

CRIMINAL JUSTICE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the criminal justice system.

Highlighted Provisions:

This bill:

- ▶ provides that the chair of a Criminal Justice Coordinating Council is a county commissioner or a county council member;
- ▶ 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 validated risk assessment tools used in sentencing 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:



- 28 **17-55-201**, as last amended by Laws of Utah 2023, Chapters 249, 257
- 29 **63A-16-1002**, as last amended by Laws of Utah 2023, Chapters 158, 161, 382, and 448
- 30 **77-2-5**, as last amended by Laws of Utah 2021, Chapters 43, 260
- 31 **77-18-103**, as last amended by Laws of Utah 2023, Chapter 155
- 32 **77-18-105**, as last amended by Laws of Utah 2023, Chapters 111, 257
- 33 **77-20-205**, as last amended by Laws of Utah 2023, Chapters 408, 447
- 34 **77-27-5**, as last amended by Laws of Utah 2023, Chapters 151, 173
- 35 **78A-2-109.5**, as last amended by Laws of Utah 2023, Chapter 441

36 ENACTS:

- 37 **76-8-309.1**, Utah Code Annotated 1953

38 REPEALS AND REENACTS:

- 39 **76-8-309**, as last amended by Laws of Utah 2022, Chapter 181



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

42 Section 1. Section **17-55-201** is amended to read:

43 **17-55-201. Criminal justice coordinating councils -- Creation -- Strategic plan --**
 44 **Reporting requirements.**

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

- 46 (i) create a criminal justice coordinating council; or
- 47 (ii) jointly with another county or counties, create a criminal justice coordinating
- 48 council.

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

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

- 52 (i) one county commissioner or county council member;
- 53 (ii) the county sheriff or the sheriff's designee;
- 54 (iii) one chief of police of a municipality within the county or the chief's designee;
- 55 (iv) the county attorney or the attorney's designee;
- 56 (v) one public defender or attorney who provides public defense within the county;
- 57 (vi) one district court judge;
- 58 (vii) one justice court judge;

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

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

62 (x) one individual who is:

63 (A) a crime victim; or

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

65 (b) A council may include:

66 (i) an individual representing:

67 (A) local government;

68 (B) human services programs;

69 (C) higher education;

70 (D) peer support services;

71 (E) workforce services;

72 (F) local housing services;

73 (G) mental health or substance use disorder providers;

74 (H) a health care organization within the county;

75 (I) a local homeless council;

76 (J) family counseling and support groups; or

77 (K) organizations that work with families of incarcerated individuals; or

78 (ii) an individual with lived experiences in the criminal justice system.

79 ~~[(3) A council shall rotate the position of the chair among the members.]~~

80 (3) The chair of a council is the county commissioner or county council member
81 described in Subsection (2)(a)(i).

82 (4) (a) A council shall develop and implement a strategic plan for the county's or
83 counties' criminal justice system that includes:

84 (i) mapping of all systems, resources, assets, and services within the county's or
85 counties' criminal justice system;

86 (ii) a plan for data sharing across the county's or counties' criminal justice system;

87 (iii) recidivism reduction objectives; and

88 (iv) community reintegration goals.

89 (b) The commission may assist a council in the development of a strategic plan.

90 (5) As part of the council's duties described in Subsection (4)(a)(i), the council shall
91 prepare a list of private probation providers for a court to provide to defendants as described in
92 Section 77-18-105.

93 (6) Before November 30 of each year, a council shall provide a written report to the
94 commission regarding:

- 95 (a) the implementation of a strategic plan described in Subsection (4); and
- 96 (b) any data on the impact of the council on the criminal justice system in the county or
97 counties.

98 Section 2. Section 63A-16-1002 is amended to read:

99 **63A-16-1002. Criminal and juvenile justice database.**

100 (1) The commission shall oversee the creation and management of a criminal and
101 juvenile justice database for information and data required to be reported to the commission,
102 organized by county, and accessible to all criminal justice agencies in the state.

103 (2) The division shall assist with the development and management of the database.

104 (3) The division, in collaboration with the commission, shall create:

- 105 (a) master standards and formats for information submitted to the database;
- 106 (b) a portal, bridge, website, or other method for reporting entities to provide the
107 information;

108 (c) a master data management index or system to assist in the retrieval of information
109 in the database;

110 (d) a protocol for accessing information in the database that complies with state
111 privacy regulations; and

112 (e) a protocol for real-time audit capability of all data accessed through the portal by
113 participating data source, data use entities, and regulators.

114 (4) Each criminal justice agency charged with reporting information to the commission
115 shall provide the data or information to the database in a form prescribed by the commission.

116 (5) The database shall be the repository for the statutorily required data described in:

- 117 (a) Section 13-53-111, recidivism reporting requirements;
- 118 (b) Section 17-22-32, county jail reporting requirements;
- 119 (c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;
- 120 (d) Section 41-6a-511, courts to collect and maintain data;

- 121 (e) Section 53-23-101, reporting requirements for reverse-location warrants;
- 122 (f) Section 53-24-102, sexual assault offense reporting requirements for law
123 enforcement agencies;
- 124 (g) Section 63M-7-214, law enforcement agency grant reporting;
- 125 (h) Section 63M-7-216, prosecutorial data collection;
- 126 (i) Section 64-13-21, supervision of sentenced offenders placed in community;
- 127 (j) Section 64-13-25, standards for programs;
- 128 (k) Section 64-13-45, department reporting requirements;
- 129 (l) Section 64-13e-104, housing of state probationary inmates or state parole inmates;
- 130 (m) Section 77-7-8.5, use of tactical groups;
- 131 (n) Section 77-11b-404, forfeiture reporting requirements;
- 132 (o) Section 77-20-103, release data requirements;
- 133 (p) Section 77-22-2.5, court orders for criminal investigations;
- 134 (q) Section 78A-2-109.5, court [~~demographics reporting~~] data collection on criminal
135 cases;
- 136 (r) Section 80-6-104, data collection on offenses committed by minors; and
- 137 (s) any other statutes which require the collection of specific data and the reporting of
138 that data to the commission.
- 139 (6) The commission shall report:
- 140 (a) progress on the database, including creation, configuration, and data entered, to the
141 Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and
- 142 (b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal
143 Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing
144 Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing
145 Committee not later than January 16, 2023.
- 146 Section 3. Section 76-8-309 is repealed and reenacted to read:
- 147 **76-8-309. Escape.**
- 148 (1) (a) As used in this section:
- 149 (i) "Agency" means a law enforcement agency, the Department of Corrections, a
150 county or district attorney's office, the Office of the Attorney General, the Board of Pardons
151 and Parole, or the judicial branch, including the Judicial Council, the Administrative Office of

152 the Courts, or a similar administrative unit of the judicial branch.

153 (ii) "Confinement in a state prison" means:

154 (A) (I) the individual is housed in a state prison, or any other facility in accordance
155 with a contract with the Department of Corrections or Section 80-6-507, after being sentenced
156 and committed;

157 (II) the individual's sentence has not been terminated or voided; and

158 (III) the individual is not on parole;

159 (B) the individual is being housed in a county jail, after felony commitment, in
160 accordance with a contract with the Department of Corrections;

161 (C) the individual is on parole and the individual is in prehearing custody after an
162 arrest for a parole violation;

163 (D) the individual is housed in a state prison and is being transported as a prisoner in
164 the state prison by a correctional officer; or

165 (E) the individual is housed in a state prison, or any other facility in accordance with a
166 contract with the Department of Corrections or Section 80-6-507, and the individual is
167 permitted to leave temporarily for a work release or home visit and is required to return at a
168 designated time.

169 (iii) "Lawful authorization" does not include authorization to leave official custody, or
170 to remove or disable a tracking device, if the authorization was obtained by means of deceit,
171 fraud, or other artifice.

172 (iv) (A) "Offender" means an individual who is in official custody.

173 (B) "Offender" includes an individual who is under trusty status.

174 (v) "Official custody" means:

175 (A) confinement in a state prison;

176 (B) (I) the individual is lawfully detained in a county jail before trial or sentencing or
177 the individual is housed in a county jail after sentencing and commitment;

178 (II) the individual's sentence has not been terminated or voided; and

179 (III) the individual is not on parole or probation;

180 (C) the individual is lawfully detained following an arrest regardless of whether the
181 individual was arrested with or without a warrant; or

182 (D) the individual is on probation and the individual is in prehearing custody after an

183 arrest for a probation violation.

184 (vi) (A) "Tracking device" means a device that reveals the device's location or
185 movement by the transmission or recording of an electronic signal.

186 (B) "Tracking device" includes a satellite-based radio navigation system.

187 (vii) "Volunteer" means a person who donates service without pay or other
188 compensation except for expenses actually and reasonably incurred with approval by the
189 supervising agency.

190 (b) Terms defined in Sections [76-1-101.5](#) and [76-8-101](#) apply to this section.

191 (2) (a) An actor commits escape if the actor:

192 (i) is an offender who, without lawful authorization:

193 (A) leaves official custody; or

194 (B) intentionally or knowingly removes, disables, or permits the removal or disabling
195 of, a tracking device that is installed or employed for an alternative incarceration program as
196 described in Section [17-22-5](#); or

197 (b) (i) is convicted as a party to an offense under this section, as described in Section
198 [76-2-202](#); and

199 (ii) is an employee at, or a volunteer of, an agency.

200 (3) (a) Except as provided by Subsection (3)(b) or (c) or Section [76-8-309.1](#), a
201 violation of Subsection (2) is a third degree felony.

202 (b) Except as provided by Subsection (3)(c) or Section [76-8-309.1](#), a violation of
203 Subsection (2) is a second degree felony if the actor leaves confinement in a state prison
204 without lawful authorization, including failing to return from a work release or home visit by
205 the time designated for return.

206 (c) Except as provided in Section [76-8-309.1](#), a violation of Subsection (2)(b) is a
207 second degree felony.

208 (4) A court sentencing an actor for a violation of this section shall impose a
209 consecutive sentence to any other sentence the actor is either serving or ordered to serve.

210 Section 4. Section **76-8-309.1** is enacted to read:

211 **76-8-309.1. Aggravated escape.**

212 (1) (a) As used in this section, "escape" means an offense under Section [76-8-309](#).

213 (b) Terms defined in Sections [76-1-101.5](#) and [76-8-101](#) apply to this section.

214 (2) An actor commits aggravated escape if, during the course of the commission of an
215 escape, the actor:

216 (a) uses a dangerous weapon; or

217 (b) causes serious bodily injury to another.

218 (3) A violation of Subsection (2) is a first degree felony.

219 (4) A court sentencing an actor for a violation of this section shall impose a
220 consecutive sentence to any other sentence the actor is either serving or ordered to serve.

221 Section 5. Section 77-2-5 is amended to read:

222 **77-2-5. Diversion agreement -- Negotiation -- Contents.**

223 (1) At any time after the commencement of prosecution and before conviction, the
224 prosecuting attorney may, by written agreement with the defendant, filed with the court, and
225 upon approval of the court, divert a defendant to a non-criminal diversion program.

226 (2) A defendant shall be represented by counsel during negotiations for diversion and
227 at the time of execution of any diversion agreement unless the defendant has knowingly and
228 intelligently waived the defendant's right to counsel.

229 (3) The defendant has the right to be represented by counsel at any court hearing
230 relating to a diversion program.

231 (4) (a) A diversion agreement, entered into between the prosecuting attorney and the
232 defendant and approved by a [magistrate] court, shall contain a full, detailed statement of the
233 requirements agreed to by the defendant and the reasons for diversion.

234 (b) The diversion agreement described in Subsection (4)(a) shall include an agreement,
235 by the parties, for a specific amount of restitution that the defendant will pay, unless the
236 prosecuting attorney certifies that:

237 (i) the prosecuting attorney has consulted with all victims, including the Utah Office
238 for Victims of Crime; and

239 (ii) the defendant does not owe any restitution.

240 (5) (a) If the court approves a diversion agreement that includes an agreement by the
241 parties for the amount of restitution that the defendant will pay, the court shall order the
242 defendant to pay restitution in accordance with the terms of the diversion agreement.

243 (b) The court shall collect, receive, process, and distribute payments for restitution to
244 the victim, unless otherwise provided by law or by the diversion agreement.

245 (6) A decision by a prosecuting attorney not to divert a defendant is not subject to
246 judicial review.

247 (7) A diversion agreement entered into between the prosecution and the defense and
248 approved by a magistrate may contain an order that the defendant pay a nonrefundable
249 diversion fee that:

250 (a) shall be allocated in the same manner as if paid as a fine for a criminal conviction
251 under Section 78A-5-110 or Section 78A-7-120; and

252 (b) may not exceed the suggested fine listed in the Uniform Fine Schedule adopted by
253 the Judicial Council.

254 (8) A diversion agreement may not be approved unless the defendant knowingly and
255 intelligently waives the defendant's constitutional right to a speedy trial before a magistrate and
256 in the diversion agreement.

257 (9) (a) The court shall, on the defendant's request, consider the defendant's ability to
258 pay a diversion fee before ordering the defendant to pay a diversion fee.

259 (b) The court may:

260 (i) consider any relevant evidence in determining the defendant's ability to pay a
261 diversion fee; and

262 (ii) lower or waive the diversion fee based on that evidence.

263 (10) A diversion program longer than two years is not permitted.

264 (11) The court may not rely solely on an algorithm or a risk assessment tool score in
265 determining whether the court should approve the defendant's diversion to a non-criminal
266 diversion program.

267 Section 6. Section 77-18-103 is amended to read:

268 **77-18-103. Presentence investigation report -- Classification of presentence**
269 **investigation report -- Evidence or other information at sentencing.**

270 (1) Before the imposition of a sentence, the court may:

271 (a) upon agreement of the defendant, continue the date for the imposition of the
272 sentence for a reasonable period of time for the purpose of obtaining a presentence
273 investigation report from the department or a law enforcement agency, or information from any
274 other source about the defendant; and

275 (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the

276 department or a law enforcement agency prepare a presentence investigation report for the
277 defendant.

278 (2) If a presentence investigation report is required under the standards established by
279 the department described in Section 77-18-109, the presentence investigation report under
280 Subsection (1) shall include:

281 (a) any impact statement provided by a victim as described in Subsection
282 77-38b-203(3)(c);

283 (b) information on restitution as described in Subsections 77-38b-203(3)(a) and (b);

284 (c) findings from any screening and any assessment of the defendant conducted under
285 Section 77-18-104;

286 (d) recommendations for treatment for the defendant; and

287 (e) the number of days since the commission of the offense that the defendant has spent
288 in the custody of the jail and the number of days, if any, the defendant was released to a
289 supervised release program or an alternative incarceration program under Section 17-22-5.5.

290 (3) The department or law enforcement agency shall provide the presentence
291 investigation report to the defendant's attorney, or the defendant if the defendant is not
292 represented by counsel, the prosecuting attorney, and the court for review within three working
293 days before the day on which the defendant is sentenced.

294 (4) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that is
295 not resolved by the parties and the department or law enforcement agency before sentencing:

296 (A) the alleged inaccuracy shall be brought to the attention of the court at sentencing;
297 and

298 (B) the court may grant an additional 10 working days after the day on which the
299 alleged inaccuracy is brought to the court's attention to allow the parties and the department to
300 resolve the alleged inaccuracy in the presentence investigation report.

301 (ii) If the court does not grant additional time under Subsection (4)(a)(i)(B), or the
302 alleged inaccuracy cannot be resolved after 10 working days, and if the court finds that there is
303 an inaccuracy in the presentence investigation report, the court shall:

304 (A) enter a written finding as to the relevance and accuracy of the challenged portion of
305 the presentence investigation report; and

306 (B) provide the written finding to the Division of Adult Probation and Parole or the

307 law enforcement agency.

308 (b) The Division of Adult Probation and Parole shall attach the written finding to the
309 presentence investigation report as an addendum.

310 (c) If a party fails to challenge the accuracy of the presentence investigation report at
311 the time of sentencing, the matter shall be considered waived.

312 (5) The contents of the presentence investigation report are protected and not available
313 except by court order for purposes of sentencing as provided by rule of the Judicial Council or
314 for use by the department or law enforcement agency.

315 (6) (a) A presentence investigation report is classified as protected in accordance with
316 Title 63G, Chapter 2, Government Records Access and Management Act.

317 (b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee
318 may not order the disclosure of a presentence investigation report.

319 (7) Except for disclosure at the time of sentencing in accordance with this section, the
320 department or law enforcement agency may disclose a presentence investigation only when:

321 (a) ordered by the court in accordance with Subsection 63G-2-202(7);

322 (b) requested by a law enforcement agency or other agency approved by the department
323 for purposes of supervision, confinement, and treatment of a defendant;

324 (c) requested by the board;

325 (d) requested by the subject of the presentence investigation report or the subject's
326 authorized representative;

327 (e) requested by the victim of the offense discussed in the presentence investigation
328 report, or the victim's authorized representative, if the disclosure is only information relating
329 to:

330 (i) statements or materials provided by the victim;

331 (ii) the circumstances of the offense, including statements by the defendant; or

332 (iii) the impact of the offense on the victim or the victim's household; or

333 (f) requested by a sex offender treatment provider:

334 (i) who is certified to provide treatment under the certification program established in
335 Subsection 64-13-25(2);

336 (ii) who is providing, at the time of the request, sex offender treatment to the offender
337 who is the subject of the presentence investigation report; and

338 (iii) who provides written assurance to the department that the report:
339 (A) is necessary for the treatment of the defendant;
340 (B) will be used solely for the treatment of the defendant; and
341 (C) will not be disclosed to an individual or entity other than the defendant.
342 (8) (a) At the time of sentence, the court shall receive any testimony, evidence, or
343 information that the defendant or the prosecuting attorney desires to present concerning the
344 appropriate sentence.

345 (b) Testimony, evidence, or information under Subsection (8)(a) shall be presented in
346 open court on record and in the presence of the defendant.

347 (9) The court may not rely solely on an algorithm or a risk assessment tool score in
348 determining the appropriate sentence for a defendant.

349 Section 7. Section **77-18-105** is amended to read:

350 **77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**
351 **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench**
352 **supervision for payments on criminal accounts receivable.**

353 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in
354 abeyance agreement, the court may hold the plea in abeyance:

355 (a) in accordance with Chapter 2a, Pleas in Abeyance; and
356 (b) under the terms of the plea in abeyance agreement.

357 (2) If a defendant is convicted, the court:

358 (a) shall impose a sentence in accordance with Section **76-3-201**; and
359 (b) subject to Subsection (5), may suspend the execution of the sentence and place the
360 defendant:

361 (i) on probation under the supervision of the department;
362 (ii) on probation under the supervision of an agency of a local government or a private
363 organization; or

364 (iii) on court probation under the jurisdiction of the sentencing court.

365 (3) (a) The legal custody of all probationers under the supervision of the department is
366 with the department.

367 (b) The legal custody of all probationers under the jurisdiction of the sentencing court
368 is vested as ordered by the court.

369 (c) The court has continuing jurisdiction over all probationers.

370 (4) (a) Court probation may include an administrative level of services, including
371 notification to the sentencing court of scheduled periodic reviews of the probationer's
372 compliance with conditions.

373 (b) Supervised probation services provided by the department, an agency of a local
374 government, or a private organization shall specifically address the defendant's risk of
375 reoffending as identified by a screening or an assessment.

376 (c) If a court orders supervised probation and determines that a public probation
377 provider is unavailable or inappropriate to supervise the defendant, the court shall make
378 available to the defendant the list of private probation providers prepared by a criminal justice
379 coordinating council under Section [17-55-201](#).

380 (5) (a) Before ordering supervised probation, the court shall consider the supervision
381 costs to the defendant for each entity that can supervise the defendant.

382 (b) (i) A court may order an agency of a local government to supervise the probation
383 for an individual convicted of any crime if:

384 (A) the agency has the capacity to supervise the individual; and

385 (B) the individual's supervision needs will be met by the agency.

386 (ii) A court may only order:

387 (A) the department to supervise the probation for an individual convicted of a class A
388 misdemeanor or any felony; or

389 (B) a private organization to supervise the probation for an individual convicted of a
390 class A, B, or C misdemeanor or an infraction.

391 (c) A court may not order a specific private organization to supervise an individual
392 unless there is only one private organization that can provide the specific supervision services
393 required to meet the individual's supervision needs.

394 (6) (a) If a defendant is placed on probation, the court may order the defendant as a
395 condition of the defendant's probation:

396 (i) to provide for the support of persons for whose support the defendant is legally
397 liable;

398 (ii) to participate in available treatment programs, including any treatment program in
399 which the defendant is currently participating if the program is acceptable to the court;

400 (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and
401 Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

402 (iv) if the defendant is on probation for a felony offense, to serve a period of time as an
403 initial condition of probation that does not exceed one year in a county jail designated by the
404 department, after considering any recommendation by the court as to which jail the court finds
405 most appropriate;

406 (v) to serve a term of home confinement in accordance with Section 77-18-107;

407 (vi) to participate in compensatory service programs, including the compensatory
408 service program described in Section 76-3-410;

409 (vii) to pay for the costs of investigation, probation, or treatment services;

410 (viii) to pay restitution to a victim with interest in accordance with Chapter 38b, Crime
411 Victims Restitution Act; or

412 (ix) to comply with other terms and conditions the court considers appropriate to
413 ensure public safety or increase a defendant's likelihood of success on probation.

414 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a
415 defendant to include a period of time that is served in a county jail immediately before the
416 termination of probation as long as that period of time does not exceed one year.

417 (ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation
418 violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply
419 to the period of time that the court orders the defendant to serve in a county jail under this
420 Subsection (6)(b)(ii).

421 (7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on
422 probation after December 31, 2018:

423 (i) may not exceed the individual's maximum sentence;

424 (ii) shall be for a period of time that is in accordance with the supervision length
425 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the
426 extent the guidelines are consistent with the requirements of the law; and

427 (iii) shall be terminated in accordance with the supervision length guidelines
428 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
429 guidelines are consistent with the requirements of the law.

430 (b) Probation of an individual placed on probation after December 31, 2018, whose

431 maximum sentence is one year or less, may not exceed 36 months.

432 (c) Probation of an individual placed on probation on or after October 1, 2015, but
433 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
434 completion without violation of 36 months probation in felony or class A misdemeanor cases,
435 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance
436 with Section 64-13-21 regarding earned credits.

437 (d) This Subsection (7) does not apply to the probation of an individual convicted of an
438 offense for criminal nonsupport under Section 76-7-201.

439 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal
440 accounts receivable for the defendant upon termination of the probation period for the
441 defendant under Subsection (7), the court may require the defendant to continue to make
442 payments towards the criminal accounts receivable in accordance with the payment schedule
443 established by the court under Section 77-32b-103.

444 (b) A court may not require the defendant to make payments as described in Subsection
445 (8)(a) beyond the expiration of the defendant's sentence.

446 (c) If the court requires a defendant to continue to pay in accordance with the payment
447 schedule for the criminal accounts receivable under this Subsection (8) and the defendant
448 defaults on the criminal accounts receivable, the court shall proceed with an order for a civil
449 judgment of restitution and a civil accounts receivable for the defendant as described in Section
450 77-18-114.

451 (d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's
452 own motion, the court may require a defendant to show cause as to why the defendant's failure
453 to pay in accordance with the payment schedule should not be treated as contempt of court.

454 (ii) A court may hold a defendant in contempt for failure to make payments for a
455 criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

456 (e) This Subsection (8) does not apply to the probation of an individual convicted of an
457 offense for criminal nonsupport under Section 76-7-201.

458 (9) When making any decision regarding probation[;]:

459 (a) the court shall consider information provided by the Department of Corrections
460 regarding a defendant's individual case action plan, including any progress the defendant has
461 made in satisfying the case action plan's completion requirements[;]; and

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

463 Section 8. Section **77-20-205** is amended to read:

464 **77-20-205. Pretrial release by a magistrate or judge.**

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

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

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

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

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

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

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

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

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

486 (i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for
487 pretrial detention as described in Section [77-20-206](#);

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

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

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

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

495 (i) release the individual on the individual's own recognizance during the time the
496 individual awaits trial or other resolution of criminal charges;

497 (ii) designate a condition, or a combination of conditions, to be imposed upon the
498 individual's release during the time the individual awaits trial or other resolution of criminal
499 charges; or

500 (iii) order the individual to be detained during the time that individual awaits trial or
501 other resolution of criminal charges.

502 (b) In making a determination about pretrial release in a pretrial status order, the
503 magistrate or judge may not give any deference to a magistrate's decision in a temporary
504 pretrial status order.

505 (4) In making a determination about pretrial release, a magistrate or judge shall impose
506 only conditions of release that are reasonably available and necessary to reasonably ensure:

507 (a) the individual's appearance in court when required;

508 (b) the safety of any witnesses or victims of the offense allegedly committed by the
509 individual;

510 (c) the safety and welfare of the public; and

511 (d) that the individual will not obstruct, or attempt to obstruct, the criminal justice
512 process.

513 (5) Except as provided in Subsection (6), a magistrate or judge may impose a
514 condition, or combination of conditions, for pretrial release that requires an individual to:

515 (a) not commit a federal, state, or local offense during the period of pretrial release;

516 (b) avoid contact with a victim of the alleged offense;

517 (c) avoid contact with a witness who:

518 (i) may testify concerning the alleged offense; and

519 (ii) is named in the pretrial status order;

520 (d) not consume alcohol or any narcotic drug or other controlled substance unless
521 prescribed by a licensed medical practitioner;

522 (e) submit to drug or alcohol testing;

523 (f) complete a substance abuse evaluation and comply with any recommended

- 524 treatment or release program;
- 525 (g) submit to electronic monitoring or location device tracking;
- 526 (h) participate in inpatient or outpatient medical, behavioral, psychological, or
- 527 psychiatric treatment;
- 528 (i) maintain employment or actively seek employment if unemployed;
- 529 (j) maintain or commence an education program;
- 530 (k) comply with limitations on where the individual is allowed to be located or the
- 531 times that the individual shall be, or may not be, at a specified location;
- 532 (l) comply with specified restrictions on personal associations, place of residence, or
- 533 travel;
- 534 (m) report to a law enforcement agency, pretrial services program, or other designated
- 535 agency at a specified frequency or on specified dates;
- 536 (n) comply with a specified curfew;
- 537 (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 538 (p) if the individual is charged with an offense against a child, limit or prohibit access
- 539 to any location or occupation where children are located, including any residence where
- 540 children are on the premises, activities where children are involved, locations where children
- 541 congregate, or where a reasonable person would know that children congregate;
- 542 (q) comply with requirements for house arrest;
- 543 (r) return to custody for a specified period of time following release for employment,
- 544 schooling, or other limited purposes;
- 545 (s) remain in custody of one or more designated individuals who agree to:
- 546 (i) supervise and report on the behavior and activities of the individual; and
- 547 (ii) encourage compliance with all court orders and attendance at all required court
- 548 proceedings;
- 549 (t) comply with a financial condition; or
- 550 (u) comply with any other condition that is reasonably available and necessary to
- 551 ensure compliance with Subsection (4).
- 552 (6) (a) If a county or municipality has established a pretrial services program, the
- 553 magistrate or judge shall consider the services that the county or municipality has identified as
- 554 available in determining what conditions of release to impose.

555 (b) The magistrate or judge may not order conditions of release that would require the
556 county or municipality to provide services that are not currently available from the county or
557 municipality.

558 (c) Notwithstanding Subsection (6)(a), the magistrate or judge may impose conditions
559 of release not identified by the county or municipality so long as the condition does not require
560 assistance or resources from the county or municipality.

561 (7) (a) If the magistrate or judge determines that a financial condition, other than an
562 unsecured bond, is necessary to impose as a condition of release, the magistrate or judge shall
563 consider the individual's ability to pay when determining the amount of the financial condition.

564 (b) If the magistrate or judge determines that a financial condition is necessary to
565 impose as a condition of release, and a county jail official fixed a financial condition for the
566 individual under Section 77-20-204, the magistrate or judge may not give any deference to:

567 (i) the county jail official's action to fix a financial condition; or

568 (ii) the amount of the financial condition that the individual was required to pay for
569 pretrial release.

570 (c) If a magistrate or judge orders a financial condition as a condition of release, the
571 judge or magistrate shall set the financial condition at a single amount per case.

572 (8) In making a determination about pretrial release, the magistrate or judge may:

573 (a) rely upon information contained in:

574 (i) the indictment or information;

575 (ii) any sworn or probable cause statement or other information provided by law
576 enforcement;

577 (iii) a pretrial risk assessment;

578 (iv) an affidavit of indigency described in Section 78B-22-201.5;

579 (v) witness statements or testimony;

580 (vi) the results of a lethality assessment completed in accordance with Section
581 77-36-2.1; or

582 (vii) any other reliable record or source, including proffered evidence; and

583 (b) consider:

584 (i) the nature and circumstances of the offense, or offenses, that the individual was
585 arrested for, or charged with, including:

- 586 (A) whether the offense is a violent offense; and
- 587 (B) the vulnerability of a witness or alleged victim;
- 588 (ii) the nature and circumstances of the individual, including the individual's:
 - 589 (A) character;
 - 590 (B) physical and mental health;
 - 591 (C) family and community ties;
 - 592 (D) employment status or history;
 - 593 (E) financial resources;
 - 594 (F) past criminal conduct;
 - 595 (G) history of drug or alcohol abuse; and
 - 596 (H) history of timely appearances at required court proceedings;
- 597 (iii) the potential danger to another individual, or individuals, posed by the release of
- 598 the individual;
- 599 (iv) whether the individual was on probation, parole, or release pending an upcoming
- 600 court proceeding at the time the individual allegedly committed the offense or offenses;
- 601 (v) the availability of:
 - 602 (A) other individuals who agree to assist the individual in attending court when
 - 603 required; or
 - 604 (B) supervision of the individual in the individual's community;
 - 605 (vi) the eligibility and willingness of the individual to participate in various treatment
 - 606 programs, including drug treatment; or
 - 607 (vii) other evidence relevant to the individual's likelihood of fleeing or violating the
 - 608 law if released.
- 609 (9) The magistrate or judge may not base a determination about pretrial release solely:
 - 610 (a) on the seriousness or type of offense that the individual is arrested for or charged
 - 611 with, unless the individual is arrested for or charged with a capital felony[:]; or
 - 612 (b) on an algorithm or a risk assessment tool score.
- 613 (10) An individual arrested for violation of a jail release agreement, or a jail release
- 614 court order, issued in accordance with Section [78B-7-802](#):
- 615 (a) may not be released before the individual's first appearance before a magistrate or
- 616 judge; and

617 (b) may be denied pretrial release by the magistrate or judge.

618 Section 9. Section 77-27-5 is amended to read:

619 **77-27-5. Board of Pardons and Parole authority.**

620 (1) (a) Subject to this chapter and other laws of the state, and except for a conviction
621 for treason or impeachment, the board shall determine by majority decision when and under
622 what conditions an offender's conviction may be pardoned or commuted.

623 (b) The Board of Pardons and Parole shall determine by majority decision when and
624 under what conditions an offender committed to serve a sentence at a penal or correctional
625 facility, which is under the jurisdiction of the department, may:

626 (i) be released upon parole;

627 (ii) have a fine or forfeiture remitted;

628 (iii) have the offender's criminal accounts receivable remitted in accordance with
629 Section 77-32b-105 or 77-32b-106;

630 (iv) have the offender's payment schedule modified in accordance with Section
631 77-32b-103; or

632 (v) have the offender's sentence terminated.

633 (c) The board shall prioritize public safety when making a determination under
634 Subsection (1)(a) or (1)(b).

635 (d) (i) The board may sit together or in panels to conduct hearings.

636 (ii) The chair shall appoint members to the panels in any combination and in
637 accordance with rules made in accordance with Title 63G, Chapter 3, Utah Administrative
638 Rulemaking Act, by the board.

639 (iii) The chair may participate on any panel and when doing so is chair of the panel.

640 (iv) The chair of the board may designate the chair for any other panel.

641 (e) (i) Except after a hearing before the board, or the board's appointed examiner, in an
642 open session, the board may not:

643 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts
644 receivable;

645 (B) release the offender on parole; or

646 (C) commute, pardon, or terminate an offender's sentence.

647 (ii) An action taken under this Subsection (1) other than by a majority of the board

648 shall be affirmed by a majority of the board.

649 (f) A commutation or pardon may be granted only after a full hearing before the board.

650 (2) (a) In the case of any hearings, timely prior notice of the time and location of the
651 hearing shall be given to the offender.

652 (b) The county or district attorney's office responsible for prosecution of the case, the
653 sentencing court, and law enforcement officials responsible for the defendant's arrest and
654 conviction shall be notified of any board hearings through the board's website.

655 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
656 notified of original hearings and any hearing after that if notification is requested and current
657 contact information has been provided to the board.

658 (d) (i) Notice to the victim or the victim's representative shall include information
659 provided in Section 77-27-9.5, and any related rules made by the board under that section.

660 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are
661 reasonable for the lay person to understand.

662 (3) (a) A decision by the board is final and not subject for judicial review if the
663 decision is regarding:

664 (i) a pardon, parole, commutation, or termination of an offender's sentence;

665 (ii) the modification of an offender's payment schedule for restitution; or

666 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.

667 (b) Deliberative processes are not public and the board is exempt from Title 52,
668 Chapter 4, Open and Public Meetings Act, when the board is engaged in the board's
669 deliberative process.

670 (c) Pursuant to Subsection 63G-2-103(25)(b)(xi), records of the deliberative process
671 are exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

672 (d) Unless it will interfere with a constitutional right, deliberative processes are not
673 subject to disclosure, including discovery.

674 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.

675 (4) (a) This chapter may not be construed as a denial of or limitation of the governor's
676 power to grant respite or reprieves in all cases of convictions for offenses against the state,
677 except treason or conviction on impeachment.

678 (b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the

679 next session of the Board of Pardons and Parole.

680 (c) At the next session of the board, the board:

681 (i) shall continue or terminate the respite or reprieve; or

682 (ii) may commute the punishment or pardon the offense as provided.

683 (d) In the case of conviction for treason, the governor may suspend execution of the
684 sentence until the case is reported to the Legislature at the Legislature's next session.

685 (e) The Legislature shall pardon or commute the sentence or direct the sentence's
686 execution.

687 (5) (a) In determining when, where, and under what conditions an offender serving a
688 sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the offender's
689 criminal accounts receivable remitted, or have the offender's sentence commuted or terminated,
690 the board shall:

691 (i) consider whether the offender has made restitution ordered by the court under
692 Section [77-38b-205](#), or is prepared to pay restitution as a condition of any parole, pardon,
693 remission of a criminal accounts receivable or a fine or forfeiture, or a commutation or
694 termination of the offender's sentence;

695 (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for
696 making determinations under this Subsection (5);

697 (iii) consider information provided by the Department of Corrections regarding an
698 offender's individual case action plan; and

699 (iv) review an offender's status within 60 days after the day on which the board
700 receives notice from the Department of Corrections that the offender has completed all of the
701 offender's case action plan components that relate to activities that can be accomplished while
702 the offender is imprisoned.

703 (b) The board shall determine whether to remit an offender's criminal accounts
704 receivable under this Subsection (5) in accordance with Section [77-32b-105](#) or [77-32b-106](#).

705 (6) In determining whether parole may be terminated, the board shall consider:

706 (a) the offense committed by the parolee; and

707 (b) the parole period under Section [76-3-202](#), and in accordance with Section
708 [77-27-13](#).

709 (7) For an offender placed on parole after December 31, 2018, the board shall

710 terminate parole in accordance with the supervision length guidelines established by the Utah
711 Sentencing Commission under Section [63M-7-404](#), to the extent the guidelines are consistent
712 with the requirements of the law.

713 (8) The board may not rely solely on an algorithm or a risk assessment tool score in
714 determining whether parole should be granted or terminated for an offender.

715 Section 10. Section **78A-2-109.5** is amended to read:

716 **78A-2-109.5. Court data collection and reporting.**

717 (1) As used in this section, "commission" means the Commission on Criminal and
718 Juvenile Justice created in Section [63M-7-201](#).

719 (2) The Administrative Office of the Courts shall submit the following information to
720 the commission for each criminal case filed with the court:

721 (a) case number;

722 (b) the defendant's:

723 (i) full name;

724 (ii) offense tracking number; and

725 (iii) date of birth;

726 (c) charges filed;

727 (d) initial appearance date;

728 (e) bail amount set by the court, if any;

729 (f) whether the defendant was represented by a public defender, private counsel, or pro

730 se; [~~and~~]

731 (g) whether the defendant had previously been convicted of an offense;

732 [~~(g)~~] (h) final disposition of the charges[~~;~~]; and

733 (i) if the defendant is convicted, the defendant's total score for the validated risk
734 assessment tool that is calculated in accordance with the adult sentencing and supervision
735 guidelines described in Section [63M-4-404](#).

736 (3) (a) The Administrative Office of the Courts shall submit the information described
737 in Subsection (2) to the commission on the 15th day of July and January of each year for the
738 previous six-month period ending the last day of June and December of each year in the form
739 and manner selected by the commission.

740 (b) If the last day of the month is a Saturday, Sunday, or state holiday, the

741 Administrative Office of the Courts shall submit the information described in Subsection (2) to
742 the commission on the next working day.

743 (4) Before July 1 of each year, the Administrative Office of the Courts shall submit the
744 following data on cases involving individuals charged with class A misdemeanors and felonies,
745 broken down by judicial district, to the commission for each preceding calendar year:

746 (a) the number of cases in which a preliminary hearing is set and placed on the court
747 calendar;

748 (b) the median and range of the number of times that a preliminary hearing is continued
749 in cases in which a preliminary hearing is set and placed on the court calendar;

750 (c) the number of cases, and the average time to disposition for those cases, in which
751 only written statements from witnesses are submitted as probable cause at the preliminary
752 hearing;

753 (d) the number of cases, and the average time to disposition for those cases, in which
754 written statements and witness testimony are submitted as probable cause at the preliminary
755 hearing;

756 (e) the number of cases, and the average time to disposition for those cases, in which
757 only witness testimony is submitted as probable cause at the preliminary hearing; and

758 (f) the number of cases in which a preliminary hearing is held and the defendant is
759 bound over for trial.

760 (5) The commission shall include the data collected under Subsection (4) in the
761 commission's annual report described in Section [63M-7-205](#).

762 Section 11. **Effective date.**

763 This bill takes effect on May 1, 2024.