mental
5837 health facility.

5838 (5) (a) An individual is guilty of a third degree felony who, without the permission of
5839 the authority operating the correctional facility or secure area of a mental health facility,
5840 knowingly transports to or upon a correctional facility or into a secure area of a mental health
5841 facility any:

5842 (i) spirituous or fermented liquor;

5843 (ii) medicine, whether or not lawfully prescribed for the offender; or

5844 (iii) poison in any quantity.

5845 (b) An individual is guilty of a third degree felony who knowingly violates correctional
5846 or mental health facility policy or rule by providing or selling to any offender at a correctional
5847 facility or detainee within a secure area of a mental health facility any:

5848 (i) spirituous or fermented liquor;

5849 (ii) medicine, whether or not lawfully prescribed for the offender; or

5850 (iii) poison in any quantity.

5851 (c) An [inmate] incarcerated individual is guilty of a third degree felony who, in
5852 violation of correctional or mental health facility policy or rule, possesses at a correctional
5853 facility or in a secure area of a mental health facility any:

- 5854 (i) spirituous or fermented liquor;
- 5855 (ii) medicine, other than medicine provided by the facility's health care providers in
5856 compliance with facility policy; or
- 5857 (iii) poison in any quantity.
- 5858 (d) An individual is guilty of a class A misdemeanor who, with the intent to directly or
5859 indirectly provide or sell any tobacco product, electronic cigarette product, or nicotine product
5860 to an offender, directly or indirectly:
- 5861 (i) transports, delivers, or distributes any tobacco product, electronic cigarette product,
5862 or nicotine product to an offender or on the grounds of any correctional facility;
- 5863 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
5864 person to transport any tobacco product, electronic cigarette product, or nicotine product to an
5865 offender or on any correctional facility, if the person is acting with the mental state required for
5866 the commission of an offense; or
- 5867 (iii) facilitates, arranges, or causes the transport of any tobacco product, electronic
5868 cigarette product, or nicotine product in violation of this section to an offender or on the
5869 grounds of any correctional facility.
- 5870 (e) An individual is guilty of a class A misdemeanor who, without the permission of
5871 the authority operating the correctional or mental health facility, fails to declare or knowingly
5872 possesses at a correctional facility or in a secure area of a mental health facility any:
- 5873 (i) spirituous or fermented liquor;
- 5874 (ii) medicine; or
- 5875 (iii) poison in any quantity.
- 5876 (f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B
5877 misdemeanor who, without the permission of the authority operating the correctional facility,
5878 knowingly engages in any activity that would facilitate the possession of any contraband by an
5879 offender in a correctional facility.
- 5880 (ii) The provisions of Subsection (5)(d) regarding any tobacco product, electronic
5881 cigarette product, or nicotine product take precedence over this Subsection (5)(f).
- 5882 (g) Exemptions may be granted for worship for Native American [immates]
5883 incarcerated individuals pursuant to Section [64-13-40](#).
- 5884 (6) The possession, distribution, or use of a controlled substance at a correctional

5885 facility or in a secure area of a mental health facility shall be prosecuted in accordance with
5886 Title 58, Chapter 37, Utah Controlled Substances Act.

5887 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
5888 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing
5889 any tobacco product, electronic cigarette product, or nicotine product to offenders is a class A
5890 misdemeanor.

5891 Section 107. Section **76-8-318** is amended to read:

5892 **76-8-318. Assault or threat of violence against child welfare worker -- Penalty.**

5893 (1) As used in this section:

5894 (a) "Assault" means the same as that term is defined in Section [76-5-102](#).

5895 (b) "Child welfare worker" means an employee of the Division of Child and Family
5896 Services created in Section [80-2-201](#).

5897 (c) "Threat of violence" means the same as that term is defined in Section [76-5-107](#).

5898 (2) An individual who commits an assault or threat of violence against a child welfare
5899 worker is guilty of a class A misdemeanor if:

5900 (a) the individual is not:

5901 (i) ~~a prisoner~~ an incarcerated individual or an individual detained under Section
5902 [77-7-15](#); or

5903 (ii) a minor in the custody of or receiving services from a division within the
5904 Department of Health and Human Services;

5905 (b) the individual knew that the victim was a child welfare worker; and

5906 (c) the child welfare worker was acting within the scope of the child welfare worker's
5907 authority at the time of the assault or threat of violence.

5908 (3) An individual who violates this section is guilty of a third degree felony if the
5909 individual:

5910 (a) causes substantial bodily injury, as defined in Section [76-1-101.5](#); and

5911 (b) acts intentionally or knowingly.

5912 Section 108. Section **77-16b-102** is amended to read:

5913 **77-16b-102. Definitions.**

5914 As used in this chapter:

5915 (1) "Correctional facility" means:

- 5916 (a) a county jail;
- 5917 (b) a secure correctional facility as defined by Section 64-13-1; or
- 5918 (c) a secure care facility as defined in Section 80-1-102.

5919 (2) "Correctional facility administrator" means:

- 5920 (a) a county sheriff in charge of a county jail;
- 5921 (b) a designee of the executive director of the [Utah] Department of Corrections; or
- 5922 (c) a designee of the director of the Division of Juvenile Justice Services.

5923 (3) "Incarcerated individual" means an individual who:

- 5924 (a) is a pretrial detainee or who has been committed to the custody of a sheriff or the
- 5925 Department of Corrections and is physically in a correctional facility; and
- 5926 (b) is 18 years old or older and younger than 21 years old and has been committed to
- 5927 the custody of the Division of Juvenile Justice Services.

5928 [~~(3)~~] (4) "Medical supervision" means under the direction of a licensed physician,

5929 physician assistant, or nurse practitioner.

5930 [~~(4)~~] (5) "Mental health therapist" means the same as that term is defined in Section

5931 58-60-102.

5932 [~~(5)~~] "~~Prisoner~~" means:]

5933 [~~(a) any individual who is a pretrial detainee or who has been committed to the custody~~

5934 ~~of a sheriff or the Utah Department of Corrections, and who is physically in a correctional~~

5935 ~~facility; and]~~

5936 [~~(b) any individual who is 18 years old or older and younger than 21 years old, and~~

5937 ~~who has been committed to the custody of the Division of Juvenile Justice Services.]~~

5938 Section 109. Section 77-16b-103 is amended to read:

5939 **77-16b-103. Involuntary feeding or hydration of incarcerated individuals --**

5940 **Petition procedures, venue -- Incarcerated individuals rights.**

5941 (1) A correctional facility administrator may petition the district court where the

5942 correctional facility is located for an order permitting the involuntary feeding or hydration of

5943 [~~any prisoner~~] an incarcerated individual who is likely to suffer severe harm or death by

5944 refusing to accept sufficient nutrition or hydration.

5945 (2) Prior to the filing of a petition under this section, a mental health therapist who is

5946 designated by the correctional facility administrator shall conduct a mental health evaluation of

5947 the subject [~~prisoner~~] incarcerated individual.

5948 (3) Upon the filing of a petition, the district court shall hold a hearing within two
5949 working days. The court:

5950 (a) shall confidentially review the [~~prisoner's~~] incarcerated individual's medical and
5951 mental health records as they are available;

5952 (b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence,
5953 concerning the circumstances of the [~~prisoner's~~] incarcerated individual's lack of nutrition or
5954 hydration; and

5955 (c) may exclude from the hearing [~~any person~~] an individual whose presence is not
5956 necessary for the purposes of the hearing, due to the introduction of personal medical and
5957 mental health evidence.

5958 (4) After conducting the hearing under Subsection (3), the district court shall issue an
5959 order to involuntarily feed or hydrate the [~~prisoner~~] incarcerated individual, if the court finds by
5960 a preponderance of evidence that:

5961 (a) (i) the [~~prisoner~~] incarcerated individual is likely to suffer severe harm or death by
5962 refusing to accept sufficient nutrition or hydration; and

5963 (ii) the correctional facility's medical or penological objectives are valid and outweigh
5964 the [~~prisoner's~~] incarcerated individual's right to refuse treatment; or

5965 (b) the [~~prisoner~~] incarcerated individual is refusing sufficient nutrition or hydration
5966 with the intent to obstruct or delay any judicial or administrative proceeding pending against
5967 the [~~prisoner~~] incarcerated individual.

5968 (5) The district court shall state its findings of fact and conclusions of law on the
5969 record.

5970 (6) The correctional facility administrator shall serve copies of the petition and a notice
5971 of the district court hearing on the [~~prisoner~~] incarcerated individual and the [~~prisoner's~~]
5972 incarcerated individual's counsel, if the [~~prisoner~~] incarcerated individual is represented by
5973 counsel, at least 24 hours in advance of the hearing under Subsection (3).

5974 (7) The [~~prisoner~~] incarcerated individual has the right to attend the hearing, testify,
5975 present evidence, and cross-examine witnesses.

5976 Section 110. Section **77-16b-104** is amended to read:

5977 **77-16b-104. Involuntary feeding or hydration of incarcerated individuals --**

5978 **Standards, continuing jurisdiction, and records.**

5979 (1) Any involuntary nutrition or hydration of [~~a prisoner pursuant to~~] an incarcerated
5980 individual under this chapter shall be conducted under immediate medical supervision and in a
5981 medically recognized and acceptable manner.

5982 (2) Upon the filing of a petition [~~pursuant to Section 77-16b-102~~] under Section
5983 77-16b-103, the court has the continuing jurisdiction to review the [~~prisoner's~~] incarcerated
5984 individual's need for involuntary nutrition or hydration as long as the [~~prisoner~~] incarcerated
5985 individual remains in custody of the correctional facility.

5986 (3) A correctional facility shall maintain records of any involuntary feeding or
5987 hydration of [~~prisoners~~] incarcerated individuals under this chapter.

5988 (a) The records are classified as "controlled" under Section 63G-2-304.

5989 (b) All medical or mental health records submitted to the court under this chapter shall
5990 be kept under seal.

5991 Section 111. Section 77-18-112 is amended to read:

5992 **77-18-112. Reports by courts and prosecuting attorneys to Board of Pardons and**
5993 **Parole.**

5994 In cases where an indeterminate sentence is imposed, the court and prosecuting attorney
5995 may, within 30 days, mail a statement to the board setting forth the term for which the
5996 [~~prisoner~~] incarcerated individual ought to be imprisoned together with any information which
5997 might aid the board in passing on the application for termination or commutation of the
5998 sentence or for parole or pardon.

5999 Section 112. Section 77-18a-1 is amended to read:

6000 **77-18a-1. Appeals -- When proper.**

6001 (1) A defendant may, as a matter of right, appeal from:

6002 (a) a final judgment of conviction, whether by verdict or plea;

6003 (b) an order made after judgment that affects the substantial rights of the defendant;

6004 (c) an order adjudicating the defendant's competency to proceed further in a pending
6005 prosecution; or

6006 (d) an order denying bail under Chapter 20, Bail.

6007 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek
6008 discretionary appellate review of any interlocutory order.

- 6009 (3) The prosecution may, as a matter of right, appeal from:
- 6010 (a) a final judgment of dismissal, including a dismissal of a felony information
- 6011 following a refusal to bind the defendant over for trial;
- 6012 (b) a pretrial order dismissing a charge on the ground that the court's suppression of
- 6013 evidence has substantially impaired the prosecution's case;
- 6014 (c) an order granting a motion to withdraw a plea of guilty or no contest;
- 6015 (d) an order arresting judgment or granting a motion for merger;
- 6016 (e) an order terminating the prosecution because of a finding of double jeopardy or
- 6017 denial of a speedy trial;
- 6018 (f) an order granting a new trial;
- 6019 (g) an order holding a statute or any part of it invalid;
- 6020 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 6021 prosecution;
- 6022 (i) an order finding, [~~pursuant to~~] under Title 77, Chapter 19, Part 2, Competency for
- 6023 Execution, that an [~~inmate~~] incarcerated individual sentenced to death is incompetent to be
- 6024 executed;
- 6025 (j) an order reducing the degree of offense pursuant to Section [76-3-402](#);
- 6026 (k) an illegal sentence; or
- 6027 (l) an order dismissing a charge pursuant to Subsection [76-2-309\(3\)](#).
- 6028 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
- 6029 discretionary appellate review of any interlocutory order entered before jeopardy attaches.
- 6030 Section 113. Section **77-19-3** is amended to read:
- 6031 **77-19-3. Special release from city or county jail -- Purposes.**
- 6032 (1) Any person incarcerated in any city or county jail may, in accordance with the
- 6033 release policy of the facility, be released from jail during those hours which are reasonable and
- 6034 necessary to accomplish any of the purposes under Subsection (2) if:
- 6035 (a) the offense is not one for which release is prohibited under state law; and
- 6036 (b) the judge has not entered an order prohibiting a special release.
- 6037 (2) The custodial authority at the jail may release an [~~inmate~~] incarcerated individual
- 6038 who qualifies under Subsection (1) for:
- 6039 (a) working at [~~his~~] the incarcerated individual's employment;

- 6040 (b) seeking employment;
- 6041 (c) attending an educational institution;
- 6042 (d) obtaining necessary medical treatment; or
- 6043 (e) any other reasonable purpose as determined by the custodial authority of the jail.

6044 Section 114. Section 77-19-4 is amended to read:

6045 **77-19-4. Special release from city or county jail -- Conditions and limitations.**

6046 (1) All released [~~prisoners~~] incarcerated individuals under Section 77-19-3 are in the
6047 custody of the custodial authority and are subject at any time to being returned to jail, for good
6048 cause.

6049 (2) The judge may order that the [~~prisoner~~] incarcerated individual:

6050 (a) pay money earned from employment during the jail term to those [~~persons he~~]
6051 individuals the incarcerated individual is legally responsible to support; or

6052 (b) retain sufficient money to pay [~~his~~] the incarcerated individual's costs of
6053 transportation, meals, and other incidental and necessary expenses related to [~~his~~] the
6054 incarcerated individual's special release.

6055 (3) The custodial authority of the jail shall establish all other conditions of special
6056 release.

6057 (4) During [~~all~~] the hours when the [~~prisoner~~] incarcerated individual is not serving the
6058 function for which [~~he~~] the incarcerated individual is awarded release time, [~~he~~] the
6059 incarcerated individual shall be confined to jail.

6060 (5) The [~~prisoner~~] incarcerated individual shall be responsible to obtain [~~his own~~]
6061 transportation to and from the place where [~~he~~] the incarcerated individual performs the
6062 function for which [~~he~~] the incarcerated individual is released.

6063 Section 115. Section 77-19-5 is amended to read:

6064 **77-19-5. Special release from city or county jail -- Revocation.**

6065 The judge may, for good cause, revoke any release time previously awarded, and shall
6066 notify the [~~prisoner~~] incarcerated individual that, if [~~he~~] the incarcerated individual makes
6067 written request, a hearing shall be afforded to [~~him~~] the incarcerated individual to challenge the
6068 revocation.

6069 Section 116. Section 77-19-201 is amended to read:

6070 **77-19-201. Definition.**

6071 As used in this part, "incompetent to be executed" means that, due to mental condition,
6072 an [inmate] incarcerated individual is unaware of either the punishment ~~[he]~~ the incarcerated
6073 individual is about to suffer or why ~~[he]~~ the incarcerated individual is to suffer ~~[it]~~ the
6074 punishment.

6075 Section 117. Section **77-19-202** is amended to read:

6076 **77-19-202. Incompetency or pregnancy of person sentenced to death --**
6077 **Procedures.**

6078 (1) If, after judgment of death, the executive director of the Department of Corrections
6079 has good reason to believe that an [inmate] incarcerated individual sentenced to death is
6080 pregnant, or has good reason to believe that an [inmate's] incarcerated individual's competency
6081 to be executed under this chapter should be addressed by a court, the executive director of the
6082 Department of Corrections or the executive director's designee shall immediately give written
6083 notice to the court in which the judgment of death was rendered, to the prosecuting attorney,
6084 and counsel for the inmate. The judgment shall be stayed pending further order of the court.

6085 (2) (a) On receipt of the notice under Subsection (1) of good reason for the court to
6086 address an [inmate's] incarcerated individual's competency to be executed, the court shall order
6087 that the mental condition of the [inmate] incarcerated individual shall be examined under the
6088 provisions of Section [77-19-204](#).

6089 (b) If the [inmate] incarcerated individual is found incompetent, the court shall
6090 immediately transmit a certificate of the findings to the Board of Pardons and Parole and
6091 continue the stay of execution pending further order of the court.

6092 (c) If the [inmate] incarcerated individual is subsequently found competent at any time,
6093 the judge shall immediately transmit a certificate of the findings to the Board of Pardons and
6094 Parole, and shall draw and have delivered another warrant under Section [77-19-6](#), together with
6095 a copy of the certificate of the findings. The warrant shall state an appointed day on which the
6096 judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the
6097 date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal
6098 holiday, as defined in Section [63G-1-301](#).

6099 (3) (a) If the court finds the [inmate] incarcerated individual is pregnant, it shall
6100 immediately transmit a certificate of the finding to the Board of Pardons and Parole and to the
6101 executive director of the Department of Corrections or the executive director's designee, and

6102 the court shall issue an order staying the execution of the judgment of death during the
6103 pregnancy.

6104 (b) When the court determines the [inmate] incarcerated individual is no longer
6105 pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and
6106 Parole and draw and have delivered another warrant under Section 77-19-6, with a copy of the
6107 certificate of the finding. The warrant shall state an appointed day on which the judgment is to
6108 be executed, which may not be fewer than 30 nor more than 60 days from the date of the
6109 drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined
6110 in Section 63G-1-301.

6111 (4) The Department of Corrections shall determine the hour, within the appointed day,
6112 at which the judgment is to be executed.

6113 Section 118. Section 77-19-203 is amended to read:

6114 **77-19-203. Petition for inquiry as to competency to be executed -- Filing --**
6115 **Contents -- Successive petitions.**

6116 (1) If an [inmate] incarcerated individual who has been sentenced to death is or
6117 becomes incompetent to be executed, a petition under Subsection (2) may be filed in the
6118 district court of the county where the [inmate] incarcerated individual is confined.

6119 (2) The petition shall:

6120 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to
6121 believe the [inmate] incarcerated individual is incompetent to be executed; and

6122 (b) contain a specific recital of the facts, observations, and conversations with the
6123 [inmate] incarcerated individual that form the basis for the petition.

6124 (3) The petition may be based upon knowledge or information and belief and may be
6125 filed by the [inmate] incarcerated individual alleged to be incompetent, legal counsel for the
6126 [inmate] incarcerated individual, or by an attorney representing the state.

6127 (4) Before ruling on a petition filed by an [inmate] incarcerated individual or [his] the
6128 incarcerated individual's legal counsel alleging that the [inmate] incarcerated individual is
6129 incompetent to be executed, the court shall give the state and the Department of Corrections an
6130 opportunity to respond to the allegations of incompetency.

6131 (5) If a petition is filed after an [inmate] incarcerated individual has previously been
6132 found competent under either this chapter or under Title 77, Chapter 15, Inquiry into Sanity of

6133 Defendant, no further hearing on competency may be granted unless the successive petition:

6134 (a) alleges with specificity a substantial change of circumstances subsequent to the
6135 previous determination of competency; and

6136 (b) is sufficient to raise a significant question about the [inmate's] incarcerated
6137 individual's competency to be executed.

6138 Section 119. Section 77-19-204 is amended to read:

6139 **77-19-204. Order for hearing -- Examinations of incarcerated individual -- Scope**
6140 **of examination and report.**

6141 (1) When a court has good reason to believe an [inmate] incarcerated individual
6142 sentenced to death is incompetent to be executed, it shall stay the execution and shall order the
6143 Department of Health and Human Services to examine the [inmate] incarcerated individual and
6144 report to the court concerning the [inmate's] incarcerated individual's mental condition.

6145 (2) (a) The [inmate] incarcerated individual subject to examination under Subsection
6146 (1) shall be examined by at least two mental health experts who are not involved in the
6147 [inmate's] incarcerated individual's current treatment.

6148 (b) The Department of Corrections shall provide information and materials to the
6149 examiners relevant to a determination of the [inmate's] incarcerated individual's competency to
6150 be executed.

6151 (3) The [inmate] incarcerated individual shall make [himself] the incarcerated
6152 individual available and fully cooperate in the examination by the Department of Health and
6153 Human Services and any other independent examiners for the defense or the state.

6154 (4) The examiners shall in the conduct of their examinations and in their reports to the
6155 court consider and address, in addition to any other factors determined to be relevant by the
6156 examiners:

6157 (a) the [inmate's] incarcerated individual's awareness of the fact of the [inmate's]
6158 incarcerated individual's impending execution;

6159 (b) the [inmate's] incarcerated individual's understanding that the [inmate] incarcerated
6160 individual is to be executed for the crime of murder;

6161 (c) the nature of the [inmate's] incarcerated individual's mental disorder, if any, and its
6162 relationship to the factors relevant to the [inmate's] incarcerated individual's competency; and

6163 (d) whether psychoactive medication is necessary to maintain or restore the [inmate's]

6164 incarcerated individual's competency.

6165 (5) (a) The examiners who are examining the [~~inmate~~] incarcerated individual shall
6166 each provide an initial report to the court and the attorneys for the state and the [~~inmate~~]
6167 incarcerated individual within 60 days of the receipt of the court's order.

6168 (b) The report shall inform the court of the examiner's opinion concerning the
6169 competency of the [~~inmate~~] incarcerated individual to be executed, or, in the alternative, the
6170 examiner may inform the court in writing that additional time is needed to complete the report.

6171 (c) If the examiner informs the court that additional time is needed, the examiner shall
6172 have up to an additional 30 days to provide the report to the court and counsel.

6173 (d) The examiner shall provide the report within 90 days from the receipt of the court's
6174 order unless, for good cause shown, the court authorizes an additional period of time to
6175 complete the examination and provide the report.

6176 (6) (a) All interviews with the [~~inmate~~] incarcerated individual conducted by the
6177 examiners shall be videotaped, unless otherwise ordered by the court for good cause shown.
6178 The Department of Corrections shall provide the videotaping equipment and facilitate the
6179 videotaping of the interviews.

6180 (b) Immediately following the videotaping, the videotape shall be provided to the
6181 attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the
6182 competency determination is pending.

6183 (c) The court shall grant counsel for the state and for the [~~inmate~~] incarcerated
6184 individual, and examiners who are examining the [~~inmate~~] incarcerated individual under this
6185 part access to view the videotape at the court building where the court is located that is
6186 conducting the competency determination under this part.

6187 (7) Any written report submitted by an examiner shall:

6188 (a) identify the specific matters referred for evaluation;

6189 (b) describe the procedures, techniques, and tests used in the examination and the
6190 purpose or purposes for each;

6191 (c) state the examiner's clinical observations, findings, and opinions on each issue
6192 referred for examination by the court, and indicate specifically those issues, if any, on which
6193 the examiner could not give an opinion; and

6194 (d) identify the sources of information used by the examiner and present the basis for

6195 the examiner's clinical findings and opinions.

6196 (8) (a) When the reports are received, the court shall set a date for a competency
6197 hearing, which shall be held within not less than five and not more than 15 days, unless the
6198 court extends the time for good cause.

6199 (b) Any examiner directed by the Department of Health and Human Services to
6200 conduct the examination may be subpoenaed to provide testimony at the hearing. If the
6201 examiners are in conflict as to the competency of the [inmate] incarcerated individual, all of
6202 them should be called to testify at the hearing if they are reasonably available.

6203 (c) The court may call any examiner to testify at the hearing who is not called by the
6204 parties. An examiner called by the court may be cross-examined by counsel for the parties.

6205 (9) (a) An [inmate] incarcerated individual shall be presumed competent to be executed
6206 unless the court, by a preponderance of the evidence, finds the [inmate] incarcerated individual
6207 incompetent to be executed. The burden of proof is upon the proponent of incompetency at the
6208 hearing.

6209 (b) An adjudication of incompetency to be executed does not operate as an
6210 adjudication of the [inmate's] incarcerated individual's incompetency to give informed consent
6211 for medical treatment or for any other purpose, unless specifically set forth in the court order.

6212 (10) (a) If the court finds the [inmate] incarcerated individual incompetent to be
6213 executed, its order shall contain findings addressing each of the factors in Subsections (4)(a)
6214 through (d).

6215 (b) The order finding the [inmate] incarcerated individual incompetent to be executed
6216 shall be delivered to the Department of Health and Human Services, and shall be accompanied
6217 by:

6218 (i) copies of the reports of the examiners filed with the court pursuant to the order of
6219 examination, if not provided previously;

6220 (ii) copies of any of the psychiatric, psychological, or social work reports submitted to
6221 the court relative to the mental condition of the [inmate] incarcerated individual; and

6222 (iii) any other documents made available to the court by either the defense or the state,
6223 pertaining to the [inmate's] incarcerated individual's current or past mental condition.

6224 (c) A copy of the order finding the [inmate] incarcerated individual incompetent to be
6225 executed shall be delivered to the Department of Corrections.

6226 Section 120. Section 77-19-205 is amended to read:

6227 **77-19-205. Procedures on finding of incompetency to be executed -- Subsequent**
6228 **hearings -- Notice to attorneys.**

6229 (1) (a) (i) If after the hearing under Section 77-19-204 the [inmate] incarcerated
6230 individual is found to be incompetent to be executed, the court shall continue the stay of
6231 execution and the [inmate] incarcerated individual shall receive appropriate mental health
6232 treatment.

6233 (ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the
6234 forcible administration of psychoactive medication for the sole purpose of restoring the
6235 [inmate's] incarcerated individual's competency to be executed.

6236 (b) The court shall order the executive director of the Department of Health and
6237 Human Services to provide periodic assessments to the court regarding the [inmate's]
6238 incarcerated individual's competency to be executed.

6239 (c) The [inmate] incarcerated individual shall be held in secure confinement, either at
6240 the prison or the [~~State Hospital~~] state hospital, as agreed upon by the executive director of the
6241 Department of Corrections and the executive director of the Department of Health and Human
6242 Services. If the [inmate] incarcerated individual remains at the prison, the Department of
6243 Health and Human Services shall consult with the Department of Corrections regarding the
6244 [inmate's] incarcerated individual's mental health treatment.

6245 (2) (a) The examiner or examiners designated by the executive director of the
6246 Department of Health and Human Services to assess the [inmate's] incarcerated individual's
6247 progress toward competency may not be involved in the routine treatment of the [inmate]
6248 incarcerated individual.

6249 (b) The examiner or examiners shall each provide a full report to the court and counsel
6250 for the state and the [inmate] incarcerated individual within 90 days of receipt of the court's
6251 order. If any examiner is unable to complete the assessment within 90 days, that examiner
6252 shall provide to the court and counsel for the state and the inmate a summary progress report
6253 which informs the court that additional time is necessary to complete the assessment, in which
6254 case the examiner has up to an additional 90 days to provide the full report, unless the court
6255 enlarges the time for good cause. The full report shall assess:

6256 (i) the facility's or program's capacity to provide appropriate treatment for the [inmate]

6257 incarcerated individual;

6258 (ii) the nature of treatments provided to the [~~inmate~~] incarcerated individual;

6259 (iii) what progress toward restoration of competency has been made;

6260 (iv) the [~~inmate's~~] incarcerated individual's current level of mental disorder and need

6261 for treatment, if any; and

6262 (v) the likelihood of restoration of competency and the amount of time estimated to

6263 achieve it.

6264 (3) The court on its own motion or upon motion by either party may order the

6265 Department of Health and Human Services to appoint additional mental health examiners to

6266 examine the [~~inmate~~] incarcerated individual and advise the court on the [~~inmate's~~]

6267 incarcerated individual's current mental status and progress toward competency restoration.

6268 (4) (a) Upon receipt of the full report, the court shall hold a hearing to determine the

6269 [~~inmate's~~] incarcerated individual's current status. At the hearing, the burden of proving that

6270 the [~~inmate~~] incarcerated individual is competent is on the proponent of competency.

6271 (b) Following the hearing, the court shall determine by a preponderance of evidence

6272 whether the [~~inmate~~] incarcerated individual is competent to be executed.

6273 (5) (a) If the court determines that the [~~inmate~~] incarcerated individual is competent to

6274 be executed, it shall enter findings and shall proceed under Subsection [77-19-202\(2\)\(c\)](#).

6275 (b) (i) If the court determines the [~~inmate~~] incarcerated individual is still incompetent

6276 to be executed, the [~~inmate~~] incarcerated individual shall continue to receive appropriate

6277 mental health treatment, and the court shall hold hearings no less frequently than at 18-month

6278 intervals for the purpose of determining the defendant's competency to be executed.

6279 (ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not

6280 include the forcible administration of psychoactive medication for the sole purpose of restoring

6281 the [~~inmate's~~] incarcerated individual's competency to be executed.

6282 (6) (a) If at any time the clinical director of the Utah State Hospital or the primary

6283 treating mental health professional determines that the [~~inmate~~] incarcerated individual has

6284 been restored to competency, he shall notify the court.

6285 (b) (i) The court shall conduct a hearing regarding the [~~inmate's~~] incarcerated

6286 individual's competency to be executed within 30 working days of the receipt of the

6287 notification under Subsection (6)(a), unless the court extends the time for good cause.

6288 (ii) The court may order a hearing or rehearing at any time on its own motion.

6289 (7) Notice of a hearing on competency to be executed shall be given to counsel for the
6290 state and for the [inmate] incarcerated individual, as well as to the office of the prosecutor who
6291 prosecuted the [inmate] incarcerated individual on the original capital charge.

6292 Section 121. Section **77-19-206** is amended to read:

6293 **77-19-206. Expenses -- Allocation.**

6294 The Department of Health and Human Services and the Department of Corrections
6295 shall each pay 1/2 of the costs of any examination of the [inmate] incarcerated individual
6296 conducted pursuant to Sections **77-19-204** and **77-19-205** to determine if an [inmate]
6297 incarcerated individual is competent to be executed.

6298 Section 122. Section **77-23-301** is amended to read:

6299 **77-23-301. Warrantless searches regarding persons on parole.**

6300 (1) An [inmate] incarcerated individual who is eligible for release on parole shall, as a
6301 condition of parole, sign an agreement as described in Subsection (2) that the [inmate]
6302 incarcerated individual, while on parole, is subject to search or seizure of the [inmate's]
6303 incarcerated individual's person, property, place of temporary or permanent residence, vehicle,
6304 or personal effects while on parole:

6305 (a) by a parole officer at any time, with or without a search warrant, and with or
6306 without cause; and

6307 (b) by a law enforcement officer at any time, with or without a search warrant, and with
6308 or without cause, but subject to Subsection (3).

6309 (2) (a) The terms of the agreement under Subsection (1) shall be stated in clear and
6310 unambiguous language.

6311 (b) The agreement shall be signed by the parolee, indicating the parolee's
6312 understanding of the terms of searches as allowed by Subsection (1).

6313 (3) (a) In order for a law enforcement officer to conduct a search of a parolee's
6314 residence under Subsection (1) or a seizure pursuant to the search, the law enforcement officer
6315 shall have obtained prior approval from a parole officer or shall have a warrant for the search.

6316 (b) If a law enforcement officer conducts a search of a parolee's person, personal
6317 effects, or vehicle pursuant to a stop, the law enforcement officer shall notify a parole officer as
6318 soon as reasonably possible after conducting the search.

6319 (4) A search conducted under this section may not be for the purpose of harassment.

6320 (5) Any [~~inmate~~] incarcerated individual who does not agree in writing to be subject to
6321 search or seizure under Subsection (1) may not be paroled until the [~~inmate~~] incarcerated
6322 individual enters into the agreement under Subsection (1).

6323 (6) This section applies only to an [~~inmate~~] incarcerated individual who is eligible for
6324 release on parole on or after May 5, 2008.

6325 Section 123. Section ~~77-27-1~~ is amended to read:

6326 **77-27-1. Definitions.**

6327 As used in this chapter:

6328 (1) "Appearance" means any opportunity to address the board, a board member, a
6329 panel, or hearing officer, including an interview.

6330 (2) "Board" means the Board of Pardons and Parole.

6331 (3) (a) "Case action plan" means a document developed by the Department of
6332 Corrections that identifies the program priorities for the treatment of the offender.

6333 (b) "Case action plan" includes the criminal risk factors as determined by a risk and
6334 needs assessment conducted by the department.

6335 (4) "Commission" means the State Commission on Criminal and Juvenile Justice
6336 created in Section [63M-7-201](#).

6337 (5) "Commutation" is the change from a greater to a lesser punishment after
6338 conviction.

6339 (6) "Criminal accounts receivable" means the same as that term is defined in Section
6340 [77-32b-102](#).

6341 (7) "Criminal risk factors" means a person's characteristics and behaviors that:

6342 (a) affect that person's risk of engaging in criminal behavior; and

6343 (b) are diminished when addressed by effective treatment, supervision, and other
6344 support resources resulting in reduced risk of criminal behavior.

6345 (8) (a) "Deliberative process" means the board or any number of the board's individual
6346 members together engaging in discussions, whether written or verbal, regarding a parole, a
6347 pardon, a commutation, termination of sentence, or fines, fees, or restitution in an individual
6348 case.

6349 (b) "Deliberative process" includes the votes, mental processes, written notes, and

6350 recommendations of individual board members and staff.

6351 (c) "Deliberative process" does not include:

6352 (i) a hearing where the offender is present;

6353 (ii) any factual record the board is considering, including records of the offender's
6354 criminal convictions, records regarding the offender's current or previous incarceration and
6355 supervision, and records regarding the offender's physical or mental health;

6356 (iii) recommendations regarding the offender's incarceration or supervision from any
6357 other individual, governmental entity, or agency;

6358 (iv) testimony received by the board regarding the offender, whether written or verbal;

6359 or

6360 (v) the board's decision or rationale for the decision.

6361 (9) "Department" means the Department of Corrections.

6362 (10) "Expiration" means when the maximum sentence has run.

6363 (11) "Family" means any individual related to the victim as a spouse, child, sibling,
6364 parent, or grandparent, or the victim's legal guardian.

6365 (12) "Hearing" or "full hearing" means an appearance before the board, a panel, a board
6366 member or hearing examiner, at which an offender or ~~[inmate]~~ incarcerated individual is
6367 afforded an opportunity to be present and address the board.

6368 (13) "Location," in reference to a hearing, means the physical location at which the
6369 board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of
6370 the location of any person participating by electronic means.

6371 (14) "Open session" means any hearing, before the board, a panel, a board member, or
6372 a hearing examiner, that is open to the public, regardless of the location of any person
6373 participating by electronic means.

6374 (15) "Panel" means members of the board assigned by the chairperson to a particular
6375 case.

6376 (16) "Pardon" means:

6377 (a) an act of grace that forgives a criminal conviction and restores the rights and
6378 privileges forfeited by or because of the criminal conviction;

6379 (b) the release of an offender from the entire punishment prescribed for a criminal
6380 offense and from disabilities that are a consequence of the criminal conviction; and

6381 (c) the reinstatement of any civil rights lost as a consequence of conviction or
6382 punishment for a criminal offense.

6383 (17) "Parole" means a release from imprisonment on prescribed conditions which, if
6384 satisfactorily performed by the parolee, enables the parolee to obtain a termination of the
6385 parolee's sentence.

6386 (18) "Payment schedule" means the same as that term is defined in Section
6387 77-32b-102.

6388 (19) "Pecuniary damages" means the same as that term is defined in Section
6389 77-38b-102.

6390 (20) "Probation" means an act of grace by the court suspending the imposition or
6391 execution of a convicted offender's sentence upon prescribed conditions.

6392 (21) "Remit" or "remission" means the same as that term is defined in Section
6393 77-32b-102.

6394 (22) "Reprieve" or "respite" means the temporary suspension of the execution of the
6395 sentence.

6396 (23) "Restitution" means the same as that term is defined in Section 77-38b-102.

6397 (24) "Termination" means the act of discharging from parole or concluding the
6398 sentence of imprisonment before the expiration of the sentence.

6399 (25) "Victim" means:

6400 (a) a person against whom the defendant committed a felony or class A misdemeanor
6401 offense for which a hearing is held under this chapter; or

6402 (b) the victim's family if the victim is deceased as a result of the offense for which a
6403 hearing is held under this chapter.

6404 Section 124. Section 77-27-1.5 is amended to read:

6405 **77-27-1.5. Appearance by incarcerated individual, offender, or witness.**

6406 (1) (a) An appearance by an [~~inmate~~] incarcerated individual, offender, or witness
6407 before the board, a panel, board member, or hearing officer may be in person, through
6408 videoconferencing or other electronic means.

6409 (b) [~~Any~~] An appearance by videoconference or other electronic means shall be
6410 recorded as provided in Section 77-27-8.

6411 (2) An [~~inmate's~~] incarcerated individual's or offender's electronic appearance by

6412 telephone is permissible with the consent of the [~~inmate~~] incarcerated individual or offender,
6413 when the [~~inmate~~] incarcerated individual or offender is incarcerated in a facility outside of this
6414 state.

6415 Section 125. Section **77-27-5.3** is amended to read:

6416 **77-27-5.3. Meritless and bad faith litigation.**

6417 (1) For purposes of this section:

6418 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,
6419 guilty with a mental illness, no contest, and conviction of any crime or offense.

6420 (b) [~~"Prisoner" means a person~~] "Incarcerated individual" means an individual who has
6421 been convicted of a crime and is incarcerated for that crime or is being held in custody for trial
6422 or sentencing.

6423 (2) In any case filed in state or federal court in which [~~a prisoner~~] an incarcerated
6424 individual submits a claim that the court finds to be without merit and brought or asserted in
6425 bad faith, the Board of Pardons and Parole and any county jail administrator may consider that
6426 finding in any early release decisions concerning the [~~prisoner~~] incarcerated individual.

6427 Section 126. Section **77-27-8** is amended to read:

6428 **77-27-8. Record of hearing.**

6429 (1) A verbatim record of proceedings before the Board of Pardons and Parole shall be
6430 maintained by a suitable electronic recording device, except when the board dispenses with a
6431 record in a particular hearing or a portion of the proceedings.

6432 (2) When the hearing involves the commutation of a death sentence, a certified
6433 shorthand reporter, in addition to electronic means, shall record all proceedings except when
6434 the board dispenses with a record for the purpose of deliberations in executive session. The
6435 compensation of the reporter shall be determined by the board. The reporter shall immediately
6436 file with the board the original record and when requested shall with reasonable diligence
6437 furnish a transcription or copy of the record upon payment of reasonable fees as determined by
6438 the board.

6439 (3) When an [~~inmate~~] incarcerated individual or offender affirms by affidavit that he is
6440 unable to pay for a copy of the record, the board may furnish a copy of the record, at the
6441 expense of the state, to the [~~inmate~~] incarcerated individual or offender.

6442 Section 127. Section **77-27-9** is amended to read:

6443 **77-27-9. Parole proceedings.**

6444 (1) (a) The Board of Pardons and Parole may parole any offender or terminate the
6445 sentence of any offender committed to a penal or correctional facility under the jurisdiction of
6446 the Department of Corrections except as provided in Subsection (2).

6447 (b) The board may not release any offender before the minimum term has been served
6448 unless the board finds mitigating circumstances which justify the release and unless the board
6449 has granted a full hearing, in open session, after previous notice of the time and location of the
6450 hearing, and recorded the proceedings and decisions of the board.

6451 (c) The board may not parole any offender or terminate the sentence of any offender
6452 unless the board has granted a full hearing, in open session, after previous notice of the time
6453 and location of the hearing, and recorded the proceedings and decisions of the board.

6454 (d) The release of an offender shall be at the initiative of the board, which shall
6455 consider each case as the offender becomes eligible. However, [~~a prisoner~~] an offender may
6456 submit the [~~prisoner's~~] offender's own application, subject to the rules of the board promulgated
6457 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6458 (2) (a) An individual sentenced to prison prior to April 29, 1996, for a first degree
6459 felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
6460 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
6461 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
6462 76-5-403.1; aggravated sexual abuse of a child, a violation of Section 76-5-404.3; aggravated
6463 sexual assault, a violation of Section 76-5-405; or a prior offense as described in Section
6464 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole until the
6465 offender has fully completed serving the minimum mandatory sentence imposed by the court.
6466 This Subsection (2)(a) supersedes any other provision of law.

6467 (b) The board may not parole any offender or commute or terminate the sentence of
6468 any offender before the offender has served the minimum term for the offense, if the offender
6469 was sentenced prior to April 29, 1996, and if:

6470 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,
6471 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined
6472 in Title 76, Chapter 5, Offenses Against the Individual; and

6473 (ii) the victim of the offense was under 18 years old at the time the offense was

6474 committed.

6475 (c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the
6476 board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as
6477 provided in this section.

6478 (d) The board may not pardon or parole any offender or commute or terminate the
6479 sentence of any offender who is sentenced to life in prison without parole except as provided in
6480 Subsection (7).

6481 (e) On or after April 27, 1992, the board may commute a sentence of death only to a
6482 sentence of life in prison without parole.

6483 (f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come
6484 before the Board of Pardons and Parole on or after April 27, 1992.

6485 (g) The board may not parole any offender convicted of a homicide unless:

6486 (i) the remains of the victim have been recovered; or

6487 (ii) the offender can demonstrate by a preponderance of the evidence that the offender
6488 has cooperated in good faith in efforts to locate the remains.

6489 (h) Subsection (2)(g) applies to any offender convicted of a homicide after February
6490 25, 2021, or any offender who was incarcerated in a correctional facility on or after February
6491 25, 2021, for a homicide offense.

6492 (3) The board may rescind:

6493 (a) an ~~[inmate's]~~ incarcerated individual's prison release date prior to the ~~[inmate]~~
6494 incarcerated individual being released from custody; or

6495 (b) an offender's termination date from parole prior to the offender being terminated
6496 from parole.

6497 (4) (a) The board may issue subpoenas to compel the attendance of witnesses and the
6498 production of evidence, to administer oaths, and to take testimony for the purpose of any
6499 investigation by the board or any of the board's members or by a designated hearing examiner
6500 in the performance of the board's duties.

6501 (b) A person who willfully disobeys a properly served subpoena issued by the board is
6502 guilty of a class B misdemeanor.

6503 (5) (a) The board may adopt rules consistent with law for the board's government,
6504 meetings and hearings, the conduct of proceedings before the board, the parole and pardon of

6505 offenders, the commutation and termination of sentences, and the general conditions under
6506 which parole may be granted and revoked.

6507 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings
6508 held under this chapter, as provided in Section 77-27-9.5.

6509 (c) The rules may allow the board to establish reasonable and equitable time limits on
6510 the presentations by all participants in hearings held under this chapter.

6511 (6) The board does not provide counseling or therapy for victims as a part of their
6512 participation in any hearing under this chapter.

6513 (7) The board may parole a person sentenced to life in prison without parole if the
6514 board finds by clear and convincing evidence that the person is permanently incapable of being
6515 a threat to the safety of society.

6516 Section 128. Section 77-27-10 is amended to read:

6517 **77-27-10. Conditions of parole -- Incarcerated individual agreement to warrant --**
6518 **Rulemaking -- Intensive early release parole program.**

6519 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall
6520 issue to the parolee a certificate setting forth the conditions of parole, including the graduated
6521 and evidence-based responses to a violation of a condition of parole established by the
6522 Sentencing Commission in accordance with Section 64-13-21, which the offender shall accept
6523 and agree to as evidenced by the offender's signature affixed to the agreement.

6524 (b) The parole agreement shall require that the [~~inmate~~] incarcerated individual agree
6525 in writing that the board may issue a warrant and conduct a parole revocation hearing if:

6526 (i) the board determines after the grant of parole that the [~~inmate~~] incarcerated
6527 individual willfully provided to the board false or inaccurate information that the board finds
6528 was significant in the board's determination to grant parole; or

6529 (ii) (A) the [~~inmate~~] incarcerated individual has engaged in criminal conduct prior to
6530 the granting of parole; and

6531 (B) the board did not have information regarding the conduct at the time parole was
6532 granted.

6533 (c) A copy of the agreement shall be delivered to the Department of Corrections and a
6534 copy shall be given to the parolee. The original shall remain with the board's file.

6535 (2) (a) If an offender convicted of violating or attempting to violate Section

6536 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,
6537 76-5-404, 76-5-404.1, 76-5-404.3, or 76-5-405, is released on parole, the board shall order
6538 outpatient mental health counseling and treatment as a condition of parole.

6539 (b) The board shall develop standards and conditions of parole under this Subsection
6540 (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6541 (c) This Subsection (2) does not apply to intensive early release parole.

6542 (3) (a) In addition to the conditions set out in Subsection (1), the board may place
6543 offenders in an intensive early release parole program. The board shall determine the
6544 conditions of parole which are reasonably necessary to protect the community as well as to
6545 protect the interests of the offender and to assist the offender to lead a law-abiding life.

6546 (b) The offender is eligible for this program only if the offender:

6547 (i) has not been convicted of a sexual offense; or

6548 (ii) has not been sentenced pursuant to Section 76-3-406.

6549 (c) The department shall:

6550 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
6551 Rulemaking Act, for operation of the program;

6552 (ii) adopt and implement internal management policies for operation of the program;

6553 (iii) determine whether or not to refer an offender into this program within 120 days
6554 from the date the offender is committed to prison by the sentencing court; and

6555 (iv) make the final recommendation to the board regarding the placement of an
6556 offender into the program.

6557 (d) The department may not consider credit for time served in a county jail awaiting
6558 trial or sentencing when calculating the 120-day period.

6559 (e) The prosecuting attorney or sentencing court may refer an offender for
6560 consideration by the department for participation in the program.

6561 (f) The board shall determine whether or not to place an offender into this program
6562 within 30 days of receiving the department's recommendation.

6563 (4) This program shall be implemented by the department within the existing budget.

6564 (5) During the time the offender is on parole, the department shall collect from the
6565 offender the monthly supervision fee authorized by Section 64-13-21.

6566 (6) When a parolee commits a violation of the parole agreement, the department may:

6567 (a) respond in accordance with the graduated and evidence-based responses established
6568 in accordance with Section 64-13-21; or

6569 (b) when the graduated and evidence-based responses established in accordance with
6570 Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation
6571 of parole.

6572 Section 129. Section 77-28b-5 is amended to read:

6573 **77-28b-5. Role of institution warden.**

6574 The warden shall sign Form III, Notice Regarding International Prisoner Transfer, and
6575 forward the application and the material required in Section 77-28b-4 in triplicate to the
6576 Department of Corrections [Inmate] Incarcerated Placement Program Bureau.

6577 Section 130. Section 77-28b-6 is amended to read:

6578 **77-28b-6. Role of Incarcerated Placement Program Bureau.**

6579 (1) The Department of Corrections [Inmate] Incarcerated Placement Program Bureau
6580 shall:

6581 (a) investigate the request to ensure that all eligibility requirements are met;

6582 (b) request a records check to verify records listed in Section 77-28b-3;

6583 (c) review application and materials for completeness and compliance with treaty
6584 terms;

6585 (d) develop and recommend assurances, where indicated; and

6586 (e) provide written notification of the transfer request to the following entities and
6587 receive objections or other comments for 15 business days after sending the notification:

6588 (i) attorney general;

6589 (ii) prosecuting law enforcement agency;

6590 (iii) prosecutor; and

6591 (iv) sentencing court.

6592 (2) If the [Inmate] Incarcerated Placement Program Bureau investigation determines
6593 that the application and materials are incomplete or do not comply with the terms of the treaty,
6594 the application shall be rejected and returned to the institution in which the [inmate]
6595 incarcerated individual is incarcerated.

6596 (3) If the investigation of the bureau determines the application and materials are
6597 complete and in compliance with the terms of the treaty, the application and materials shall be

6598 forwarded to the director of the Department of Corrections.

6599 Section 131. Section 77-28b-7 is amended to read:

6600 **77-28b-7. Role of director.**

6601 (1) (a) The director of the Department of Corrections shall review the application and
6602 materials.

6603 (b) Upon [his] the director's approval the application and materials shall be forwarded
6604 to the governor for authorization to transfer.

6605 (2) Applications that are not approved by the director shall be returned to the sending
6606 institution and the [inmate] incarcerated individual shall be notified.

6607 Section 132. Section 77-28b-8 is amended to read:

6608 **77-28b-8. Referral to the United States Department of Justice, Office of**
6609 **International Affairs.**

6610 (1) Upon receipt of the governor's authorization for international transfer, the
6611 application and materials shall be forwarded to the United States Department of Justice, Office
6612 of International Affairs, by the [inmate] Incarcerated Placement Program Bureau.

6613 (2) The bureau shall notify the [inmate] incarcerated individual and the warden of the
6614 sending institution of the decision of the application for international transfer.

6615 (3) All arrangements regarding the treaty process and proposed assurances shall be
6616 negotiated between the bureau and the United States Department of Justice, Office of
6617 International Affairs.

6618 Section 133. Section 77-28b-9 is amended to read:

6619 **77-28b-9. Transfer of offender.**

6620 (1) If the [inmate] offender is accepted for international transfer by the United States
6621 Department of Justice, Office of International Affairs, the offender shall be transported by the
6622 Department of Corrections to the federal district court for a verification hearing to ensure the
6623 offender consents to the international transfer.

6624 (2) The Department of Corrections shall then relinquish jurisdiction over the offender
6625 to the United States Department of Justice.

6626 Section 134. Section 77-30-10 is amended to read:

6627 **77-30-10. Time to apply for habeas corpus allowed.**

6628 No [person] individual arrested upon such warrant shall be delivered over to the agent

6629 whom the executive authority demanding [~~him~~] the individual shall have appointed to receive
6630 [~~him unless he~~] the individual unless the individual shall first be taken forthwith before a judge
6631 of a court of record in this state who shall inform [~~him~~] the individual of the demand made for
6632 [~~his~~] the individual's surrender and of the crime with which [~~he~~] the individual is charged and
6633 that [~~he~~] the individual has the right to demand and procure legal counsel and if the [~~prisoner~~]
6634 individual or [~~his~~] the individual's counsel shall state that [~~he or they desire~~] the individual
6635 desires to test the legality of [~~his~~] the individual's arrest, the judge of such court of record shall
6636 fix a reasonable time to be allowed [~~him~~] the individual within which to apply for a writ of
6637 habeas corpus. When such writ is applied for, notice thereof and the time and place of hearing
6638 thereon shall be given to the prosecuting officer of the county in which the arrest is made and
6639 in which the [~~accused~~] individual is in custody, and to the said agent of the demanding state.

6640 Section 135. Section 77-30-12 is amended to read:

6641 **77-30-12. Officers entitled to use local jails.**

6642 The officer or persons executing the governor's warrant of arrest or the agent of the
6643 demanding state to whom the [~~prisoner~~] incarcerated individual may have been delivered may,
6644 when necessary, confine the [~~prisoner~~] incarcerated individual in the jail of any county or city
6645 through which [~~he~~] the officer, person, or agent may pass and the keeper of such jail must
6646 receive and safely keep the [~~prisoner~~] incarcerated individual until the officer or person having
6647 charge of [~~him~~] the incarcerated individual is ready to proceed on his route, such officer or
6648 person being chargeable with the expense of keeping.

6649 The officer or agent of a demanding state to whom [~~a prisoner~~] an incarcerated
6650 individual may have been delivered following extradition proceedings in another state, or to
6651 whom [~~a prisoner~~] an incarcerated individual may have been delivered after waiving
6652 extradition in such other state, and who is passing through this state with such [~~a prisoner~~] an
6653 incarcerated individual for the purpose of immediately returning such [~~prisoner~~] incarcerated
6654 individual to the demanding state may, when necessary, confine the [~~prisoner~~] incarcerated
6655 individual in the jail of any county or city through which [~~he~~] the officer or agent may pass, and
6656 the keeper of such jail must receive and safely keep the [~~prisoner~~] incarcerated individual until
6657 the officer or agent having charge of [~~him~~] the incarcerated individual is ready to proceed on
6658 his route, such officer or agent being chargeable with the expense of keeping; provided, such
6659 officer or agent shall produce and show to the keeper of such jail satisfactory written evidence

6660 of the fact that ~~[he]~~ the officer or agent is actually transporting such ~~[prisoner]~~ incarcerated
6661 individual to the demanding state after a requisition by the executive authority of such
6662 demanding state. Such ~~[prisoner shall]~~ incarcerated individual may not be entitled to demand a
6663 new requisition while in this state.

6664 Section 136. Section **77-30-18** is amended to read:

6665 **77-30-18. Forfeiture of bail.**

6666 (1) ~~[If the prisoner]~~ If an incarcerated individual is admitted to bail and fails to appear
6667 and surrender according to the conditions of the ~~[prisoner's]~~ incarcerated individual's bond, the
6668 judge or magistrate by proper order shall declare the bond forfeited and order the ~~[prisoner's]~~
6669 immediate arrest of the incarcerated individual without a warrant if the ~~[prisoner]~~ incarcerated
6670 individual is within this state.

6671 (2) Recovery may be had on such bond in the name of the state as in the case of other
6672 bonds given by the accused in criminal proceedings within this state.

6673 Section 137. Section **77-33-2** is amended to read:

6674 **77-33-2. Summoning an incarcerated individual in this state to testify in another**
6675 **state -- Certificate of out-of-state judge.**

6676 (1) A judge of a state court of record in another state, which by ~~[its]~~ the state's laws has
6677 made provision for commanding ~~[persons]~~ individuals confined in penal institutions within that
6678 state to attend and testify in this state, may certify:

6679 ~~[(1)]~~ (a) that there is a criminal proceeding or investigation by a grand jury or a
6680 criminal action pending in the court~~[-]~~;

6681 ~~[(2)]~~ (b) that ~~[a person]~~ an individual who is confined in a penal institution in this state
6682 may be a material witness in the proceeding, investigation, or action~~[-]~~; and

6683 ~~[(3)]~~ (c) that ~~[his]~~ the individual's presence will be required during a specified time.

6684 (2) Upon presentation of the certificate to any judge having jurisdiction over the
6685 ~~[person]~~ individual confined, and upon notice to the attorney general, the judge in this state
6686 shall fix a time and place for a hearing and shall make an order directed to the person having
6687 custody of the ~~[prisoner]~~ incarcerated individual requiring that the ~~[prisoner]~~ incarcerated
6688 individual be produced before ~~[him]~~ the judge at the hearing.

6689 Section 138. Section **77-33-6** is amended to read:

6690 **77-33-6. Incarcerated individual in another state summoned to testify in this state**

6691 -- **Certificate of judge.**

6692 (1) If a person confined in a penal institution in any state may be a material witness in a
 6693 criminal action pending in a court of record or in a grand jury investigation in this state, a judge
 6694 of the court may certify:

6695 [~~(1)~~] (a) that there is a criminal proceeding or investigation by a grand jury or a
 6696 criminal action pending in the court[;];

6697 [~~(2)~~] (b) that a person who is confined in a penal institution in another state may be a
 6698 material witness in the proceeding, investigation, or action[;]; and

6699 [~~(3)~~] (c) that his presence will be required during a specified time.

6700 (2) The certificate shall be presented to a judge of a court of record in the other state
 6701 having jurisdiction over the [~~prisoner~~] incarcerated individual confined, and a notice shall be
 6702 given to the attorney general of the state in which the [~~prisoner~~] incarcerated individual is
 6703 confined.

6704 Section 139. Section 77-38-2 is amended to read:

6705 **77-38-2. Definitions.**

6706 For the purposes of this chapter and the Utah Constitution:

6707 (1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or
 6708 disparage.

6709 (2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

6710 (3) "Fairness" means treating the crime victim reasonably, even-handedly, and
 6711 impartially.

6712 (4) "Harassment" means treating the crime victim in a persistently annoying manner.

6713 (5) "Important criminal justice hearings" or "important juvenile justice hearings" means
 6714 the following proceedings in felony criminal cases or cases involving a minor's conduct which
 6715 would be a felony if committed by an adult:

6716 (a) any preliminary hearing to determine probable cause;

6717 (b) any court arraignment where practical;

6718 (c) any court proceeding involving the disposition of charges against a defendant or
 6719 minor or the delay of a previously scheduled trial date but not including any unanticipated
 6720 proceeding to take an admission or a plea of guilty as charged to all charges previously filed or
 6721 any plea taken at an initial appearance;

6722 (d) any court proceeding to determine whether to release a defendant or minor and, if
6723 so, under what conditions release may occur, excluding any such release determination made at
6724 an initial appearance;

6725 (e) any criminal or delinquency trial, excluding any actions at the trial that a court
6726 might take in camera, in chambers, or at a sidebar conference;

6727 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or
6728 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or
6729 restitution of a defendant; and

6730 (g) any public hearing concerning whether to grant a defendant or minor parole or other
6731 form of discretionary release from confinement.

6732 (6) "Reliable information" means information worthy of confidence, including any
6733 information whose use at sentencing is permitted by the United States Constitution.

6734 (7) "Representative of a victim" means [~~a person~~] an individual who is designated by
6735 the victim or designated by the court and who represents the victim in the best interests of the
6736 victim.

6737 (8) "Respect" means treating the crime victim with regard and value.

6738 (9) (a) "Victim of a crime" means [~~any natural person~~] an individual against whom the
6739 charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or
6740 minor personally or as a party to the offense or conduct or, in the discretion of the court,
6741 against whom a related crime or act is alleged to have been perpetrated or attempted, unless the
6742 [~~natural person~~] individual is the accused or appears to be accountable or otherwise criminally
6743 responsible for or criminally involved in the crime or conduct or a crime or act arising from the
6744 same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

6745 (b) For purposes of the right to be present, "victim of a crime" does not mean [~~any~~
6746 ~~person~~] an individual who is in custody as a pretrial detainee, as [~~a prisoner~~] an incarcerated
6747 individual following conviction for an offense, or as a juvenile who has committed an act that
6748 would be an offense if committed by an adult, or who is in custody for mental or psychological
6749 treatment.

6750 (c) For purposes of the right to be present and heard at a public hearing as provided in
6751 Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a),
6752 "victim of a crime" includes any victim originally named in the allegation of criminal conduct

6753 who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

6754 Section 140. Section ~~77-38-4~~ is amended to read:

6755 **77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal --**

6756 **Control of disruptive acts or irrelevant statements -- Statements from individuals in**
6757 **custody.**

6758 (1) The victim of a crime, the representative of the victim, or both shall have the right:

6759 (a) to be present at the important criminal or juvenile justice hearings provided in

6760 Subsection ~~77-38-2~~(5);

6761 (b) to be heard at the important criminal or juvenile justice hearings provided in

6762 Subsections ~~77-38-2~~(5)(b), (c), (d), (f), and (g);

6763 (c) to submit a written statement in any action on appeal related to that crime; and

6764 (d) upon request to the judge hearing the matter, to be present and heard at the initial
6765 appearance of the ~~[person]~~ individual suspected of committing the conduct or criminal offense
6766 against the victim on issues relating to whether to release a defendant or minor and, if so, under
6767 what conditions release may occur.

6768 (2) This chapter shall not confer any right to the victim of a crime to be heard:

6769 (a) at any criminal trial, including the sentencing phase of a capital trial under Section
6770 ~~76-3-207~~ or at any preliminary hearing, unless called as a witness; and

6771 (b) at any delinquency trial or at any preliminary hearing in a minor's case, unless
6772 called as a witness.

6773 (3) The right of a victim or representative of a victim to be present at trial is subject to
6774 Rule 615 of the Utah Rules of Evidence.

6775 (4) Nothing in this chapter shall deprive the court of the right to prevent or punish
6776 disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

6777 (5) The court shall have the right to limit any victim's statement to matters that are
6778 relevant to the proceeding.

6779 (6) In all cases where the number of victims exceeds five, the court may limit the
6780 in-court oral statements it receives from victims in its discretion to a few representative
6781 statements.

6782 (7) Except as otherwise provided in this section, a victim's right to be heard may be
6783 exercised at the victim's discretion in any appropriate fashion, including an oral, written,

6784 audiotaped, or videotaped statement or direct or indirect information that has been provided to
6785 be included in any presentence report.

6786 (8) If the victim of a crime is [~~a person~~] an individual who is in custody as a pretrial
6787 detainee, as [~~a prisoner~~] an incarcerated individual following conviction for an offense, or as a
6788 juvenile who has committed an act that would be an offense if committed by an adult, or who
6789 is in custody for mental or psychological treatment, the right to be heard under this chapter
6790 shall be exercised by submitting a written statement to the court.

6791 (9) The court may exclude any oral statement from a victim on the grounds of the
6792 victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

6793 (10) Except in juvenile court cases, the Constitution may not be construed as limiting
6794 the existing rights of the prosecution to introduce evidence in support of a capital sentence.

6795 Section 141. Section **78A-2-302** is amended to read:

6796 **78A-2-302. Indigent litigants -- Affidavit.**

6797 (1) As used in Sections **78A-2-302** through **78A-2-309**:

6798 (a) "Convicted" means:

6799 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental
6800 illness, no contest; and

6801 (ii) a conviction of any crime or offense.

6802 [~~(b) "Indigent" means an individual who is financially unable to pay fees and costs or
6803 give security.]~~

6804 [~~(c)~~] (b) [~~"Prisoner"~~] "Incarcerated individual" means an individual who has been
6805 convicted of a crime and is incarcerated for that crime or is being held in custody for trial or
6806 sentencing.

6807 (c) "Indigent" means an individual who is financially unable to pay fees and costs or
6808 give security.

6809 (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this
6810 state without prepayment of fees and costs or security if the individual submits an affidavit
6811 demonstrating that the individual is indigent.

6812 (3) A court shall find an individual indigent if the individual's affidavit under
6813 Subsection (2) demonstrates:

6814 (a) the individual has an income level at or below 150% of the United States poverty

6815 level as defined by the most recent poverty income guidelines published by the United States
6816 Department of Health and Human Services;

6817 (b) the individual receives benefits from a means-tested government program,
6818 including Temporary Assistance to Needy Families, Supplemental Security Income, the
6819 Supplemental Nutrition Assistance Program, or Medicaid;

6820 (c) the individual receives legal services from a nonprofit provider or a pro bono
6821 attorney through the Utah State Bar; or

6822 (d) the individual has insufficient income or other means to pay the necessary fees and
6823 costs or security without depriving the individual, or the individual's family, of food, shelter,
6824 clothing, or other necessities.

6825 (4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d)
6826 shall contain complete information on the individual's:

6827 (a) identity and residence;

6828 (b) amount of income, including any government financial support, alimony, or child
6829 support;

6830 (c) assets owned, including real and personal property;

6831 (d) business interests;

6832 (e) accounts receivable;

6833 (f) securities, checking and savings account balances;

6834 (g) debts; and

6835 (h) monthly expenses.

6836 (5) If the individual under Subsection (3) is [~~a prisoner~~] an incarcerated individual, the
6837 [~~prisoner~~] incarcerated individual shall disclose the amount of money held in the [~~prisoner's~~]
6838 incarcerated individual's trust account at the time the affidavit under Subsection (2) is executed
6839 in accordance with Section [78A-2-305](#).

6840 (6) An affidavit of indigency under this section shall state the following:

6841 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear
6842 the expenses of the action or legal proceedings which I am about to commence or the appeal
6843 which I am about to take, and that I believe I am entitled to the relief sought by the action, legal
6844 proceedings, or appeal.

6845 Section 142. Section [78A-2-305](#) is amended to read:

6846 **78A-2-305. Effect of filing affidavit -- Procedure for review and collection.**

6847 (1) (a) Upon receipt of an affidavit of indigency under Section 78A-2-302 filed with
6848 any Utah court by [~~a prisoner~~] an incarcerated individual, the court shall immediately request
6849 the institution or facility where the [~~prisoner~~] incarcerated individual is incarcerated to provide
6850 an account statement detailing all financial activities in the [~~prisoner's~~] incarcerated individual's
6851 trust account for the previous six months or since the time of incarceration, whichever is
6852 shorter.

6853 (b) The incarcerating facility shall:

6854 (i) prepare and produce to the court the [~~prisoner's~~] incarcerated individual's six-month
6855 trust account statement, current trust account balance, and aggregate disposable income; and

6856 (ii) calculate aggregate disposable income by totaling all deposits made [~~in~~] into the
6857 [~~prisoner's~~] incarcerated individual's trust account during the six-month period and subtracting
6858 all funds automatically deducted or otherwise garnished from the account during the same
6859 period.

6860 (2) The court shall:

6861 (a) review both the affidavit of indigency and the financial account statement; and

6862 (b) based upon the review, independently determine whether or not the [~~prisoner~~]
6863 incarcerated individual is financially capable of paying all the regular fees and costs associated
6864 with filing the action.

6865 (3) When the court concludes that the [~~prisoner~~] incarcerated individual is unable to
6866 pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the
6867 [~~prisoner's~~] incarcerated individual's current trust account balance or 10% of the [~~prisoner's~~]
6868 incarcerated individual's six-month aggregate disposable income, whichever is greater.

6869 (4) (a) After payment of the initial partial filing fee, the court shall require the
6870 [~~prisoner~~] incarcerated individual to make monthly payments of 20% of the preceding month's
6871 aggregate disposable income until the regular filing fee associated with the civil action is paid
6872 in full.

6873 (b) The agency having custody of the [~~prisoner~~] incarcerated individual shall:

6874 (i) garnish the [~~prisoner's~~] incarcerated individual's account each month; and

6875 (ii) once the collected fees exceed \$10, forward payments to the clerk of the court until
6876 the filing fees are paid.

6877 (c) Nothing in this section may be construed to prevent the agency having custody of
6878 the ~~[prisoner]~~ incarcerated individual from withdrawing funds from the ~~[prisoner's]~~
6879 incarcerated individual's account to pay court-ordered restitution.

6880 (5) Collection of the filing fees continues despite dismissal of the action.

6881 (6) The filing fee collected may not exceed the amount of fees permitted by statute for
6882 the commencement of a civil action or an appeal of a civil action.

6883 (7) If the ~~[prisoner]~~ incarcerated individual is filing an initial divorce action or an
6884 action to obtain custody of the ~~[prisoner's]~~ incarcerated individual's children, the following
6885 procedures shall apply for review and collection of fees and costs:

6886 (a) (i) Upon a filing of an affidavit of indigency under Section 78A-2-302 with any
6887 Utah court by ~~[a prisoner]~~ an incarcerated individual, the court shall review the affidavit and
6888 make an independent determination based on the information provided whether court costs and
6889 fees should be paid in full or be waived in whole or in part.

6890 (ii) The court shall require a full or partial filing fee when the ~~[prisoner's]~~ incarcerated
6891 individual's financial information demonstrates an ability to pay the applicable court fees or
6892 costs.

6893 (b) (i) If ~~[a prisoner's]~~ an incarcerated individual's court fees or costs are completely
6894 waived, and if the ~~[prisoner]~~ incarcerated individual files an appeal, the court shall immediately
6895 file any complaint or papers on appeal and complete all necessary action as promptly as if the
6896 litigant had paid all the fees and costs in full.

6897 (ii) If ~~[a prisoner]~~ an incarcerated individual is indigent, the constable and sheriff shall
6898 immediately serve any summonses, writs, process and subpoenas, and papers necessary in the
6899 prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.

6900 (c) (i) If ~~[a prisoner]~~ an incarcerated individual files an affidavit of indigency, the judge
6901 shall question the ~~[prisoner]~~ incarcerated individual at the time of the hearing on the merits of
6902 the case as to the ~~[prisoner's]~~ incarcerated individual's ability to pay.

6903 (ii) If the judge determines that the ~~[prisoner]~~ incarcerated individual is reasonably able
6904 to pay court fees and costs, the final order or decree shall be entered, however the ~~[prisoner]~~
6905 incarcerated individual may not seek enforcement or modification of the decree or order until
6906 the ~~[prisoner]~~ incarcerated individual has paid the fees or costs in full.

6907 (iii) A judge may waive the restrictions placed on the ~~[prisoner]~~ incarcerated individual

6908 in Subsection (7)(c)(ii) upon a showing of good cause.

6909 Section 143. Section **78B-2-302** is amended to read:

6910 **78B-2-302. Within one year.**

6911 An action may be brought within one year:

6912 (1) for liability created by the statutes of a foreign state;

6913 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,
6914 or to an individual and the state, except when the statute imposing it prescribes a different
6915 limitation;

6916 (3) except as provided in Section **78B-2-307.5**, upon a statute, or upon an undertaking
6917 in a criminal action, for a forfeiture or penalty to the state;

6918 (4) for libel, slander, false imprisonment, or seduction;

6919 (5) against a sheriff or other officer for the escape of [~~a prisoner~~] an incarcerated
6920 individual arrested or imprisoned upon either civil or criminal process;

6921 (6) against a municipal corporation for damages or injuries to property caused by a
6922 mob or riot;

6923 (7) except as otherwise expressly provided by statute, against a county legislative body
6924 or a county executive to challenge a decision of the county legislative body or county
6925 executive, respectively;

6926 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious
6927 Land Use Act; or

6928 (9) for a claim for relief or a cause of action under Subsection **25-6-203**(2).

6929 Section 144. Section **78B-6-603** is amended to read:

6930 **78B-6-603. Recommitment after discharge forbidden -- Exceptions.**

6931 [~~A person~~] An individual who has been discharged by order of the court or judge upon
6932 habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause,
6933 except in the following cases:

6934 (1) if the [~~person~~] individual has been discharged from custody on a criminal charge
6935 and is afterward committed for the same offense by legal order or process; or

6936 (2) if, after discharge for defect of proof or for any defect of the process, warrant or
6937 commitment in a criminal case, the [~~prisoner~~] individual is again arrested on sufficient proof
6938 and committed by legal process for the same offense.

6939 Section 145. Section **78B-8-401** is amended to read:

6940 **78B-8-401. Definitions.**

6941 As used in this part:

6942 (1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid,
6943 pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and
6944 vaginal secretions, and any body fluid visibly contaminated with blood.

6945 (2) "COVID-19" means the same as that term is defined in Section [78B-4-517](#).

6946 (3) "Disease" means Human Immunodeficiency Virus infection, acute or chronic
6947 Hepatitis B infection, Hepatitis C infection, COVID-19 or another infectious disease that may
6948 cause Severe Acute Respiratory Syndrome, and any other infectious disease specifically
6949 designated by the Labor Commission, in consultation with the Department of Health and
6950 Human Services, for the purposes of this part.

6951 (4) "Emergency services provider" means:

6952 (a) an individual licensed under Section [26-8a-302](#), a peace officer, local fire
6953 department personnel, or personnel employed by the Department of Corrections or by a county
6954 jail, who provide prehospital emergency care for an emergency services provider either as an
6955 employee or as a volunteer; or

6956 (b) an individual who provides for the care, control, support, or transport of [~~a~~
6957 ~~prisoner~~] an incarcerated individual.

6958 (5) "First aid volunteer" means a person who provides voluntary emergency assistance
6959 or first aid medical care to an injured person prior to the arrival of an emergency medical
6960 services provider or peace officer.

6961 (6) "Health care provider" means the same as that term is defined in Section
6962 [78B-3-403](#).

6963 (7) "Incarcerated individual" means the same as that term is defined in Section
6964 [76-5-101](#).

6965 [~~(7)~~] (8) "Medical testing procedure" means a nasopharyngeal swab, a nasal swab, a
6966 capillary blood sample, a saliva test, or a blood draw.

6967 [~~(8)~~] (9) "Peace officer" means the same as that term is defined in Section [53-1-102](#).

6968 [~~(9)~~] "~~Prisoner~~" means the same as that term is defined in Section ~~[76-5-101](#)~~[:]

6969 (10) "Significant exposure" and "significantly exposed" mean:

6970 (a) exposure of the body of one individual to the blood or body fluids of another
6971 individual by:

6972 (i) percutaneous injury, including a needle stick, cut with a sharp object or instrument,
6973 or a wound resulting from a human bite, scratch, or similar force; or

6974 (ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut,
6975 abrasion, dermatitis, or other damage;

6976 (b) exposure of the body of one individual to the body fluids, including airborne
6977 droplets, of another individual if:

6978 (i) the other individual displays symptoms known to be associated with COVID-19 or
6979 another infectious disease that may cause Severe Acute Respiratory Syndrome; or

6980 (ii) other evidence exists that would lead a reasonable person to believe that the other
6981 individual may be infected with COVID-19 or another infectious disease that may cause Severe
6982 Acute Respiratory Syndrome; or

6983 (c) exposure that occurs by any other method of transmission defined by the Labor
6984 Commission, in consultation with the Department of Health and Human Services, as a
6985 significant exposure.

6986 Section 146. Section **78B-8-402** is amended to read:

6987 **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

6988 (1) An emergency services provider or first aid volunteer who is significantly exposed
6989 during the course of performing the emergency services provider's duties or during the course
6990 of performing emergency assistance or first aid, or a health care provider acting in the course
6991 and scope of the health care provider's duties as a health care provider may:

6992 (a) request that the [~~person~~] individual to whom the emergency services provider, first
6993 aid volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

6994 (b) petition the district court or a magistrate for an order requiring that the [~~person~~]
6995 individual to whom the emergency services provider, first aid volunteer, or health care provider
6996 was significantly exposed submit to testing to determine the presence of a disease and that the
6997 results of that test be disclosed to the petitioner by the Department of Health and Human
6998 Services.

6999 (2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic
7000 or other means an ex parte request for a warrant ordering a medical testing procedure of the

7001 respondent.

7002 (b) The court or magistrate shall issue a warrant ordering the respondent to submit to a
7003 medical testing procedure within two hours, and that reasonable force may be used, if
7004 necessary, if the court or magistrate finds that:

7005 (i) the petitioner was significantly exposed during the course of performing the
7006 petitioner's duties as an emergency services provider, first aid volunteer, or health care
7007 provider;

7008 (ii) the respondent refused to give consent to the medical testing procedure or is unable
7009 to give consent;

7010 (iii) there may not be an opportunity to obtain a sample at a later date; and

7011 (iv) a delay in administering available FDA-approved post-exposure treatment or
7012 prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

7013 (c) (i) If the petitioner requests that the court order the respondent to submit to a blood
7014 draw, the petitioner shall request [~~a person~~] an individual authorized under Section [41-6a-523](#)
7015 to perform the blood draw.

7016 (ii) If the petitioner requests that the court order the respondent to submit to a medical
7017 testing procedure, other than a blood draw, the petitioner shall request that a qualified medical
7018 professional, including a physician, a physician's assistant, a registered nurse, a licensed
7019 practical nurse, or a paramedic, perform the medical testing procedure.

7020 (d) (i) A sample drawn in accordance with a warrant following an ex parte request shall
7021 be sent to the Department of Health and Human Services for testing.

7022 (ii) If the Department of Health and Human Services is unable to perform a medical
7023 testing procedure ordered by the court under this section, a qualified medical laboratory may
7024 perform the medical testing procedure if:

7025 (A) the Department of Health and Human Services requests that the medical laboratory
7026 perform the medical testing procedure; and

7027 (B) the result of the medical testing procedure is provided to the Department of Health
7028 and Human Services.

7029 (3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the
7030 petitioner may file a petition with the district court seeking an order to submit to testing and to
7031 disclose the results in accordance with this section.

7032 (4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in
7033 which the petitioner certifies that the petitioner has been significantly exposed to the individual
7034 who is the subject of the petition and describes that exposure.

7035 (b) The petitioner shall submit to testing to determine the presence of a disease, when
7036 the petition is filed or within three days after the petition is filed.

7037 (5) The petitioner shall cause the petition required under this section to be served on
7038 the [~~person~~] individual who the petitioner is requesting to be tested in a manner that will best
7039 preserve the confidentiality of that [~~person~~] individual.

7040 (6) (a) The court shall set a time for a hearing on the matter within 10 days after the
7041 petition is filed and shall give the petitioner and the individual who is the subject of the petition
7042 notice of the hearing at least 72 hours prior to the hearing.

7043 (b) The individual who is the subject of the petition shall also be notified that the
7044 individual may have an attorney present at the hearing and that the individual's attorney may
7045 examine and cross-examine witnesses.

7046 (c) The hearing shall be conducted in camera.

7047 (7) The district court may enter an order requiring that an individual submit to testing,
7048 including a medical testing procedure, for a disease if the court finds probable cause to believe:

7049 (a) the petitioner was significantly exposed; and

7050 (b) the exposure occurred during the course of the emergency services provider's
7051 duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health
7052 care provider acting in the course and scope of the provider's duties as a health care provider.

7053 (8) The court may order that the use of reasonable force is permitted to complete an
7054 ordered test if the individual who is the subject of the petition is [~~a prisoner~~] an incarcerated
7055 individual.

7056 (9) The court may order that additional, follow-up testing be conducted and that the
7057 individual submit to that testing, as it determines to be necessary and appropriate.

7058 (10) The court is not required to order an individual to submit to a test under this
7059 section if it finds that there is a substantial reason, relating to the life or health of the
7060 individual, not to enter the order.

7061 (11) (a) Upon order of the district court that an individual submit to testing for a
7062 disease, that individual shall report to the designated local health department to provide the

7063 ordered specimen within five days after the day on which the court issues the order, and
7064 thereafter as designated by the court, or be held in contempt of court.

7065 (b) The court shall send the order to the Department of Health and Human Services and
7066 to the local health department ordered to conduct or oversee the test.

7067 (c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and
7068 Human Services and a local health department may disclose the test results pursuant to a court
7069 order as provided in this section.

7070 (d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not
7071 satisfy the requirements of the court order.

7072 (12) The local health department or the Department of Health and Human Services
7073 shall inform the subject of the petition and the petitioner of the results of the test and advise
7074 both parties that the test results are confidential. That information shall be maintained as
7075 confidential by all parties to the action.

7076 (13) The court, the court's personnel, the process server, the Department of Health and
7077 Human Services, local health department, and petitioner shall maintain confidentiality of the
7078 name and any other identifying information regarding the individual tested and the results of
7079 the test as they relate to that individual, except as specifically authorized by this chapter.

7080 (14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment
7081 for each test performed in accordance with this section to the entity that performs the
7082 procedure.

7083 (b) If the petitioner is an emergency services provider, the agency that employs the
7084 emergency services provider shall remit payment for each test performed in accordance with
7085 this section to the entity that performs the procedure.

7086 (15) The entity that obtains a specimen for a test ordered under this section shall cause
7087 the specimen and the payment for the analysis of the specimen to be delivered to the
7088 Department of Health and Human Services for analysis.

7089 (16) If the individual is incarcerated, the incarcerating authority shall either obtain a
7090 specimen for a test ordered under this section or shall pay the expenses of having the specimen
7091 obtained by a qualified individual who is not employed by the incarcerating authority.

7092 (17) The ex parte request or petition shall be sealed upon filing and made accessible
7093 only to the petitioner, the subject of the petition, and their attorneys, upon court order.

7094 Section 147. Section **78B-22-404** is amended to read:

7095 **78B-22-404. Powers and duties of the commission.**

7096 (1) The commission shall:

7097 (a) adopt core principles for an indigent defense system to ensure the effective
7098 representation of indigent individuals consistent with the requirements of the United States
7099 Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall
7100 address the following:

7101 (i) an indigent defense system shall ensure that in providing indigent defense services:

7102 (A) an indigent individual receives conflict-free indigent defense services; and

7103 (B) there is a separate contract for each type of indigent defense service; and

7104 (ii) an indigent defense system shall ensure an indigent defense service provider has:

7105 (A) the ability to exercise independent judgment without fear of retaliation and is free
7106 to represent an indigent individual based on the indigent defense service provider's own
7107 independent judgment;

7108 (B) adequate access to indigent defense resources;

7109 (C) the ability to provide representation to accused individuals in criminal cases at the
7110 critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency
7111 and child welfare proceedings;

7112 (D) a workload that allows for sufficient time to meet with clients, investigate cases,
7113 file appropriate documents with the courts, and otherwise provide effective assistance of
7114 counsel to each client;

7115 (E) adequate compensation without financial disincentives;

7116 (F) appropriate experience or training in the area for which the indigent defense service
7117 provider is representing indigent individuals;

7118 (G) compensation for legal training and education in the areas of the law relevant to the
7119 types of cases for which the indigent defense service provider is representing indigent
7120 individuals; and

7121 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
7122 including expectations on client communications and managing conflicts of interest;

7123 (b) encourage and aid indigent defense systems in the state in the regionalization of
7124 indigent defense services to provide for effective and efficient representation to the indigent

- 7125 individuals;
- 7126 (c) emphasize the importance of ensuring constitutionally effective indigent defense
7127 services;
- 7128 (d) encourage members of the judiciary to provide input regarding the delivery of
7129 indigent defense services; and
- 7130 (e) oversee individuals and entities involved in providing indigent defense services.
- 7131 (2) The commission may:
- 7132 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
7133 Rulemaking Act, to carry out the commission's duties under this part;
- 7134 (b) assign duties related to indigent defense services to the office to assist the
7135 commission with the commission's statutory duties;
- 7136 (c) request supplemental appropriations from the Legislature to address a deficit in the
7137 Indigent [~~Inmate~~] Incarcerated Individual Fund created in Section [78B-22-455](#); and
- 7138 (d) request supplemental appropriations from the Legislature to address a deficit in the
7139 Child Welfare Parental Representation Fund created in Section [78B-22-804](#).
- 7140 Section 148. Section **78B-22-452** is amended to read:
- 7141 **78B-22-452. Duties of the office.**
- 7142 (1) The office shall:
- 7143 (a) establish an annual budget for the office for the Indigent Defense Resources
7144 Restricted Account created in Section [78B-22-405](#);
- 7145 (b) assist the commission in performing the commission's statutory duties described in
7146 this chapter;
- 7147 (c) identify and collect data that is necessary for the commission to:
- 7148 (i) aid, oversee, and review compliance by indigent defense systems with the
7149 commission's core principles for the effective representation of indigent individuals; and
- 7150 (ii) provide reports regarding the operation of the commission and the provision of
7151 indigent defense services by indigent defense systems in the state;
- 7152 (d) assist indigent defense systems by reviewing contracts and other agreements, to
7153 ensure compliance with the commission's core principles for effective representation of
7154 indigent individuals;
- 7155 (e) establish procedures for the receipt and acceptance of complaints regarding the

7156 provision of indigent defense services in the state;

7157 (f) establish procedures to award grants to indigent defense systems under Section
7158 78B-22-406 that are consistent with the commission's core principles;

7159 (g) create and enter into contracts consistent with Section 78B-22-454 to provide
7160 indigent defense services for an indigent defense ~~[inmate]~~ incarcerated individual who:

7161 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth
7162 class as classified in Section 17-50-501;

7163 (ii) is charged with having committed a crime within that state prison; and

7164 (iii) has been appointed counsel in accordance with Section 78B-22-203;

7165 (h) assist the commission in developing and reviewing advisory caseload guidelines
7166 and procedures;

7167 (i) investigate, audit, and review the provision of indigent defense services to ensure
7168 compliance with the commission's core principles for the effective representation of indigent
7169 individuals;

7170 (j) administer the Child Welfare Parental Representation Program in accordance with
7171 Part 8, Child Welfare Parental Representation Program;

7172 (k) annually report to the governor, Legislature, Judiciary Interim Committee, and
7173 Judicial Council, regarding:

7174 (i) the operations of the commission;

7175 (ii) the operations of the indigent defense systems in the state; and

7176 (iii) compliance with the commission's core principles by indigent defense systems
7177 receiving grants from the commission;

7178 (l) submit recommendations to the commission for improving indigent defense services
7179 in the state;

7180 (m) publish an annual report on the commission's website; and

7181 (n) perform all other duties assigned by the commission related to indigent defense
7182 services.

7183 (2) The office may enter into contracts and accept, allocate, and administer funds and
7184 grants from any public or private person to accomplish the duties of the office.

7185 (3) Any contract entered into under this part shall require that indigent defense services
7186 are provided in a manner consistent with the commission's core principles implemented under

7187 Section 78B-22-404.

7188 Section 149. Section 78B-22-454 is amended to read:

7189 **78B-22-454. Defense of indigent incarcerated individuals.**

7190 (1) The office shall pay for indigent defense services for indigent [inmates]
7191 incarcerated individuals from the Indigent [Inmate] Incarcerated Individual Fund created in
7192 Section 78B-22-455.

7193 (2) A contract under this part shall ensure that indigent defense services are provided in
7194 a manner consistent with the core principles described in Section 78B-22-404.

7195 (3) The county attorney or district attorney of a county of the third, fourth, fifth, or
7196 sixth class shall function as the prosecuting entity.

7197 (4) (a) A county of the third, fourth, fifth, or sixth class where a state prison is located
7198 may impose an additional property tax levy by ordinance at .0001 per dollar of taxable value in
7199 the county.

7200 (b) If the county governing body imposes the additional property tax levy by ordinance,
7201 the revenue shall be deposited into the Indigent [Inmate] Incarcerated Individual Fund as
7202 provided in Section 78B-22-455 to fund the purposes of this part.

7203 (c) Upon notification that the fund has reached the amount specified in Subsection
7204 78B-22-455(6), a county shall deposit revenue derived from the property tax levy after the
7205 county receives the notice into a county account used exclusively to provide indigent defense
7206 services.

7207 (d) A county that chooses not to impose the additional levy by ordinance may not
7208 receive any benefit from the Indigent [Inmate] Incarcerated Individual Fund.

7209 Section 150. Section 78B-22-455 is amended to read:

7210 **78B-22-455. Indigent Incarcerated Individual Fund.**

7211 (1) There is created a custodial fund known as the "Indigent [Inmate] Incarcerated
7212 Individual Fund" to be disbursed by the office in accordance with contracts entered into under
7213 Subsection 78B-22-452(1)(g).

7214 (2) Money deposited into this fund shall only be used:

7215 (a) to pay indigent defense services for an indigent [inmate] incarcerated individual
7216 who:

7217 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth

7218 class as defined in Section 17-50-501;

7219 (ii) is charged with having committed a crime within that state prison; and

7220 (iii) has been appointed counsel in accordance with Section 78B-22-203; and

7221 (b) to cover costs of administering the Indigent [~~Inmate~~] Incarcerated Individual Fund.

7222 (3) The fund consists of:

7223 (a) proceeds received from counties that impose the additional tax levy by ordinance

7224 under Subsection 78B-22-454(4), which shall be the total county obligation for payment of

7225 costs listed in Subsection (2) for defense services for indigent [~~inmates~~] incarcerated

7226 individuals;

7227 (b) appropriations made to the fund by the Legislature; and

7228 (c) interest and earnings from the investment of fund money.

7229 (4) Fund money shall be invested by the state treasurer with the earnings and interest

7230 accruing to the fund.

7231 (5) (a) In any calendar year in which the fund has insufficient funding, or is projected

7232 to have insufficient funding, the commission shall request a supplemental appropriation from

7233 the Legislature in the following general session to provide sufficient funding.

7234 (b) The state shall pay any or all of the reasonable and necessary money to provide

7235 sufficient funding into the Indigent [~~Inmate~~] Incarcerated Individual Fund.

7236 (6) The fund is capped at \$1,000,000.

7237 (7) The office shall notify the contributing counties when the fund approaches

7238 \$1,000,000 and provide each county with the amount of the balance in the fund.

7239 (8) Upon notification by the office that the fund is near the limit imposed in Subsection

7240 (6), the counties may contribute enough money to enable the fund to reach \$1,000,000 and

7241 discontinue contributions until notified by the office that the balance has fallen below

7242 \$1,000,000, at which time counties that meet the requirements of Section 78B-22-454 shall

7243 resume contributions.

7244 Section 151. Section 78B-22-701 is amended to read:

7245 **78B-22-701. Establishment of Indigent Aggravated Murder Defense Fund -- Use**

7246 **of fund -- Compensation for indigent legal defense from fund.**

7247 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense

7248 Fund.

7249 (2) (a) There is established a custodial fund known as the "Indigent Aggravated Murder
7250 Defense Fund."

7251 (b) The Division of Finance shall disburse money from the fund at the direction of the
7252 board and subject to this chapter.

7253 (3) The fund consists of:

7254 (a) money received from participating counties as provided in Sections 78B-22-702
7255 and 78B-22-703;

7256 (b) appropriations made to the fund by the Legislature as provided in Section
7257 78B-22-703; and

7258 (c) interest and earnings from the investment of fund money.

7259 (4) The state treasurer shall invest fund money with the earnings and interest accruing
7260 to the fund.

7261 (5) The fund shall be used to assist participating counties with financial resources, as
7262 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the
7263 provision of constitutionally effective defense for indigent individuals prosecuted for the
7264 violation of state laws in cases involving aggravated murder.

7265 (6) Money allocated to or deposited in this fund shall be used only:

7266 (a) to reimburse participating counties for expenditures made for an attorney appointed
7267 to represent an indigent individual, other than a state ~~[inmate]~~ incarcerated individual in a state
7268 prison, prosecuted for aggravated murder in a participating county; and

7269 (b) for administrative costs pursuant to Section 78B-22-501.

7270 Section 152. Section 80-6-204 is amended to read:

7271 **80-6-204. Detention or confinement of a minor -- Restrictions.**

7272 (1) Except as provided in Subsection (2) or this chapter, if a child is apprehended by a
7273 peace officer, or brought before a court for examination under state law, the child may not be
7274 confined:

7275 (a) in a jail, lockup, or cell used for an adult who is charged with a crime; or

7276 (b) in secure care .

7277 (2) (a) The division shall detain a child in accordance with Sections 80-6-502,
7278 80-6-504, and 80-6-505 if:

7279 (i) the child is charged with an offense under Section 80-6-502 or 80-6-503;

7280 (ii) the district court has obtained jurisdiction over the offense because the child is
7281 bound over to the district court under Section 80-6-504; and

7282 (iii) the juvenile or district court orders the detention of the child.

7283 (b) (i) If a child is detained before a detention hearing, or a preliminary hearing under
7284 Section 80-6-504 if a criminal information is filed for the child under Section 80-6-503, the
7285 child may only be held in certified juvenile detention accommodations in accordance with rules
7286 made by the commission.

7287 (ii) The commission's rules shall include rules for acceptable sight and sound
7288 separation from adult ~~[inmates]~~ incarcerated individuals.

7289 (iii) The commission shall certify that a correctional facility is in compliance with the
7290 commission's rules.

7291 (iv) This Subsection (2)(b) does not apply to a child held in a correctional facility in
7292 accordance with Subsection (2)(a).

7293 (3) (a) In an area of low density population, the commission may, by rule, approve a
7294 juvenile detention accommodation within a correctional facility that has acceptable sight and
7295 sound separation.

7296 (b) An accommodation described in Subsection (3)(a) shall be used only:

7297 (i) for short-term holding of a child who is alleged to have committed an act that would
7298 be a criminal offense if committed by an adult; and

7299 (ii) for a maximum confinement period of six hours.

7300 (c) A child may only be held in an accommodation described in Subsection (3)(a) for:

7301 (i) identification;

7302 (ii) notification of a juvenile court official;

7303 (iii) processing; and

7304 (iv) allowance of adequate time for evaluation of needs and circumstances regarding
7305 the release or transfer of the child to a shelter or detention facility.

7306 (d) This Subsection (3) does not apply to a child held in a correctional facility in
7307 accordance with Subsection (2)(a).

7308 (4) (a) If a child is alleged to have committed an act that would be a criminal offense if
7309 committed by an adult, the child may be detained in a holding room in a local law enforcement
7310 agency facility:

- 7311 (i) for a maximum of two hours; and
- 7312 (ii) (A) for identification or interrogation; or
- 7313 (B) while awaiting release to a parent or other responsible adult.
- 7314 (b) A holding room described in Subsection (4)(a) shall be certified by the commission
- 7315 in accordance with the commission's rules.
- 7316 (c) The commission's rules shall include provisions for constant supervision and for
- 7317 sight and sound separation from adult ~~[inmates]~~ incarcerated individuals.
- 7318 (5) Willful failure to comply with this section is a class B misdemeanor.
- 7319 (6) (a) The division is responsible for the custody and detention of:
- 7320 (i) a child who requires detention before trial or examination, or is placed in secure
- 7321 detention after an adjudication under Section 80-6-704; and
- 7322 (ii) a juvenile offender under Subsection 80-6-806(7).
- 7323 (b) Subsection (6)(a) does not apply to a child held in a correctional facility in
- 7324 accordance with Subsection (2)(a).
- 7325 (c) (i) The commission shall provide standards for custody or detention under
- 7326 Subsections (2)(b), (3), and (4).
- 7327 (ii) The division shall determine and set standards for conditions of care and
- 7328 confinement of children in detention facilities.
- 7329 (d) (i) The division, or a public or private agency willing to undertake temporary
- 7330 custody or detention upon agreed terms in a contract with the division, shall provide all other
- 7331 custody or detention in suitable premises distinct and separate from the general jails, lockups,
- 7332 or cells used in law enforcement and corrections systems.
- 7333 (ii) This Subsection (6)(d) does not apply to a child held in a correctional facility in
- 7334 accordance with Subsection (2)(a).
- 7335 (7) Except as otherwise provided by this chapter, if an individual who is, or appears to
- 7336 be, under 18 years old is received at a correctional facility, the sheriff, warden, or other official,
- 7337 in charge of the correctional facility shall:
- 7338 (a) immediately notify the juvenile court of the individual; and
- 7339 (b) make arrangements for the transfer of the individual to a detention facility, unless
- 7340 otherwise ordered by the juvenile court.
- 7341 Section 153. **Repealer.**

7342 This bill repeals:

7343 Section **77-16b-101**, Title.

7344 Section 154. **Revisor instructions.**

7345 The Legislature intends that the Office of Legislative Research and General Counsel, in
7346 preparing the Utah Code database for publication, replace the terms "prisoner" and "inmate"
7347 with "incarcerated individual" in any new language added to the Utah Code by legislation
7348 passed during the 2023 General Session.