SB0188S01 compared with SB0188

~~{deleted text}~~ shows text that was in SB0188 but was deleted in SB0188S01.

inserted text shows text that was not in SB0188 but was inserted into SB0188S01.

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Senator Luz Escamilla proposes the following substitute bill:

INMATE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

circumstances; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

10-8-58.5, as last amended by Laws of Utah 2010, Chapter 378

13-26-11, as last amended by Laws of Utah 2022, Chapter 324

13-45-301, as enacted by Laws of Utah 2006, Chapter 344

17-18a-506, as enacted by Laws of Utah 2021, Chapter 142

17-22-2, as last amended by Laws of Utah 2022, Chapter 335

17-22-2.5, as last amended by Laws of Utah 2018, Chapter 86

17-22-3, as Utah Code Annotated 1953

17-22-5, as last amended by Laws of Utah 2004, Chapter 301

17-22-5.5, as last amended by Laws of Utah 2022, Chapter 115

17-22-6, as last amended by Laws of Utah 2011, Chapter 297

17-22-7, as last amended by Laws of Utah 1993, Chapter 227

17-22-8, as last amended by Laws of Utah 2022, Chapter 123

17-22-9, as Utah Code Annotated 1953

17-22-19, as Utah Code Annotated 1953

17-22-28, as enacted by Laws of Utah 1996, Chapter 94

17-22-29, as enacted by Laws of Utah 1996, Chapter 237

17-22-32, as last amended by Laws of Utah 2022, Chapter 187

17-22-33, as enacted by Laws of Utah 2020, Chapter 65

17-25-3, as renumbered and amended by Laws of Utah 2001, Chapter 46

17-50-319, as last amended by Laws of Utah 2021, Chapter 260

17-53-311, as last amended by Laws of Utah 2011, Chapter 297

17D-1-201, as last amended by Laws of Utah 2021, Chapter 339

26-18-3, as last amended by Laws of Utah 2021, Chapter 422

26-18-421, as enacted by Laws of Utah 2020, Chapter 159

26-40-105, as last amended by Laws of Utah 2019, Chapter 393

31A-35-701, as last amended by Laws of Utah 2016, Chapter 234

34-40-104, as last amended by Laws of Utah 2008, Chapter 382

35A-4-205, as last amended by Laws of Utah 2006, Chapter 22

39A-5-111, as renumbered and amended by Laws of Utah 2022, Chapter 373

39A-5-112, as renumbered and amended by Laws of Utah 2022, Chapter 373

51-7-4, as last amended by Laws of Utah 2020, Chapter 365

53-2a-602, as last amended by Laws of Utah 2016, Chapters 83, 134

53-10-404, as last amended by Laws of Utah 2021, Chapter 262

53-13-104, as last amended by Laws of Utah 2022, Chapter 10

53B-7-103, as last amended by Laws of Utah 2022, Chapter 421

58-37-8, as last amended by Laws of Utah 2022, Chapters 116, 415 and 430

59-12-402.1, as last amended by Laws of Utah 2017, Chapter 422

62A-2-120, as last amended by Laws of Utah 2022, Chapters 185, 335, 430, and 468

62A-15-103, as last amended by Laws of Utah 2022, Chapters 187, 255 and 415

62A-15-605.5, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

62A-15-902, as last amended by Laws of Utah 2011, Chapter 366

63A-16-1002, as enacted by Laws of Utah 2022, Chapter 390 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 390

63A-17-301, as last amended by Laws of Utah 2022, Chapter 209

63A-17-307, as last amended by Laws of Utah 2022, Chapters 169, 209

63B-6-502, as last amended by Laws of Utah 2021, Chapter 280

63B-12-301, as enacted by Laws of Utah 2003, Chapter 302

63G-2-301, as last amended by Laws of Utah 2020, Chapters 255, 399

63G-3-201, as last amended by Laws of Utah 2020, Chapter 408

63G-4-102, as last amended by Laws of Utah 2022, Chapter 307

63J-1-602.1, as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415, and 451

63M-7-204, as last amended by Laws of Utah 2022, Chapter 187

63M-7-526, as enacted by Laws of Utah 2020, Chapter 230

64-9b-1, as last amended by Laws of Utah 2011, Chapter 366

64-9b-2, as last amended by Laws of Utah 1999, Chapter 21

64-9b-3, as last amended by Laws of Utah 1997, Chapter 158

64-9b-4, as last amended by Laws of Utah 1997, Chapter 158

64-9b-5, as last amended by Laws of Utah 1997, Chapter 158

64-13-1, as last amended by Laws of Utah 2021, Chapters 85, 246 and 260

64-13-14.5, as last amended by Laws of Utah 2015, Chapter 412

64-13-15, as last amended by Laws of Utah 1991, Chapter 124

64-13-16, as last amended by Laws of Utah 1997, Chapters 10, 375

64-13-17, as last amended by Laws of Utah 2008, Chapter 382

64-13-21, as last amended by Laws of Utah 2022, Chapter 187

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

64-13-30, as last amended by Laws of Utah 2016, Chapter 243

64-13-30.5, as enacted by Laws of Utah 2009, Chapter 258

64-13-32, as last amended by Laws of Utah 1993, Chapter 49

64-13-34, as last amended by Laws of Utah 1987, Chapter 116

64-13-36, as last amended by Laws of Utah 1994, Chapters 12, 148

64-13-38, as last amended by Laws of Utah 2012, Chapter 21

64-13-39.5, as last amended by Laws of Utah 2009, Chapter 355

64-13-40, as enacted by Laws of Utah 1996, Chapter 88

64-13-42, as last amended by Laws of Utah 2018, Chapter 415

64-13-43, as enacted by Laws of Utah 2008, Chapter 368

64-13-44, as enacted by Laws of Utah 2013, Chapter 256

64-13-45, as last amended by Laws of Utah 2019, Chapters 311, 385

64-13-46, as enacted by Laws of Utah 2019, Chapter 385

64-13-47, as enacted by Laws of Utah 2021, Chapter 44

64-13-48, as enacted by Laws of Utah 2022, Chapter 144

64-13d-103, as enacted by Laws of Utah 1999, Chapter 288

64-13d-104, as enacted by Laws of Utah 1999, Chapter 288

64-13d-105, as enacted by Laws of Utah 1999, Chapter 288

64-13d-106, as enacted by Laws of Utah 1999, Chapter 288

64-13d-107, as enacted by Laws of Utah 1999, Chapter 288

64-13e-102, as last amended by Laws of Utah 2022, Chapter 370

64-13e-103, as last amended by Laws of Utah 2022, Chapter 187

64-13e-103.2, as enacted by Laws of Utah 2021, Chapter 366

64-13e-104, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

64-13e-105, as last amended by Laws of Utah 2021, Chapters 366, 382

64-13g-101, as enacted by Laws of Utah 2022, Chapter 393

76-3-201, as repealed and reenacted by Laws of Utah 2021, Chapter 260 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 261

76-3-202, as last amended by Laws of Utah 2022, Chapter 181

76-3-203.5, as last amended by Laws of Utah 2022, Chapters 181, 185 and 418

76-3-203.6, as last amended by Laws of Utah 2022, Chapter 181

76-3-403, as last amended by Laws of Utah 1998, Chapter 91

76-3-403.5, as last amended by Laws of Utah 2007, Chapter 148

76-5-101, as last amended by Laws of Utah 2022, Chapter 181

76-5-102.5, as last amended by Laws of Utah 2022, Chapter 181

76-5-102.6, as last amended by Laws of Utah 2022, Chapter 181

76-5-102.7, as last amended by Laws of Utah 2022, Chapters 117, 181

76-5-103.5, as last amended by Laws of Utah 2022, Chapter 181

76-5-412, as last amended by Laws of Utah 2022, Chapter 181

76-8-309, as last amended by Laws of Utah 2022, Chapter 181

76-8-311.3, as last amended by Laws of Utah 2020, Chapters 302, 347

76-8-318, as last amended by Laws of Utah 2022, Chapters 181, 335

77-16b-102, as last amended by Laws of Utah 2021, Chapter 262

77-16b-103, as enacted by Laws of Utah 2012, Chapter 355

77-16b-104, as enacted by Laws of Utah 2012, Chapter 355

77-18-112, as renumbered and amended by Laws of Utah 2021, Chapter 260

77-18a-1, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

77-19-3, as last amended by Laws of Utah 2007, Chapter 148

77-19-4, as last amended by Laws of Utah 2007, Chapters 148, 306

77-19-5, as enacted by Laws of Utah 1980, Chapter 15

77-19-201, as last amended by Laws of Utah 2005, Chapter 71

77-19-202, as last amended by Laws of Utah 2008, Chapter 382

77-19-203, as enacted by Laws of Utah 2004, Chapter 137

77-19-204, as enacted by Laws of Utah 2004, Chapter 137

77-19-205, as enacted by Laws of Utah 2004, Chapter 137

77-19-206, as enacted by Laws of Utah 2004, Chapter 137

77-23-301, as enacted by Laws of Utah 2008, Chapter 357

77-27-1, as last amended by Laws of Utah 2021, Chapters 21, 260

77-27-1.5, as enacted by Laws of Utah 2010, Chapter 110

77-27-5.3, as last amended by Laws of Utah 2011, Chapter 366

77-27-8, as last amended by Laws of Utah 2010, Chapter 110

77-27-9, as last amended by Laws of Utah 2022, Chapter 430

77-27-10, as last amended by Laws of Utah 2022, Chapter 430

77-28b-5, as enacted by Laws of Utah 1990, Chapter 324

77-28b-6, as enacted by Laws of Utah 1990, Chapter 324

77-28b-7, as enacted by Laws of Utah 1990, Chapter 324

77-28b-8, as enacted by Laws of Utah 1990, Chapter 324

77-28b-9, as enacted by Laws of Utah 1990, Chapter 324

77-30-10, as enacted by Laws of Utah 1980, Chapter 15

77-30-12, as enacted by Laws of Utah 1980, Chapter 15

77-30-18, as last amended by Laws of Utah 2018, Chapter 281

77-33-2, as enacted by Laws of Utah 1980, Chapter 15

77-33-6, as enacted by Laws of Utah 1980, Chapter 15

77-38-2, as last amended by Laws of Utah 1997, Chapter 103

77-38-4, as last amended by Laws of Utah 2011, Chapter 28

78A-2-302, as last amended by Laws of Utah 2022, Chapter 272

78A-2-305, as last amended by Laws of Utah 2022, Chapter 272

78B-2-302, as last amended by Laws of Utah 2017, Chapter 204

78B-6-603, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-8-401, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16

78B-8-402, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16

78B-22-404, as last amended by Laws of Utah 2022, Chapter 451

78B-22-452, as last amended by Laws of Utah 2021, Chapter 228

78B-22-454, as last amended by Laws of Utah 2022, Chapter 451

78B-22-455, as last amended by Laws of Utah 2022, Chapter 451

78B-22-701, as last amended by Laws of Utah 2022, Chapters 281, 451

80-6-204, as renumbered and amended by Laws of Utah 2021, Chapter 261

ENACTS:

26B-4-301, Utah Code Annotated 1953

~~{ **64-13-39.4**, Utah Code Annotated 1953~~

~~}~~ **64-13-49**, Utah Code Annotated 1953

REPEALS:

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

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

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

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

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

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

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

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

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

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

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

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

(f) require the private contractor to:

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

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

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

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

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

13-26-11. Prohibited practices.

(1) It is unlawful for a seller to:

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

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

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

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

(e) unless the seller is exempt under Section 13-26-4, fail to orally advise a purchaser

of the purchaser's right to cancel under Section 13-26-5;

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

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

(2) It is unlawful for a solicitor to:

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

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

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

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

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

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

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

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

13-45-301. Protection of personal information.

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

(i) the proposed contract;

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

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

(B) the contract provides for adequate services that meet the needs of the correctional

facility; and

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

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

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

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

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

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

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

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

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

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

(1) The sheriff shall:

(a) preserve the peace;

(b) make all lawful arrests;

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

(d) upon request of the juvenile court, aid the court in maintaining order during

hearings and transport a minor to and from youth corrections facilities, other institutions, or other designated places;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-22-2.5. Fees of sheriff.

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

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

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

(b) If the legislative body of a county does not under Subsection (1)(a) set a fee charged by the county sheriff, the sheriff shall charge a fee in accordance with Subsections (2) through (7).

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

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

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

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

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

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

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

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

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

(i) for serving a writ of possession or restitution, and putting any person entitled to

possession into possession of premises, and removing occupant, $50;

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

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

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

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

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

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

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

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

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

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

(a) accompany the summons in the action; and

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

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

(ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may receive, except as otherwise provided under Subsection (1)(a), $2.50 for each mile necessarily

traveled, in going only, computed from the post office where received for each person served, to a maximum of 100 miles.

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

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

(6) (a) For transporting a patient to the Utah State Hospital or to or from a hospital or a mental health facility, as defined in Section 62A-15-602, when the cost of transportation is payable by private individuals, the sheriff may collect, except as otherwise provided under Subsection (1)(a), $2.50 for each mile necessarily traveled, in going only, to a maximum of 100 miles.

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

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

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

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

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

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

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

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

(1) (a) Except as provided in Subsection (4), the sheriff shall adopt and implement written policies for admission of [~~prisoners~~] incarcerated individuals to the county jail and the classification of [~~persons~~] individuals incarcerated in the jail which shall provide for the separation of [~~prisoners~~] incarcerated individuals by gender and by such other factors as may

reasonably provide for the safety and well-being of [~~inmates~~] incarcerated individuals and the community.

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

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

(3) (a) Except as provided in Subsection (4), a county sheriff may develop and implement alternative incarceration programs that may or may not involve housing [~~a prisoner~~] an incarcerated individual in a jail facility.

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

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

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

(ii) ordered by the court.

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

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

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

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

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

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

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

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

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

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

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

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

(A) under the sheriff's control; or

(B) available to the sheriff by contract;

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

(A) to a supervised release program, according to release criteria established by the sheriff; or

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

(iii) admit [~~prisoners~~] incarcerated individuals in accordance with law and a uniform admissions policy imposed equally upon all entities using the county jail.

(3) (a) The sheriff shall keep records of the release status and the type of release program or alternative incarceration program for any [~~prisoner~~] incarcerated individual released under Subsection (2)(b)(ii).

(b) The sheriff shall make these records available upon request to the Department of Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

(4) This section may not be construed to authorize a sheriff to modify provisions of a contract with the Department of Corrections to house in a county jail an individual sentenced to the Department of Corrections.

(5) Regardless of whether a jail facility has reached the jail facility's maximum operating capacity under Subsection (2), a sheriff may release an individual from a jail facility in accordance with Section 77-20-203 or 77-20-204.

(6) (a) Subject to Subsection (6)(c), a jail facility shall detain an individual for up to 24 hours from booking if:

(i) the individual is on supervised probation or parole and that information is reasonably available; and

(ii) the individual was arrested for:

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

(B) a qualifying domestic violence offense as defined in Subsection 77-36-1.1(4) that is not a criminal mischief offense.

(b) The jail facility shall notify the entity supervising the individual's probation or parole that the individual is being detained.

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

(A) to the Department of Corrections if the Department of Corrections supervises the individual and requests the individual's release; or

(B) if a court or magistrate orders release.

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

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

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

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

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

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

17-22-7. Special guards for jail.

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

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

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

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

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

(b) provide each [~~prisoner~~] incarcerated individual with necessary food, clothing, and

bedding in the manner prescribed by the county legislative body;

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

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

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

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

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

(i) an oral contraceptive;

(ii) an injectable contraceptive;

(iii) a patch;

(iv) a vaginal ring; or

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

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

(3) A sheriff shall follow:

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

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

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

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

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

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

17-22-9. Federal incarcerated individuals.

[~~Persons~~]{ } An individual convicted of crime in any of the courts of the United States in the state of Utah as well as [~~prisoners~~] an incarcerated individual held to answer before such courts for a violation of any of the laws of the United States shall be received and held in the jail of any county under the same regulations and laws governing [~~prisoners~~] incarcerated individuals held under the authority of this state, and upon such terms as to compensation as may be agreed upon by the county and the United States.

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

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

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

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

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

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

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

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

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

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

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

(2) The court shall:

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

(b) consider facility policy.

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

17-22-32. County jail reporting requirements.

(1) As used in this section:

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

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

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

(A) being transported for medical care; or

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

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

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

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

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

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

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

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

(i) the Bureau of Indian Affairs;

(ii) a state prison;

(iii) a federal prison;

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

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

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

(f) for each [~~inmate~~] incarcerated individual booked into the county jail:

(i) the name of the agency that arrested the [~~inmate~~] incarcerated individual;

(ii) the date and time the [~~inmate~~] incarcerated individual was booked into and released from the custody of the county jail;

(iii) if the [~~inmate~~] incarcerated individual was released from the custody of the county jail, the reason the [~~inmate~~] incarcerated individual was released from the custody of the county jail;

(iv) if the [~~inmate~~] incarcerated individual was released from the custody of the county jail on a financial condition, whether the financial condition was set by a bail commissioner or a court;

(v) the number of days the [~~inmate~~] incarcerated individual was held in the custody of the county jail before disposition of the [~~inmate's~~] incarcerated individual's criminal charges;

(vi) whether the [~~inmate~~] incarcerated individual was released from the custody of the county jail before final disposition of the [~~inmate's~~] incarcerated individual's criminal charges; and

(vii) the state identification number of the [~~inmate~~] incarcerated individual;

(g) the number of in-custody deaths that occurred at the county jail;

(h) for each in-custody death[~~;~~]:

(i) the name, gender, race, ethnicity, age, and known or suspected medical diagnosis or disability, if any, of the deceased;

(ii) the date, time, and location of death;

(iii) the law enforcement agency that detained, arrested, or was in the process of

arresting the deceased; and

(iv) a brief description of the circumstances surrounding the death;

(i) the known, or discoverable on reasonable inquiry, causes and contributing factors of each of the in-custody deaths described in Subsection (2)(g);

(j) the county jail's policy for notifying an [~~inmate's~~] incarcerated individual's next of kin after the [~~inmate's~~] incarcerated individual's in-custody death;

(k) the county jail policies, procedures, and protocols:

(i) for treatment of an [~~inmate~~] incarcerated individual experiencing withdrawal from alcohol or substance use, including use of opiates;

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

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

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

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

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

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

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

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

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

(A) the county jail; and

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

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

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

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

(4) The commission shall:

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

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

(c) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee and the Utah Substance Use and Mental Health Advisory Council before November 1 of each year; and

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

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

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

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

17-22-33. Commissary account disclosure requirements.

(1) As used in this section:

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

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

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

(d) [~~"Inmate"~~] "Incarcerated individual" means an individual in the custody of a

correctional facility for criminal charges or a criminal conviction.

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

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

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

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

(i) $5 for each defendant served; and

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

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

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

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

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

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

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

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

(5) For arresting each [~~prisoner~~] incarcerated individual and bringing [~~him~~] the

incarcerated individual into court, or otherwise satisfying a warrant, a fee of $15 may be charged.

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

17-50-319. County charges enumerated.

(1) County charges are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) under the Public Employees' Benefit and Insurance Program, created in Section

49-20-103; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) require the private contractor to show evidence of liability insurance protecting the county and its officers, employees, and agents from liability arising from the construction,

operation, or maintenance of the jail, in an amount not less than those specified in Title 63G, Chapter 7, Governmental Immunity Act of Utah;

(f) require the private contractor to:

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

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

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

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

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

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

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

(1) water;

(2) sewerage;

(3) drainage;

(4) flood control;

(5) garbage collection and disposal;

(6) health care;

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

(8) recreation;

(9) fire protection, including:

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

(b) Firewise Communities programs and the development of community wildfire

protection plans; and

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

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

(11) street lighting;

(12) consolidated 911 and emergency dispatch;

(13) animal shelter and control;

(14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease Funds, and expending those funds to be used in accordance with state and federal law;

(15) in a county of the first class, extended police protection;

(16) control or abatement of earth movement or a landslide;

(17) an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure as defined in Section 11-42a-102, in accordance with Title 11, Chapter 42a, Commercial Property Assessed Clean Energy Act; or

(18) cemetery.

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

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

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

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

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

(i) the standards used by the department for determining eligibility for Medicaid

services;

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

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

(iv) a requirement that:

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

(B) prior to enrollment in the electronic exchange of clinical health records the enrollee shall receive notice of enrollment in the electronic exchange of clinical health records and the right to opt out of participation at any time; and

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

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

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

(ii) initiates a new Medicaid waiver;

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

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

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

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

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

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

(ii) include:

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

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

(C) the proposed change in services or reimbursement, including a description of the

effect of the change;

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

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

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

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

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

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

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

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

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

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

(b) recovery of overpayments; and

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

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

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

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

(7) (a) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated

credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.

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

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

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

(i) the federal government shall:

(A) determine that Subsection (8)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department shall determine that Subsection (8)(a) can be implemented within existing funding.

(9) (a) For purposes of this Subsection (9):

(i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as defined in 42 U.S.C. Sec. 1382c(a)(1); and

(ii) "spend down" means an amount of income in excess of the allowable income standard that shall be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or has a disability is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

(10) The department shall conduct internal audits of the Medicaid program.

(11) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (11)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.

(12) (a) (i) The department shall apply for, and if approved, implement an amendment to the state plan under this Subsection (12) for benefits for:

(A) medically needy pregnant women;

(B) medically needy children; and

(C) medically needy parents and caretaker relatives.

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

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

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

(A) under the age of 26; and

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

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

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

(i) incarcerated; and

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

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

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

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

(b) that involves medical assistance under:

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

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

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

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

(1) As used in this section:

(a) "Correctional facility" means:

(i) a county jail;

(ii) the Department of Corrections, created in Section 64-13-2; or

(iii) a prison, penitentiary, or other institution operated by or under contract with the Department of Corrections for the confinement of an offender, as defined in Section 64-13-1.

(b) "Qualified [~~inmate~~] incarcerated individual" means an individual who:

(i) is incarcerated in a correctional facility; and

(ii) has:

(A) a chronic physical or behavioral health condition;

(B) a mental illness, as defined in Section 62A-15-602; or

(C) an opioid use disorder.

(2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan amendment with CMS to offer a program to provide Medicaid coverage to a qualified [~~inmate~~] incarcerated individual for up to 30 days immediately before the day on which the qualified [~~inmate~~] incarcerated individual is released from a correctional facility.

(3) If the waiver or state plan amendment described in Subsection (2) is approved, the department shall report to the Health and Human Services Interim Committee each year before November 30 while the waiver or state plan amendment is in effect regarding:

(a) the number of qualified [~~inmates~~] incarcerated individuals served under the program;

(b) the cost of the program; and

(c) the effectiveness of the program, including:

(i) any reduction in the number of emergency room visits or hospitalizations by [~~inmates~~] incarcerated individuals after release from a correctional facility;

(ii) any reduction in the number of [~~inmates~~] incarcerated individuals undergoing inpatient treatment after release from a correctional facility;

(iii) any reduction in overdose rates and deaths of [~~inmates~~] incarcerated individuals after release from a correctional facility; and

(iv) any other costs or benefits as a result of the program.

(4) If the waiver or state plan amendment described in Subsection (2) is approved, a county that is responsible for the cost of a qualified [~~inmate's~~] incarcerated individual's medical care shall provide the required matching funds to the state for:

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

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

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

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

26-40-105. Eligibility.

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

(a) is a bona fide Utah resident;

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

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

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

(e) is ineligible for Medicaid benefits;

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

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

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

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

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

required action, or because there is an administrative or other emergency beyond the department's control, the department shall:

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

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

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

(5) The program shall:

(a) apply for grants to make technology system improvements necessary to implement a simplified enrollment and renewal process in accordance with Subsection (5)(b); and

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

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

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

As used in this section:

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

(a) by the Department of Corrections; or

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

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

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

(a) committed to the custody of the ~~{department}~~Department of Corrections; and

(b) housed at a correctional facility or at a county jail at the request of the ~~{department}~~Department of Corrections.

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

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

(6) The department shall:

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

31A-35-701. Prohibited acts.

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

(a) solicit business in or about:

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

(ii) any court;

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

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

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

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

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

(a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) a peace officer;

(c) a judge; and

(d) an [~~inmate incarcerated in any~~] incarcerated individual in a jail, correctional facility, or other facility used for the incarceration of persons.

(3) A bail bond producer may not:

(a) sign or countersign in blank any bail bond;

(b) give the power of attorney to, or otherwise authorize anyone to, countersign in the bail bond producer's name to a bail bond; or

(c) submit a bail bond to a jail or court in Utah without having completed a written agreement that:

(i) states the terms of the bail agreement, contract, or undertaking;

(ii) is signed by the bail bond producer; and

(iii) is filed with the department.

(4) A bail bond producer may not advertise or hold [~~himself or herself~~] the bail bond producer out to be a bail bond agency or surety insurer.

(5) The following persons or members of their immediate families may not solicit business on behalf of a bail bond agency or bail bond producer:

(a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) a peace officer;

(c) a judge; or

(d) an [~~inmate incarcerated in any~~] incarcerated individual in a jail, correctional facility, or other facility used for the incarceration of persons.

Section 28. Section **34-40-104** is amended to read:

34-40-104. Exemptions.

(1) The minimum wage established in this chapter does not apply to:

(a) [~~any~~] an employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;

(b) outside sales persons;

(c) an employee who is a member of the employer's immediate family;

(d) companionship service for [~~persons~~] ~~{individuals}~~an individual who, because of age or infirmity, [~~are~~] is unable to care for [~~themselves~~] the individual's self;

(e) casual and domestic employees as defined by the commission;

(f) seasonal employees of nonprofit camping programs, religious or recreation programs, and nonprofit educational and charitable organizations registered under Title 13, Chapter 22, Charitable Solicitations Act;

(g) an individual employed by the United States of America;

(h) [~~any prisoner~~] an incarcerated individual employed through the penal system;

(i) [~~any~~] an employee employed in agriculture if the employee:

(i) is principally engaged in the range production of livestock;

(ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation that has been and is generally recognized by custom as having been paid on a piece rate basis in the region of employment;

(iii) was employed in agriculture less than 13 weeks during the preceding calendar year; or

(iv) is a retired or semiretired [~~person~~] individual performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;

(j) registered apprentices or students employed by the educational institution in which they are enrolled; or

(k) [~~any~~] a seasonal hourly employee employed by a seasonal amusement establishment with permanent structures and facilities if the other direct monetary compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay

is sufficient to cause the average hourly rate of total compensation for the season of seasonal hourly employees who continue to work to the end of the operating season to equal the applicable minimum wage if the seasonal amusement establishment:

(i) does not operate for more than seven months in any calendar year; or

(ii) during the preceding calendar year its average receipts for any six months of that year were not more than 33-1/3% of its average receipts for the other six months of that year.

(2) (a) Persons with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiencies, or injury may be employed at wages that are lower than the minimum wage, provided the wage is related to the employee's productivity.

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

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

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

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

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

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

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

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

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

35A-4-205. Exempt employment.

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

(a) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect to contributions erroneously collected;

(b) service performed by an individual as an employee or employee representative as defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;

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

(d) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

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

(A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or

(B) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;

(ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, that combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, but this Subsection (1) does not apply to service performed in a program established for or on behalf of an employer or

group of employers;

(iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital; or

(iv) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved under state law;

(f) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's parent;

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

(i) in the employ of:

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

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

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

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

(A) as an elected official;

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

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

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

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

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

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

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

(vi) by an [~~inmate~~] incarcerated individual of a custodial or penal institution;

(h) casual labor not in the course of the employing unit's trade or business;

(i) service performed in any calendar quarter in the employ of any organization exempt from income tax under Subsection 501(a), Internal Revenue Code, other than an organization described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the service is less than $50;

(j) service performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;

(k) service performed in the employ of an instrumentality wholly owned by a foreign government:

(i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(ii) if the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(l) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(m) service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or

distribution;

(n) service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;

(o) service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) no compensation or fee for the service is paid to an agency or company as a business furnishing nursing services.

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

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

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

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

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

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

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

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

(b) [~~However, the prisoner~~] Notwithstanding Subsection (2)(a), an incarcerated

individual may be:

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

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

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

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

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

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

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

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

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

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

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

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

(d) trust funds established by judicial order;

(e) funds of the Utah Housing Corporation;

(f) endowment funds of higher education institutions; and

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

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

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

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

(3) Unless otherwise provided by the constitution or laws of this state or by contractual obligation, the income derived from the investment of state money by the state treasurer shall be deposited into and become part of the General Fund.

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

53-2a-602. Definitions.

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

(2) As used in this part:

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

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

(i) within the state;

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

(iii) that involve:

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

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

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

(v) that results in:

(A) the president of the United States declaring an emergency or major disaster in the

state;

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

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

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

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

(A) evacuation;

(B) shelter;

(C) medical triage;

(D) emergency transportation;

(E) repair of infrastructure;

(F) safety services, including fencing or roadblocks;

(G) sandbagging;

(H) debris removal;

(I) temporary bridges;

(J) procurement and distribution of food, water, or ice;

(K) procurement and deployment of generators;

(L) rescue or recovery;

(M) emergency protective measures; or

(N) services similar to those described in Subsections (2)(d)(i)(A) through (M), as defined by the division by rule, that are generally required in response to a declared disaster.

(ii) "Emergency disaster services" does not include:

(A) emergency preparedness; or

(B) notwithstanding whether or not a county participates in the Wildland Fire Suppression Fund created in Section 65A-8-204, any fire suppression or presuppression costs that may be paid for from the Wildland Fire Suppression Fund if the county participates in the Wildland Fire Suppression Fund.

(e) "Emergency preparedness" means the following done for the purpose of being prepared for an emergency as defined by the division by rule made in accordance with Title

63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) the purchase of equipment;

(ii) the training of personnel; or

(iii) the obtaining of a certification.

(f) "Governing body" means:

(i) for a county, city, or town, the legislative body of the county, city, or town;

(ii) for a local district, the board of trustees of the local district; and

(iii) for a special service district:

(A) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

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

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

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

(i) "Local government" means:

(i) a county;

(ii) a city or town; or

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

(A) operates a water system;

(B) provides transportation service;

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

(D) provides consolidated 911 and emergency dispatch service;

(E) operates an airport; or

(F) operates a sewage system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The responsible agency may use reasonable force, as established by its guidelines

and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

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

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

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

(iii) The collection fee is not imposed for a second or subsequent DNA specimen collected under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The juvenile court is the responsible agency regarding a minor under Subsection 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the minor has not previously been obtained by the juvenile court under Section 80-6-608.

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

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

(ii) are incarcerated in the county jail:

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

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

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

(iv) are booked at the county jail:

(A) by a law enforcement agency that is obtaining a DNA specimen for any felony offense on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b); or

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

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

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

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

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

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

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

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

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

(i) first, persons on probation;

(ii) second, persons on parole; and

(iii) third, incarcerated persons.

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

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

(i) "Court" means the juvenile court.

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

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

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

(ii) second, to obtain specimens from minors whose cases are under the jurisdiction of the court after July 1, 2002, within 120 days of the minor's case being found to be within the

court's jurisdiction, if possible, but no later than before the court's jurisdiction over the minor's case terminates.

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

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

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, if possible, but no later than before the termination of the court's jurisdiction over the minor's case.

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

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

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

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

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

53-13-104. Correctional officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The in-service training shall:

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

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

(5) The local law enforcement agencies may establish correctional officer basic,

advanced, or in-service training programs as approved by the director of the division with the advice and consent of the council.

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

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

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

(1) (a) The board is the designated state educational agency authorized to negotiate and contract with the federal government and to accept financial or other assistance from the federal government or any of its agencies in the name of and in behalf of the state of Utah, under terms and conditions as may be prescribed by congressional enactment designed to further higher education.

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

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

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

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

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

(b) subject to the approval of the controlling state agency, conduct authorized programs within any of the penal, corrective, or custodial institutions of this state and engage the

voluntary participation of [~~inmates~~] an incarcerated individual in those programs;

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

(d) retain, accumulate, invest, commit, and expend the funds and proceeds from programs funded under Subsection (3)(c), including the acquisition of real and personal property reasonably required for their accomplishment, except that no portion of the funds and proceeds may be diverted from or used for purposes other than those authorized or undertaken under Subsection (3)(c), or may ever become a charge upon or obligation of the state of Utah or the general funds appropriated for the normal operations of the institution unless otherwise permitted by law.

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

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

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

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

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

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

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

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

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

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

(iv) engage in a continuing criminal enterprise where:

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

(B) the violation is a part of a continuing series of two or more violations of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

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

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

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

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

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

(d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree

felony punishable by imprisonment for an indeterminate term of not less than:

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

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

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

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

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

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

(a) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The Administrative Office of the Courts shall report to the Division of Professional

Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

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

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

(4) Prohibited acts D -- Penalties:

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

of fact finds the act is committed:

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

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

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

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

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years old, regardless of where the act occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an [~~inmate~~] incarcerated individual or on the grounds of a correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

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

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense.

(d) (i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of

one year to run consecutively and not concurrently; and

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

(ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that:

(i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or

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

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

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

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

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

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

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

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

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

prosecution in this state.

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

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

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

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

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

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

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

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

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

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

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

charges.

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

(i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

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

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

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

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

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

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

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

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

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

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

imposition of tax.

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

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

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

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

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

(3) For purposes of this section, the tax rate may not exceed .5%.

(4) Except as provided in Subsection (5), a tax under this section shall be imposed on the transactions described in Subsection 59-12-103(1) within the city or town.

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

(a) the sale of:

(i) a motor vehicle;

(ii) an aircraft;

(iii) a watercraft;

(iv) a modular home;

(v) a manufactured home; or

(vi) a mobile home;

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

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

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

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

(8) A city or town may impose a tax under this section by majority vote of the

members of the city or town legislative body.

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

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

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

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

(1) As used in this section:

(a) (i) "Applicant" means:

(A) the same as that term is defined in Section 62A-2-101;

(B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;

(C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(D) a department contractor;

(E) an individual who transports a child for a youth transportation company;

(F) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

(G) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

(ii) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(e) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license or other government-issued identification;

(vi) social security number;

(vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(i) personal identifying information;

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

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

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

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

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

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

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

(3) The office:

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

(i) check state and regional criminal background databases for the applicant's criminal

history by:

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

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

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

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

(iv) search the Department of Health and Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

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

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

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

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

(i) for an annual renewal; or

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

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

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

(i) more than one license;

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

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

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

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

(h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a congregate care program, shall:

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

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

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

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

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

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

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

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

(d) The bureau is authorized to submit the fingerprints to the Federal Bureau of

Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

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

(iii) prostitution;

(iv) an offense included in:

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

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

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

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

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

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

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

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

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

(b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).

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

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

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

(ii) has an open court case or a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check;

(iii) has a conviction for any offense described in Subsection (5)(a) that occurred more than three years before the day on which the applicant submitted information under Subsection (2)(a);

(iv) is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);

(v) has a listing in the Department of Health and Human Services, Division of Child

and Family Services' Licensing Information System described in Section 80-2-1002;

(vi) has a listing in the Department of Health and Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(vii) has a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 80-3-404;

(viii) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(A) under 28 years old; or

(B) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);

(ix) has a pending charge for an offense described in Subsection (5)(a); or

(x) is an applicant described in Subsection (5)(c).

(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical, mental, or financial harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;

(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and

(ix) any other pertinent information presented to or publicly available to the committee members.

(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.

(d) At the conclusion of the comprehensive review described in Subsection (6)(a), the office may not deny an application to an applicant solely because the applicant was convicted of an offense that occurred 10 or more years before the day on which the applicant submitted the information required under Subsection (2)(a) if:

(i) the applicant has not committed another misdemeanor or felony offense after the day on which the conviction occurred; and

(ii) the applicant has never been convicted of an offense described in Subsection (14)(c).

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).

(7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (14).

(8) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal background databases; and

(ii) would otherwise approve an application of the applicant under Subsection (7).

(b) The office may conditionally approve an application of an applicant, for a maximum of one year after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised if the office:

(i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and

(ii) would otherwise approve an application of the applicant under Subsection (7).

(c) Upon receiving the results of the criminal history search of a national criminal

background database, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).

(9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):

(a) the individual is associated with the licensee or department contractor and:

(i) the individual's application is approved by the office under this section;

(ii) the individual's application is conditionally approved by the office under Subsection (8); or

(iii) (A) the individual has submitted the background check information described in Subsection (2) to the office;

(B) the office has not determined whether to approve the applicant's application; and

(C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;

(b) (i) the individual is associated with the licensee or department contractor;

(ii) the individual has a current background screening approval issued by the office under this section;

(iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:

(A) the individual was charged with an offense described in Subsection (5)(a);

(B) the individual is listed in the Licensing Information System, described in Section 80-2-1002;

(C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;

(D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 80-3-404; or

(E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a) or (6); and

(iv) the individual is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this

section; and

(B) is associated with the licensee or department contractor;

(c) the individual:

(i) is not associated with the licensee or department contractor; and

(ii) is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;

(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or

(g) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.

(10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give notice of the clearance status to:

(i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.

(b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

(c) If the notice under Subsection (12)(a) states that the applicant's application is

denied, the notice shall further advise the applicant that the applicant may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of the office's background check decision described in Subsection (12)(c); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(13) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule, is exempt from this section. This exemption does not extend to a program director or a member, as defined by Section 62A-2-108, of the program.

(14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care program, an applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (14)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a

court from placing a child with:

(A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

(B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an applicant seeking a position in a congregate care program, an applicant for a one-time adoption, an applicant to become a prospective foster parent, or an applicant to become a prospective adoptive parent if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-114;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) human trafficking of a child, as described in Section 76-5-308.5;

(N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(O) sexual exploitation of a minor, as described in Section 76-5b-201;

(P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;

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

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

(S) aggravated robbery, as described in Section 76-6-302; or

(T) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would

constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by [~~a prisoner~~] an incarcerated individual, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102.

Section 40. Section **62A-15-103** is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

(1) (a) The division shall exercise responsibility over the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in state law that were previously vested in the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director.

(b) The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) promote integrated programs that address an individual's substance abuse, mental health, and physical health;

(vi) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with a substance use disorder or mental illness;

(vii) evaluate the effectiveness of programs described in this Subsection (2);

(viii) consider the impact of the programs described in this Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(ix) promote or establish programs for education and certification of instructors to educate individuals convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of the state hospital's budget, administrative policy, and coordination of services with local service plans;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, to direct that an individual receiving services through a local mental health authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

(C) in counties where they exist, a private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to

division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

(B) a statewide comprehensive continuum of mental health services;

(C) services result in improved overall health and functioning;

(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;

(E) compliance, where appropriate, with the certification requirements in Subsection (2)(j); and

(F) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with the local mental health authority's provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with division rules and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to the division on or before May 15 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority and each local substance abuse authority's contract provider, and each local mental health authority and each local mental health authority's contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use disorder and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate;

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

(h) (i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:

(A) a substance use disorder;

(B) a mental health disorder; or

(C) a substance use disorder and a mental health disorder;

(ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish training and certification requirements for a peer support specialist;

(B) specify the types of services a peer support specialist is qualified to provide;

(C) specify the type of supervision under which a peer support specialist is required to operate; and

(D) specify continuing education and other requirements for maintaining or renewing certification as a peer support specialist; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish the requirements for a person to be certified to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist; and

(B) specify how the division shall provide oversight of a person certified to train and certify a peer support specialist;

(i) collaborate with the State Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed to reduce recidivism;

(ii) county jail and county behavioral health early-assessment resources needed for an individual convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;

(j) establish performance goals and outcome measurements for a mental health or substance use treatment program that is licensed under Chapter 2, Licensure of Programs and Facilities, and contracts with the department, including goals and measurements related to employment and reducing recidivism of individuals receiving mental health or substance use treatment who are involved with the criminal justice system;

(k) annually, on or before November 30, submit a written report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, and the Law Enforcement and Criminal Justice Interim Committee, that includes:

(i) a description of the performance goals and outcome measurements described in Subsection (2)(j); and

(ii) information on the effectiveness of the goals and measurements in ensuring appropriate and adequate mental health or substance use treatment is provided in a treatment program described in Subsection (2)(j);

(l) collaborate with the Administrative Office of the Courts, the Department of Corrections, the Department of Workforce Services, and the Board of Pardons and Parole to collect data on recidivism, including data on:

(i) individuals who participate in a mental health or substance use treatment program while incarcerated and are convicted of another offense within two years after release from incarceration;

(ii) individuals who are ordered by a criminal court or the Board of Pardons and Parole to participate in a mental health or substance use treatment program and are convicted of another offense while participating in the treatment program or within two years after the day on which the treatment program ends;

(iii) the type of treatment provided to, and employment of, the individuals described in

Subsections (2)(l)(i) and (ii); and

(iv) cost savings associated with recidivism reduction and the reduction in the number of [~~inmates~~] incarcerated individuals in the state;

(m) at the division's discretion, use the data described in Subsection (2)(l) to make decisions regarding the use of funds allocated to the division to provide treatment;

(n) annually, on or before August 31, submit the data collected under Subsection (2)(l) and any recommendations to improve the data collection to the State Commission on Criminal and Juvenile Justice to be included in the report described in Subsection 63M-7-204(1)(x);

(o) publish the following on the division's website:

(i) the performance goals and outcome measurements described in Subsection (2)(j); and

(ii) a description of the services provided and the contact information for the mental health and substance use treatment programs described in Subsection (2)(j) and residential, vocational and life skills programs, as defined in Section 13-53-102; and

(p) consult and coordinate with the Division of Child and Family Services to develop and manage the operation of a program designed to reduce substance abuse during pregnancy and by parents of a newborn child that includes:

(i) providing education and resources to health care providers and individuals in the state regarding prevention of substance abuse during pregnancy;

(ii) providing training to health care providers in the state regarding screening of a pregnant woman or pregnant minor to identify a substance abuse disorder; and

(iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn child in need of substance abuse treatment services to a facility that has the capacity to provide the treatment services.

(3) In addition to the responsibilities described in Subsection (2), the division shall, within funds appropriated by the Legislature for this purpose, implement and manage the operation of a firearm safety and suicide prevention program, in consultation with the Bureau of Criminal Identification created in Section 53-10-201, including:

(a) coordinating with local mental health and substance abuse authorities, a nonprofit behavioral health advocacy group, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners,

to:

(i) produce and periodically review and update a firearm safety brochure and other educational materials with information about the safe handling and use of firearms that includes:

(A) information on safe handling, storage, and use of firearms in a home environment;

(B) information about at-risk individuals and individuals who are legally prohibited from possessing firearms;

(C) information about suicide prevention awareness; and

(D) information about the availability of firearm safety packets;

(ii) procure cable-style gun locks for distribution under this section;

(iii) produce a firearm safety packet that includes the firearm safety brochure and the cable-style gun lock described in this Subsection (3); and

(iv) create a suicide prevention education course that:

(A) provides information for distribution regarding firearm safety education;

(B) incorporates current information on how to recognize suicidal behaviors and identify individuals who may be suicidal; and

(C) provides information regarding crisis intervention resources;

(b) distributing, free of charge, the firearm safety packet to the following persons, who shall make the firearm safety packet available free of charge:

(i) health care providers, including emergency rooms;

(ii) mobile crisis outreach teams;

(iii) mental health practitioners;

(iv) other public health suicide prevention organizations;

(v) entities that teach firearm safety courses;

(vi) school districts for use in the seminar, described in Section 53G-9-702, for parents of students in the school district; and

(vii) firearm dealers to be distributed in accordance with Section 76-10-526;

(c) creating and administering a rebate program that includes a rebate that offers between $10 and $200 off the purchase price of a firearm safe from a participating firearms dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah resident;

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

making rules that establish procedures for:

(i) producing and distributing the suicide prevention education course and the firearm safety brochures and packets;

(ii) procuring the cable-style gun locks for distribution; and

(iii) administering the rebate program; and

(e) reporting to the Health and Human Services Interim Committee regarding implementation and success of the firearm safety program and suicide prevention education course at or before the November meeting each year.

(4) (a) The division may refuse to contract with and may pursue legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(5) (a) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with the oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309.

(b) Nothing in this Subsection (5) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(6) In carrying out the division's duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(7) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(8) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

(a) use of public funds;

(b) oversight of public funds; and

(c) governance of substance use disorder and mental health programs and services.

(9) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(10) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

(a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or

(b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

(11) The division shall employ a school-based mental health specialist to be housed at the State Board of Education who shall work with the State Board of Education to:

(a) provide coordination between a local education agency and local mental health authority;

(b) recommend evidence-based and evidence informed mental health screenings and intervention assessments for a local education agency; and

(c) coordinate with the local community, including local departments of health, to enhance and expand mental health related resources for a local education agency.

Section 41. Section **62A-15-605.5** is amended to read:

62A-15-605.5. Admission of person in custody of Department of Corrections to state hospital -- Retransfer of person to Department of Corrections.

(1) The executive director of the Department of Corrections may request the director to admit a person who is in the custody of the Department of Corrections to the state hospital, if the clinical director within the Department of Corrections finds that the [~~inmate~~] incarcerated individual has mentally deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental health treatment. In determining whether that [~~inmate~~]

incarcerated individual should be placed in the state hospital, the director of the division shall consider:

(a) the mental health treatment needs of the [~~inmate~~] incarcerated individual;

(b) the treatment programs available at the state hospital; and

(c) whether the [~~inmate~~] incarcerated individual meets the requirements of Subsection 62A-15-610(2).

(2) If the director denies the admission of an [~~inmate~~] incarcerated individual as requested by the clinical director within the Department of Corrections, the Board of Pardons and Parole shall determine whether the [~~inmate~~] incarcerated individual will be admitted to the state hospital. The Board of Pardons and Parole shall consider:

(a) the mental health treatment needs of the [~~inmate~~] incarcerated individual;

(b) the treatment programs available at the state hospital; and

(c) whether the [~~inmate~~] incarcerated individual meets the requirements of Subsection 62A-15-610(2).

(3) The state hospital shall receive any person in the custody of the Department of Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the custody of the Department of Corrections, and the state hospital shall act solely as the agent of the Department of Corrections.

(4) [~~Inmates~~] Incarcerated individuals transferred to the state hospital pursuant to this section shall be transferred back to the Department of Corrections through negotiations between the director and the director of the Department of Corrections. If agreement between the director and the director of the Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final authority in determining whether a person will be transferred back to the Department of Corrections. In making that determination, that board shall consider:

(a) the mental health treatment needs of the [~~inmate~~] incarcerated individual;

(b) the treatment programs available at the state hospital;

(c) whether the person continues to meet the requirements of Subsection 62A-15-610(2);

(d) the ability of the state hospital to provide adequate treatment to the person, as well

as safety and security to the public; and

(e) whether, in the opinion of the director, in consultation with the clinical director of the state hospital, the person's treatment needs have been met.

Section 42. Section **62A-15-902** is amended to read:

62A-15-902. Design and operation -- Security.

(1) The forensic mental health facility is a secure treatment facility.

(2) (a) The forensic mental health facility accommodates the following populations:

(i) [~~prison inmates~~] incarcerated individuals displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility;

(ii) criminally adjudicated persons found guilty with a mental illness or guilty with a mental illness at the time of the offense undergoing evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

(iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental illness or guilty with a mental illness at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who also have an intellectual disability;

(iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and

(vi) persons ordered to commit themselves to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in

Subsection (2)(a).

(3) The department shall:

(a) own and operate the forensic mental health facility;

(b) provide and supervise administrative and clinical staff; and

(c) provide security staff who are trained as psychiatric technicians.

(4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate individuals to perform security functions for the state hospital.

Section 43. Section **63A-16-1002** is amended to read:

63A-16-1002. Criminal Justice Database.

(1) The commission shall oversee the creation and management of a Criminal Justice Database for information and data required to be reported to the commission, organized by county, and accessible to all criminal justice agencies in the state.

(2) The division shall assist with the development and management of the database.

(3) The division, in collaboration with the commission, shall create:

(a) master standards and formats for information submitted to the database;

(b) a portal, bridge, website, or other method for reporting entities to provide the information;

(c) a master data management index or system to assist in the retrieval of information in the database;

(d) a protocol for accessing information in the database that complies with state privacy regulations; and

(e) a protocol for real-time audit capability of all data accessed through the portal by participating data source, data use entities, and regulators.

(4) Each criminal justice agency charged with reporting information to the commission shall provide the data or information to the database in a form prescribed by the commission.

(5) The database shall be the repository for the statutorily required data described in:

(a) Section 13-53-111, recidivism reporting requirements;

(b) Section 17-22-32, county jail reporting requirements;

(c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;

(d) Section 24-4-118, forfeiture reporting requirements;

(e) Section 41-6a-511, courts to collect and maintain data;

(f) Section 63M-7-214, law enforcement agency grant reporting;

(g) Section 63M-7-216, prosecutorial data collection;

(h) Section 64-13-21, supervision of sentenced offenders placed in community;

(i) Section 64-13-25, standards for programs;

(j) Section 64-13-45, department reporting requirements;

(k) Section 64-13e-104, housing of state probationary [~~inmates~~] incarcerated individuals or state parole [~~inmates~~] incarcerated individuals;

(l) Section 77-7-8.5, use of tactical groups;

(m) Section 77-20-103, release data requirements;

(n) Section 77-22-2.5, court orders for criminal investigations;

(o) Section 78A-2-109.5, court demographics reporting; and

(p) any other statutes which require the collection of specific data and the reporting of that data to the commission.

(6) The commission shall report:

(a) progress on the database, including creation, configuration, and data entered, to the Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and

(b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing Committee not later than January 16, 2023.

Section 44. Section **63A-17-301** is amended to read:

63A-17-301. Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions.

(1) Except as provided in Subsection (3)(d), the following positions are exempt from the career service provisions of this chapter and are designated under the following schedules:

(a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;

(b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;

(c) schedule AC includes all employees and officers in:

(i) the office and at the residence of the governor;

(ii) the Public Lands Policy Coordinating Office;

(iii) the Office of the State Auditor; and

(iv) the Office of the State Treasurer;

(d) schedule AD includes employees who:

(i) are in a confidential relationship to an agency head or commissioner; and

(ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;

(e) schedule AE includes each employee of the State Board of Education that the State Board of Education designates as exempt from the career service provisions of this chapter;

(f) schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;

(g) schedule AH includes:

(i) teaching staff of all state institutions; and

(ii) employees of the Utah Schools for the Deaf and the Blind who are:

(A) educational interpreters as classified by the division; or

(B) educators as defined by Section 53E-8-102;

(h) schedule AN includes employees of the Legislature;

(i) schedule AO includes employees of the judiciary;

(j) schedule AP includes all judges in the judiciary;

(k) schedule AQ includes:

(i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;

(ii) a water commissioner appointed under Section 73-5-1;

(iii) other local officials serving in an ex officio capacity; and

(iv) officers, faculty, and other employees of state universities and other state institutions of higher education;

(l) schedule AR includes employees in positions that involve responsibility:

(i) for determining policy;

(ii) for determining the way in which a policy is carried out; or

(iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the director;

(m) schedule AS includes any other employee:

(i) whose appointment is required by statute to be career service exempt;

(ii) whose agency is not subject to this chapter; or

(iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;

(n) schedule AT includes employees of the Division of Technology Services, designated as executive/professional positions by the director of the Division of Technology Services with the concurrence of the director of the division;

(o) schedule AU includes patients and [~~inmates~~] incarcerated individuals employed in state institutions;

(p) employees of the Department of Workforce Services, designated as schedule AW:

(i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or

(ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the director of the division;

(q) subject to Subsection (6), schedule AX includes employees in positions that:

(i) require the regular supervision and performance evaluation of one or more other employees; and

(ii) are not designated exempt from career service under any other schedule described in this Subsection (1); and

(r) for employees in positions that are temporary, seasonal, time limited, funding limited, or variable hour in nature, under schedule codes and parameters established by the division by administrative rule.

(2) The civil service shall consist of two schedules as follows:

(a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

(ii) Removal from any appointive position under schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

(b) Schedule B is the competitive career service schedule, consisting of:

(i) all positions filled through competitive selection procedures as defined by the

director; or

(ii) positions filled through a division approved on-the-job examination intended to appoint a qualified person with a disability, or a veteran in accordance with Title 71, Chapter 10, Veterans Preference.

(3) (a) The director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.

(b) Agency heads shall make requests and obtain approval from the director before changing the schedule assignment and tenure rights of any position.

(c) Unless the director's decision is reversed by the governor, when the director denies an agency's request, the director's decision is final.

(d) (i) An agency may file with the division a request to reschedule a position that would otherwise be scheduled as a schedule A position.

(ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the request only if the exception is necessary to conform to a requirement imposed as a condition precedent to receipt of federal funds or grant of a tax benefit under federal law.

(4) (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.

(b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78A-2-107.

(c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapter 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of Higher Education.

(d) Unless otherwise provided by law, compensation for all other schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the director.

(5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the employee:

(a) remains in the position that the employee is in on June 30, 2010; and

(b) does not elect to convert to career service exempt status in accordance with a rule

made by the division.

(6) (a) An employee who is hired for a schedule AX position on or after July 1, 2022, is exempt from career service status.

(b) An employee who before July 1, 2022, is a career service employee employed in a schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall maintain the employee's career service status for the duration of the employee's employment in the same position unless the employee voluntarily converts to career service exempt status before July 1, 2023.

(c) (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service status if:

(A) before July 1, 2022, the employee was a probationary employee in a schedule B position and had not completed the probationary period; and

(B) on July 1, 2022, the schedule B position in which the probationary employee is employed is rescheduled as a scheduled AX position.

(ii) An employee described in Subsection (6)(c)(i):

(A) is not a probationary employee on or after July 1, 2022; and

(B) is exempt from career service status on and after July 1, 2022, unless the employee changes employment to a schedule B position.

(d) The division shall disseminate to each employee described in Subsection (6)(b) information on financial and other incentives for voluntary conversion to career-service exempt status.

(e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in consultation with the division, for agency review of recommendations that schedule AX employees be suspended, demoted, or dismissed from employment.

Section 45. Section **63A-17-307** is amended to read:

63A-17-307. State pay plans -- Applicability of section -- Exemptions -- Duties of director.

(1) (a) This section, and the rules made by the division under this section, apply to each career and noncareer employee not specifically exempted under Subsection (2).

(b) If not exempted under Subsection (2), an employee is considered to be in classified service.

(2) The following employees are exempt from this section:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and employees designated as schedule AC as provided under Subsection 63A-17-301(1)(c);

(d) employees of the State Board of Education;

(e) officers, faculty, and other employees of state institutions of higher education;

(f) employees in a position that is specified by statute to be exempt from this Subsection (2);

(g) employees in the Office of the Attorney General;

(h) department heads and other persons appointed by the governor under statute;

(i) schedule AS employees as provided under Subsection 63A-17-301(1)(m);

(j) department deputy directors, division directors, and other employees designated as schedule AD as provided under Subsection 63A-17-301(1)(d);

(k) employees that determine and execute policy designated as schedule AR as provided under Subsection 63A-17-301(1)(l);

(l) teaching staff, educational interpreters, and educators designated as schedule AH as provided under Subsection 63A-17-301(1)(g);

(m) temporary employees described in Subsection 63A-17-301(1)(r);

(n) patients and [~~inmates~~] incarcerated individuals designated as schedule AU as provided under Subsection 63A-17-301(1)(o) who are employed by state institutions; and

(o) members of state and local boards and councils and other employees designated as schedule AQ as provided under Subsection 63A-17-301(1)(k).

(3) (a) The director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.

(b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range, subject to Section 63A-17-112, may be applied equitably to each position in the same class.

(c) The director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.

(d) (i) The division shall conduct periodic studies and interviews to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.

(ii) The director shall determine the need for studies and interviews after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.

(4) (a) With the approval of the executive director and the governor, the director shall develop and adopt pay plans for each position in classified service.

(b) The director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to the market using data obtained from private enterprise and other public employment for similar work.

(c) The director shall adhere to the following in developing each pay plan:

(i) each pay plan shall consist of sufficient salary ranges to:

(A) permit adequate salary differential among the various classes of positions in the classification plan; and

(B) reflect the normal growth and productivity potential of employees in that class.

(ii) The director shall issue rules for the administration of pay plans.

(d) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Part 6, Grievance Provisions, Title 67, Chapter 19a, Grievance Procedures, or otherwise.

(e) The director shall make rules, accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for:

(i) agency approved salary adjustments within approved salary ranges, including an administrative salary adjustment; and

(ii) structure adjustments that modify salary ranges, including a cost of living adjustment or market comparability adjustment.

(5) (a) On or before October 31 of each year, the director shall submit an annual compensation plan to the executive director and the governor for consideration in the executive budget.

(b) The plan described in Subsection (5)(a) may include recommendations, including:

(i) salary increases that generally affect employees, including a general increase or merit increase;

(ii) salary increases that address compensation issues unique to an agency or occupation;

(iii) structure adjustments, including a cost of living adjustment or market comparability adjustment; or

(iv) changes to employee benefits.

(c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the director shall incorporate the results of a salary survey of a reasonable cross section of comparable positions in private and public employment in the state into the annual compensation plan.

(B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section 53-6-102, shall at minimum include the three largest political subdivisions in the state that employ, respectively, comparable positions.

(C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1, Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit Insurance Corporation, Federal Reserve, and National Credit Union Administration.

(ii) The director may cooperate with or participate in any survey conducted by other public and private employers.

(iii) The director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.

(iv) The division shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.

(d) The director may incorporate any other relevant information in the plan described in Subsection (5)(a), including information on staff turnover, recruitment data, or external market trends.

(e) The director shall:

(i) establish criteria to assure the adequacy and accuracy of data used to make recommendations described in this Subsection (5); and

(ii) when preparing recommendations use accepted methodologies and techniques similar to and consistent with those used in the private sector.

(f) (i) Upon request and subject to Subsection (5)(f)(ii), the division shall make available foundational information used by the division or director in the drafting of a plan described in Subsection (5)(a), including:

(A) demographic and labor market information;

(B) information on employee turnover;

(C) salary information;

(D) information on recruitment; and

(E) geographic data.

(ii) The division may not provide under Subsection (5)(f)(i) information or other data that is proprietary or otherwise protected under the terms of a contract or by law.

(g) The governor shall:

(i) consider salary and structure adjustments recommended under Subsection (5)(b) in preparing the executive budget and shall recommend the method of distributing the adjustments;

(ii) submit compensation recommendations to the Legislature; and

(iii) support the recommendation with schedules indicating the cost to individual departments and the source of funds.

(h) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment unless otherwise indicated.

(6) (a) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.

(b) An agency may not grant a market-based award unless the award is previously approved by the division.

(c) In accordance with Subsection (6)(b), an agency requesting the division's approval of a market-based award shall submit a request and documentation, subject to Subsection (6)(d), to the division.

(d) In the documentation required in Subsection (6)(c), the requesting agency shall identify for the division:

(i) any benefit the market-based award would provide for the agency, including:

(A) budgetary advantages; or

(B) recruitment advantages;

(ii) a mission critical need to attract or retain unique or hard to find skills in the market; or

(iii) any other advantage the agency would gain through the utilization of a market-based award.

(7) (a) The director shall regularly evaluate the total compensation program of state employees in the classified service.

(b) The division shall determine if employee benefits are comparable to those offered by other private and public employers using information from:

(i) a study conducted by a third-party consultant; or

(ii) the most recent edition of a nationally recognized benefits survey.

Section 46. Section **63B-6-502** is amended to read:

63B-6-502. Other capital facility authorizations and intent language.

(1) It is the intent of the Legislature that the University of Utah use institutional funds to plan, design, and construct:

(a) the Health Science Lab Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) the gymnastics facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(2) It is the intent of the Legislature that Southern Utah University use institutional funds to plan, design, and construct a science center addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(3) It is the intent of the Legislature that Utah Valley State College use institutional funds to plan, design, and construct a student center addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(4) (a) It is the intent of the Legislature that the Division of Facilities Construction and

Management lease property at the Draper Prison to an entity for the purpose of constructing recycling and transfer facilities to employ [~~inmates~~] incarcerated individuals if the following conditions are satisfactorily met:

(i) the entity assures continuous employment of state [~~inmates~~] incarcerated individuals;

(ii) the lease with the entity provides an appropriate return to the state;

(iii) the lease has an initial term of not to exceed 20 years;

(iv) the lease protects the state from all liability;

(v) the entity guarantees that no adverse environmental impact will occur;

(vi) the state retains the right to:

(A) monitor the types of wastes that are processed; and

(B) prohibit the processing of types of wastes that are considered to be a risk to the state or surrounding property uses;

(vii) the lease provides for adequate security arrangements;

(viii) the entity assumes responsibility for any taxes or fees associated with the facility; and

(ix) the entity assumes responsibility for bringing utilities to the site and any state expenditures for roads, etc. are considered in establishing the return to the state.

(b) Except as provided in Subsections (4)(c) and (d), the facility may be constructed without direct supervision by the Division of Facilities Construction and Management.

(c) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and Management shall:

(i) review the design, plans, and specifications of the project; and

(ii) approve them if they are appropriate.

(d) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and Management may:

(i) require that the project be submitted to the local building official for plan review and inspection; and

(ii) inspect the project.

(5) It is the intent of the Legislature that:

(a) the $221,497.86 authorized for the Capitol Hill Day Care Center in Subsection (4)

of Laws of Utah 1992, Chapter 304, Section 56, be used for general capital improvements; and

(b) the Building Board should, in allocating the $221,497.86, if appropriate under the Board's normal allocation and prioritization process, give preference to projects for the Division of State Parks, formerly known as the Division of Parks and Recreation.

Section 47. Section **63B-12-301** is amended to read:

63B-12-301. Other capital facilities authorizations.

(1) It is the intent of the Legislature that:

(a) Utah State University use institutional funds to plan, design, and construct an addition to the Laboratory Research Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) Utah State University use institutional funds to plan, design, and construct an addition to the Biology/Natural Resources Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) Snow College use grants and loans from the Community Impact Board together with other institutional funds to plan, design, and construct an addition to the Activities Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project;

(c) before proceeding with the project, the Board of Regents and the State Building Board review and approve the scope and funding of the project; and

(d) the college may request state funds for operations and maintenance to the extent that the college is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(4) (a) It is the intent of the Legislature that the Division of Facilities Construction and Management sell the state's interest in the Iron County Correction Facility to Iron County for $2,000,000 according to the terms specified in this Subsection (4).

(b) Iron County will pay the state $1,550,000 in cash.

(c) To pay the $450,000 balance of the purchase price, Iron County will:

(i) provide office space for the Department of Corrections' Adult Probation and Parole in the Iron County Correction Facility for 10 years at no cost to the state of Utah, at an estimated value of $45,000 per year for a total 10 year value of $450,000; and

(ii) contract with the Department of Corrections to house 15 state [~~prisoners~~] incarcerated individuals in the Iron County Correctional Facility for at least five years.

(d) (i) The Department of Corrections shall select the 15 [~~prisoners~~] incarcerated individuals to house at the Iron County Correctional Facility from beds currently under contract in other counties.

(ii) Nothing in this section may be construed to authorize or require the Department of Corrections to increase the number of [~~prisoners~~] incarcerated individuals currently housed in county correctional facilities on state contract.

(e) If the Department of Corrections' Adult Probation and Parole chooses, for whatever reason, not to use the office space offered by Iron County, Iron County is not liable for, and need not pay, the state the value of that estimated rent.

Section 48. Section **63G-2-301** is amended to read:

63G-2-301. Public records.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

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

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsection 63G-2-305(17) or (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data;

(l) voter registration records, including an individual's voting history, except for a voter registration record or those parts of a voter registration record that are classified as private under Subsections 63G-2-302(1)(j) through (m) or withheld under Subsection 20A-2-104(7);

(m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;

(n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53G-7-1203;

(o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111; and

(p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as defined in Section 20A-7-101, after the packet is submitted to a county clerk.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to

the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses;

(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline; and

(u) (i) records that disclose a standard, regulation, policy, guideline, or rule regarding the operation of a correctional facility or the care and control of [~~inmates~~] incarcerated individuals committed to the custody of a correctional facility; and

(ii) records that disclose the results of an audit or other inspection assessing a correctional facility's compliance with a standard, regulation, policy, guideline, or rule described in Subsection (3)(u)(i).

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 49. Section **63G-3-201** is amended to read:

63G-3-201. When rulemaking is required.

(1) Each agency shall:

(a) maintain a current version of its rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, [~~inmates~~] incarcerated individuals or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or, except as provided in Title 53B, Chapter 27, Part 3, Student Civil Liberties Protection Act, students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.

(5) (a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).

(b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).

(c) A violation of a rule may be subject to a class C misdemeanor or greater criminal penalty under Subsection (5)(a) when:

(i) authorized by a specific state statute;

(ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or

(iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7) (a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

(iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public review at the agency and at the office.

(8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Section 50. Section **63G-4-102** is amended to read:

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke,

suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an [~~inmate~~] incarcerated individual or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or

Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, values, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1);

(u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action;

(v) the issuance of a determination and order under Title 34A, Chapter 5, Utah Antidiscrimination Act;

(w) state environmental studies and related decisions by the Department of Transportation approving state or locally funded projects, or judicial review of the action;

(x) the suspension of operations under Subsection 32B-1-304(3); or

(y) the issuance of a determination of violation by the Governor's Office of Economic Opportunity under Section 11-41-104.

(3) This chapter does not affect a legal remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

(10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

(11) Subsection (2)(w), regarding action taken based on state environmental studies and policies of the Department of Transportation, applies to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order before May 14, 2019.

Section 51. Section **63J-1-602.1** is amended to read:

63J-1-602.1. List of nonlapsing appropriations from accounts and funds.

Appropriations made from the following accounts or funds are nonlapsing:

(1) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.

(2) The Native American Repatriation Restricted Account created in Section 9-9-407.

(3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in

Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

(5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-106.

(6) Money received by the Utah Inland Port Authority, as provided in Section 11-58-105.

(7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

(8) The Clean Air Support Restricted Account created in Section 19-1-109.

(9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in Section 19-2a-106.

(10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in Section 19-5-126.

(11) The "Support for State-Owned Shooting Ranges Restricted Account" created in Section 23-14-13.5.

(12) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

(13) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

(14) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

(15) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

(16) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

(17) The Technology Development Restricted Account created in Section 31A-3-104.

(18) The Criminal Background Check Restricted Account created in Section 31A-3-105.

(19) The Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(20) The Title Licensee Enforcement Restricted Account created in Section

31A-23a-415.

(21) The Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.

(22) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.

(23) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.

(24) The Drinking While Pregnant Prevention Media and Education Campaign Restricted Account created in Section 32B-2-308.

(25) The School Readiness Restricted Account created in Section 35A-15-203.

(26) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

(27) The Oil and Gas Administrative Penalties Account created in Section 40-6-11.

(28) The Oil and Gas Conservation Account created in Section 40-6-14.5.

(29) The Division of Oil, Gas, and Mining Restricted account created in Section 40-6-23.

(30) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.

(31) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.

(32) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.

(33) The State Disaster Recovery Restricted Account to the Division of Emergency Management, as provided in Section 53-2a-603.

(34) The Post Disaster Recovery and Mitigation Restricted Account created in Section 53-2a-1302.

(35) The Department of Public Safety Restricted Account to the Department of Public Safety, as provided in Section 53-3-106.

(36) The Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.

(37) The DNA Specimen Restricted Account created in Section 53-10-407.

(38) The Canine Body Armor Restricted Account created in Section 53-16-201.

(39) The Technical Colleges Capital Projects Fund created in Section 53B-2a-118.

(40) The Higher Education Capital Projects Fund created in Section 53B-22-202.

(41) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

(42) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5, subject to Subsection 54-5-1.5(4)(d).

(43) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-3a-105.

(44) Certain fines collected by the Division of Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

(45) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-22-104.

(46) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-55-106.

(47) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-56-3.5.

(48) Certain fines collected by the Division of Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

(49) The Relative Value Study Restricted Account created in Section 59-9-105.

(50) The Cigarette Tax Restricted Account created in Section 59-14-204.

(51) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(52) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(53) Certain funds donated to the Department of Health and Human Services, as provided in Section 26B-1-202.

(54) The National Professional Men's Basketball Team Support of Women and

Children Issues Restricted Account created in Section 26B-1-302.

(55) Certain funds donated to the Division of Child and Family Services, as provided in Section 80-2-404.

(56) The Choose Life Adoption Support Restricted Account created in Section 80-2-502.

(57) Funds collected by the Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

(58) The Immigration Act Restricted Account created in Section 63G-12-103.

(59) Money received by the military installation development authority, as provided in Section 63H-1-504.

(60) The Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.

(61) The Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.

(62) The Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.

(63) The Utah Capital Investment Restricted Account created in Section 63N-6-204.

(64) The Motion Picture Incentive Account created in Section 63N-8-103.

(65) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

(66) Funds collected by the housing of state probationary [~~inmates~~] incarcerated individuals or state parole [~~inmates~~] incarcerated individuals, as provided in Subsection 64-13e-104(2).

(67) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.

(68) The Amusement Ride Safety Restricted Account, as provided in Section 72-16-204.

(69) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.

(70) The Water Resources Conservation and Development Fund, as provided in Section 73-23-2.

(71) Funds donated or paid to a juvenile court by private sources, as provided in

Subsection 78A-6-203(1)(c).

(72) Fees for certificate of admission created under Section 78A-9-102.

(73) Funds collected for adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(74) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

(75) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in Section 79-3-403.

(76) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, and Green River State Park, as provided under Section 79-4-403.

(77) Funds donated as described in Section 41-1a-422 for the State Park Fees Restricted Account created in Section 79-4-402 for support of the Division of State Parks' dark sky initiative.

(78) Certain funds received by the Division of State Parks from the sale or disposal of buffalo, as provided under Section 79-4-1001.

Section 52. Section **63M-7-204** is amended to read:

63M-7-204. Duties of commission.

(1) The State Commission on Criminal and Juvenile Justice administration shall:

(a) promote the commission's purposes as enumerated in Section 63M-7-201;

(b) promote the communication and coordination of all criminal and juvenile justice agencies;

(c) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

(d) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of [~~inmates~~] incarcerated individuals, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

(e) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;

(f) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;

(g) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

(h) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant money;

(i) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;

(j) promote research and program evaluation as an integral part of the criminal and juvenile justice system;

(k) provide a comprehensive criminal justice plan annually;

(l) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;

(m) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

(i) developing and maintaining common data standards for use by all state criminal justice agencies;

(ii) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

(iii) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

(iv) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this Subsection (1)(m);

(n) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children;

(o) allocate and administer grants for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity;

(p) request, receive, and evaluate data and recommendations collected and reported by agencies and contractors related to policies recommended by the commission regarding recidivism reduction, including the data described in Section 13-53-111 and Subsection 62A-15-103(2)(l);

(q) establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated;

(r) oversee or designate an entity to oversee the implementation of juvenile justice reforms;

(s) make rules and administer the juvenile holding room standards and juvenile jail standards to align with the Juvenile Justice and Delinquency Prevention Act requirements pursuant to 42 U.S.C. Sec. 5633;

(t) allocate and administer grants, from money made available, for pilot qualifying education programs;

(u) oversee the trauma-informed justice program described in Section 63M-7-209;

(v) request, receive, and evaluate the aggregate data collected from prosecutorial agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216 and 78A-2-109.5;

(w) report annually to the Law Enforcement and Criminal Justice Interim Committee on the progress made on each of the following goals of the Justice Reinvestment Initiative:

(i) ensuring oversight and accountability;

(ii) supporting local corrections systems;

(iii) improving and expanding reentry and treatment services; and

(iv) strengthening probation and parole supervision;

(x) compile a report of findings based on the data and recommendations provided under Section 13-53-111 and Subsection 62A-15-103(2)(n) that:

(i) separates the data provided under Section 13-53-111 by each residential, vocational and life skills program; and

(ii) separates the data provided under Subsection 62A-15-103(2)(n) by each mental

health or substance use treatment program; and

(y) publish the report described in Subsection (1)(x) on the commission's website and annually provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

(2) If the commission designates an entity under Subsection (1)(r), the commission shall ensure that the membership of the entity includes representation from the three branches of government and, as determined by the commission, representation from relevant stakeholder groups across all parts of the juvenile justice system, including county representation.

Section 53. Section **63M-7-526** is amended to read:

63M-7-526. Crime Victims Reparations Fund.

(1) (a) There is created an expendable special revenue fund known as the "Crime Victim Reparations Fund" to be administered and distributed as provided in this section by the office in cooperation with the Division of Finance.

(b) The fund shall consist of:

(i) appropriations by the Legislature; and

(ii) funds collected under Subsections (2) and (3).

(c) Money deposited in this fund is for victim reparations, other victim services, and, as appropriated, for administrative costs of the office.

(2) (a) A percentage of the income earned by [~~inmates~~] incarcerated individuals working for correctional industries in a federally certified private sector/prison industries enhancement program shall be deposited [~~in~~] into the fund.

(b) The percentage of income deducted from [~~inmate~~] incarcerated individual pay under Subsection (2)(a) shall be determined by the executive director of the Department of Corrections in accordance with the requirements of the private sector/prison industries enhancement program.

(3) (a) Judges are encouraged to, and may in their discretion, impose additional reparations to be paid into the fund by convicted criminals.

(b) The additional discretionary reparations may not exceed the statutory maximum fine permitted by Title 76, Utah Criminal Code, for that offense.

Section 54. Section **64-9b-1** is amended to read:

CHAPTER 9b. WORK PROGRAMS FOR INCARCERATED INDIVIDUALS

64-9b-1. Legislative findings.

(1) The Legislature finds that it is in the best interest of the state for the department to:

(a) develop job opportunities to further enhance the rehabilitation of [~~inmates~~] incarcerated individuals of the Utah state prison;

(b) establish and actively work toward the goal that all [~~inmates~~] incarcerated individuals shall be productively involved in a treatment, education, or work program, or a combination of these programs, as appropriate, except for [~~inmates~~] incarcerated individuals who the department determines have a physical or mental disability, or pose a danger to the public, so that they are unable to engage in these activities; and

(c) submit a comprehensive management plan outlining the department's plan to meet this goal to the Legislature on or before November 1 of each even-numbered year, and the plan shall include:

(i) a cost-effective analysis of current [~~inmate~~] incarcerated individual education, treatment, and work programs; and

(ii) a study of the feasibility of expanding [~~inmate~~] incarcerated individual work programs, particularly in regard to programs that:

(A) are not capital intensive;

(B) do not unfairly compete with existing Utah industry; and

(C) are designed to increase the motivation, develop the work capabilities, and foster the cooperation of [~~inmates~~] incarcerated individuals.

(2) The Legislature further finds that a proper means to accomplish this is through a liberal application of this chapter.

Section 55. Section **64-9b-2** is amended to read:

64-9b-2. Definitions.

As used in this chapter:

(1) "Department" means the Department of Corrections.

(2) [~~"Inmate" means any man or woman~~] "Incarcerated individual" means an individual who is under the jurisdiction of the department and who is assigned to the Utah state prison or to a county jail.

Section 56. Section **64-9b-3** is amended to read:

64-9b-3. Encouragement of private industry -- Types of employers to be sought.

(1) The department is authorized to encourage private industry to locate and provide rehabilitative and job opportunities for [~~inmates~~] incarcerated individuals at the Utah state prison and county jails housing [~~inmates~~] incarcerated individuals under the jurisdiction of the department.

(2) The department shall determine what type of employer is to be allowed to locate at the prison or county jail, taking into consideration the physical facilities and space at the prison or county jail, the abilities of the [~~inmates~~] incarcerated individuals, and the type of product to be produced by the employer.

Section 57. Section **64-9b-4** is amended to read:

64-9b-4. Work to be voluntary -- Payment of prevailing wages.

(1) Rehabilitative and job opportunities at the Utah state prison and participating county jails shall not be forced upon any [~~inmate~~] incarcerated individual contrary to the Utah Constitution, Article XVI, Section 3 (2), but instead shall be on a completely voluntary basis.

(2) (a) Private businesses that manufacture products for sale in Utah or in interstate commerce shall pay [~~inmates~~] incarcerated individuals the prevailing wage for similar work in local private industry.

(b) Private businesses that provide services, agricultural products, or manufactured products for export shall pay [~~inmates~~] incarcerated individuals wages determined by the department, but should not displace local Utah workers as a result of their employment of [~~inmates~~] incarcerated individuals.

Section 58. Section **64-9b-5** is amended to read:

64-9b-5. Intent of Legislature.

It is the legislative intent, and [~~inmates are encouraged, to use their~~] an incarcerated individual is encouraged to use the incarcerated individual's personal earnings from jobs created under this chapter for the following:

(1) for restitution to the victims of the [~~inmate's~~] incarcerated individual's criminal offense, where applicable;

(2) for support of the [~~inmate's~~] incarcerated individual's family, where applicable;

(3) for the [~~inmate's~~] incarcerated individual's personal use; and

(4) for reimbursement of security, operational, and other costs incurred by the Utah

Correctional Industries Division of the department in administering these projects.

Section 59. Section **64-13-1** is amended to read:

64-13-1. Definitions.

As used in this chapter:

(1) "Behavioral health transition facility" means a nonsecure correctional facility operated by the department for the purpose of providing a therapeutic environment for offenders receiving mental health services.

(2) "Case action plan" means a document developed by the Department of Corrections that identifies:

(a) the program priorities for the treatment of the offender, including the criminal risk factors as determined by risk, needs, and responsivity assessments conducted by the department; and

(b) clearly defined completion requirements.

(3) "Community correctional center" means a nonsecure correctional facility operated by the department, but does not include a behavioral health transition facility for the purposes of Section 64-13f-103.

(4) "Correctional facility" means any facility operated to house offenders in a secure or nonsecure setting:

(a) by the department; or

(b) under a contract with the department.

(5) "Criminal risk factors" means an individual's characteristics and behaviors that:

(a) affect the individual's risk of engaging in criminal behavior; and

(b) are diminished when addressed by effective treatment, supervision, and other support resources, resulting in a reduced risk of criminal behavior.

(6) "Department" means the Department of Corrections.

(7) "Direct supervision" means a housing and supervision system that is designed to meet the goals described in Subsection 64-13-14(5) and has the elements described in Subsection 64-13-14(6).

(8) "Emergency" means any riot, disturbance, homicide, [~~inmate~~] incarcerated individual violence occurring in any correctional facility, or any situation that presents immediate danger to the safety, security, and control of the department.

(9) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(10) "Evidence-informed" means a program or practice that is based on research and the experience and expertise of the department.

(11) "Executive director" means the executive director of the Department of Corrections.

(12) ["~~Inmate~~"] "Incarcerated individual" means an individual who is:

(a) committed to the custody of the department; and

(b) housed at a correctional facility or at a county jail at the request of the department.

(13) "Offender" means an individual who has been convicted of a crime for which the individual may be committed to the custody of the department and is at least one of the following:

(a) committed to the custody of the department;

(b) on probation; or

(c) on parole.

(14) "Restitution" means the same as that term is defined in Section 77-38b-102.

(15) "Risk and needs assessment" means an actuarial tool validated on criminal offenders that determines:

(a) an individual's risk of reoffending; and

(b) the criminal risk factors that, when addressed, reduce the individual's risk of reoffending.

(16) "Secure correctional facility" means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain an offender if the offender attempts to leave the institution without authorization.

(17) "Serious illness" means, as determined by the incarcerated individual's physician, an illness that substantially impairs the incarcerated individual's quality of life.

(18) "Serious injury" means, as determined by the incarcerated individual's physician, bodily injury that involves a substantial risk of death, prolonged unconsciousness, prolonged and obvious disfigurement, or prolonged loss or impairment of the function of a bodily

member, organ, or mental faculty.

Section 60. Section **64-13-14.5** is amended to read:

64-13-14.5. Limits of confinement place -- Release status -- Work release.

(1) The department may extend the limits of the place of confinement of an [~~inmate~~] incarcerated individual when, as established by department policies and procedures, there is cause to believe the [~~inmate~~] incarcerated individual will honor the trust, by authorizing the [~~inmate~~] incarcerated individual under prescribed conditions:

(a) to leave temporarily for purposes specified by department policies and procedures to visit specifically designated places for a period not to exceed 30 days;

(b) to participate in a voluntary training program in the community while housed at a correctional facility or to work at paid employment;

(c) to be housed in a nonsecure community correctional center operated by the department; or

(d) to be housed in any other facility under contract with the department.

(2) The department shall establish rules governing offenders on release status. A copy of the rules shall be furnished to the offender and to any employer or other person participating in the offender's release program. Any employer or other participating person shall agree in writing to abide by the rules and to notify the department of the offender's discharge or other release from a release program activity, or of any violation of the rules governing release status.

(3) The willful failure of an [~~inmate~~] incarcerated individual to remain within the extended limits of his confinement or to return within the time prescribed to an institution or facility designated by the department is an escape from custody.

(4) If an offender is arrested for the commission of a crime, the arresting authority shall immediately notify the department of the arrest.

(5) The department may impose appropriate sanctions pursuant to Section 64-13-21 upon offenders who violate guidelines established by the Utah Sentencing Commission, including prosecution for escape under Section 76-8-309 and for unauthorized absence.

(6) An [~~inmate~~] incarcerated individual who is housed at a nonsecure correctional facility and on work release may not be required to work for less than the current federally established minimum wage, or under substandard working conditions.

Section 61. Section **64-13-15** is amended to read:

64-13-15. Property of offender -- Storage and disposal.

(1) (a) (i) Offenders may retain personal property at correctional facilities only as authorized by the department.

(ii) An offender's property which is retained by the department shall be inventoried and placed in storage by the department and a receipt for the property shall be issued to the offender.

(iii) Offenders shall be required to arrange for disposal of property retained by the department within a reasonable time under department rules.

(iv) Property retained by the department shall be returned to the offender at discharge, or in accordance with Title 75, Utah Uniform Probate Code, in the case of death prior to discharge.

(b) If property is not claimed within one year of discharge, or it is not disposed of by the offender within a reasonable time after the department's order to arrange for disposal, it becomes property of the state and may be used for correctional purposes or donated to a charity within the state.

(c) If an [~~inmate's~~] incarcerated individual's property is not claimed within one year of [~~his~~] the incarcerated individual's death, it becomes the property of the state in accordance with Section 75-2-105.

(d) (i) Funds which are contraband and in the physical custody of [~~any prisoner~~] an incarcerated individual, whether in the form of currency and coin which are legal tender in any jurisdiction or negotiable instruments drawn upon a personal or business account, shall be subject to forfeiture following a hearing which accords with prevailing standards of due process.

(ii) All such forfeited funds shall be used by the department for purposes which promote the general welfare of [~~prisoners~~] incarcerated individuals in the custody of the department.

(iii) Money and negotiable instruments taken from offenders' mail under department rule and which are not otherwise contraband shall be placed in an account administered by the department, to the credit of the offender who owns the money or negotiable instruments.

(2) Upon discharge from a secure correctional facility, the department may give an [~~inmate~~] incarcerated individual transition funds in an amount established by the department

with the approval of the director of the Division of Finance. At its discretion, the department may spend the funds directly on the purchase of necessities or transportation for the discharged [~~inmate~~] incarcerated individual.

Section 62. Section **64-13-16** is amended to read:

64-13-16. Incarcerated individual employment.

(1) (a) The department may employ [~~inmates~~] incarcerated individuals, unless incapable of employment because of sickness or other infirmity or for security reasons, to the degree that funding and available resources allow.

(b) An offender may not be employed on work which benefits any employee or officer of the department.

(2) An offender employed under this section is not considered an employee, worker, workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act, except as required by federal statute or regulation.

Section 63. Section **64-13-17** is amended to read:

64-13-17. Visitors to correctional facilities -- Correspondence.

(1) (a) The following persons may visit correctional facilities without the consent of the department:

(i) the governor;

(ii) the attorney general;

(iii) a justice or judge of the courts of record;

(iv) members of the Board of Pardons and Parole;

(v) members of the Legislature;

(vi) the sheriff, district attorney, and county attorney for the county in which the correctional facility is located; and

(vii) any other persons authorized under rules prescribed by the department or court order.

(b) [~~Any~~] A person acting under a court order may visit or correspond with [~~any inmate~~] an incarcerated individual without the consent of the department provided the department has received notice of, and is permitted to respond to, the court order. The court shall consider department policy when making its order.

(c) The department may limit access to correctional facilities when the department or

governor declares an emergency or when there is a riot or other disturbance.

(2) (a) A person may not visit with any offender at any correctional facility, other than under Subsection (1), without the consent of the department.

(b) Offenders and all visitors, including those listed in Subsection (1), may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

(3) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing guidelines for providing written notice to visitors regarding prohibited items and regarding the fact that under state law all visitors may be required to submit to a search of their persons and properties as a condition of visitation.

(4) Offenders housed at any correctional facility may send and receive correspondence, subject to the rules of the department. All correspondence is subject to search, consistent with department rules.

Section 64. Section **64-13-21** is amended to read:

64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking -- POST certified parole or probation officers and peace officers -- Duties -- Supervision fee.

(1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.

(b) If a sentenced offender participates in substance use treatment or a residential, vocational and life skills program, as defined in Section 13-53-102, while under supervision on probation or parole, the department shall monitor the offender's compliance with and completion of the treatment or program.

(c) The department shall establish standards for:

(i) the supervision of offenders in accordance with sentencing guidelines and supervision length guidelines, including the graduated and evidence-based responses, established by the Utah Sentencing Commission, giving priority, based on available resources, to felony offenders and offenders sentenced under Subsection 58-37-8 (2)(b)(ii); and

(ii) the monitoring described in Subsection (1)(b).

(2) The department shall apply the graduated and evidence-based responses established

by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an individual's violation of the terms of probation or parole, including:

(a) sanctions to be used in response to a violation of the terms of probation or parole; and

(b) requesting approval from the court or Board of Pardons and Parole to impose a sanction for an individual's violation of the terms of probation or parole, for a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.

(3) The department shall implement a program of graduated incentives as established by the Utah Sentencing Commission to facilitate the department's prompt and appropriate response to an offender's:

(a) compliance with the terms of probation or parole; or

(b) positive conduct that exceeds those terms.

(4) (a) The department shall, in collaboration with the State Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of [~~inmates~~] incarcerated individuals, related to the use of the graduated and evidence-based responses and graduated incentives, and offenders' outcomes.

(b) The collected information shall be provided to the State Commission on Criminal and Juvenile Justice not less frequently than annually on or before August 31.

(5) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:

(a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;

(b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;

(c) supervising any offender during transportation; or

(d) collecting DNA specimens when the specimens are required under Section 53-10-404.

(6) (a) (i) A monthly supervision fee of $30 shall be collected from each offender on probation or parole.

(ii) The fee described in Subsection (6)(a)(i) may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

(b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.

(ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.

(7) (a) For offenders placed on probation under Section 77-18-105 or parole under Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the department shall establish a program allowing an offender to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).

(b) The program shall provide that an offender earns a reduction credit of 30 days from the offender's period of probation or parole for each month the offender completes without any violation of the terms of the offender's probation or parole agreement, including the case action plan.

(c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).

(d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).

(e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment

program is completed.

(f) The department shall report annually to the State Commission on Criminal and Juvenile Justice on or before August 31:

(i) the number of offenders who have earned probation or parole credits under this Subsection (7) in one or more months of the preceding fiscal year and the percentage of the offenders on probation or parole during that time that this number represents;

(ii) the average number of credits earned by those offenders who earned credits;

(iii) the number of offenders who earned credits by county of residence while on probation or parole;

(iv) the cost savings associated with sentencing reform programs and practices; and

(v) a description of how the savings will be invested in treatment and early-intervention programs and practices at the county and state levels.

Section 65. Section **64-13-25** is amended to read:

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

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

(a) The standards shall be promulgated according to state rulemaking provisions. Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Offenders are not a class of persons under that act.

(b) Standards shall provide for inquiring into and processing offender complaints.

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

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

(A) consult and collaborate with the county sheriffs and the Division of Substance Abuse and Mental Health; and

(B) include programs demonstrated by recognized scientific research to reduce

recidivism by addressing an offender's criminal risk factors as determined by a risk and needs assessment.

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

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

(ii) The standards shall require the use of the most current best practices demonstrated by recognized scientific research to address an offender's criminal risk factors.

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

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

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

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

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

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

(3) The department shall establish a certification program for public and private providers of treatment for sex offenders on probation or parole that requires the providers' sex offender treatment practices meet the standards and practices established under Subsection (1)(d) to reduce sex offender recidivism.

(a) The department shall collaborate with the Division of Substance Abuse and Mental

Health to develop, coordinate, and implement the certification program.

(b) The certification program shall be based on the standards under Subsection (1)(d) and shall require renewal of certification every two years.

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

(d) The department shall establish the certification program by administrative rule pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The department shall establish performance goals and outcome measurements for all programs that are subject to the minimum standards established under this section and shall collect data to analyze and evaluate whether the goals and measurements are attained.

(a) The department shall collaborate with the Division of Substance Abuse and Mental Health to develop and coordinate the performance goals and outcome measurements, including recidivism rates and treatment success and failure rates.

(b) The department may use these data to make decisions on the use of funds to provide treatment for which standards are established under this section.

(c) The department shall collaborate with the Division of Substance Abuse and Mental Health to track a subgroup of participants to determine if there is a net positive result from the use of treatment as an alternative to incarceration.

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

(e) The department shall annually provide data collected under this Subsection (4) to the Commission on Criminal and Juvenile Justice on or before August 31. The commission shall compile a written report of the findings based on the data and shall provide the report to the legislative Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

Section 66. Section **64-13-30** is amended to read:

64-13-30. Expenses incurred by offenders -- Payment to department or county jail -- Medical care expenses and copayments.

(1) (a) The department or county jail may require an [~~inmate~~] incarcerated individual to make a copayment for medical and dental services provided by the department or county jail.

(b) For services provided while in the custody of the department, the copayment by the [~~inmate~~] incarcerated individual is $5 for primary medical care, $5 for dental care, and $2 for prescription medication.

(c) For services provided outside of a prison facility while in the custody of the department, the offender is responsible for 10% of the costs associated with hospital care with a cap on an [~~inmate's~~] incarcerated individual's share of hospital care expenses not to exceed $2,000 per fiscal year.

(2) (a) An [~~inmate~~] incarcerated individual who has assets exceeding $200,000, as determined by the department upon entry into the department's custody, is responsible to pay the costs of all medical and dental care up to 20% of the [~~inmate's~~] incarcerated individual's total determined asset value.

(b) After an [~~inmate~~] incarcerated individual has received medical and dental care equal to 20% of the [~~inmate's~~] incarcerated individual's total asset value, the [~~inmate~~] incarcerated individual is subject to the copayments provided in Subsection (1).

(3) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.

(4) An [~~inmate~~] incarcerated individual may not be denied medical treatment if the [~~inmate~~] incarcerated individual is unable to pay for the treatment because of inadequate financial resources.

(5) When an offender in the custody of the department receives medical care that is provided outside of a prison facility, the department shall pay the costs:

(a) at the contracted rate; or

(b) (i) if there is no contract between the department and a health care facility that establishes a fee schedule for medical services rendered, expenses shall be at the noncapitated state Medicaid rate in effect at the time the service was provided; and

(ii) if there is no contract between the department and a health care provider that establishes a fee schedule for medical services rendered, expenses shall be 65% of the amount

that would be paid under the Public Employees' Benefit and Insurance Program, created in Section 49-20-103.

(6) Expenses described in Subsection (5) are a cost to the department only to the extent that they exceed an offender's private insurance that is in effect at the time of the service and that covers those expenses.

(7) (a) The Public Employees' Benefit and Insurance Program shall provide information to the department that enables the department to calculate the amount to be paid to a health care provider under Subsection (5)(b).

(b) The department shall ensure that information provided under Subsection (7)(a) is confidential.

Section 67. Section **64-13-30.5** is amended to read:

64-13-30.5. Payment by incarcerated individual for postsecondary educational tuition.

(1) (a) [~~(a)~~] (i) An [~~inmate~~] incarcerated individual participating in a postsecondary education program through the department shall pay to the department at the time of enrollment 50% of the costs of the postsecondary education tuition.

[~~(b)~~] (ii) If an [~~inmate~~] incarcerated individual desires to participate in the postsecondary education program but is unable to pay the costs of the education because of inadequate financial resources, the [~~inmate~~] incarcerated individual may participate in a deferred tuition payment program under this section.

[~~(c)~~] (iii) The department and the Office of State Debt Collection shall coordinate a deferred postsecondary education tuition repayment program to provide [~~inmates~~] incarcerated individuals a reasonable payment schedule and payment amount to allow for deferred payment of the postsecondary educational tuition obligation the [~~inmate~~] incarcerated individual incurred while under supervision of the department, which shall:

[~~(i)~~] (A) account for all postsecondary education tuition costs incurred by the [~~inmate~~] incarcerated individual while under the supervision of the department;

[~~(ii)~~] (B) establish an appropriate time for the [~~inmate~~] incarcerated individual to begin payment of postsecondary education tuition costs, which shall require that payments start no later than two years after termination of parole; and

[~~(iii)~~] (C) establish a payment schedule and payment amounts, including prevailing

interest rates, commensurate with student loans currently being offered by local financial institutions.

[~~(d)~~] (iv) Neither the department nor the Office of State Debt Collection may relieve an offender of the postsecondary tuition repayment responsibility.

[~~(e)~~] (v) The department shall pay costs of postsecondary education not paid by the offender at the time of participation in the program from the Prison Telephone Surcharge Account.

(2) (a) Of those tuition funds collected by the Office of State Debt Collection under this section, 10% may be used by the Office of State Debt Collection for operation of the deferred payment program.

(b) All other funds collected as repayment for postsecondary tuition costs shall be deposited in the Prison Telephone Surcharge Account.

(3) Only [~~inmates~~] an incarcerated individual lawfully present in the United States may participate in the postsecondary educational program offered through the department.

Section 68. Section **64-13-32** is amended to read:

64-13-32. Discipline of offenders -- Use of force.

(1) If an offender offers violence to an officer or other employee of the Department of Corrections, or to another offender, or to any other person; attempts to damage or damages any corrections property; attempts to escape; or resists or refuses to obey any lawful and reasonable command; the officers and other employees of the department may use all reasonable means, including the use of weapons, to defend themselves and department property and to enforce the observance of discipline and prevent escapes.

(2) (a) An [~~inmate~~] incarcerated individual who is housed in a secure correctional facility and is in the act of escaping from that secure correctional facility or from the custody of a peace or correctional officer is presumed to pose a threat of death or serious bodily injury to an officer or others if apprehension is delayed.

(b) Notwithstanding Section 76-2-404, a peace or correctional officer is justified in using deadly force if he reasonably believes deadly force is necessary to apprehend the [~~inmate~~] incarcerated individual.

Section 69. Section **64-13-34** is amended to read:

64-13-34. Safety of offenders.

(1) In case of disaster or acts of God that threaten the safety of [~~inmates~~] incarcerated individuals or the security of a secure correctional facility, [~~inmates~~] incarcerated individuals may be moved to a suitable place of security.

(2) [~~Inmates~~] Incarcerated individuals moved under Subsection (1) shall be returned to a correctional facility as soon as it is practicable.

Section 70. Section **64-13-36** is amended to read:

64-13-36. Testing of incarcerated individuals for AIDS and HIV infection -- Medical care -- Department authority.

(1) As used in this section[~~:~~]

[~~(a) "Prisoner" means a person who has been adjudicated and found guilty of a criminal offense and who is in the custody of and under the jurisdiction of the department.~~]

[~~(b) "Test" or "testing"~~] "test" or "testing" means a test or tests for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection in accordance with standards recommended by the state Department of Health and Human Services.

(2) (a) Within 90 days after July 1, 1989, the effective date of this act, the department shall test or provide for testing of all [~~prisoners~~] incarcerated individuals who are under the jurisdiction of the department, and subsequently test or provide for testing of all [~~prisoners~~] incarcerated individuals who are committed to the jurisdiction of the department upon admission or within a reasonable period after admission.

(b) At the time test results are provided to [~~persons~~] incarcerated individuals tested, the department shall provide education and counseling regarding Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection.

(3) (a) The results of tests conducted under Subsection (2) become part of the [~~inmate's~~] incarcerated individual's medical file, accessible only to persons designated by department rule and in accordance with any other legal requirement for reporting of Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

(b) Medical and epidemiological information regarding results of tests conducted under Subsection (2) shall be provided to the state Department of Health and Human Services.

(4) The department has authority to take action as medically indicated with regard to any [~~prisoner~~] incarcerated individual who has tested positive for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

(5) [~~Prisoners~~] Incarcerated individuals who test positive for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection may not be excluded from common areas of the prison that are accessible to other [~~prisoners~~] incarcerated individuals solely on the basis of that condition, unless medically necessary for protection of the general [~~prison~~] incarcerated individual population or staff.

Section 71. Section **64-13-38** is amended to read:

64-13-38. Emergency release due to overcrowding.

(1) [~~Definitions~~] As used in this section:

(a) "Maximum capacity" means every physical and funded prison bed is occupied by an [~~inmate~~] incarcerated individual.

(b) "Operational capacity" means 96.5% of every physical and funded bed is occupied by an [~~inmate~~] incarcerated individual.

(c) "Emergency release capacity" means 98% of every physical and funded bed is occupied by an [~~inmate~~] incarcerated individual.

(2) When the executive director of the department finds that either the male or female [~~inmate~~] incarcerated individual population of the Utah State Prison has exceeded operational capacity for at least 45 consecutive days, the executive director shall notify the governor, the legislative leadership, and the Board of Pardons and Parole that the department is approaching an overcrowding emergency and provide them with information relevant to that determination.

(3) When the executive director of the department finds that either the male or female [~~inmate~~] incarcerated individual population of the Utah State Prison has exceeded emergency release capacity for at least 45 consecutive days, the executive director shall:

(a) notify the governor and the legislative leadership that the emergency release capacity has been reached and provide them with information relevant to that determination; and

(b) notify the Board of Pardons and Parole that the emergency release capacity has been reached so that the board may commence the emergency release process pursuant to Subsection (4).

(4) Upon the department's notifying the governor and the legislative leadership of the emergency release capacity under Subsection (3), the department shall:

(a) notify the Board of Pardons and Parole of the number of [~~inmates~~] incarcerated

individuals who need to be released in order to return the prison [~~inmate~~] incarcerated individual population to operational capacity; and

(b) in cooperation and consultation with the Board of Pardons and Parole, compile a list of [~~inmates~~] incarcerated individuals, the release of whom would be sufficient to return the prison [~~inmate~~] incarcerated individual population to operational capacity.

(5) After 45 consecutive days of emergency release capacity, the Board of Pardons and Parole may order the release of a sufficient number of [~~inmates~~] incarcerated individuals identified under Subsection (4) to return the prison [~~inmate~~] incarcerated individual population to operational capacity.

(6) The department shall inform the governor and the legislative leadership when the emergency release has been completed.

(7) The Board of Pardons and Parole shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

Section 72. Section **64-13-39.~~{4}~~5** is ~~{enacted}~~amended to read:

~~{ **64-13-39.4. Supervision of emergency medical provider in a correctional facility.**~~

~~(1) As used in this section:~~

~~(a) "Emergency medical service personnel" means an individual licensed under Section 26-8a-302.~~

~~(b) "Registered nurse" means a registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act.~~

~~(2) If emergency medical service personnel provide medical services to an incarcerated individual, the department shall ensure that a registered nurse supervises the emergency medical service personnel.~~

~~(3) A registered nurse providing supervision under Subsection (2) shall:~~

~~(a) provide written or verbal instructions to the emergency medical service personnel before the emergency medical service personnel perform employment responsibilities; and~~

~~(b) be available at the correctional facility where the emergency medical service personnel provides medical services.~~

~~Section 73. Section **64-13-39.5** is amended to read:~~

~~}~~ **64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders -- Notice to health care facility.**

(1) As used in this section:

(a) "Department or agency" means the Utah Department of Corrections or a department of corrections or government entity responsible for placing an offender in a facility located in Utah.

(b) "Chronically ill" has the same meaning as in Section 31A-36-102.

(c) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5) and a nursing care facility as defined in Subsection 26-21-2(17), except that transitional care units and other long term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not facilities for the purpose of this section.

(d) "Offender" means an [~~inmate~~] incarcerated individual whom the department or agency has given an early release, pardon, or parole due to a chronic or terminal illness.

(e) "Terminally ill" has the same meaning as in Section 31A-36-102.

(2) If an offender from Utah or any other state is admitted as a resident of a facility due to the chronic or terminal illness, the department or agency placing the offender shall:

(a) provide written notice to the administrator of the facility no later than 15 days prior to the offender's admission as a resident of a facility, stating:

(i) the offense for which the offender was convicted and a description of the actual offense;

(ii) the offender's status with the department or agency;

(iii) that the information provided by the department or agency regarding the offender shall be provided to employees of the facility no later than 10 days prior to the offender's admission to the facility; and

(iv) the contact information for:

(A) the offender's parole officer and also a point of contact within the department or agency, if the offender is on parole; and

(B) a point of contact within the department or agency, if the offender is not under parole supervision but was given an early release or pardon due to a chronic or terminal illness;

(b) make available to the public on the Utah Department of Corrections' website and upon request:

(i) the name and address of the facility where the offender resides; and

(ii) the date the offender was placed at the facility; and

(c) provide a training program for employees who work in a facility where offenders reside, and if the offender is placed at the facility by:

(i) the Utah Department of Corrections, the department shall provide the training program for the employees; and

(ii) by a department or agency from another state, that state's department or agency shall arrange with the Utah Department of Corrections to provide the training required by this Subsection (2), if training has not already been provided by the Utah Department of Corrections, and shall provide to the Utah Department of Corrections any necessary compensation for this service.

(3) The administrator of the facility shall:

(a) provide residents of the facility or their guardians notice that a convicted felon is being admitted to the facility no later than 10 days prior to the offender's admission to the facility;

(b) advise potential residents or their guardians of persons under Subsection (2) who are current residents of the facility; and

(c) provide training, offered by the Utah Department of Corrections, in the safe management of offenders for all employees.

(4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(a) a consistent format and procedure for providing notification to facilities and information to the public in compliance with Subsection (2); and

(b) a training program, in compliance with Subsection (3) for employees, who work at facilities where offenders reside to ensure the safety of facility residents and employees.

Section ~~{74}~~73. Section **64-13-40** is amended to read:

64-13-40. Worship for native American incarcerated individual.

(1) As used in this section:

(a) "Items used in religious ceremonies" includes cedar, corn husks, corn pollen, corn meal, eagle and other feathers, sage, sweet grass, tobacco, pipes, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, staffs, and other traditional items and materials.

(b) "Native American" means an individual who is eligible for membership in a tribe recognized by the federal government.

(c) "Native American religion" means a religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community.

(d) "Native American spiritual advisor" means a person who leads, instructs, or facilitates a native American religious ceremony or service, or provides religious counseling, and includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.

(e) "Site of worship" means a site indoors or outdoors where a person can pray or meditate, or where a sweat lodge ceremony, talking circle, or individual prayer can be made.

(2) (a) At the request of any native American [~~inmate~~] incarcerated individual, a state correctional facility shall reasonably accommodate the practice of the native American [~~inmate's~~] incarcerated individual's religion including a native American religion at each state correctional facility, unless the [~~inmate~~] incarcerated individual is a maximum security [~~inmate~~] incarcerated individual and accommodating the maximum security [~~inmate~~] incarcerated individual would threaten the reasonable security of the state correctional facility.

(b) In accommodating a native American religion, the state correctional facility shall:

(i) permit access on a regular basis to:

(A) a native American spiritual advisor; and

(B) a site of worship on the grounds of the correctional facility, unless the [~~inmate~~] incarcerated individual is a maximum security [~~inmate~~] incarcerated individual and permitting access would threaten the reasonable security of the state correctional facility;

(ii) permit access to items used in religious ceremonies during the religious ceremonies; and

(iii) provide a secure place at the site of worship to store the items used in religious ceremonies.

(3) Notwithstanding Subsection (2)(b)(iii), the state correctional facility is not required to provide to the [~~inmate~~] incarcerated individual any item used in religious ceremonies.

(4) A native American spiritual advisor shall have any privilege of access to [~~inmates~~] incarcerated individuals and sites of worship provided to an individual functioning as a religious leader or advisor at a state correctional facility.

(5) An [~~inmate~~] incarcerated individual claiming to be a native American for purposes

of this section shall bear the burden of establishing to the state correctional facility that the [~~inmate~~] incarcerated individual is a native American.

(6) The department may not require a native American [~~inmate~~] incarcerated individual to cut the [~~inmate's~~] incarcerated individual's hair if it conflicts with the [~~inmate's~~] incarcerated individual's traditional native American religious beliefs.

(7) A state correctional facility is required to comply with this section only to the extent that it does not threaten the reasonable security of the state correctional facility.

(8) This section may not be construed as requiring a state correctional facility to permit access to peyote by a native American [~~inmate~~] incarcerated individual.

Section ~~{75}~~74. Section **64-13-42** is amended to read:

64-13-42. Prison Telephone Surcharge Account -- Funding incarcerated individual and offender education and training programs.

(1) (a) There is created within the General Fund a restricted account known as the Prison Telephone Surcharge Account.

(b) The Prison Telephone Surcharge Account consists of:

(i) beginning July 1, 2006, revenue generated by the state from pay telephone services located at any correctional facility as defined in Section 64-13-1;

(ii) interest on account money;

(iii) (A) money paid by [~~inmates~~] incarcerated individuals participating in postsecondary education provided by the department; and

(B) money repaid by former [~~inmates~~] incarcerated individuals who have a written agreement with the department to pay for a specified portion of the tuition costs under the department's deferred tuition payment program;

(iv) money collected by the Office of State Debt Collection for debt described in Subsection (1)(b)(iii); and

(v) money appropriated by the Legislature.

(2) Upon appropriation by the Legislature, money from the Prison Telephone Surcharge Account shall be used by the department for education and training programs for offenders and [~~inmates~~] incarcerated individual as defined in Section 64-13-1.

Section ~~{76}~~75. Section **64-13-43** is amended to read:

64-13-43. Use of state vehicles by department personnel.

The department executive director may authorize the use of a state vehicle for official and commute purposes for a department employee who:

(1) supervises probationers or parolees; or

(2) investigates the criminal activity of [~~inmates~~] incarcerated individuals, probationers, or parolees.

Section ~~{77}~~76. Section **64-13-44** is amended to read:

64-13-44. Posthumous organ donations by incarcerated individuals.

(1) As used in this section:

(a) "Document of gift" has the same meaning as in Section 26-28-102.

(b) "Sign" has the same meaning as in Section 26-28-102.

(2) (a) The Utah Department of Corrections shall make available to each [~~inmate~~] incarcerated individual a document of gift form that allows an [~~inmate~~] incarcerated individual to indicate the [~~inmate's~~] incarcerated individual's desire to make an anatomical gift if the [~~inmate~~] incarcerated individual dies while in the custody of the department.

(b) If the [~~inmate~~] incarcerated individual chooses to make an anatomical gift after death, the [~~inmate~~] incarcerated individual shall complete a document of gift in accordance with the requirements of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

(c) The department shall maintain a record of the document of gift that an [~~inmate~~] incarcerated individual provides to the department.

(3) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the department may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all [~~inmates~~] incarcerated individuals who complete and sign the document of gift form indicating they intend to make an anatomical gift.

(4) The making of an anatomical gift by an [~~inmate~~] incarcerated individual under this section shall comply with Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

(5) Notwithstanding anything in this section, the department shall not be considered to be an [~~inmate's~~] incarcerated individual's "guardian" for the purposes of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

Section ~~{78}~~77. Section **64-13-45** is amended to read:

64-13-45. Department reporting requirements.

(1) As used in this section:

(a) (i) "In-custody death" means [~~an inmate~~] the death of an incarcerated individual { }that occurs while the [~~inmate~~] incarcerated individual is in the custody of the department.

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

(A) being transported for medical care; or

(B) receiving medical care outside of a correctional facility, other than a county jail.

(b) [~~"Inmate"~~] "Incarcerated individual" means an individual who is processed or booked into custody or housed in the department or a correctional facility other than a county jail.

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

(2) The department shall submit a report to the Commission on Criminal and Juvenile Justice, created in Section 63M-7-201, before June 15 of each year that includes:

(a) the number of in-custody deaths that occurred during the preceding calendar year, including:

(i) the known, or discoverable on reasonable inquiry, causes and contributing factors of each of the in-custody deaths described in Subsection (2)(a); and

(ii) the department's policy for notifying an [~~inmate's~~] incarcerated individual's next of kin after the [~~inmate's~~] incarcerated individual's in-custody death;

(b) the department policies, procedures, and protocols:

(i) for treatment of an [~~inmate~~] incarcerated individual experiencing withdrawal from alcohol or substance use, including use of opiates;

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

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

(c) the number of [~~inmates~~] incarcerated individuals who gave birth and were restrained in accordance with Section 64-13-46, including:

(i) the types of restraints used; and

(ii) whether the use of restraints was to prevent escape or to ensure the safety of the

[~~inmate~~] incarcerated individual, medical or corrections staff, or the public; and

(d) any report the department provides or is required to provide under federal law or regulation relating to [~~inmate deaths~~] an in-custody death.

(3) The Commission on Criminal and Juvenile Justice shall:

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

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

(c) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee and the Utah Substance Use and Mental Health Advisory Council before November 1 of each year.

(4) The Commission on Criminal and Juvenile Justice may not provide access to or use the department's policies, procedures, or protocols submitted under this section in a manner or for a purpose not described in this section.

Section ~~{79}~~78. Section **64-13-46** is amended to read:

64-13-46. Pregnant incarcerated individuals.

(1) (a) If the staff of a correctional facility knows or has reason to believe that an [~~inmate~~] incarcerated individual is pregnant, the staff, when restraining the [~~inmate~~] incarcerated individual, shall use the least restrictive restraints necessary to ensure the safety and security of the [~~inmate~~] incarcerated individual and others.

(b) This requirement shall continue during postpartum recovery and any transport to or from a correctional facility.

(2) The staff of a correctional facility may not use restraints on an [~~inmate~~] incarcerated individual during labor and childbirth unless a correctional staff member makes an individualized determination that there are compelling grounds to believe that the [~~inmate~~] incarcerated individual presents:

(a) an immediate and serious risk of harm to herself, medical staff, correctional staff, or the public; or

(b) a substantial risk of escape that cannot reasonably be reduced by the use of other existing means.

(3) Notwithstanding Subsection (1) or (2), under no circumstances may shackles, leg

restraints, or waist restraints be used on an [~~inmate~~] incarcerated individual during labor and childbirth or postpartum recovery while in a medical facility.

(4) Correctional staff present during labor or childbirth shall:

(a) be stationed in a location that offers the maximum privacy to the [~~inmate~~] incarcerated individual, while taking into consideration safety and security concerns; and

(b) be female, if practicable.

(5) If restraints are authorized under Subsection (1) or (2), a written record of the decision and use of the restraints shall be made that includes:

(a) the correctional staff member's determination on the use of restraints;

(b) the circumstances that necessitated the use of restraints;

(c) the type of restraints that were used; and

(d) the length of time the restraints were used.

(6) The record created in Subsection (5):

(a) shall be retained by the correctional facility for five years;

(b) shall be available for public inspection with individually identifying information redacted; and

(c) may not be considered a medical record under state or federal law.

(7) As used in this section:

(a) "Postpartum recovery" means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or medical facility after birth.

(b) "Restraints" means any physical restraint or mechanical device used to control the movement of an [~~inmate's~~] incarcerated individual's body or limbs, including flex cuffs, soft restraints, shackles, or a convex shield.

(c) "Shackles" means metal or iron restraints and includes hard metal handcuffs, leg irons, belly chains, or a security or tether chain.

Section ~~{80}~~79. Section **64-13-47** is amended to read:

64-13-47. Prison Sexual Assault Prevention Program.

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

(2) The rules described in Subsection (1) shall:

(a) require education and training, including:

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

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

(b) require reporting of sexual assault, including:

(i) ensuring the confidentiality of [~~inmate~~] incarcerated individual sexual assault complaints and the protection of [~~inmates~~] incarcerated individuals who make complaints of sexual assault; and

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

(c) require safety and care for victims, including:

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

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

(iii) providing confidential mental health counseling for victims of sexual assault, including access to outside community groups or victim advocates that have expertise in sexual assault counseling, and enable confidential communication between [~~inmates~~] incarcerated individuals and those organizations and advocates; and

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

(d) require investigations and staff discipline, including:

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

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

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

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

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

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

(b) The investigation shall include:

(i) using a forensic rape kit, if appropriate;

(ii) questioning suspects and witnesses; and

(iii) gathering and preserving relevant evidence.

(4) The department shall:

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

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

Section ~~{81}~~80. Section **64-13-48** is amended to read:

64-13-48. Educational and career-readiness programs.

(1) The department shall, in accordance with Subsection 64-13-6(1)(c), ensure that appropriate evidence-based and evidence-informed educational or career-readiness programs are made available to an [~~inmate~~] incarcerated individual as soon as practicable after the creation of the [~~inmate's~~] incarcerated individual's case action plan.

(2) The department shall provide incarcerated women with substantially equivalent educational and career-readiness opportunities as incarcerated men.

(3) Before an [~~inmate~~] incarcerated individual begins an educational or career-readiness program, the department shall provide reasonable access to resources

necessary for an [~~inmate~~] incarcerated individual to apply for grants or other available financial aid that may be available to pay for the [~~inmate's~~] incarcerated individual's program.

(4) (a) The department shall consider an [~~inmate's~~] incarcerated individual's current participation in an educational or career-readiness program when the department makes a decision with regard to an [~~inmate's~~] incarcerated individual's:

(i) transfer to another area or facility; or

(ii) appropriate disciplinary sanction.

(b) When possible, the department shall use best efforts to allow an [~~inmate~~] incarcerated individual to continue the [~~inmate's~~] incarcerated individual's participation in an educational or career-readiness program while the facility is under lockdown, quarantine, or a similar status.

(5) (a) The department shall maintain records on an [~~inmate's~~] incarcerated individual's educational progress, including completed life skills, certifications, and credit- and non-credit-bearing courses, made while the [~~inmate~~] incarcerated individual is incarcerated.

(b) The department shall facilitate the transfer of information related to the [~~inmate's~~] incarcerated individual's educational process upon the [~~inmate's~~] incarcerated individual's release, including the [~~inmate's~~] incarcerated individual's post-release contact information and the records described in Subsection (5)(a), to:

(i) the [~~inmate~~] incarcerated individual; or

(ii) an entity that the [~~inmate~~] incarcerated individual has authorized to receive the [~~inmate's~~] incarcerated individual's records or post-release contact information, including an institution:

(A) from which the [~~inmate~~] incarcerated individual received educational instruction while the [~~inmate~~] incarcerated individual was incarcerated; or

(B) at which the [~~inmate~~] incarcerated individual plans to continue the [~~inmate's~~] incarcerated individual's post-incarceration education.

(6) Beginning May 1, 2023, the department shall provide an annual report to the Higher Education Appropriations Subcommittee regarding educational and career-readiness programs for [~~inmates~~] incarcerated individuals, which shall include:

(a) the number of [~~inmates~~] incarcerated individuals who are participating in an educational or career-readiness program, including an accredited postsecondary education

program;

(b) the percentage of [~~inmates~~] incarcerated individuals who are participating in an educational or career-readiness program as compared to the total [~~inmate~~] incarcerated individual population;

(c) [~~inmate~~] incarcerated individual program completion and graduation data, including the number of completions and graduations in each educational or career-readiness program;

(d) the potential effect of educational or career-readiness programs on recidivism, as determined by a comparison of:

(i) the total number of [~~inmates~~] incarcerated individuals who return to incarceration after a previous incarceration; and

(ii) the number of [~~inmates~~] incarcerated individuals who return to incarceration after a previous incarceration who participated in or completed an educational or career-readiness program;

(e) the number of [~~inmates~~] incarcerated individuals who were transferred to a different facility while currently participating in an educational or career-readiness program, including the number of [~~inmates~~] incarcerated individuals who were unable to continue a program after a transfer to a different facility; and

(f) the department's:

(i) recommendation for resources that may increase [~~inmates'~~] incarcerated individuals' access to and participation in an educational or career-readiness program; and

(ii) estimate of how many additional [~~inmates~~] incarcerated individuals would participate in an educational or career-readiness program if the resources were provided.

(7) The department may make rules in accordance with Section 64-13-10 and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

Section ~~{82}~~81. Section **64-13-49** is enacted to read:

64-13-49. Incarcerated individual medical notification.

(1)

As used in this section, "health care facility" means the same as that term is defined in Section 26-21-2.

(2) Upon intake of an incarcerated individual, a correctional facility shall provide the

incarcerated individual with a form that allows the incarcerated individual to designate a contact to whom the correctional facility may release the incarcerated individual's medical information in compliance with applicable federal law and Title 63G, Chapter 2, Government Records Access and Management Act.

(3) A correctional facility shall, without compromising an investigation:

(a) attempt to notify an incarcerated individual's designated contact that the incarcerated individual sustained a serious injury or contracted a serious illness within five days after:

(i) the day on which the incarcerated individual sustains the serious injury or contracts the serious illness; or

(ii) if the incarcerated individual is transferred to a health care facility as a result of the serious injury or serious illness, the day on which the incarcerated individual is released from the health care facility;

(b) attempt to notify the designated contact within 24 hours after the death of the incarcerated individual and include the manner of death in the notification, if known; or

(c) attempt to notify the designated contact if the incarcerated individual's physician determines notification is necessary because the incarcerated individual has a medical condition that:

(i) renders the incarcerated individual incapable of making health care decisions; or

(ii) may result in the incarcerated individual reaching end-of-life.

(4) The notification described in Subsection (3)(a) shall, without compromising an investigation, describe:

(a) the serious injury or serious illness;

(b) the extent of the serious injury or serious illness;

(c) the medical treatment plan; and

(d) if applicable, the medical treatment recovery plan.

(5) The department shall create a policy that a staff member provide the notification described in Subsection (3) in a compassionate and professional manner.

Section ~~{83}~~82. Section **64-13d-103** is amended to read:

64-13d-103. Private contracts.

(1) The department may contract with a contractor to finance, acquire, construct, lease,

or provide full or partial correctional services.

(2) Before entering into a contract, the department shall:

(a) hold a public hearing within the county or municipality where the facility is to be sited for the purpose of obtaining public comment;

(b) give consideration to the input received at the public hearing when making decisions regarding the awarding of a contract and the contract process; and

(c) have received written notification from the legislative body of the municipality or county where the proposed facility is to be sited, stating that the legislative body has agreed to the establishment of the facility within its boundaries.

(3) Before entering into a contract, the department shall require that the contractor proposing to provide the services demonstrate that it has:

(a) management personnel with the qualifications and experience necessary to carry out the terms of the contract;

(b) sufficient financial resources to:

(i) complete and operate the facility;

(ii) provide indemnification for liability arising from the operation of the facility; and

(iii) provide reimbursement as required under Section 64-13d-105;

(c) the ability and resources to meet applicable court orders, correctional standards as defined by the department, and constitutional requirements; and

(d) liability insurance adequate to protect the state, the political subdivision where the facility is located, and the officers and employees of the facility from all claims and losses incurred as a result of action or inaction by the contractor or its employees.

(4) A contract awarded for the operation of a facility shall be consistent with commonly accepted correctional practices as defined by the department and shall include:

(a) adequate internal and perimeter security to protect the public, employees, and [~~inmates~~] incarcerated individuals, based on the security level of the inmate population;

(b) work, training, educational, and treatment programs for [~~inmates~~] incarcerated individuals;

(c) a minimum correctional officer to [~~inmate~~] incarcerated individual ratio;

(d) imposition of [~~inmate~~] incarcerated individual discipline in accordance with applicable state law and department policy; and

(e) adequate food, clothing, housing, and medical care for [~~inmates~~] incarcerated individuals.

Section ~~{84}~~83. Section **64-13d-104** is amended to read:

64-13d-104. Use of force -- Private prison employees.

(1) Employees of a facility contractor may use reasonable force to the extent allowed by state law. The use of force, power, and authority shall be limited to:

(a) the grounds of a facility operated in whole or in part by their employer;

(b) when transporting [~~inmates~~] incarcerated individuals; and

(c) when pursuing escapees from the facility.

(2) Training standards for employees of a contractor shall be in accordance with the standards in Section 64-13-24.

(3) Subsection (2) does not confer peace officer status on the contractor or its employees.

Section ~~{85}~~84. Section **64-13d-105** is amended to read:

64-13d-105. Restricted powers and duties of contractors.

(1) A contract for correctional services may not authorize a contractor to perform the following:

(a) calculate or establish [~~inmate~~] incarcerated individual release and parole eligibility dates;

(b) grant, deny, or revoke sentence credit;

(c) approve [~~inmates~~] incarcerated individuals for furlough, work release, or parole; or

(d) approve the types of work [~~inmates~~] incarcerated individuals may perform.

(2) A contractor shall reimburse amounts incurred by local and state agencies for providing assistance with riots, escapes, transportation, medical services, and legal services regarding the operation of the facility.

(3) A contractor shall have in place a written plan approved by the department regarding the reporting and management of escapes, riots, and other emergency situations.

Section ~~{86}~~85. Section **64-13d-106** is amended to read:

64-13d-106. Monitoring contracts.

(1) The executive director or his designee shall monitor the performance of all facilities incarcerating [~~inmates~~] individuals under the jurisdiction of the department.

(2) The executive director or his designee shall have unlimited access to all facilities, records, and staff for monitoring purposes.

(3) The executive director may appoint a monitor to inspect a facility. The monitor shall have unlimited access to all facilities, records, and staff for monitoring purposes.

(4) The department shall be reimbursed by the entity operating the facility for that portion of the salary and expenses of the monitor attributable to monitoring the particular facility.

(5) Monitoring consists of ensuring that:

(a) all state laws, department rules, and contractual obligations applicable to the facility are being met; and

(b) all operations are effective, efficient, and economical.

Section ~~{87}~~86. Section **64-13d-107** is amended to read:

64-13d-107. Facility construction -- Housing out-of-state incarcerated individuals.

(1) A contractor may not expand its original housing capacity without the approval of the:

(a) Legislature; and

(b) county or municipal legislative body within whose jurisdiction the facility is located.

(2) A contractor may not incarcerate out-of-state [~~inmates~~] incarcerated individuals in a facility operated in the state, except in accordance with any interstate compact of which Utah is a party.

Section ~~{88}~~87. Section **64-13e-102** is amended to read:

64-13e-102. Definitions.

As used in this chapter:

(1) "Actual county daily incarceration rate" means the median amount of jail daily incarceration costs based on the data submitted by counties in accordance with Section 64-13e-104(6)(b).

(2) "Actual state daily incarceration rate" means the average daily incarceration rate, calculated by the department based on the previous three fiscal years, that reflects the following expenses incurred by the department for housing an [~~inmate~~] incarcerated individual:

(a) executive overhead;

(b) administrative overhead;

(c) transportation overhead;

(d) division overhead; and

(e) motor pool expenses.

(3) "Alternative treatment" means:

(a) evidence-based cognitive behavioral therapy; or

(b) a certificate-based program provided by:

(i) an institution of higher education described in Subsection 53B-1-102(1)(b); or

(ii) a degree-granting institution acting in the degree-granting institution's technical education role described in Section 53B-2a-201.

(4) "Annual [~~inmate~~] incarcerated individual jail days" means the total number of state probationary [~~inmates~~] incarcerated individuals housed in a county jail each day for the preceding fiscal year.

(5) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in Section 63M-7-201.

(6) "Department" means the Department of Corrections.

(7) "Division of Finance" means the Division of Finance, created in Section 63A-3-101.

(8) "Final county daily incarceration rate" means the amount equal to:

(a) the amount appropriated by the Legislature for the purpose of making payments to counties under Section 64-13e-104; divided by

(b) the average annual [~~inmate~~] incarcerated individual jail days for the preceding five fiscal years.

(9) "Jail daily incarceration costs" means the following daily costs incurred by a county jail for housing a state probationary [~~inmate~~] incarcerated individual on behalf of the department:

(a) executive overhead;

(b) administrative overhead;

(c) transportation overhead;

(d) division overhead; and

(e) motor pool expenses.

(10) "State [~~inmate~~] incarcerated individual" means an individual, other than a state probationary [~~inmate~~] incarcerated individual or state parole [~~inmate~~] incarcerated individual, who is committed to the custody of the department.

(11) "State parole [~~inmate~~] incarcerated individual" means an individual who is:

(a) on parole, as defined in Section 77-27-1; and

(b) housed in a county jail for a reason related to the individual's parole.

(12) "State probationary [~~inmate~~] incarcerated individual" means a felony probationer sentenced to time in a county jail under Subsection 77-18-105(6).

(13) "Treatment program" means:

(a) an alcohol treatment program;

(b) a substance abuse treatment program;

(c) a sex offender treatment program; or

(d) an alternative treatment program.

Section ~~{89}~~88. Section **64-13e-103** is amended to read:

64-13e-103. Contracts for housing state incarcerated individuals.

(1) Subject to Subsection (6), the department may contract with a county to house state [~~inmates~~] incarcerated individuals in a county or other correctional facility.

(2) The department shall give preference for placement of state [~~inmates~~] incarcerated individuals, over private entities, to county correctional facility bed spaces for which the department has contracted under Subsection (1).

(3) (a) The compensation rate for housing state [~~inmates~~] incarcerated individuals pursuant to a contract described in Subsection (1) shall be:

(i) except as provided in Subsection (3)(a)(ii), 83.19% of the actual state daily incarceration rate for beds in a county that, pursuant to the contract, are dedicated to a treatment program for state [~~inmates~~] incarcerated individuals, if the treatment program is approved by the department under Subsection (3)(c);

(ii) 74.18% of the actual state daily incarceration rate for beds in a county that, pursuant to the contract, are dedicated to an alternative treatment program for state [~~inmates~~] incarcerated individuals, if the alternative treatment program is approved by the department under Subsection (3)(c); and

(iii) 66.23% of the actual state daily incarceration rate for beds in a county other than the beds described in Subsections (3)(a)(i) and (ii).

(b) The department shall:

(i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish standards that a treatment program is required to meet before the treatment program is considered for approval for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i) or (ii); and

(ii) determine on an annual basis, based on appropriations made by the Legislature for the contracts described in this section, whether to approve a treatment program that meets the standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i) or (ii).

(c) The department may not approve a treatment program for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i) or (ii), unless:

(i) the program meets the standards established under Subsection (3)(b)(i);

(ii) the department determines that the Legislature has appropriated sufficient funds to:

(A) pay the county that provides the treatment program at the rate described in Subsection (3)(a)(i) or (ii); and

(B) pay each county that does not provide a treatment program an amount per state [~~inmate~~] incarcerated individual that is not less than the amount per state [~~inmate~~] incarcerated individual received for the preceding fiscal year by a county that did not provide a treatment program; and

(iii) the department determines that the treatment program is needed by the department at the location where the treatment program will be provided.

(4) Compensation to a county for state [~~inmates~~] incarcerated individuals incarcerated under this section shall be made by the department.

(5) Counties that contract with the department under Subsection (1) shall, on or before June 30 of each year, submit a report to the department that includes:

(a) the number of state [~~inmates~~] incarcerated individuals the county housed under this section; and

(b) the total number of state [~~inmate~~] incarcerated individual days of incarceration that were provided by the county.

(6) Except as provided under Subsection (7), the department may not enter into a contract described under Subsection (1), unless:

(a) beginning July 1, 2023, the county jail within the county is in compliance with the reporting requirements described in Subsection 17-22-32(2); and

(b) the Legislature has previously passed a joint resolution that includes the following information regarding the proposed contract:

(i) the approximate number of beds to be contracted;

(ii) the daily rate at which the county is paid to house a state [~~inmate~~] incarcerated individual;

(iii) the approximate amount of the county's long-term debt; and

(iv) the repayment time of the debt for the facility where the [~~inmates~~] incarcerated individuals are to be housed.

(7) The department may enter into a contract with a county government to house [~~inmates~~] incarcerated individuals without complying with the approval process described in Subsection (6) only if the county facility was under construction, or already in existence, on March 16, 2001.

(8) Any resolution passed by the Legislature under Subsection (6) does not bind or obligate the Legislature or the department regarding the proposed contract.

Section ~~{90}~~89. Section **64-13e-103.2** is amended to read:

64-13e-103.2. State daily incarceration rate -- Limits -- Payments to jails.

(1) Notwithstanding Sections 64-13e-103 and 64-13e-103.1, the actual state daily incarceration rate shall be $85.27. This rate shall apply to [~~inmates~~] incarcerated individuals under Section 64-13e-103 and probationary and parole [~~inmates~~] incarcerated individuals under Section 64-13e-104.

(2) Notwithstanding Subsection 64-13e-103(3)(a), the number of jail beds contracted for shall be 1450 at the base rate of 71.57%, with the exception of:

(a) the beds set aside for Subsection 64-13e-103(3)(a)(i) which shall be 434 beds and shall be reimbursed at 88.53% of the actual state daily incarceration rate; and

(b) the beds set aside for Subsection 64-13e-103(3)(a)(ii) which shall be 235 beds and shall be reimbursed at 79.52% of the actual state daily incarceration rate.

(3) Notwithstanding Subsection 64-13e-104(9), the five year average state probationary

or parole [~~inmate~~] incarcerated individual days is set at 300,000 days.

(4) Notwithstanding Subsection 64-13e-104(2), within funds appropriated by the Legislature for this purpose, the Division of Finance shall pay a county that houses a state probationary [~~inmate~~] incarcerated individual or a state parole [~~inmate~~] incarcerated individual at a rate of 50% of the actual state daily incarceration rate.

(5) Expenditures for Section 64-13e-103 shall be $35,173,900 annually.

(6) Expenditures for Section 64-13e-104 shall be $12,790,700 annually.

Section ~~{91}~~90. Section **64-13e-104** is amended to read:

64-13e-104. Housing of state probationary incarcerated individuals or state parole incarcerated individuals -- Payments.

(1) (a) A county shall accept and house a state probationary [~~inmate~~] incarcerated individual or a state parole [~~inmate~~] incarcerated individual in a county correctional facility, subject to available resources.

(b) A county may release a number of [~~inmates~~] incarcerated individuals from a county correctional facility, but not to exceed the number of state probationary [~~inmates~~] incarcerated individuals in excess of the number of [~~inmates~~] incarcerated individuals funded by the appropriation authorized in Subsection (2) if:

(i) the state does not fully comply with the provisions of Subsection (9) for the most current fiscal year; or

(ii) funds appropriated by the Legislature for this purpose are less than 50% of the actual county daily incarceration rate.

(2) Within funds appropriated by the Legislature for this purpose, the Division of Finance shall pay a county that houses a state probationary [~~inmate~~] incarcerated individual or a state parole [~~inmate~~] incarcerated individual at a rate of 47.89% of the actual county daily incarceration rate.

(3) Funds appropriated by the Legislature under Subsection (2):

(a) are nonlapsing;

(b) may only be used for the purposes described in Subsection (2) and Subsection (10); and

(c) may not be used for:

(i) the costs of administering the payment described in this section; or

(ii) payment of contract costs under Section 64-13e-103.

(4) The costs described in Subsection (3)(c)(i) shall be covered by legislative appropriation.

(5) (a) The Division of Finance shall administer the payment described in Subsection (2) and Subsection (10).

(b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish procedures for collecting data from counties for the purpose of completing the calculations described in this section.

(c) Notwithstanding any other provision of this section, CCJJ shall adjust the amount of the payments described in Subsection (7)(b), on a pro rata basis, to ensure that the total amount of the payments made does not exceed the amount appropriated by the Legislature for the payments.

(6) Each county that receives the payment described in Subsection (2) and Subsection (10) shall:

(a) on at least a monthly basis, submit a report to CCJJ that includes:

(i) the number of state probationary [~~inmates~~] incarcerated individuals and state parole [~~inmates~~] incarcerated individuals the county housed under this section;

(ii) the total number of state probationary [~~inmate~~] incarcerated individual days of incarceration and state parole [~~inmate~~] incarcerated individual days of incarceration that were provided by the county;

(iii) the total number of offenders housed pursuant to Subsection 64-13-21(2)(b); and

(iv) the total number of days of incarceration of offenders housed pursuant to Subsection 64-13-21(2)(b); and

(b) before September 15 of every third year beginning in 2022, calculate and inform CCJJ of the county's jail daily incarceration costs for the preceding fiscal year.

(7) (a) On or before September 30 of each year, CCJJ shall:

(i) compile the information from the reports described in Subsection (6)(a) that relate to the preceding state fiscal year and provide a copy of the compilation to each county that submitted a report; and

(ii) calculate:

(A) the actual county incarceration rate, based on the most recent year that data was

reported in accordance with Subsection (6)(b); and

(B) the final county incarceration rate.

(b) On or before October 15 of each year, CCJJ shall inform the Division of Finance and each county of:

(i) the actual county incarceration rate;

(ii) the final county incarceration rate; and

(iii) the exact amount of the payment described in this section that shall be made to each county.

(8) On or before December 15 of each year, the Division of Finance shall distribute the payment described in Subsection (7)(b) in a single payment to each county.

(9) (a) The amount paid to each county under Subsection (8) shall be calculated on a pro rata basis, based on the average number of state probationary [~~inmate~~] incarcerated individual days of incarceration and the average state parole [~~inmate~~] incarcerated individual days of incarceration that were provided by each county for the preceding five state fiscal years; and

(b) if funds are available, the total number of days of incarceration of offenders housed pursuant to Subsection 64-13-21(2)(b).

(10) If funds appropriated under Subsection (2) remain after payments are made pursuant to Subsection (8), the Division of Finance shall pay a county that houses in its jail a person convicted of a felony who is on probation or parole and who is incarcerated pursuant to Subsection 64-13-21(2)(b) on a pro rata basis not to exceed 50% of the actual county daily incarceration rate.

Section ~~{92}~~91. Section **64-13e-105** is amended to read:

64-13e-105. Subcommittee on Jail Contracting and Reimbursement -- Purpose -- Responsibilities -- Membership.

(1) There is created within the Commission on Criminal and Juvenile Justice, the Subcommittee on Jail Contracting and Reimbursement consisting of the individuals listed in Subsection (3).

(2) The subcommittee shall meet at least quarterly to review, discuss, and make recommendations for:

(a) the state daily incarceration rate, described in Section 64-13e-103.1;

(b) the county daily incarceration rate;

(c) jail contracting and jail reimbursement processes and goals, including the creation of a comprehensive statewide system of jail contracting and reimbursement;

(d) developing a partnership between the state and counties to create common goals for housing state [~~inmates~~] incarcerated individuals;

(e) calculations for the projected number of beds needed;

(f) programming for [~~inmates~~] incarcerated individuals while incarcerated;

(g) proposals to reduce recidivism;

(h) enhancing partnerships to improve law enforcement and incarceration programs;

(i) [~~inmate~~] incarcerated individuals transportation costs; and

(j) the compilation described in Subsection 64-13e-104(7).

(3) The membership of the subcommittee shall consist of the following nine members:

(a) as designated by the Utah Sheriffs Association:

(i) one sheriff of a county that is currently under contract with the department to house state [~~inmates~~] incarcerated individuals; and

(ii) one sheriff of a county that is currently receiving reimbursement from the department for housing state probationary [~~inmates~~] incarcerated individuals or state parole [~~inmates~~] incarcerated individuals;

(b) the executive director of the department or the executive director's designee;

(c) as designated by the Utah Association of Counties:

(i) one member of the legislative body of one county that is currently under contract with the department to house state [~~inmates~~] incarcerated individuals; and

(ii) one member of the legislative body of one county that is currently receiving reimbursement from the department for housing [~~state probationary inmates or state parole inmates~~] individuals on probation or individuals on parole;

(d) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;

(e) one member of the House of Representatives, appointed by the speaker of the House of Representatives;

(f) one member of the Senate, appointed by the president of the Senate; and

(g) the executive director of the Governor's Office of Planning and Budget or the

executive director's designee.

(4) The subcommittee shall report to the Law Enforcement and Criminal Justice Interim Committee in November 2022 and 2024 on progress and efforts to create a comprehensive statewide jail reimbursement and contracting system.

(5) The subcommittee shall report to the Executive Offices and Criminal Justice Appropriations Subcommittee not later than October 31 in 2022, 2023, and 2024 on costs associated with creating a comprehensive statewide jail reimbursement and contracting system.

(6) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section ~~{93}~~92. Section **64-13g-101** is amended to read:

64-13g-101. Definitions.

As used in this chapter:

(1) "Average daily population" means the average daily number of individuals on parole or felony probation in the region during the applicable fiscal year.

(2) "Baseline parole employment rate" means the average of the parole employment rates for fiscal years 2023, 2024, and 2025.

(3) "Baseline probation employment rate" means the average of the probation employment rates for fiscal years 2023, 2024, and 2025.

(4) "Department" means the Department of Corrections.

(5) "Eligible employment" means an occupation, or combined occupations, that:

(a) consist of at least 130 hours in a 30-day period; and

(b) are verified via paystubs, employment letters, contracts, or other reliable methods, as determined by the department.

(6) "Evidence-based" means a supervision policy, procedure, program, or practice demonstrated by scientific research to reduce recidivism of individuals on parole or felony

probation.

(7) "Marginal cost of incarceration" means the total costs of incarceration, per [~~inmate~~] incarcerated individual, that fluctuate based on [~~inmate~~] incarcerated individual population.

(8) "Office" means the Governor's Office of Planning and Budget.

(9) "Parole employment rate" means the percentage of individuals on parole who held eligible employment for at least nine months in a one-year period, if at least a portion of the nine-months was during the preceding fiscal year.

(10) "Probation employment rate" means the percentage of individuals on felony probation who held eligible employment for at least nine months in a one-year period, if at least a portion of the nine-months was during the preceding fiscal year.

(11) "Program" means the Adult Probation and Parole Employment Incentive Program, created in Section 64-13g-102.

(12) "Region" means one of the geographic regions into which the Department of Corrections has divided the state for purposes of supervising adult probation and parole.

(13) "Restricted account" means the Employment Incentive Restricted Account created in Section 64-13g-103.

Section ~~{94}~~93. Section **76-3-201** is amended to read:

76-3-201. Sentences or combination of sentences allowed -- Restitution and other costs -- Civil penalties.

(1) As used in this section:

(a) (i) "Convicted" means:

(A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a mental illness; or

(B) having received a judgment of guilty or a judgment of guilty with a mental illness.

(ii) "Convicted" does not include an adjudication of an offense under Section 80-6-701.

(b) "Restitution" means the same as that term is defined in Section 77-38b-102.

(2) Within the limits provided by this chapter, a court may sentence an individual convicted of an offense to any one of the following sentences, or combination of the following sentences:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) except as otherwise provided by law, to probation in accordance with Section 77-18-105;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law:

(i) to forfeit property;

(ii) to dissolve a corporation;

(iii) to suspend or cancel a license;

(iv) to permit removal of an individual from office;

(v) to cite for contempt; or

(vi) to impose any other civil penalty.

(b) A court may include a civil penalty in a sentence.

(4) In addition to any other sentence that a sentencing court may impose, the court shall order an individual to:

(a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act;

(b) subject to Subsection (5) and Section 77-32b-104, pay the cost of any government transportation if the individual was:

(i) transported, in accordance with a court order, from one county to another county within the state;

(ii) charged with a felony or a misdemeanor; and

(iii) convicted of an offense;

(c) subject to Section 77-32b-104, pay the cost expended by an appropriate governmental entity under Section 77-30-24 for the extradition of the individual if the individual:

(i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve pending criminal charges; and

(ii) is convicted of an offense in the county for which the individual is returned;

(d) subject to Subsection (6) and Subsections 77-32b-104(2), (3), and (4), pay the cost of medical care, treatment, hospitalization, and related transportation, as described in Section

17-50-319, that is provided by a county to the individual while the individual is in a county correctional facility before and after sentencing if:

(i) the individual is convicted of an offense that results in incarceration in the county correctional facility; and

(ii) (A) the individual is not a state [~~prisoner~~] incarcerated individual housed in the county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104 if the individual is [~~a state probationary inmate or a state parole inmate~~] on probation or parole; and

(e) pay any other cost that the court determines is appropriate under Section 77-32b-104.

(5) (a) The court may not order an individual to pay the costs of government transportation under Subsection (4)(b) if:

(i) the individual is charged with an infraction or a warrant is issued for an infraction on a subsequent failure to appear; or

(ii) the individual was not transported in accordance with a court order.

(b) (i) The cost of governmental transportation under Subsection (4)(b) shall be calculated according to the following schedule:

(A) $100 for up to 100 miles that an individual is transported;

(B) $200 for 100 miles to 200 miles that an individual is transported; and

(C) $350 for 200 miles or more that an individual is transported.

(ii) The schedule under Subsection (5)(b)(i) applies to each individual transported regardless of the number of individuals transported in a single trip.

(6) The cost of medical care under Subsection (4)(d) does not include expenses incurred by the county correctional facility in providing reasonable accommodation for an [~~inmate~~] incarcerated individual qualifying as an individual with a disability as defined and covered by the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the [~~inmate's~~] incarcerated individual's disability.

Section ~~{95}~~94. Section **76-3-202** is amended to read:

76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.

(1) Every individual committed to the state prison to serve an indeterminate term and, after December 31, 2018, released on parole shall complete a term of parole that extends through the expiration of the individual's maximum sentence unless the parole is earlier terminated by the Board of Pardons and Parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, as described in Subsection 77-27-5(7), to the extent the guidelines are consistent with the requirements of the law.

(2) (a) Except as provided in Subsection (2)(b), every individual committed to the state prison to serve an indeterminate term and released on parole on or after October 1, 2015, but before January 1, 2019, shall, upon completion of three years on parole outside of confinement and without violation, be terminated from the individual's sentence unless the parole is earlier terminated by the Board of Pardons and Parole or is terminated pursuant to Section 64-13-21.

(b) Every individual committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, but before January 1, 2019, and who was convicted of any felony offense under Chapter 5, Offenses Against the Individual, or any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the individual's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.

(3) Every individual convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse; Section 76-5-404.1, sexual abuse of a child; or Section 76-5-404.3, aggravated sexual abuse of a child; or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the individual is earlier terminated by the Board of Pardons and Parole.

(4) An individual who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(5) An individual paroled following a former parole revocation may not be discharged from the individual's sentence until:

(a) the individual has served the applicable period of parole under this section outside of confinement;

(b) the individual's maximum sentence has expired; or

(c) the Board of Pardons and Parole orders the individual to be discharged from the sentence.

(6) (a) All time served on parole, outside of confinement and without violation, constitutes service toward the total sentence.

(b) Any time an individual spends outside of confinement after commission of a parole violation does not constitute service toward the total sentence unless the individual is exonerated at a parole revocation hearing.

(c) (i) Any time an individual spends in confinement awaiting a hearing before the Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service toward the total sentence.

(ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.

(7) When a parolee causes the parolee's absence from the state without authority from the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(8) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.

(b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.

(9) This section does not preclude the Board of Pardons and Parole from paroling or discharging an [~~inmate~~] incarcerated individual at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.

(10) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.

Section ~~{96}~~95. Section **76-3-203.5** is amended to read:

76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Chapter 6, Part 1, Property Destruction;

(B) assault by [~~prisoner~~] incarcerated individual, Section 76-5-102.5;

(C) disarming a police officer, Section 76-5-102.8;

(D) aggravated assault, Section 76-5-103;

(E) aggravated assault by [~~prisoner~~] incarcerated individual, Section 76-5-103.5;

(F) mayhem, Section 76-5-105;

(G) stalking, Subsection 76-5-106.5(2);

(H) threat of terrorism, Section 76-5-107.3;

(I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);

(J) commission of domestic violence in the presence of a child, Section 76-5-114;

(K) abuse or neglect of a child with a disability, Section 76-5-110;

(L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2, 76-5-111.3, or 76-5-111.4;

(M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

(N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;

(O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(P) rape, Section 76-5-402;

(Q) rape of a child, Section 76-5-402.1;

(R) object rape, Section 76-5-402.2;

(S) object rape of a child, Section 76-5-402.3;

(T) forcible sodomy, Section 76-5-403;

(U) sodomy on a child, Section 76-5-403.1;

(V) forcible sexual abuse, Section 76-5-404;

(W) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;

(X) aggravated sexual assault, Section 76-5-405;

(Y) sexual exploitation of a minor, Section 76-5b-201;

(Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

(AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;

(BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary and Criminal Trespass;

(CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;

(DD) theft by extortion under Subsection 76-6-406(2)(a) or (b);

(EE) tampering with a witness under Subsection 76-8-508(1);

(FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;

(GG) tampering with a juror under Subsection 76-8-508.5(2)(c);

(HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);

(II) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);

(JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;

(KK) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;

(LL) unlawful discharge of a firearm under Section 76-10-508;

(MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

(NN) bus hijacking under Section 76-10-1504; and

(OO) discharging firearms and hurling missiles under Section 76-10-1505; or

(ii) any felony violation of a criminal statute of any other state, the United States, or

any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c) (i) Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the

offense for which the person is being sentenced.

Section ~~{97}~~96. Section **76-3-203.6** is amended to read:

76-3-203.6. Enhanced penalty for certain offenses committed by an incarcerated individual.

(1) As used in this section, "serving a sentence" means [~~a prisoner~~] an incarcerated individual is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the [~~prisoner~~] incarcerated individual:

(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that [~~a prisoner~~] an incarcerated individual serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (5), the offense is a first degree felony and the court shall sentence the defendant to life in prison without parole.

(3) Notwithstanding Subsection (2), the court may sentence the defendant to an indeterminate prison term of not less than 20 years and that may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(4) Subsection (2) does not apply if the [~~prisoner~~] incarcerated individual is younger than 18 years old at the time the offense listed in Subsection (5) is committed and is sentenced on or after May 10, 2016.

(5) Offenses referred to in Subsection (2) are:

(a) aggravated assault by [~~a prisoner~~] an incarcerated individual, Section 76-5-103.5;

(b) mayhem, Section 76-5-105;

(c) attempted murder, Section 76-5-203;

(d) kidnapping, Section 76-5-301;

(e) child kidnapping, Section 76-5-301.1;

(f) aggravated kidnapping, Section 76-5-302;

(g) rape, Section 76-5-402;

(h) rape of a child, Section 76-5-402.1;

(i) object rape, Section 76-5-402.2;

(j) object rape of a child, Section 76-5-402.3;

(k) forcible sodomy, Section 76-5-403;

(l) sodomy on a child, Section 76-5-403.1;

(m) aggravated sexual abuse of a child, Section 76-5-404.3;

(n) aggravated sexual assault, Section 76-5-405;

(o) aggravated arson, Section 76-6-103;

(p) aggravated burglary, Section 76-6-203; and

(q) aggravated robbery, Section 76-6-302.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1; or

(iii) aggravated kidnapping, Section 76-5-302; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section ~~{98}~~97. Section **76-3-403** is amended to read:

76-3-403. Credit for good behavior against jail sentence for misdemeanors and certain felonies.

In any commitment for incarceration in a county jail or detention facility, other than the Utah State Prison, the custodial authority may in its discretion and upon good behavior of the [~~inmate~~] incarcerated individual allow up to 10 days credit against the sentence to be served for every 30 days served or up to two days credit for every 10 days served when the period to be served is less than 30 days if:

(1) the incarceration is for a misdemeanor offense, and the sentencing judge has not entered an order to the contrary; or

(2) the incarceration is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order to the contrary.

Section ~~{99}~~98. Section **76-3-403.5** is amended to read:

76-3-403.5. Work or school release from county jail or facility -- Conditions.

When an [~~inmate~~] individual is incarcerated in a county jail or in a detention facility, the custodial authority may, in accordance with the release policy of the facility, allow the

[~~inmate~~] incarcerated individual to work outside of the jail or facility as part of a jail or facility supervised work detail, to seek or work at employment, or to attend an educational institution, if the [~~inmate's~~] incarcerated individual's incarceration:

(1) is not for an offense for which release is prohibited under state law; and

(2) (a) is for a misdemeanor offense, and the sentencing judge has not entered an order prohibiting release under this section; or

(b) is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order prohibiting release under this section.

Section ~~{100}~~99. Section **76-5-101** is amended to read:

76-5-101. Definitions.

Unless otherwise provided, as used in this part:

(1) "Detained individual" means an individual detained under Section 77-7-15.

(2) [~~"Prisoner"~~] "Incarcerated individual" means an individual who is in custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles operated by the Division of Juvenile Justice Services regardless of whether the confinement is legal.

Section ~~{101}~~100. Section **76-5-102.5** is amended to read:

76-5-102.5. Assault by incarcerated individual.

(1) (a) As used in this section, "assault" means an offense under Section 76-5-102.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits assault by [~~prisoner~~] incarcerated individual if the actor:

(a) is [~~a prisoner~~] an incarcerated individual; and

(b) intending to cause bodily injury, commits an assault.

(3) A violation of Subsection (2) is a third degree felony.

Section ~~{102}~~101. Section **76-5-102.6** is amended to read:

76-5-102.6. Propelling object or substance at a correctional or peace officer -- Penalties.

(1) (a) As used in this section, "infectious agent" means the same as that term is defined in Section 26-6-2.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits the offense of propelling an object or substance at a correctional

or peace officer if the actor:

(a) is [~~a prisoner~~] an incarcerated individual or a detained individual; and

(b) throws or otherwise propels an object or substance at a peace officer, a correctional officer, or an employee or volunteer, including a health care provider.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony if:

(i) the object or substance causes substantial bodily injury to the peace officer, the correctional officer, or the employee or volunteer, including a health care provider; or

(ii) (A) the object or substance is:

(I) blood, urine, semen, or fecal material;

(II) an infectious agent or a material that carries an infectious agent;

(III) vomit or a material that carries vomit; or

(IV) the actor's saliva, and the actor knows the actor is infected with HIV, hepatitis B, or hepatitis C; and

(B) the object or substance comes into contact with any portion of the officer's, employee's, volunteer's, or health care provider's face, including the eyes or mouth, or comes into contact with any open wound on the officer's, employee's, volunteer's, or health care provider's body.

(4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Section ~~{103}~~102. Section **76-5-102.7** is amended to read:

76-5-102.7. Assault or threat of violence against health care provider, emergency medical service worker, or health facility employee, owner, or contractor -- Penalty.

(1) (a) As used in this section:

(i) "Assault" means an offense under Section 76-5-102.

(ii) "Emergency medical service worker" means an individual licensed under Section 26-8a-302.

(iii) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(iv) "Health facility" means:

(A) a health care facility as defined in Section 26-21-2; and

(B) the office of a private health care provider, whether for individual or group practice.

(v) "Health facility employee" means an employee, owner, or contractor of a health facility.

(vi) "Threat of violence" means an offense under Section 76-5-107.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits assault or threat of violence against a health care provider or emergency medical service worker if:

(i) the actor is not [~~a prisoner~~] an incarcerated individual or a detained individual;

(ii) the actor commits an assault or threat of violence;

(iii) the actor knew that the victim was a health care provider or emergency medical service worker; and

(iv) the health care provider or emergency medical service worker was performing emergency or life saving duties within the scope of his or her authority at the time of the assault or threat of violence.

(b) An actor commits assault or threat of violence against a health facility employee if:

(i) the actor is not [~~a prisoner~~] an incarcerated individual or a detained individual;

(ii) the actor commits an assault or threat of violence;

(iii) the actor knew that the victim was a health facility employee; and

(iv) the health facility employee was acting within the scope of the health facility employee's duties for the health facility.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony if the actor:

(i) causes substantial bodily injury; and

(ii) acts intentionally or knowingly.

Section ~~{104}~~103. Section **76-5-103.5** is amended to read:

76-5-103.5. Aggravated assault by incarcerated individual.

(1) (a) As used in this section, "aggravated assault" means an offense under Section

76-5-103.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits aggravated assault by [~~prisoner~~] incarcerated individual if the actor:

(a) is [~~a prisoner~~] an incarcerated individual; and

(b) commits aggravated assault.

(3) (a) A violation of Subsection (2) is a second degree felony.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a first degree felony if serious bodily injury was intentionally caused.

Section ~~{105}~~104. Section **76-5-412** is amended to read:

76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.

(1) (a) As used in this section:

(i) "Actor" means:

(A) a law enforcement officer, as defined in Section 53-13-103;

(B) a correctional officer, as defined in Section 53-13-104;

(C) a special function officer, as defined in Section 53-13-105; or

(D) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(iii) "Person in custody" means an individual, either an adult 18 years old or older, or a minor younger than 18 years old, who is:

(A) [~~a prisoner~~] an incarcerated individual, as defined in Section 76-5-101, and includes [~~a prisoner~~] an incarcerated individual who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-15-601 or other medical facility;

(B) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(C) under lawful or unlawful arrest, either with or without a warrant.

(iv) "Private provider or contractor" means a person that contracts or enters into a memorandum of understanding with [~~the Department of Corrections~~] [~~or with a county jail~~] a governmental or private entity to provide services or functions that are part of the operation of

the Department of Corrections or a county jail under state or local law.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (2)(b):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) Acts referred to in Subsection (2)(a) are:

(i) having sexual intercourse with a person in custody;

(ii) engaging in a sexual act with a person in custody involving the genitals of one individual and the mouth or anus of another individual; or

(iii) (A) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body; and

(B) intending to cause substantial emotional or bodily pain to any individual.

(c) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3) (a) A violation of Subsection (2) is a third degree felony.

(b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years old, a violation of Subsection (2) is a second degree felony.

(c) If the act committed under Subsection (3) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

(4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(5) (a) It is not a defense to the commission of, or the attempt to commit, the offense of custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years old, that the actor:

(i) mistakenly believed the person in custody to be 18 years old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2).

(6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section ~~{106)~~105. Section **76-8-309** is amended to read:

76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.

(1) (a) (i) [~~A prisoner~~] An incarcerated individual is guilty of escape if the [~~prisoner~~] incarcerated individual leaves official custody without lawful authorization.

(ii) If [~~a prisoner~~] an incarcerated individual obtains authorization to leave official custody by means of deceit, fraud, or other artifice, the [~~prisoner~~] incarcerated individual has not received lawful authorization.

(b) Escape under this Subsection (1) is a third degree felony except as provided under Subsection (1)(c).

(c) Escape under this Subsection (1) is a second degree felony if:

(i) the actor escapes from a state prison; or

(ii) (A) the actor is convicted as a party to the offense, as defined in Section 76-2-202; and

(B) the actor is an employee at or a volunteer of a law enforcement agency, the

Department of Corrections, a county or district attorney's office, the office of the state attorney general, the Board of Pardons and Parole, or the courts, the Judicial Council, the Administrative Office of the Courts, or similar administrative units in the judicial branch of government.

(2) (a) [~~A prisoner~~] An incarcerated individual is guilty of aggravated escape if in the commission of an escape the [~~prisoner~~] incarcerated individual uses a dangerous weapon, as defined in Section 76-1-101.5, or causes serious bodily injury to another.

(b) Aggravated escape is a first degree felony.

(3) [~~Any~~] A prison term imposed upon [~~a prisoner~~] an incarcerated individual for escape under this section shall run consecutively with any other sentence.

(4) [~~For the purposes of~~] As used in this section:

(a) "Confinement" means the [~~prisoner~~] incarcerated individual is:

(i) housed in a state prison or any other facility pursuant to a contract with the [~~Utah~~]Department of Corrections after being sentenced and committed and the sentence has not been terminated or voided or the [~~prisoner~~] incarcerated individual is not on parole;

(ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county jail after sentencing and commitment and the sentence has not been terminated or voided or the [~~prisoner~~] incarcerated individual is not on parole; or

(iii) lawfully detained following arrest.

(b) "Escape" is considered to be a continuing activity commencing with the conception of the design to escape and continuing until the escaping [~~prisoner~~] incarcerated individual is returned to official custody or the [~~prisoner's~~] incarcerated individual's attempt to escape is thwarted or abandoned.

(c) "Official custody" means arrest, whether with or without warrant, or confinement in a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement pursuant to an order of the court or sentenced and committed and the sentence has not been terminated or voided or the [~~prisoner~~] incarcerated individual is not on parole. [~~A person~~] An individual is considered confined in the state prison if the [~~person~~] individual:

(i) without authority fails to return to the person's place of confinement from work release or home visit by the time designated for return;

(ii) is in prehearing custody after arrest for parole violation;

(iii) is being housed in a county jail, after felony commitment, pursuant to a contract with the Department of Corrections; or

(iv) is being transported as [~~a prisoner~~] an incarcerated individual in the state prison by correctional officers.

(d) [~~"Prisoner" means any person~~] "Incarcerated individual" means an individual who is in official custody and includes [~~persons~~] individuals under trusty status.

(e) "Volunteer" means [~~any person~~] an individual who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency.

Section ~~{107}~~106. Section **76-8-311.3** is amended to read:

76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.

(1) As used in this section:

(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

(i) any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any juvenile detention facility; and

(iv) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

(d) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

(e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(f) "Mental health facility" means the same as that term is defined in Section

62A-15-602.

(g) "Nicotine product" means the same as that term is defined in Section 76-10-101.

(h) "Offender" means a person in custody at a correctional facility.

(i) "Secure area" means the same as that term is defined in Section 76-8-311.1.

(j) "Tobacco product" means the same as that term is defined in Section 76-10-101.

(2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

(a) transported to or upon a correctional or mental health facility;

(b) sold or given away at any correctional or mental health facility;

(c) given to or used by any offender at a correctional or mental health facility; or

(d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section with respect to:

(a) a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) An individual who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) An individual who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(c) An offender who possesses at a correctional facility, or a detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or

implement of escape is guilty of a second degree felony.

(d) An individual who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.

(e) An individual violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

(5) (a) An individual is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(b) An individual is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(c) An [~~inmate~~] incarcerated individual is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or

(iii) poison in any quantity.

(d) An individual is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell any tobacco product, electronic cigarette product, or nicotine product to an offender, directly or indirectly:

(i) transports, delivers, or distributes any tobacco product, electronic cigarette product, or nicotine product to an offender or on the grounds of any correctional facility;

(ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product, electronic cigarette product, or nicotine product to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or

(iii) facilitates, arranges, or causes the transport of any tobacco product, electronic cigarette product, or nicotine product in violation of this section to an offender or on the grounds of any correctional facility.

(e) An individual is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(ii) The provisions of Subsection (5)(d) regarding any tobacco product, electronic cigarette product, or nicotine product take precedence over this Subsection (5)(f).

(g) Exemptions may be granted for worship for Native American [~~inmates~~] incarcerated individuals pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

(7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors that providing any tobacco product, electronic cigarette product, or nicotine product to offenders is a class A misdemeanor.

Section ~~{108}~~107. Section **76-8-318** is amended to read:

76-8-318. Assault or threat of violence against child welfare worker -- Penalty.

(1) As used in this section:

(a) "Assault" means the same as that term is defined in Section 76-5-102.

(b) "Child welfare worker" means an employee of the Division of Child and Family Services created in Section 80-2-201.

(c) "Threat of violence" means the same as that term is defined in Section 76-5-107.

(2) An individual who commits an assault or threat of violence against a child welfare worker is guilty of a class A misdemeanor if:

(a) the individual is not:

(i) [~~a prisoner~~] an incarcerated individual or an individual detained under Section 77-7-15; or

(ii) a minor in the custody of or receiving services from a division within the Department of Health and Human Services;

(b) the individual knew that the victim was a child welfare worker; and

(c) the child welfare worker was acting within the scope of the child welfare worker's authority at the time of the assault or threat of violence.

(3) An individual who violates this section is guilty of a third degree felony if the individual:

(a) causes substantial bodily injury, as defined in Section 76-1-101.5; and

(b) acts intentionally or knowingly.

Section ~~{109}~~108. Section **77-16b-102** is amended to read:

77-16b-102. Definitions.

As used in this chapter:

(1) "Correctional facility" means:

(a) a county jail;

(b) a secure correctional facility as defined by Section 64-13-1; or

(c) a secure care facility as defined in Section 80-1-102.

(2) "Correctional facility administrator" means:

(a) a county sheriff in charge of a county jail;

(b) a designee of the executive director of the [~~Utah~~] Department of Corrections; or

(c) a designee of the director of the Division of Juvenile Justice Services.

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

(a) is a pretrial detainee or who has been committed to the custody of a sheriff or the Department of Corrections and is physically in a correctional facility; and

(b) is 18 years old or older and younger than 21 years old and has been committed to the custody of the Division of Juvenile Justice Services.

[~~(3)~~] (4) "Medical supervision" means under the direction of a licensed physician, physician assistant, or nurse practitioner.

[~~(4)~~] (5) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

[~~(5) "Prisoner" means:~~]

[~~(a) any individual who is a pretrial detainee or who has been committed to the custody of a sheriff or the Utah Department of Corrections, and who is physically in a correctional facility; and~~]

[~~(b) any individual who is 18 years old or older and younger than 21 years old, and who has been committed to the custody of the Division of Juvenile Justice Services.~~]

Section ~~{110}~~109. Section **77-16b-103** is amended to read:

77-16b-103. Involuntary feeding or hydration of incarcerated individuals -- Petition procedures, venue -- Incarcerated individuals rights.

(1) A correctional facility administrator may petition the district court where the correctional facility is located for an order permitting the involuntary feeding or hydration of [~~any prisoner~~] an incarcerated individual who is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration.

(2) Prior to the filing of a petition under this section, a mental health therapist who is designated by the correctional facility administrator shall conduct a mental health evaluation of the subject [~~prisoner~~] incarcerated individual.

(3) Upon the filing of a petition, the district court shall hold a hearing within two working days. The court:

(a) shall confidentially review the [~~prisoner's~~] incarcerated individual's medical and mental health records as they are available;

(b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence, concerning the circumstances of the [~~prisoner's~~] incarcerated individual's lack of nutrition or

hydration; and

(c) may exclude from the hearing [~~any person~~] an individual whose presence is not necessary for the purposes of the hearing, due to the introduction of personal medical and mental health evidence.

(4) After conducting the hearing under Subsection (3), the district court shall issue an order to involuntarily feed or hydrate the [~~prisoner~~] incarcerated individual, if the court finds by a preponderance of evidence that:

(a) (i) the [~~prisoner~~] incarcerated individual is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration; and

(ii) the correctional facility's medical or penological objectives are valid and outweigh the [~~prisoner's~~] incarcerated individual's right to refuse treatment; or

(b) the [~~prisoner~~] incarcerated individual is refusing sufficient nutrition or hydration with the intent to obstruct or delay any judicial or administrative proceeding pending against the [~~prisoner~~] incarcerated individual.

(5) The district court shall state its findings of fact and conclusions of law on the record.

(6) The correctional facility administrator shall serve copies of the petition and a notice of the district court hearing on the [~~prisoner~~] incarcerated individual and the [~~prisoner's~~] incarcerated individual's counsel, if the [~~prisoner~~] incarcerated individual is represented by counsel, at least 24 hours in advance of the hearing under Subsection (3).

(7) The [~~prisoner~~] incarcerated individual has the right to attend the hearing, testify, present evidence, and cross-examine witnesses.

Section ~~{111}~~110. Section **77-16b-104** is amended to read:

77-16b-104. Involuntary feeding or hydration of incarcerated individuals -- Standards, continuing jurisdiction, and records.

(1) Any involuntary nutrition or hydration of [~~a prisoner pursuant to~~] an incarcerated individual under this chapter shall be conducted under immediate medical supervision and in a medically recognized and acceptable manner.

(2) Upon the filing of a petition [~~pursuant to Section 77-16b-102~~] under Section 77-16b-103, the court has the continuing jurisdiction to review the [~~prisoner's~~] incarcerated individual's need for involuntary nutrition or hydration as long as the [~~prisoner~~] incarcerated

individual remains in custody of the correctional facility.

(3) A correctional facility shall maintain records of any involuntary feeding or hydration of [~~prisoners~~] incarcerated individuals under this chapter.

(a) The records are classified as "controlled" under Section 63G-2-304.

(b) All medical or mental health records submitted to the court under this chapter shall be kept under seal.

Section ~~{112}~~111. Section **77-18-112** is amended to read:

77-18-112. Reports by courts and prosecuting attorneys to Board of Pardons and Parole.

In cases where an indeterminate sentence is imposed, the court and prosecuting attorney may, within 30 days, mail a statement to the board setting forth the term for which the [~~prisoner~~] incarcerated individual ought to be imprisoned together with any information which might aid the board in passing on the application for termination or commutation of the sentence or for parole or pardon.

Section ~~{113}~~112. Section **77-18a-1** is amended to read:

77-18a-1. Appeals -- When proper.

(1) A defendant may, as a matter of right, appeal from:

(a) a final judgment of conviction, whether by verdict or plea;

(b) an order made after judgment that affects the substantial rights of the defendant;

(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or

(d) an order denying bail under Chapter 20, Bail.

(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.

(3) The prosecution may, as a matter of right, appeal from:

(a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;

(b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;

(c) an order granting a motion to withdraw a plea of guilty or no contest;

(d) an order arresting judgment or granting a motion for merger;

(e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(f) an order granting a new trial;

(g) an order holding a statute or any part of it invalid;

(h) an order adjudicating the defendant's competency to proceed further in a pending prosecution;

(i) an order finding, [~~pursuant to~~] under Title 77, Chapter 19, Part 2, Competency for Execution, that an [~~inmate~~] incarcerated individual sentenced to death is incompetent to be executed;

(j) an order reducing the degree of offense pursuant to Section 76-3-402;

(k) an illegal sentence; or

(l) an order dismissing a charge pursuant to Subsection 76-2-309(3).

(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

Section ~~{114}~~113. Section **77-19-3** is amended to read:

77-19-3. Special release from city or county jail -- Purposes.

(1) Any person incarcerated in any city or county jail may, in accordance with the release policy of the facility, be released from jail during those hours which are reasonable and necessary to accomplish any of the purposes under Subsection (2) if:

(a) the offense is not one for which release is prohibited under state law; and

(b) the judge has not entered an order prohibiting a special release.

(2) The custodial authority at the jail may release an [~~inmate~~] incarcerated individual who qualifies under Subsection (1) for:

(a) working at [~~his~~] the incarcerated individual's employment;

(b) seeking employment;

(c) attending an educational institution;

(d) obtaining necessary medical treatment; or

(e) any other reasonable purpose as determined by the custodial authority of the jail.

Section ~~{115}~~114. Section **77-19-4** is amended to read:

77-19-4. Special release from city or county jail -- Conditions and limitations.

(1) All released [~~prisoners~~] incarcerated individuals under Section 77-19-3 are in the

custody of the custodial authority and are subject at any time to being returned to jail, for good cause.

(2) The judge may order that the [~~prisoner~~] incarcerated individual:

(a) pay money earned from employment during the jail term to those [~~persons he~~] individuals the incarcerated individual is legally responsible to support; or

(b) retain sufficient money to pay [~~his~~] the incarcerated individual's costs of transportation, meals, and other incidental and necessary expenses related to [~~his~~] the incarcerated individual's special release.

(3) The custodial authority of the jail shall establish all other conditions of special release.

(4) During [~~all~~] the hours when the [~~prisoner~~] incarcerated individual is not serving the function for which [~~he~~] the incarcerated individual is awarded release time, [~~he~~] the incarcerated individual shall be confined to jail.

(5) The [~~prisoner~~] incarcerated individual shall be responsible to obtain [~~his own~~] transportation to and from the place where [~~he~~] the incarcerated individual performs the function for which [~~he~~] the incarcerated individual is released.

Section ~~{116}~~115. Section **77-19-5** is amended to read:

77-19-5. Special release from city or county jail -- Revocation.

The judge may, for good cause, revoke any release time previously awarded, and shall notify the [~~prisoner~~] incarcerated individual that, if [~~he~~]~~{~}~~ the incarcerated individualmakes written request, a hearing shall be afforded to [~~him~~] the incarcerated individual to challenge the revocation.

Section ~~{117}~~116. Section **77-19-201** is amended to read:

77-19-201. Definition.

As used in this part, "incompetent to be executed" means that, due to mental condition, an [~~inmate~~] incarcerated individual is unaware of either the punishment [~~he~~] the incarcerated individual is about to suffer or why [~~he~~] the incarcerated individual is to suffer [~~it~~] the punishment.

Section ~~{118}~~117. Section **77-19-202** is amended to read:

77-19-202. Incompetency or pregnancy of person sentenced to death -- Procedures.

(1) If, after judgment of death, the executive director of the Department of Corrections has good reason to believe that an [~~inmate~~] incarcerated individual sentenced to death is pregnant, or has good reason to believe that an [~~inmate's~~] incarcerated individual's competency to be executed under this chapter should be addressed by a court, the executive director of the Department of Corrections or the executive director's designee shall immediately give written notice to the court in which the judgment of death was rendered, to the prosecuting attorney, and counsel for the inmate. The judgment shall be stayed pending further order of the court.

(2) (a) On receipt of the notice under Subsection (1) of good reason for the court to address an [~~inmate's~~] incarcerated individual's competency to be executed, the court shall order that the mental condition of the [~~inmate~~] incarcerated individual shall be examined under the provisions of Section 77-19-204.

(b) If the [~~inmate~~] incarcerated individual is found incompetent, the court shall immediately transmit a certificate of the findings to the Board of Pardons and Parole and continue the stay of execution pending further order of the court.

(c) If the [~~inmate~~] incarcerated individual is subsequently found competent at any time, the judge shall immediately transmit a certificate of the findings to the Board of Pardons and Parole, and shall draw and have delivered another warrant under Section 77-19-6, together with a copy of the certificate of the findings. The warrant shall state an appointed day on which the judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the date of the drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.

(3) (a) If the court finds the [~~inmate~~] incarcerated individual is pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and Parole and to the executive director of the Department of Corrections or the executive director's designee, and the court shall issue an order staying the execution of the judgment of death during the pregnancy.

(b) When the court determines the [~~inmate~~] incarcerated individual is no longer pregnant, it shall immediately transmit a certificate of the finding to the Board of Pardons and Parole and draw and have delivered another warrant under Section 77-19-6, with a copy of the certificate of the finding. The warrant shall state an appointed day on which the judgment is to be executed, which may not be fewer than 30 nor more than 60 days from the date of the

drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.

(4) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

Section ~~{119}~~118. Section **77-19-203** is amended to read:

77-19-203. Petition for inquiry as to competency to be executed -- Filing -- Contents -- Successive petitions.

(1) If an [~~inmate~~] incarcerated individual who has been sentenced to death is or becomes incompetent to be executed, a petition under Subsection (2) may be filed in the district court of the county where the [~~inmate~~] incarcerated individual is confined.

(2) The petition shall:

(a) contain a certificate stating that it is filed in good faith and on reasonable grounds to believe the [~~inmate~~] incarcerated individual is incompetent to be executed; and

(b) contain a specific recital of the facts, observations, and conversations with the [~~inmate~~] incarcerated individual that form the basis for the petition.

(3) The petition may be based upon knowledge or information and belief and may be filed by the [~~inmate~~] incarcerated individual alleged to be incompetent, legal counsel for the [~~inmate~~] incarcerated individual, or by an attorney representing the state.

(4) Before ruling on a petition filed by an [~~inmate~~] incarcerated individual or [~~his~~] the incarcerated individual's legal counsel alleging that the [~~inmate~~] incarcerated individual is incompetent to be executed, the court shall give the state and the Department of Corrections an opportunity to respond to the allegations of incompetency.

(5) If a petition is filed after an [~~inmate~~] incarcerated individual has previously been found competent under either this chapter or under Title 77, Chapter 15, Inquiry into Sanity of Defendant, no further hearing on competency may be granted unless the successive petition:

(a) alleges with specificity a substantial change of circumstances subsequent to the previous determination of competency; and

(b) is sufficient to raise a significant question about the [~~inmate's~~] incarcerated individual's competency to be executed.

Section ~~{120}~~119. Section **77-19-204** is amended to read:

77-19-204. Order for hearing -- Examinations of incarcerated individual -- Scope

of examination and report.

(1) When a court has good reason to believe an [~~inmate~~] incarcerated individual sentenced to death is incompetent to be executed, it shall stay the execution and shall order the Department of Health and Human Services to examine the [~~inmate~~] incarcerated individual and report to the court concerning the [~~inmate's~~] incarcerated individual's mental condition.

(2) (a) The [~~inmate~~] incarcerated individual subject to examination under Subsection (1) shall be examined by at least two mental health experts who are not involved in the [~~inmate's~~] incarcerated individual's current treatment.

(b) The Department of Corrections shall provide information and materials to the examiners relevant to a determination of the [~~inmate's~~] incarcerated individual's competency to be executed.

(3) The [~~inmate~~] incarcerated individual shall make [~~himself~~] the incarcerated individual available and fully cooperate in the examination by the Department of Health and Human Services and any other independent examiners for the defense or the state.

(4) The examiners shall in the conduct of their examinations and in their reports to the court consider and address, in addition to any other factors determined to be relevant by the examiners:

(a) the [~~inmate's~~] incarcerated individual's awareness of the fact of the [~~inmate's~~] incarcerated individual's impending execution;

(b) the [~~inmate's~~] incarcerated individual's understanding that the [~~inmate~~] incarcerated individual is to be executed for the crime of murder;

(c) the nature of the [~~inmate's~~] incarcerated individual's mental disorder, if any, and its relationship to the factors relevant to the [~~inmate's~~] incarcerated individual's competency; and

(d) whether psychoactive medication is necessary to maintain or restore the [~~inmate's~~] incarcerated individual's competency.

(5) (a) The examiners who are examining the [~~inmate~~] incarcerated individual shall each provide an initial report to the court and the attorneys for the state and the [~~inmate~~] incarcerated individual within 60 days of the receipt of the court's order.

(b) The report shall inform the court of the examiner's opinion concerning the competency of the [~~inmate~~] incarcerated individual to be executed, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.

(c) If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel.

(d) The examiner shall provide the report within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(6) (a) All interviews with the [~~inmate~~] incarcerated individual conducted by the examiners shall be videotaped, unless otherwise ordered by the court for good cause shown. The Department of Corrections shall provide the videotaping equipment and facilitate the videotaping of the interviews.

(b) Immediately following the videotaping, the videotape shall be provided to the attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the competency determination is pending.

(c) The court shall grant counsel for the state and for the [~~inmate~~] incarcerated individual, and examiners who are examining the [~~inmate~~] incarcerated individual under this part access to view the videotape at the court building where the court is located that is conducting the competency determination under this part.

(7) Any written report submitted by an examiner shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the examiner's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; and

(d) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(8) (a) When the reports are received, the court shall set a date for a competency hearing, which shall be held within not less than five and not more than 15 days, unless the court extends the time for good cause.

(b) Any examiner directed by the Department of Health and Human Services to conduct the examination may be subpoenaed to provide testimony at the hearing. If the examiners are in conflict as to the competency of the [~~inmate~~] incarcerated individual, all of

them should be called to testify at the hearing if they are reasonably available.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. An examiner called by the court may be cross-examined by counsel for the parties.

(9) (a) An [~~inmate~~] incarcerated individual shall be presumed competent to be executed unless the court, by a preponderance of the evidence, finds the [~~inmate~~] incarcerated individual incompetent to be executed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to be executed does not operate as an adjudication of the [~~inmate's~~] incarcerated individual's incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(10) (a) If the court finds the [~~inmate~~] incarcerated individual incompetent to be executed, its order shall contain findings addressing each of the factors in Subsections (4)(a) through (d).

(b) The order finding the [~~inmate~~] incarcerated individual incompetent to be executed shall be delivered to the Department of Health and Human Services, and shall be accompanied by:

(i) copies of the reports of the examiners filed with the court pursuant to the order of examination, if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the [~~inmate~~] incarcerated individual; and

(iii) any other documents made available to the court by either the defense or the state, pertaining to the [~~inmate's~~] incarcerated individual's current or past mental condition.

(c) A copy of the order finding the [~~inmate~~] incarcerated individual incompetent to be executed shall be delivered to the Department of Corrections.

Section ~~{121}~~120. Section **77-19-205** is amended to read:

77-19-205. Procedures on finding of incompetency to be executed -- Subsequent hearings -- Notice to attorneys.

(1) (a) (i) If after the hearing under Section 77-19-204 the [~~inmate~~] incarcerated individual is found to be incompetent to be executed, the court shall continue the stay of execution and the [~~inmate~~] incarcerated individual shall receive appropriate mental health treatment.

(ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the [~~inmate's~~] incarcerated individual's competency to be executed.

(b) The court shall order the executive director of the Department of Health and Human Services to provide periodic assessments to the court regarding the [~~inmate's~~] incarcerated individual's competency to be executed.

(c) The [~~inmate~~] incarcerated individual shall be held in secure confinement, either at the prison or the [~~State Hospital~~] state hospital, as agreed upon by the executive director of the Department of Corrections and the executive director of the Department of Health and Human Services. If the [~~inmate~~] incarcerated individual remains at the prison, the Department of Health and Human Services shall consult with the Department of Corrections regarding the [~~inmate's~~] incarcerated individual's mental health treatment.

(2) (a) The examiner or examiners designated by the executive director of the Department of Health and Human Services to assess the [~~inmate's~~] incarcerated individual's progress toward competency may not be involved in the routine treatment of the [~~inmate~~] incarcerated individual.

(b) The examiner or examiners shall each provide a full report to the court and counsel for the state and the [~~inmate~~] incarcerated individual within 90 days of receipt of the court's order. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel for the state and the inmate a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner has up to an additional 90 days to provide the full report, unless the court enlarges the time for good cause. The full report shall assess:

(i) the facility's or program's capacity to provide appropriate treatment for the [~~inmate~~] incarcerated individual;

(ii) the nature of treatments provided to the [~~inmate~~] incarcerated individual;

(iii) what progress toward restoration of competency has been made;

(iv) the [~~inmate's~~] incarcerated individual's current level of mental disorder and need for treatment, if any; and

(v) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party may order the Department of Health and Human Services to appoint additional mental health examiners to examine the [~~inmate~~] incarcerated individual and advise the court on the~~{ }~~[~~inmate's~~]~~{ }~~ incarcerated individual's current mental status and progress toward competency restoration.

(4) (a) Upon receipt of the full report, the court shall hold a hearing to determine the [~~inmate's~~] incarcerated individual's current status. At the hearing, the burden of proving that the [~~inmate~~] incarcerated individual is competent is on the proponent of competency.

(b) Following the hearing, the court shall determine by a preponderance of evidence whether the [~~inmate~~] incarcerated individual is competent to be executed.

(5) (a) If the court determines that the [~~inmate~~] incarcerated individual is competent to be executed, it shall enter findings and shall proceed under Subsection 77-19-202(2)(c).

(b) (i) If the court determines the [~~inmate~~] incarcerated individual is still incompetent to be executed, the [~~inmate~~] incarcerated individual shall continue to receive appropriate mental health treatment, and the court shall hold hearings no less frequently than at 18-month intervals for the purpose of determining the defendant's competency to be executed.

(ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the [~~inmate's~~] incarcerated individual's competency to be executed.

(6) (a) If at any time the clinical director of the Utah State Hospital or the primary treating mental health professional determines that the [~~inmate~~] incarcerated individual has been restored to competency, he shall notify the court.

(b) (i) The court shall conduct a hearing regarding the [~~inmate's~~] incarcerated individual's competency to be executed within 30 working days of the receipt of the notification under Subsection (6)(a), unless the court extends the time for good cause.

(ii) The court may order a hearing or rehearing at any time on its own motion.

(7) Notice of a hearing on competency to be executed shall be given to counsel for the state and for the [~~inmate~~] incarcerated individual, as well as to the office of the prosecutor who prosecuted the [~~inmate~~] incarcerated individual on the original capital charge.

Section ~~{122}~~121. Section **77-19-206** is amended to read:

77-19-206. Expenses -- Allocation.

The Department of Health and Human Services and the Department of Corrections

shall each pay 1/2 of the costs of any examination of the [~~inmate~~] incarcerated individual conducted pursuant to Sections 77-19-204 and 77-19-205 to determine if an [~~inmate~~] incarcerated individual is competent to be executed.

Section ~~{123}~~122. Section **77-23-301** is amended to read:

77-23-301. Warrantless searches regarding persons on parole.

(1) An [~~inmate~~] incarcerated individual who is eligible for release on parole shall, as a condition of parole, sign an agreement as described in Subsection (2) that the [~~inmate~~] incarcerated individual, while on parole, is subject to search or seizure of the [~~inmate's~~] incarcerated individual's person, property, place of temporary or permanent residence, vehicle, or personal effects while on parole:

(a) by a parole officer at any time, with or without a search warrant, and with or without cause; and

(b) by a law enforcement officer at any time, with or without a search warrant, and with or without cause, but subject to Subsection (3).

(2) (a) The terms of the agreement under Subsection (1) shall be stated in clear and unambiguous language.

(b) The agreement shall be signed by the parolee, indicating the parolee's understanding of the terms of searches as allowed by Subsection (1).

(3) (a) In order for a law enforcement officer to conduct a search of a parolee's residence under Subsection (1) or a seizure pursuant to the search, the law enforcement officer shall have obtained prior approval from a parole officer or shall have a warrant for the search.

(b) If a law enforcement officer conducts a search of a parolee's person, personal effects, or vehicle pursuant to a stop, the law enforcement officer shall notify a parole officer as soon as reasonably possible after conducting the search.

(4) A search conducted under this section may not be for the purpose of harassment.

(5) Any [~~inmate~~] incarcerated individual who does not agree in writing to be subject to search or seizure under Subsection (1) may not be paroled until the [~~inmate~~] incarcerated individual enters into the agreement under Subsection (1).

(6) This section applies only to an [~~inmate~~] incarcerated individual who is eligible for release on parole on or after May 5, 2008.

Section ~~{124}~~123. Section **77-27-1** is amended to read:

77-27-1. Definitions.

As used in this chapter:

(1) "Appearance" means any opportunity to address the board, a board member, a panel, or hearing officer, including an interview.

(2) "Board" means the Board of Pardons and Parole.

(3) (a) "Case action plan" means a document developed by the Department of Corrections that identifies the program priorities for the treatment of the offender.

(b) "Case action plan" includes the criminal risk factors as determined by a risk and needs assessment conducted by the department.

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

(5) "Commutation" is the change from a greater to a lesser punishment after conviction.

(6) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

(7) "Criminal risk factors" means a person's characteristics and behaviors that:

(a) affect that person's risk of engaging in criminal behavior; and

(b) are diminished when addressed by effective treatment, supervision, and other support resources resulting in reduced risk of criminal behavior.

(8) (a) "Deliberative process" means the board or any number of the board's individual members together engaging in discussions, whether written or verbal, regarding a parole, a pardon, a commutation, termination of sentence, or fines, fees, or restitution in an individual case.

(b) "Deliberative process" includes the votes, mental processes, written notes, and recommendations of individual board members and staff.

(c) "Deliberative process" does not include:

(i) a hearing where the offender is present;

(ii) any factual record the board is considering, including records of the offender's criminal convictions, records regarding the offender's current or previous incarceration and supervision, and records regarding the offender's physical or mental health;

(iii) recommendations regarding the offender's incarceration or supervision from any

other individual, governmental entity, or agency;

(iv) testimony received by the board regarding the offender, whether written or verbal; or

(v) the board's decision or rationale for the decision.

(9) "Department" means the Department of Corrections.

(10) "Expiration" means when the maximum sentence has run.

(11) "Family" means any individual related to the victim as a spouse, child, sibling, parent, or grandparent, or the victim's legal guardian.

(12) "Hearing" or "full hearing" means an appearance before the board, a panel, a board member or hearing examiner, at which an offender or [~~inmate~~] incarcerated individual is afforded an opportunity to be present and address the board.

(13) "Location," in reference to a hearing, means the physical location at which the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of the location of any person participating by electronic means.

(14) "Open session" means any hearing, before the board, a panel, a board member, or a hearing examiner, that is open to the public, regardless of the location of any person participating by electronic means.

(15) "Panel" means members of the board assigned by the chairperson to a particular case.

(16) "Pardon" means:

(a) an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction;

(b) the release of an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction; and

(c) the reinstatement of any civil rights lost as a consequence of conviction or punishment for a criminal offense.

(17) "Parole" means a release from imprisonment on prescribed conditions which, if satisfactorily performed by the parolee, enables the parolee to obtain a termination of the parolee's sentence.

(18) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(19) "Pecuniary damages" means the same as that term is defined in Section 77-38b-102.

(20) "Probation" means an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon prescribed conditions.

(21) "Remit" or "remission" means the same as that term is defined in Section 77-32b-102.

(22) "Reprieve" or "respite" means the temporary suspension of the execution of the sentence.

(23) "Restitution" means the same as that term is defined in Section 77-38b-102.

(24) "Termination" means the act of discharging from parole or concluding the sentence of imprisonment before the expiration of the sentence.

(25) "Victim" means:

(a) a person against whom the defendant committed a felony or class A misdemeanor offense for which a hearing is held under this chapter; or

(b) the victim's family if the victim is deceased as a result of the offense for which a hearing is held under this chapter.

Section ~~{125}~~124. Section **77-27-1.5** is amended to read:

77-27-1.5. Appearance by incarcerated individual, offender, or witness.

(1) (a) An appearance by an [~~inmate~~] incarcerated individual, offender, or witness before the board, a panel, board member, or hearing officer may be in person, through videoconferencing or other electronic means.

(b) [~~Any~~] An appearance by videoconference or other electronic means shall be recorded as provided in Section 77-27-8.

(2) An [~~inmate's~~] incarcerated individual's or offender's electronic appearance by telephone is permissible with the consent of the [~~inmate~~] incarcerated individual or offender, when the [~~inmate~~] incarcerated individual or offender is incarcerated in a facility outside of this state.

Section ~~{126}~~125. Section **77-27-5.3** is amended to read:

77-27-5.3. Meritless and bad faith litigation.

(1) For purposes of this section:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,

guilty with a mental illness, no contest, and conviction of any crime or offense.

(b) [~~"Prisoner" means a person~~] "Incarcerated individual" means an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) In any case filed in state or federal court in which [~~a prisoner~~] an incarcerated individual submits a claim that the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons and Parole and any county jail administrator may consider that finding in any early release decisions concerning the [~~prisoner~~] incarcerated individual.

Section ~~{127}~~126. Section **77-27-8** is amended to read:

77-27-8. Record of hearing.

(1) A verbatim record of proceedings before the Board of Pardons and Parole shall be maintained by a suitable electronic recording device, except when the board dispenses with a record in a particular hearing or a portion of the proceedings.

(2) When the hearing involves the commutation of a death sentence, a certified shorthand reporter, in addition to electronic means, shall record all proceedings except when the board dispenses with a record for the purpose of deliberations in executive session. The compensation of the reporter shall be determined by the board. The reporter shall immediately file with the board the original record and when requested shall with reasonable diligence furnish a transcription or copy of the record upon payment of reasonable fees as determined by the board.

(3) When an [~~inmate~~] incarcerated individual or offender affirms by affidavit that he is unable to pay for a copy of the record, the board may furnish a copy of the record, at the expense of the state, to the [~~inmate~~] incarcerated individual or offender.

Section ~~{128}~~127. Section **77-27-9** is amended to read:

77-27-9. Parole proceedings.

(1) (a) The Board of Pardons and Parole may parole any offender or terminate the sentence of any offender committed to a penal or correctional facility under the jurisdiction of the Department of Corrections except as provided in Subsection (2).

(b) The board may not release any offender before the minimum term has been served unless the board finds mitigating circumstances which justify the release and unless the board has granted a full hearing, in open session, after previous notice of the time and location of the

hearing, and recorded the proceedings and decisions of the board.

(c) The board may not parole any offender or terminate the sentence of any offender unless the board has granted a full hearing, in open session, after previous notice of the time and location of the hearing, and recorded the proceedings and decisions of the board.

(d) The release of an offender shall be at the initiative of the board, which shall consider each case as the offender becomes eligible. However, [~~a prisoner~~] an offender may submit the [~~prisoner's~~] offender's own application, subject to the rules of the board promulgated in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) An individual sentenced to prison prior to April 29, 1996, for a first degree felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; aggravated sexual abuse of a child, a violation of Section 76-5-404.3; aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole until the offender has fully completed serving the minimum mandatory sentence imposed by the court. This Subsection (2)(a) supersedes any other provision of law.

(b) The board may not parole any offender or commute or terminate the sentence of any offender before the offender has served the minimum term for the offense, if the offender was sentenced prior to April 29, 1996, and if:

(i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape, aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Individual; and

(ii) the victim of the offense was under 18 years old at the time the offense was committed.

(c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.

(d) The board may not pardon or parole any offender or commute or terminate the sentence of any offender who is sentenced to life in prison without parole except as provided in Subsection (7).

(e) On or after April 27, 1992, the board may commute a sentence of death only to a sentence of life in prison without parole.

(f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come before the Board of Pardons and Parole on or after April 27, 1992.

(g) The board may not parole any offender convicted of a homicide unless:

(i) the remains of the victim have been recovered; or

(ii) the offender can demonstrate by a preponderance of the evidence that the offender has cooperated in good faith in efforts to locate the remains.

(h) Subsection (2)(g) applies to any offender convicted of a homicide after February 25, 2021, or any offender who was incarcerated in a correctional facility on or after February 25, 2021, for a homicide offense.

(3) The board may rescind:

(a) an [~~inmate's~~] incarcerated individual's prison release date prior to the [~~inmate~~] incarcerated individual being released from custody; or

(b) an offender's termination date from parole prior to the offender being terminated from parole.

(4) (a) The board may issue subpoenas to compel the attendance of witnesses and the production of evidence, to administer oaths, and to take testimony for the purpose of any investigation by the board or any of the board's members or by a designated hearing examiner in the performance of the board's duties.

(b) A person who willfully disobeys a properly served subpoena issued by the board is guilty of a class B misdemeanor.

(5) (a) The board may adopt rules consistent with law for the board's government, meetings and hearings, the conduct of proceedings before the board, the parole and pardon of offenders, the commutation and termination of sentences, and the general conditions under which parole may be granted and revoked.

(b) The rules shall ensure an adequate opportunity for victims to participate at hearings held under this chapter, as provided in Section 77-27-9.5.

(c) The rules may allow the board to establish reasonable and equitable time limits on the presentations by all participants in hearings held under this chapter.

(6) The board does not provide counseling or therapy for victims as a part of their

participation in any hearing under this chapter.

(7) The board may parole a person sentenced to life in prison without parole if the board finds by clear and convincing evidence that the person is permanently incapable of being a threat to the safety of society.

Section ~~{129}~~128. Section **77-27-10** is amended to read:

77-27-10. Conditions of parole -- Incarcerated individual agreement to warrant -- Rulemaking -- Intensive early release parole program.

(1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole, including the graduated and evidence-based responses to a violation of a condition of parole established by the Sentencing Commission in accordance with Section 64-13-21, which the offender shall accept and agree to as evidenced by the offender's signature affixed to the agreement.

(b) The parole agreement shall require that the [~~inmate~~] incarcerated individual agree in writing that the board may issue a warrant and conduct a parole revocation hearing if:

(i) the board determines after the grant of parole that the [~~inmate~~] incarcerated individual willfully provided to the board false or inaccurate information that the board finds was significant in the board's determination to grant parole; or

(ii) (A) the [~~inmate~~] incarcerated individual has engaged in criminal conduct prior to the granting of parole; and

(B) the board did not have information regarding the conduct at the time parole was granted.

(c) A copy of the agreement shall be delivered to the Department of Corrections and a copy shall be given to the parolee. The original shall remain with the board's file.

(2) (a) If an offender convicted of violating or attempting to violate Section 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, 76-5-404, 76-5-404.1, 76-5-404.3, or 76-5-405, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole.

(b) The board shall develop standards and conditions of parole under this Subsection (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) This Subsection (2) does not apply to intensive early release parole.

(3) (a) In addition to the conditions set out in Subsection (1), the board may place

offenders in an intensive early release parole program. The board shall determine the conditions of parole which are reasonably necessary to protect the community as well as to protect the interests of the offender and to assist the offender to lead a law-abiding life.

(b) The offender is eligible for this program only if the offender:

(i) has not been convicted of a sexual offense; or

(ii) has not been sentenced pursuant to Section 76-3-406.

(c) The department shall:

(i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for operation of the program;

(ii) adopt and implement internal management policies for operation of the program;

(iii) determine whether or not to refer an offender into this program within 120 days from the date the offender is committed to prison by the sentencing court; and

(iv) make the final recommendation to the board regarding the placement of an offender into the program.

(d) The department may not consider credit for time served in a county jail awaiting trial or sentencing when calculating the 120-day period.

(e) The prosecuting attorney or sentencing court may refer an offender for consideration by the department for participation in the program.

(f) The board shall determine whether or not to place an offender into this program within 30 days of receiving the department's recommendation.

(4) This program shall be implemented by the department within the existing budget.

(5) During the time the offender is on parole, the department shall collect from the offender the monthly supervision fee authorized by Section 64-13-21.

(6) When a parolee commits a violation of the parole agreement, the department may:

(a) respond in accordance with the graduated and evidence-based responses established in accordance with Section 64-13-21; or

(b) when the graduated and evidence-based responses established in accordance with Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation of parole.

Section ~~{130}~~129. Section **77-28b-5** is amended to read:

77-28b-5. Role of institution warden.

The warden shall sign Form III, Notice Regarding International Prisoner Transfer, and forward the application and the material required in Section 77-28b-4 in triplicate to the Department of Corrections [~~Inmate~~] Incarcerated Placement Program Bureau.

Section ~~{131}~~130. Section **77-28b-6** is amended to read:

77-28b-6. Role of Incarcerated Placement Program Bureau.

(1) The Department of Corrections [~~Inmate~~] Incarcerated Placement Program Bureau shall:

(a) investigate the request to ensure that all eligibility requirements are met;

(b) request a records check to verify records listed in Section 77-28b-3;

(c) review application and materials for completeness and compliance with treaty terms;

(d) develop and recommend assurances, where indicated; and

(e) provide written notification of the transfer request to the following entities and receive objections or other comments for 15 business days after sending the notification:

(i) attorney general;

(ii) prosecuting law enforcement agency;

(iii) prosecutor; and

(iv) sentencing court.

(2) If the [~~Inmate~~] Incarcerated Placement Program Bureau investigation determines that the application and materials are incomplete or do not comply with the terms of the treaty, the application shall be rejected and returned to the institution in which the [~~inmate~~] incarcerated individual is incarcerated.

(3) If the investigation of the bureau determines the application and materials are complete and in compliance with the terms of the treaty, the application and materials shall be forwarded to the director of the Department of Corrections.

Section ~~{132}~~131. Section **77-28b-7** is amended to read:

77-28b-7. Role of director.

(1) (a) The director of the Department of Corrections shall review the application and materials.

(b) Upon [~~his~~] the director's approval the application and materials shall be forwarded to the governor for authorization to transfer.

(2) Applications that are not approved by the director shall be returned to the sending institution and the [~~inmate~~] incarcerated individual shall be notified.

Section ~~{133}~~132. Section **77-28b-8** is amended to read:

77-28b-8. Referral to the United States Department of Justice, Office of International Affairs.

(1) Upon receipt of the governor's authorization for international transfer, the application and materials shall be forwarded to the United States Department of Justice, Office of International Affairs, by the [~~Inmate~~] Incarcerated Placement Program Bureau.

(2) The bureau shall notify the [~~inmate~~] incarcerated individual and the warden of the sending institution of the decision of the application for international transfer.

(3) All arrangements regarding the treaty process and proposed assurances shall be negotiated between the bureau and the United States Department of Justice, Office of International Affairs.

Section ~~{134}~~133. Section **77-28b-9** is amended to read:

77-28b-9. Transfer of offender.

(1) If the [~~inmate~~] offender is accepted for international transfer by the United States Department of Justice, Office of International Affairs, the offender shall be transported by the Department of Corrections to the federal district court for a verification hearing to ensure the offender consents to the international transfer.

(2) The Department of Corrections shall then relinquish jurisdiction over the offender to the United States Department of Justice.

Section ~~{135}~~134. Section **77-30-10** is amended to read:

77-30-10. Time to apply for habeas corpus allowed.

No [~~person~~] individual arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding [~~him~~] the individual shall have appointed to receive [~~him unless he~~] the individual unless the individual shall first be taken forthwith before a judge of a court of record in this state who shall inform [~~him~~] the individual of the demand made for [~~his~~] the individual's surrender and of the crime with which [~~he~~] the individual is charged and that [~~he~~] the individual has the right to demand and procure legal counsel and if the [~~prisoner~~] individual or [~~his~~] the individual's counsel shall state that [~~he or they desire~~] the individual desires to test the legality of [~~his~~] the individual's arrest, the judge of such court of record shall

fix a reasonable time to be allowed [~~him~~] the individual within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the [~~accused~~] individual is in custody, and to the said agent of the demanding state.

Section ~~{136}~~135. Section **77-30-12** is amended to read:

77-30-12. Officers entitled to use local jails.

The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the [~~prisoner~~] incarcerated individual may have been delivered may, when necessary, confine the [~~prisoner~~] incarcerated individual in the jail of any county or city through which [~~he~~] the officer, person, or agent may pass and the keeper of such jail must receive and safely keep the [~~prisoner~~] incarcerated individual until the officer or person having charge of [~~him~~] the incarcerated individual is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom [~~a prisoner~~] an incarcerated individual may have been delivered following extradition proceedings in another state, or to whom [~~a prisoner~~] an incarcerated individual may have been delivered after waiving extradition in such other state, and who is passing through this state with such [~~a prisoner~~] an incarcerated individual for the purpose of immediately returning such [~~prisoner~~] incarcerated individual to the demanding state may, when necessary, confine the [~~prisoner~~] incarcerated individual in the jail of any county or city through which [~~he~~] the officer or agent may pass, and the keeper of such jail must receive and safely keep the [~~prisoner~~] incarcerated individual until the officer or agent having charge of [~~him~~] the incarcerated individual is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping; provided, such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that [~~he~~] the officer or agent is actually transporting such [~~prisoner~~] incarcerated individual to the demanding state after a requisition by the executive authority of such demanding state. Such [~~prisoner shall~~] incarcerated individual may not be entitled to demand a new requisition while in this state.

Section ~~{137}~~136. Section **77-30-18** is amended to read:

77-30-18. Forfeiture of bail.

(1) [~~If the prisoner~~] If an incarcerated individual is admitted to bail and fails to appear

and surrender according to the conditions of the [~~prisoner's~~] incarcerated individual's bond, the judge or magistrate by proper order shall declare the bond forfeited and order the [~~prisoner's~~] immediate arrest of the incarcerated individual without a warrant if the [~~prisoner~~] incarcerated individual is within this state.

(2) Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Section ~~{138}~~137. Section **77-33-2** is amended to read:

77-33-2. Summoning an incarcerated individual in this state to testify in another state -- Certificate of out-of-state judge.

(1) A judge of a state court of record in another state, which by [~~its~~] the state's laws has made provision for commanding [~~persons~~] individuals confined in penal institutions within that state to attend and testify in this state, may certify:

[~~(1)~~] (a) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court[~~,~~];

~~{(b) }~~[~~(2)~~] (b) that [~~a person~~] an individual who is confined in a penal institution in this state may be a material witness in the proceeding, investigation, or action[~~,~~]; and

~~{(c) }~~[~~(3)~~] (c) that [~~his~~] the individual's presence will be required during a specified time.

(2) Upon presentation of the certificate to any judge having jurisdiction over the [~~person~~] individual confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the [~~prisoner~~] incarcerated individual requiring that the [~~prisoner~~] incarcerated individual be produced before [~~him~~] the judge at the hearing.

Section ~~{139}~~138. Section **77-33-6** is amended to read:

77-33-6. Incarcerated individual in another state summoned to testify in this state -- Certificate of judge.

(1) If a person confined in a penal institution in any state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify:

[~~(1)~~] (a) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court[~~,~~];

[~~(2)~~] (b) that a person who is confined in a penal institution in another state may be a material witness in the proceeding, investigation, or action[~~;~~]; and

[~~(3)~~] (c) that his presence will be required during a specified time.

(2) The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the [~~prisoner~~] incarcerated individual confined, and a notice shall be given to the attorney general of the state in which the [~~prisoner~~] incarcerated individual is confined.

Section ~~{140}~~139. Section **77-38-2** is amended to read:

77-38-2. Definitions.

For the purposes of this chapter and the Utah Constitution:

(1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or disparage.

(2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

(3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.

(4) "Harassment" means treating the crime victim in a persistently annoying manner.

(5) "Important criminal justice hearings" or "important juvenile justice hearings" means the following proceedings in felony criminal cases or cases involving a minor's conduct which would be a felony if committed by an adult:

(a) any preliminary hearing to determine probable cause;

(b) any court arraignment where practical;

(c) any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceeding to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;

(d) any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;

(e) any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or at a sidebar conference;

(f) any court proceeding to determine the disposition of a minor or sentence, fine, or

restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant; and

(g) any public hearing concerning whether to grant a defendant or minor parole or other form of discretionary release from confinement.

(6) "Reliable information" means information worthy of confidence, including any information whose use at sentencing is permitted by the United States Constitution.

(7) "Representative of a victim" means [~~a person~~] an individual who is designated by the victim or designated by the court and who represents the victim in the best interests of the victim.

(8) "Respect" means treating the crime victim with regard and value.

(9) (a) "Victim of a crime" means [~~any natural person~~] an individual against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the [~~natural person~~] individual is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

(b) For purposes of the right to be present, "victim of a crime" does not mean [~~any person~~] an individual who is in custody as a pretrial detainee, as [~~a prisoner~~] an incarcerated individual following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment.

(c) For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

Section ~~{141}~~140. Section **77-38-4** is amended to read:

77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from individuals in custody.

(1) The victim of a crime, the representative of the victim, or both shall have the right:

(a) to be present at the important criminal or juvenile justice hearings provided in Subsection 77-38-2(5);

(b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), (f), and (g);

(c) to submit a written statement in any action on appeal related to that crime; and

(d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the [~~person~~] individual suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.

(2) This chapter shall not confer any right to the victim of a crime to be heard:

(a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and

(b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.

(3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.

(4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

(5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.

(6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.

(7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.

(8) If the victim of a crime is [~~a person~~] an individual who is in custody as a pretrial detainee, as [~~a prisoner~~] an incarcerated individual following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter

shall be exercised by submitting a written statement to the court.

(9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

(10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

Section ~~{142}~~141. Section **78A-2-302** is amended to read:

78A-2-302. Indigent litigants -- Affidavit.

(1) As used in Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest; and

(ii) a conviction of any crime or offense.

[~~(b) "Indigent" means an individual who is financially unable to pay fees and costs or give security.~~]

[~~(c)~~] (b) [~~"Prisoner"~~] "Incarcerated individual" means an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(c) "Indigent" means an individual who is financially unable to pay fees and costs or give security.

(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if the individual submits an affidavit demonstrating that the individual is indigent.

(3) A court shall find an individual indigent if the individual's affidavit under Subsection (2) demonstrates:

(a) the individual has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

(b) the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

(c) the individual receives legal services from a nonprofit provider or a pro bono

attorney through the Utah State Bar; or

(d) the individual has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual, or the individual's family, of food, shelter, clothing, or other necessities.

(4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d) shall contain complete information on the individual's:

(a) identity and residence;

(b) amount of income, including any government financial support, alimony, or child support;

(c) assets owned, including real and personal property;

(d) business interests;

(e) accounts receivable;

(f) securities, checking and savings account balances;

(g) debts; and

(h) monthly expenses.

(5) If the individual under Subsection (3) is [~~a prisoner~~] an incarcerated individual, the [~~prisoner~~] incarcerated individual shall disclose the amount of money held in the [~~prisoner's~~] incarcerated individual's trust account at the time the affidavit under Subsection (2) is executed in accordance with Section 78A-2-305.

(6) An affidavit of indigency under this section shall state the following:

I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Section ~~{143}~~142. Section **78A-2-305** is amended to read:

78A-2-305. Effect of filing affidavit -- Procedure for review and collection.

(1) (a) Upon receipt of an affidavit of indigency under Section 78A-2-302 filed with any Utah court by [~~a prisoner~~] an incarcerated individual, the court shall immediately request the institution or facility where the [~~prisoner~~] incarcerated individual is incarcerated to provide an account statement detailing all financial activities in the [~~prisoner's~~] incarcerated individual's trust account for the previous six months or since the time of incarceration, whichever is

shorter.

(b) The incarcerating facility shall:

(i) prepare and produce to the court the [~~prisoner's~~] incarcerated individual's six-month trust account statement, current trust account balance, and aggregate disposable income; and

(ii) calculate aggregate disposable income by totaling all deposits made [~~in~~] into the [~~prisoner's~~] incarcerated individual's trust account during the six-month period and subtracting all funds automatically deducted or otherwise garnished from the account during the same period.

(2) The court shall:

(a) review both the affidavit of indigency and the financial account statement; and

(b) based upon the review, independently determine whether or not the [~~prisoner~~] incarcerated individual is financially capable of paying all the regular fees and costs associated with filing the action.

(3) When the court concludes that the [~~prisoner~~] incarcerated individual is unable to pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the [~~prisoner's~~] incarcerated individual's current trust account balance or 10% of the [~~prisoner's~~] incarcerated individual's six-month aggregate disposable income, whichever is greater.

(4) (a) After payment of the initial partial filing fee, the court shall require the [~~prisoner~~] incarcerated individual to make monthly payments of 20% of the preceding month's aggregate disposable income until the regular filing fee associated with the civil action is paid in full.

(b) The agency having custody of the [~~prisoner~~] incarcerated individual shall:

(i) garnish the [~~prisoner's~~] incarcerated individual's account each month; and

(ii) once the collected fees exceed $10, forward payments to the clerk of the court until the filing fees are paid.

(c) Nothing in this section may be construed to prevent the agency having custody of the [~~prisoner~~] incarcerated individual from withdrawing funds from the [~~prisoner's~~] incarcerated individual's account to pay court-ordered restitution.

(5) Collection of the filing fees continues despite dismissal of the action.

(6) The filing fee collected may not exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

(7) If the [~~prisoner~~] incarcerated individual is filing an initial divorce action or an action to obtain custody of the [~~prisoner's~~] incarcerated individual's children, the following procedures shall apply for review and collection of fees and costs:

(a) (i) Upon a filing of an affidavit of indigency under Section 78A-2-302 with any Utah court by [~~a prisoner~~] an incarcerated individual, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and fees should be paid in full or be waived in whole or in part.

(ii) The court shall require a full or partial filing fee when the [~~prisoner's~~] incarcerated individual's financial information demonstrates an ability to pay the applicable court fees or costs.

(b) (i) If [~~a prisoner's~~] an incarcerated individual's court fees or costs are completely waived, and if the [~~prisoner~~] incarcerated individual files an appeal, the court shall immediately file any complaint or papers on appeal and complete all necessary action as promptly as if the litigant had paid all the fees and costs in full.

(ii) If [~~a prisoner~~] an incarcerated individual is indigent, the constable and sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary in the prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.

(c) (i) If [~~a prisoner~~] an incarcerated individual files an affidavit of indigency, the judge shall question the [~~prisoner~~] incarcerated individual at the time of the hearing on the merits of the case as to the [~~prisoner's~~] incarcerated individual's ability to pay.

(ii) If the judge determines that the [~~prisoner~~] incarcerated individual is reasonably able to pay court fees and costs, the final order or decree shall be entered, however the [~~prisoner~~] incarcerated individual may not seek enforcement or modification of the decree or order until the [~~prisoner~~] incarcerated individual has paid the fees or costs in full.

(iii) A judge may waive the restrictions placed on the [~~prisoner~~] incarcerated individual in Subsection (7)(c)(ii) upon a showing of good cause.

Section ~~{144}~~143. Section **78B-2-302** is amended to read:

78B-2-302. Within one year.

An action may be brought within one year:

(1) for liability created by the statutes of a foreign state;

(2) upon a statute for a penalty or forfeiture where the action is given to an individual,

or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(3) except as provided in Section 78B-2-307.5, upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;

(4) for libel, slander, false imprisonment, or seduction;

(5) against a sheriff or other officer for the escape of [~~a prisoner~~] an incarcerated individual arrested or imprisoned upon either civil or criminal process;

(6) against a municipal corporation for damages or injuries to property caused by a mob or riot;

(7) except as otherwise expressly provided by statute, against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive, respectively;

(8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious Land Use Act; or

(9) for a claim for relief or a cause of action under Subsection 25-6-203(2).

Section ~~{145}~~144. Section **78B-6-603** is amended to read:

78B-6-603. Recommitment after discharge forbidden -- Exceptions.

[~~A person~~] An individual who has been discharged by order of the court or judge upon habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause, except in the following cases:

(1) if the [~~person~~] individual has been discharged from custody on a criminal charge and is afterward committed for the same offense by legal order or process; or

(2) if, after discharge for defect of proof or for any defect of the process, warrant or commitment in a criminal case, the [~~prisoner~~] individual is again arrested on sufficient proof and committed by legal process for the same offense.

Section ~~{146}~~145. Section **78B-8-401** is amended to read:

78B-8-401. Definitions.

As used in this part:

(1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "COVID-19" means the same as that term is defined in Section 78B-4-517.

(3) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome, and any other infectious disease specifically designated by the Labor Commission, in consultation with the Department of Health and Human Services, for the purposes of this part.

(4) "Emergency services provider" means:

(a) an individual licensed under Section 26-8a-302, a peace officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either as an employee or as a volunteer; or

(b) an individual who provides for the care, control, support, or transport of [~~a prisoner~~] an incarcerated individual.

(5) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or peace officer.

(6) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(7) "Incarcerated individual" means the same as that term is defined in Section 76-5-101.

[~~(7)~~] (8) "Medical testing procedure" means a nasopharyngeal swab, a nasal swab, a capillary blood sample, a saliva test, or a blood draw.

[~~(8)~~] (9) "Peace officer" means the same as that term is defined in Section 53-1-102.

[~~(9) "Prisoner" means the same as that term is defined in Section 76-5-101.~~]

(10) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one individual to the blood or body fluids of another individual by:

(i) percutaneous injury, including a needle stick, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage;

(b) exposure of the body of one individual to the body fluids, including airborne droplets, of another individual if:

(i) the other individual displays symptoms known to be associated with COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome; or

(ii) other evidence exists that would lead a reasonable person to believe that the other individual may be infected with COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome; or

(c) exposure that occurs by any other method of transmission defined by the Labor Commission, in consultation with the Department of Health and Human Services, as a significant exposure.

Section ~~{147}~~146. Section **78B-8-402** is amended to read:

78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.

(1) An emergency services provider or first aid volunteer who is significantly exposed during the course of performing the emergency services provider's duties or during the course of performing emergency assistance or first aid, or a health care provider acting in the course and scope of the health care provider's duties as a health care provider may:

(a) request that the [~~person~~] individual to whom the emergency services provider, first aid volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

(b) petition the district court or a magistrate for an order requiring that the [~~person~~] individual to whom the emergency services provider, first aid volunteer, or health care provider was significantly exposed submit to testing to determine the presence of a disease and that the results of that test be disclosed to the petitioner by the Department of Health and Human Services.

(2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic or other means an ex parte request for a warrant ordering a medical testing procedure of the respondent.

(b) The court or magistrate shall issue a warrant ordering the respondent to submit to a medical testing procedure within two hours, and that reasonable force may be used, if necessary, if the court or magistrate finds that:

(i) the petitioner was significantly exposed during the course of performing the petitioner's duties as an emergency services provider, first aid volunteer, or health care

provider;

(ii) the respondent refused to give consent to the medical testing procedure or is unable to give consent;

(iii) there may not be an opportunity to obtain a sample at a later date; and

(iv) a delay in administering available FDA-approved post-exposure treatment or prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

(c) (i) If the petitioner requests that the court order the respondent to submit to a blood draw, the petitioner shall request [~~a person~~] an individual authorized under Section 41-6a-523 to perform the blood draw.

(ii) If the petitioner requests that the court order the respondent to submit to a medical testing procedure, other than a blood draw, the petitioner shall request that a qualified medical professional, including a physician, a physician's assistant, a registered nurse, a licensed practical nurse, or a paramedic, perform the medical testing procedure.

(d) (i) A sample drawn in accordance with a warrant following an ex parte request shall be sent to the Department of Health and Human Services for testing.

(ii) If the Department of Health and Human Services is unable to perform a medical testing procedure ordered by the court under this section, a qualified medical laboratory may perform the medical testing procedure if:

(A) the Department of Health and Human Services requests that the medical laboratory perform the medical testing procedure; and

(B) the result of the medical testing procedure is provided to the Department of Health and Human Services.

(3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the petitioner may file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with this section.

(4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

(b) The petitioner shall submit to testing to determine the presence of a disease, when the petition is filed or within three days after the petition is filed.

(5) The petitioner shall cause the petition required under this section to be served on

the [~~person~~] individual who the petitioner is requesting to be tested in a manner that will best preserve the confidentiality of that [~~person~~] individual.

(6) (a) The court shall set a time for a hearing on the matter within 10 days after the petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

(b) The individual who is the subject of the petition shall also be notified that the individual may have an attorney present at the hearing and that the individual's attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(7) The district court may enter an order requiring that an individual submit to testing, including a medical testing procedure, for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

(b) the exposure occurred during the course of the emergency services provider's duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health care provider acting in the course and scope of the provider's duties as a health care provider.

(8) The court may order that the use of reasonable force is permitted to complete an ordered test if the individual who is the subject of the petition is [~~a prisoner~~] an incarcerated individual.

(9) The court may order that additional, follow-up testing be conducted and that the individual submit to that testing, as it determines to be necessary and appropriate.

(10) The court is not required to order an individual to submit to a test under this section if it finds that there is a substantial reason, relating to the life or health of the individual, not to enter the order.

(11) (a) Upon order of the district court that an individual submit to testing for a disease, that individual shall report to the designated local health department to provide the ordered specimen within five days after the day on which the court issues the order, and thereafter as designated by the court, or be held in contempt of court.

(b) The court shall send the order to the Department of Health and Human Services ~~{~~ ~~}~~and to the local health department ordered to conduct or oversee the test.

(c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and Human Services and a local health department may disclose the test results pursuant to a court

order as provided in this section.

(d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not satisfy the requirements of the court order.

(12) The local health department or the Department of Health and Human Services shall inform the subject of the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

(13) The court, the court's personnel, the process server, the Department of Health and Human Services, local health department, and petitioner shall maintain confidentiality of the name and any other identifying information regarding the individual tested and the results of the test as they relate to that individual, except as specifically authorized by this chapter.

(14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment for each test performed in accordance with this section to the entity that performs the procedure.

(b) If the petitioner is an emergency services provider, the agency that employs the emergency services provider shall remit payment for each test performed in accordance with this section to the entity that performs the procedure.

(15) The entity that obtains a specimen for a test ordered under this section shall cause the specimen and the payment for the analysis of the specimen to be delivered to the Department of Health and Human Services for analysis.

(16) If the individual is incarcerated, the incarcerating authority shall either obtain a specimen for a test ordered under this section or shall pay the expenses of having the specimen obtained by a qualified individual who is not employed by the incarcerating authority.

(17) The ex parte request or petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

Section ~~{148}~~147. Section **78B-22-404** is amended to read:

78B-22-404. Powers and duties of the commission.

(1) The commission shall:

(a) adopt core principles for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall

address the following:

(i) an indigent defense system shall ensure that in providing indigent defense services:

(A) an indigent individual receives conflict-free indigent defense services; and

(B) there is a separate contract for each type of indigent defense service; and

(ii) an indigent defense system shall ensure an indigent defense service provider has:

(A) the ability to exercise independent judgment without fear of retaliation and is free to represent an indigent individual based on the indigent defense service provider's own independent judgment;

(B) adequate access to indigent defense resources;

(C) the ability to provide representation to accused individuals in criminal cases at the critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency and child welfare proceedings;

(D) a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client;

(E) adequate compensation without financial disincentives;

(F) appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals;

(G) compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals; and

(H) the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest;

(b) encourage and aid indigent defense systems in the state in the regionalization of indigent defense services to provide for effective and efficient representation to the indigent individuals;

(c) emphasize the importance of ensuring constitutionally effective indigent defense services;

(d) encourage members of the judiciary to provide input regarding the delivery of indigent defense services; and

(e) oversee individuals and entities involved in providing indigent defense services.

(2) The commission may:

(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the commission's duties under this part;

(b) assign duties related to indigent defense services to the office to assist the commission with the commission's statutory duties;

(c) request supplemental appropriations from the Legislature to address a deficit in the Indigent [~~Inmate~~] Incarcerated Individual Fund created in Section 78B-22-455; and

(d) request supplemental appropriations from the Legislature to address a deficit in the Child Welfare Parental Representation Fund created in Section 78B-22-804.

Section ~~{149}~~148. Section **78B-22-452** is amended to read:

78B-22-452. Duties of the office.

(1) The office shall:

(a) establish an annual budget for the office for the Indigent Defense Resources Restricted Account created in Section 78B-22-405;

(b) assist the commission in performing the commission's statutory duties described in this chapter;

(c) identify and collect data that is necessary for the commission to:

(i) aid, oversee, and review compliance by indigent defense systems with the commission's core principles for the effective representation of indigent individuals; and

(ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state;

(d) assist indigent defense systems by reviewing contracts and other agreements, to ensure compliance with the commission's core principles for effective representation of indigent individuals;

(e) establish procedures for the receipt and acceptance of complaints regarding the provision of indigent defense services in the state;

(f) establish procedures to award grants to indigent defense systems under Section 78B-22-406 that are consistent with the commission's core principles;

(g) create and enter into contracts consistent with Section 78B-22-454 to provide indigent defense services for an indigent defense [~~inmate~~] incarcerated individual who:

(i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth

class as classified in Section 17-50-501;

(ii) is charged with having committed a crime within that state prison; and

(iii) has been appointed counsel in accordance with Section 78B-22-203;

(h) assist the commission in developing and reviewing advisory caseload guidelines and procedures;

(i) investigate, audit, and review the provision of indigent defense services to ensure compliance with the commission's core principles for the effective representation of indigent individuals;

(j) administer the Child Welfare Parental Representation Program in accordance with Part 8, Child Welfare Parental Representation Program;

(k) annually report to the governor, Legislature, Judiciary Interim Committee, and Judicial Council, regarding:

(i) the operations of the commission;

(ii) the operations of the indigent defense systems in the state; and

(iii) compliance with the commission's core principles by indigent defense systems receiving grants from the commission;

(l) submit recommendations to the commission for improving indigent defense services in the state;

(m) publish an annual report on the commission's website; and

(n) perform all other duties assigned by the commission related to indigent defense services.

(2) The office may enter into contracts and accept, allocate, and administer funds and grants from any public or private person to accomplish the duties of the office.

(3) Any contract entered into under this part shall require that indigent defense services are provided in a manner consistent with the commission's core principles implemented under Section 78B-22-404.

Section ~~{150}~~149. Section **78B-22-454** is amended to read:

78B-22-454. Defense of indigent incarcerated individuals.

(1) The office shall pay for indigent defense services for indigent [~~inmates~~] incarcerated individuals from the Indigent [~~Inmate~~] Incarcerated Individual Fund created in Section 78B-22-455.

(2) A contract under this part shall ensure that indigent defense services are provided in a manner consistent with the core principles described in Section 78B-22-404.

(3) The county attorney or district attorney of a county of the third, fourth, fifth, or sixth class shall function as the prosecuting entity.

(4) (a) A county of the third, fourth, fifth, or sixth class where a state prison is located may impose an additional property tax levy by ordinance at .0001 per dollar of taxable value in the county.

(b) If the county governing body imposes the additional property tax levy by ordinance, the revenue shall be deposited into the Indigent [~~Inmate~~] Incarcerated Individual Fund as provided in Section 78B-22-455 to fund the purposes of this part.

(c) Upon notification that the fund has reached the amount specified in Subsection 78B-22-455(6), a county shall deposit revenue derived from the property tax levy after the county receives the notice into a county account used exclusively to provide indigent defense services.

(d) A county that chooses not to impose the additional levy by ordinance may not receive any benefit from the Indigent [~~Inmate~~] Incarcerated Individual Fund.

Section ~~{151}~~150. Section **78B-22-455** is amended to read:

78B-22-455. Indigent Incarcerated Individual Fund.

(1) There is created a custodial fund known as the "Indigent [~~Inmate~~] Incarcerated Individual Fund" to be disbursed by the office in accordance with contracts entered into under Subsection 78B-22-452(1)(g).

(2) Money deposited into this fund shall only be used:

(a) to pay indigent defense services for an indigent [~~inmate~~] incarcerated individual who:

(i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501;

(ii) is charged with having committed a crime within that state prison; and

(iii) has been appointed counsel in accordance with Section 78B-22-203; and

(b) to cover costs of administering the Indigent [~~Inmate~~] Incarcerated Individual Fund.

(3) The fund consists of:

(a) proceeds received from counties that impose the additional tax levy by ordinance

under Subsection 78B-22-454(4), which shall be the total county obligation for payment of costs listed in Subsection (2) for defense services for indigent [~~inmates~~] incarcerated individuals;

(b) appropriations made to the fund by the Legislature; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) (a) In any calendar year in which the fund has insufficient funding, or is projected to have insufficient funding, the commission shall request a supplemental appropriation from the Legislature in the following general session to provide sufficient funding.

(b) The state shall pay any or all of the reasonable and necessary money to provide sufficient funding into the Indigent [~~Inmate~~] Incarcerated Individual Fund.

(6) The fund is capped at $1,000,000.

(7) The office shall notify the contributing counties when the fund approaches $1,000,000 and provide each county with the amount of the balance in the fund.

(8) Upon notification by the office that the fund is near the limit imposed in Subsection (6), the counties may contribute enough money to enable the fund to reach $1,000,000 and discontinue contributions until notified by the office that the balance has fallen below $1,000,000, at which time counties that meet the requirements of Section 78B-22-454 shall resume contributions.

Section ~~{152}~~151. Section **78B-22-701** is amended to read:

78B-22-701. Establishment of Indigent Aggravated Murder Defense Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense Fund.

(2) (a) There is established a custodial fund known as the "Indigent Aggravated Murder Defense Fund."

(b) The Division of Finance shall disburse money from the fund at the direction of the board and subject to this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 78B-22-702

and 78B-22-703;

(b) appropriations made to the fund by the Legislature as provided in Section 78B-22-703; and

(c) interest and earnings from the investment of fund money.

(4) The state treasurer shall invest fund money with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of constitutionally effective defense for indigent individuals prosecuted for the violation of state laws in cases involving aggravated murder.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent individual, other than a state [~~inmate~~] incarcerated individual in a state prison, prosecuted for aggravated murder in a participating county; and

(b) for administrative costs pursuant to Section 78B-22-501.

Section ~~{153}~~152. Section **80-6-204** is amended to read:

80-6-204. Detention or confinement of a minor -- Restrictions.

(1) Except as provided in Subsection (2) or this chapter, if a child is apprehended by a peace officer, or brought before a court for examination under state law, the child may not be confined:

(a) in a jail, lockup, or cell used for an adult who is charged with a crime; or

(b) in secure care .

(2) (a) The division shall detain a child in accordance with Sections 80-6-502, 80-6-504, and 80-6-505 if:

(i) the child is charged with an offense under Section 80-6-502 or 80-6-503;

(ii) the district court has obtained jurisdiction over the offense because the child is bound over to the district court under Section 80-6-504; and

(iii) the juvenile or district court orders the detention of the child.

(b) (i) If a child is detained before a detention hearing, or a preliminary hearing under Section 80-6-504 if a criminal information is filed for the child under Section 80-6-503, the child may only be held in certified juvenile detention accommodations in accordance with rules

made by the commission.

(ii) The commission's rules shall include rules for acceptable sight and sound separation from adult [~~inmates~~] incarcerated individuals.

(iii) The commission shall certify that a correctional facility is in compliance with the commission's rules.

(iv) This Subsection (2)(b) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(3) (a) In an area of low density population, the commission may, by rule, approve a juvenile detention accommodation within a correctional facility that has acceptable sight and sound separation.

(b) An accommodation described in Subsection (3)(a) shall be used only:

(i) for short-term holding of a child who is alleged to have committed an act that would be a criminal offense if committed by an adult; and

(ii) for a maximum confinement period of six hours.

(c) A child may only be held in an accommodation described in Subsection (3)(a) for:

(i) identification;

(ii) notification of a juvenile court official;

(iii) processing; and

(iv) allowance of adequate time for evaluation of needs and circumstances regarding the release or transfer of the child to a shelter or detention facility.

(d) This Subsection (3) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(4) (a) If a child is alleged to have committed an act that would be a criminal offense if committed by an adult, the child may be detained in a holding room in a local law enforcement agency facility:

(i) for a maximum of two hours; and

(ii) (A) for identification or interrogation; or

(B) while awaiting release to a parent or other responsible adult.

(b) A holding room described in Subsection (4)(a) shall be certified by the commission in accordance with the commission's rules.

(c) The commission's rules shall include provisions for constant supervision and for

sight and sound separation from adult [~~inmates~~] incarcerated individuals.

(5) Willful failure to comply with this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of:

(i) a child who requires detention before trial or examination, or is placed in secure detention after an adjudication under Section 80-6-704; and

(ii) a juvenile offender under Subsection 80-6-806(7).

(b) Subsection (6)(a) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(c) (i) The commission shall provide standards for custody or detention under Subsections (2)(b), (3), and (4).

(ii) The division shall determine and set standards for conditions of care and confinement of children in detention facilities.

(d) (i) The division, or a public or private agency willing to undertake temporary custody or detention upon agreed terms in a contract with the division, shall provide all other custody or detention in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems.

(ii) This Subsection (6)(d) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(7) Except as otherwise provided by this chapter, if an individual who is, or appears to be, under 18 years old is received at a correctional facility, the sheriff, warden, or other official, in charge of the correctional facility shall:

(a) immediately notify the juvenile court of the individual; and

(b) make arrangements for the transfer of the individual to a detention facility, unless otherwise ordered by the juvenile court.

Section ~~{154}~~153. **Repealer.**

This bill repeals:

Section **77-16b-101, Title.**

Section ~~{155}~~154. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the terms "prisoner" and "inmate" with "incarcerated individual" in any new language added to the Utah Code by legislation

passed during the 2023 General Session.