

HB0568S01 compared with HB0568

~~{deleted text}~~ shows text that was in HB0568 but was deleted in HB0568S01.

inserted text shows text that was not in HB0568 but was inserted into HB0568S01.

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Representative Doug Owens proposes the following substitute bill:

INTERMITTENT SENTENCING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: { } Doug Owens

Senate Sponsor: { } _____

LONG TITLE

General Description:

This bill amends provisions related to alternative incarceration programs~~{and sentencing requirements}~~.

Highlighted Provisions:

This bill:

~~{~~ → clarifies terms;

- ~~}~~ ▶ provides that a county sheriff may implement a sheriff's work program in which ~~{prisoners}~~eligible inmates participate in supervised ~~{community service}~~public works projects instead of serving time in jail;
- ▶ amends the eligibility requirements for alternative incarceration programs and sheriffs' work programs;
- ▶ ~~{amends the sentencing requirements for driving under the influence of alcohol};~~

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~~drugs, or a combination of both}~~ clarifies provisions related to credit for good behavior against a jail sentence; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-5, as last amended by Laws of Utah 2004, Chapter 301

~~{41-6a-505}~~ 76-3-403, as last amended by Laws of Utah ~~{2023}~~ 1998, ~~{Chapters 328, 415}~~ Chapter 91

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

Section 1. Section 17-22-5 is amended to read:

17-22-5. Sheriff's classification of jail inmates -- Classification criteria --

Alternative incarceration programs -- Limitation.

(1) Except as provided in Subsection ~~[(4)]~~ (6), the sheriff shall adopt and implement written policies for admission of ~~[prisoners]~~ inmates to the county jail and the classification of persons incarcerated in the jail which shall provide for the separation of ~~[prisoners]~~ inmates by gender and by such other factors as may reasonably provide for the safety and well-being of inmates and the community. To the extent authorized by law, any written admission policies shall be applied equally to all entities using the county correctional facilities.

(2) Except as provided in Subsection ~~[(4)]~~ (6), each county sheriff shall assign ~~[prisoners]~~ inmates to a facility or section of a facility based on classification criteria that the sheriff develops and maintains.

(3) ~~[(a)]~~ Except as provided in Subsection ~~[(4)]~~ (6), a county sheriff may develop and implement alternative incarceration programs that may or may not involve housing ~~[a prisoner]~~ an inmate in a jail facility, including a sheriff's work program as described in Subsection (4).

(4) (a) A county sheriff may implement a sheriff's work program that allows ~~fa prisoner}~~ an inmate to participate in public works projects ~~{or community service}~~ under the

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county sheriff's supervision and in lieu of incarceration.

(b) If a county sheriff implements a sheriff's work program, the county sheriff shall establish policies and procedures related to a sheriff's work program, including:

- (i) notwithstanding Subsection (5), program eligibility criteria;
- (ii) reasonable participation fees;
- (iii) the type of ~~{public works projects and community service}~~ work assignments;
- (iv) the timeline within which the work assignments must be completed;
- (v) participant dress code and code of conduct;
- (vi) work safety protocols;
- (vii) supervision of participants;
- (viii) disciplinary measures for program noncompliance; and
- (ix) criteria for successful completion or termination.

(c) When assigning and scheduling work under a sheriff's work program, a county sheriff may consider:

- (i) ~~{a prisoner's}~~ an inmate's ability to perform the work assignment; and
- (ii) ~~{a prisoner's}~~ an inmate's existing employment, education, training, treatment,

medical needs, family care obligations, and other similar obligations.

(d) Eight hours of participation in a sheriff's work program shall constitute credit for one day of incarceration.

~~[(b) A prisoner housed under] { }~~

(5) (a) ~~{A prisoner [housed under]}~~ An inmate participating in an alternative incarceration program under Subsection ~~[(3)(a)]~~ (3) or a sheriff's work program under Subsection (4) shall be considered to be in the full custody and control of the sheriff for purposes of Section 76-8-309.

~~[(c)]~~ (b) ~~[A prisoner]~~ An inmate may [not] be placed in an alternative incarceration program under Subsection ~~[(3)(a) unless]~~ (3) or a sheriff's work program under Subsection (4) at the discretion of the county sheriff if:

~~[(i) the jail facility is at maximum operating capacity, as established under Subsection 17-22-5.5(2); or]~~

~~[(ii) { } { (i) if } ordered by the court { . }, provided that a program is available in the county in which the court resides; or]~~

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~~(ii) at the discretion of the county sheriff if:~~

~~(A) the prisoner;]~~

(i) the inmate was convicted of a non-violent offense and sentenced to a jail term;

~~(B) ii~~ the ~~prisoner~~inmate voluntarily agrees to participate in the program; and

~~(C) iii~~ there is not a court order prohibiting the ~~prisoner's~~inmate's participation in the program.

~~(4)~~ (6) This section may not be construed to authorize a sheriff to modify provisions of a contract with the Department of Corrections to house in a county jail persons sentenced to the Department of Corrections.

Section 2. Section ~~41-6a-505~~76-3-403 is amended to read:

~~41-6a-505. Sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both violations:~~

~~(1) As part of any sentence for a first conviction of Section 41-6a-502 where there is admissible evidence that the individual 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:~~

~~(a) the court shall:~~

~~(i) (A) impose a jail sentence of not less than five days; [or]~~

~~(B) impose a jail sentence of not less than two days in addition to home confinement of not fewer than 30 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; or~~

~~(C) provided that a program is available in the county in which the court resides, require the individual to participate in a~~76-3-403. Credit for good behavior against jail sentence for misdemeanors and certain felonies.

In any commitment for incarceration in a county jail or detention facility, other than the Utah State Prison, or for participation in an alternative incarceration program or sheriff's work program as described in ~~Section 17-22-5 for not less than 40 hours;~~

~~(ii) order the individual to participate in a screening;~~

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- ~~—— (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (1)(a)(ii);~~
- ~~—— (iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (1)(b);~~
- ~~—— (v) impose a fine of not less than \$700;~~
- ~~—— (vi) order probation for the individual in accordance with Section 41-6a-507;~~
- ~~—— (vii) (A) order the individual to pay the administrative impound fee described in Section 41-6a-1406; or~~
 - ~~—— (B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party;~~
- ~~—— (viii) (A) order the individual to pay the towing and storage fees described in Section 72-9-603; or~~
 - ~~—— (B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or~~
- ~~—— (ix) unless the court determines and states on the record that an ignition interlock system is not necessary for the safety of the community and in the best interest of justice, order the installation of an ignition interlock system as described in Section 41-6a-518; and~~
- ~~—— (b) the court may:~~
 - ~~—— (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;~~
 - ~~—— (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or~~
 - ~~—— (iii) order a combination of Subsections (1)(b)(i) and (ii).~~
- ~~—— (2) (a) If an individual described in Subsection (1) is participating in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (1)(a).~~
 - ~~—— (b) If an individual described in Subsection (1) fails to successfully complete all of the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (2)(a).~~

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~~(3) As part of any sentence for any first conviction of Section 41-6a-502 not described in Subsection (1):~~

~~(a) the court shall:~~

~~(i) (A) impose a jail sentence of not less than two days; or~~

~~(B) provided that a program is available in the county in which the court resides, require the individual to [work] participate in [a compensatory-service work program] a sheriff's work program as described in Section 17-22-5 for not less than [48] 16 hours;~~

~~(ii) order the individual to participate in a screening;~~

~~(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (3)(a)(ii);~~

~~(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (3)(b);~~

~~(v) impose a fine of not less than \$700;~~

~~(vi) (A) order the individual to pay the administrative impound fee described in Section 41-6a-1406; or~~

~~(B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or~~

~~(vii) (A) order the individual to pay the towing and storage fees described in Section 72-9-603; or~~

~~(B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; and~~

~~(b) the court may:~~

~~(i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;~~

~~(ii) order probation for the individual in accordance with Section 41-6a-507;~~

~~(iii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or~~

~~(iv) order a combination of Subsections (3)(b)(i) through (iii);~~

~~(4) (a) If an individual described in Subsection (3) is participating in a [24/7] 24-7~~

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~~sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (3)(a):~~

~~—— (b) If an individual described in Subsection (4)(a) fails to successfully complete all of the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (4)(a):~~

~~—— (5) If an individual has a prior conviction as defined in Section 41-6a-501 that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based and where there is admissible evidence that the individual 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:~~

~~—— (a) the court shall:~~

~~—— (i) (A) impose a jail sentence of not less than 20 days;~~

~~—— (B) impose a jail sentence of not less than 10 days in addition to home confinement of not fewer than 60 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; [or]~~

~~—— (C) impose a jail sentence of not less than 10 days in addition to ordering the individual to obtain substance abuse treatment, if the court finds that substance abuse treatment is more likely to reduce recidivism and is in the interests of public safety; or~~

~~—— (D) provided that a program is available in the county in which the court resides; require the individual to participate in a sheriff's work program as described in Section 17-22-5 for not less than 160 hours;~~

~~—— (ii) order the individual to participate in a screening;~~

~~—— (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (5)(a)(ii);~~

~~—— (iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(b);~~

~~—— (v) impose a fine of not less than \$800;~~

~~—— (vi) order probation for the individual in accordance with Section 41-6a-507;~~

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- ~~—— (vii) order the installation of an ignition interlock system as described in Section 41-6a-518;~~
- ~~—— (viii) (A) order the individual to pay the administrative impound fee described in Section 41-6a-1406; or~~
- ~~—— (B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or~~
- ~~—— (ix) (A) order the individual to pay the towing and storage fees described in Section 72-9-603; or~~
- ~~—— (B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; and~~
- ~~—— (b) the court may:~~
- ~~—— (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;~~
- ~~—— (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or~~
- ~~—— (iii) order a combination of Subsections (5)(b)(i) and (ii);~~
- ~~—— (6) (a) If an individual described in Subsection (5) is participating in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (5)(a) after the individual has served a minimum of:~~
- ~~—— (i) five days of the jail sentence for a second offense; or~~
- ~~—— (ii) 10 days of the jail sentence for a third or subsequent offense;~~
- ~~—— (b) If an individual described in Subsection (6)(a) fails to successfully complete all of the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (6)(a);~~
- ~~—— (7) If an individual has a prior conviction as defined in Section 41-6a-501 that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based and that does not qualify under Subsection (5):~~
- ~~—— (a) the court shall:~~
- ~~—— (i) (A) impose a jail sentence of not less than 10 days; [or]~~

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- ~~—— (B) impose a jail sentence of not less than 5 days in addition to home confinement of not fewer than 30 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; or~~
- ~~—— (C) provided that a program is available in the county in which the court resides; require the individual to participate in a sheriff's work program as described in Section 17-22-5 for not less than 80 hours;~~
- ~~—— (ii) order the individual to participate in a screening;~~
- ~~—— (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (7)(a)(ii);~~
- ~~—— (iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (7)(b);~~
- ~~—— (v) impose a fine of not less than \$800;~~
- ~~—— (vi) order probation for the individual in accordance with Section 41-6a-507;~~
- ~~—— (vii) (A) order the individual to pay the administrative impound fee described in Section 41-6a-1406; or~~
- ~~—— (B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or~~
- ~~—— (viii) (A) order the individual to pay the towing and storage fees described in Section 72-9-603; or~~
- ~~—— (B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; and~~
- ~~—— (b) the court may:~~
 - ~~—— (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;~~
 - ~~—— (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or~~
 - ~~—— (iii) order a combination of Subsections (7)(b)(i) and (ii).~~
- ~~—— (8) (a) If an individual described in Subsection (7) is participating in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence~~

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~~imposed under Subsection (7)(a) after the individual has served a minimum of:~~

~~—— (i) five days of the jail sentence for a second offense; or~~

~~—— (ii) 10 days of the jail sentence for a third or subsequent offense.~~

~~—— (b) If an individual described in Subsection (8)(a) fails to successfully complete all of the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (8)(a):~~

~~—— (9) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison sentence and places the defendant on probation where there is admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the person's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research Medical Cannabis, or prescribed, the court shall impose:~~

~~—— (a) a fine of not less than \$1,500;~~

~~—— (b) a jail sentence of not less than 120 days;~~

~~—— (c) home confinement of not fewer than 120 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; and~~

~~—— (d) supervised probation.~~

~~—— (10) (a) For Subsection (9) or Subsection 41-6a-502(2)(c)(i), the court:~~

~~—— (i) shall impose an order requiring the individual to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate; and~~

~~—— (ii) may impose an order requiring the individual to participate in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older.~~

~~—— (b) If an individual described in Subsection (10)(a)(ii) fails to successfully complete all of the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended prison sentence described in Subsection (9):~~

~~—— (11) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison sentence and places the defendant on probation with a sentence not described in Subsection (9), the court shall impose:~~

~~—— (a) a fine of not less than \$1,500;~~

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~~—— (b) a jail sentence of not less than 60 days;~~

~~—— (c) home confinement of not fewer than 60 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; and~~

~~—— (d) supervised probation.~~

~~—— (12) (a) (i) Except as described in Subsection (12)(a)(ii), a court may not suspend the requirements of this section:~~

~~—— (ii) A court may suspend requirements as described in Subsection (2), (4), (6), or (8):~~

~~—— (b) A court, with stipulation of both parties and approval from the judge, may convert a jail sentence required in this section to electronic home confinement:~~

~~—— (c) A court may order a jail sentence imposed as a condition of misdemeanor probation under this section to be served in multiple two-day increments at weekly intervals if the court determines that separate jail increments are necessary to ensure the defendant can serve the statutorily required jail term and maintain employment.~~

~~—— (13) If an individual is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, the court shall order the following, or describe on record why the order or orders are not appropriate:~~

~~—— (a) treatment as described under Subsection (1)(b), (3)(b), (5)(b), or (7)(b); and~~

~~—— (b) one or more of the following:~~

~~—— (i) the installation of an ignition interlock system as a condition of probation for the individual in accordance with Section 41-6a-518;~~

~~—— (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device or remote alcohol monitor as a condition of probation for the individual; or~~

~~—— (iii) the imposition of home confinement through the use of electronic monitoring in accordance with Section 41-6a-506.~~

~~‡17-22-5, the custodial authority may in its discretion and upon good behavior of the inmate allow up to 10 days credit against the sentence to be served for every 30 days served or up to two days credit for every 10 days served when the period to be served is less than 30 days if:~~

~~(1) the [incarceration] punishment is for a misdemeanor offense, and the sentencing judge has not entered an order to the contrary; or~~

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(2) the [incarceration] punishment is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order to the contrary.

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.