

SB0213S03 compared with SB0213S02

~~text~~ shows text that was in SB0213S02 but was deleted in SB0213S03.

text shows text that was not in SB0213S02 but was inserted into SB0213S03.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: ~~_____~~ Karianne Lisonbee

LONG TITLE

General Description:

This bill amends provisions related to the criminal justice system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Utah Sentencing Commission to review and revise, on or before October 31, 2024, supervision guidelines regarding appropriate sanctions and incentives;
- ▶ requires the Utah Sentencing Commission to establish sentencing guidelines to address habitual offenders;
- ▶ requires the Department of Corrections to create a program to provide incentives for maintaining eligible employment for certain offenders on probation or parole;

SB0213S03 compared with SB0213S02

- ▶ 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;
- ▶ 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides coordination clauses.

Utah Code Sections Affected:

AMENDS:

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-7-303, 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

SB0213S03 compared with SB0213S02

63M-7-404, as last amended by Laws of Utah 2023, Chapter 111
64-13-21, as last amended by Laws of Utah 2022, Chapter 187
76-5-401, as last amended by Laws of Utah 2023, Chapter 123
76-5-401.3, as last amended by Laws of Utah 2023, Chapters 123, 161
77-18-102, as last amended by Laws of Utah 2023, Chapter 330
77-18-103, as last amended by Laws of Utah 2023, Chapter 155
77-20-205, as last amended by Laws of Utah 2023, Chapters 408, 447
77-27-9.5, as last amended by Laws of Utah 1998, Chapter 355
77-27-9.7, as last amended by Laws of Utah 1994, Chapter 13
77-27-13, as last amended by Laws of Utah 1998, Chapter 171
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

Utah Code Sections Affected By Coordination Clause:

63M-7-404, as last amended by Laws of Utah 2023, Chapter 111
63M-7-404.3, Utah Code Annotated 1953
76-5-401.3, as last amended by Laws of Utah 2023, 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,

SB0213S03 compared with SB0213S02

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 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

SB0213S03 compared with SB0213S02

"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; 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

SB0213S03 compared with SB0213S02

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 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

SB0213S03 compared with SB0213S02

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)(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.

SB0213S03 compared with SB0213S02

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:
 - (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

SB0213S03 compared with SB0213S02

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

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

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

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

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

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

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

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

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

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

SB0213S03 compared with SB0213S02

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

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

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

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

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

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

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

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

(8) On or before October 31, 2024, the commission shall review and revise the supervision tools in the guidelines to:

(a) recommend appropriate sanctions for an individual who violates probation or parole by:

(i) committing 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) possessing a dangerous weapon; or

(iii) willfully refusing to participate in treatment ordered by the court or the Board of Pardons and Parole; and

(b) recommend appropriate incentives for an individual on probation or parole that:

(i) completes all conditions of probation or parole; or

SB0213S03 compared with SB0213S02

(ii) maintains eligible employment as defined in Section 64-13g-101.

~~[(8)]~~ (9) (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)]~~ (9), 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)]~~ (10) The commission shall establish and maintain supervision length guidelines in accordance with this section.

~~[(10)]~~ (11) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:

- (i) securities fraud, Sections 61-1-1 and 61-1-21;
- (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;
- (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;
- (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1, Assault and Related Offenses;
- (v) arson, Section 76-6-102;

SB0213S03 compared with SB0213S02

- (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)] (11)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.

(c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection [~~(10)~~(a)] (11)(a).

~~[(11)]~~ (12) (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)] (12)(a), including the application of aggravating and mitigating factors specific to the offense.

(13) 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.

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

SB0213S03 compared with SB0213S02

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

(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.

SB0213S03 compared with SB0213S02

(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 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

SB0213S03 compared with SB0213S02

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 July 1, 2026, the department shall establish a program, consistent with the sentencing and supervision length guidelines described in Section 63M-7-404, to provide incentives for an offender that maintains eligible employment, as defined in Section 64-13g-101.

(ii) The program under Subsection (7)(b)(i) may include a credit towards the reduction of the length of supervision for an offender at a rate of up to 30 days for each month that the offender maintains eligible employment, as defined in Section 64-13g-101.

(iii) A court, or the Board of Pardons and Parole, is not required to grant a request for termination of supervision under the program described in this Subsection (7)(b) if the court, or the Board of Pardons and Parole, finds that:

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

(B) termination would prevent the offender from completing risk reduction programming or treatment; or

(C) the eligibility criteria for termination of supervision, as established in the sentencing and supervision length guidelines described in Section 63M-7-404, have not been met.

(iv) This Subsection (7)(b) does not prohibit the department, or another supervision services provider, from requesting termination of supervision based on the eligibility criteria in the sentencing and supervision length guidelines described in Section 63M-7-404.

(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

SB0213S03 compared with SB0213S02

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 5. 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.

(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.

SB0213S03 compared with SB0213S02

(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;

(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 6. 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

SB0213S03 compared with SB0213S02

commits unlawful adolescent sexual activity if:

(a) the actor:

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

~~(b)~~ (ii) has sexual activity with ~~[another]~~ an adolescent~~[-]; or~~

(b) the actor:

(i) has sexual activity with 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;

~~(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;

SB0213S03 compared with SB0213S02

- (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).

Section 7. 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 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:

SB0213S03 compared with SB0213S02

(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 8. 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.

(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

SB0213S03 compared with SB0213S02

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 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.

SB0213S03 compared with SB0213S02

(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);

(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

SB0213S03 compared with SB0213S02

(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 9. 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 substantial evidence 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

SB0213S03 compared with SB0213S02

(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).

(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.

SB0213S03 compared with SB0213S02

(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 reasonably ensure:

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

~~(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

SB0213S03 compared with SB0213S02

travel;

(m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;

(n) comply with a specified curfew;

(o) forfeit or refrain from possession of a firearm or other dangerous weapon;

(p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;

(q) comply with requirements for house arrest;

(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.

SB0213S03 compared with SB0213S02

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

- (i) the county jail official's action to fix a financial condition; or
- (ii) the amount of the financial condition that the individual was required to pay for pretrial release.

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

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

- (a) rely upon information contained in:
 - (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;

SB0213S03 compared with SB0213S02

- (G) history of drug or alcohol abuse; and
- (H) history of timely appearances at required court proceedings;
- (iii) the potential danger to another individual, or individuals, posed by the release of the individual;
- (iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;
- (v) the availability of:
 - (A) other individuals who agree to assist the individual in attending court when required; or
 - (B) supervision of the individual in the individual's community;
- (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 10. 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.

SB0213S03 compared with SB0213S02

(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 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.

~~[(c)]~~ (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.

SB0213S03 compared with SB0213S02

(5) The statement 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).

(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 11. Section ~~77-27-9.7~~ is amended to read:

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.]~~

(1) (a) In accordance with 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 (1) with the notification sent under Subsection 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 12. Section ~~77-27-13~~ is amended to read:

77-27-13. Board of Pardons and Parole -- Duties of the judiciary, the Department

SB0213S03 compared with SB0213S02

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 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~~

SB0213S03 compared with SB0213S02

~~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:

(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.

SB0213S03 compared with SB0213S02

~~[(6)]~~ (8) The chief executive officer of any penal or correctional institution shall permit offenders to send mail to the board without censorship.

Section 13. 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.

~~[(c)]~~ (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;

SB0213S03 compared with SB0213S02

- (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 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

SB0213S03 compared with SB0213S02

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

(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

SB0213S03 compared with SB0213S02

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 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.

SB0213S03 compared with SB0213S02

(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 14. 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

(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.

SB0213S03 compared with SB0213S02

(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; and

(ii) may not limit participation in a drug court only to individuals convicted of an offense described in Section 58-37-8.

(c) A plea to, conviction of, or adjudication for a felony offense is not required for participation in a drug court program.

Section 15. **Effective date.**

This bill takes effect on May 1, 2024.

Section 16. **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~~

SB0213S03 compared with SB0213S02

~~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;

(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

SB0213S03 compared with SB0213S02

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:

(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;]~~

SB0213S03 compared with SB0213S02

~~[(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)(i)]~~ (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 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 17. **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:

(1) the Legislature intends that, on May 1, 2024:

(a) 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~~ accept 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~~ accept public comment;

SB0213S03 compared with SB0213S02

(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) On or before October 31, 2024, the sentencing commission shall review and revise the supervision tools in the adult sentencing and supervision length guidelines to:

(a) recommend appropriate sanctions for an individual who violates probation or parole by:

(i) committing 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) possessing a dangerous weapon; or

(iii) willfully refusing to participate in treatment ordered by the court or the Board of Pardons and Parole; and

(b) recommend appropriate incentives for an individual on probation or parole that:

SB0213S03 compared with SB0213S02

(i) completes all conditions of probation or parole; or

(ii) maintains eligible employment as defined in Section 64-13g-101.

(3) 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.

(4) 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."; and

(b) all occurrences of the language "sentencing and supervision length guidelines in Section 63M-7-404" in Subsection 64-13-21(7)(b) in S.B. 213 be replaced with "adult sentencing and supervision length guidelines, as defined in Section 63M-7-401.1"; and

(2) the Legislature intends that, 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~~ accept 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~~ accept public comment;

(ii) increase equity in criminal supervision lengths;

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

SB0213S03 compared with SB0213S02

(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) On or before October 31, 2024, the sentencing commission shall review and revise the supervision tools in the adult sentencing and supervision length guidelines to:~~

~~— (a) recommend appropriate sanctions for an individual who violates probation or parole by:~~

~~— (i) committing 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) possessing a dangerous weapon; or~~

~~— (iii) willfully refusing to participate in treatment ordered by the court or the Board of Pardons and Parole; and~~

~~— (b) recommend appropriate incentives for an individual on probation or parole that:~~

~~— (i) completes all conditions of probation or parole; or~~

~~— (ii) maintains eligible employment as defined in Section 64-13g-101.~~

SB0213S03 compared with SB0213S02

~~(3) 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.~~

† ~~(4)(2)~~ (a) Before July 1, 2024, the sentencing commission shall ~~create guidelines~~ in revise and review the adult sentencing and supervision length guidelines to reflect appropriate penalties for the following offenses:

(i) an interlock restricted driver operating a vehicle without an ignition interlock system, Section 41-6a-518.2;

(ii) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and

(iii) negligently operating a vehicle resulting in death, Section 76-5-207.

(b) The guidelines under Subsection (4)(2)(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);†

~~(iv) the offender's number of convictions} and~~

(iv) whether the offense amounts to extreme DUI, as that term is defined in Section 41-6a-501.

(3) On or before October 31, 2024, the sentencing commission shall review and revise the supervision tools in the adult sentencing and supervision length guidelines to:

(a) recommend appropriate sanctions for an interlock restricted driver operating a vehicle without an ignition interlock system as} individual who violates probation or parole by:

(i) committing 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-518.2; and

~~(v) 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~~

SB0213S03 compared with SB0213S02

~~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; 41-6a-502;~~

~~(ii) possessing a dangerous weapon; or~~

~~(iii) willfully refusing to participate in treatment ordered by the court or the Board of~~

~~Pardons and Parole; and~~

~~(b) recommend appropriate incentives for an individual on probation or parole that:~~

~~(i) completes all conditions of probation or parole; or~~

~~(ii) maintains eligible employment as defined in Section 64-13g-101.~~

~~(4) 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.~~

~~(5) 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 18. Coordinating S.B. 213 with H.B. 395 if S.B. 200 does not 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;

SB0213S03 compared with SB0213S02

- (iii) increase equity in criminal sentencing;
- (iv) better define responsibility in criminal sentencing; and
- (v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority;

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

- (i) increase equity in criminal supervision lengths;
- (ii) respond to public comment;
- (iii) relate the length of supervision to an offender's progress;
- (iv) take into account an offender's risk of offending again;
- (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and

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

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

- (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.

SB0213S03 compared with SB0213S02

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

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

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

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

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

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

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

SB0213S03 compared with SB0213S02

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

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

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

(i) three consecutive days; and

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

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

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

(b) positive conduct that exceeds those terms.

(8) On or before October 31, 2024, the commission shall review and revise the supervision tools in the guidelines to:

(a) recommend appropriate sanctions for an individual who violates probation or parole by:

(i) committing 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) possessing a dangerous weapon; or

(iii) willfully refusing to participate in treatment ordered by the court or the Board of Pardons and Parole; and

(b) recommend appropriate incentives for an individual on probation or parole that:

(i) completes all conditions of probation or parole; or

(ii) maintains eligible employment as defined in Section 64-13g-101.

~~[(8)]~~ (9) (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;

SB0213S03 compared with SB0213S02

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

(vi) placed in a secure care facility.

(b) In establishing guidelines under this Subsection [~~(8)~~] (9), 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)~~ (10) The commission shall establish and maintain supervision length guidelines in accordance with this section.

~~(10)~~ (11) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:

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

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

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

(iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,

Assault and Related Offenses;

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

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

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

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

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

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

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

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

SB0213S03 compared with SB0213S02

(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)] (11)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.

(c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection [~~(10)~~(a)] (11)(a).

~~[(11)]~~ (12) (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)] (12)(a), including the application of aggravating and mitigating factors specific to the offense.

(13) 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.

(14) (a) Before July 1, 2024, the sentencing commission shall ~~create guidelines in~~ review and revise the ~~adult~~ commission's sentencing and supervision length guidelines to reflect appropriate penalties for the following offenses:

(i) an interlock restricted driver operating a vehicle without an ignition interlock system, Section 41-6a-518.2;

(ii) negligently operating a vehicle resulting in death, Section 76-5-207; and

(iii) negligently operating a vehicle resulting in death, Section 76-5-207.

(b) The guidelines under Subsection (14)(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;

SB0213S03 compared with SB0213S02

(iii) the offender's number of previous convictions for driving under the influence related offenses ~~as~~ including those defined in Subsection 41-6a-501(2)(a); and

(iv) whether the ~~offender's number of convictions for an interlock restricted driver operating a vehicle without an ignition interlock system as described~~; offense amounts to extreme DUI, as that term is defined in Section ~~41-6a-518.2; and~~

~~— (v) 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~~ 41-6a-501."

Section 19. 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;

(1) 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~~ accept 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~~ accept public comment;

(ii) increase equity in criminal supervision lengths;

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

SB0213S03 compared with SB0213S02

(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) On or before October 31, 2024, the sentencing commission shall review and revise the supervision tools in the adult sentencing and supervision length guidelines to:

(a) recommend appropriate sanctions for an individual who violates probation or parole by:

(i) committing 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) possessing a dangerous weapon; or

(iii) willfully refusing to participate in treatment ordered by the court or the Board of Pardons and Parole; and

(b) recommend appropriate incentives for an individual on probation or parole that:

(i) completes all conditions of probation or parole; or

(ii) maintains eligible employment as defined in Section 64-13g-101.

SB0213S03 compared with SB0213S02

(3) 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.

(4) 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."; and

(2) all occurrences of the language "sentencing and supervision length guidelines in Section 63M-7-404" in Subsection 64-13-21(7)(b) in S.B. 213 be replaced with "adult sentencing and supervision length guidelines, as defined in Section 63M-7-401.1."