

HB0366S01 compared with HB0366

~~{deleted text}~~ shows text that was in HB0366 but was deleted in HB0366S01.

inserted text shows text that was not in HB0366 but was inserted into HB0366S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

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}~~amends provisions regarding 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

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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:

17-55-201, as last amended by Laws of Utah 2023, Chapters 249, 257

63A-16-1002, as last amended by Laws of Utah 2023, Chapters 158, 161, 382, and 448

77-2-5, as last amended by Laws of Utah 2021, Chapters 43, 260

77-18-103, as last amended by Laws of Utah 2023, Chapter 155

77-18-105, as last amended by Laws of Utah 2023, Chapters 111, 257

77-20-205, as last amended by Laws of Utah 2023, Chapters 408, 447

77-27-5, as last amended by Laws of Utah 2023, Chapters 151, 173

78A-2-109.5, as last amended by Laws of Utah 2023, Chapter 441

ENACTS:

76-8-309.1, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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

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

17-55-201. Criminal justice coordinating councils -- Creation -- Strategic plan --

Reporting requirements.

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

(i) create a criminal justice coordinating council; or

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

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

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(2) (a) A council shall include:

- (i) one county commissioner or county council member;
- (ii) the county sheriff or the sheriff's designee;
- (iii) one chief of police of a municipality within the county or the chief's designee;
- (iv) the county attorney or the attorney's designee;
- (v) one public defender or attorney who provides public defense within the county;
- (vi) one district court judge;
- (vii) one justice court judge;
- (viii) one representative from the Division of Adult Probation and Parole within the

Department of Corrections;

- (ix) one representative from the local mental health authority within the county; and
- (x) one individual who is:
 - (A) a crime victim; or
 - (B) a victim advocate, as defined in Section 77-38-403.

(b) A council may include:

- (i) an individual representing:
 - (A) local government;
 - (B) human services programs;
 - (C) higher education;
 - (D) peer support services;
 - (E) workforce services;
 - (F) local housing services;
 - (G) mental health or substance use disorder providers;
 - (H) a health care organization within the county;
 - (I) a local homeless council;
 - (J) family counseling and support groups; or
 - (K) organizations that work with families of incarcerated individuals; or
- (ii) an individual with lived experiences in the criminal justice system.

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

(3) ~~The~~(a) Except as provided in Subsection (3)(b), the chair of a council is the county commissioner or county council member described in Subsection (2)(a)(i).

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(b) The county commissioner or county council member may designate a member of the council, who is an elected official, to serve as the chair of the council.

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

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

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

(iii) recidivism reduction objectives; and

(iv) community reintegration goals.

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

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

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

(a) the implementation of a strategic plan described in Subsection (4); and

(b) any data on the impact of the council on the criminal justice system in the county or counties.

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

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

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

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

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

(a) master standards and formats for information submitted to the database;

(b) a portal, bridge, website, or other method for reporting entities to provide the information;

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

(d) a protocol for accessing information in the database that complies with state

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privacy regulations; and

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

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

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

(a) Section 13-53-111, recidivism reporting requirements;

(b) Section 17-22-32, county jail reporting requirements;

(c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;

(d) Section 41-6a-511, courts to collect and maintain data;

(e) Section 53-23-101, reporting requirements for reverse-location warrants;

(f) Section 53-24-102, sexual assault offense reporting requirements for law enforcement agencies;

(g) Section 63M-7-214, law enforcement agency grant reporting;

(h) Section 63M-7-216, prosecutorial data collection;

(i) Section 64-13-21, supervision of sentenced offenders placed in community;

(j) Section 64-13-25, standards for programs;

(k) Section 64-13-45, department reporting requirements;

(l) Section 64-13e-104, housing of state probationary inmates or state parole inmates;

(m) Section 77-7-8.5, use of tactical groups;

(n) Section 77-11b-404, forfeiture reporting requirements;

(o) Section 77-20-103, release data requirements;

(p) Section 77-22-2.5, court orders for criminal investigations;

(q) Section 78A-2-109.5, court [~~demographics reporting~~] data collection on criminal cases;

(r) Section 80-6-104, data collection on offenses committed by minors; and

(s) any other statutes which require the collection of specific data and the reporting of that data to the commission.

(6) The commission shall report:

(a) progress on the database, including creation, configuration, and data entered, to the Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and

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(b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing Committee not later than January 16, 2023.

Section 3. Section **76-8-309** is repealed and reenacted to read:

76-8-309. Escape.

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

(i) "Agency" means a law enforcement agency, the Department of Corrections, a county or district attorney's office, the Office of the Attorney General, the Board of Pardons and Parole, or the judicial branch, including the Judicial Council, the Administrative Office of the Courts, or a similar administrative unit of the judicial branch.

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

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

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

(III) the individual is not on parole;

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

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

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

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

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

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

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

(v) "Official custody" means:

(A) confinement in a state prison;

(B) the individual is lawfully detained in a facility for secure confinement of minors that is operated by the Division of Juvenile Justice Services;

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

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

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

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

(~~D~~ E) the individual is on probation and the individual is in prehearing custody after an arrest for a probation violation.

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

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

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

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

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

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

(A) leaves official custody; or

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

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

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

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

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

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

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

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

76-8-309.1. Aggravated escape.

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

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

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

(a) uses a dangerous weapon; or

(b) causes serious bodily injury to another.

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

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

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

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

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

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

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

(4) (a) A diversion agreement, entered into between the prosecuting attorney and the defendant and approved by a [magistrate] court, shall contain a full, detailed statement of the

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requirements agreed to by the defendant and the reasons for diversion.

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

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

(ii) the defendant does not owe any restitution.

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

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

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

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

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

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

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

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

(b) The court may:

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

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

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

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

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

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

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

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

(b) if the defendant is convicted of a felony or a class A misdemeanor, request that the department or a law enforcement agency prepare a presentence investigation report for the defendant.

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

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

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

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

(d) recommendations for treatment for the defendant; and

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

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

(4) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that is

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not resolved by the parties and the department or law enforcement agency before sentencing:

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

and

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

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

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

(B) provide the written finding to the Division of Adult Probation and Parole or the law enforcement agency.

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

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

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

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

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

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

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

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

(c) requested by the board;

(d) requested by the subject of the presentence investigation report or the subject's

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authorized representative;

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

- (i) statements or materials provided by the victim;
- (ii) the circumstances of the offense, including statements by the defendant; or
- (iii) the impact of the offense on the victim or the victim's household; or
- (f) requested by a sex offender treatment provider:

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

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

(iii) who provides written assurance to the department that the report:

- (A) is necessary for the treatment of the defendant;
- (B) will be used solely for the treatment of the defendant; and
- (C) will not be disclosed to an individual or entity other than the defendant.

(8) (a) At the time of sentence, the court shall receive any testimony, evidence, or information that the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.

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

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

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

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

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

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

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

(a) shall impose a sentence in accordance with Section 76-3-201; and

(b) subject to Subsection (5), may suspend the execution of the sentence and place the defendant:

(i) on probation under the supervision of the department;

(ii) on probation under the supervision of an agency of a local government or a private organization; or

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

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

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

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

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

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

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

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

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

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

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

(ii) A court may only order:

(A) the department to supervise the probation for an individual convicted of a class A

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misdemeanor or any felony; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply

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to the period of time that the court orders the defendant to serve in a county jail under this Subsection (6)(b)(ii).

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

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

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

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

(b) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less, may not exceed 36 months.

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

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

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

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

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

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77-18-114.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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charges.

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

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

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

(ii) if a party requests a delay; or

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

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

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

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

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

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

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

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

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

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

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

(d) that the individual will not obstruct, or attempt to obstruct, the criminal justice

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process.

- (5) Except as provided in Subsection (6), a magistrate or judge may impose a condition, or combination of conditions, for pretrial release that requires an individual to:
- (a) not commit a federal, state, or local offense during the period of pretrial release;
 - (b) avoid contact with a victim of the alleged offense;
 - (c) avoid contact with a witness who:
 - (i) may testify concerning the alleged offense; and
 - (ii) is named in the pretrial status order;
 - (d) not consume alcohol or any narcotic drug or other controlled substance unless prescribed by a licensed medical practitioner;
 - (e) submit to drug or alcohol testing;
 - (f) complete a substance abuse evaluation and comply with any recommended treatment or release program;
 - (g) submit to electronic monitoring or location device tracking;
 - (h) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;
 - (i) maintain employment or actively seek employment if unemployed;
 - (j) maintain or commence an education program;
 - (k) comply with limitations on where the individual is allowed to be located or the times that the individual shall be, or may not be, at a specified location;
 - (l) comply with specified restrictions on personal associations, place of residence, or travel;
 - (m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;
 - (n) comply with a specified curfew;
 - (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
 - (p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;
 - (q) comply with requirements for house arrest;

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(r) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;

(s) remain in custody of one or more designated individuals who agree to:

(i) supervise and report on the behavior and activities of the individual; and

(ii) encourage compliance with all court orders and attendance at all required court proceedings;

(t) comply with a financial condition; or

(u) comply with any other condition that is reasonably available and necessary to ensure compliance with Subsection (4).

(6) (a) If a county or municipality has established a pretrial services program, the magistrate or judge shall consider the services that the county or municipality has identified as available in determining what conditions of release to impose.

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

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

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

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

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

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

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

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

(a) rely upon information contained in:

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- (i) the indictment or information;
 - (ii) any sworn or probable cause statement or other information provided by law enforcement;
 - (iii) a pretrial risk assessment;
 - (iv) an affidavit of indigency described in Section 78B-22-201.5;
 - (v) witness statements or testimony;
 - (vi) the results of a lethality assessment completed in accordance with Section 77-36-2.1; or
 - (vii) any other reliable record or source, including proffered evidence; and
- (b) consider:
- (i) the nature and circumstances of the offense, or offenses, that the individual was arrested for, or charged with, including:
 - (A) whether the offense is a violent offense; and
 - (B) the vulnerability of a witness or alleged victim;
 - (ii) the nature and circumstances of the individual, including the individual's:
 - (A) character;
 - (B) physical and mental health;
 - (C) family and community ties;
 - (D) employment status or history;
 - (E) financial resources;
 - (F) past criminal conduct;
 - (G) history of drug or alcohol abuse; and
 - (H) history of timely appearances at required court proceedings;
 - (iii) the potential danger to another individual, or individuals, posed by the release of the individual;
 - (iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;
 - (v) the availability of:
 - (A) other individuals who agree to assist the individual in attending court when required; or
 - (B) supervision of the individual in the individual's community;

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(vi) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or

(vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.

(9) The magistrate or judge may not base a determination about pretrial release solely:

(a) on the seriousness or type of offense that the individual is arrested for or charged with, unless the individual is arrested for or charged with a capital felony[-]; or

(b) on an algorithm or a risk assessment tool score.

(10) An individual arrested for violation of a jail release agreement, or a jail release court order, issued in accordance with Section 78B-7-802:

(a) may not be released before the individual's first appearance before a magistrate or judge; and

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

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

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

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

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

(i) be released upon parole;

(ii) have a fine or forfeiture remitted;

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

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

(v) have the offender's sentence terminated.

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

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

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

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

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

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

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

(B) release the offender on parole; or

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

(ii) An action taken under this Subsection (1) other than by a majority of the board shall be affirmed by a majority of the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole.

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

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

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

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

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

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

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

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

(iii) consider information provided by the Department of Corrections regarding an

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offender's individual case action plan; and

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

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

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

(a) the offense committed by the parolee; and

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

(7) For an offender placed on parole after December 31, 2018, the board shall terminate parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

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

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

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

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

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

(a) case number;

(b) the defendant's:

(i) full name;

(ii) offense tracking number; and

(iii) date of birth;

(c) charges filed;

(d) initial appearance date;

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

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(f) whether the defendant was represented by a public defender, private counsel, or pro se; [~~and~~]

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

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

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

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

(b) If the last day of the month is a Saturday, Sunday, or state holiday, the Administrative Office of the Courts shall submit the information described in Subsection (2) to the commission on the next working day.

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

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

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

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

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

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

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

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

Section 11. **Effective date.**

This bill takes effect on May 1, 2024.