

SB0188S03 compared with SB0188S02

~~text~~ shows text that was in SB0188S02 but was deleted in SB0188S03.

text shows text that was not in SB0188S02 but was inserted into SB0188S03.

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Representative Ryan D. Wilcox proposes the following substitute bill:

INMATE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: Melissa G. Ballard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Health and Human Services to establish a pilot program for medical monitoring;~~and~~
- ▶ 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

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

26B-4-301, Utah Code Annotated 1953

64-13-49, Utah Code Annotated 1953

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

Section 1. Section **26B-4-301** is enacted to read:

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

As used in this section:

(1) "Correctional facility" means a facility operated to house inmates 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) "Inmate" means an individual who is:

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

(b) housed at a correctional facility or at a county jail at the request of the 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;

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

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

(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 2. 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

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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 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" 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

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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 inmate's physician, an illness that substantially impairs the inmate's quality of life.

(18) "Serious injury" means, as determined by the inmate'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 3. Section **64-13-49** is enacted to read:

64-13-49. Inmate 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 inmate, a correctional facility shall provide the inmate with a form that allows the inmate to designate a contact to whom the correctional facility may release the ~~inmates~~inmate'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 inmate's designated contact that the inmate sustained a serious

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injury or contracted a serious illness within five days after:

(i) the day on which the inmate sustains the serious injury or contracts the serious illness; or

(ii) if the inmate is transferred to a health care facility as a result of the serious injury or serious illness, the day on which the inmate is released from the health care facility;

(b) attempt to notify the designated contact within 24 hours after the death of the inmate and include the manner of death in the notification, if known; or

(c) attempt to notify the designated contact if the inmate's physician determines notification is necessary because the inmate has a medical condition that:

(i) renders the inmate incapable of making health care decisions; or

(ii) may result in the inmate 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 4. 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:

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(A) a prisoner, as defined in Section 76-5-101, and includes a prisoner 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

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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).