

SB0213S01 compared with SB0213

~~{deleted text}~~ shows text that was in SB0213 but was deleted in SB0213S01.

inserted text shows text that was not in SB0213 but was inserted into SB0213S01.

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Senator Kirk A. Cullimore proposes the following substitute bill:

CRIMINAL JUSTICE MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the criminal justice system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{modifies the criminal penalties for the possession of a controlled substance or controlled substance analog;~~
- ~~clarifies provisions related to the}~~ requires the Utah Sentencing Commission~~;~~
- ~~clarifies and amends the adult sentencing and supervision length}~~ to establish supervision guidelines regarding responses to progress in, and violations of, probation and parole;
- ▶ requires the Utah Sentencing Commission to establish sentencing guidelines to

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address habitual offenders ~~{ and responses to probation and parole progress or violations;~~

~~→ clarifies the juvenile disposition guidelines};~~

- ▶ requires the Department of Corrections to create a program to allow an offender to earn credits for maintaining stable and verifiable employment that would result in a reduction in the amount of time that the offender is on probation or parole;

~~{ → clarifies and modifies provisions on venue and joinder for a criminal action;~~

- ▶ addresses the modification of a sentence for an individual who is incarcerated in a state prison or county jail;
- ▶ modifies the crime of unlawful sexual activity with a minor to address a defendant who is 18 years old and enrolled in high school at the time the sexual activity occurred;

▶ modifies the crime of unlawful adolescent sexual activity to include an actor who is 18 years old and enrolled in high school at the time the sexual activity occurred;

- ▶ addresses the sentencing of an individual who has been previously convicted of felony offenses;
- ▶ modifies the continuing jurisdiction of the sentencing court;
- ▶ addresses pretrial detention of certain individuals who have committed a felony offense;
- ▶ modifies the requirements for a magistrate or judge when ordering pretrial release;
- ▶ addresses the means by which the Board of Pardons and Parole notifies a victim of any hearing or decision;
- ▶ allows a victim to submit a written statement for a hearing by the Board of Pardons and Parole;
- ▶ addresses consideration of a victim's written statement by the Board of Pardons and Parole;
- ▶ addresses the information that a court and a prosecuting attorney forwards to the Board of Pardons and Parole;
- ▶ modifies the duties of a law enforcement officer with regard to a victim;
- ▶ amends the requirements for a drug court program; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides ~~{a special effective date}~~ coordination clauses.

Utah Code Sections Affected:

AMENDS:

- ~~{~~ ~~58-37-8 (Superseded 07/01/24)~~, as last amended by Laws of Utah 2023, Chapters 312, 329
- ~~58-37-8 (Effective 07/01/24)~~, as last amended by Laws of Utah 2023, Chapters 310, 312 and 329
- ‡ **63I-1-263**, as last amended by Laws of Utah 2023, Chapters 33, 47, 104, 109, 139, 155, 212, 218, 249, 270, 448, 489, and 534
- ~~{~~ ~~63M-7-102~~, as enacted by Laws of Utah 2023, Chapter 177
- ‡ **63M-7-303**, as last amended by Laws of Utah 2023, Chapters 266, 330 and 534 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 330
- ~~{~~ ~~63M-7-402~~; 63M-7-404, as last amended by Laws of Utah ~~{2020, Chapter 154~~
- ~~63M-7-405~~, as last amended by Laws of Utah 2022, Chapter 274
- ~~63M-7-406~~, as renumbered and amended by Laws of Utah 2008, Chapter 382
- ~~64-13-6~~, as last amended by Laws of Utah 2023, Chapter 177
- ‡ 2023, Chapter 111
- 64-13-21**, as last amended by Laws of Utah 2022, Chapter 187
- ~~{~~ ~~64-13g-102~~, as last amended by Laws of Utah 2023, Chapter 177
- ~~76-1-401~~, as last amended by Laws of Utah 1995, Chapter 20
- ~~76-1-402~~, as last amended by Laws of Utah 1974, Chapter 32
- ~~76-3-202~~, as last amended by Laws of Utah 2022, Chapter 181
- ~~76-5-102.1~~, as last amended by Laws of Utah 2023, Chapters 111, 415
- ~~76-5-207~~, as last amended by Laws of Utah 2023, Chapter 415
- ‡ **76-5-401**, as last amended by Laws of Utah 2023, Chapter 123
- ~~{~~ ~~77-2a-2~~; 76-5-401.3, as last amended by Laws of Utah ~~{2020}~~ 2023, ~~{Chapter 281}~~; Chapters 123, 161
- 77-18-102**, as last amended by Laws of Utah 2023, Chapter 330

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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~~

~~77-18-108, as last amended by Laws of Utah 2023, Chapter 113~~

‡ 77-18-118, as last amended by Laws of Utah 2022, Chapter 359

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~~

‡ 77-27-9.5, as last amended by Laws of Utah 1998, Chapter 355

~~{77-27-11}~~ 77-27-9.7, as last amended by Laws of Utah ~~{2022}~~ 1994, Chapter ~~{115}~~ 13

77-27-13, as last amended by Laws of Utah 1998, Chapter 171

~~{ 77-27-32, as enacted by Laws of Utah 2023, Chapter 151~~

‡ 77-36-2.1, as last amended by Laws of Utah 2023, Chapters 138, 447

78A-5-201, as last amended by Laws of Utah 2023, Chapter 330

78B-9-102, as last amended by Laws of Utah 2017, Chapter 450

~~{ 80-6-307, as renumbered and amended by Laws of Utah 2021, Chapter 261~~

~~80-6-607, as renumbered and amended by Laws of Utah 2021, Chapter 261~~

ENACTS:

~~63M-7-101.5, Utah Code Annotated 1953~~

~~63M-7-401.1, Utah Code Annotated 1953~~

~~63M-7-402.5, Utah Code Annotated 1953~~

~~63M-7-404.1, Utah Code Annotated 1953~~

~~63M-7-404.3, Utah Code Annotated 1953~~

~~63M-7-404.5, Utah Code Annotated 1953~~

‡ ENACTS:

76-3-411, Utah Code Annotated 1953

~~{REPEALS AND REENACTS}~~ Utah Code Sections Affected By Coordination Clause:

~~{76-1-202}~~ 63M-7-404, as last amended by Laws of Utah ~~{2017, Chapter 282~~

RENUMBERS AND AMENDS:

~~63M-7-401.2, (Renumbered from 63M-7-401, as last amended by Laws of Utah 2021, Chapter 173)~~

~~76-1-402.5, (Renumbered from 77-8a-1, as enacted by Laws of Utah 1990, Chapter 201)~~

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REPEALS:

~~63M-7-403~~, as renumbered and amended by Laws of Utah 2008, Chapter 382

~~63M-7-404~~, 2023, Chapter 111

76-5-401.3, as last amended by Laws of Utah 2023, ~~{Chapter 111}~~ Chapters 123, 161

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

Section 1. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates: Titles 63A to 63N.

(1) Subsection 63A-5b-405(5), relating to prioritizing and allocating capital improvement funding, is repealed July 1, 2024.

(2) Section 63A-5b-1003, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Sections 63A-9-301 and 63A-9-302, related to the Motor Vehicle Review Committee, are repealed July 1, 2023.

(4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2028.

(5) Title 63C, Chapter 6, Utah Seismic Safety Commission, is repealed January 1, 2025.

(6) Title 63C, Chapter 12, Snake Valley Aquifer Advisory Council, is repealed July 1, 2024.

(7) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2023.

(8) Title 63C, Chapter 18, Behavioral Health Crisis Response Commission, is repealed December 31, 2026.

(9) Title 63C, Chapter 23, Education and Mental Health Coordinating Council, is repealed July 1, 2026.

(10) Title 63C, Chapter 27, Cybersecurity Commission, is repealed July 1, 2032.

(11) Title 63C, Chapter 28, Ethnic Studies Commission, is repealed July 1, 2026.

(12) Title 63C, Chapter 29, Domestic Violence Data Task Force, is repealed December 31, 2024.

(13) Title 63C, Chapter 31, State Employee Benefits Advisory Commission, is

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repealed on July 1, 2028.

(14) Section 63G-6a-805, which creates the Purchasing from Persons with Disabilities Advisory Board, is repealed July 1, 2026.

(15) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2028.

(16) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2024.

(17) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(18) Subsection 63J-1-602.2(25), related to the Utah Seismic Safety Commission, is repealed January 1, 2025.

(19) Section 63L-11-204, creating a canyon resource management plan to Provo Canyon, is repealed July 1, 2025.

(20) Title 63L, Chapter 11, Part 4, Resource Development Coordinating Committee, is repealed July 1, 2027.

(21) In relation to the Utah Substance Use and Mental Health Advisory Council, on January 1, 2033:

(a) Sections 63M-7-301, 63M-7-302, 63M-7-303, 63M-7-304, and 63M-7-306 are repealed;

(b) Section 63M-7-305, the language that states "council" is replaced with "commission";

(c) Subsection 63M-7-305(1)(a) is repealed and replaced with:

"(1) "Commission" means the Commission on Criminal and Juvenile Justice."; and

(d) Subsection 63M-7-305(2) is repealed and replaced with:

"(2) The commission shall:

(a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and

(b) coordinate the implementation of Section 77-18-104 and related provisions in Subsections [77-18-103(2)(c)] 77-18-103(3)(c) and (d)."

(22) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2027.

(23) Title 63M, Chapter 7, Part 8, Sex Offense Management Board, is repealed July 1,

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2026.

(24) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2026.

(25) Title 63N, Chapter 1b, Part 4, Women in the Economy Subcommittee, is repealed January 1, 2025.

(26) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028.

(27) Section 63N-2-512, related to the Hotel Impact Mitigation Fund, is repealed July 1, 2028.

(28) Title 63N, Chapter 3, Part 9, Strategic Innovation Grant Pilot Program, is repealed July 1, 2027.

(29) Title 63N, Chapter 3, Part 11, Manufacturing Modernization Grant Program, is repealed July 1, 2025.

(30) In relation to the Rural Employment Expansion Program, on July 1, 2028:

(a) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed;
and

(b) Subsection 63N-4-805(5)(b), referring to the Rural Employment Expansion Program, is repealed.

(31) In relation to the Board of Tourism Development, on July 1, 2025:

(a) Subsection 63N-2-511(1)(b), which defines "tourism board," is repealed;

(b) Subsections 63N-2-511(3)(a) and (5), the language that states "tourism board" is repealed and replaced with "Utah Office of Tourism";

(c) Subsection 63N-7-101(1), which defines "board," is repealed;

(d) Subsection 63N-7-102(3)(c), which requires the Utah Office of Tourism to receive approval from the Board of Tourism Development, is repealed; and

(e) Title 63N, Chapter 7, Part 2, Board of Tourism Development, is repealed.

(32) Subsection 63N-8-103(3)(c), which allows the Governor's Office of Economic Opportunity to issue an amount of tax credit certificates only for rural productions, is repealed on July 1, 2024.

Section 2. Section **63M-7-303** is amended to read:

63M-7-303. Duties of council.

(1) The Utah Substance Use and Mental Health Advisory Council shall:

(a) provide leadership and generate unity for Utah's ongoing efforts to reduce and

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eliminate the impact of substance use and mental health disorders in Utah through a comprehensive and evidence-based prevention, treatment, and justice strategy;

(b) recommend and coordinate the creation, dissemination, and implementation of statewide policies to address substance use and mental health disorders;

(c) facilitate planning for a balanced continuum of substance use and mental health disorder prevention, treatment, and justice services;

(d) promote collaboration and mutually beneficial public and private partnerships;

(e) coordinate recommendations made by any committee created under Section 63M-7-302;

(f) analyze and provide an objective assessment of all proposed legislation concerning substance use, mental health, forensic mental health, and related issues;

(g) coordinate the implementation of Section 77-18-104 and related provisions in Subsections [77-18-103(2)(c)] 77-18-103(3)(c) and (d), as provided in Section 63M-7-305;

(h) comply with Section 32B-2-306;

(i) oversee coordination for the funding, implementation, and evaluation of suicide prevention efforts described in Section 26B-5-611;

(j) advise the Department of Health and Human Services regarding the state hospital admissions policy for individuals in the custody of the Department of Corrections;

(k) regarding the interaction between an individual with a mental illness or an intellectual disability and the civil commitment system, criminal justice system, or juvenile justice system;

(i) promote communication between and coordination among all agencies interacting with the individual;

(ii) study, evaluate, and recommend changes to laws and procedures;

(iii) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with the individual; and

(iv) promote judicial education;

(l) study the long-term need for adult patient staffed beds at the state hospital, including:

(i) the total number of staffed beds currently in use at the state hospital;

(ii) the current staffed bed capacity at the state hospital;

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(iii) the projected total number of staffed beds needed in the adult general psychiatric unit of the state hospital over the next three, five, and 10 years based on:

(A) the state's current and projected population growth;

(B) current access to mental health resources in the community; and

(C) any other factors the council finds relevant to projecting the total number of staffed beds; and

(iv) the cost associated with the projected total number of staffed beds described in Subsection (1)(l)(iii); and

(m) each year report on whether the pay of the state hospital's employees is adequate based on market conditions.

(2) The council shall meet quarterly or more frequently as determined necessary by the chair.

(3) The council shall report:

(a) with the assistance and staff support from the state hospital, regarding the items described in Subsections (1)(l) and (m), including any recommendations, to the Health and Human Services Interim Committee before October 1 of each year; and

(b) any other recommendations annually to the commission, the governor, the Legislature, and the Judicial Council.

The following section is affected by a coordination clause at the end of this bill.

Section 3. Section 63M-7-404 is amended to read:

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

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

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

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in criminal sentencing;

(iv) better define responsibility in criminal sentencing; and

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

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

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- (i) increase equity in criminal supervision lengths;
- (ii) respond to public comment;
- (iii) relate the length of supervision to an offender's progress;
- (iv) take into account an offender's risk of offending again;
- (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and
- (vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole; and
- (c) appropriate, evidence-based probation and parole supervision policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:
 - (i) treatment and intervention completion determinations based on individualized case action plans;
 - (ii) measured and consistent processes for addressing violations of conditions of supervision;
 - (iii) processes that include using positive reinforcement to recognize an individual's progress in supervision;
 - (iv) engaging with social services agencies and other stakeholders who provide services that meet offender needs; and
 - (v) identifying community violations that may not warrant revocation of probation or parole.
- (2) (a) The commission shall modify the sentencing guidelines and supervision length guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.
- (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.
- (3) (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.
- (b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination

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of an individual's risk of offending again.

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

- (i) who have violated one or more conditions of probation; and
- (ii) whose probation has been revoked by the court.

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

- (i) the seriousness of any violation of the condition of probation;
- (ii) the probationer's conduct while on probation; and
- (iii) the probationer's criminal history.

(5) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:

- (i) who have violated a condition of parole; and
- (ii) whose parole has been revoked by the Board of Pardons and Parole.

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

- (i) the seriousness of any violation of the condition of parole;
- (ii) the individual's conduct while on parole; and
- (iii) the individual's criminal history.

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

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

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

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

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

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- (i) three consecutive days; and
- (ii) a total of five days in a period of 30 days.

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

- (a) compliance with the terms of probation or parole; and
- (b) positive conduct that exceeds those terms.

(8) (a) Subject to Subsection (8)(b), the commission shall establish guidelines that categorize a violation of a condition of parole or probation as low, medium, and high based on the nature of the violation.

(b) The guidelines under Subsection (8)(a) shall categorize the following supervision violations as a high violation:

(i) the commission of a felony offense, a misdemeanor offense described in Title 76, Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving under the influence described in Section 41-6a-502;

(ii) the possession of a dangerous weapon; or

(iii) the refusal to comply with the requirements for treatment imposed by the court or the Board of Pardons and Parole.

(c) The guidelines under Subsection (8)(a) shall include the following responses for a violation of a condition of parole or probation described in Subsection (6)(a) that is a high violation:

(i) a hearing before the court or the Board of Pardons and Parole; or

(ii) except as provided in Subsections 77-18-108(4)(b) and 77-27-11(6)(c), a period of incarceration that does not exceed a period of more than:

(A) three consecutive days; and

(B) a total of five days in a period of 30 days.

(9) (a) Subject to Subsection (9)(b), the commission shall establish guidelines that categorize positive behavior and progress for offenders on parole or probation as low, medium, and high based on the nature of the accomplishment.

(b) The guidelines under Subsection (9)(a) shall categorize the completion of all conditions of parole or probation as a high accomplishment.

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(c) The guidelines under Subsection (9)(a) shall include the following responses for positive behavior and progress for offenders on parole or probation described in Subsections (6)(b) and (7)(b) that is a high accomplishment:

(i) early termination from probation or parole;

(ii) a reduction of the offense for which the offender was convicted, as described in Section 76-3-402; or

(iii) reduction in the fine for which the offender is required to pay for the offense.

~~[(8)]~~ (10) (a) The commission shall establish guidelines, including sanctions and incentives, to appropriately respond to negative and positive behavior of juveniles who are:

- (i) nonjudicially adjusted;
- (ii) placed on diversion;
- (iii) placed on probation;
- (iv) placed on community supervision;
- (v) placed in an out-of-home placement; or
- (vi) placed in a secure care facility.

(b) In establishing guidelines under this Subsection ~~[(8)]~~ (10), the commission shall consider:

- (i) the seriousness of the negative and positive behavior;
- (ii) the juvenile's conduct post-adjudication; and
- (iii) the delinquency history of the juvenile.

(c) The guidelines shall include:

- (i) responses that are swift and certain;
- (ii) a continuum of community-based options for juveniles living at home;
- (iii) responses that target the individual's criminogenic risk and needs; and
- (iv) incentives for compliance, including earned discharge credits.

~~[(9)]~~ (11) The commission shall establish and maintain supervision length guidelines in accordance with this section.

~~[(10)]~~ (12) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:

- (i) securities fraud, Sections 61-1-1 and 61-1-21;

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(ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;

(iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;

(iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(v) arson, Section 76-6-102;

(vi) burglary, Section 76-6-202;

(vii) theft under Title 76, Chapter 6, Part 4, Theft;

(viii) forgery, Section 76-6-501;

(ix) unlawful dealing of property by a fiduciary, Section 76-6-513;

(x) insurance fraud, Section 76-6-521;

(xi) computer crimes, Section 76-6-703;

(xii) mortgage fraud, Section 76-6-1203;

(xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;

(xiv) communications fraud, Section 76-10-1801;

(xv) money laundering, Section 76-10-1904; and

(xvi) other offenses in the discretion of the commission.

(b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.

(c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection ~~[(10)(a)]~~ [(12)(a)].

~~[(11)]~~ [(13)] (a) Before January 1, 2023, the commission shall study the offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor under Sections 76-5b-201 and 76-5b-201.1.

(b) The commission shall update sentencing and release guidelines and juvenile disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection ~~[(11)(a)]~~ [(13)(a)], including the application of aggravating and mitigating factors specific to the offense.

[(14) The commission shall establish guidelines that recommend an enhanced sentence that a court or the Board of Pardons and Parole should consider when determining the period in which a habitual offender, as defined in Section 77-18-102, will be incarcerated.]

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Section 4. Section 64-13-21 is amended to read:

64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking -- POST certified parole or probation officers and peace officers -- Duties -- Supervision fee.

(1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.

(b) If a sentenced offender participates in substance use treatment or a residential, vocational and life skills program, as defined in Section 13-53-102, while under supervision on probation or parole, the department shall monitor the offender's compliance with and completion of the treatment or program.

(c) The department shall establish standards for:

(i) the supervision of offenders in accordance with sentencing guidelines and supervision length guidelines, including the graduated and evidence-based responses, established by the Utah Sentencing Commission, giving priority, based on available resources, to felony offenders and offenders sentenced under Subsection 58-37-8 (2)(b)(ii); and

(ii) the monitoring described in Subsection (1)(b).

(2) The department shall apply the graduated and evidence-based responses established by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an individual's violation of the terms of probation or parole, including:

(a) sanctions to be used in response to a violation of the terms of probation or parole;
and

(b) requesting approval from the court or Board of Pardons and Parole to impose a sanction for an individual's violation of the terms of probation or parole, for a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.

(3) The department shall implement a program of graduated incentives as established by the Utah Sentencing Commission to facilitate the department's prompt and appropriate response to an offender's:

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

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(b) positive conduct that exceeds those terms.

(4) (a) The department shall, in collaboration with the State Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of inmates, related to the use of the graduated and evidence-based responses and graduated incentives, and offenders' outcomes.

(b) The collected information shall be provided to the State Commission on Criminal and Juvenile Justice not less frequently than annually on or before August 31.

(5) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:

(a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;

(b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;

(c) supervising any offender during transportation; or

(d) collecting DNA specimens when the specimens are required under Section 53-10-404.

(6) (a) (i) A monthly supervision fee of \$30 shall be collected from each offender on probation or parole.

(ii) The fee described in Subsection (6)(a)(i) may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

(b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.

(ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.

(7) (a) For offenders placed on probation under Section 77-18-105 or parole under Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the

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department shall establish a program allowing [an offender to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).]

[(b) The program shall provide that an offender earns] an offender to earn a reduction credit of 30 days from the offender's period of probation or parole for each month the offender [completes without any violation of] complies with the terms of the offender's probation or parole agreement, including the case action plan.

(b) (i) For offenders placed on probation under Section 77-18-105 or parole under Section 76-3-202 on or after October 1, 2024, the department shall establish a program on and after July 1, 2026, allowing an offender to earn a reduction credit of 15 days from the offender's period of probation or parole for each month that the offender:

(A) maintains stable and verifiable employment; and

(B) complies with the terms of the offender's probation or parole agreement.

(ii) The department is not required to grant an offender a reduction credit under Subsection (7)(b)(i) if the department finds that:

(A) the offender presents a substantial risk to public safety; or

(B) applying the reduction credit would prevent an offender from completing risk reduction programming or treatment.

(c) The department shall:

(i) maintain a record of credits earned by an offender under this Subsection (7) [and shall]; and

(ii) request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).

(d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).

(e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment

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program is completed.

(f) The department shall report annually to the State Commission on Criminal and Juvenile Justice on or before August 31:

(i) the number of offenders who have earned probation or parole credits under this Subsection (7) in one or more months of the preceding fiscal year and the percentage of the offenders on probation or parole during that time that this number represents;

(ii) the average number of credits earned by those offenders who earned credits;

(iii) the number of offenders who earned credits by county of residence while on probation or parole;

(iv) the cost savings associated with sentencing reform programs and practices; and

(v) a description of how the savings will be invested in treatment and early-intervention programs and practices at the county and state levels.

Section 5. Section 76-3-411 is enacted to read:

76-3-411. Modifying a sentence -- Factors for modification.

(1) As used in this section:

(a) "Offender" means an individual who is convicted within this state and is incarcerated in a county jail or state prison.

(b) "Rehabilitation program" means the same as that term is defined in Section 76-3-402.

(2) On and after July 1, 2025, a prosecuting attorney may bring a petition in the sentencing court seeking to modify the sentence of an offender.

(3) Upon a petition described in Subsection (2), the sentencing court may modify the sentence of an offender to a lesser sentence if permitted by this title and the court finds that modifying the sentence is in the interest of justice.

(4) In determining whether modifying an offender's sentence is in the interest of justice:

(a) the sentencing court shall consider:

(i) the nature, circumstances, and severity of the offense;

(ii) the physical, emotional, or other harm that the defendant caused any victim of the offense; and

(iii) any input from a victim of the offense; and

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(b) the sentencing court may consider:

(i) any special characteristics or circumstances of the offender, including the offender's criminogenic risks and needs;

(ii) the offender's criminal history;

(iii) the offender's employment and community service history;

(iv) whether the offender has successfully completed a rehabilitation program;

(v) whether the level of the offense has been reduced by law after the offender's conviction;

(vi) any potential impact that the modification of the offender's sentence would have on public safety; or

(vii) any other circumstances that are reasonably related to the offender or the offense.

(5) The prosecuting attorney has the burden to provide evidence sufficient to demonstrate that an offender's sentence should be modified in the interest of justice.

(6) A sentencing court may not modify a sentence under this section unless:

(a) the offender is notified of the motion to modify;

(b) the prosecuting attorney has made reasonable efforts to notify any victim of the offense;

(c) a hearing is held if a hearing is requested by the prosecuting attorney or the offender; and

(d) any victim has been given an opportunity to submit a written or oral statement to the court.

(7) A court may not modify a sentence under this section for:

(a) an individual who is on parole; or

(b) an offense described in Section 76-3-406.

(8) This section does not require a sentencing court to modify an offender's sentence.

Section 6. Section 76-5-401 is amended to read:

76-5-401. Unlawful sexual activity with a minor -- Penalties -- Evidence of age raised by defendant -- Limitations.

(1) (a) As used in this section, "minor" means an individual who is 14 years old or older, but younger than 16 years old, at the time the sexual activity described in Subsection (2) occurred.

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(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor 18 years old or older commits unlawful sexual activity with a minor if the actor:

(i) has sexual intercourse with the minor;

(ii) engages in any sexual act with the minor involving the genitals of an individual and the mouth or anus of another individual; or

(iii) causes the penetration, however slight, of the genital or anal opening of the minor by a foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual.

(b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a)(ii).

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

(b) (i) Notwithstanding Subsection (3)(a) or (c), a violation of Subsection (2) is a class B misdemeanor if the defendant establishes by a preponderance of the evidence the mitigating factor that:

(A) the defendant is less than four years older than the minor at the time the sexual activity occurred[; the offense is a class B misdemeanor.]; or

(B) the defendant is 18 years old and enrolled in high school at the time the sexual activity occurred.

(ii) An offense under Subsection (3)(b)(i) is not subject to registration under Subsection 77-41-102(18)(a)(vii).

(c) (i) Notwithstanding Subsection (3)(a), if the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant was younger than 21 years old at the time the sexual activity occurred, the offense is a class A misdemeanor.

(ii) An offense under Subsection (3)(c)(i) is not subject to registration under Subsection 77-41-102(18)(a)(vii).

(4) The offenses referred to in Subsection (2)(a) are:

(a) rape, in violation of Section 76-5-402;

(b) object rape, in violation of Section 76-5-402.2;

(c) forcible sodomy, in violation of Section 76-5-403;

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(d) aggravated sexual assault, in violation of Section 76-5-405; or

(e) an attempt to commit an offense listed in Subsections (4)(a) through (4)(d).

The following section is affected by a coordination clause at the end of this bill.

Section 7. Section 76-5-401.3 is amended to read:

76-5-401.3. Unlawful adolescent sexual activity -- Penalties -- Limitations.

(1) (a) As used in this section, "adolescent" means ~~an individual in the transitional phase of human physical and psychological growth and development between childhood and adulthood~~ who is 12 years old or older; ~~but younger than 18 years old.~~

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits unlawful adolescent sexual activity if:

(a) the actor:

~~[(a) { is an adolescent; and~~

~~(b) } (i) is [an adolescent] 12 years old or older but younger than 18 years old; and~~

~~[(b) } (ii) has sexual activity with [another] the adolescent; or~~

(b) the actor:

(i) has sexual activity with ~~another adolescent.~~

~~(3) } an adolescent who is 12 or 13 years old; and~~

~~(ii) is 18 years old and is enrolled in high school at the time the sexual activity occurred.~~

(3) (a) A violation of Subsection (2)(a) is a:

[(a) (i)] third degree felony if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old;

[(b) (ii)] third degree felony if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

[(c) (iii)] class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

[(d) (iv)] class A misdemeanor if an actor who is 14 or 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

[(e) (v)] class B misdemeanor if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 14 years old;

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~~[(f)]~~ (vi) class B misdemeanor if an actor who is 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

~~[(g)]~~ (vii) class C misdemeanor if an actor who is 12 or 13 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old; and

~~[(h)]~~ (viii) class C misdemeanor if an actor who is 14 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old.

(b) A violation of Subsection (2)(b) is a third degree felony.

(4) The offenses referred to in Subsection (2) are:

- (a) rape, in violation of Section 76-5-402;
- (b) rape of a child, in violation of Section 76-5-402.1;
- (c) object rape, in violation of Section 76-5-402.2;
- (d) object rape of a child, in violation of Section 76-5-402.3;
- (e) forcible sodomy, in violation of Section 76-5-403;
- (f) sodomy on a child, in violation of Section 76-5-403.1;
- (g) sexual abuse of a child, in violation of Section 76-5-404;
- (h) aggravated sexual assault, in violation of Section 76-5-405;
- (i) incest, in violation of Section 76-7-102; or
- (j) an attempt to commit any offense listed in Subsections (4)(a) through (4)(i).

(5) An offense under this section is not eligible for a nonjudicial adjustment under Section 80-6-303.5 or a referral to a youth court under Section 80-6-902.

(6) Except for an offense that is transferred to a district court by the juvenile court in accordance with Section 80-6-504, the district court may enter any sentence or combination of sentences that would have been available in juvenile court but for the delayed reporting or delayed filing of the information in the district court.

(7) An offense under this section is not subject to registration under Subsection 77-41-102(18).

~~{77-27-9.7. Victim right to notification of release -- Notice by board.~~

~~— A victim entitled to notice of the hearings regarding parole under Section 77-27-9.5 shall also be notified by the Board of Pardons and Parole of the right of victims to be advised upon request of other releases of the defendant under Section 64-13-14.7. The board may include this notification in the same notice sent under Section 77-27-9.5. The board shall~~

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~~coordinate with the Department of Corrections to ensure notice under this section is provided to victims.~~

~~Section 1. Section 58-37-8 (Superseded 07/01/24) is amended to read:~~

~~58-37-8 (Superseded 07/01/24). Prohibited acts -- Penalties.~~

~~(1) Prohibited acts A -- Penalties and reporting:~~

~~(a) Except as authorized by this chapter, it is unlawful for a person to knowingly and intentionally:~~

~~(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;~~

~~(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;~~

~~(iii) possess a controlled or counterfeit substance with intent to distribute; or~~

~~(iv) engage in a continuing criminal enterprise where:~~

~~(A) the person participates, directs, or engages in conduct that results in a violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and~~

~~(B) the violation is a part of a continuing series of two or more violations of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.~~

~~(b) A person convicted of violating Subsection (1)(a) with respect to:~~

~~(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;~~

~~(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or~~

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~~—— (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.~~

~~—— (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.~~

~~—— (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than:~~

~~—— (A) seven years and which may be for life; or~~

~~—— (B) 15 years and which may be for life if the trier of fact determined that the defendant knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under 18 years old.~~

~~—— (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.~~

~~—— (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the offense, was under 18 years old.~~

~~—— (e) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (1)(a):~~

~~—— (2) Prohibited acts B -- Penalties and reporting:~~

~~—— (a) It is unlawful:~~

~~—— (i) for a person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;~~

~~—— (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,~~

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~~vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or~~

~~—— (iii) for a person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.~~

~~—— (b) A person convicted of violating Subsection (2)(a)(i) with respect to:~~

~~—— (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or~~

~~—— (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first [or second] conviction, and on a [third] second or subsequent conviction if [each] a prior offense was committed within seven years before the date of the offense upon which the current conviction is based is guilty of a third degree felony.~~

~~—— (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).~~

~~—— (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.~~

~~—— (i) Upon a [third] second conviction, the person is guilty of a class A misdemeanor[, if each] if a prior offense was committed within seven years before the date of the offense upon which the current conviction is based.~~

~~—— (ii) Upon a [fourth] third or subsequent conviction the person is guilty of a third degree felony if [each] a prior offense was committed within seven years before the date of the offense upon which the current conviction is based.~~

~~—— (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:~~

~~—— (i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:~~

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- ~~—— (A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently, and~~
- ~~—— (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently, and~~
- ~~—— (i) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.~~
- ~~—— (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:~~
- ~~—— (i) on a first conviction, guilty of a class B misdemeanor;~~
- ~~—— (ii) on a second conviction, guilty of a class A misdemeanor, and~~
- ~~—— (iii) on a third or subsequent conviction, guilty of a third degree felony.~~
- ~~—— (g) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).~~
- ~~—— (3) Prohibited acts C -- Penalties:~~
- ~~—— (a) It is unlawful for a person knowingly and intentionally:~~
- ~~—— (i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;~~
- ~~—— (ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;~~
- ~~—— (iii) to make a false or forged prescription or written order for a controlled substance, or to utter the same, or to alter a prescription or written order issued or written under the terms of this chapter; or~~
- ~~—— (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to~~

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~~print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render a drug a counterfeit controlled substance.~~

~~—— (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.~~

~~—— (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.~~

~~—— (c) A violation of Subsection (3)(a)(iv) is a third degree felony.~~

~~—— (4) Prohibited acts D -- Penalties:~~

~~—— (a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:~~

~~—— (i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;~~

~~—— (ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;~~

~~—— (iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;~~

~~—— (iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;~~

~~—— (v) in or on the grounds of a house of worship as defined in Section 76-10-501;~~

~~—— (vi) in or on the grounds of a library when the library is open to the public;~~

~~—— (vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (vi);~~

~~—— (viii) in the presence of a person younger than 18 years old, regardless of where the act occurs; or~~

~~—— (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.~~

~~—— (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony~~

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~~and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony:~~

~~—— (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.~~

~~—— (c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense:~~

~~—— (d) (i) If the violation is of Subsection (4)(a)(ix):~~

~~—— (A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and~~

~~—— (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and~~

~~—— (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix):~~

~~—— (e) It is not a defense to a prosecution under this Subsection (4) that:~~

~~—— (i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or~~

~~—— (ii) the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a):~~

~~—— (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor:~~

~~—— (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in~~

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~~abeyance agreement.~~

~~—— (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:~~

~~—— (i) from a separate criminal episode than the current charge; and~~

~~—— (ii) from a conviction that is separate from any other conviction used to enhance the current charge.~~

~~—— (7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.~~

~~—— (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu of, a civil or administrative penalty or sanction authorized by law.~~

~~—— (b) When a violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.~~

~~—— (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.~~

~~—— (10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.~~

~~—— (11) Civil or criminal liability may not be imposed under this section on:~~

~~—— (a) a person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research;~~

~~—— (b) a law enforcement officer acting in the course and legitimate scope of the officer's employment; or~~

~~—— (c) a healthcare facility, substance use harm reduction services program, or drug addiction treatment facility that temporarily possesses a controlled or counterfeit substance to conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity of the substance for a public health or safety reason.~~

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~~———— (12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Section 58-37-2.~~

~~———— (b) In a prosecution alleging violation of this section regarding peyote as defined in Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.~~

~~———— (c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days before trial.~~

~~———— (ii) The notice shall include the specific claims of the affirmative defense.~~

~~———— (iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.~~

~~———— (d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.~~

~~———— (13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person was:~~

~~———— (i) engaged in medical research; and~~

~~———— (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.~~

~~———— (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.~~

~~———— (14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:~~

~~———— (a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and~~

~~———— (b) the substance was administered to the person by the medical researcher.~~

~~———— (15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.~~

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~~—— (16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander:~~

~~—— (i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;~~

~~—— (ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26B-4-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);~~

~~—— (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;~~

~~—— (iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;~~

~~—— (v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and~~

~~—— (vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.~~

~~—— (b) The offenses referred to in Subsection (16)(a) are:~~

~~—— (i) the possession or use of less than 16 ounces of marijuana;~~

~~—— (ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and~~

~~—— (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.~~

~~—— (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.~~

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~~———— (17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.~~

~~———— (18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.~~

~~———— (19) If a minor who is under 18 years old is found by a court to have violated this section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to complete:~~

~~———— (a) a screening as defined in Section 41-6a-501;~~

~~———— (b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and~~

~~———— (c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as indicated by an assessment.~~

~~———— Section 2. Section 58-37-8 (Effective 07/01/24) is amended to read:~~

~~———— **58-37-8 (Effective 07/01/24). Prohibited acts -- Penalties.**~~

~~———— (1) Prohibited acts A -- Penalties and reporting:~~

~~———— (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and intentionally:~~

~~———— (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;~~

~~———— (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;~~

~~———— (iii) possess a controlled or counterfeit substance with intent to distribute; or~~

~~———— (iv) engage in a continuing criminal enterprise where:~~

~~———— (A) the person participates, directs, or engages in conduct that results in a violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and~~

~~———— (B) the violation is a part of a continuing series of two or more violations of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,~~

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~~Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.~~

~~—— (b) A person convicted of violating Subsection (1)(a) with respect to:~~

~~—— (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;~~

~~—— (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or~~

~~—— (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.~~

~~—— (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.~~

~~—— (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than:~~

~~—— (A) seven years and which may be for life; or~~

~~—— (B) 15 years and which may be for life if the trier of fact determined that the defendant knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under 18 years old.~~

~~—— (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.~~

~~—— (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the~~

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~~offense, was under 18 years old.~~

~~—— (c) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (1)(a):~~

~~—— (2) Prohibited acts B -- Penalties and reporting:~~

~~—— (a) It is unlawful:~~

~~—— (i) for a person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;~~

~~—— (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or~~

~~—— (iii) for a person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.~~

~~—— (b) A person convicted of violating Subsection (2)(a)(i) with respect to:~~

~~—— (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;~~
~~or~~

~~—— (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first [or second] conviction, and on a [third] second or subsequent conviction if [each] a prior offense was committed within seven years before the date of the offense upon which the current conviction is based is guilty of a third degree felony.~~

~~—— (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).~~

~~—— (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.~~

~~—— (i) Upon a [third] second conviction the person is guilty of a class A misdemeanor[, if each] if a prior offense was committed within seven years before the date of the offense upon~~

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~~which the current conviction is based:~~

~~—— (ii) Upon a [fourth] third or subsequent conviction the person is guilty of a third degree felony if [each] a prior offense was committed within seven years before the date of the offense upon which the current conviction is based:~~

~~—— (c) A person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:~~

~~—— (i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:~~

~~—— (A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently, and~~

~~—— (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently, and~~

~~—— (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.~~

~~—— (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:~~

~~—— (i) on a first conviction, guilty of a class B misdemeanor;~~

~~—— (ii) on a second conviction, guilty of a class A misdemeanor; and~~

~~—— (iii) on a third or subsequent conviction, guilty of a third degree felony.~~

~~—— (g) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a):~~

~~—— (3) Prohibited acts C -- Penalties:~~

~~—— (a) It is unlawful for a person knowingly and intentionally:~~

~~—— (i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized~~

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person;

~~—— (ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;~~

~~—— (iii) to make a false or forged prescription or written order for a controlled substance, or to utter the same, or to alter a prescription or written order issued or written under the terms of this chapter, or~~

~~—— (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render a drug a counterfeit controlled substance.~~

~~—— (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.~~

~~—— (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.~~

~~—— (c) A violation of Subsection (3)(a)(iv) is a third degree felony.~~

~~—— (4) Prohibited acts D -- Penalties:~~

~~—— (a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:~~

~~—— (i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;~~

~~—— (ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;~~

~~—— (iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;~~

~~—— (iv) in a public park, amusement park, arcade, or recreation center when the public or~~

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~~amusement park, arcade, or recreation center is open to the public;~~

~~—— (v) in or on the grounds of a house of worship as defined in Section 76-10-501;~~

~~—— (vi) in or on the grounds of a library when the library is open to the public;~~

~~—— (vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (vi);~~

~~—— (viii) in the presence of a person younger than 18 years old, regardless of where the act occurs; or~~

~~—— (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.~~

~~—— (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.~~

~~—— (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.~~

~~—— (c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense.~~

~~—— (d) (i) If the violation is of Subsection (4)(a)(ix):~~

~~—— (A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and~~

~~—— (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and~~

~~—— (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).~~

~~—— (e) It is not a defense to a prosecution under this Subsection (4) that:~~

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~~—— (i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or~~

~~—— (ii) the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).~~

~~—— (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.~~

~~—— (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.~~

~~—— (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:~~

~~—— (i) from a separate criminal episode than the current charge; and~~

~~—— (ii) from a conviction that is separate from any other conviction used to enhance the current charge.~~

~~—— (7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.~~

~~—— (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu of, a civil or administrative penalty or sanction authorized by law.~~

~~—— (b) When a violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.~~

~~—— (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.~~

~~—— (10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an~~

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~~assistant or orderly under the veterinarian's direction and supervision.~~

~~—— (11) Civil or criminal liability may not be imposed under this section on:~~

~~—— (a) a person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research;~~

~~—— (b) a law enforcement officer acting in the course and legitimate scope of the officer's employment; or~~

~~—— (c) a healthcare facility, substance use harm reduction services program, or drug addiction treatment facility that temporarily possesses a controlled or counterfeit substance to conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity of the substance for a public health or safety reason.~~

~~—— (12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Section 58-37-2.~~

~~—— (b) In a prosecution alleging violation of this section regarding peyote as defined in Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.~~

~~—— (c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days before trial.~~

~~—— (ii) The notice shall include the specific claims of the affirmative defense.~~

~~—— (iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.~~

~~—— (d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.~~

~~—— (13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person was:~~

~~—— (i) engaged in medical research; and~~

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- ~~—— (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.~~
- ~~—— (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.~~
- ~~—— (14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:~~
 - ~~—— (a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and~~
 - ~~—— (b) the substance was administered to the person by the medical researcher.~~
- ~~—— (15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.~~
- ~~—— (16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander:~~
 - ~~—— (i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;~~
 - ~~—— (ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 53-2d-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);~~
 - ~~—— (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;~~
 - ~~—— (iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;~~
 - ~~—— (v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and~~

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~~—— (vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.~~

~~—— (b) The offenses referred to in Subsection (16)(a) are:~~

~~—— (i) the possession or use of less than 16 ounces of marijuana;~~

~~—— (ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and~~

~~—— (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.~~

~~—— (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.~~

~~—— (17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.~~

~~—— (18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.~~

~~—— (19) If a minor who is under 18 years old is found by a court to have violated this section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to complete:~~

~~—— (a) a screening as defined in Section 41-6a-501;~~

~~—— (b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and~~

~~—— (c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as indicated by an assessment.~~

~~—— Section 3. Section **63I-1-263** is amended to read:~~

~~—— **63I-1-263. Repeal dates: Titles 63A to 63N.**~~

~~—— (1) Subsection 63A-5b-405(5), relating to prioritizing and allocating capital improvement funding, is repealed July 1, 2024.~~

~~—— (2) Section 63A-5b-1003, State Facility Energy Efficiency Fund, is repealed July 1, 2023.~~

~~—— (3) Sections 63A-9-301 and 63A-9-302, related to the Motor Vehicle Review~~

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~~Committee, are repealed July 1, 2023.~~

~~—— (4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2028.~~

~~—— (5) Title 63C, Chapter 6, Utah Seismic Safety Commission, is repealed January 1, 2025.~~

~~—— (6) Title 63C, Chapter 12, Snake Valley Aquifer Advisory Council, is repealed July 1, 2024.~~

~~—— (7) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2023.~~

~~—— (8) Title 63C, Chapter 18, Behavioral Health Crisis Response Commission, is repealed December 31, 2026.~~

~~—— (9) Title 63C, Chapter 23, Education and Mental Health Coordinating Council, is repealed July 1, 2026.~~

~~—— (10) Title 63C, Chapter 27, Cybersecurity Commission, is repealed July 1, 2032.~~

~~—— (11) Title 63C, Chapter 28, Ethnic Studies Commission, is repealed July 1, 2026.~~

~~—— (12) Title 63C, Chapter 29, Domestic Violence Data Task Force, is repealed December 31, 2024.~~

~~—— (13) Title 63C, Chapter 31, State Employee Benefits Advisory Commission, is repealed on July 1, 2028.~~

~~—— (14) Section 63G-6a-805, which creates the Purchasing from Persons with Disabilities Advisory Board, is repealed July 1, 2026.~~

~~—— (15) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2028.~~

~~—— (16) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2024.~~

~~—— (17) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.~~

~~—— (18) Subsection 63J-1-602.2(25), related to the Utah Seismic Safety Commission, is repealed January 1, 2025.~~

~~—— (19) Section 63L-11-204, creating a canyon resource management plan to Provo Canyon, is repealed July 1, 2025.~~

~~—— (20) Title 63L, Chapter 11, Part 4, Resource Development Coordinating Committee, is~~

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~~repealed July 1, 2027.~~

~~—— (21) In relation to the Utah Substance Use and Mental Health Advisory Council, on January 1, 2033:~~

~~—— (a) Sections 63M-7-301, 63M-7-302, 63M-7-303, 63M-7-304, and 63M-7-306 are repealed;~~

~~—— (b) Section 63M-7-305, the language that states "council" is replaced with "commission";~~

~~—— (c) Subsection 63M-7-305(1)(a) is repealed and replaced with:~~

~~—— "(1) "Commission" means the Commission on Criminal and Juvenile Justice."; and~~

~~—— (d) Subsection 63M-7-305(2) is repealed and replaced with:~~

~~—— "(2) The commission shall:~~

~~—— (a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and~~

~~—— (b) coordinate the implementation of Section 77-18-104 and related provisions in Subsections [77-18-103(2)(c)] 77-18-103(3)(c) and (d)."~~

~~—— (22) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2027.~~

~~—— (23) Title 63M, Chapter 7, Part 8, Sex Offense Management Board, is repealed July 1, 2026.~~

~~—— (24) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2026.~~

~~—— (25) Title 63N, Chapter 1b, Part 4, Women in the Economy Subcommittee, is repealed January 1, 2025.~~

~~—— (26) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028.~~

~~—— (27) Section 63N-2-512, related to the Hotel Impact Mitigation Fund, is repealed July 1, 2028.~~

~~—— (28) Title 63N, Chapter 3, Part 9, Strategic Innovation Grant Pilot Program, is repealed July 1, 2027.~~

~~—— (29) Title 63N, Chapter 3, Part 11, Manufacturing Modernization Grant Program, is repealed July 1, 2025.~~

~~—— (30) In relation to the Rural Employment Expansion Program, on July 1, 2028:~~

~~—— (a) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed;~~

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and

~~—— (b) Subsection 63N-4-805(5)(b), referring to the Rural Employment Expansion Program, is repealed.~~

~~—— (31) In relation to the Board of Tourism Development, on July 1, 2025:~~

~~—— (a) Subsection 63N-2-511(1)(b), which defines "tourism board," is repealed;~~

~~—— (b) Subsections 63N-2-511(3)(a) and (5), the language that states "tourism board" is repealed and replaced with "Utah Office of Tourism";~~

~~—— (c) Subsection 63N-7-101(1), which defines "board," is repealed;~~

~~—— (d) Subsection 63N-7-102(3)(c), which requires the Utah Office of Tourism to receive approval from the Board of Tourism Development, is repealed; and~~

~~—— (e) Title 63N, Chapter 7, Part 2, Board of Tourism Development, is repealed.~~

~~—— (32) Subsection 63N-8-103(3)(c), which allows the Governor's Office of Economic Opportunity to issue an amount of tax credit certificates only for rural productions, is repealed on July 1, 2024.~~

~~—— Section 4. Section **63M-7-101.5** is enacted to read:~~

~~—— **63M-7-101.5. Definitions for chapter:**~~

~~—— As used in this chapter:~~

~~—— (1) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.~~

~~—— (2) "Desistance" means an individual's abstinence from further criminal activity after a previous criminal conviction.~~

~~—— (3) "Intervention" means a program, sanction, supervision, or event that may impact recidivism.~~

~~—— (4) "Recidivism" means a return to criminal activity after a previous criminal conviction.~~

~~—— (5) "Recidivism standard metric" means the number of individuals who are returned to prison for a new conviction within the three years after the day on which the individuals were released from prison.~~

~~—— Section 5. Section **63M-7-102** is amended to read:~~

~~—— **63M-7-102. Recidivism metrics -- Reporting:**~~

~~—— [(1) For purposes of this chapter:]~~

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~~—— [(a) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.]~~

~~—— [(b) "Desistance" means an individual's abstinence from further criminal activity after a previous criminal conviction.]~~

~~—— [(c) "Intervention" means a program, sanction, supervision, or event that may impact recidivism.]~~

~~—— [(d) "Recidivism" means a return to criminal activity after a previous criminal conviction.]~~

~~—— [(e) "Recidivism standard metric" means the number of individuals who are returned to prison for a new conviction within the three years after the day on which the individuals were released from prison.]~~

~~—— [(2)] (1) (a) The commission, the Department of Corrections, and the Board of Pardons and Parole, when reporting data on statewide recidivism, shall include data reflecting the recidivism standard metric.~~

~~—— (b) (i) On or before August 1, 2024, the commission shall reevaluate the recidivism standard metric to determine whether new data streams allow for a broader definition, which may include criminal convictions that do not include prison time.~~

~~—— (ii) On or before November 1, 2024, the commission shall report to the Law Enforcement and Criminal Justice Interim Committee:~~

~~—— (A) the result of the reevaluation described in Subsection [(2)(b)(i)] (1)(b)(i); and~~

~~—— (B) other recommendations regarding standardized recidivism metrics.~~

~~—— [(3)] (2) A report on statewide criminal recidivism may also include other information reflecting available recidivism, intervention, or desistance data.~~

~~—— [(4)] (3) A criminal justice institution, agency, or entity required to report adult recidivism data to the commission:~~

~~—— (a) shall include:~~

~~—— (i) a clear description of the eligible individuals, including:~~

~~—— (A) the criminal population being evaluated for recidivism; and~~

~~—— (B) the interventions that are being evaluated;~~

~~—— (ii) a clear description of the beginning and end of the evaluation period; and~~

~~—— (iii) a clear description of the events that are considered as a recidivism-triggering~~

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event; and

~~_____ (b) may include supplementary data including:~~

~~_____ (i) the length of time that elapsed before a recidivism-triggering event described in Subsection [(4)(a)(iii)] (3)(a)(iii) occurred;~~

~~_____ (ii) the severity of a recidivism-triggering event described in Subsection [(4)(a)(iii)] (3)(a)(iii);~~

~~_____ (iii) measures of personal well-being, education, employment, housing, health, family or social support, civic or community engagement, or legal involvement; or~~

~~_____ (iv) other desistance metrics that may capture an individual's behavior following the individual's release from an intervention.~~

~~_____ [(5)] (4) Unless otherwise specified in statute:~~

~~_____ (a) the evaluation period described in Subsection [(4)(a)(ii)] (3)(a)(ii) is three years;~~

and

~~_____ (b) a recidivism-triggering event under Subsection [(4)(a)(iii)] (3)(a)(iii) shall include:~~

~~_____ (i) an arrest;~~

~~_____ (ii) an admission to prison;~~

~~_____ (iii) a criminal charge; or~~

~~_____ (iv) a criminal conviction.~~

~~_____ Section 6. Section **63M-7-303** is amended to read:~~

~~_____ **63M-7-303. Duties of council:**~~

~~_____ (1) The Utah Substance Use and Mental Health Advisory Council shall:~~

~~_____ (a) provide leadership and generate unity for Utah's ongoing efforts to reduce and eliminate the impact of substance use and mental health disorders in Utah through a comprehensive and evidence-based prevention, treatment, and justice strategy;~~

~~_____ (b) recommend and coordinate the creation, dissemination, and implementation of statewide policies to address substance use and mental health disorders;~~

~~_____ (c) facilitate planning for a balanced continuum of substance use and mental health disorder prevention, treatment, and justice services;~~

~~_____ (d) promote collaboration and mutually beneficial public and private partnerships;~~

~~_____ (e) coordinate recommendations made by any committee created under Section **63M-7-302**;~~

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- ~~—— (f) analyze and provide an objective assessment of all proposed legislation concerning substance use, mental health, forensic mental health, and related issues;~~
- ~~—— (g) coordinate the implementation of Section 77-18-104 and related provisions in Subsections [77-18-103(2)(c)] 77-18-103(3)(c) and (d), as provided in Section 63M-7-305;~~
- ~~—— (h) comply with Section 32B-2-306;~~
- ~~—— (i) oversee coordination for the funding, implementation, and evaluation of suicide prevention efforts described in Section 26B-5-611;~~
- ~~—— (j) advise the Department of Health and Human Services regarding the state hospital admissions policy for individuals in the custody of the Department of Corrections;~~
- ~~—— (k) regarding the interaction between an individual with a mental illness or an intellectual disability and the civil commitment system, criminal justice system, or juvenile justice system:
 - ~~—— (i) promote communication between and coordination among all agencies interacting with the individual;~~
 - ~~—— (ii) study, evaluate, and recommend changes to laws and procedures;~~
 - ~~—— (iii) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with the individual; and~~
 - ~~—— (iv) promote judicial education;~~~~
- ~~—— (l) study the long-term need for adult patient staffed beds at the state hospital, including:
 - ~~—— (i) the total number of staffed beds currently in use at the state hospital;~~
 - ~~—— (ii) the current staffed bed capacity at the state hospital;~~
 - ~~—— (iii) the projected total number of staffed beds needed in the adult general psychiatric unit of the state hospital over the next three, five, and 10 years based on:
 - ~~—— (A) the state's current and projected population growth;~~
 - ~~—— (B) current access to mental health resources in the community; and~~
 - ~~—— (C) any other factors the council finds relevant to projecting the total number of staffed beds; and~~~~
 - ~~—— (iv) the cost associated with the projected total number of staffed beds described in Subsection (1)(1)(iii); and~~
 - ~~—— (m) each year report on whether the pay of the state hospital's employees is adequate~~~~

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~~based on market conditions.~~

~~—— (2) The council shall meet quarterly or more frequently as determined necessary by the chair.~~

~~—— (3) The council shall report:~~

~~—— (a) with the assistance and staff support from the state hospital, regarding the items described in Subsections (1)(l) and (m), including any recommendations, to the Health and Human Services Interim Committee before October 1 of each year; and~~

~~—— (b) any other recommendations annually to the commission, the governor, the Legislature, and the Judicial Council.~~

~~—— Section 7. Section ~~63M-7-401.1~~ is enacted to read:~~

~~—— **63M-7-401.1. Definitions for part.**~~

~~—— As used in this part:~~

~~—— (1) "Adjudication" means an adjudication, as that term is defined in Section 80-1-102, of an offense under Section 80-6-701.~~

~~—— (2) "Adult sentencing and supervision length guidelines" means the guidelines established in Section 63M-7-404.3.~~

~~—— (3) "Civil disability" means a legal right or privilege that is revoked as a result of the individual's conviction or adjudication.~~

~~—— (4) "Collateral consequence" means:~~

~~—— (a) a discretionary disqualification; or~~

~~—— (b) a mandatory sanction.~~

~~—— (5) "Conviction" means the same as that term is defined in Section 77-38b-102.~~

~~—— (6) "Disadvantage" means any legal or regulatory restriction that:~~

~~—— (a) is imposed on an individual as a result of the individual's conviction or adjudication; and~~

~~—— (b) is not a civil disability or a legal penalty.~~

~~—— (7) "Discretionary disqualification" means a penalty, a civil disability, or a disadvantage that a court in a civil proceeding, or a federal, state, or local government agency or official, may impose on an individual as a result of the individual's adjudication or conviction for an offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage.~~

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~~(8) "Juvenile" means a minor as defined in Section 80-1-102.~~

~~(9) "Juvenile disposition guidelines" means the guidelines established in Section 63M-7-404.5.~~

~~(10) "Mandatory sanction" means a penalty, a civil disability, or a disadvantage that:~~

~~(a) is imposed on an individual as a result of the individual's adjudication or conviction for an offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage; and~~

~~(b) is not included in the judgment for the adjudication or conviction.~~

~~(11) "Master offense list" means a document that contains all offenses that exist in statute and each offense's associated penalty.~~

~~(12) "Offense" means a felony, a misdemeanor, an infraction, or an adjudication under the laws of this state, another state, or the United States.~~

~~(13) "Penalty" means an administrative, civil, or criminal sanction imposed to punish the individual for the individual's conviction or adjudication.~~

~~(14) "Sentencing commission" means the sentencing commission created in Section 63M-7-401.2.~~

~~Section 8. Section 63M-7-401.2, which is renumbered from Section 63M-7-401 is renumbered and amended to read:~~

~~[63M-7-401]. **63M-7-401.2. Creation -- Members -- Appointment -- Qualifications.**~~

~~(1) There is created a [state commission to be known as the Sentencing Commission] sentencing commission, within the State Commission on Criminal and Juvenile Justice, that is composed of 28 members.~~

~~(2) The [commission shall] sentencing commission shall:~~

~~(a) develop by-laws and rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, [and elect its]; and~~

~~(b) elect the sentencing commission's officers.~~

~~[(2)] (3) The sentencing commission's members [shall be] are:~~

~~(a) two members of the House of Representatives, appointed by the speaker of the House and not of the same political party;~~

~~(b) two members of the Senate, appointed by the president of the Senate and not of the~~

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~~same political party;~~

~~—— (c) the executive director of the Department of Corrections or a designee₂ appointed by the executive director;~~

~~—— (d) the director of the Division of Juvenile Justice Services or a designee₂ appointed by the director;~~

~~—— (e) the executive director of the Commission on Criminal and Juvenile Justice or a designee₂ appointed by the executive director;~~

~~—— (f) the chair of the Board of Pardons and Parole or a designee₂ appointed by the chair;~~

~~—— (g) the chair of the Youth Parole Authority or a designee₂ appointed by the chair;~~

~~—— (h) two trial judges and an appellate judge₂ appointed by the chair of the Judicial Council;~~

~~—— (i) two juvenile court judges₂ designated by the chair of the Judicial Council;~~

~~—— (j) an attorney in private practice who is a member of the Utah State Bar, experienced in criminal defense[,] and appointed by the Utah [Bar Commission] State Board of Bar Commissioners;~~

~~—— (k) an attorney who is a member of the Utah State Bar, experienced in the defense of minors in juvenile court[,] and appointed by the Utah [Bar Commission] State Board of Bar Commissioners;~~

~~—— (l) the director of Salt Lake Legal Defenders or a designee₂ appointed by the director;~~

~~—— (m) the attorney general or a designee₂ appointed by the attorney general;~~

~~—— (n) a criminal prosecutor₂ appointed by the Statewide Association of Public Attorneys and Prosecutors;~~

~~—— (o) a juvenile court prosecutor₂ appointed by the Statewide Association of Public Attorneys and Prosecutors;~~

~~—— (p) a representative of the Utah Sheriff's Association₂ appointed by the governor;~~

~~—— (q) a chief of police₂ appointed by the governor;~~

~~—— (r) a licensed professional₂ appointed by the governor who assists in the rehabilitation of adult offenders;~~

~~—— (s) a licensed professional₂ appointed by the governor who assists in the rehabilitation of juvenile offenders;~~

~~—— (t) two members from the public₂ appointed by the governor₂ who exhibit sensitivity to~~

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~~the concerns of victims of crime and the ethnic composition of the population;~~

~~—— (u) one member from the public at large, appointed by the governor; and~~

~~—— (v) a representative of an organization that specializes in civil rights or civil liberties on behalf of incarcerated individuals, appointed by the governor.~~

~~—— Section 9. Section ~~63M-7-402~~ is amended to read:~~

~~—— ~~63M-7-402. Terms of members -- Reappointment -- Vacancy.~~~~

~~—— (1) (a) Except as required by Subsection (1)(b), [as terms of current commission members expire,] the appointing authority shall appoint each new member or reappointed member to a four-year term as the terms of members of the sentencing commission expire.~~

~~—— (b) [Notwithstanding the requirements of Subsection (1)(a), the] The appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of [commission members] members of the sentencing commission are staggered so that approximately half of the sentencing commission is appointed every two years.~~

~~—— (2) If a member of the sentencing commission no longer holds a qualifying position, resigns, or is unable to serve, the appointing authority shall fill the vacancy.~~

~~—— [(2)] (3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.~~

~~—— Section 10. Section ~~63M-7-402.5~~ is enacted to read:~~

~~—— ~~63M-7-402.5. Compensation of members.~~~~

~~—— (1) A member of the sentencing commission who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:~~

~~—— (a) Section 63A-3-106;~~

~~—— (b) Section 63A-3-107; and~~

~~—— (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.~~

~~—— (2) Compensation and expenses of a member of the sentencing commission who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.~~

~~—— Section 11. Section ~~63M-7-404.1~~ is enacted to read:~~

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~~63M-7-404.1. Duties of the sentencing commission.~~

~~(1) The sentencing commission shall establish and maintain:~~

~~(a) the adult sentencing and supervision length guidelines described in Section 63M-7-404.3;~~

~~(b) the juvenile disposition guidelines described in Section 63M-7-404.5;~~

~~(c) a master offense list described in Section 63M-7-405; and~~

~~(d) a collateral consequences guide described in Section 63M-7-405.~~

~~(2) The sentencing commission may make recommendations to the Legislature, the governor, and the Judicial Council regarding:~~

~~(a) the adult sentencing and supervision length guidelines described in Section 63M-7-404.3;~~

~~(b) the juvenile disposition guidelines described in Section 63M-7-404.5;~~

~~(c) a master offense list described in Section 63M-7-405; and~~

~~(d) a collateral consequences guide described in Section 63M-7-405.~~

~~(3) The sentencing commission shall:~~

~~(a) use existing data and resources from state criminal justice agencies in carrying out the duties of the sentencing commission;~~

~~(b) assist and respond to questions from all three branches of government; and~~

~~(c) coordinate with the State Commission on Criminal and Juvenile Justice on criminal and juvenile justice issues, budget, and administrative support.~~

~~(4) The sentencing commission may employ professional assistance and other staff members that the sentencing commission considers necessary to comply with this section.~~

~~Section 12. Section 63M-7-404.3 is enacted to read:~~

~~63M-7-404.3. Adult sentencing and supervision length guidelines.~~

~~(1) The sentencing commission shall establish and maintain adult sentencing and supervision length guidelines regarding:~~

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

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

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

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

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

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- ~~—— (v) enhance the discretion of the sentencing court while preserving the role of the Board of Pardons and Parole;~~
- ~~—— (b) the length of supervision of offenders on probation or parole in order to:~~
 - ~~—— (i) respond to public comment;~~
 - ~~—— (ii) increase equity in criminal supervision lengths;~~
 - ~~—— (iii) relate the length of supervision to an offender's progress;~~
 - ~~—— (iv) take into account an offender's risk of offending again;~~
 - ~~—— (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and~~
 - ~~—— (vi) enhance the discretion of the sentencing court while preserving the role of the Board of Pardons and Parole; and~~
- ~~—— (c) appropriate, evidence-based probation and parole supervision policies and services that assist offenders in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:~~
 - ~~—— (i) treatment and intervention completion determinations based on individualized case action plans;~~
 - ~~—— (ii) measured and consistent processes for addressing violations of conditions of supervision;~~
 - ~~—— (iii) processes that include using positive reinforcement to recognize an offender's progress in supervision;~~
 - ~~—— (iv) engaging with social services agencies and other stakeholders who provide services that meet the needs of an offender; and~~
 - ~~—— (v) identifying community violations that may not warrant revocation of probation or parole.~~
- ~~—— (2) The adult sentencing and supervision length guidelines shall include guidelines on sentencing that:~~
 - ~~—— (a) recommend an enhanced sentence that a court or the Board of Pardons and Parole should consider when determining the period in which a habitual offender, as defined in Section 77-18-102, will be incarcerated;~~
 - ~~—— (b) provide appropriate sanctions for an offender who commits sexual exploitation of a minor as described in Section 76-5b-201, or aggravated sexual exploitation of a minor as~~

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~~described in Section 76-5b-201.1, and recommend the application of aggravating and mitigating factors specific to the offense; and~~

~~—— (c) provide a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:~~

~~—— (i) securities fraud as described in Sections 61-1-1 and 61-1-21;~~

~~—— (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative as described in Sections 61-1-3 and 61-1-21;~~

~~—— (iii) offer or sale of unregistered security as described in Sections 61-1-7 and 61-1-21;~~

~~—— (iv) abuse or exploitation of a vulnerable adult as described in Title 76, Chapter 5, Part 1, Assault and Related Offenses;~~

~~—— (v) arson as described in Section 76-6-102;~~

~~—— (vi) burglary as described in Section 76-6-202;~~

~~—— (vii) theft as described in Title 76, Chapter 6, Part 4, Theft;~~

~~—— (viii) forgery as described in Section 76-6-501;~~

~~—— (ix) unlawful dealing of property by a fiduciary as described in Section 76-6-513;~~

~~—— (x) insurance fraud as described in Section 76-6-521;~~

~~—— (xi) computer crimes as described in Section 76-6-703;~~

~~—— (xii) mortgage fraud as described in Section 76-6-1203;~~

~~—— (xiii) pattern of unlawful activity as described in Sections 76-10-1603 and 76-10-1603.5;~~

~~—— (xiv) communications fraud as described in Section 76-10-1801;~~

~~—— (xv) money laundering as described in Section 76-10-1904; and~~

~~—— (xvi) other offenses at the discretion of the sentencing commission;~~

~~—— (3) The adult sentencing and supervision guidelines shall include guidelines on supervision with:~~

~~—— (a) recommended periods of incarceration for offenders:~~

~~—— (i) who are on probation;~~

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

~~—— (iii) whose probation has been revoked by the court;~~

~~—— (b) recommended periods of incarceration for offenders:~~

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- ~~—— (i) who are on parole;~~
- ~~—— (ii) who have violated a condition of parole; and~~
- ~~—— (iii) whose parole has been revoked by the Board of Pardons and Parole;~~
- ~~—— (c) if a court or the Board of Pardons and Parole interact with an offender described in Subsection (3)(a) or (b), a recommendation that the court or Board of Pardons and Parole consider:~~
 - ~~—— (i) the seriousness of any violation of the condition of probation or parole;~~
 - ~~—— (ii) the offender's conduct while on probation or parole; and~~
 - ~~—— (iii) the offender's criminal history;~~
 - ~~—— (d) graduated and evidence-based processes to facilitate the prompt and effective response to an offender's progress in, or violation of, the terms of probation or parole by the Department of Corrections, or another supervision services provider, to reduce recidivism and incarceration, including:~~
 - ~~—— (i) responses used when an offender violates a condition of probation or parole as described in Subsection (4);~~
 - ~~—— (ii) responses to recognize positive behavior and progress related to an offender's case action plan as described in Subsection (5); and~~
 - ~~—— (iii) when a violation of a condition of probation or parole should be reported to the court or the Board of Pardons and Parole; and~~
 - ~~—— (e) graduated incentives to facilitate a prompt and effective response by the Department of Corrections to an offender's:~~
 - ~~—— (i) compliance with the terms of probation or parole; and~~
 - ~~—— (ii) positive behavior that exceeds those terms;~~
 - ~~—— (4) (a) Subject to Subsection (4)(b), the adult sentencing and supervision length guidelines shall categorize a violation of a condition of parole or probation as low, medium, and high based on the nature of the violation;~~
 - ~~—— (b) The adult sentencing and supervision length guidelines shall categorize the following supervision violations as a high violation:~~
 - ~~—— (i) the commission of a felony offense, a misdemeanor offense described in Title 76, Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving under the influence described in Section 41-6a-502;~~

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- ~~—— (ii) the possession of a dangerous weapon;~~
- ~~—— (iii) a positive drug test on two or more occasions; or~~
- ~~—— (iv) the refusal to comply with the requirements for treatment imposed by the court or the Board of Pardons and Parole;~~
- ~~—— (c) The responses for a violation of a condition of parole or probation described in Subsection (3)(d)(i) shall include the following responses for a high violation:~~
 - ~~—— (i) a hearing before the court or the Board of Pardons and Parole; or~~
 - ~~—— (ii) except as provided in Subsections 77-18-108(4)(b) and 77-27-11(6)(c), a period of incarceration that does not exceed a period of more than:~~
 - ~~—— (A) three consecutive days; and~~
 - ~~—— (B) a total of five days in a period of 30 days;~~
- ~~—— (5) (a) Subject to Subsection (5)(b), the adult sentencing and supervision length guidelines shall categorize positive behavior and progress for offenders on parole or probation as low, medium, and high based on the nature of the accomplishment;~~
- ~~—— (b) The adult sentencing and supervision length guidelines shall categorize the following supervision accomplishments as a high accomplishment:~~
 - ~~—— (i) completion of all conditions of parole or probation; or~~
 - ~~—— (ii) the maintenance of eligible employment as defined in Section 64-13g-101;~~
- ~~—— (c) The responses for positive behavior and progress for offenders on parole or probation described in Subsections (3)(d)(ii) and (c) shall include the following responses for a high accomplishment:~~
 - ~~—— (i) early termination from probation or parole;~~
 - ~~—— (ii) a reduction of the offense for which the offender was convicted, as described in Section 76-3-402; or~~
 - ~~—— (iii) a reduction in the fine for which the offender is required to pay for the offense;~~
- ~~—— (6) The sentencing commission shall modify:~~
 - ~~—— (a) the adult sentencing and supervision length guidelines to reduce recidivism for the purposes of protecting the public and ensuring efficient use of state funds; and~~
 - ~~—— (b) the criminal history score in the adult sentencing and supervision length guidelines to reduce recidivism, including factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again;~~

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~~Section 13. Section 63M-7-404.5 is enacted to read:~~

~~**63M-7-404.5. Juvenile disposition guidelines.**~~

~~(1) The sentencing commission shall establish and maintain juvenile disposition guidelines that:~~

~~(a) respond to public comment;~~

~~(b) relate dispositional practices and rehabilitative resources;~~

~~(c) increase equity in disposition orders;~~

~~(d) better define responsibility for disposition orders; and~~

~~(e) enhance the discretion of the juvenile court while preserving the role of the Youth Parole Authority.~~

~~(2) The juvenile disposition guidelines shall address how to appropriately respond to negative and positive behavior of juveniles who are:~~

~~(a) nonjudicially adjusted;~~

~~(b) placed on diversion;~~

~~(c) placed on probation;~~

~~(d) placed on community supervision;~~

~~(e) placed in an out-of-home placement; or~~

~~(f) placed in a secure care facility.~~

~~(3) The juvenile disposition guidelines shall include:~~

~~(a) other sanctions and incentives including:~~

~~(i) recommended responses that are swift and certain;~~

~~(ii) a continuum of community-based options for juveniles living at home;~~

~~(iii) recommended responses that target the juvenile's criminogenic risk and needs; and~~

~~(iv) recommended incentives for compliance, including earned discharge credits;~~

~~(b) a recommendation that, when a juvenile court interacts with a juvenile described in Subsection (2), the juvenile court consider:~~

~~(i) the seriousness of the negative and positive behavior of the juvenile;~~

~~(ii) the juvenile's conduct postadjudication; and~~

~~(iii) the juvenile's delinquency history; and~~

~~(c) appropriate sanctions for a juvenile who commits sexual exploitation of a minor as described in Section 76-5b-201, or aggravated sexual exploitation of a minor as described in~~

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Section 76-5b-201.1, including the application of aggravating and mitigating factors specific to the offense:

— Section 14. Section ~~63M-7-405~~ is amended to read:

— ~~63M-7-405. Master offense list -- Collateral consequences guide:~~

— [(1) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:]

— [(i) Section 63A-3-106;]

— [(ii) Section 63A-3-107; and]

— [(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.]

— [(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.]

— [(2) (a) The commission shall submit to the Legislature, the courts, and the governor at least 60 days before the annual general session of the Legislature the commission's reports and recommendations for sentencing guidelines and supervision length guidelines and amendments.]

— [(b) The commission shall use existing data and resources from state criminal justice agencies.]

— [(c) The commission may employ professional assistance and other staff members as it considers necessary or desirable.]

— [(3) The commission shall assist and respond to questions from all three branches of government, but is part of the Commission on Criminal and Juvenile Justice for coordination on criminal and juvenile justice issues, budget, and administrative support.]

— [(4)] ~~(1)~~ [(a) As used in this Subsection (4), "master offense list" means a document that contains all offenses that exist in statute and each offense's associated penalty.]

— [(b)] ~~(a)~~ [No later than May 1, 2017, the] The sentencing commission shall create a master offense list:

— [(c)] ~~(b)~~ [No later than June 30 of each calendar] On or before June 30 of each year, the sentencing commission shall:

— (i) after the last day of the general legislative session, update the master offense list; and

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~~—— (ii) present the updated master offense list to the Law Enforcement and Criminal Justice Interim Committee.~~

~~—— [(5) As used in Subsection (6):]~~

~~—— [(a) "Adjudication" means an adjudication, as that term is defined in Section 80-1-102, of an offense under Section 80-6-701.]~~

~~—— [(b) "Civil disability" means a legal right or privilege that is revoked as a result of the individual's conviction or adjudication.]~~

~~—— [(c) "Collateral consequence" means:]~~

~~—— [(i) a discretionary disqualification; or]~~

~~—— [(ii) a mandatory sanction.]~~

~~—— [(d) "Conviction" means the same as that term is defined in Section 77-38b-102.]~~

~~—— [(e) "Disadvantage" means any legal or regulatory restriction that:]~~

~~—— [(i) is imposed on an individual as a result of the individual's conviction or adjudication; and]~~

~~—— [(ii) is not a civil disability or a legal penalty.]~~

~~—— [(f) "Discretionary disqualification" means a penalty, a civil disability, or a disadvantage that a court in a civil proceeding, or a federal, state, or local government agency or official, may impose on an individual as a result of the individual's adjudication or conviction for an offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage.]~~

~~—— [(g) "Mandatory sanction" means a penalty, a civil disability, or a disadvantage that:]~~

~~—— [(i) is imposed on an individual as a result of the individual's adjudication or conviction for an offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage; and]~~

~~—— [(ii) is not included in the judgment for the adjudication or conviction.]~~

~~—— [(h) "Offense" means a felony, a misdemeanor, an infraction, or an adjudication under the laws of this state, another state, or the United States.]~~

~~—— [(i) "Penalty" means an administrative, civil, or criminal sanction imposed to punish the individual for the individual's conviction or adjudication.]~~

~~—— [(6)] (2) (a) The sentencing commission shall:~~

~~—— (i) identify any provision of state law, including the Utah Constitution, and any~~

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~~administrative rule that imposes a collateral consequence;~~

~~—— (ii) prepare and compile a guide that contains all the provisions identified in Subsection [(6)(a)(i)] (2)(a)(i) on or before October 1, 2022; and~~

~~—— (iii) update the guide described in Subsection [(6)(a)(ii)] (2)(a)(ii) annually.~~

~~—— (b) The sentencing commission shall state in the guide described in Subsection [(6)(a)] (2)(a) that:~~

~~—— (i) the guide has not been enacted into law;~~

~~—— (ii) the guide does not have the force of law;~~

~~—— (iii) the guide is for informational purposes only;~~

~~—— (iv) an error or omission in the guide, or in any reference in the guide:~~

~~—— (A) has no effect on a plea, an adjudication, a conviction, a sentence, or a disposition; and~~

~~—— (B) does not prevent a collateral consequence from being imposed;~~

~~—— (v) any laws or regulations for a county, a municipality, another state, or the United States, imposing a collateral consequence are not included in the guide; and~~

~~—— (vi) the guide does not include any provision of state law or any administrative rule imposing a collateral consequence that is enacted on or after March 31 of each year.~~

~~—— (c) The sentencing commission shall:~~

~~—— (i) place the statements described in Subsection [(6)(b)] (2)(b) in a prominent place at the beginning of the guide; and~~

~~—— (ii) make the guide available to the public on the sentencing commission's website.~~

~~—— (d) The sentencing commission shall:~~

~~—— (i) present the updated guide described in Subsection [(6)(a)(iii)] (2)(a)(iii) annually to the Law Enforcement and Criminal Justice Interim Committee; and~~

~~—— (ii) identify and recommend legislation on collateral consequences to the Law Enforcement and Criminal Justice Interim Committee.~~

~~—— Section 15. Section **63M-7-406** is amended to read:~~

~~—— **63M-7-406. Reports -- Publication of reports.**~~

~~—— (1) At least 60 days before the annual general session of the Legislature, the sentencing commission shall submit to the Legislature, the Judicial Council, and the governor the sentencing commission's reports and recommendations for the adult sentencing and supervision~~

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~~length guidelines and the juvenile disposition guidelines.~~

~~(2) The sentencing commission shall also be authorized to prepare, publish, and distribute from time to time reports of [its] studies, recommendations, and statements from the sentencing commission.~~

~~Section 16. Section 64-13-6 is amended to read:~~

~~64-13-6. Department duties.~~

~~(1) The department shall:~~

~~(a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;~~

~~(b) implement court-ordered punishment of offenders;~~

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

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

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

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

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

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

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

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

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

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

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Offender Supervision;

- ~~—— (m) establish a case action plan based on appropriate validated risk, needs, and responsivity assessments for each offender as follows:~~
- ~~—— (i) (A) if an offender is to be supervised in the community, the department shall establish a case action plan for the offender no later than 60 days after the day on which the department's community supervision of the offender begins; and~~
- ~~—— (B) if the offender is committed to the custody of the department, the department shall establish a case action plan for the offender no later than 90 days after the day on which the offender is committed to the custody of the department;~~
- ~~—— (ii) each case action plan shall integrate an individualized, evidence-based, and evidence-informed treatment and program plan with clearly defined completion requirements;~~
- ~~—— (iii) the department shall share each newly established case action plan with the sentencing and release authority within 30 days after the day on which the case action plan is established; and~~
- ~~—— (iv) the department shall share any changes to a case action plan, including any change in an offender's risk assessment, with the sentencing and release authority within 30 days after the day of the change;~~
- ~~—— (n) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:~~
- ~~—— (i) under this title;~~
- ~~—— (ii) by the department; or~~
- ~~—— (iii) by an agency or division within the department; and~~
- ~~—— (o) when reporting on statewide recidivism, include the metrics and requirements described in Section 63M-7-102:~~
- ~~—— (2) The department may in the course of supervising probationers and parolees:~~
- ~~—— (a) respond [in accordance with the graduated and evidence-based processes established by the Utah Sentencing Commission under Subsection 63M-7-404(6),] to an individual's violation of one or more terms of the probation or parole in accordance with the graduated and evidence-based processes established by the adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1; and~~

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~~— (b) upon approval by the court or the Board of Pardons and Parole, impose as a sanction for an individual's violation of the terms of probation or parole a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.~~

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

~~— (i) criminal conduct of departmental employees;~~

~~— (ii) felony crimes resulting in serious bodily injury;~~

~~— (iii) death of any person; or~~

~~— (iv) aggravated kidnaping.~~

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

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

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

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

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

~~— (b) Beginning in the 2022 interim, the department shall provide an annual report to the Law Enforcement and Criminal Justice Interim Committee regarding the department's implementation of and offender participation in evidence-based and evidence-informed treatment and program opportunities designed to reduce the criminogenic and recidivism risks of offenders over time.~~

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

~~— (i) "Accounts receivable" means any amount owed by an offender arising from a~~

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~~criminal judgment that has not been paid:~~

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

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

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

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

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

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

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

~~—— Section 17. Section 64-13-21 is amended to read:~~

~~—— **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking -- POST-certified parole or probation officers and peace officers -- Duties -- Supervision fee:**~~

~~—— (1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.~~

~~—— (b) If a sentenced offender participates in substance use treatment or a residential, vocational and life skills program, as defined in Section 13-53-102, while under supervision on probation or parole, the department shall monitor the offender's compliance with and completion of the treatment or program.~~

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- ~~—— (c) The department shall establish standards for:~~
 - ~~—— (i) the supervision of offenders in accordance with sentencing guidelines and supervision length guidelines, including the graduated and evidence-based responses, established by the Utah Sentencing Commission, giving priority, based on available resources, to felony offenders and offenders sentenced under Subsection 58-37-8 (2)(b)(ii); and~~
 - ~~—— (ii) the monitoring described in Subsection (1)(b).~~
- ~~—— (2) The department shall apply the graduated and evidence-based responses established by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an individual's violation of the terms of probation or parole, including:~~
 - ~~—— (a) sanctions to be used in response to a violation of the terms of probation or parole; and~~
 - ~~—— (b) requesting approval from the court or Board of Pardons and Parole to impose a sanction for an individual's violation of the terms of probation or parole, for a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.~~
- ~~—— (3) The department shall implement a program of graduated incentives as established by the Utah Sentencing Commission to facilitate the department's prompt and appropriate response to an offender's:~~
 - ~~—— (a) compliance with the terms of probation or parole; or~~
 - ~~—— (b) positive conduct that exceeds those terms.~~
- ~~—— (4) (a) The department shall, in collaboration with the State Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of inmates, related to the use of the graduated and evidence-based responses and graduated incentives, and offenders' outcomes.~~
 - ~~—— (b) The collected information shall be provided to the State Commission on Criminal and Juvenile Justice not less frequently than annually on or before August 31.~~
- ~~—— (5) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:~~
 - ~~—— (a) monitoring, investigating, and supervising a parolee's or probationer's compliance~~

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~~with the conditions of the parole or probation agreement;~~

~~—— (b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;~~

~~—— (c) supervising any offender during transportation; or~~

~~—— (d) collecting DNA specimens when the specimens are required under Section 53-10-404.~~

~~—— (6) (a) (i) A monthly supervision fee of \$30 shall be collected from each offender on probation or parole.~~

~~—— (ii) The fee described in Subsection (6)(a)(i) may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.~~

~~—— (b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.~~

~~—— (ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.~~

~~—— (7) (a) For offenders placed on probation under Section 77-18-105 or parole under Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the department shall establish a program allowing [an offender to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).]~~

~~—— [(b) The program shall provide that an offender earns] an offender to earn a reduction credit of 30 days from the offender's period of probation or parole for each month the offender [completes without any violation of] complies with the terms of the offender's probation or parole agreement, including the case action plan.~~

~~—— (b) For offenders placed on probation under Section 77-18-105 or parole under Section 76-3-202 on or after October 1, 2024, the department shall establish a program allowing an offender to earn a reduction credit of 15 days from the offender's period of probation or parole for each month that the offender:~~

~~—— (i) maintains stable and verifiable employment; and~~

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- ~~—— (ii) complies with the terms of the offender's probation or parole agreement;~~
- ~~—— (c) The department shall:~~
- ~~—— (i) maintain a record of credits earned by an offender under this Subsection (7) [and shall]; and~~
- ~~—— (ii) request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).~~
- ~~—— (d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).~~
- ~~—— (e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment program is completed.~~
- ~~—— (f) The department shall report annually to the State Commission on Criminal and Juvenile Justice on or before August 31:~~
- ~~—— (i) the number of offenders who have earned probation or parole credits under this Subsection (7) in one or more months of the preceding fiscal year and the percentage of the offenders on probation or parole during that time that this number represents;~~
- ~~—— (ii) the average number of credits earned by those offenders who earned credits;~~
- ~~—— (iii) the number of offenders who earned credits by county of residence while on probation or parole;~~
- ~~—— (iv) the cost savings associated with sentencing reform programs and practices; and~~
- ~~—— (v) a description of how the savings will be invested in treatment and early-intervention programs and practices at the county and state levels.~~
- ~~—— Section 18. Section ~~64-13g-102~~ is amended to read:~~
- ~~—— **64-13g-102. Adult Probation and Parole Employment Incentive Program.**~~
- ~~—— (1) There is created the Adult Probation and Parole Employment Incentive Program.~~
- ~~—— (2) The department and the office shall implement the program in accordance with the requirements of this chapter.~~

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- ~~—— (3) Beginning July 2026, and each July after 2026, the department shall calculate and report to the office, for the preceding fiscal year, for each region and statewide:~~
- ~~—— (a) the parole employment rate and the average length of employment of individuals on parole;~~
- ~~—— (b) the probation employment rate and average length of employment of individuals on felony probation;~~
- ~~—— (c) the recidivism percentage, using applicable recidivism metrics described in Subsections [63M-7-102(2) and (4)] 63M-7-102(1) and (3);~~
- ~~—— (d) the number and percentage of individuals who successfully complete parole or felony probation;~~
- ~~—— (e) if the recidivism percentage described in Subsection (3)(c) represents a decrease in the recidivism percentage when compared to the fiscal year immediately preceding the fiscal year to which the recidivism percentage described in Subsection (3)(c) relates, the estimated costs of incarceration savings to the state, based on the marginal cost of incarceration;~~
- ~~—— (f) the number of individuals who successfully complete parole and, during the entire six months before the day on which the individuals' parole ends, held eligible employment; and~~
- ~~—— (g) the number of individuals who successfully complete felony probation and, during the entire six months before the day on which the individuals' parole ended, held eligible employment.~~
- ~~—— (4) In addition to the information described in Subsection (3), the department shall report, for each region, the number and types of parole or probation programs that were created, replaced, or discontinued during the preceding fiscal year.~~
- ~~—— (5) After receiving the information described in Subsections (3) and (4), the office, in consultation with the department, shall, for each region:~~
- ~~—— (a) add the region's baseline parole employment rate and the region's baseline probation employment rate;~~
- ~~—— (b) add the region's parole employment rate and the region's probation employment rate;~~
- ~~—— (c) subtract the sum described in Subsection (5)(a) from the sum described in Subsection (5)(b); and~~
- ~~—— (d) (i) if the rate difference described in Subsection (5)(c) is zero or less than zero;~~

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~~assign an employment incentive payment of zero to the region; or~~

~~—— (ii) except as provided in Subsection (7), if the rate difference described in Subsection (5)(c) is greater than zero, assign an employment incentive payment to the region by:~~

~~—— (A) multiplying the rate difference by the average daily population for that region; and~~

~~—— (B) multiplying the product of the calculation described in Subsection (5)(d)(ii)(A) by \$2,500.~~

~~—— (6) In addition to the employment incentive payment described in Subsection (5), after receiving the information described in Subsections (3) and (4), the office, in consultation with the department, shall, for each region, multiply the sum of the numbers described in Subsections (3)(f) and (g) for the region by \$2,500 to determine the end-of-supervision employment incentive payment for the region:~~

~~—— (7) The employment incentive payment, or end-of-supervision employment supervision payment, for a region is zero if the recidivism percentage for the region, described in Subsection (3)(c), represents an increase in the recidivism percentage when compared to the fiscal year immediately preceding the fiscal year to which the recidivism percentage for the region, described in Subsection (3)(c), relates:~~

~~—— (8) Upon determining an employment incentive payment for a region in accordance with Subsections (5)(d)(ii), (6), and (7), the office shall authorize distribution, from the restricted account, of the incentive payment as follows:~~

~~—— (a) 15% of the payment may be used by the department for expenses related to administering the program; and~~

~~—— (b) 85% of the payment shall be used by the region to improve and expand supervision and rehabilitative services to individuals on parole or adult probation, including by:~~

~~—— (i) implementing and expanding evidence-based practices for risk and needs assessments for individuals;~~

~~—— (ii) implementing and expanding intermediate sanctions, including mandatory community service, home detention, day reporting, restorative justice programs, and furlough programs;~~

~~—— (iii) expanding the availability of evidence-based practices for rehabilitation programs, including drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and other employment services;~~

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~~—— (iv) hiring additional officers, contractors, or other personnel to implement evidence-based practices for rehabilitative and vocational programing;~~

~~—— (v) purchasing and adopting new technologies or equipment that are relevant to, and enhance, supervision, rehabilitation, or vocational training; or~~

~~—— (vi) evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.~~

~~—— (9) (a) The report described in Subsections (3) and (4) is a public record.~~

~~—— (b) The department shall maintain a complete and accurate accounting of the payment and use of funds under this section.~~

~~—— (c) If the money in the restricted account is insufficient to make the full employment incentive payments or the full end-of-supervision employment incentive payments, the office shall authorize the payments on a prorated basis.~~

~~—— Section 19. Section ~~76-1-202~~ is repealed and reenacted to read:~~

~~—— 76-1-202. Venue for criminal actions.~~

~~—— (1) As used in this section, "body of water" includes a stream, river, lake, or reservoir regardless of whether the stream, river, lake or reservoir is natural or man-made.~~

~~—— (2) A prosecuting attorney shall bring a criminal action in the county in which the offense is alleged to have been committed.~~

~~—— (3) In determining the proper venue under Subsection (2), a prosecuting attorney shall bring a criminal action for an offense:~~

~~—— (a) if the commission of the offense commenced outside the state and the offense is committed within this state, in the county in which the offense is committed;~~

~~—— (b) if conduct constituting the elements of an offense, or results that constitute the elements of an offense, occurred in more than one county, in any county in which the conduct occurred;~~

~~—— (c) if an actor committed the offense in one county and the victim was located in another county at the time of the offense, in the county in which:~~

~~—— (i) the offense was committed; or~~

~~—— (ii) the victim was located;~~

~~—— (d) if an actor committed the offense in one county, the offense resulted in a death, and the death occurred in another county, in the county in which:~~

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- ~~—— (i) the offense was committed; or~~
- ~~—— (ii) the death occurred;~~
- ~~—— (c) if an actor committed an inchoate offense, in the county in which an element of the inchoate offense occurred;~~
- ~~—— (f) if an actor in one county solicited, aided, abetted, agreed, or attempted to aid another individual in the planning or commission of an offense in another county, in the county in which:~~
 - ~~—— (i) the actor solicited, aided, abetted, agreed, or attempted to aid another individual; or~~
 - ~~—— (ii) the offense was committed or was planned to be committed;~~
- ~~—— (g) if the offense is a violation of Subsection 77-41-105(3) concerning sex offender registration, or Subsection 77-43-105(3) concerning child abuse offender registration, in the county in which:~~
 - ~~—— (i) the actor's most recent registered primary residency is located if the actual location of the actor is not known; or~~
 - ~~—— (ii) the actor is located at the time that the actor is apprehended; or~~
- ~~—— (h) if the actor commits an offense described in Chapter 6, Part 11, Identity Fraud Act, in the county in which:~~
 - ~~—— (i) the victim's personal identifying information was obtained;~~
 - ~~—— (ii) the actor used or attempted to use the victim's personally identifying information;~~
 - ~~—— (iii) the victim resides or is found; or~~
 - ~~—— (iv) if multiple offenses occur in multiple jurisdictions:~~
 - ~~—— (A) the victim's identity was used or obtained; or~~
 - ~~—— (B) the victim resides or is found.~~
- ~~—— (4) If an offense is committed within this state but a prosecuting attorney cannot determine in which county that the offense occurred, the prosecuting attorney shall bring the criminal action:~~
 - ~~—— (a) for an offense committed on a railroad car, vehicle, watercraft, or aircraft passing within the state, in any county in which the railroad car, vehicle, watercraft, or aircraft passed;~~
 - ~~—— (b) for an offense committed on a body of water bordering on or within this state, in the county adjacent to the body of water;~~
 - ~~—— (c) for a theft offense, in a county in which the actor exerted control over the property~~

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subject to the theft;

~~—— (d) for an offense committed on or near the boundary of two counties, in either county;~~

or

~~—— (e) for any other offense, in the county:~~

~~—— (i) in which the actor resides;~~

~~—— (ii) in which the actor is apprehended; or~~

~~—— (iii) to which the actor is extradited.~~

~~—— (5) (a) Notwithstanding Subsections (2), (3), and (4), if a prosecuting attorney brings a criminal action for multiple offenses that occurred within a 48-hour period as described in Subsection 76-1-402.5(1)(b), the prosecuting attorney shall bring the criminal action in the county in which the most serious offense was committed;~~

~~—— (b) For purposes of Subsection (5)(a), the prosecuting attorney, or the defendant, may bring a motion to consolidate the offenses into one single criminal action in the county in which the most serious offense was committed;~~

~~—— (6) A defendant waives an objection to the venue of a criminal action if the defendant fails to bring the objection before trial.~~

~~—— Section 20. Section ~~76-1-401~~ is amended to read:~~

~~—— **76-1-401. Definitions:**~~

~~—— [In this part unless the context requires a different definition, "single"] As used in this part:~~

~~—— (1) "Lesser included offense" means an offense that:~~

~~—— (a) is established by proof of the same or fewer than all the facts required to establish the commission of the offense charged;~~

~~—— (b) constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included in the offense charged; or~~

~~—— (c) is specifically designated by a statute as a lesser included offense.~~

~~—— (2) "Single criminal episode" means all conduct [which] that is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.~~

~~—— [Nothing in this part shall be construed to limit or modify the effect of Section ~~77-8a-1~~ in controlling the joinder of offenses and defendants in criminal proceedings.]~~

~~—— Section 21. Section ~~76-1-402~~ is amended to read:~~

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~~76-1-402. Mandatory joinder of separate offenses arising out of single criminal episode -- Lesser included offenses:~~

~~[(1) A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; however, when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions of this code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision.]~~

~~(1) (a) Except as provided by Subsections (1)(b) and (c), a prosecuting attorney may prosecute a defendant in a single criminal action for all separate offenses arising out of a single criminal episode:~~

~~(b) If a defendant's act within a single criminal episode consists of different offenses that may be punished in different ways under different provisions of the Utah Code, the defendant may only be convicted and sentenced under one provision:~~

~~(c) An acquittal or conviction and sentence based on a defendant's acts during a single criminal episode bars the prosecution under another provision of the Utah Code based on those actions:~~

~~(2) [Whenever conduct may establish separate offenses under]~~

~~(a) If multiple offenses arise out of a single criminal episode, [unless the court otherwise orders to promote justice, a defendant shall not] the defendant may not be subject to separate trials for the multiple offenses [when] if:~~

~~[(a)] (i) [The] the offenses are within the jurisdiction of a single court; and~~

~~[(b)] (ii) [The] the offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment.~~

~~(b) Notwithstanding Subsection (2)(a), a court may order separate trials in the interests of justice:~~

~~(3) (a) A defendant may be convicted of [an offense included in] a lesser included offense for the offense charged [but]:~~

~~(b) Notwithstanding Subsection (3)(a), a defendant may not be convicted of both the offense charged and the lesser included offense. [An offense is so included when:]~~

~~[(a) It is established by proof of the same or less than all the facts required to establish~~

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~~the commission of the offense charged; or]~~

~~—— [(b) It constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included therein; or]~~

~~—— [(c) It is specifically designated by a statute as a lesser included offense.]~~

~~—— (4) The court [shall not] may not be obligated to charge the jury with respect to [an included offense] a lesser included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting [him of the] the defendant of the lesser included offense.~~

~~—— (5) A district court, or an appellate court on appeal or certiorari, may set aside or reverse a conviction and enter a judgment of conviction for a lesser included offense without holding a new trial if:~~

~~—— (a) the defendant files a motion with the court seeking to have a lesser included offense entered in place of the original conviction;~~

~~—— (b) there is insufficient evidence to support the original conviction;~~

~~—— (c) there is sufficient evidence to support a conviction for the lesser included offense;
and~~

~~—— (d) the trier of fact found every fact required for the court to determine that the defendant's actions meet the elements of the lesser included offense.~~

~~—— [(5) If the district court on motion after verdict or judgment, or an appellate court on appeal or certiorari, shall determine that there is insufficient evidence to support a conviction for the offense charged but that there is sufficient evidence to support a conviction for an included offense and the trier of fact necessarily found every fact required for conviction of that included offense, the verdict or judgment of conviction may be set aside or reversed and a judgment of conviction entered for the included offense, without necessity of a new trial, if such relief is sought by the defendant.]~~

~~—— Section 22. Section ~~76-1-402.5~~, which is renumbered from Section ~~77-8a-1~~ is renumbered and amended to read:~~

~~—— ~~[77-8a-1].~~ 76-1-402.5. Permissive joinder of offenses and of defendants.~~

~~—— (1) [Two or more felonies, misdemeanors, or both, may be charged] A prosecuting attorney may charge two or more felonies or misdemeanors in the same indictment or information if:~~

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- ~~—— (a) each offense is a separate count and [if] the offenses charged are:~~
- ~~—— [(a)] (i) based on the same conduct or are otherwise connected together in [their commission] the commission of the offenses; or~~
- ~~—— [(b)] (ii) alleged to have been part of a common scheme or plan[.]; or~~
- ~~—— (b) each offense is a separate count and the offenses charged:~~
- ~~—— (i) are within the jurisdiction of a single court;~~
- ~~—— (ii) were committed within 48 hours after the time at which the first offense was committed; and~~
- ~~—— (iii) were committed in more than one county.~~
- ~~—— (2) (a) When a felony and misdemeanor are charged [together] in the same indictment or information, the defendant is afforded a preliminary hearing [with respect to] for both the misdemeanor and felony offenses:~~
- ~~—— (b) [Two] A prosecuting attorney may charge two or more defendants [may be charged] in the same indictment or information if [they] the defendants are alleged to have participated in the same act or conduct or in the same criminal episode:~~
- ~~—— (c) [The defendants may be charged] The prosecuting attorney:~~
- ~~—— (i) may charge the defendants in one or more counts together or separately [and all of the defendants need not be charged]; and~~
- ~~—— (ii) is not required to charge all of the defendants in each count.~~
- ~~—— (d) When two or more defendants are jointly charged with [any] an offense, [they] the defendants shall be tried jointly, unless the court, in [its] the court's discretion on motion or otherwise, orders separate trials consistent with the interests of justice:~~
- ~~—— (3) (a) The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants, if there is more than one, could have been joined in a single indictment or information:~~
- ~~—— (b) The procedure [shall be] is the same as if the prosecution were under a single indictment or information:~~
- ~~—— (4) (a) If the court finds a defendant or the prosecution is prejudiced by a joinder of offenses or defendants in an indictment or information or by a joinder for trial together, the court shall:~~
- ~~—— (i) order an election of separate trials of separate counts[.];~~

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~~—— (ii) grant a severance of defendants[,], or~~

~~—— (iii) provide other relief as justice requires.~~

~~—— (b) A defendant's right to severance of offenses or defendants is waived if the motion is not made at least five days before trial.~~

~~—— (c) In ruling on a motion by defendant for severance, the court may order the [prosecutor] prosecuting attorney to disclose any statements made by the defendants [which he] that the prosecuting attorney intends to introduce [in] into evidence at the trial.~~

~~—— (5) Section 76-1-402 applies to a criminal action in which there is the permissive joinder of offenses or defendants.~~

~~—— (6) Nothing in this part limits or modifies the effect of this section in controlling the permissive joinder of offenses and defendants in criminal proceedings.~~

~~—— Section 23. Section 76-3-202 is amended to read:~~

~~—— **76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.**~~

~~—— [(1) Every]~~

~~—— (1) (a) Except as provided in Subsection (1)(b), an individual committed to the state prison to serve an indeterminate term and[, after December 31, 2018,] released on parole after December 31, 2018, shall complete a term of parole that extends through the expiration of the individual's maximum sentence [unless the parole is earlier terminated by the Board of Pardons and Parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, as described in Subsection 77-27-5(7), to the extent the guidelines are consistent with the requirements of the law.];~~

~~—— (b) The Board of Pardons and Parole may terminate an individual's parole earlier than required under Subsection (1) in accordance with the adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1, to the extent that the guidelines are consistent with the requirements of the law.~~

~~—— (2) (a) Except as provided in Subsection (2)(b), [every] an individual committed to the state prison to serve an indeterminate term and released on parole on or after October 1, 2015, but before January 1, 2019, shall, upon completion of three years on parole outside of confinement and without violation, be terminated from the individual's sentence unless the parole is earlier terminated by the Board of Pardons and Parole or is terminated pursuant to~~

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~~Section 64-13-21:~~

~~—— (b) [Every] An individual committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, but before January 1, 2019, and who was convicted of any felony offense under Chapter 5, Offenses Against the Individual, or any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the individual's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.~~

~~—— (3) [Every] An individual convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse; Section 76-5-404.1, sexual abuse of a child; or Section 76-5-404.3, aggravated sexual abuse of a child; or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the individual is earlier terminated by the Board of Pardons and Parole.~~

~~—— (4) An individual who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.~~

~~—— (5) An individual paroled following a former parole revocation may not be discharged from the individual's sentence until:~~

~~—— (a) the individual has served the applicable period of parole under this section outside of confinement;~~

~~—— (b) the individual's maximum sentence has expired; or~~

~~—— (c) the Board of Pardons and Parole orders the individual to be discharged from the sentence.~~

~~—— (6) (a) All time served on parole, outside of confinement and without violation, constitutes service toward the total sentence.~~

~~—— (b) Any time an individual spends outside of confinement after commission of a parole violation does not constitute service toward the total sentence unless the individual is exonerated at a parole revocation hearing.~~

~~—— (c) (i) Any time an individual spends in confinement awaiting a hearing before the~~

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~~Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service toward the total sentence.~~

~~—— (ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.~~

~~—— (7) When a parolee causes the parolee's absence from the state without authority from the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.~~

~~—— (8) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.~~

~~—— (b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.~~

~~—— (9) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.~~

~~—— (10) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.~~

~~—— Section 24. Section ~~76-3-411~~ is enacted to read:~~

~~—— 76-3-411. Modifying a sentence -- Factors for modification.~~

~~—— (1) As used in this section:~~

~~—— (a) "Offender" means an individual who is convicted within this state and is incarcerated in a county jail or state prison.~~

~~—— (b) "Rehabilitation program" means the same as that term is defined in Section 76-3-402.~~

~~—— (2) A prosecuting attorney may bring a petition in the sentencing court seeking to modify the sentence of an offender.~~

~~—— (3) Upon a petition described in Subsection (2), the sentencing court may modify the sentence of an offender to a lesser sentence if permitted by this title and the court finds that modifying the sentence is in the interest of justice.~~

~~—— (4) In determining whether modifying an offender's sentence is in the interest of justice:~~

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- ~~_____ (a) the sentencing court shall consider:~~
- ~~_____ (i) the nature, circumstances, and severity of the offense;~~
- ~~_____ (ii) the physical, emotional, or other harm that the defendant caused any victim of the offense; and~~
- ~~_____ (iii) any input from a victim of the offense; and~~
- ~~_____ (b) the sentencing court may consider:~~
- ~~_____ (i) any special characteristics or circumstances of the offender, including the offender's criminogenic risks and needs;~~
- ~~_____ (ii) the offender's criminal history;~~
- ~~_____ (iii) the offender's employment and community service history;~~
- ~~_____ (iv) whether the offender has successfully completed a rehabilitation program;~~
- ~~_____ (v) whether the level of the offense has been reduced by law after the offender's conviction;~~
- ~~_____ (vi) any potential impact that the modification of the offender's sentence would have on public safety; or~~
- ~~_____ (vii) any other circumstances that are reasonably related to the offender or the offense.~~
- ~~_____ (5) The prosecuting attorney has the burden to provide evidence sufficient to demonstrate that an offender's sentence should be modified in the interest of justice.~~
- ~~_____ (6) A sentencing court may not modify a sentence under this section unless:~~
- ~~_____ (a) the offender is notified of the motion to modify;~~
- ~~_____ (b) the prosecuting attorney has made reasonable efforts to notify any victim of the offense;~~
- ~~_____ (c) a hearing is held if a hearing is requested by the prosecuting attorney or the offender; and~~
- ~~_____ (d) any victim has been given an opportunity to submit a written or oral statement to the court.~~
- ~~_____ (7) A court may not modify a sentence under this section for:~~
- ~~_____ (a) an individual who is on parole; or~~
- ~~_____ (b) an offense described in Section 76-3-406.~~
- ~~_____ (8) This section does not require a sentencing court to modify an offender's sentence.~~
- ~~_____ Section 25. Section 76-5-102.1 is amended to read:~~

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~~76-5-102.1. Negligently operating a vehicle resulting in injury.~~

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

~~(i) "Controlled substance" means the same as that term is defined in Section 58-37-2.~~

~~(ii) "Drug" means the same as that term is defined in Section 76-5-207.~~

~~(iii) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.~~

~~(iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.~~

~~(b) Terms defined in Section 76-1-101.5 apply to this section.~~

~~(2) An actor commits negligently operating a vehicle resulting in injury if the actor:~~

~~(a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and~~

~~(ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;~~

~~(B) is under the influence of alcohol, a drug, or the combined influence of alcohol and a drug to a degree that renders the actor incapable of safely operating a vehicle; or~~

~~(C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or~~

~~(b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to another; and~~

~~(ii) has in the actor's body any measurable amount of a controlled substance.~~

~~(3) Except as provided in Subsection (4), a violation of Subsection (2) is:~~

~~(a) (i) a class A misdemeanor; or~~

~~(ii) a third degree felony if the bodily injury is serious bodily injury; and~~

~~(b) a separate offense for each victim suffering bodily injury as a result of the actor's violation of this section, regardless of whether the injuries arise from the same episode of driving.~~

~~(4) An actor is not guilty of negligently operating a vehicle resulting in injury under Subsection (2)(b) if:~~

~~(a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;~~

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- ~~—— (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or~~
- ~~—— (c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:~~
- ~~—— (i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and~~
- ~~—— (ii) the substance was administered to the actor by the medical researcher.~~
- ~~—— (5) (a) A judge imposing a sentence under this section may consider:~~
- ~~—— (i) the [sentencing guidelines developed in accordance with Section 63M-7-404] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1;~~
- ~~—— (ii) the defendant's history;~~
- ~~—— (iii) the facts of the case;~~
- ~~—— (iv) aggravating and mitigating factors; or~~
- ~~—— (v) any other relevant fact.~~
- ~~—— (b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.~~
- ~~—— (c) The standards for chemical breath analysis under Section 41-6a-515 and the provisions for the admissibility of chemical test results under Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.~~
- ~~—— (d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).~~
- ~~—— (e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.~~
- ~~—— (f) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.~~
- ~~—— (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.~~
- ~~—— Section 26. Section 76-5-207 is amended to read:~~
- ~~—— **76-5-207. Negligently operating a vehicle resulting in death -- Penalties --**~~
- Evidence:**
- ~~—— (1) (a) As used in this section:~~

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- ~~—— (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.~~
- ~~—— (ii) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).~~
- ~~—— (iii) "Drug" means:~~
 - ~~—— (A) a controlled substance;~~
 - ~~—— (B) a drug as defined in Section 58-37-2; or~~
 - ~~—— (C) a substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of an individual to safely operate a vehicle.~~
- ~~—— (iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.~~
- ~~—— (v) "Vehicle" means the same as that term is defined in Section 41-6a-501.~~
- ~~—— (b) Terms defined in Section 76-1-101.5 apply to this section.~~
- ~~—— (2) An actor commits negligently operating a vehicle resulting in death if the actor:~~
 - ~~—— (a) (i) operates a vehicle in a negligent or criminally negligent manner causing the death of another individual;~~
 - ~~—— (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;~~
 - ~~—— (B) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the actor incapable of safely operating a vehicle; or~~
 - ~~—— (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or~~
 - ~~—— (b) (i) operates a vehicle in a criminally negligent manner causing death to another; and~~
 - ~~—— (ii) has in the actor's body any measurable amount of a controlled substance.~~
- ~~—— (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty of:~~
 - ~~—— (a) a second degree felony; and~~
 - ~~—— (b) a separate offense for each victim suffering death as a result of the actor's violation of this section, regardless of whether the deaths arise from the same episode of driving.~~
- ~~—— (4) An actor is not guilty of a violation of negligently operating a vehicle resulting in death under Subsection (2)(b) if:~~

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~~—— (a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;~~

~~—— (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or~~

~~—— (c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:~~

~~—— (i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and~~

~~—— (ii) the substance was administered to the actor by the medical researcher.~~

~~—— (5) (a) A judge imposing a sentence under this section may consider:~~

~~—— (i) the [sentencing guidelines developed in accordance with Section 63M-7-404] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1;~~

~~—— (ii) the defendant's history;~~

~~—— (iii) the facts of the case;~~

~~—— (iv) aggravating and mitigating factors; or~~

~~—— (v) any other relevant fact.~~

~~—— (b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.~~

~~—— (c) The standards for chemical breath analysis as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.~~

~~—— (d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).~~

~~—— (e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.~~

~~—— (f) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.~~

~~—— (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.~~

~~—— Section 27. Section 76-5-401 is amended to read:~~

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~~76-5-401. Unlawful sexual activity with a minor -- Penalties -- Evidence of age raised by defendant -- Limitations.~~

~~(1) (a) As used in this section, "minor" means an individual who is 14 years old or older, but younger than 16 years old, at the time the sexual activity described in Subsection (2) occurred.~~

~~(b) Terms defined in Section 76-1-101.5 apply to this section.~~

~~(2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor 18 years old or older commits unlawful sexual activity with a minor if the actor:~~

~~(i) has sexual intercourse with the minor;~~

~~(ii) engages in any sexual act with the minor involving the genitals of an individual and the mouth or anus of another individual; or~~

~~(iii) causes the penetration, however slight, of the genital or anal opening of the minor by a foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual.~~

~~(b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a)(ii).~~

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

~~(b) (i) Notwithstanding Subsection (3)(a) or (c), a violation of Subsection (2) is a class B misdemeanor if the defendant establishes by a preponderance of the evidence the mitigating factor that:~~

~~(A) the defendant is less than four years older than the minor at the time the sexual activity occurred[, the offense is a class B misdemeanor.]; or~~

~~(B) the defendant is 18 years old and enrolled in high school at the time the sexual activity occurred.~~

~~(ii) An offense under Subsection (3)(b)(i) is not subject to registration under Subsection 77-41-102(18)(a)(vii).~~

~~(c) (i) Notwithstanding Subsection (3)(a), if the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant was younger than 21 years old at the time the sexual activity occurred, the offense is a class A misdemeanor.~~

~~(ii) An offense under Subsection (3)(c)(i) is not subject to registration under~~

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~~Subsection 77-41-102(18)(a)(vii):~~

~~—— (4) The offenses referred to in Subsection (2)(a) are:~~

~~—— (a) rape, in violation of Section 76-5-402;~~

~~—— (b) object rape, in violation of Section 76-5-402.2;~~

~~—— (c) forcible sodomy, in violation of Section 76-5-403;~~

~~—— (d) aggravated sexual assault, in violation of Section 76-5-405; or~~

~~—— (e) an attempt to commit an offense listed in Subsections (4)(a) through (4)(d).~~

~~—— Section 28. Section 77-2a-2 is amended to read:~~

~~—— **77-2a-2. Plea in abeyance agreement -- Negotiation -- Contents -- Terms of agreement -- Waiver of time for sentencing.**~~

~~—— (1) At any time after acceptance of a plea of guilty or no contest but before entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.~~

~~—— (2) A defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant knowingly and intelligently waives the defendant's right to counsel.~~

~~—— (3) A defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.~~

~~—— (4) (a) Any plea in abeyance agreement entered into between the prosecution and the defendant and approved by the court shall include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.~~

~~—— (b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, before acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.~~

~~—— (5) (a) Except as provided in Subsection (5)(b), a plea may not be held in abeyance for a period longer than 18 months if the plea is to any class of misdemeanor or longer than three years if the plea is to any degree of felony or to any combination of misdemeanors and felonies.~~

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~~—— (b) (i) For a plea in abeyance agreement that [Adult Probation and Parole] the Department of Corrections supervises, the plea may not be held in abeyance for a period longer than the initial term of probation required under the [supervision length guidelines described in Section 63M-7-404] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1, if the initial term of probation is shorter than the period required under Subsection (5)(a):~~

~~—— (ii) Subsection (5)(b)(i) does not:~~

~~—— (A) apply to a plea that is held in abeyance in a drug court created under Title 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by the Judicial Council; or~~

~~—— (B) prohibit court supervision of a plea in abeyance agreement after the day on which the [Adult Probation and Parole] Department of Corrections supervision described in Subsection (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends:~~

~~—— (6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years if the plea is to any class of misdemeanor and the plea in abeyance agreement includes a condition that the defendant participate in a problem solving court approved by the Judicial Council.~~

~~—— (7) A plea in abeyance agreement may not be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in Rule 22(a), Utah Rules of Criminal Procedure:~~

~~—— Section 29} Section 8. Section 77-18-102 is amended to read:~~

77-18-102. Definitions.

As used in this chapter:

(1) "Assessment" means, except as provided in Section 77-18-104, the same as the term "risk and needs assessment" in Section 77-1-3.

(2) "Board" means the Board of Pardons and Parole.

(3) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(4) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(5) "Convicted" means the same as that term is defined in Section 76-3-201.

(6) "Criminal accounts receivable" means the same as that term is defined in Section

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77-32b-102.

(7) "Default" means the same as that term is defined in Section 77-32b-102.

(8) "Delinquent" means the same as that term is defined in Section 77-32b-102.

(9) "Department" means the Department of Corrections created in Section 64-13-2.

(10) "Habitual offender" means an individual who has been convicted in:

(a) at least six cases for one or more felony offenses in each case; and

(b) each case described in Subsection (10)(a) within five years before the day on which the defendant is convicted of the felony offense before the court.

~~[(10)]~~ (11) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

~~[(11)]~~ (12) "Restitution" means the same as that term is defined in Section 77-38b-102.

~~[(12)]~~ (13) "Screening" means, except as provided in Section 77-18-104, a tool or questionnaire that is designed to determine whether an individual needs further assessment or any additional resource or referral for treatment.

~~[(13)]~~ (14) "Substance use disorder treatment" means treatment obtained through a substance use disorder program that is licensed by the Office of Licensing within the Department of Health and Human Services.

Section ~~{30}~~9. 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) (a) Notwithstanding Subsection (1), if a defendant is convicted of a felony offense and the defendant is a habitual offender, the prosecuting attorney shall notify the court that the defendant is a habitual offender.

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(b) Upon a notification under Subsection (2)(a), the court may not impose a sentence for the conviction without ordering and obtaining a presentence investigation report, unless the court finds good cause to proceed with sentencing without the presentence investigation report.

~~[(2)]~~ (3) If a presentence investigation report is required under Subsection (2) or 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)]~~ (4) 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)]~~ (5) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that is 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)]~~ (5)(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

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the presentence investigation report; and

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

(b) The [~~Division of Adult Probation and Parole~~] department 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)]~~ (6) 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)]~~ (7) (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)]~~ (8) 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 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);

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(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)]~~ (9) (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)]~~ (9)(a) shall be presented in open court on record and in the presence of the defendant.

Section ~~{31}~~ 10. Section ~~{77-18-105}~~ 77-18-118 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.~~

~~—— (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.~~

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- ~~—— (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 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;~~

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- ~~—— (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 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] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1, 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] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1, to the extent the~~

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~~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 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, the court shall consider information provided by the Department of Corrections regarding a defendant's individual case~~

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action plan, including any progress the defendant has made in satisfying the case action plan's completion requirements:

~~Section 32. Section 77-18-108 is amended to read:~~

~~77-18-108. Termination, revocation, modification, or extension of probation -- Violation of probation -- Hearing on violation.~~

~~(1) (a) The department shall send a written notice to the court:~~

~~(i) when the department is recommending termination of supervision for a defendant; or~~

~~(ii) before a defendant's supervision will be terminated by law.~~

~~(b) The written notice under this Subsection (1) shall include:~~

~~(i) a probation progress report; and~~

~~(ii) if the department is responsible for the collection of the defendant's criminal accounts receivable, a summary of the criminal accounts receivable, including the amount of restitution ordered and the amount of restitution that has been paid.~~

~~(c) (i) Upon receipt of the written notice under Subsection (1)(a), the court shall:~~

~~(A) file the written notice on the docket; and~~

~~(B) provide notice to all parties in the criminal case.~~

~~(ii) A party shall have a reasonable opportunity to respond to the written notice under Subsection (1)(a):~~

~~(d) If a defendant's probation is being terminated, and the defendant's criminal accounts receivable has an unpaid balance or there is any outstanding debt with the department, the department shall send a written notice to the Office of State Debt Collection with a summary of the defendant's criminal accounts receivable, including the amount of restitution ordered and the amount of restitution that has been paid:~~

~~(2) (a) The court may modify the defendant's probation in accordance with the [supervision length guidelines and the graduated and evidence-based responses and graduated incentives developed by the Utah Sentencing Commission under Section 63M-7-404] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1.~~

~~(b) The court may not:~~

~~(i) extend the length of a defendant's probation, except upon:~~

~~(A) waiver of a hearing by the defendant; or~~

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~~—— (B) a hearing and a finding by the court that the defendant has violated the terms of probation;~~

~~—— (ii) revoke a defendant's probation, except upon a hearing and a finding by the court that the terms of probation have been violated; or~~

~~—— (iii) terminate a defendant's probation before expiration of the probation period until the court:~~

~~—— (A) reviews the docket to determine whether the defendant owes a balance on the defendant's criminal accounts receivable; and~~

~~—— (B) enters a finding of whether the defendant owes restitution under Section 77-38b-205.~~

~~—— (c) The court may find under Subsection (2)(b)(iii)(B) that the defendant does not owe restitution if no request for restitution has been filed with the court.~~

~~—— (3) (a) Upon the filing of an affidavit, or an unsworn written declaration executed in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, alleging with particularity facts asserted to constitute violation of the terms of a defendant's probation, the court shall determine if the affidavit or unsworn written declaration establishes probable cause to believe that revocation, modification, or extension of the defendant's probation is justified:~~

~~—— (b) (i) If the court determines there is probable cause, the court shall order that the defendant be served with:~~

~~—— (A) a warrant for the defendant's arrest or a copy of the affidavit or unsworn written declaration; and~~

~~—— (B) an order to show cause as to why the defendant's probation should not be revoked, modified, or extended:~~

~~—— (ii) The order under Subsection (3)(b)(i)(B) shall:~~

~~—— (A) be served upon the defendant at least five days before the day on which the hearing is held;~~

~~—— (B) specify the time and place of the hearing; and~~

~~—— (C) inform the defendant of the right to be represented by counsel at the hearing, the right to have counsel appointed if the defendant is indigent, and the right to present evidence at the hearing.~~

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- ~~—— (iii) The defendant shall show good cause for a continuance of the hearing.~~
- ~~—— (c) At the hearing, the defendant shall admit or deny the allegations of the affidavit or unsworn written declaration.~~
- ~~—— (d) (i) If the defendant denies the allegations of the affidavit or unsworn written declaration, the prosecuting attorney shall present evidence on the allegations.~~
- ~~—— (ii) If the affidavit, or unsworn written declaration, alleges that a defendant is delinquent, or in default, on a criminal accounts receivable, the prosecuting attorney shall present evidence to establish, by a preponderance of the evidence, that the defendant:~~
 - ~~—— (A) was aware of the defendant's obligation to pay the balance of the criminal accounts receivable;~~
 - ~~—— (B) failed to pay on the balance of the criminal accounts receivable as ordered by the court; and~~
 - ~~—— (C) had the ability to make a payment on the balance of the criminal accounts receivable if the defendant opposes an order to show cause, in writing, and presents evidence that the defendant was unable to make a payment on the balance of the criminal accounts receivable.~~
- ~~—— (e) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant, unless the court for good cause otherwise orders.~~
- ~~—— (f) At the hearing, the defendant may:~~
 - ~~—— (i) call witnesses;~~
 - ~~—— (ii) appear and speak in the defendant's own behalf; and~~
 - ~~—— (iii) present evidence.~~
- ~~—— (g) (i) After the hearing, the court shall make findings of fact.~~
- ~~—— (ii) Upon a finding that the defendant violated the terms of the defendant's probation, the court may order the defendant's probation terminated, revoked, modified, continued, or reinstated for all or a portion of the original term of probation.~~
- ~~—— (4) (a) (i) Except as provided in Subsection 77-18-105(7), the court may not require a defendant to remain on probation for a period of time that exceeds the length of the defendant's maximum sentence.~~
- ~~—— (ii) Except as provided in Subsection 77-18-105(7), if a defendant's probation is~~

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~~revoked and later reinstated, the total time of all periods of probation that the defendant serves, in relation to the same sentence, may not exceed the defendant's maximum sentence.~~

~~—— (b) If the court orders a sanction for a defendant who violated terms of probation, the court may:~~

~~—— (i) order a period of incarceration that is consistent with the [guidelines established by the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4)] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1;~~

~~—— (ii) order a period of incarceration that deviates from the guidelines with an explanation for the deviation on the record;~~

~~—— (iii) order treatment services that are immediately available in the community for a defendant that needs substance abuse or mental health treatment, as determined by a screening and assessment;~~

~~—— (iv) execute the sentence previously imposed; or~~

~~—— (v) order any other appropriate sanction.~~

~~—— (c) If the defendant had, before the imposition of a term of incarceration or the execution of the previously imposed sentence under this section, served time in jail as a term of probation or due to a violation of probation, the time that the defendant served in jail constitutes service of time toward the sentence previously imposed.~~

~~—— (5) (a) Any time served by a defendant:~~

~~—— (i) outside of confinement after having been charged with a probation violation, and before a hearing to revoke probation, does not constitute service of time toward the total probation term, unless the defendant is exonerated at a hearing to revoke the defendant's probation;~~

~~—— (ii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation does not constitute service of time toward the total probation term, unless the defendant is exonerated at the hearing to revoke probation; or~~

~~—— (iii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated and evidence-based response imposed under the [guidelines established by the Utah Sentencing Commission in accordance with Section 63M-7-404] adult sentencing and supervision length guidelines, as defined in Section~~

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~~63M-7-404.1.~~

~~— (b) The running of the probation period is tolled upon:~~

~~— (i) the filing of a report with the court alleging a violation of the terms of the defendant's probation; or~~

~~— (ii) the issuance of an order or a warrant under Subsection (3).~~

~~— Section 33. Section 77-18-118 is amended to read:~~

‡ **77-18-118. Continuing jurisdiction of a sentencing court.**

(1) A sentencing court shall retain jurisdiction over a defendant's criminal case:

(a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);

(b) if the defendant is on probation and the probation period has terminated under Subsection 77-18-105(7), to require the defendant to continue to make payments towards a criminal accounts receivable until the defendant's sentence expires;

(c) within the time periods described in Subsection 77-38b-205(5), to enter or modify an order for a criminal accounts receivable in accordance with Section 77-32b-103;

(d) within the time periods described in Subsection 77-38b-205(5), to enter or modify an order for restitution in accordance with Section 77-38b-205;

(e) until a defendant's sentence is terminated, to correct an error for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(a);

(f) until a defendant's sentence is terminated, to modify a payment schedule for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);

(g) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within 90 days from the day on which the defendant's sentence is terminated, to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable; ~~and~~

(h) to enter an order for a civil accounts receivable and a civil judgment of restitution in accordance with Section 77-18-114[-]; and

(i) to modify a sentence upon a petition by a prosecuting attorney as described in Section 76-3-411.

(2) This section does not prevent a court from exercising jurisdiction over:

(a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3, Contempt; or

(b) enforcement of a civil accounts receivable or a civil judgment of restitution.

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Section ~~{34}~~11. 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 charges.

(c) Notwithstanding Subsection (1)(a) or (b), a magistrate shall issue a temporary pretrial status order under Subsection (1) that detains an individual if the individual is arrested for a felony offense and the magistrate finds:

(i) there is probable cause to support the individual's arrest for the felony offense;

(ii) the individual committed the felony offense while:

(A) the individual was on parole or probation for a conviction of a felony offense; or

(B) the individual was released and awaiting trial on a previous charge for a felony offense; and

(iii) based on information reasonably available to the magistrate, the individual has at least nine cases where the individual has been charged or convicted, or entered a plea of guilty, within five years from the day on which the individual was arrested for the felony offense described in Subsection (1)(c)(i).

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(d) Subsection (1)(c) does not limit or prohibit a magistrate's authority to detain an individual who does not meet the requirements described in Subsection (1)(c).

(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:

(a) only conditions of release that are reasonably available [and necessary to reasonably ensure]; and

(b) conditions of release that ensure:

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

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

~~[(c)]~~ (iii) the safety and welfare of the public; and

~~[(d)]~~ (iv) that the individual will not obstruct, or attempt to obstruct, the criminal justice process.

(5) Except as provided in Subsection (1)(c) or (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

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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;

(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.

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(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:

(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;

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(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;

(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 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.

(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 ~~{35}~~12. Section ~~{77-27-5}~~77-27-9.5 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.~~

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- ~~—— (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.~~
- ~~—— (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:~~

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- ~~—— (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.~~
- ~~—— (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;~~

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~~—— (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 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] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1, to the extent the guidelines are consistent with the requirements of the law.~~

~~—— Section 36. Section 77-27-9.5 is amended to read:~~

~~‡~~ **77-27-9.5. Victim may attend hearings.**

(1) As used in this section, "hearing" means a hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present.

(2) (a) Except as provided in Subsection (2)(b), when a hearing is held regarding any offense committed by the defendant that involved the victim, the victim may attend the hearing to present [~~his~~] the victim's views concerning the decisions to be made regarding the defendant.

(b) (i) The victim may not attend a redetermination or special attention hearing[;] if the offender is not present.

(ii) At that redetermination or special attention hearing, the board shall give consideration to any presentation previously given by the victim regarding that offender.

(3) (a) The [~~notice of the hearing shall be timely sent to the victim at~~] ~~{[} his {]}~~ the

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~~victim's}~~ most recent address of record with the board] board shall send timely notice of the hearing to the victim as provided in Subsection (3)(c).

(b) The notice shall include:

(i) the date, time, and location of the hearing;

(ii) a clear statement of the reason for the hearing, including all offenses involved;

(iii) the statutes and rules applicable to the victim's participation in the hearing;

(iv) the address and telephone number of an office or person the victim may contact for further explanation of the procedure regarding victim participation in the hearing; and

(v) specific information about how, when, and where the victim may obtain the results of the hearing.

(c) The board may notify a victim through the board's website or through the mail or other electronic means available to the board.

(d) If the victim requests that a notification occur using a specific method offered by the board, the board shall make reasonable efforts to accommodate that request.

~~(e)~~ (e) If the victim is ~~dead~~ deceased, or the board is otherwise unable to contact the victim, the board shall make reasonable efforts to notify the victim's immediate family of the hearing.

~~(d)~~ (f) The victim may communicate with the board for consideration of continuance of the hearing if travel or other significant conflict prohibits ~~their~~ the victim's attendance at the hearing.

(4) The victim, or family members if the victim is deceased or unable to attend due to physical incapacity, may:

(a) attend the hearing to observe;

(b) make a statement to the board, or ~~[its appointed examiner either]~~ the board's appointed examiner, in person or through a representative appointed by the victim or ~~[his]~~ the victim's family; and

(c) remain present for the hearing if ~~he~~ the victim appoints another to make a statement on ~~his~~ the victim's behalf.

(5) The statement ~~under Subsection (4)}~~ may be presented:

(a) as a written statement, which may also be read aloud, if the presenter desires; or

(b) as an oral statement presented by the person selected under Subsection (4).

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(6) The victim may be accompanied by a member of his family or another individual, present to provide emotional support to the victim.

(7) The victim may, upon request, testify outside the presence of the defendant but a separate hearing may not be held for this purpose.

(8) (a) If a victim does not attend a hearing, the victim may provide a written statement that complies with board rules.

(b) If the victim does not offer a verbal or written statement at the time of the hearing, the board shall consider any statement from the victim that was previously provided to the board.

(c) The board may not afford a written statement provided by a victim less weight than a verbal statement solely because the statement is written.

Section ~~{37}~~13. Section ~~{77-27-11}~~77-27-9.7 is amended to read:

~~{77-27-11. Revocation of parole.~~

~~—————~~ (1) 77-27-9.7. Victim right to notification of release -- Notice by board.

[A victim entitled to notice of the hearings regarding parole under Section 77-27-9.5 shall also be notified by the Board of Pardons and Parole of the right of victims to be advised upon request of other releases of the defendant under Section 64-13-14.7.] ~~The board may {revoke the parole of any individual who is found to have violated any condition of the individual's parole.~~

~~—————~~ (2) (a) If a parolee is confined by the department or any law enforcement official for a suspected violation of parole, the department:

~~—————~~ (i) shall immediately report the alleged violation to the board, by means of an incident report; and

~~—————~~ (ii) make any recommendation regarding the incident.

~~—————~~ (b) A parolee may not be held for a period longer than 72 hours, excluding weekends and holidays, without first obtaining a warrant.

~~—————~~ (3) Any member of the board may:

~~—————~~ (a) issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee; and

~~—————~~ (b) upon arrest of the parolee, determine, or direct the department to determine, if there is probable cause to believe that the parolee has violated the conditions of the parolee's parole.

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~~—— (4) Upon a finding of probable cause, a parolee may be further detained or imprisoned again pending a hearing by the board or the board's appointed examiner.~~

~~—— (5) (a) The board or the board's appointed examiner shall conduct a hearing on the alleged violation, and the parolee shall have written notice of the time and location of the hearing, the alleged violation of parole, and a statement of the evidence against the parolee.~~

~~—— (b) The board or the board's appointed examiner shall provide the parolee the opportunity:~~

~~—— (i) to be present;~~

~~—— (ii) to be heard;~~

~~—— (iii) to present witnesses and documentary evidence;~~

~~—— (iv) to confront and cross-examine adverse witnesses, absent a showing of good cause for not allowing the confrontation; and~~

~~—— (v) to be represented by counsel when the parolee is mentally incompetent or pleading not guilty.~~

~~—— (c) (i) If heard by an appointed examiner, the examiner shall make a written decision which shall include a statement of the facts relied upon by the examiner in determining the guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the alleged violation occurred.~~

~~—— (ii) The appointed examiner shall then refer the case to the board for disposition.~~

~~—— (d) (i) A final decision shall be reached by a majority vote of the sitting members of the board.~~

~~—— (ii) A parolee shall be promptly notified in writing of the board's findings and decision.~~

~~—— (6) (a) If a parolee is found to have violated the terms of parole, the board, at the board's discretion, may:~~

~~—— (i) return the parolee to parole;~~

~~—— (ii) modify the payment schedule for the parolee's criminal accounts receivable in } include this notification in the same notice sent under Section 77-27-9.5.~~

(1) (a) In accordance with {Section 77-32b-105;

~~—— (iii) order the parolee to pay pecuniary damages that are proximately caused by a defendant's violation of the terms of the defendant's parole;~~

~~—— (iv) order the parolee to be imprisoned, but not to exceed the maximum term of~~

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~~imprisonment for the parolee's sentence; or~~

~~— (v) order any other conditions for the parolee.~~

~~— (b) If the board returns the parolee to parole, the length of parole may not be for a period of time that exceeds the length of the parolee's maximum sentence.~~

~~— (c) If the board revokes parole for a violation and orders incarceration, the board may impose a period of incarceration:~~

~~— (i) consistent with the [guidelines under Subsection 63M-7-404(5)] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1; or~~

~~— (ii) subject to Subsection (6)(a)(iv), impose a period of incarceration that differs from the guidelines.~~

~~— (d) The following periods of time constitute service of time toward the period of incarceration imposed;~~ Subsection 77-38-104(1)(p), the board shall notify a victim of the victim's right to be informed, upon request, of other releases of the offender under Section 64-13-14.7.

(b) The board may provide the notification to the victim as described in Subsection 77-27-9.5(3)(c).

(2) The board may include the notification under Subsection (6)(c):

~~— (i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and~~

~~— (ii) time served in jail by a parolee due to a violation of parole;~~ 1) with the notification sent under Subsection 64-13-6(2):

~~— Section 38;~~ 77-27-9.5(3)

(3) The board shall coordinate with the Department of Corrections to ensure notice under this section is provided to [victims] a victim.

Section 14. Section 77-27-13 is amended to read:

77-27-13. Board of Pardons and Parole -- Duties of the judiciary, the Department of Corrections, and law enforcement -- Removal of material from files.

(1) The chief executive officer and employees of each penal or correctional institution shall cooperate fully with the board, permit board members free access to offenders, and furnish the board with pertinent information regarding an offender's physical, mental, and social history and his institutional record of behavior, discipline, work, efforts of

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self-improvement, and attitude toward society.

(2) (a) The [~~Department of Corrections shall~~] department shall:

(i) furnish any pertinent information [it has], within the department's possession, to the board; and [~~shall~~]

(ii) provide a copy of the [~~pre-sentence report~~] presentence report, any available information within the department's possession concerning the impact a crime may have had upon the victim or the victim's family, and any other investigative reports to the board.

(b) In all cases where a [~~pre-sentence~~] presentence report has not been completed, the department shall:

(i) make a [~~post-sentence~~] postsentence report [~~and shall~~]; and

(ii) provide a copy of [~~it~~] the postsentence report to the board as soon as possible.

(c) The department shall provide the board, upon request, any additional investigations or information needed by the board to reach a decision or conduct a hearing.

(3) The department shall make [~~its~~] the department's facilities available to the board to carry out [~~its~~] the board's functions.

(4) Law enforcement officials responsible for the offender's arrest, conviction, and sentence shall furnish all pertinent data requested by the board.

~~[(5)(a) In all cases where an indeterminate sentence is imposed, the judge imposing the sentence may within 30 days from the date of the sentence, mail to the chief executive of the board a statement in writing setting out the term for which, in his opinion, the offender sentenced should be imprisoned, and any information he may have regarding the character of the offender or any mitigating or aggravating circumstances connected with the offense for which the offender has been convicted. In addition, the prosecutor shall in all cases, within 30 days from the date of sentence, forward in writing to the chief executive of the board a full and complete description of the crime, a written record of any plea bargain entered into, a statement of the mitigating or aggravating circumstances or both, all investigative reports, a victim impact statement referring to physical, mental, or economic loss suffered, and any other information the prosecutor believes will be relevant to the board. These statements shall be preserved in the files of the board.]~~

(5) (a) If an indeterminate sentence is imposed in a case, the court shall forward, within 30 days after the day on which the sentence was imposed, to the board:

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(i) a record of the judgment and commitment;

(ii) if available and in the court's possession, a victim impact statement referring to any loss suffered by a victim; and

(iii) any other record that the court believes will be relevant to the board, including a statement:

(A) proposing the term for which, in the court's opinion, the offender should be imprisoned;

(B) any information the court may have regarding the character of the offender; and

(C) any mitigating or aggravating circumstances connected with the offense for which the offender has been convicted.

(b) If the court amends an order for a judgment and commitment, the court shall forward the amended order to the board within 30 days after the day on which the amended order is entered.

(6) If an indeterminate sentence is imposed in a case and the offender is committed to prison, the prosecuting attorney shall forward, in writing and within 30 days after the day on which the sentence was imposed, to the board:

(a) a victim impact statement referring to any loss suffered by a victim; and

(b) any other information the prosecuting attorney believes will be relevant to the board, including a summary and recommendations related to the case.

~~[(b)]~~ (7) Notwithstanding Subsection [(5)(a)] (5) or (6), the board may remove from [its] the board's files any:

~~[(i)]~~ (a) statement that [it] the board is not going to rely on in [its decisionmaking] the board's decision-making process;

~~[(ii)]~~ (b) information found to be incorrect by a court, the [Board of Pardons and Parole] board, or an administrative agency; or

~~[(iii)]~~ (c) duplicative materials.

~~[(6)]~~ (8) The chief executive officer of any penal or correctional institution shall permit offenders to send mail to the board without censorship.

Section ~~{39}~~ 15. Section ~~{77-27-32}~~ 77-36-2.1 is amended to read:

~~{~~ 77-27-32. Reporting requirements:

~~——~~ (1) The board shall publicly display metrics on the board's website, including:

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- ~~_____ (a) a measure of recidivism;~~
 - ~~_____ (b) a measure of time under board jurisdiction;~~
 - ~~_____ (c) a measure of prison releases by category;~~
 - ~~_____ (d) a measure of parole revocations;~~
 - ~~_____ (e) a measure of alignment of board decisions with the [guidelines established by the Sentencing Commission under Section 63M-7-404] adult sentencing and supervision length guidelines, as defined in Section 63M-7-404.1; and~~
 - ~~_____ (f) a measure of the aggregate reasons for departing from the guidelines described in Subsection (1)(e).~~
- ~~_____ (2) On or before September 30 of each year, the board shall submit to the commission and the Law Enforcement and Criminal Justice Interim Committee a report for the previous fiscal year that summarizes the metrics in Subsection (1).~~
- ~~_____ Section 40. Section **77-36-2.1** is amended to read:~~

~~†~~ **77-36-2.1. Duties of law enforcement officers -- Notice to victims -- Lethality assessments.**

(1) ~~[For purposes of]~~ As used in this section:

(a) "Criminal justice system victim advocate" means the same as that term is defined in Section 77-38-403.

~~[(a)]~~ (b) (i) "Dating relationship" means a social relationship of a romantic or intimate nature, or a relationship which has romance or intimacy as a goal by one or both parties, regardless of whether the relationship involves sexual intimacy.

(ii) "Dating relationship" does not include casual fraternization in a business, educational, or social context.

~~[(b)]~~ (c) "Intimate partner" means an emancipated individual under Section 15-2-1 or an individual who is 16 years old or older who:

- (i) is or was a spouse of the other party;
- (ii) is or was living as if a spouse of the other party;
- (iii) has or had one or more children in common with the other party;
- (iv) is the biological parent of the other party's unborn child;
- (v) is or was in a consensual sexual relationship with the other party; or
- (vi) is or was in a dating relationship with the other party.

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~~[(e)]~~ (d) "Nongovernment organization victim advocate" means the same as that term is defined in Section 77-38-403.

~~[(d)]~~ (e) "Primary purpose domestic violence organization" means a contract provider of domestic violence services as described in Section 80-2-301.

(2) A law enforcement officer who responds to an allegation of domestic violence shall:

(a) use all reasonable means to protect the victim and prevent further violence, including:

(i) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(ii) confiscating the weapon or weapons involved in the alleged domestic violence;

(iii) making arrangements for the victim and any child to obtain emergency housing or shelter;

(iv) providing protection while the victim removes essential personal effects;

(v) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; ~~[and]~~

(vi) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (3); and

(vii) providing the pamphlet created by the department under Section 53-5c-201 to the victim if the allegation of domestic violence:

(A) includes a threat of violence as described in Section 76-5-107;

(B) results, or would result, in the owner cohabitant becoming a restricted person under Section 76-10-503; or

(C) is accompanied by a completed lethality assessment that demonstrates the cohabitant is at high risk of being further victimized; and

(b) if the allegation of domestic violence is against an intimate partner, complete the lethality assessment protocols described in this section.

(3) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, and Title 78B, Chapter 7, Part 2, Child Protective

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Orders.

(b) The written notice shall include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with Subsections 78B-7-802(8) and (9) .

(4) If a weapon is confiscated under this section, the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a domestic violence protective order is not issued or once the domestic violence protective order is terminated.

(5) A law enforcement officer shall complete a lethality assessment form by asking the victim:

(a) if the aggressor has ever used a weapon against the victim or threatened the victim with a weapon;

(b) if the aggressor has ever threatened to kill the victim or the victim's children;

(c) if the victim believes the aggressor will try to kill the victim;

(d) if the aggressor has ever tried to choke the victim;

(e) if the aggressor has a gun or could easily get a gun;

(f) if the aggressor is violently or constantly jealous, or controls most of the daily activities of the victim;

(g) if the victim left or separated from the aggressor after they were living together or married;

(h) if the aggressor is unemployed;

(i) if the aggressor has ever attempted suicide, to the best of the victim's knowledge;

(j) if the victim has a child that the aggressor believes is not the aggressor's biological child;

(k) if the aggressor follows or spies on the victim, or leaves threatening messages for the victim; and

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(l) if there is anything else that worries the victim about the victim's safety and, if so, what worries the victim.

(6) A law enforcement officer shall comply with Subsection (7) if:

(a) the victim answers affirmatively to any of the questions in Subsections (5)(a) through (d);

(b) the victim answers negatively to the questions in Subsections (5)(a) through (d), but affirmatively to at least four of the questions in Subsections (5)(e) through (k); or

(c) as a result of the victim's response to the question in Subsection (5)(l), the law enforcement officer believes the victim is in a potentially lethal situation.

(7) If the criteria in Subsections (6)(a), (b), or (c) are met, the law enforcement officer shall:

(a) advise the victim of the results of the assessment; ~~and~~

(b) refer the victim to a nongovernment organization victim advocate at a primary purpose domestic violence organization~~[-]; and~~

(c) refer the victim to a criminal justice system victim advocate if the responding law enforcement agency has a criminal justice system victim advocate available.

(8) If a victim does not or is unable to provide information to a law enforcement officer sufficient to allow the law enforcement officer to complete a lethality assessment form, or does not speak or is unable to speak with a nongovernment organization victim advocate, the law enforcement officer shall document this information on the lethality assessment form and submit the information to the Department of Public Safety under Subsection (9).

(9) (a) Except as provided in Subsection (9)(b), a law enforcement officer shall submit the results of a lethality assessment to the Department of Public Safety while on scene.

(b) If a law enforcement officer is not reasonably able to submit the results of a lethality assessment while on scene, the law enforcement officer shall submit the results of the lethality assessment to the Department of Public Safety as soon as practicable.

(c) (i) Before the reporting mechanism described in Subsection (10)(a) is developed, a law enforcement officer shall submit the results of a lethality assessment to the Department of Public Safety using means prescribed by the Department of Public Safety.

(ii) After the reporting mechanism described in Subsection (10)(a) is developed, a law enforcement officer shall submit the results of a lethality assessment to the Department of

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Public Safety using that reporting mechanism.

(10) The Department of Public Safety shall:

(a) as soon as practicable, develop and maintain a reporting mechanism by which a law enforcement officer will submit the results of a lethality assessment as required by Subsection (9);

(b) provide prompt analytical support to a law enforcement officer who submits the results of a lethality assessment using the reporting mechanism described in Subsection (10)(a); and

(c) create and maintain a database of lethality assessment data provided under this section.

(11) (a) Subject to Subsection (11)(b), a law enforcement officer shall include the results of a lethality assessment and any related, relevant analysis provided by the Department of Public Safety under Subsection (10), with:

(i) a probable cause statement submitted in accordance with Rule 9 of the Utah Rules of Criminal Procedure; and

(ii) an incident report prepared in accordance with Section 77-36-2.2.

(b) In a probable cause statement or incident report, a law enforcement officer may not include information about how or where a victim was referred under Subsection (7)(b).

Section ~~{41}~~16. Section **78A-5-201** is amended to read:

78A-5-201. Creation and expansion of existing drug court programs -- Definition of drug court program -- Criteria for participation in drug court programs -- Reporting requirements.

(1) There may be created a drug court program in any judicial district that demonstrates:

(a) the need for a drug court program; and

(b) the existence of a collaborative strategy between the court, prosecutors, defense counsel, corrections, and substance abuse treatment services to reduce substance abuse by offenders.

(2) The collaborative strategy in each drug court program shall:

(a) include monitoring and evaluation components to measure program effectiveness;

and

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(b) be submitted to, for the purpose of coordinating the disbursement of funding, the:

(i) executive director of the Department of Health and Human Services;

(ii) executive director of the Department of Corrections; and

(iii) state court administrator.

(3) (a) Funds disbursed to a drug court program shall be allocated as follows:

(i) 87% to the Department of Health and Human Services for testing, treatment, and case management; and

(ii) 13% to the Administrative Office of the Courts for increased judicial and court support costs.

(b) This provision does not apply to federal block grant funds.

(4) A drug court program shall include continuous judicial supervision using a cooperative approach with prosecutors, defense counsel, corrections, substance abuse treatment services, juvenile court probation, and the Division of Child and Family Services as appropriate to promote public safety, protect participants' due process rights, and integrate substance abuse treatment with justice system case processing.

(5) Screening criteria for participation in a drug court program shall include:

(a) a plea to, conviction of, or adjudication for a nonviolent drug offense or drug-related offense;

(b) an agreement to frequent alcohol and other drug testing;

(c) participation in one or more substance abuse treatment programs; and

(d) an agreement to submit to sanctions for noncompliance with drug court program requirements.

(6) (a) The Judicial Council shall develop rules prescribing eligibility requirements for participation in adult criminal drug courts.

(b) ~~Acceptance~~ The eligibility requirements described in Subsection (6)(a):

(i) shall require that the acceptance of an offender into a drug court ~~shall be based~~ is based on a risk and needs assessment ~~[, without regard to the nature of the offense:]~~ and targeted at individuals who are high risk and high needs ~~[, without regard to the nature of the offense.];~~ and

(ii) may not limit participation in a drug court only to individuals convicted of an offense described in Section 58-37-8.

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(c) A plea to, conviction of, or adjudication for a felony offense is not required for participation in a drug court program.

Section ~~{42}~~17. Section **78B-9-102** is amended to read:

78B-9-102. Replacement of prior remedies.

(1) (a) This chapter establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal except as provided in Subsection (2). This chapter replaces all prior remedies for review, including extraordinary or common law writs. Proceedings under this chapter are civil and are governed by the rules of civil procedure. Procedural provisions for filing and commencement of a petition are found in Rule 65C, Utah Rules of Civil Procedure.

(b) A court may not enter an order to withdraw, modify, vacate or otherwise set aside a plea unless it is in conformity with this chapter or Section 77-13-6.

(2) This chapter does not apply to:

(a) [~~habeas corpus petitions that do~~] a habeas corpus petition that does not challenge a conviction or sentence for a criminal offense;

(b) [~~motions~~] a motion to correct a sentence [pursuant to Rule 22(e),] in accordance with Rule 22(c) of the Utah Rules of Criminal Procedure; [or]

(c) [~~actions~~] an action taken by the Board of Pardons and Parole[-]; or

(d) a petition to modify a sentence as described in Section 76-3-411.

Section ~~{43}~~. Section ~~80-6-307~~ is amended to read:

~~80-6-307. Dispositional report required in minors' cases -- Exceptions.~~

~~(1) A juvenile probation officer, or other agency designated by the juvenile court, shall make a dispositional report in writing in all minors' cases in which a petition has been filed, except in cases involving violations of traffic laws or ordinances, violations of wildlife laws and boating laws, and other minor cases.~~

~~(2) When preparing a dispositional report and recommendation in a minor's case, the juvenile probation officer, or other agency designated by the juvenile court, shall consider the juvenile disposition guidelines [developed in accordance with Section 63M-7-404], as defined in Section 63M-7-404.1, and any other factors relevant to the disposition designated in the juvenile disposition guidelines.~~

~~(3) Where the allegations of a petition filed under Section 80-6-305 are denied, the~~

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~~investigation may not be made until the juvenile court has made an adjudication.~~

~~Section 44. Section 80-6-607 is amended to read:~~

~~80-6-607. Case planning and appropriate responses:~~

~~(1) For a minor adjudicated and placed on probation under Section 80-6-702 or committed to the division under Section 80-6-703, a case plan shall be created and:~~

~~(a) developed in collaboration with the minor and the minor's family;~~

~~(b) individualized to the minor;~~

~~(c) informed by the results of a validated risk and needs assessment under Section 80-6-606; and~~

~~(d) tailored to the minor's offense and history.~~

~~(2) (a) The Administrative Office of the Courts and the division shall develop a statewide system of appropriate responses to guide responses to the behaviors of minors:~~

~~(i) undergoing nonjudicial adjustments;~~

~~(ii) whose case is under the jurisdiction of the juvenile court; and~~

~~(iii) in the custody of the division.~~

~~(b) The system of responses shall include both sanctions and incentives that:~~

~~(i) are swift and certain;~~

~~(ii) include a continuum of community based responses for minors living at home;~~

~~(iii) target a minor's criminogenic risks and needs, as determined by the results of a validated risk and needs assessment under Section 80-6-606, and the severity of the violation; and~~

~~(iv) authorize earned discharge credits as one incentive for compliance.~~

~~(c) After considering the [juvenile disposition guidelines established by the Sentencing Commission, in accordance with Section 63M-7-404] juvenile disposition guidelines, as defined in Section 63M-7-404.1, the system of appropriate responses under Subsections (2)(a) and (b) shall be developed.~~

~~(3) (a) A response to compliant or noncompliant behavior under Subsection (2) shall be documented in the minor's case plan.~~

~~(b) Documentation under Subsection (3)(a) shall include:~~

~~(i) positive behaviors and incentives offered;~~

~~(ii) violations and corresponding sanctions; and~~

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~~— (iii) whether the minor has a subsequent violation after a sanction.~~

~~— (4) Before referring a minor to a juvenile court for judicial review, or to the authority if the minor is under the jurisdiction of the authority, in response to a contempt filing under Section 78A-6-353 or an order to show cause, a pattern of appropriate responses shall be documented in the minor's case plan in accordance with Subsections (3)(a) and (b).~~

~~— (5) Notwithstanding Subsection (4), if a minor violates a protective order or an ex parte protective order listed in Section 78B-7-803, the violation may be filed directly with the juvenile court.~~

~~— Section 45. Repealer.~~

~~— This bill repeals:~~

~~— Section 63M-7-403, Vacancies.~~

~~— Section 63M-7-404, Purpose -- Duties.~~

~~— Section 46}18. Effective date.~~

~~{(1) Except as provided in Subsection (2), this} This bill takes effect on May 1, 2024.~~

~~— (2) The actions affecting Section 58-37-8 (Effective 07/01/24) take effect on July 1, 2024.~~

~~‡~~

Section 19. Coordinating S.B. 213 with H.B. 16.

If S.B. 213, Criminal Justice Modifications, and H.B. 16, Sexual Offenses

Amendments, both pass and become law, the Legislature intends that, on May 1, 2024, Section 76-5-401.3 be amended to read:

"76-5-401.3. Unlawful adolescent sexual activity -- Penalties -- Limitations.

(1) (a) As used in this section, "adolescent" means an individual [in the transitional phase of human physical and psychological growth and development between childhood and adulthood] who is 12 years old or older[-] but younger than 18 years old.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Under circumstances not amounting to an offense listed in Subsection [(4)](5), an actor commits unlawful sexual activity if [the actor]:

[(a) is an adolescent; and]

[(b) has sexual activity with another adolescent.]

(a) (i) the actor is 12 years old or older but younger than 18 years old;

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(ii) the actor engages in sexual activity with an adolescent;

(iii) the actor is not the biological sibling of the adolescent; and

(iv) both the actor and the adolescent mutually agree to the sexual activity; or

(b) (i) the actor engages in sexual activity with an adolescent who is 13 years old;

(ii) the actor is 18 years old and enrolled in high school at the time that the sexual

activity occurred;

(iii) the actor is not the biological sibling of the adolescent; and

(iv) both the actor and the adolescent mutually agree to the sexual activity.

(3) (a) A violation of Subsection (2) (a) is a:

[(a)] (i) third degree felony if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is [~~12 or~~] 13 years old;

[(b)] (ii) third degree felony if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

[(c)] (iii) class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

[(d)] (iv) class A misdemeanor if an actor who is 14 or 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

[(e)] (v) class B misdemeanor if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 14 years old;

[(f)] (vi) class B misdemeanor if an actor who is 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

[(g)] (vii) class C misdemeanor if an actor who is 12 or 13 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old; and

[(h)] (viii) class C misdemeanor if an actor who is 14 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old.

(b) A violation of Subsection (2)(b) is a third degree felony.

(4) The actor and the adolescent do not mutually agree to the sexual activity under Subsection (2) if:

(a) the adolescent expresses lack of agreement to the sexual activity through words or conduct;

(b) the actor overcomes the adolescent's will through:

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(i) threats to the adolescent or any other individual;

(ii) force;

(iii) coercion; or

(iv) enticement;

(c) the actor is able to overcome the adolescent through concealment or by the element of surprise;

(d) the actor knows, or reasonably should know, that the adolescent has a mental disease or defect, which renders the adolescent unable to:

(i) appraise the nature of the act;

(ii) resist the act;

(iii) understand the possible consequences to the adolescent's health or safety; or

(iv) appraise the nature of the relationship between the actor and the adolescent;

(e) the actor knows that the adolescent participates in the sexual activity because the adolescent erroneously believes that the actor is someone else; or

(f) the actor intentionally impaired the power of the adolescent to appraise or control the adolescent's conduct by administering any substance without the adolescent's knowledge.

[~~(4)~~] (5) The offenses referred to in Subsection (2) are:

(a) rape[~~, in violation of~~] under Section 76-5-402;

[~~(b) rape of a child, in violation of Section 76-5-402.1;~~]

[~~(c)~~] (b) object rape[~~, in violation of~~] under Section 76-5-402.2;

[~~(d)~~] object rape of a child, in violation of Section 76-5-402.3;]

[~~(e)~~] (c) forcible sodomy[~~, in violation of~~] under Section 76-5-403;

[~~(f)~~] sodomy on a child, in violation of Section 76-5-403.1;]

[~~(g)~~] sexual abuse of a child, in violation of Section 76-5-404;]

[~~(h)~~] (d) aggravated sexual assault[~~, in violation of~~] under Section 76-5-405;

[~~(i)~~] (e) incest[~~, in violation of~~] under Section 76-7-102; or

[~~(j)~~] (f) an attempt to commit [~~any~~] an offense listed in Subsections [~~(4)(a) through (4)(j)~~] (5)(a) through (e).

[~~(5)~~] (6) An offense under this section is not eligible for a nonjudicial adjustment under Section 80-6-303.5 or a referral to a youth court under Section 80-6-902.

[~~(6)~~] (7) Except for an offense that is transferred to a district court by the juvenile court

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in accordance with Section 80-6-504, the district court may enter any sentence or combination of sentences that would have been available in juvenile court but for the delayed reporting or delayed filing of the information in the district court.

[(7)] (8) An offense under this section is not subject to registration under Subsection 77-41-102(18)."

Section 20. **Coordinating S.B. 213 with H.B. 395 and S.B. 200 if all pass and become law.**

If S.B. 213, Criminal Justice Modifications, H.B. 395, DUI Offense Amendments, and S.B. 200, State Commission on Criminal and Juvenile Justice Amendments, all pass and become law, the Legislature intends that:

(1) on May 1, 2024, Section 63M-7-404.3 enacted in S.B. 200 be amended to read:

"63M-7-404.3. **Adult sentencing and supervision length guidelines.**

(1) The sentencing commission shall establish and maintain adult sentencing and supervision length guidelines regarding:

(a) the sentencing and release of offenders in order to:

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in sentencing;

(iv) better define responsibility in sentencing; and

(v) enhance the discretion of the sentencing court while preserving the role of the

Board of Pardons and Parole;

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

(i) respond to public comment;

(ii) increase equity in criminal supervision lengths;

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

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

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

(vi) enhance the discretion of the sentencing court while preserving the role of the

Board of Pardons and Parole; and

(c) appropriate, evidence-based probation and parole supervision policies and services

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that assist offenders in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:

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

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

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

(iv) engaging with social services agencies and other stakeholders who provide services that meet the needs of an offender; and

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

(2) The sentencing commission shall include guidelines on supervision in the adult sentencing and supervision guidelines with graduated and evidence-based processes to facilitate the prompt and effective response to an offender's progress in, or violation of, the terms of probation or parole by the Department of Corrections, or another supervision services provider, to reduce recidivism and incarceration, including:

(a) responses used when an offender violates a condition of probation or parole as described in Subsection (3);

(b) responses to recognize positive behavior and progress related to an offender's case action plan as described in Subsection (4); and

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

(3) (a) Subject to Subsection (3)(b), the sentencing commission shall include guidelines in the adult sentencing and supervision guidelines that categorize a violation of a condition of parole or probation as low, medium, and high based on the nature of the violation.

(b) The guidelines under Subsection (3)(a) shall categorize the following supervision violations as a high violation:

(i) the commission of a felony offense, a misdemeanor offense described in Title 76, Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving under the influence described in Section 41-6a-502;

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(ii) the possession of a dangerous weapon; or

(iii) the refusal to comply with the requirements for treatment imposed by the court or the Board of Pardons and Parole.

(c) The guidelines under Subsection (3)(a) shall include the following responses to a violation of a condition of parole or probation as described in Subsection (2)(a) that is a high violation:

(i) a hearing before the court or the Board of Pardons and Parole; or

(ii) except as provided in Subsections 77-18-108(4)(b) and 77-27-11(6)(c), a period of incarceration that does not exceed a period of more than:

(A) three consecutive days; and

(B) a total of five days in a period of 30 days.

(4) (a) Subject to Subsection (4)(b), the sentencing commission shall include guidelines in the adult sentencing and supervision guidelines that categorize positive behavior and progress for offenders on parole or probation as low, medium, and high based on the nature of the accomplishment.

(b) The guidelines under Subsection (4)(a) shall categorize the completion of all conditions of parole or probation as a high accomplishment.

(c) The guidelines under Subsection (4)(a) shall include the following responses for positive behavior and progress for offenders on parole or probation described in Subsections (2)(b) that is a high accomplishment:

(i) early termination from probation or parole;

(ii) a reduction of the offense for which the offender was convicted, as described in Section 76-3-402; or

(iii) reduction in the fine for which the offender is required to pay for the offense.

(5) The sentencing commission shall establish guidelines in the adult sentencing and supervision length guidelines that recommend an enhanced sentence that a court or the Board of Pardons and Parole should consider when determining the period in which a habitual offender, as defined in Section 77-18-102, will be incarcerated.

(6) The sentencing commission shall modify:

(a) the adult sentencing and supervision length guidelines to reduce recidivism for the purposes of protecting the public and ensuring efficient use of state funds; and

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(b) the criminal history score in the adult sentencing and supervision length guidelines to reduce recidivism, including factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again."; and

(2) on July 1, 2024, Section 63M-7-404.3 enacted in S.B. 200 be amended to read:

"63M-7-404.3. **Adult sentencing and supervision length guidelines.**

(1) The sentencing commission shall establish and maintain adult sentencing and supervision length guidelines regarding:

(a) the sentencing and release of offenders in order to:

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in sentencing;

(iv) better define responsibility in sentencing; and

(v) enhance the discretion of the sentencing court while preserving the role of the

Board of Pardons and Parole;

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

(i) respond to public comment;

(ii) increase equity in criminal supervision lengths;

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

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

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

(vi) enhance the discretion of the sentencing court while preserving the role of the

Board of Pardons and Parole; and

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

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

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

(iii) processes that include using positive reinforcement to recognize an offender's

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progress in supervision;

(iv) engaging with social services agencies and other stakeholders who provide services that meet the needs of an offender; and

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

(2) The sentencing commission shall include guidelines on supervision in the adult sentencing and supervision guidelines with graduated and evidence-based processes to facilitate the prompt and effective response to an offender's progress in, or violation of, the terms of probation or parole by the Department of Corrections, or another supervision services provider, to reduce recidivism and incarceration, including:

(a) responses used when an offender violates a condition of probation or parole as described in Subsection (3);

(b) responses to recognize positive behavior and progress related to an offender's case action plan as described in Subsection (4); and

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

(3) (a) Subject to Subsection (3)(b), the sentencing commission shall include guidelines in the adult sentencing and supervision guidelines that categorize a violation of a condition of parole or probation as low, medium, and high based on the nature of the violation.

(b) The guidelines under Subsection (3)(a) shall categorize the following supervision violations as a high violation:

(i) the commission of a felony offense, a misdemeanor offense described in Title 76, Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving under the influence described in Section 41-6a-502;

(ii) the possession of a dangerous weapon; or

(iii) the refusal to comply with the requirements for treatment imposed by the court or the Board of Pardons and Parole.

(c) The guidelines under Subsection (3)(a) shall include the following responses to a violation of a condition of parole or probation as described in Subsection (2)(a) that is a high violation:

(i) a hearing before the court or the Board of Pardons and Parole; or

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(ii) except as provided in Subsections 77-18-108(4)(b) and 77-27-11(6)(c), a period of incarceration that does not exceed a period of more than:

(A) three consecutive days; and

(B) a total of five days in a period of 30 days.

(4) (a) Subject to Subsection (4)(b), the sentencing commission shall include guidelines in the adult sentencing and supervision guidelines that categorize positive behavior and progress for offenders on parole or probation as low, medium, and high based on the nature of the accomplishment.

(b) The guidelines under Subsection (4)(a) shall categorize the completion of all conditions of parole or probation as a high accomplishment.

(c) The guidelines under Subsection (4)(a) shall include the following responses for positive behavior and progress for offenders on parole or probation described in Subsections (2)(b) that is a high accomplishment:

(i) early termination from probation or parole;

(ii) a reduction of the offense for which the offender was convicted, as described in Section 76-3-402; or

(iii) reduction in the fine for which the offender is required to pay for the offense.

(5) The sentencing commission shall establish guidelines in the adult sentencing and supervision length guidelines that recommend an enhanced sentence that a court or the Board of Pardons and Parole should consider when determining the period in which a habitual offender, as defined in Section 77-18-102, will be incarcerated.

(6) (a) Before July 1, 2024, the sentencing commission shall create guidelines in the adult sentencing and supervision length guidelines for the following offenses:

(i) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and

(ii) negligently operating a vehicle resulting in death, Section 76-5-207.

(b) The guidelines under Subsection (6)(a) shall consider the following:

(i) the current sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both as identified in Section 41-6a-505 when injury or death do not result;

(ii) the degree of injury and the number of victims suffering injury or death as a result of the offense;

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(iii) the offender's number of previous convictions for driving under the influence related offenses as defined in Subsection 41-6a-501(2)(a); and

(iv) whether the offender had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed.

(7) The sentencing commission shall modify:

(a) the adult sentencing and supervision length guidelines to reduce recidivism for the purposes of protecting the public and ensuring efficient use of state funds; and

(b) the criminal history score in the adult sentencing and supervision length guidelines to reduce recidivism, including factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again."

Section 21. Coordinating S.B. 213 with H.B. 395 and S.B. 200 if all pass and become law.

If S.B. 213, Criminal Justice Modifications, and H.B. 395, DUI Offense Amendments, both pass and become law, and S.B. 200, State Commission on Criminal and Juvenile Justice Amendments, does not pass and become law, the Legislature intends that, on July 1, 2024, Section 63M-7-404 be amended to read:

"63M-7-404. Purpose -- Duties.

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

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

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in criminal sentencing;

(iv) better define responsibility in criminal sentencing; and

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

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

(i) increase equity in criminal supervision lengths;

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(ii) respond to public comment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) who have violated one or more conditions of probation; and
- (ii) whose probation has been revoked by the court.

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

- (i) the seriousness of any violation of the condition of probation;
- (ii) the probationer's conduct while on probation; and
- (iii) the probationer's criminal history.

(5) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:

- (i) who have violated a condition of parole; and
- (ii) whose parole has been revoked by the Board of Pardons and Parole.

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

- (i) the seriousness of any violation of the condition of parole;
- (ii) the individual's conduct while on parole; and
- (iii) the individual's criminal history.

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

- (a) responses to be used when an individual violates a condition of probation or parole;
- (b) responses to recognize positive behavior and progress related to an individual's case

action plan:

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

- (d) a range of sanctions that may not exceed a period of incarceration of more than:
 - (i) three consecutive days; and

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

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

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

(b) positive conduct that exceeds those terms.

(8) (a) Subject to Subsection (8)(b), the commission shall establish guidelines that categorize a violation of a condition of parole or probation as low, medium, and high based on the nature of the violation.

(b) The guidelines under Subsection (8)(a) shall categorize the following supervision violations as a high violation:

(i) the commission of a felony offense, a misdemeanor offense described in Title 76, Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving under the influence described in Section 41-6a-502;

(ii) the possession of a dangerous weapon; or

(iii) the refusal to comply with the requirements for treatment imposed by the court or the Board of Pardons and Parole.

(c) The guidelines under Subsection (8)(a) shall include the following responses for a violation of a condition of parole or probation described in Subsection (6)(a) that is a high violation:

(i) a hearing before the court or the Board of Pardons and Parole; or

(ii) except as provided in Subsections 77-18-108(4)(b) and 77-27-11(6)(c), a period of incarceration that does not exceed a period of more than:

(A) three consecutive days; and

(B) a total of five days in a period of 30 days.

(9) (a) Subject to Subsection (9)(b), the commission shall establish guidelines that categorize positive behavior and progress for offenders on parole or probation as low, medium, and high based on the nature of the accomplishment.

(b) The guidelines under Subsection (9)(a) shall categorize the completion of all conditions of parole or probation as a high accomplishment.

(c) The guidelines under Subsection (9)(a) shall include the following responses for

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positive behavior and progress for offenders on parole or probation described in Subsections (6)(b) and (7)(b) that is a high accomplishment:

(i) early termination from probation or parole;

(ii) a reduction of the offense for which the offender was convicted, as described in Section 76-3-402; or

(iii) reduction in the fine for which the offender is required to pay for the offense.

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

(i) nonjudicially adjusted;

(ii) placed on diversion;

(iii) placed on probation;

(iv) placed on community supervision;

(v) placed in an out-of-home placement; or

(vi) placed in a secure care facility.

(b) In establishing guidelines under this Subsection (8), the commission shall consider:

(i) the seriousness of the negative and positive behavior;

(ii) the juvenile's conduct post-adjudication; and

(iii) the delinquency history of the juvenile.

(c) The guidelines shall include:

(i) responses that are swift and certain;

(ii) a continuum of community-based options for juveniles living at home;

(iii) responses that target the individual's criminogenic risk and needs; and

(iv) incentives for compliance, including earned discharge credits.

[(9)] (11) The commission shall establish and maintain supervision length guidelines in accordance with this section.

[(10)] (12) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:

(i) securities fraud, Sections 61-1-1 and 61-1-21;

(ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;

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(iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;

(iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,

Assault and Related Offenses:

(v) arson, Section 76-6-102;

(vi) burglary, Section 76-6-202;

(vii) theft under Title 76, Chapter 6, Part 4, Theft;

(viii) forgery, Section 76-6-501;

(ix) unlawful dealing of property by a fiduciary, Section 76-6-513;

(x) insurance fraud, Section 76-6-521;

(xi) computer crimes, Section 76-6-703;

(xii) mortgage fraud, Section 76-6-1203;

(xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;

(xiv) communications fraud, Section 76-10-1801;

(xv) money laundering, Section 76-10-1904; and

(xvi) other offenses in the discretion of the commission.

(b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.

(c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection ~~[(10)(a)]~~ (12)(a).

~~[(11)]~~ (13) (a) Before January 1, 2023, the commission shall study the offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor under Sections 76-5b-201 and 76-5b-201.1.

(b) The commission shall update sentencing and release guidelines and juvenile disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection ~~[(11)(a)]~~ (13)(a), including the application of aggravating and mitigating factors specific to the offense.

(14) The commission shall establish guidelines that recommend an enhanced sentence that a court or the Board of Pardons and Parole should consider when determining the period in which a habitual offender, as defined in Section 77-18-102, will be incarcerated.

(15) (a) Before July 1, 2024, the sentencing commission shall create sentencing guidelines and supervision length guidelines for the following offenses:

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(i) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and

(ii) negligently operating a vehicle resulting in death, Section 76-5-207.

(b) The guidelines under Subsection (15)(a) shall consider the following:

(i) the current sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both as identified in Section 41-6a-505 when injury or death do not result;

(ii) the degree of injury and the number of victims suffering injury or death as a result of the offense;

(iii) the offender's number of previous convictions for driving under the influence related offenses as defined in Subsection 41-6a-501(2)(a); and

(iv) whether the offender had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed."

Section 22. Coordinating S.B. 213 with S.B. 200 if H.B. 395 does not pass and become law.

If S.B. 213, Criminal Justice Modifications, and S.B. 200, State Commission on Criminal and Juvenile Justice Amendments, both pass and become law, and H.B. 395, DUI Offense Amendments, does not pass and become law, the Legislature intends that, on May 1, 2024, Section 63M-7-404.3 enacted in S.B. 200 be amended to read:

"63M-7-404.3. Adult sentencing and supervision length guidelines.

(1) The sentencing commission shall establish and maintain adult sentencing and supervision length guidelines regarding:

(a) the sentencing and release of offenders in order to:

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in sentencing;

(iv) better define responsibility in sentencing; and

(v) enhance the discretion of the sentencing court while preserving the role of the Board of Pardons and Parole;

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

(i) respond to public comment;

(ii) increase equity in criminal supervision lengths;

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

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

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

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

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

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

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

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

(iv) engaging with social services agencies and other stakeholders who provide services that meet the needs of an offender; and

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

(2) The sentencing commission shall include guidelines on supervision in the adult sentencing and supervision guidelines with graduated and evidence-based processes to facilitate the prompt and effective response to an offender's progress in, or violation of, the terms of probation or parole by the Department of Corrections, or another supervision services provider, to reduce recidivism and incarceration, including:

(a) responses used when an offender violates a condition of probation or parole as described in Subsection (3);

(b) responses to recognize positive behavior and progress related to an offender's case action plan as described in Subsection (4); and

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

(3) (a) Subject to Subsection (3)(b), the sentencing commission shall include guidelines in the adult sentencing and supervision guidelines that categorize a violation of a condition of parole or probation as low, medium, and high based on the nature of the violation.

(b) The guidelines under Subsection (3)(a) shall categorize the following supervision violations as a high violation:

(i) the commission of a felony offense, a misdemeanor offense described in Title 76, Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving under the influence described in Section 41-6a-502;

(ii) the possession of a dangerous weapon; or

(iii) the refusal to comply with the requirements for treatment imposed by the court or the Board of Pardons and Parole.

(c) The guidelines under Subsection (3)(a) shall include the following responses to a violation of a condition of parole or probation as described in Subsection (2)(a) that is a high violation:

(i) a hearing before the court or the Board of Pardons and Parole; or

(ii) except as provided in Subsections 77-18-108(4)(b) and 77-27-11(6)(c), a period of incarceration that does not exceed a period of more than:

(A) three consecutive days; and

(B) a total of five days in a period of 30 days.

(4) (a) Subject to Subsection (4)(b), the sentencing commission shall include guidelines in the adult sentencing and supervision guidelines that categorize positive behavior and progress for offenders on parole or probation as low, medium, and high based on the nature of the accomplishment.

(b) The guidelines under Subsection (4)(a) shall categorize the completion of all conditions of parole or probation as a high accomplishment.

(c) The guidelines under Subsection (4)(a) shall include the following responses for positive behavior and progress for offenders on parole or probation described in Subsections (2)(b) that is a high accomplishment:

(i) early termination from probation or parole;

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(ii) a reduction of the offense for which the offender was convicted, as described in Section 76-3-402; or

(iii) reduction in the fine for which the offender is required to pay for the offense.

(5) The sentencing commission shall establish guidelines in the adult sentencing and supervision length guidelines that recommend an enhanced sentence that a court or the Board of Pardons and Parole should consider when determining the period in which a habitual offender, as defined in Section 77-18-102, will be incarcerated.

(6) The sentencing commission shall modify:

(a) the adult sentencing and supervision length guidelines to reduce recidivism for the purposes of protecting the public and ensuring efficient use of state funds; and

(b) the criminal history score in the adult sentencing and supervision length guidelines to reduce recidivism, including factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again."