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CRIMINAL JUSTICE AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Karianne Lisonbee
Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends provisions related to the criminal justice system.

Highlighted Provisions:

This bill:

- amends provisions regarding the chair of a Criminal Justice Coordinating Council;
- amends the crime for an escape;
- moves the crime for an aggravated escape to a separate statute;
- addresses the use of an algorithm or a risk assessment tool score in determinations about pretrial release, diversion, sentencing, probation, and parole;
- requires the Administrative Office of the Courts to collect data regarding the total scores for pretrial risk assessment tools and on whether a defendant was previously convicted of an offense; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 17-22-5**, as last amended by Laws of Utah 2004, Chapter 301
- 17-55-201**, as last amended by Laws of Utah 2023, Chapters 249, 257
- 53-10-403**, as last amended by Laws of Utah 2023, Chapters 328, 457
- 63A-16-1002**, as last amended by Laws of Utah 2023, Chapters 158, 161, 382, and 448
- 64-13-14.5**, as last amended by Laws of Utah 2015, Chapter 412

28 **76-5-203**, as last amended by Laws of Utah 2022, Chapter 181
 29 **77-2-5**, as last amended by Laws of Utah 2021, Chapters 43, 260
 30 **77-18-103**, as last amended by Laws of Utah 2023, Chapter 155
 31 **77-18-105**, as last amended by Laws of Utah 2023, Chapters 111, 257
 32 **77-20-205**, as last amended by Laws of Utah 2023, Chapters 408, 447
 33 **77-27-5**, as last amended by Laws of Utah 2023, Chapters 151, 173
 34 **78A-2-109.5**, as last amended by Laws of Utah 2023, Chapter 441

35 ENACTS:

36 **76-8-309.1**, Utah Code Annotated 1953

37 REPEALS AND REENACTS:

38 **76-8-309**, as last amended by Laws of Utah 2022, Chapter 181

39

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

41 Section 1. Section **17-22-5** is amended to read:

42 **17-22-5 . Sheriff's classification of jail inmates -- Classification criteria --**

43 **Alternative incarceration programs -- Limitation.**

- 44 (1) Except as provided in Subsection (4), the sheriff shall adopt and implement written
 45 policies for admission of prisoners to the county jail and the classification of persons
 46 incarcerated in the jail which shall provide for the separation of prisoners by gender and
 47 by such other factors as may reasonably provide for the safety and well-being of inmates
 48 and the community. To the extent authorized by law, any written admission policies
 49 shall be applied equally to all entities using the county correctional facilities.
- 50 (2) Except as provided in Subsection (4), each county sheriff shall assign prisoners to a
 51 facility or section of a facility based on classification criteria that the sheriff develops
 52 and maintains.
- 53 (3) (a) Except as provided in Subsection (4), a county sheriff may develop and
 54 implement alternative incarceration programs that may or may not involve housing a
 55 prisoner in a jail facility.
- 56 (b) A prisoner housed under an alternative incarceration program under Subsection
 57 (3)(a) shall be considered to be in the full custody and control of the sheriff for
 58 purposes of ~~[Section]~~ Sections 76-8-309 and 76-8-309.1.
- 59 (c) A prisoner may not be placed in an alternative incarceration program under
 60 Subsection (3)(a) unless:
- 61 (i) the jail facility is at maximum operating capacity, as established under Subsection

62 17-22-5.5(2); or

63 (ii) ordered by the court.

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

67 Section 2. Section **17-55-201** is amended to read:

68 **17-55-201 . Criminal justice coordinating councils -- Creation -- Strategic plan --**
69 **Reporting requirements.**

70 (1) (a) Beginning January 1, 2023, a county shall:

71 (i) create a criminal justice coordinating council; or

72 (ii) jointly with another county or counties, create a criminal justice coordinating
73 council.

74 (b) The purpose of a council is to coordinate and improve components of the criminal
75 justice system in the county or counties.

76 (2) (a) A council shall include:

77 (i) one county commissioner or county council member;

78 (ii) the county sheriff or the sheriff's designee;

79 (iii) one chief of police of a municipality within the county or the chief's designee;

80 (iv) the county attorney or the attorney's designee;

81 (v) one public defender or attorney who provides public defense within the county;

82 (vi) one district court judge;

83 (vii) one justice court judge;

84 (viii) one representative from the Division of Adult Probation and Parole within the
85 Department of Corrections;

86 (ix) one representative from the local mental health authority within the county; and

87 (x) one individual who is:

88 (A) a crime victim; or

89 (B) a victim advocate, as defined in Section 77-38-403.

90 (b) A council may include:

91 (i) an individual representing:

92 (A) local government;

93 (B) human services programs;

94 (C) higher education;

95 (D) peer support services;

- 96 (E) workforce services;
- 97 (F) local housing services;
- 98 (G) mental health or substance use disorder providers;
- 99 (H) a health care organization within the county;
- 100 (I) a local homeless council;
- 101 (J) family counseling and support groups; or
- 102 (K) organizations that work with families of incarcerated individuals; or
- 103 (ii) an individual with lived experiences in the criminal justice system.
- 104 [~~(3) A council shall rotate the position of the chair among the members.~~]
- 105 (3) (a) A member who is an elected county official shall serve as chair of the council.
- 106 (b) The council shall elect the member to serve as chair under Subsection (3)(a).
- 107 (4) (a) A council shall develop and implement a strategic plan for the county's or
- 108 counties' criminal justice system that includes:
- 109 (i) mapping of all systems, resources, assets, and services within the county's or
- 110 counties' criminal justice system;
- 111 (ii) a plan for data sharing across the county's or counties' criminal justice system;
- 112 (iii) recidivism reduction objectives; and
- 113 (iv) community reintegration goals.
- 114 (b) The commission may assist a council in the development of a strategic plan.
- 115 (5) As part of the council's duties described in Subsection (4)(a)(i), the council shall prepare
- 116 a list of private probation providers for a court to provide to defendants as described in
- 117 Section 77-18-105.
- 118 (6) Before November 30 of each year, a council shall provide a written report to the
- 119 commission regarding:
- 120 (a) the implementation of a strategic plan described in Subsection (4); and
- 121 (b) any data on the impact of the council on the criminal justice system in the county or
- 122 counties.
- 123 Section 3. Section **53-10-403** is amended to read:
- 124 **53-10-403 . DNA specimen analysis -- Application to offenders, including minors.**
- 125 (1) Sections 53-10-403.6, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any
- 126 person who:
- 127 (a) has pled guilty to or has been convicted of any of the offenses under Subsection
- 128 (2)(a) or (b) on or after July 1, 2002;
- 129 (b) has pled guilty to or has been convicted by any other state or by the United States

- 130 government of an offense which if committed in this state would be punishable as
131 one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;
132 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any
133 offense under Subsection (2)(c);
134 (d) has been booked:
135 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May
136 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any
137 felony offense; or
138 (ii) on or after January 1, 2015, for any felony offense; or
139 (e) is a minor under Subsection (3).
- 140 (2) Offenses referred to in Subsection (1) are:
- 141 (a) any felony or class A misdemeanor under the Utah Code;
142 (b) any offense under Subsection (2)(a):
143 (i) for which the court enters a judgment for conviction to a lower degree of offense
144 under Section 76-3-402; or
145 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
146 defined in Section 77-2a-1; or
147 (c) (i) any violent felony as defined in Section 53-10-403.5;
148 (ii) sale or use of body parts, Section 26B-8-315;
149 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;
150 (iv) operating a motor vehicle with any amount of a controlled substance in an
151 individual's body and causing serious bodily injury or death, as codified before
152 May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8
153 (2)(g);
154 (v) a felony violation of enticing a minor, Section 76-4-401;
155 (vi) negligently operating a vehicle resulting in injury, Subsection 76-5-102.1(2)(b);
156 (vii) a felony violation of propelling a substance or object at a correctional officer, a
157 peace officer, or an employee or a volunteer, including health care providers,
158 Section 76-5-102.6;
159 (viii) negligently operating a vehicle resulting in death, Subsection 76-5-207(2)(b);
160 (ix) aggravated human trafficking, Section 76-5-310, and aggravated human
161 smuggling, Section 76-5-310.1;
162 (x) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
163 (xi) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

- 164 (xii) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
- 165 (xiii) sale of a child, Section 76-7-203;
- 166 (xiv) aggravated escape, [~~Subsection 76-8-309(2)~~] Section 76-8-309.1;
- 167 (xv) a felony violation of assault on an elected official, Section 76-8-315;
- 168 (xvi) influencing, impeding, or retaliating against a judge or member of the Board of
- 169 Pardons and Parole, Section 76-8-316;
- 170 (xvii) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 171 (xviii) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 172 (xix) a felony violation of sexual battery, Section 76-9-702.1;
- 173 (xx) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 174 (xxi) a felony violation of abuse or desecration of a dead human body, Section
- 175 76-9-704;
- 176 (xxii) manufacture, possession, sale, or use of a weapon of mass destruction, Section
- 177 76-10-402;
- 178 (xxiii) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
- 179 Section 76-10-403;
- 180 (xxiv) possession of a concealed firearm in the commission of a violent felony,
- 181 Subsection 76-10-504(4);
- 182 (xxv) assault with the intent to commit bus hijacking with a dangerous weapon,
- 183 Subsection 76-10-1504(3);
- 184 (xxvi) commercial obstruction, Subsection 76-10-2402(2);
- 185 (xxvii) a felony violation of failure to register as a sex or kidnap offender, Section
- 186 77-41-107;
- 187 (xxviii) repeat violation of a protective order, Subsection 77-36-1.1(4); or
- 188 (xxix) violation of condition for release after arrest under Section 78B-7-802.
- 189 (3) A minor under Subsection (1) is a minor 14 years old or older who is adjudicated by the
- 190 juvenile court due to the commission of any offense described in Subsection (2), and
- 191 who:
- 192 (a) committed an offense under Subsection (2) within the jurisdiction of the juvenile
- 193 court on or after July 1, 2002; or
- 194 (b) is in the legal custody of the Division of Juvenile Justice and Youth Services on or
- 195 after July 1, 2002, for an offense under Subsection (2).
- 196 Section 4. Section **63A-16-1002** is amended to read:
- 197 **63A-16-1002 . Criminal and juvenile justice database.**

- 198 (1) The commission shall oversee the creation and management of a criminal and juvenile
199 justice database for information and data required to be reported to the commission,
200 organized by county, and accessible to all criminal justice agencies in the state.
- 201 (2) The division shall assist with the development and management of the database.
- 202 (3) The division, in collaboration with the commission, shall create:
- 203 (a) master standards and formats for information submitted to the database;
- 204 (b) a portal, bridge, website, or other method for reporting entities to provide the
205 information;
- 206 (c) a master data management index or system to assist in the retrieval of information in
207 the database;
- 208 (d) a protocol for accessing information in the database that complies with state privacy
209 regulations; and
- 210 (e) a protocol for real-time audit capability of all data accessed through the portal by
211 participating data source, data use entities, and regulators.
- 212 (4) Each criminal justice agency charged with reporting information to the commission
213 shall provide the data or information to the database in a form prescribed by the
214 commission.
- 215 (5) The database shall be the repository for the statutorily required data described in:
- 216 (a) Section 13-53-111, recidivism reporting requirements;
- 217 (b) Section 17-22-32, county jail reporting requirements;
- 218 (c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;
- 219 (d) Section 41-6a-511, courts to collect and maintain data;
- 220 (e) Section 53-23-101, reporting requirements for reverse-location warrants;
- 221 (f) Section 53-24-102, sexual assault offense reporting requirements for law
222 enforcement agencies;
- 223 (g) Section 63M-7-214, law enforcement agency grant reporting;
- 224 (h) Section 63M-7-216, prosecutorial data collection;
- 225 (i) Section 64-13-21, supervision of sentenced offenders placed in community;
- 226 (j) Section 64-13-25, standards for programs;
- 227 (k) Section 64-13-45, department reporting requirements;
- 228 (l) Section 64-13e-104, housing of state probationary inmates or state parole inmates;
- 229 (m) Section 77-7-8.5, use of tactical groups;
- 230 (n) Section 77-11b-404, forfeiture reporting requirements;
- 231 (o) Section 77-20-103, release data requirements;

- 232 (p) Section 77-22-2.5, court orders for criminal investigations;
 233 (q) Section 78A-2-109.5, court [~~demographics reporting~~] data collection on criminal cases;
 234 (r) Section 80-6-104, data collection on offenses committed by minors; and
 235 (s) any other statutes which require the collection of specific data and the reporting of
 236 that data to the commission.

237 (6) The commission shall report:

- 238 (a) progress on the database, including creation, configuration, and data entered, to the
 239 Law Enforcement and Criminal Justice Interim Committee not later than November
 240 2022; and
 241 (b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal
 242 Justice Interim Committee, the House Law Enforcement and Criminal Justice
 243 Standing Committee, and the Senate Judiciary, Law Enforcement and Criminal
 244 Justice Standing Committee not later than January 16, 2023.

245 Section 5. Section **64-13-14.5** is amended to read:

246 **64-13-14.5 . Limits of confinement place -- Release status -- Work release.**

- 247 (1) The department may extend the limits of the place of confinement of an inmate when, as
 248 established by department policies and procedures, there is cause to believe the inmate
 249 will honor the trust, by authorizing the inmate under prescribed conditions:
 250 (a) to leave temporarily for purposes specified by department policies and procedures to
 251 visit specifically designated places for a period not to exceed 30 days;
 252 (b) to participate in a voluntary training program in the community while housed at a
 253 correctional facility or to work at paid employment;
 254 (c) to be housed in a nonsecure community correctional center operated by the
 255 department; or
 256 (d) to be housed in any other facility under contract with the department.
 257 (2) The department shall establish rules governing offenders on release status. A copy of
 258 the rules shall be furnished to the offender and to any employer or other person
 259 participating in the offender's release program. Any employer or other participating
 260 person shall agree in writing to abide by the rules and to notify the department of the
 261 offender's discharge or other release from a release program activity, or of any violation
 262 of the rules governing release status.
 263 (3) The willful failure of an inmate to remain within the extended limits of his confinement
 264 or to return within the time prescribed to an institution or facility designated by the
 265 department is an escape from custody.

- 266 (4) If an offender is arrested for the commission of a crime, the arresting authority shall
267 immediately notify the department of the arrest.
- 268 (5) The department may impose appropriate sanctions pursuant to Section 64-13-21 upon
269 offenders who violate guidelines established by the Utah Sentencing Commission,
270 including prosecution for escape under Section 76-8-309 or 76-8-309.1 and for
271 unauthorized absence.
- 272 (6) An inmate who is housed at a nonsecure correctional facility and on work release may
273 not be required to work for less than the current federally established minimum wage, or
274 under substandard working conditions.

275 Section 6. Section **76-5-203** is amended to read:

276 **76-5-203 . Murder -- Penalties-- Affirmative defense and special mitigation --**
277 **Separate offenses.**

- 278 (1) (a) As used in this section, "predicate offense" means:
- 279 (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
- 280 (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused
281 individual is younger than 18 years old;
- 282 (iii) kidnapping under Section 76-5-301;
- 283 (iv) child kidnapping under Section 76-5-301.1;
- 284 (v) aggravated kidnapping under Section 76-5-302;
- 285 (vi) rape under Section 76-5-402;
- 286 (vii) rape of a child under Section 76-5-402.1;
- 287 (viii) object rape under Section 76-5-402.2;
- 288 (ix) object rape of a child under Section 76-5-402.3;
- 289 (x) forcible sodomy under Section 76-5-403;
- 290 (xi) sodomy upon a child under Section 76-5-403.1;
- 291 (xii) forcible sexual abuse under Section 76-5-404;
- 292 (xiii) sexual abuse of a child under Section 76-5-404.1;
- 293 (xiv) aggravated sexual abuse of a child under Section 76-5-404.3;
- 294 (xv) aggravated sexual assault under Section 76-5-405;
- 295 (xvi) arson under Section 76-6-102;
- 296 (xvii) aggravated arson under Section 76-6-103;
- 297 (xviii) burglary under Section 76-6-202;
- 298 (xix) aggravated burglary under Section 76-6-203;
- 299 (xx) robbery under Section 76-6-301;

- 300 (xxi) aggravated robbery under Section 76-6-302;
- 301 (xxii) escape [~~or aggravated escape~~] under Section 76-8-309;
- 302 (xxiii) aggravated escape under Section 76-8-309.1; or
- 303 [~~(xxiii)~~] (xxiv) a felony violation of Section 76-10-508 or 76-10-508.1 regarding
- 304 discharge of a firearm or dangerous weapon.
- 305 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 306 (2) An actor commits murder if:
- 307 (a) the actor intentionally or knowingly causes the death of another individual;
- 308 (b) intending to cause serious bodily injury to another individual, the actor commits an
- 309 act clearly dangerous to human life that causes the death of the other individual;
- 310 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 311 actor knowingly engages in conduct that creates a grave risk of death to another
- 312 individual and thereby causes the death of the other individual;
- 313 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 314 flight from the commission or attempted commission of any predicate offense, or
- 315 is a party to the predicate offense;
- 316 (ii) an individual other than a party described in Section 76-2-202 is killed in the
- 317 course of the commission, attempted commission, or immediate flight from the
- 318 commission or attempted commission of any predicate offense; and
- 319 (iii) the actor acted with the intent required as an element of the predicate offense;
- 320 (e) the actor recklessly causes the death of a peace officer or military service member in
- 321 uniform while in the commission or attempted commission of:
- 322 (i) an assault against a peace officer under Section 76-5-102.4;
- 323 (ii) interference with a peace officer while making a lawful arrest under Section
- 324 76-8-305 if the actor uses force against the peace officer; or
- 325 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
- 326 or
- 327 (f) the actor commits a homicide that would be aggravated murder, but the offense is
- 328 reduced in accordance with Subsection 76-5-202(4).
- 329 (3) (a) (i) A violation of Subsection (2) is a first degree felony.
- 330 (ii) A defendant who is convicted of murder shall be sentenced to imprisonment for
- 331 an indeterminate term of not less than 15 years and which may be for life.
- 332 (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder,
- 333 or alternatively, attempted murder, as described in this section are proved beyond a

334 reasonable doubt, and also finds that the existence of special mitigation is established
335 by a preponderance of the evidence and in accordance with Section 76-5-205.5, the
336 court shall enter a judgment of conviction as follows:

337 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
338 judgment of conviction for manslaughter; or

339 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall,
340 notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment
341 of conviction for attempted manslaughter.

342 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
343 defendant caused the death of another individual or attempted to cause the death of
344 another individual under a reasonable belief that the circumstances provided a legal
345 justification or excuse for the conduct although the conduct was not legally justifiable
346 or excusable under the existing circumstances.

347 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
348 the viewpoint of a reasonable person under the then existing circumstances.

349 (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or
350 alternatively, attempted murder, as described in this section are proved beyond a
351 reasonable doubt, and also finds the affirmative defense described in this Subsection
352 (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of
353 conviction as follows:

354 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
355 judgment of conviction for manslaughter; or

356 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall
357 enter a judgment of conviction for attempted manslaughter.

358 (5) (a) Any predicate offense that constitutes a separate offense does not merge with the
359 crime of murder.

360 (b) An actor who is convicted of murder, based on a predicate offense that constitutes a
361 separate offense, may also be convicted of, and punished for, the separate offense.

362 Section 7. Section **76-8-309** is repealed and reenacted to read:

363 **76-8-309 . Escape.**

364 (1) (a) As used in this section:

365 (i) "Agency" means a law enforcement agency, the Department of Corrections, a
366 county or district attorney's office, the Office of the Attorney General, the Board
367 of Pardons and Parole, or the judicial branch, including the Judicial Council, the

- 368 Administrative Office of the Courts, or a similar administrative unit of the judicial
369 branch.
- 370 (ii) "Confinement in a state prison" means:
- 371 (A) (I) the individual is housed in a state prison, or any other facility in
372 accordance with a contract with the Department of Corrections or Section
373 80-6-507, after being sentenced and committed;
- 374 (II) the individual's sentence has not been terminated or voided; and
375 (III) the individual is not on parole;
- 376 (B) the individual is being housed in a county jail, after felony commitment, in
377 accordance with a contract with the Department of Corrections;
- 378 (C) the individual is on parole and the individual is in prehearing custody after an
379 arrest for a parole violation;
- 380 (D) the individual is housed in a state prison and is being transported as a prisoner
381 in the state prison by a correctional officer; or
- 382 (E) the individual is housed in a state prison, or any other facility in accordance
383 with a contract with the Department of Corrections or Section 80-6-507, and
384 the individual is permitted to leave temporarily for a work release or home visit
385 and is required to return at a designated time.
- 386 (iii) "Lawful authorization" does not include authorization to leave official custody,
387 or to remove or disable a tracking device, if the authorization was obtained by
388 means of deceit, fraud, or other artifice.
- 389 (iv) (A) "Offender" means an individual who is in official custody.
- 390 (B) "Offender" includes an individual who is under trusty status.
- 391 (v) "Official custody" means:
- 392 (A) confinement in a state prison;
- 393 (B) the individual is lawfully detained in a facility for secure confinement of
394 minors that is operated by the Division of Juvenile Justice Services;
- 395 (C) (I) the individual is lawfully detained in a county jail before trial or
396 sentencing or the individual is housed in a county jail after sentencing and
397 commitment;
- 398 (II) the individual's sentence has not been terminated or voided; and
399 (III) the individual is not on parole or probation;
- 400 (D) the individual is lawfully detained following an arrest regardless of whether
401 the individual was arrested with or without a warrant; or

- 402 (E) the individual is on probation and the individual is in prehearing custody after
403 an arrest for a probation violation.
- 404 (vi) (A) "Tracking device" means a device that reveals the device's location or
405 movement by the transmission or recording of an electronic signal.
- 406 (B) "Tracking device" includes a satellite-based radio navigation system.
- 407 (vii) "Volunteer" means a person who donates service without pay or other
408 compensation except for expenses actually and reasonably incurred with approval
409 by the supervising agency.
- 410 (b) Terms defined in Sections 76-1-101.5 and 76-8-101 apply to this section.
- 411 (2) An actor commits escape if the actor:
- 412 (a) is an offender who, without lawful authorization:
- 413 (i) leaves official custody; or
- 414 (ii) intentionally or knowingly removes, disables, or permits the removal or disabling
415 of, a tracking device that is installed or employed as an alternative to
416 incarceration; or
- 417 (b) (i) is convicted as a party to an offense under this section, as described in Section
418 76-2-202; and
- 419 (ii) is an employee at, or a volunteer of, an agency.
- 420 (3) (a) Except as provided by Subsection (3)(b) or Section 76-8-309.1, a violation of
421 Subsection (2)(a) is a third degree felony.
- 422 (b) Except as provided by Section 76-8-309.1, a violation of Subsection (2)(a) is a
423 second degree felony if the actor leaves confinement in a state prison without lawful
424 authorization, including failing to return from a work release or home visit by the
425 time designated for return.
- 426 (c) Except as provided in Section 76-8-309.1, a violation of Subsection (2)(b) is a
427 second degree felony.
- 428 (4) (a) For purposes of an attempt to commit an escape under Section 76-4-102, the
429 conception of the design to escape is conduct constituting a substantial step toward
430 the commission of the crime.
- 431 (b) For purposes of a conspiracy to commit an escape under Section 76-4-201, the
432 conception of the design to escape is an overt act in pursuance of the conspiracy to
433 commit the crime.
- 434 (c) For an inchoate offense of escape, an escape is considered a continuing activity that
435 commences with the conception of the design to escape and continues until the actor's

- 436 attempt to escape is thwarted or abandoned or the actor commits the escape as
 437 described in Subsection (2)(a).
- 438 (5) For a completed offense of escape, an escape is considered a continuing activity that
 439 commences when the actor commits an escape as described in Subsection (2)(a) and
 440 continues until the actor is returned to official custody or the actor's escape is thwarted
 441 or abandoned.
- 442 (6) A court sentencing an actor for a violation of this section shall impose a consecutive
 443 sentence to any other sentence the actor is either serving or ordered to serve.

444 Section 8. Section **76-8-309.1** is enacted to read:

445 **76-8-309.1 . Aggravated escape.**

- 446 (1) (a) As used in this section, "escape" means an offense under Section 76-8-309.
 447 (b) Terms defined in Sections 76-1-101.5 and 76-8-101 apply to this section.
- 448 (2) An actor commits aggravated escape if, during the course of the commission of an
 449 escape, the actor:
- 450 (a) uses a dangerous weapon; or
 451 (b) causes serious bodily injury to another.
- 452 (3) A violation of Subsection (2) is a first degree felony.
- 453 (4) A court sentencing an actor for a violation of this section shall impose a consecutive
 454 sentence to any other sentence the actor is either serving or ordered to serve.

455 Section 9. Section **77-2-5** is amended to read:

456 **77-2-5 . Diversion agreement -- Negotiation -- Contents.**

- 457 (1) At any time after the commencement of prosecution and before conviction, the
 458 prosecuting attorney may, by written agreement with the defendant, filed with the court,
 459 and upon approval of the court, divert a defendant to a non-criminal diversion program.
- 460 (2) A defendant shall be represented by counsel during negotiations for diversion and at the
 461 time of execution of any diversion agreement unless the defendant has knowingly and
 462 intelligently waived the defendant's right to counsel.
- 463 (3) The defendant has the right to be represented by counsel at any court hearing relating to
 464 a diversion program.
- 465 (4) (a) A diversion agreement, entered into between the prosecuting attorney and the
 466 defendant and approved by a [magistrate] court, shall contain a full, detailed statement
 467 of the requirements agreed to by the defendant and the reasons for diversion.
 468 (b) The diversion agreement described in Subsection (4)(a) shall include an agreement,
 469 by the parties, for a specific amount of restitution that the defendant will pay, unless

- 470 the prosecuting attorney certifies that:
- 471 (i) the prosecuting attorney has consulted with all victims, including the Utah Office
472 for Victims of Crime; and
- 473 (ii) the defendant does not owe any restitution.
- 474 (5) (a) If the court approves a diversion agreement that includes an agreement by the
475 parties for the amount of restitution that the defendant will pay, the court shall order
476 the defendant to pay restitution in accordance with the terms of the diversion
477 agreement.
- 478 (b) The court shall collect, receive, process, and distribute payments for restitution to the
479 victim, unless otherwise provided by law or by the diversion agreement.
- 480 (6) A decision by a prosecuting attorney not to divert a defendant is not subject to judicial
481 review.
- 482 (7) A diversion agreement entered into between the prosecution and the defense and
483 approved by a magistrate may contain an order that the defendant pay a nonrefundable
484 diversion fee that:
- 485 (a) shall be allocated in the same manner as if paid as a fine for a criminal conviction
486 under Section 78A-5-110 or Section 78A-7-120; and
- 487 (b) may not exceed the suggested fine listed in the Uniform Fine Schedule adopted by
488 the Judicial Council.
- 489 (8) A diversion agreement may not be approved unless the defendant knowingly and
490 intelligently waives the defendant's constitutional right to a speedy trial before a
491 magistrate and in the diversion agreement.
- 492 (9) (a) The court shall, on the defendant's request, consider the defendant's ability to pay
493 a diversion fee before ordering the defendant to pay a diversion fee.
- 494 (b) The court may:
- 495 (i) consider any relevant evidence in determining the defendant's ability to pay a
496 diversion fee; and
- 497 (ii) lower or waive the diversion fee based on that evidence.
- 498 (10) A diversion program longer than two years is not permitted.
- 499 (11) The court may not rely solely on an algorithm or a risk assessment tool score in
500 determining whether the court should approve the defendant's diversion to a
501 non-criminal diversion program.
- 502 Section 10. Section **77-18-103** is amended to read:
- 503 **77-18-103 . Presentence investigation report -- Classification of presentence**

504 **investigation report -- Evidence or other information at sentencing.**

- 505 (1) Before the imposition of a sentence, the court may:
- 506 (a) upon agreement of the defendant, continue the date for the imposition of the sentence
507 for a reasonable period of time for the purpose of obtaining a presentence
508 investigation report from the department or a law enforcement agency, or information
509 from any other source about the defendant; and
- 510 (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the
511 department or a law enforcement agency prepare a presentence investigation report
512 for the defendant.
- 513 (2) If a presentence investigation report is required under the standards established by the
514 department described in Section 77-18-109, the presentence investigation report under
515 Subsection (1) shall include:
- 516 (a) any impact statement provided by a victim as described in Subsection 77-38b-203
517 (3)(c);
- 518 (b) information on restitution as described in Subsections 77-38b-203(3)(a) and (b);
- 519 (c) findings from any screening and any assessment of the defendant conducted under
520 Section 77-18-104;
- 521 (d) recommendations for treatment for the defendant; and
- 522 (e) the number of days since the commission of the offense that the defendant has spent
523 in the custody of the jail and the number of days, if any, the defendant was released
524 to a supervised release program or an alternative incarceration program under Section
525 17-22-5.5.
- 526 (3) The department or law enforcement agency shall provide the presentence investigation
527 report to the defendant's attorney, or the defendant if the defendant is not represented by
528 counsel, the prosecuting attorney, and the court for review within three working days
529 before the day on which the defendant is sentenced.
- 530 (4) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that
531 is not resolved by the parties and the department or law enforcement agency
532 before sentencing:
- 533 (A) the alleged inaccuracy shall be brought to the attention of the court at
534 sentencing; and
- 535 (B) the court may grant an additional 10 working days after the day on which the
536 alleged inaccuracy is brought to the court's attention to allow the parties and
537 the department to resolve the alleged inaccuracy in the presentence

- 538 investigation report.
- 539 (ii) If the court does not grant additional time under Subsection (4)(a)(i)(B), or the
540 alleged inaccuracy cannot be resolved after 10 working days, and if the court finds
541 that there is an inaccuracy in the presentence investigation report, the court shall:
- 542 (A) enter a written finding as to the relevance and accuracy of the challenged
543 portion of the presentence investigation report; and
- 544 (B) provide the written finding to the Division of Adult Probation and Parole or
545 the law enforcement agency.
- 546 (b) The Division of Adult Probation and Parole shall attach the written finding to the
547 presentence investigation report as an addendum.
- 548 (c) If a party fails to challenge the accuracy of the presentence investigation report at the
549 time of sentencing, the matter shall be considered waived.
- 550 (5) The contents of the presentence investigation report are protected and not available
551 except by court order for purposes of sentencing as provided by rule of the Judicial
552 Council or for use by the department or law enforcement agency.
- 553 (6) (a) A presentence investigation report is classified as protected in accordance with
554 Title 63G, Chapter 2, Government Records Access and Management Act.
- 555 (b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee
556 may not order the disclosure of a presentence investigation report.
- 557 (7) Except for disclosure at the time of sentencing in accordance with this section, the
558 department or law enforcement agency may disclose a presentence investigation only
559 when:
- 560 (a) ordered by the court in accordance with Subsection 63G-2-202(7);
- 561 (b) requested by a law enforcement agency or other agency approved by the department
562 for purposes of supervision, confinement, and treatment of a defendant;
- 563 (c) requested by the board;
- 564 (d) requested by the subject of the presentence investigation report or the subject's
565 authorized representative;
- 566 (e) requested by the victim of the offense discussed in the presentence investigation
567 report, or the victim's authorized representative, if the disclosure is only information
568 relating to:
- 569 (i) statements or materials provided by the victim;
- 570 (ii) the circumstances of the offense, including statements by the defendant; or
- 571 (iii) the impact of the offense on the victim or the victim's household; or

- 572 (f) requested by a sex offender treatment provider:
- 573 (i) who is certified to provide treatment under the certification program established in
- 574 Subsection 64-13-25(2);
- 575 (ii) who is providing, at the time of the request, sex offender treatment to the offender
- 576 who is the subject of the presentence investigation report; and
- 577 (iii) who provides written assurance to the department that the report:
- 578 (A) is necessary for the treatment of the defendant;
- 579 (B) will be used solely for the treatment of the defendant; and
- 580 (C) will not be disclosed to an individual or entity other than the defendant.
- 581 (8) (a) At the time of sentence, the court shall receive any testimony, evidence, or
- 582 information that the defendant or the prosecuting attorney desires to present
- 583 concerning the appropriate sentence.
- 584 (b) Testimony, evidence, or information under Subsection (8)(a) shall be presented in
- 585 open court on record and in the presence of the defendant.
- 586 (9) The court may not rely solely on an algorithm or a risk assessment tool score in
- 587 determining the appropriate sentence for a defendant.
- 588 Section 11. Section **77-18-105** is amended to read:
- 589 **77-18-105 . Pleas held in abeyance -- Suspension of a sentence -- Probation --**
- 590 **Supervision -- Terms and conditions of probation -- Time periods for probation --**
- 591 **Bench supervision for payments on criminal accounts receivable.**
- 592 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in
- 593 abeyance agreement, the court may hold the plea in abeyance:
- 594 (a) in accordance with Chapter 2a, Pleas in Abeyance; and
- 595 (b) under the terms of the plea in abeyance agreement.
- 596 (2) If a defendant is convicted, the court:
- 597 (a) shall impose a sentence in accordance with Section 76-3-201; and
- 598 (b) subject to Subsection (5), may suspend the execution of the sentence and place the
- 599 defendant:
- 600 (i) on probation under the supervision of the department;
- 601 (ii) on probation under the supervision of an agency of a local government or a
- 602 private organization; or
- 603 (iii) on court probation under the jurisdiction of the sentencing court.
- 604 (3) (a) The legal custody of all probationers under the supervision of the department is
- 605 with the department.

- 606 (b) The legal custody of all probationers under the jurisdiction of the sentencing court is
607 vested as ordered by the court.
- 608 (c) The court has continuing jurisdiction over all probationers.
- 609 (4) (a) Court probation may include an administrative level of services, including
610 notification to the sentencing court of scheduled periodic reviews of the probationer's
611 compliance with conditions.
- 612 (b) Supervised probation services provided by the department, an agency of a local
613 government, or a private organization shall specifically address the defendant's risk
614 of reoffending as identified by a screening or an assessment.
- 615 (c) If a court orders supervised probation and determines that a public probation
616 provider is unavailable or inappropriate to supervise the defendant, the court shall
617 make available to the defendant the list of private probation providers prepared by a
618 criminal justice coordinating council under Section 17-55-201.
- 619 (5) (a) Before ordering supervised probation, the court shall consider the supervision
620 costs to the defendant for each entity that can supervise the defendant.
- 621 (b) (i) A court may order an agency of a local government to supervise the probation
622 for an individual convicted of any crime if:
- 623 (A) the agency has the capacity to supervise the individual; and
624 (B) the individual's supervision needs will be met by the agency.
- 625 (ii) A court may only order:
- 626 (A) the department to supervise the probation for an individual convicted of a
627 class A misdemeanor or any felony; or
628 (B) a private organization to supervise the probation for an individual convicted of
629 a class A, B, or C misdemeanor or an infraction.
- 630 (c) A court may not order a specific private organization to supervise an individual
631 unless there is only one private organization that can provide the specific supervision
632 services required to meet the individual's supervision needs.
- 633 (6) (a) If a defendant is placed on probation, the court may order the defendant as a
634 condition of the defendant's probation:
- 635 (i) to provide for the support of persons for whose support the defendant is legally
636 liable;
- 637 (ii) to participate in available treatment programs, including any treatment program in
638 which the defendant is currently participating if the program is acceptable to the
639 court;

- 640 (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and
641 Mental Health for treatment at the Utah State Hospital in accordance with Section
642 77-18-106;
- 643 (iv) if the defendant is on probation for a felony offense, to serve a period of time as
644 an initial condition of probation that does not exceed one year in a county jail
645 designated by the department, after considering any recommendation by the court
646 as to which jail the court finds most appropriate;
- 647 (v) to serve a term of home confinement in accordance with Section 77-18-107;
- 648 (vi) to participate in compensatory service programs, including the compensatory
649 service program described in Section 76-3-410;
- 650 (vii) to pay for the costs of investigation, probation, or treatment services;
- 651 (viii) to pay restitution to a victim with interest in accordance with Chapter 38b,
652 Crime Victims Restitution Act; or
- 653 (ix) to comply with other terms and conditions the court considers appropriate to
654 ensure public safety or increase a defendant's likelihood of success on probation.
- 655 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a
656 defendant to include a period of time that is served in a county jail immediately
657 before the termination of probation as long as that period of time does not exceed
658 one year.
- 659 (ii) If a defendant is ordered to serve time in a county jail as a sanction for a
660 probation violation, the one-year limitation described in Subsection (6)(a)(iv) or
661 (6)(b)(i) does not apply to the period of time that the court orders the defendant to
662 serve in a county jail under this Subsection (6)(b)(ii).
- 663 (7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on
664 probation after December 31, 2018:
- 665 (i) may not exceed the individual's maximum sentence;
- 666 (ii) shall be for a period of time that is in accordance with the supervision length
667 guidelines established by the Utah Sentencing Commission under Section
668 63M-7-404, to the extent the guidelines are consistent with the requirements of the
669 law; and
- 670 (iii) shall be terminated in accordance with the supervision length guidelines
671 established by the Utah Sentencing Commission under Section 63M-7-404, to the
672 extent the guidelines are consistent with the requirements of the law.
- 673 (b) Probation of an individual placed on probation after December 31, 2018, whose

- 674 maximum sentence is one year or less, may not exceed 36 months.
- 675 (c) Probation of an individual placed on probation on or after October 1, 2015, but
676 before January 1, 2019, may be terminated at any time at the discretion of the court
677 or upon completion without violation of 36 months probation in felony or class A
678 misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions,
679 or as allowed in accordance with Section 64-13-21 regarding earned credits.
- 680 (d) This Subsection (7) does not apply to the probation of an individual convicted of an
681 offense for criminal nonsupport under Section 76-7-201.
- 682 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal
683 accounts receivable for the defendant upon termination of the probation period for
684 the defendant under Subsection (7), the court may require the defendant to continue
685 to make payments towards the criminal accounts receivable in accordance with the
686 payment schedule established by the court under Section 77-32b-103.
- 687 (b) A court may not require the defendant to make payments as described in Subsection
688 (8)(a) beyond the expiration of the defendant's sentence.
- 689 (c) If the court requires a defendant to continue to pay in accordance with the payment
690 schedule for the criminal accounts receivable under this Subsection (8) and the
691 defendant defaults on the criminal accounts receivable, the court shall proceed with
692 an order for a civil judgment of restitution and a civil accounts receivable for the
693 defendant as described in Section 77-18-114.
- 694 (d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's
695 own motion, the court may require a defendant to show cause as to why the
696 defendant's failure to pay in accordance with the payment schedule should not be
697 treated as contempt of court.
- 698 (ii) A court may hold a defendant in contempt for failure to make payments for a
699 criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3,
700 Contempt.
- 701 (e) This Subsection (8) does not apply to the probation of an individual convicted of an
702 offense for criminal nonsupport under Section 76-7-201.
- 703 (9) When making any decision regarding probation[-] :
- 704 (a) the court shall consider information provided by the Department of Corrections
705 regarding a defendant's individual case action plan, including any progress the
706 defendant has made in satisfying the case action plan's completion requirements[-] ;
707 and

708 (b) the court may not rely solely on an algorithm or a risk assessment tool score.

709 Section 12. Section **77-20-205** is amended to read:

710 **77-20-205 . Pretrial release by a magistrate or judge.**

711 (1) (a) At the time that a magistrate issues a warrant of arrest, or finds there is probable
712 cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal
713 Procedure, the magistrate shall issue a temporary pretrial status order that:

714 (i) releases the individual on the individual's own recognizance during the time the
715 individual awaits trial or other resolution of criminal charges;

716 (ii) designates a condition, or a combination of conditions, to be imposed upon the
717 individual's release during the time the individual awaits trial or other resolution
718 of criminal charges; or

719 (iii) orders the individual be detained during the time the individual awaits trial or
720 other resolution of criminal charges.

721 (b) At the time that a magistrate issues a summons, the magistrate may issue a temporary
722 pretrial status order that:

723 (i) releases the individual on the individual's own recognizance during the time the
724 individual awaits trial or other resolution of criminal charges; or

725 (ii) designates a condition, or a combination of conditions, to be imposed upon the
726 individual's release during the time the individual awaits trial or other resolution
727 of criminal charges.

728 (2) (a) Except as provided in Subsection (2)(b), the magistrate or judge shall issue a
729 pretrial status order at an individual's first appearance before the court.

730 (b) The magistrate or judge may delay the issuance of a pretrial status order at an
731 individual's first appearance before the court:

732 (i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion
733 for pretrial detention as described in Section 77-20-206;

734 (ii) if a party requests a delay; or

735 (iii) if there is good cause to delay the issuance.

736 (c) If a magistrate or judge delays the issuance of a pretrial status order under Subsection
737 (2)(b), the magistrate or judge shall extend the temporary pretrial status order until
738 the issuance of a pretrial status order.

739 (3) (a) When a magistrate or judge issues a pretrial status order, the pretrial status order
740 shall:

741 (i) release the individual on the individual's own recognizance during the time the

- 742 individual awaits trial or other resolution of criminal charges;
- 743 (ii) designate a condition, or a combination of conditions, to be imposed upon the
744 individual's release during the time the individual awaits trial or other resolution
745 of criminal charges; or
- 746 (iii) order the individual to be detained during the time that individual awaits trial or
747 other resolution of criminal charges.
- 748 (b) In making a determination about pretrial release in a pretrial status order, the
749 magistrate or judge may not give any deference to a magistrate's decision in a
750 temporary pretrial status order.
- 751 (4) In making a determination about pretrial release, a magistrate or judge shall impose only
752 conditions of release that are reasonably available and necessary to reasonably ensure:
- 753 (a) the individual's appearance in court when required;
- 754 (b) the safety of any witnesses or victims of the offense allegedly committed by the
755 individual;
- 756 (c) the safety and welfare of the public; and
- 757 (d) that the individual will not obstruct, or attempt to obstruct, the criminal justice
758 process.
- 759 (5) Except as provided in Subsection (6), a magistrate or judge may impose a condition, or
760 combination of conditions, for pretrial release that requires an individual to:
- 761 (a) not commit a federal, state, or local offense during the period of pretrial release;
- 762 (b) avoid contact with a victim of the alleged offense;
- 763 (c) avoid contact with a witness who:
- 764 (i) may testify concerning the alleged offense; and
- 765 (ii) is named in the pretrial status order;
- 766 (d) not consume alcohol or any narcotic drug or other controlled substance unless
767 prescribed by a licensed medical practitioner;
- 768 (e) submit to drug or alcohol testing;
- 769 (f) complete a substance abuse evaluation and comply with any recommended treatment
770 or release program;
- 771 (g) submit to electronic monitoring or location device tracking;
- 772 (h) participate in inpatient or outpatient medical, behavioral, psychological, or
773 psychiatric treatment;
- 774 (i) maintain employment or actively seek employment if unemployed;
- 775 (j) maintain or commence an education program;

- 776 (k) comply with limitations on where the individual is allowed to be located or the times
777 that the individual shall be, or may not be, at a specified location;
- 778 (l) comply with specified restrictions on personal associations, place of residence, or
779 travel;
- 780 (m) report to a law enforcement agency, pretrial services program, or other designated
781 agency at a specified frequency or on specified dates;
- 782 (n) comply with a specified curfew;
- 783 (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 784 (p) if the individual is charged with an offense against a child, limit or prohibit access to
785 any location or occupation where children are located, including any residence where
786 children are on the premises, activities where children are involved, locations where
787 children congregate, or where a reasonable person would know that children
788 congregate;
- 789 (q) comply with requirements for house arrest;
- 790 (r) return to custody for a specified period of time following release for employment,
791 schooling, or other limited purposes;
- 792 (s) remain in custody of one or more designated individuals who agree to:
- 793 (i) supervise and report on the behavior and activities of the individual; and
794 (ii) encourage compliance with all court orders and attendance at all required court
795 proceedings;
- 796 (t) comply with a financial condition; or
- 797 (u) comply with any other condition that is reasonably available and necessary to ensure
798 compliance with Subsection (4).
- 799 (6) (a) If a county or municipality has established a pretrial services program, the
800 magistrate or judge shall consider the services that the county or municipality has
801 identified as available in determining what conditions of release to impose.
- 802 (b) The magistrate or judge may not order conditions of release that would require the
803 county or municipality to provide services that are not currently available from the
804 county or municipality.
- 805 (c) Notwithstanding Subsection (6)(a), the magistrate or judge may impose conditions of
806 release not identified by the county or municipality so long as the condition does not
807 require assistance or resources from the county or municipality.
- 808 (7) (a) If the magistrate or judge determines that a financial condition, other than an
809 unsecured bond, is necessary to impose as a condition of release, the magistrate or

- 810 judge shall consider the individual's ability to pay when determining the amount of
811 the financial condition.
- 812 (b) If the magistrate or judge determines that a financial condition is necessary to impose
813 as a condition of release, and a county jail official fixed a financial condition for the
814 individual under Section 77-20-204, the magistrate or judge may not give any
815 deference to:
- 816 (i) the county jail official's action to fix a financial condition; or
817 (ii) the amount of the financial condition that the individual was required to pay for
818 pretrial release.
- 819 (c) If a magistrate or judge orders a financial condition as a condition of release, the
820 judge or magistrate shall set the financial condition at a single amount per case.
- 821 (8) In making a determination about pretrial release, the magistrate or judge may:
- 822 (a) rely upon information contained in:
- 823 (i) the indictment or information;
824 (ii) any sworn or probable cause statement or other information provided by law
825 enforcement;
826 (iii) a pretrial risk assessment;
827 (iv) an affidavit of indigency described in Section 78B-22-201.5;
828 (v) witness statements or testimony;
829 (vi) the results of a lethality assessment completed in accordance with Section
830 77-36-2.1; or
831 (vii) any other reliable record or source, including proffered evidence; and
- 832 (b) consider:
- 833 (i) the nature and circumstances of the offense, or offenses, that the individual was
834 arrested for, or charged with, including:
835 (A) whether the offense is a violent offense; and
836 (B) the vulnerability of a witness or alleged victim;
837 (ii) the nature and circumstances of the individual, including the individual's:
838 (A) character;
839 (B) physical and mental health;
840 (C) family and community ties;
841 (D) employment status or history;
842 (E) financial resources;
843 (F) past criminal conduct;

- 844 (G) history of drug or alcohol abuse; and
 845 (H) history of timely appearances at required court proceedings;
 846 (iii) the potential danger to another individual, or individuals, posed by the release of
 847 the individual;
 848 (iv) whether the individual was on probation, parole, or release pending an upcoming
 849 court proceeding at the time the individual allegedly committed the offense or
 850 offenses;
 851 (v) the availability of:
 852 (A) other individuals who agree to assist the individual in attending court when
 853 required; or
 854 (B) supervision of the individual in the individual's community;
 855 (vi) the eligibility and willingness of the individual to participate in various treatment
 856 programs, including drug treatment; or
 857 (vii) other evidence relevant to the individual's likelihood of fleeing or violating the
 858 law if released.
- 859 (9) The magistrate or judge may not base a determination about pretrial release solely:
 860 (a) on the seriousness or type of offense that the individual is arrested for or charged
 861 with, unless the individual is arrested for or charged with a capital felony[-] ; or
 862 (b) on an algorithm or a risk assessment tool score.
- 863 (10) An individual arrested for violation of a jail release agreement, or a jail release court
 864 order, issued in accordance with Section 78B-7-802:
 865 (a) may not be released before the individual's first appearance before a magistrate or
 866 judge; and
 867 (b) may be denied pretrial release by the magistrate or judge.
- 868 Section 13. Section **77-27-5** is amended to read:
 869 **77-27-5 . Board of Pardons and Parole authority.**
- 870 (1) (a) Subject to this chapter and other laws of the state, and except for a conviction for
 871 treason or impeachment, the board shall determine by majority decision when and
 872 under what conditions an offender's conviction may be pardoned or commuted.
 873 (b) The Board of Pardons and Parole shall determine by majority decision when and
 874 under what conditions an offender committed to serve a sentence at a penal or
 875 correctional facility, which is under the jurisdiction of the department, may:
 876 (i) be released upon parole;
 877 (ii) have a fine or forfeiture remitted;

- 878 (iii) have the offender's criminal accounts receivable remitted in accordance with
879 Section 77-32b-105 or 77-32b-106;
- 880 (iv) have the offender's payment schedule modified in accordance with Section
881 77-32b-103; or
- 882 (v) have the offender's sentence terminated.
- 883 (c) The board shall prioritize public safety when making a determination under
884 Subsection (1)(a) or (1)(b).
- 885 (d) (i) The board may sit together or in panels to conduct hearings.
886 (ii) The chair shall appoint members to the panels in any combination and in
887 accordance with rules made in accordance with Title 63G, Chapter 3, Utah
888 Administrative Rulemaking Act, by the board.
- 889 (iii) The chair may participate on any panel and when doing so is chair of the panel.
890 (iv) The chair of the board may designate the chair for any other panel.
- 891 (e) (i) Except after a hearing before the board, or the board's appointed examiner, in
892 an open session, the board may not:
- 893 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts
894 receivable;
- 895 (B) release the offender on parole; or
- 896 (C) commute, pardon, or terminate an offender's sentence.
- 897 (ii) An action taken under this Subsection (1) other than by a majority of the board
898 shall be affirmed by a majority of the board.
- 899 (f) A commutation or pardon may be granted only after a full hearing before the board.
- 900 (2) (a) In the case of any hearings, timely prior notice of the time and location of the
901 hearing shall be given to the offender.
- 902 (b) The county or district attorney's office responsible for prosecution of the case, the
903 sentencing court, and law enforcement officials responsible for the defendant's arrest
904 and conviction shall be notified of any board hearings through the board's website.
- 905 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
906 notified of original hearings and any hearing after that if notification is requested and
907 current contact information has been provided to the board.
- 908 (d) (i) Notice to the victim or the victim's representative shall include information
909 provided in Section 77-27-9.5, and any related rules made by the board under that
910 section.
- 911 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are

- 912 reasonable for the lay person to understand.
- 913 (3) (a) A decision by the board is final and not subject for judicial review if the decision
914 is regarding:
- 915 (i) a pardon, parole, commutation, or termination of an offender's sentence;
916 (ii) the modification of an offender's payment schedule for restitution; or
917 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.
- 918 (b) Deliberative processes are not public and the board is exempt from Title 52, Chapter
919 4, Open and Public Meetings Act, when the board is engaged in the board's
920 deliberative process.
- 921 (c) Pursuant to Subsection 63G-2-103(25)(b)(xi), records of the deliberative process are
922 exempt from Title 63G, Chapter 2, Government Records Access and Management
923 Act.
- 924 (d) Unless it will interfere with a constitutional right, deliberative processes are not
925 subject to disclosure, including discovery.
- 926 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.
- 927 (4) (a) This chapter may not be construed as a denial of or limitation of the governor's
928 power to grant respite or reprieves in all cases of convictions for offenses against the
929 state, except treason or conviction on impeachment.
- 930 (b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the
931 next session of the Board of Pardons and Parole.
- 932 (c) At the next session of the board, the board:
- 933 (i) shall continue or terminate the respite or reprieve; or
934 (ii) may commute the punishment or pardon the offense as provided.
- 935 (d) In the case of conviction for treason, the governor may suspend execution of the
936 sentence until the case is reported to the Legislature at the Legislature's next session.
- 937 (e) The Legislature shall pardon or commute the sentence or direct the sentence's
938 execution.
- 939 (5) (a) In determining when, where, and under what conditions an offender serving a
940 sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the
941 offender's criminal accounts receivable remitted, or have the offender's sentence
942 commuted or terminated, the board shall:
- 943 (i) consider whether the offender has made restitution ordered by the court under
944 Section 77-38b-205, or is prepared to pay restitution as a condition of any parole,
945 pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a

- 946 commutation or termination of the offender's sentence;
- 947 (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for
948 making determinations under this Subsection (5);
- 949 (iii) consider information provided by the Department of Corrections regarding an
950 offender's individual case action plan; and
- 951 (iv) review an offender's status within 60 days after the day on which the board
952 receives notice from the Department of Corrections that the offender has
953 completed all of the offender's case action plan components that relate to activities
954 that can be accomplished while the offender is imprisoned.
- 955 (b) The board shall determine whether to remit an offender's criminal accounts
956 receivable under this Subsection (5) in accordance with Section 77-32b-105 or
957 77-32b-106.
- 958 (6) In determining whether parole may be terminated, the board shall consider:
959 (a) the offense committed by the parolee; and
960 (b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.
- 961 (7) For an offender placed on parole after December 31, 2018, the board shall terminate
962 parole in accordance with the supervision length guidelines established by the Utah
963 Sentencing Commission under Section 63M-7-404, to the extent the guidelines are
964 consistent with the requirements of the law.
- 965 (8) The board may not rely solely on an algorithm or a risk assessment tool score in
966 determining whether parole should be granted or terminated for an offender.
- 967 Section 14. Section **78A-2-109.5** is amended to read:
968 **78A-2-109.5 . Court data collection and reporting.**
- 969 (1) As used in this section, "commission" means the Commission on Criminal and Juvenile
970 Justice created in Section 63M-7-201.
- 971 (2) The Administrative Office of the Courts shall submit the following information to the
972 commission for each criminal case filed with the court:
- 973 (a) case number;
- 974 (b) the defendant's:
975 (i) full name;
976 (ii) offense tracking number; and
977 (iii) date of birth;
- 978 (c) charges filed;
- 979 (d) initial appearance date;

- 980 (e) bail amount set by the court, if any;
- 981 (f) whether the defendant was represented by a public defender, private counsel, or pro
982 se; [~~and~~]
- 983 (g) whether the defendant had previously been convicted of an offense;
- 984 [~~(g)~~] (h) final disposition of the charges[-] ; and
- 985 (i) if the defendant is convicted, the defendant's total score for any pretrial risk
986 assessment used by a magistrate or judge in making a determination about pretrial
987 release as described in Section 77-20-205.
- 988 (3) (a) The Administrative Office of the Courts shall submit the information described in
989 Subsection (2) to the commission on the 15th day of July and January of each year
990 for the previous six-month period ending the last day of June and December of each
991 year in the form and manner selected by the commission.
- 992 (b) If the last day of the month is a Saturday, Sunday, or state holiday, the
993 Administrative Office of the Courts shall submit the information described in
994 Subsection (2) to the commission on the next working day.
- 995 (4) Before July 1 of each year, the Administrative Office of the Courts shall submit the
996 following data on cases involving individuals charged with class A misdemeanors and
997 felonies, broken down by judicial district, to the commission for each preceding calendar
998 year:
- 999 (a) the number of cases in which a preliminary hearing is set and placed on the court
1000 calendar;
- 1001 (b) the median and range of the number of times that a preliminary hearing is continued
1002 in cases in which a preliminary hearing is set and placed on the court calendar;
- 1003 (c) the number of cases, and the average time to disposition for those cases, in which
1004 only written statements from witnesses are submitted as probable cause at the
1005 preliminary hearing;
- 1006 (d) the number of cases, and the average time to disposition for those cases, in which
1007 written statements and witness testimony are submitted as probable cause at the
1008 preliminary hearing;
- 1009 (e) the number of cases, and the average time to disposition for those cases, in which
1010 only witness testimony is submitted as probable cause at the preliminary hearing; and
- 1011 (f) the number of cases in which a preliminary hearing is held and the defendant is
1012 bound over for trial.
- 1013 (5) The commission shall include the data collected under Subsection (4) in the

1014 commission's annual report described in Section 63M-7-205.

1015 Section 15. **Effective date.**

1016 This bill takes effect on May 1, 2024.