

# HB0248S01 compared with HB0248

~~{deleted text}~~ shows text that was in HB0248 but was deleted in HB0248S01.

inserted text shows text that was not in HB0248 but was inserted into HB0248S01.

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Representative Melissa G. Ballard proposes the following substitute bill:

## INMATE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: { } Melissa G. Ballard**

Senate Sponsor: { \_\_\_\_\_ } Todd D. Weiler

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### LONG TITLE

#### General Description:

This bill concerns inmates.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ~~{ } →~~ requires the Sentencing Commission, the Board of Pardons and Parole (board), and the Department of Corrections (department) to develop a procedure that will provide the department with the ability to determine an inmate's earliest estimated release date from a correctional facility;
- ~~{ }~~ ▶ requires the department to:
  - create a reentry division that focuses on the successful reentry of inmates into the community;

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- coordinate with the Board of Pardons and Parole (board) regarding inmate records and ensure that inmate records are complete and, when applicable, shared with the board;
  - report on the department's inmate program implementation progress;
  - use an inmate's ~~{earliest estimated release date}~~ board hearing when determining the timing of an inmate's programs;
  - create an incentive program to encourage an inmate to complete the inmate's programs by the inmate's ~~{earliest estimated release date}~~ board hearing;
  - ensure that an inmate may continue participating in programs under certain circumstances;
  - under certain circumstances, start an inmate in at least two of the inmate's programs as soon as the inmate's case action plan is created;
  - allow an inmate to participate in more than one program at a time throughout the inmate's time within the correctional facility under certain circumstances;
  - prioritize placement of inmates in county correctional facilities that meet specified requirements regarding inmate programs;
  - periodically confer with an inmate to determine whether the inmate is on track to complete the inmate's programs by the inmate's ~~{earliest estimated release date}~~ board hearing;
  - include in an inmate's record the reason why certain program requirements were not met, if the department is unable to meet specified program requirements; and
  - provide an annual report on the department's public website concerning inmate program data;
- ▶ requires the board to use certain factors when setting an inmate's board hearing; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

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AMENDS:

~~{ 63M-7-404, as last amended by Laws of Utah 2023, Chapter 111~~

+ 64-13-6, as last amended by Laws of Utah 2023, Chapter 177

77-27-7, as last amended by Laws of Utah 2022, Chapter 430

ENACTS:

~~{64-13-50, Utah}~~64-13-50Utah Code Annotated 1953

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

Section 1. Section ~~{63M-7-404}~~64-13-6 is amended to read:

~~{ 63M-7-404. Purpose -- Duties.~~

~~———— (1) The purpose of the commission is to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council regarding:~~

~~———— (a) the sentencing and release of juvenile and adult offenders in order to:~~

~~———— (i) respond to public comment;~~

~~———— (ii) relate sentencing practices and correctional resources;~~

~~———— (iii) increase equity in criminal sentencing;~~

~~———— (iv) better define responsibility in criminal sentencing; and~~

~~———— (v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority;~~

~~———— (b) the length of supervision of adult offenders on probation or parole in order to:~~

~~———— (i) increase equity in criminal supervision lengths;~~

~~———— (ii) respond to public comment;~~

~~———— (iii) relate the length of supervision to an offender's progress;~~

~~———— (iv) take into account an offender's risk of offending again;~~

~~———— (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and~~

~~———— (vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole; and~~

~~———— (c) appropriate, evidence-based probation and parole supervision policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:~~

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~~—— (i) treatment and intervention completion determinations based on individualized case action plans;~~

~~—— (ii) measured and consistent processes for addressing violations of conditions of supervision;~~

~~—— (iii) processes that include using positive reinforcement to recognize an individual's progress in supervision;~~

~~—— (iv) engaging with social services agencies and other stakeholders who provide services that meet offender needs; and~~

~~—— (v) identifying community violations that may not warrant revocation of probation or parole.~~

~~—— (2) (a) The commission shall modify the sentencing guidelines and supervision length guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.~~

~~—— (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.~~

~~—— (3) (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.~~

~~—— (b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.~~

~~—— (4) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on probation and:~~

~~—— (i) who have violated one or more conditions of probation; and~~

~~—— (ii) whose probation has been revoked by the court.~~

~~—— (b) For a situation described in Subsection (4)(a), the guidelines shall recommend that a court consider:~~

~~—— (i) the seriousness of any violation of the condition of probation;~~

~~—— (ii) the probationer's conduct while on probation; and~~

~~—— (iii) the probationer's criminal history.~~

~~—— (5) (a) The commission shall establish sentencing guidelines for periods of~~

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~~incarceration for individuals who are on parole and:~~

~~—— (i) who have violated a condition of parole; and~~

~~—— (ii) whose parole has been revoked by the Board of Pardons and Parole.~~

~~—— (b) For a situation described in Subsection (5)(a), the guidelines shall recommend that the Board of Pardons and Parole consider:~~

~~—— (i) the seriousness of any violation of the condition of parole;~~

~~—— (ii) the individual's conduct while on parole; and~~

~~—— (iii) the individual's criminal history.~~

~~—— (6) The commission shall establish graduated and evidence-based processes to facilitate the prompt and effective response to an individual's progress in or violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections, or other supervision services provider, to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration, including:~~

~~—— (a) responses to be used when an individual violates a condition of probation or parole;~~

~~—— (b) responses to recognize positive behavior and progress related to an individual's case action plan;~~

~~—— (c) when a violation of a condition of probation or parole should be reported to the court or the Board of Pardons and Parole; and~~

~~—— (d) a range of sanctions that may not exceed a period of incarceration of more than:~~

~~—— (i) three consecutive days; and~~

~~—— (ii) a total of five days in a period of 30 days.~~

~~—— (7) The commission shall establish graduated incentives to facilitate a prompt and effective response by the adult probation and parole section of the Department of Corrections to an offender's:~~

~~—— (a) compliance with the terms of probation or parole; and~~

~~—— (b) positive conduct that exceeds those terms.~~

~~—— (8) (a) The commission shall establish guidelines, including sanctions and incentives, to appropriately respond to negative and positive behavior of juveniles who are:~~

~~—— (i) nonjudicially adjusted;~~

~~—— (ii) placed on diversion;~~

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- ~~—— (iii) placed on probation;~~
- ~~—— (iv) placed on community supervision;~~
- ~~—— (v) placed in an out-of-home placement; or~~
- ~~—— (vi) placed in a secure care facility.~~
- ~~—— (b) In establishing guidelines under this Subsection (8), the commission shall consider:~~
  - ~~—— (i) the seriousness of the negative and positive behavior;~~
  - ~~—— (ii) the juvenile's conduct post-adjudication; and~~
  - ~~—— (iii) the delinquency history of the juvenile.~~
- ~~—— (c) The guidelines shall include:~~
  - ~~—— (i) responses that are swift and certain;~~
  - ~~—— (ii) a continuum of community-based options for juveniles living at home;~~
  - ~~—— (iii) responses that target the individual's criminogenic risk and needs; and~~
  - ~~—— (iv) incentives for compliance, including earned discharge credits.~~
- ~~—— (9) The commission shall establish and maintain supervision length guidelines in accordance with this section:~~
- ~~—— (10) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:~~
  - ~~—— (i) securities fraud, Sections 61-1-1 and 61-1-21;~~
  - ~~—— (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;~~
  - ~~—— (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;~~
  - ~~—— (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1, Assault and Related Offenses;~~
  - ~~—— (v) arson, Section 76-6-102;~~
  - ~~—— (vi) burglary, Section 76-6-202;~~
  - ~~—— (vii) theft under Title 76, Chapter 6, Part 4, Theft;~~
  - ~~—— (viii) forgery, Section 76-6-501;~~
  - ~~—— (ix) unlawful dealing of property by a fiduciary, Section 76-6-513;~~
  - ~~—— (x) insurance fraud, Section 76-6-521;~~
  - ~~—— (xi) computer crimes, Section 76-6-703;~~

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- ~~—— (xii) mortgage fraud, Section 76-6-1203;~~
  - ~~—— (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;~~
  - ~~—— (xiv) communications fraud, Section 76-10-1801;~~
  - ~~—— (xv) money laundering, Section 76-10-1904; and~~
  - ~~—— (xvi) other offenses in the discretion of the commission.~~
  - ~~—— (b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.~~
  - ~~—— (c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection (10)(a).~~
  - ~~—— (11) (a) Before January 1, 2023, the commission shall study the offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor under Sections 76-5b-201 and 76-5b-201.1.~~
  - ~~—— (b) The commission shall update sentencing and release guidelines and juvenile disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection (11)(a), including the application of aggravating and mitigating factors specific to the offense.~~
  - ~~—— (12) (a) On or before January 1, 2026, the commission shall coordinate with the Board of Pardons and Parole and the Department of Corrections to develop a procedure that will provide the Department of Corrections with the ability to determine an inmate's earliest estimated release date as described in Section 64-13-50.~~
  - ~~—— (b) The procedure described in Subsection (12)(a) shall include factors that may be relevant to the determination of an earliest estimated release date for an inmate, including:~~
    - ~~—— (i) the type and severity of offenses;~~
    - ~~—— (ii) prior criminal history;~~
    - ~~—— (iii) criminogenic risk factors; and~~
    - ~~—— (iv) evidence-based assessments.~~
  - ~~—— Section 2. Section ~~64-13-6~~ is amended to read:~~
- ‡ **64-13-6. Department duties.**
- (1) The department shall:
    - (a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;
    - (b) implement court-ordered punishment of offenders;

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(c) provide evidence-based and evidence-informed program opportunities for offenders designed to reduce offenders' criminogenic and recidivism risks, including behavioral, cognitive, educational, and career-readiness program opportunities;

(d) ensure that offender participation in all program opportunities described in Subsection (1)(c) is voluntary;

(e) where appropriate, utilize offender volunteers as mentors in the program opportunities described in Subsection (1)(c);

(f) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;

(g) provide the results of ongoing clinical assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;

(h) manage programs that take into account the needs and interests of victims, where reasonable;

(i) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;

(j) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;

(k) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals;

(l) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision;

(m) establish a case action plan based on appropriate validated risk, needs, and responsivity assessments for each offender as follows:

(i) (A) if an offender is to be supervised in the community, the department shall establish a case action plan for the offender no later than 60 days after the day on which the department's community supervision of the offender begins; and

(B) if the offender is committed to the custody of the department, the department shall establish a case action plan for the offender no later than 90 days after the day on which the offender is committed to the custody of the department;

(ii) each case action plan shall integrate an individualized, evidence-based, and



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evidence-informed treatment and program plan with clearly defined completion requirements;

(iii) the department shall share each newly established case action plan with the sentencing and release authority within 30 days after the day on which the case action plan is established; and

(iv) the department shall share any changes to a case action plan, including any change in an offender's risk assessment, with the sentencing and release authority within 30 days after the day of the change;

(n) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(i) under this title;

(ii) by the department; or

(iii) by an agency or division within the department; [~~and~~]

(o) when reporting on statewide recidivism, include the metrics and requirements described in Section 63M-7-102;

(p) create a reentry division that focuses on the successful reentry of inmates into the community;

(q) coordinate with the Board of Pardons and Parole regarding inmate records that are necessary for the Board of Pardons and Parole to make necessary determinations regarding an inmate; and

(r) ensure that inmate records regarding discipline, programs, and other relevant metrics are:

(i) complete and updated in a timely manner; and

(ii) when applicable, shared with the Board of Pardons and Parole in a timely manner.

(2) The department may in the course of supervising probationers and parolees:

(a) respond in accordance with the graduated and evidence-based processes established by the Utah Sentencing Commission under Subsection 63M-7-404(6), to an individual's violation of one or more terms of the probation or parole; and

(b) upon approval by the court or the Board of Pardons and Parole, impose as a sanction for an individual's violation of the terms of probation or parole a period of incarceration of not more than three consecutive days and not more than a total of five days

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within a period of 30 days.

(3) (a) By following the procedures in Subsection (3)(b), the department may investigate the following occurrences at state correctional facilities:

- (i) criminal conduct of departmental employees;
- (ii) felony crimes resulting in serious bodily injury;
- (iii) death of any person; or
- (iv) aggravated kidnaping.

(b) Before investigating any occurrence specified in Subsection (3)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (3)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (3)(a).

(4) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

(5) (a) The executive director of the department, or the executive director's designee if the designee possesses expertise in correctional programming, shall consult at least annually with cognitive and career-readiness staff experts from the Utah system of higher education and the State Board of Education to review the department's evidence-based and evidence-informed treatment and program opportunities.

(b) Beginning in the 2022 interim, the department shall provide an annual report to the Law Enforcement and Criminal Justice Interim Committee regarding:

(i) ~~the~~ the department's implementation of and offender participation in evidence-based and evidence-informed treatment and program opportunities designed to reduce the criminogenic and recidivism risks of offenders over time[-]; and

(ii) the progress of the department's implementation of the inmate program requirements described in Section 64-13-50.

(6) (a) As used in this Subsection (6):

(i) "Accounts receivable" means any amount owed by an offender arising from a criminal judgment that has not been paid.

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(ii) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third-party claims, claims, reimbursement of a reward, and damages that an offender is ordered to pay.

(b) The department shall collect and disburse, with any interest and any other costs assessed under Section 64-13-21, an accounts receivable for an offender during:

(i) the parole period and any extension of that period in accordance with Subsection (6)(c); and

(ii) the probation period for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection 77-18-105(7).

(c) (i) If an offender has an unpaid balance of the offender's accounts receivable at the time that the offender's sentence expires or terminates, the department shall be referred to the sentencing court for the sentencing court to enter a civil judgment of restitution and a civil accounts receivable as described in Section 77-18-114.

(ii) If the board makes an order for restitution within 60 days from the day on which the offender's sentence expires or terminates, the board shall refer the order for restitution to the sentencing court to be entered as a civil judgment of restitution as described in Section 77-18-114.

(d) This Subsection (6) only applies to offenders sentenced before July 1, 2021.

Section ~~63~~2. Section **64-13-50** is enacted to read:

### **64-13-50. Inmate program requirements -- Records -- Reporting.**

(1) As used in this section:

(a) ~~"Earliest estimated release date" means the earliest estimated release date, determined by using the earliest estimated release date procedure, that an inmate may reasonably be expected to be released;~~ Board" means the Board of Pardons and Parole.

(b) "Board hearing" means a hearing established under Subsection 77-27-7(1), which is the earliest possible point at which the board may consider an inmate's release from a correctional facility.

~~(b) "Earliest estimated release date procedure" means the procedure created in accordance with Subsection 63M-7-404(12) for estimating an inmate's earliest estimated release date.~~

(c) (i) "Program" means a part of an inmate's case action plan that is required or

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optional and includes:

(A) sex offender treatment;

(B) substance use treatment;

(C) educational programs, including literacy programs;

(D) career-readiness programs;

(E) life-skills training; and

(F) transition programs meant to prepare an inmate who is about to leave a correctional facility in accordance with Section 64-13-10.6.

(ii) "Program" includes online and in-person programs.

(2) On or before January 1, 2026, the department shall:

(a) use an inmate's ~~{earliest estimated release date}~~ ~~board hearing~~ when determining the timing of an inmate's programs to ensure that an inmate will have the ability to complete all of the inmate's programs by the inmate's ~~{earliest estimated release date}~~ ~~board hearing~~;

(b) create an incentive plan to encourage an inmate to complete the inmate's programs by the inmate's ~~{earliest estimated release date}~~ ~~board hearing~~;

(c) in accordance with Subsection 64-13-48(4) and Subsection (3), use the department's best efforts to ensure that when an inmate is transferred within a correctional facility or to a different correctional facility, the inmate is able to continue all programs that the inmate has already started and has not yet completed, without requiring the inmate to restart a program from the beginning or wait on a waiting list for the program, unless the program's continuation would be impossible due to the inmate's transfer to a more restrictive setting due to a behavioral or disciplinary violation;

(d) in accordance with Subsection (3), use the department's best efforts to ensure that if an inmate opts out of an optional program, the inmate is able to rejoin the program within six months without being required to restart the program from the beginning or wait on a waiting list;

(e) in accordance with Subsection (3), as soon as an inmate's case action plan is created in accordance with Subsection 64-13-6(1)(m), use the department's best efforts to start the inmate in at least two of the inmate's programs;

(f) in accordance with Subsection (3), use the department's best efforts to allow an inmate to participate in more than one program at a time throughout the inmate's time within

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the correctional facility, including, if applicable, providing technological methods for an inmate to participate in an online program;

(g) in accordance with Section 64-13e-103, prioritize the placement of inmates within county correctional facilities that:

(i) offer, allow, or facilitate department-specified programs for inmates; and

(ii) collect and provide inmate program completion data to the department; and

(h) periodically confer with an inmate and, if necessary, the ~~{Board of Pardons and Parole}~~board, to determine whether the inmate is on track to complete all of the inmate's programs by the inmate's ~~{earliest estimated release date}~~board hearing.

(3) If the department is unable to meet a requirement described in Subsection (2)(c), (2)(d), (2)(e), or (2)(f), the department shall:

(a) include in the inmate's records the reason why the requirement was not met; and

(b) ensure the information described in Subsection (3)(a) is made available to the ~~{Board of Pardons and Parole}~~board.

(4) The department shall provide an annual report on the department's public website that states how many inmates:

(a) are currently participating in one or more programs; and

(b) have successfully completed one or more programs during the prior year.

Section 3. Section 77-27-7 is amended to read:

**77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.**

(1) (a) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(b) When determining the hearing date under Subsection (1)(a), the board shall consider:

(i) the type and severity of offenses;

(ii) prior criminal history;

(iii) criminogenic risk factors; and

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(iv) evidence-based assessments.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider the offender's fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

(3) (a) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(2)(b)(vi), Section 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, the chair may appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3).

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) A parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(2)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, 76-5-404.3, or 76-5-405, and released on parole before January 1, 2019.

(5) In any case where an offender's mental competency is questioned by the board, the chair may appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules governing:

(a) the hearing process;

(b) alienist examination; and

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(c) parolee petitions for termination of parole.

Section 4. **Effective date.**

This bill takes effect on May 1, 2024.