

# SB0200S01 compared with SB0200

~~{deleted text}~~ shows text that was in SB0200 but was deleted in SB0200S01.

inserted text shows text that was not in SB0200 but was inserted into SB0200S01.

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Senator Michael K. McKell proposes the following substitute bill:

## STATE COMMISSION ON CRIMINAL AND JUVENILE

### JUSTICE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: { } Michael K. McKell**

House Sponsor: { \_\_\_\_\_ } Karianne Lisonbee

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#### LONG TITLE

##### General Description:

This bill amends provisions regarding the State Commission on Criminal and Juvenile Justice ~~{, including the establishment of the Sentencing Commission}~~.

##### Highlighted Provisions:

This bill:

▶ ~~{repeals provisions in the Utah Code establishing the Sentencing Commission;~~

▶ requires adjusts the number of members on:

• the State Commission on Criminal and Juvenile Justice ~~{ to assume}~~; and

• the sentencing commission;

▶ amends the duties of the Sentencing ~~{Commission's responsibilities to:~~

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- ~~• develop sentencing and supervision length guidelines;~~
- ~~• develop juvenile disposition guidelines; and~~
- ~~• create and maintain a master offense list and a collateral consequences~~  
~~guide~~ Commission;

- ▶ requires the Legislature to approve the sentencing and supervision length guidelines and the juvenile disposition guidelines developed by the State Commission on Criminal and Juvenile Justice; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

- 36-29-108, as last amended by Laws of Utah 2023, Chapter 112
- 63M-7-102, as enacted by Laws of Utah 2023, Chapter 177
- 63M-7-202, as last amended by Laws of Utah 2023, Chapter 150
- 63M-7-204, as last amended by Laws of Utah 2023, Chapters 158, 330, 382, and 500
- 63M-7-402, as last amended by Laws of Utah 2020, Chapter 154
- 63M-7-405, as last amended by Laws of Utah 2022, Chapter 274
- 63M-7-406, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 64-13-6, as last amended by Laws of Utah 2023, Chapter 177
- 64-13-14.5, as last amended by Laws of Utah 2015, Chapter 412
- 64-13-21, as last amended by Laws of Utah 2022, Chapter 187
- 64-13g-102, as last amended by Laws of Utah 2023, Chapter 177
- 76-3-202, as last amended by Laws of Utah 2022, Chapter 181
- 76-5-102.1, as last amended by Laws of Utah 2023, Chapters 111, 415
- 76-5-207, as last amended by Laws of Utah 2023, Chapter 415
- 77-2a-2, as last amended by Laws of Utah 2020, Chapter 281
- 77-18-105, as last amended by Laws of Utah 2023, Chapters 111, 257
- 77-18-108, as last amended by Laws of Utah 2023, Chapter 113

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

77-27-10, as last amended by Laws of Utah 2022, Chapter 430

77-27-11, as last amended by Laws of Utah 2022, Chapter 115

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

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

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

### ENACTS:

63M-7-101.5, Utah Code Annotated 1953

~~63M-7-220~~; 63M-7-401.1, Utah Code Annotated 1953

63M-7-402.5, Utah Code Annotated 1953

63M-7-404.1, Utah Code Annotated 1953

63M-7-404.3, Utah Code Annotated 1953

63M-7-404.5, Utah Code Annotated 1953

### RENUMBERS AND AMENDS:

~~63M-7-221~~; 63M-7-401.2, (Renumbered from ~~63M-7-405~~ 63M-7-401, as last amended by Laws of Utah ~~2022~~ 2021, Chapter ~~274~~ 173)

### REPEALS:

~~63M-7-401~~, as last amended by Laws of Utah 2021, Chapter 173

~~63M-7-402~~, as last amended by Laws of Utah 2020, Chapter 154

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

63M-7-404, as last amended by Laws of Utah 2023, Chapter 111

~~63M-7-406~~, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **36-29-108** is amended to read:

**36-29-108. Criminal Code Evaluation Task Force.**

(1) As used in this section, "task force" means the Criminal Code Evaluation Task Force created in this section.

(2) There is created the Criminal Code Evaluation Task Force consisting of the following ~~15~~ 14 members:

(a) three members of the Senate appointed by the president of the Senate, no more than

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two of whom may be from the same political party;

(b) three members of the House of Representatives appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;

(c) the executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee;

~~(d)~~ the executive director of the ~~Utah~~ Sentencing Commission or the executive director's designee;~~(d)~~

~~(e)~~ ~~(d)~~ one member appointed by the presiding officer of the Utah Judicial Council;

~~(f)~~ ~~(e)~~ one member of the Utah Prosecution Council appointed by the chair of the Utah Prosecution Council;

~~(g)~~ ~~(f)~~ the executive director of the Department of Corrections or the executive director's designee;

~~(h)~~ ~~(g)~~ the commissioner of the Department of Public Safety or the commissioner's designee;

~~(i)~~ ~~(h)~~ the director of the Utah Office for Victims of Crime or the director's designee;

~~(j)~~ ~~(i)~~ an individual who represents an association of criminal defense attorneys, appointed by the president of the Senate; and

~~(k)~~ ~~(j)~~ an individual who represents an association of victim advocates, appointed by the speaker of the House of Representatives.

(3) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b) as a cochair of the task force.

(4) (a) A majority of the members of the task force constitutes a quorum.

(b) The action of a majority of a quorum constitutes an action of the task force.

(5) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(b) A member of the task force who is not a legislator:

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(i) may not receive compensation for the member's work associated with the task force;  
and

(ii) may receive per diem and reimbursement for travel expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(6) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(7) The task force shall review the state's criminal code and related statutes and make recommendations regarding:

- (a) the proper classification of crimes by degrees of felony and misdemeanor;
- (b) standardizing the format of criminal statutes; and
- (c) other modifications related to the criminal code and related statutes.

(8) On or before November 30 of each year that the task force is in effect, the task force shall provide a report, including any proposed legislation, to:

- (a) the Law Enforcement and Criminal Justice Interim Committee; and
- (b) the Legislative Management Committee.

(9) The task force is repealed July 1, 2028.

Section 2. Section **63M-7-101.5** is enacted to read:

### **63M-7-101.5. Definitions for chapter.**

As used in this chapter:

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

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

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

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

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

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~~{ (6) "Sentencing and supervision length guidelines" means the guidelines established in Subsection 63M-7-220(1):~~

~~— (7) "Juvenile disposition guidelines" means the guidelines established in Subsection 63M-7-220(3):~~

‡ Section 3. Section **63M-7-102** is amended to read:

### **63M-7-102. Recidivism metrics -- Reporting.**

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

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

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

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

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

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

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

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

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

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

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

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

~~[(4)] (3) A criminal justice institution, agency, or entity required to report adult~~

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recidivism data to the commission:

(a) shall include:

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

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

(B) the interventions that are being evaluated;

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

(iii) a clear description of the events that are considered as a recidivism-triggering event; and

(b) may include supplementary data including:

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

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

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

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

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

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

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

(i) an arrest;

(ii) an admission to prison;

(iii) a criminal charge; or

(iv) a criminal conviction.

Section 4. Section **63M-7-202** is amended to read:

**63M-7-202. Composition -- Appointments -- Ex officio members -- Terms -- United States Attorney as nonvoting member.**

(1) The State Commission on Criminal and Juvenile Justice is composed of ~~[26]~~ eleven 15 voting members as follows:

~~[(a) the chief justice of the ]~~ supreme court, as the presiding officer of the judicial

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council, ~~{Supreme Court,}~~ or a judge ~~{or the state court administrator}~~ designated by the chief justice;]

~~[(b)]~~ [(a)] the state court administrator or the state court administrator's designee; ~~{}~~

~~[(c)]~~ [(b)] the executive director of the Department of Corrections or the executive director's designee;

~~[(d)]~~ [(c)] the executive director of the Department of Health and Human Services or the executive director's designee; ~~{}~~

~~[(e)]~~ ~~[(c)]~~ [(d)] the commissioner of the Department of Public Safety or the commissioner's designee;

~~[(f)]~~ [(e)] the attorney general or an attorney designated by the attorney general; ~~{}~~

~~[(g)]~~ ~~[(d)]~~ [(f)] the president of the chiefs of police association or a chief of police designated by the association's president;

~~[(h)]~~ ~~[(c)]~~ [(g)] the president of the sheriffs' association or a sheriff designated by the association's president;

~~[(i)]~~ ~~[(f)]~~ [(h)] the chair of the Board of Pardons and Parole or a member of the Board of Pardons and Parole designated by the chair;

~~[(j)]~~ [(i)] the chair of the Utah Sentencing Commission or a member of the Utah Sentencing Commission designated by the chair; ~~{}~~

~~[(k)]~~ ~~the chair of the Utah Substance Use and Mental Health Advisory Council or a member of the Utah Substance Use and Mental Health Advisory Council designated by the chair;~~

~~[(l)]~~ ~~[(g)]~~ [(i)] the chair of the Utah Board of Juvenile Justice or a member of the Utah Board of Juvenile Justice designated by the chair;

~~[(m)]~~ ~~[(h)]~~ [(k)] the chair of the Utah Victim Services Commission or a member of the Utah Victim Services Commission designated by the chair;

~~[(n)]~~ ~~the chair of the Utah Council on Victims of Crime or a member of the Utah Council on Victims of Crime designated by the chair;~~

~~[(o)]~~ ~~the executive director of the Salt Lake Legal Defender Association or an attorney designated by the executive director;~~

~~[(p)]~~ ~~[(j)]~~ [(l)] [the chair of the an indigent defense attorney, appointed by the Utah Indigent Defense Commission ] or a member of the Indigent Defense Commission designated



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by the chair];

~~{ (j) a criminal defense attorney appointed by the governor to serve a four-year term, and~~

~~{ (q) the Salt Lake County District Attorney or an attorney designated by the district attorney; and]~~

~~{ (r) ~~{ (k) }~~ the following members designated to serve four-year terms:]~~

~~{ (i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council;]~~

~~{ (ii) ~~{ }~~ a representative of the ~~{ }~~ statewide association of public attorneys ~~{ }~~ Statewide Association of Prosecutors and Public Attorneys of Utah designated by the association's officers ~~{ }~~; ~~{ to serve a four-year term.}~~~~

~~{ (iii) one member of the House of Representatives who is appointed by the speaker of the House of Representatives; and]~~

~~{ (iv) one member of the Senate who is appointed by the president of the Senate.}]~~

~~{ (m) a criminal prosecutor, appointed by the Statewide Association of Public Attorneys and Prosecutors;~~

~~{ (n) a criminal defense attorney, appointed by the Utah Association of Criminal Defense Lawyers;~~

~~{ (o) the executive director of the commission.~~

~~{ (2) The governor shall appoint the remaining five members to four-year staggered terms as follows:]~~

~~{ (a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;]~~

~~{ (b) one attorney who primarily represents juveniles in delinquency matters appointed from a list of three nominees submitted by the Utah Bar Association;]~~

~~{ (c) one representative of public education;]~~

~~{ (d) one citizen representative; and]~~

~~{ (e) a representative from a local faith who has experience with the criminal justice system.}]~~

~~{ (3) ~~{ (2) }~~ In addition to the members designated under ~~{ }~~ Subsections (1) and (2) ~~{ }~~ Subsection (1), the United States Attorney for the ~~{ }~~ district ~~{ }~~ District of Utah or an attorney designated by the United States Attorney may serve as a nonvoting member. ~~{ }~~~~

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~~[(4)]~~

[(4)] (2) In addition to the members designated in Subsection (1), the following may serve as non-voting members:

(a) a district court judge appointed by the Judicial Council; and

(b) a juvenile court judge appointed by the Judicial Council.

(3) In appointing the members under ~~[Subsection (2)]~~ Subsections (1) and (2), the ~~[governor]~~ appointing authority shall take into account the geographical makeup of the commission. ~~{}~~

Section 5. Section **63M-7-204** is amended to read:

### **63M-7-204. Duties of commission.**

(1) The State Commission on Criminal and Juvenile Justice administration shall:

(a) promote the commission's purposes as enumerated in Section 63M-7-201;

(b) promote the communication and coordination of all criminal and juvenile justice agencies;

(c) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

(d) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

(e) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;

(f) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;

(g) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

(h) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant money;

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(i) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;

(j) promote research and program evaluation as an integral part of the criminal and juvenile justice system;

(k) provide a comprehensive criminal justice plan annually;

(l) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;

(m) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

(i) developing and maintaining common data standards for use by all state criminal justice agencies;

(ii) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

(iii) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

(iv) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this Subsection (1)(m);

(n) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children;

(o) allocate and administer grants for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity;

(p) request, receive, and evaluate data and recommendations collected and reported by agencies and contractors related to policies recommended by the commission regarding recidivism reduction, including the data described in Section 13-53-111 and Subsection 26B-5-102(2)(1);

(q) establish and administer a performance incentive grant program that allocates funds

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appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated;

(r) oversee or designate an entity to oversee the implementation of juvenile justice reforms;

(s) make rules and administer the juvenile holding room standards and juvenile jail standards to align with the Juvenile Justice and Delinquency Prevention Act requirements pursuant to 42 U.S.C. Sec. 5633;

(t) allocate and administer grants, from money made available, for pilot qualifying education programs;

(u) oversee the trauma-informed justice program described in Section 63M-7-209;

(v) request, receive, and evaluate the aggregate data collected from prosecutorial agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216 and 78A-2-109.5;

(w) report annually to the Law Enforcement and Criminal Justice Interim Committee on the progress made on each of the following goals of the Justice Reinvestment Initiative:

(i) ensuring oversight and accountability;

(ii) supporting local corrections systems;

(iii) improving and expanding reentry and treatment services; and

(iv) strengthening probation and parole supervision;

(x) compile a report of findings based on the data and recommendations provided under Section 13-53-111 and Subsection 26B-5-102(2)(n) that:

(i) separates the data provided under Section 13-53-111 by each residential, vocational and life skills program; and

(ii) separates the data provided under Subsection 26B-5-102(2)(n) by each mental health or substance use treatment program;

(y) publish the report described in Subsection (1)(x) on the commission's website and annually provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees; ~~ff~~ and ~~ff~~

(z) receive, compile, and publish on the commission's website the data provided under:

(i) Section 53-23-101;

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(ii) Section 53-24-102; and

(iii) Section 53-26-101 ~~§, §~~.

~~{ (aa) develop sentencing and supervision length guidelines and juvenile disposition guidelines as described in Section 63M-7-220; and~~

~~— (bb) create and maintain a master offense list and a collateral consequences guide as described in Section 63M-7-221.~~

‡ (2) If the commission designates an entity under Subsection (1)(r), the commission shall ensure that the membership of the entity includes representation from the three branches of government and, as determined by the commission, representation from relevant stakeholder groups across all parts of the juvenile justice system, including county representation.

(3) In fulfilling the commission's duties under Subsection (1), the commission may seek input and request assistance from groups with knowledge and expertise in criminal justice, including other boards and commissions affiliated or housed within the commission.

Section 6. Section ~~{63M-7-220}~~ 63M-7-401.1 is enacted to read:

~~{63M-7-220. Sentencing}~~ 63M-7-401.1. Definitions for part.

As used in this part:

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

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

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

(4) "Collateral consequence" means:

(a) a discretionary disqualification; or

(b) a mandatory sanction.

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

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

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

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

(7) "Discretionary disqualification" means a penalty, a civil disability, or a

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

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

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

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

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

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

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

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

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

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

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

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

### **Qualifications.**

(1) There is created [~~a state commission to be known as the Sentencing Commission~~] the sentencing commission, within the commission, that is composed of [~~28~~] 13 members.

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

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

(b) elect the sentencing commission's officers.

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

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

~~[(b) two members of the Senate, appointed by the president of the Senate and not of the same political party;]~~

~~[(c)] (a) the executive director of the Department of Corrections or [a designee appointed by the executive director] the executive director's designee;~~

~~[(d)] (b) the director of the Division of Juvenile Justice and Youth Services or [a designee appointed by the director] the director's designee;~~

~~[(e)] (c) the executive director of the [Commission on Criminal and Juvenile Justice or a designee appointed by the executive director] commission or the executive director's designee;~~

~~[(f)] (d) the chair of the Board of Pardons and Parole or [a designee appointed by the chair] the chair's designee;~~

~~[(g) the chair of the Youth Parole Authority or a designee appointed by the chair;]~~

~~[(h) two trial judges and an appellate judge appointed by the chair of the Judicial Council;]~~

~~[(i) two juvenile court judges designated by the chair of the Judicial Council;]~~

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

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

~~[(l) the director of Salt Lake Legal Defenders or a designee appointed by the director;]~~

~~[(m)] (e) the state court administrator or the state court administrator's designee;~~

~~(f) a criminal defense attorney, appointed by the Utah Association of Criminal Defense Lawyers;~~

~~(g) an indigent defense attorney, appointed by the Indigent Defense Commission;~~

~~(h) the attorney general or [a designee appointed by the attorney general] the attorney general's designee;~~

~~[(n)] (i) a criminal prosecutor, appointed by the Statewide Association of Public Attorneys and Prosecutors;~~

~~[(o) a juvenile court prosecutor appointed by the Statewide Association of Public~~

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~~[(p)] (j) a representative of the Utah Sheriff's Association appointed by the governor;~~

~~[(q) a chief of police appointed by the governor;]~~

~~[(r)] (k) a licensed professional, appointed by the governor, who assists in the rehabilitation of [adult offenders] individuals convicted of an offense;~~

~~[(s) a licensed professional appointed by the governor who assists in the rehabilitation of juvenile offenders;]~~

~~[(t) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population;]~~

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

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

~~(l) the chair of the Utah Victim Services Commission or a member of the Utah Victim Services Commission designated by the chair; and~~

~~(m) the chair of the Utah Board of Juvenile Justice or a member of the Utah Board of Juvenile Justice designated by the chair.~~

~~(4) In addition to the members described in Subsection (3), the following may serve as non-voting members:~~

~~(a) a district court judge appointed by the Judicial Council; and~~

~~(b) a juvenile court judge appointed by the Judicial Council.~~

~~(5) The executive director of the commission shall hire an executive director of the sentencing commission to administer and manage the sentencing commission.~~

~~Section 8. Section 63M-7-402 is amended to read:~~

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

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

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



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years.

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

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

Section 9. Section 63M-7-402.5 is enacted to read:

### 63M-7-402.5. Compensation of members.

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

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

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

Section 10. Section 63M-7-404.1 is enacted to read:

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

(1) The sentencing commission shall establish and maintain:

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

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

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

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

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

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

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

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

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

(3) The sentencing commission shall use existing data and resources from state criminal justice agencies in carrying out the duties of the sentencing commission.

(4) The sentencing commission shall:

(a) provide training and recommendations regarding the adult sentencing and supervision length guidelines, the juvenile disposition guidelines, and other documents maintained by the sentencing commission to the three branches of government, in coordination with the commission; and

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

(5) (a) The sentencing commission may provide analysis and recommendations to the commission regarding proposed legislation or other policy changes that may impact sentencing, release, or supervision of individuals convicted of crimes.

(b) The sentencing commission may not take public positions on proposed legislation or other proposed policy changes by the Legislature.

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

(7) The sentencing commission shall coordinate with the commission on criminal and juvenile justice issues, budget, and administrative support.

Section 11. Section 63M-7-404.3 is enacted to read:

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

(1) The ~~sentencing~~ commission shall establish and maintain ~~adult~~ sentencing and supervision length guidelines 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 ~~the~~ sentencing ~~judges~~ court while preserving the role of the Board of Pardons and Parole ~~and the Youth Parole Authority~~;

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

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(i) respond to public comment;

(ii) 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}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~~{needs}~~; and~~

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

(2) The sentencing commission shall modify:

(a) the adult sentencing and supervision length guidelines ~~{shall include:~~

~~(a) guidelines for periods of incarceration for offenders 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) guidelines for periods of incarceration for offenders 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;~~

~~(c) recommendations that when a court or the Board of Pardons and Parole interact~~

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with an offender described in Subsection (2)(a) or (2)(b) the court or Board of Pardons and Parole consider:

- ~~\_\_\_\_\_ (i) the seriousness of any violation of the condition of probation or parole;~~
- ~~\_\_\_\_\_ (ii) the offender's conduct while on probation or parole; and~~
- ~~\_\_\_\_\_ (iii) the } 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;

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

- ~~\_\_\_\_\_ (i) securities fraud, 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;~~
- ~~\_\_\_\_\_ (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;~~

~~\_\_\_\_\_ (c) graduated and evidence-based processes to facilitate the prompt and effective response to an offender's progress in or violation of the terms of probation or parole by the~~

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~~Department of Corrections, or another supervision services provider, to reduce recidivism and incarceration, including:~~

~~— (i) responses to be used when an offender violates a condition of probation or parole;~~

~~— (ii) responses to recognize positive behavior and progress related to an offender's case action plan;~~

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

~~— (iv) a range of sanctions that may not exceed a period of incarceration of more than:~~

~~— (A) three consecutive days; and~~

~~— (B) a total of five days in a period of 30 days; and~~

~~— (f) graduated incentives to facilitate a prompt and effective response by the Department of Corrections to an offender's:~~

~~— (i) compliance with the terms of probation or parole; and~~

~~— (ii) positive conduct that exceeds those terms.~~

~~— (3) The } that are relevant to the accurate determination of an individual's risk of offending again.~~

Section 12. Section 63M-7-404.5 is enacted to read:

### 63M-7-404.5. Juvenile disposition guidelines.

(1) The sentencing commission shall establish and maintain juvenile disposition guidelines {regarding:

~~— (a) } that:~~

(a) respond to public comment;

(b) relate dispositional practices and rehabilitative resources;

(c) increase equity in disposition orders;

(d) better define responsibility for disposition orders; and

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

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

~~(fi)a~~ nonjudicially adjusted;

~~(fi)b~~ placed on diversion;

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~~(fiii)c~~ placed on probation;

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

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

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

(3) The juvenile disposition guidelines shall include:

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

(i) recommended responses that are swift and certain;

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

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

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

~~(fc)b~~ ~~recommendations~~ a recommendation that, when a juvenile court interacts

with a juvenile described in Subsection ~~(f3)2~~~~(a)~~, the juvenile court shall consider:

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

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

(iii) the juvenile's delinquency history ~~of the juvenile~~.

~~(4) The sentencing and supervision length guidelines and the juvenile disposition guidelines shall include the;~~ and

(c) appropriate sanctions for ~~an offender~~ a juvenile who commits sexual exploitation of a minor as described in ~~Section~~ Sections 76-5b-201 ~~and~~, or aggravated sexual exploitation of a minor as described in Section 76-5b-201.1, including the application of aggravating and mitigating factors specific to the offense.

~~(5) The commission shall modify:~~

~~(a) the sentencing and supervision length guidelines and recommendations for adult offenders 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 sentencing and supervision length guidelines and recommendations for adult offenders to reduce recidivism, which shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.~~

~~(6) (a) On or before October 31 of each year, the commission shall submit the sentencing and supervision length guidelines and juvenile disposition guidelines created in~~

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~~accordance with this section to the Law Enforcement and Criminal Justice Interim Committee and the Judiciary Interim Committee for review, including any legislative recommendations:~~

~~—— (b) Beginning January 1, 2025, the Legislature shall annually authorize, by passing a concurrent resolution, the sentencing and supervision length guidelines and the juvenile disposition guidelines submitted in accordance with Subsection (6)(a):~~

~~—— (c) The existing sentencing and supervision length guidelines and juvenile disposition guidelines that were approved in accordance with Subsection (6)(b) shall remain in effect until the day on which the Legislature reauthorizes the sentencing and supervision length guidelines and juvenile disposition guidelines as described in Subsection (6)(b):~~

~~—— (7) The commission may employ professional assistance and other staff members that the commission considers necessary to comply with this section.~~

‡ Section ~~{7}~~13. Section ~~{63M-7-221}~~63M-7-405, which is ~~{renumbered from Section 63M-7-405 is renumbered and}~~ amended to read:

~~{{63M-7-405}}~~. ~~{ 63M-7-221. Master}~~Master offense list -- Collateral consequences guide.

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

~~[(i) Section 63A-3-106;]~~

~~[(ii) Section 63A-3-107; and]~~

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

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

~~{ —— (1) As used in this section:~~

~~—— (a) "Adjudication" means the same as that term is defined in Section 80-1-102.~~

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

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

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

~~—— (ii) a mandatory sanction.~~

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

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- ~~(c) "Disadvantage" means a legal or regulatory restriction that:~~
- ~~(i) is imposed on an individual as a result of the individual's conviction or adjudication;~~  
~~and~~
- ~~(ii) is not a civil disability or a legal penalty;~~
- ~~(f) "Discretionary disqualification" means a penalty, a civil disability, or a disadvantage that a court in a civil proceeding, or a federal, state, or local government agency or official, may impose on an individual as a result of the individual's adjudication or conviction for an offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage;~~
- ~~(g) "Mandatory sanction" means a penalty, a civil disability, or a disadvantage that:~~
- ~~(i) is imposed on an individual as a result of the individual's adjudication or conviction for an offense regardless of whether the penalty, the civil disability, or the disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage; and~~
- ~~(ii) is not included in the judgment for the adjudication or conviction;~~
- ~~(h) "Master offense list" means a document that contains all offenses that exist in statute and each offense's associated penalty;~~
- ~~(i) "Offense" means a felony, a misdemeanor, an infraction, or an adjudication under the laws of this state, another state, or the United States;~~
- ~~(j) "Penalty" means an administrative, civil, or criminal sanction imposed to punish the individual for the individual's conviction or adjudication;~~

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

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

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

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



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~~[(4) (1) (2) (b)]~~ (a) ~~As used in this Subsection (4), "master offense list" means a document that contains all offenses that exist in statute and each offense's associated penalty.]~~

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

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

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

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

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

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

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

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

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

~~[(ii) a mandatory sanction.]~~

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

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

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

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

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

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

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

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~~disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage; and]~~

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

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

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

~~[(6)]~~ ~~(3~~2~~)~~ (a) The sentencing commission shall:

(i) identify any provision of state law, including the Utah Constitution, and any administrative rule that imposes a collateral consequence;

(ii) prepare and compile a guide that contains all the provisions identified in Subsection ~~[(6)(a)(i) on or before October 1, 2022]~~ ~~(3~~2~~)~~(a)(i); and

(iii) update the guide described in Subsection ~~[(6)(a)(ii)]~~ ~~(3~~2~~)~~(a)(ii) annually.

(b) The sentencing commission shall state in the guide described in Subsection ~~[(6)(a)]~~ ~~(3~~2~~)~~(a) that:

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

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

(iii) the guide is for informational purposes only;

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

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

and

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

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

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

(c) The sentencing commission shall:

(i) place the statements described in Subsection ~~[(6)(b)]~~ ~~(3~~2~~)~~(b) in a prominent place at the beginning of the guide; and

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

(d) The sentencing commission shall:

(i) present the updated guide described in Subsection ~~[(6)(a)(iii)]~~ ~~(3~~2~~)~~(a)(iii) annually

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to the Law Enforcement and Criminal Justice Interim Committee; and

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

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

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

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

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

~~———— (2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.}~~ Section 14. Section 63M-7-406 is amended to read:

**63M-7-406. Reports -- Legislative approval -- Publication of reports.**

~~{The}~~ (1) (a) On or before October 31 of each year, the commission shall submit the sentencing and supervision length guidelines and juvenile disposition guidelines created in accordance with this section to the Law Enforcement and Criminal Justice Interim Committee and the Judiciary Interim Committee for review, including any legislative recommendations.

(b) Beginning January 1, 2025, the Legislature shall annually authorize, by passing a concurrent resolution, the sentencing and supervision length guidelines and the juvenile disposition guidelines submitted in accordance with Subsection (1)(a).

(c) The existing sentencing and supervision length guidelines and juvenile disposition guidelines that were approved in accordance with Subsection (1)(b) shall remain in effect until the day on which the Legislature reauthorizes the sentencing and supervision length guidelines and juvenile disposition guidelines as described in Subsection (1)(b).

(2) The sentencing commission shall also be authorized to prepare, publish, and distribute from time to time reports of [its] studies, recommendations, and statements~~†~~

~~———— 63M-7-401. Creation -- Members -- Appointment -- Qualifications.~~

~~———— (1) There is created a state commission to be known as the Sentencing Commission~~

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~~composed of 28 members. The commission shall develop by laws and rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and elect its officers:~~

~~—— (2) The commission's members shall be:~~

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

~~—— (b) two members of the Senate, appointed by the president of the Senate and not of the same political party;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~— (t) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population;~~

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

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

~~— Section 8} from the sentencing commission.~~

Section 15. Section 64-13-6 is amended to read:

### **64-13-6. Department duties.**

(1) The department shall:

(a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;

(b) implement court-ordered punishment of offenders;

(c) provide evidence-based and evidence-informed program opportunities for offenders designed to reduce offenders' criminogenic and recidivism risks, including behavioral, cognitive, educational, and career-readiness program opportunities;

(d) ensure that offender participation in all program opportunities described in Subsection (1)(c) is voluntary;

(e) where appropriate, utilize offender volunteers as mentors in the program opportunities described in Subsection (1)(c);

(f) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;

(g) provide the results of ongoing clinical assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;

(h) manage programs that take into account the needs and interests of victims, where reasonable;

(i) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;

(j) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;

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(k) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals;

(l) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision;

(m) establish a case action plan based on appropriate validated risk, needs, and responsivity assessments for each offender as follows:

(i) (A) if an offender is to be supervised in the community, the department shall establish a case action plan for the offender no later than 60 days after the day on which the department's community supervision of the offender begins; and

(B) if the offender is committed to the custody of the department, the department shall establish a case action plan for the offender no later than 90 days after the day on which the offender is committed to the custody of the department;

(ii) each case action plan shall integrate an individualized, evidence-based, and evidence-informed treatment and program plan with clearly defined completion requirements;

(iii) the department shall share each newly established case action plan with the sentencing and release authority within 30 days after the day on which the case action plan is established; and

(iv) the department shall share any changes to a case action plan, including any change in an offender's risk assessment, with the sentencing and release authority within 30 days after the day of the change;

(n) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(i) under this title;

(ii) by the department; or

(iii) by an agency or division within the department; and

(o) when reporting on statewide recidivism, include the metrics and requirements described in Section 63M-7-102.

(2) The department may in the course of supervising probationers and parolees:

(a) respond ~~in accordance with the graduated and evidence-based processes~~

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established ~~{}~~ by the Utah Sentencing Commission under Subsection ~~63M-7-404(6)~~, ~~{ in the sentencing and supervision length guidelines as defined in Section 63M-7-101.5}~~, to an individual's violation of one or more terms of the probation or parole in accordance with the graduated and evidence-based processes established by the adult sentencing and supervision length guidelines, as defined in Section 63M-7-401.1; and

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

(3) (a) By following the procedures in Subsection (3)(b), the department may investigate the following occurrences at state correctional facilities:

- (i) criminal conduct of departmental employees;
- (ii) felony crimes resulting in serious bodily injury;
- (iii) death of ~~{}~~any person ~~{ an individual}~~; or
- (iv) aggravated kidnaping.

(b) Before investigating any occurrence specified in Subsection (3)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (3)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (3)(a).

(4) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement ~~{}~~agencies ~~{ agency}~~.

(5) (a) The executive director of the department, or the executive director's designee if the designee possesses expertise in correctional programming, shall consult at least annually with cognitive and career-readiness staff experts from the Utah system of higher education and the State Board of Education to review the department's evidence-based and evidence-informed treatment and program opportunities.

(b) ~~{}~~Beginning in the 2022 interim, the ~~{ The}~~ department shall provide an annual report to the Law Enforcement and Criminal Justice Interim Committee regarding the

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department's implementation of and offender participation in evidence-based and evidence-informed treatment and program opportunities designed to reduce the criminogenic and recidivism risks of offenders over time.

(6) (a) As used in this Subsection (6):

(i) "Accounts receivable" means any amount owed by an offender arising from a criminal judgment that has not been paid.

(ii) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third-party claims, claims, reimbursement of a reward, and damages that an offender is ordered to pay.

(b) The department shall collect and disburse, with any interest and any other costs assessed under Section 64-13-21, an accounts receivable for an offender during:

(i) the parole period and any extension of that period in accordance with Subsection (6)(c); and

(ii) the probation period for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection 77-18-105(7).

(c) (i) If an offender has an unpaid balance of the offender's accounts receivable at the time that the offender's sentence expires or terminates, the department shall be referred to the sentencing court for the sentencing court to enter a civil judgment of restitution and a civil accounts receivable as described in Section 77-18-114.

(ii) If the board makes an order for restitution within 60 days from the day on which the offender's sentence expires or terminates, the board shall refer the order for restitution to the sentencing court to be entered as a civil judgment of restitution as described in Section 77-18-114.

(d) This Subsection (6) only applies to offenders sentenced before July 1, 2021.

Section ~~9~~16. Section **64-13-14.5** is amended to read:

### **64-13-14.5. Limits of confinement place -- Release status -- Work release.**

(1) The department may extend the limits of the place of confinement of an inmate when, as established by department policies and procedures, there is cause to believe the inmate will honor the trust, by authorizing the inmate under prescribed conditions:

(a) to leave temporarily for purposes specified by department policies and procedures to visit specifically designated places for a period not to exceed 30 days;



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(b) to participate in a voluntary training program in the community while housed at a correctional facility or to work at paid employment;

(c) to be housed in a nonsecure community correctional center operated by the department; or

(d) to be housed in any other facility under contract with the department.

(2) (a) The department shall establish rules governing offenders on release status.

(b) A copy of the rules established under Subsection (2)(a) shall be furnished to the offender and to any employer or other person participating in the offender's release program.

(c) Any employer or other participating person shall agree in writing to abide by the rules established under Subsection (2)(a) and to notify the department of the offender's discharge or other release from a release program activity, or of any violation of the rules governing release status.

(3) The willful failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed to an institution or facility designated by the department is an escape from custody.

(4) If an offender is arrested for the commission of a crime, the arresting authority shall immediately notify the department of the arrest.

(5) The department may impose appropriate sanctions pursuant to Section 64-13-21 upon offenders who violate [~~guidelines established by the Utah Sentencing Commission~~] the adult sentencing and supervision length guidelines, as defined in Section ~~63M-7-101~~63M-7-401, ~~5~~1, including prosecution for escape under Section 76-8-309 and for unauthorized absence.

(6) An inmate who is housed at a nonsecure correctional facility and on work release may not be required to work for less than the current federally established minimum wage, or under substandard working conditions.

Section ~~10~~17. Section **64-13-21** is amended to read:

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

(1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of

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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~~] the adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401~~{5}1~~, 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~~] in the adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401~~{5}1~~, 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~~] in the adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401~~{5}1~~, 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

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and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of inmates, related to the use of the graduated and evidence-based responses and graduated incentives, and offenders' outcomes.

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

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

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

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

(c) supervising any offender during transportation; or

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

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

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

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

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

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

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reducing the period of probation or parole as provided in this Subsection (7).

(b) The program shall provide that an offender earns 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 the terms of the offender's probation or parole agreement, including the case action plan.

(c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).

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

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

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

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

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

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

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

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

Section ~~411~~18. Section **64-13g-102** is amended to read:

### **64-13g-102. Adult Probation and Parole Employment Incentive Program.**

(1) There is created the Adult Probation and Parole Employment Incentive Program.

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(2) The department and the office shall implement the program in accordance with the requirements of this chapter.

(3) Beginning July 2026, and each July after 2026, the department shall calculate and report to the office, for the preceding fiscal year, for each region and statewide:

(a) the parole employment rate and the average length of employment of individuals on parole;

(b) the probation employment rate and average length of employment of individuals on felony probation;

(c) the recidivism percentage, using applicable recidivism metrics described in Subsections [~~63M-7-102(2) and (4)~~] 63M-7-102(1) and (3);

(d) the number and percentage of individuals who successfully complete parole or felony probation;

(e) if the recidivism percentage described in Subsection (3)(c) represents a decrease in the recidivism percentage when compared to the fiscal year immediately preceding the fiscal year to which the recidivism percentage described in Subsection (3)(c) relates, the estimated costs of incarceration savings to the state, based on the marginal cost of incarceration;

(f) the number of individuals who successfully complete parole and, during the entire six months before the day on which the individuals' parole ends, held eligible employment; and

(g) the number of individuals who successfully complete felony probation and, during the entire six months before the day on which the individuals' parole ended, held eligible employment.

(4) In addition to the information described in Subsection (3), the department shall report, for each region, the number and types of parole or probation programs that were created, replaced, or discontinued during the preceding fiscal year.

(5) After receiving the information described in Subsections (3) and (4), the office, in consultation with the department, shall, for each region:

(a) add the region's baseline parole employment rate and the region's baseline probation employment rate;

(b) add the region's parole employment rate and the region's probation employment rate;

(c) subtract the sum described in Subsection (5)(a) from the sum described in

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Subsection (5)(b); and

(d) (i) if the rate difference described in Subsection (5)(c) is zero or less than zero, assign an employment incentive payment of zero to the region; or

(ii) except as provided in Subsection (7), if the rate difference described in Subsection (5)(c) is greater than zero, assign an employment incentive payment to the region by:

(A) multiplying the rate difference by the average daily population for that region; and

(B) multiplying the product of the calculation described in Subsection (5)(d)(ii)(A) by \$2,500.

(6) In addition to the employment incentive payment described in Subsection (5), after receiving the information described in Subsections (3) and (4), the office, in consultation with the department, shall, for each region, multiply the sum of the numbers described in Subsections (3)(f) and (g) for the region by \$2,500 to determine the end-of-supervision employment incentive payment for the region.

(7) The employment incentive payment, or end-of-supervision employment supervision payment, for a region is zero if the recidivism percentage for the region, described in Subsection (3)(c), represents an increase in the recidivism percentage when compared to the fiscal year immediately preceding the fiscal year to which the recidivism percentage for the region, described in Subsection (3)(c), relates.

(8) Upon determining an employment incentive payment for a region in accordance with Subsections (5)(d)(ii), (6), and (7), the office shall authorize distribution, from the restricted account, of the incentive payment as follows:

(a) 15% of the payment may be used by the department for expenses related to administering the program; and

(b) 85% of the payment shall be used by the region to improve and expand supervision and rehabilitative services to individuals on parole or adult probation, including by:

(i) implementing and expanding evidence-based practices for risk and needs assessments for individuals;

(ii) implementing and expanding intermediate sanctions, including mandatory community service, home detention, day reporting, restorative justice programs, and furlough programs;

(iii) expanding the availability of evidence-based practices for rehabilitation programs,

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including drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and other employment services;

(iv) hiring additional officers, contractors, or other personnel to implement evidence-based practices for rehabilitative and vocational programming;

(v) purchasing and adopting new technologies or equipment that are relevant to, and enhance, supervision, rehabilitation, or vocational training; or

(vi) evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.

(9) (a) The report described in Subsections (3) and (4) is a public record.

(b) The department shall maintain a complete and accurate accounting of the payment and use of funds under this section.

(c) If the money in the restricted account is insufficient to make the full employment incentive payments or the full end-of-supervision employment incentive payments, the office shall authorize the payments on a prorated basis.

Section ~~{12}~~19. Section **76-3-202** is amended to read:

**76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.**

(1) [Every] As described in Subsection 77-27-5(7), every individual committed to the state prison to serve an indeterminate term and, after December 31, 2018, released on parole shall complete a term of parole that extends through the expiration of the individual's maximum sentence unless the parole is earlier terminated by the Board of Pardons and Parole in accordance with the [~~supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, as described in Subsection 77-27-5(7),~~] adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401, ~~{5}~~1, to the extent the guidelines are consistent with the requirements of the law.

(2) (a) Except as provided in Subsection (2)(b), [~~every~~] an individual committed to the state prison to serve an indeterminate term and released on parole on or after October 1, 2015, but before January 1, 2019, shall, upon completion of three years on parole outside of confinement and without violation, be terminated from the individual's sentence unless the parole is earlier terminated by the Board of Pardons and Parole or is terminated pursuant to

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Section 64-13-21.

(b) [Every] An individual committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, but before January 1, 2019, and who was convicted of [~~any~~] a felony offense under Chapter 5, Offenses Against the Individual, or [~~any~~] an attempt, conspiracy, or solicitation to commit [~~any of these felony offenses~~] the offense, shall complete a term of parole that extends through the expiration of the individual's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.

(3) [Every] An individual convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse; Section 76-5-404.1, sexual abuse of a child; or Section 76-5-404.3, aggravated sexual abuse of a child; or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the individual is earlier terminated by the Board of Pardons and Parole.

(4) An individual who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(5) An individual paroled following a former parole revocation may not be discharged from the individual's sentence until:

(a) the individual has served the applicable period of parole under this section outside of confinement;

(b) the individual's maximum sentence has expired; or

(c) the Board of Pardons and Parole orders the individual to be discharged from the sentence.

(6) (a) All time served on parole, outside of confinement and without violation, constitutes service toward the total sentence.

(b) Any time an individual spends outside of confinement after commission of a parole violation does not constitute service toward the total sentence unless the individual is exonerated at a parole revocation hearing.

(c) (i) Any time an individual spends in confinement awaiting a hearing before the



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Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service toward the total sentence.

(ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.

(7) When a parolee causes the parolee's absence from the state without authority from the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(8) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.

(b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.

(9) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.

(10) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.

Section ~~13~~20. Section **76-5-102.1** is amended to read:

### **76-5-102.1. Negligently operating a vehicle resulting in injury.**

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

(i) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(ii) "Drug" means the same as that term is defined in Section 76-5-207.

(iii) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.

(iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.

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

(2) An actor commits negligently operating a vehicle resulting in injury if the actor:

(a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and

(ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;

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(B) is under the influence of alcohol, a drug, or the combined influence of alcohol and a drug to a degree that renders the actor incapable of safely operating a vehicle; or

(C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or

(b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to another; and

(ii) has in the actor's body any measurable amount of a controlled substance.

(3) Except as provided in Subsection (4), a violation of Subsection (2) is:

(a) (i) a class A misdemeanor; or

(ii) a third degree felony if the bodily injury is serious bodily injury; and

(b) a separate offense for each victim suffering bodily injury as a result of the actor's violation of this section, regardless of whether the injuries arise from the same episode of driving.

(4) An actor is not guilty of negligently operating a vehicle resulting in injury under Subsection (2)(b) if:

(a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;

(b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

(c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:

(i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(ii) the substance was administered to the actor by the medical researcher.

(5) (a) A judge imposing a sentence under this section may consider:

(i) the ~~sentencing~~ ~~guidelines developed in accordance with Section 63M-7-404~~ adult sentencing and supervision length guidelines, as defined in Section 63M-7-101, 63M-7-401, 63M-7-402, 63M-7-403, 63M-7-404, 63M-7-405, 63M-7-406, 63M-7-407, 63M-7-408, 63M-7-409, 63M-7-410, 63M-7-411, 63M-7-412, 63M-7-413, 63M-7-414, 63M-7-415, 63M-7-416, 63M-7-417, 63M-7-418, 63M-7-419, 63M-7-420, 63M-7-421, 63M-7-422, 63M-7-423, 63M-7-424, 63M-7-425, 63M-7-426, 63M-7-427, 63M-7-428, 63M-7-429, 63M-7-430, 63M-7-431, 63M-7-432, 63M-7-433, 63M-7-434, 63M-7-435, 63M-7-436, 63M-7-437, 63M-7-438, 63M-7-439, 63M-7-440, 63M-7-441, 63M-7-442, 63M-7-443, 63M-7-444, 63M-7-445, 63M-7-446, 63M-7-447, 63M-7-448, 63M-7-449, 63M-7-450, 63M-7-451, 63M-7-452, 63M-7-453, 63M-7-454, 63M-7-455, 63M-7-456, 63M-7-457, 63M-7-458, 63M-7-459, 63M-7-460, 63M-7-461, 63M-7-462, 63M-7-463, 63M-7-464, 63M-7-465, 63M-7-466, 63M-7-467, 63M-7-468, 63M-7-469, 63M-7-470, 63M-7-471, 63M-7-472, 63M-7-473, 63M-7-474, 63M-7-475, 63M-7-476, 63M-7-477, 63M-7-478, 63M-7-479, 63M-7-480, 63M-7-481, 63M-7-482, 63M-7-483, 63M-7-484, 63M-7-485, 63M-7-486, 63M-7-487, 63M-7-488, 63M-7-489, 63M-7-490, 63M-7-491, 63M-7-492, 63M-7-493, 63M-7-494, 63M-7-495, 63M-7-496, 63M-7-497, 63M-7-498, 63M-7-499, 63M-7-500;

(ii) the defendant's history;

(iii) the facts of the case;

(iv) aggravating and mitigating factors; or

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(v) any other relevant fact.

(b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.

(c) The standards for chemical breath analysis under Section 41-6a-515 and the provisions for the admissibility of chemical test results under Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).

(e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(f) Evidence of ~~the~~ a defendant's ~~an actor's~~ blood or breath alcohol content or drug content is admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.

(g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.

Section ~~14~~21. Section **76-5-207** is amended to read:

### **76-5-207. Negligently operating a vehicle resulting in death -- Penalties --**

#### **Evidence.**

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

(i) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(ii) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).

(iii) "Drug" means:

(A) a controlled substance;

(B) a drug as defined in Section 58-37-2; or

(C) a substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of an individual to safely operate a vehicle.

(iv) "Negligent" ~~or~~ "negligence~~or~~" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(v) "Vehicle" means the same as that term is defined in Section 41-6a-501.

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

(2) An actor commits negligently operating a vehicle resulting in death if the actor:

(a) (i) operates a vehicle in a negligent or criminally negligent manner causing the death of another individual;

(ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;

(B) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the actor incapable of safely operating a vehicle; or

(C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or

(b) (i) operates a vehicle in a criminally negligent manner causing death to another; and

(ii) has in the actor's body any measurable amount of a controlled substance.

(3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty of:

(a) a second degree felony; and

(b) a separate offense for each victim suffering death as a result of the actor's violation of this section, regardless of whether the deaths arise from the same episode of driving.

(4) An actor is not guilty of a violation of negligently operating a vehicle resulting in death under Subsection (2)(b) if:

(a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;

(b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

(c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:

(i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(ii) the substance was administered to the actor by the medical researcher.

(5) (a) A judge imposing a sentence under this section may consider:

(i) the ~~sentencing {} guidelines developed in accordance with Section 63M-7-404]~~

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adult sentencing and supervision length guidelines, as defined in Section

~~{63M-7-101}~~, 63M-7-401, ~~{5}~~1;

- (ii) the defendant's history;
- (iii) the facts of the case;
- (iv) aggravating and mitigating factors; or
- (v) any other relevant fact.

(b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.

(c) The standards for chemical breath analysis as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).

(e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(f) Evidence of a ~~{}~~ defendant's ~~{an actor's}~~ blood or breath alcohol content or drug content is admissible except when prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.

(g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.

Section ~~{15}~~22. Section 77-2a-2 is amended to read:

### **77-2a-2. Plea in abeyance agreement -- Negotiation -- Contents -- Terms of agreement -- Waiver of time for sentencing.**

(1) At any time after acceptance of a plea of guilty or no contest but before entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.

(2) A defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant knowingly and intelligently waives the defendant's right to

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counsel.

(3) A defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.

(4) (a) ~~{f}~~ Any ~~{f}A~~ plea in abeyance agreement entered into between the prosecution and ~~{f}~~ the ~~{f}a~~ defendant and approved by the court shall include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.

(b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, before acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.

(5) (a) Except as provided in Subsection (5)(b), a plea may not be held in abeyance for a period longer than 18 months if the plea is to any class of misdemeanor or longer than three years if the plea is to any degree of felony or to any combination of misdemeanors and felonies.

(b) (i) For a plea in abeyance agreement that ~~[Adult Probation and Parole]~~ the Department of Corrections supervises, the plea may not be held in abeyance for a period longer than the initial term of probation required under the ~~[supervision length guidelines described in Section 63M-7-404]~~ adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~ 63M-7-401. {5}1, if the initial term of probation is shorter than the period required under Subsection (5)(a).

(ii) Subsection (5)(b)(i) does not:

(A) apply to a plea that is held in abeyance in a drug court created under Title 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by the Judicial Council; or

(B) prohibit court supervision of a plea in abeyance agreement after the day on which the ~~[Adult Probation and Parole]~~ Department of Corrections supervision described in Subsection (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends.

(6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years if the plea is to any class of misdemeanor and the plea in abeyance agreement includes a condition that the defendant participate in a problem solving court approved by the Judicial Council.

(7) A plea in abeyance agreement may not be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as

## **SB0200S01 compared with SB0200**

designated in Rule 22(a), Utah Rules of Criminal Procedure.

Section ~~16~~23. Section **77-18-105** is amended to read:

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

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

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

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

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

defendant:

- (i) on probation under the supervision of the department;
- (ii) on probation under the supervision of an agency of a local government or a private organization; or
- (iii) on court probation under the jurisdiction of the sentencing court.

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

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

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

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

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

(c) If a court orders supervised probation and determines that a public probation provider is unavailable or inappropriate to supervise the defendant, the court shall make available to the defendant the list of private probation providers prepared by a criminal justice

## **SB0200S01 compared with SB0200**

coordinating council under Section 17-55-201.

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

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

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

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

(ii) A court may only order:

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

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

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

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

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

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

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

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

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

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

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



## SB0200S01 compared with SB0200

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

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

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

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

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

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

(ii) shall be for a period of time that is in accordance with the [~~supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404~~] adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401.~~{5}1~~, to the extent the guidelines are consistent with the requirements of the law; and

(iii) shall be terminated in accordance with the [~~supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404~~] adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401.~~{5}1~~, to the extent the guidelines are consistent with the requirements of the law.

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

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

(d) This Subsection (7) does not apply to the probation of an individual convicted of an

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offense for criminal nonsupport under Section 76-7-201.

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

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

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

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

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

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

(9) When making ~~any~~ decision regarding probation, the court shall consider information provided by the Department of Corrections regarding a defendant's individual case action plan, including any progress the defendant has made in satisfying the case action plan's completion requirements.

Section ~~17~~24. Section 77-18-108 is amended to read:

**77-18-108. Termination, revocation, modification, or extension of probation --**

**Violation of probation -- Hearing on violation.**

(1) (a) The department shall send a written notice to the court:

(i) when the department is recommending termination of supervision for a defendant;

or

(ii) before a defendant's supervision will be terminated by law.

## SB0200S01 compared with SB0200

(b) The written notice under this Subsection (1) shall include:

(i) a probation progress report; and

(ii) if the department is responsible for the collection of the defendant's criminal accounts receivable, a summary of the criminal accounts receivable, including the amount of restitution ordered and the amount of restitution that has been paid.

(c) (i) Upon receipt of the written notice under Subsection (1)(a), the court shall:

(A) file the written notice on the docket; and

(B) provide notice to all parties in the criminal case.

(ii) A party shall have a reasonable opportunity to respond to the written notice under Subsection (1)(a).

(d) If a defendant's probation is being terminated, and the defendant's criminal accounts receivable has an unpaid balance or there is any outstanding debt with the department, the department shall send a written notice to the Office of State Debt Collection with a summary of the defendant's criminal accounts receivable, including the amount of restitution ordered and the amount of restitution that has been paid.

(2) (a) The court may modify the defendant's probation in accordance with the ~~[supervision length guidelines and the graduated and evidence-based responses and graduated incentives developed by the Utah Sentencing Commission under Section 63M-7-404]~~ adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~ 63M-7-401. ~~{5}~~1.

(b) The court may not:

(i) extend the length of a defendant's probation, except upon:

(A) waiver of a hearing by the defendant; or

(B) a hearing and a finding by the court that the defendant has violated the terms of probation;

(ii) revoke a defendant's probation, except upon a hearing and a finding by the court that the terms of probation have been violated; or

(iii) terminate a defendant's probation before expiration of the probation period until the court:

(A) reviews the docket to determine whether the defendant owes a balance on the defendant's criminal accounts receivable; and

## **SB0200S01 compared with SB0200**

(B) enters a finding of whether the defendant owes restitution under Section 77-38b-205.

(c) The court may find under Subsection (2)(b)(iii)(B) that the defendant does not owe restitution if no request for restitution has been filed with the court.

(3) (a) Upon the filing of an affidavit, or an unsworn written declaration executed in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, alleging with particularity facts asserted to constitute violation of the terms of a defendant's probation, the court shall determine if the affidavit or unsworn written declaration establishes probable cause to believe that revocation, modification, or extension of the defendant's probation is justified.

(b) (i) If the court determines there is probable cause, the court shall order that the defendant be served with:

(A) a warrant for the defendant's arrest or a copy of the affidavit or unsworn written declaration; and

(B) an order to show cause as to why the defendant's probation should not be revoked, modified, or extended.

(ii) The order under Subsection (3)(b)(i)(B) shall:

(A) be served upon the defendant at least five days before the day on which the hearing is held;

(B) specify the time and place of the hearing; and

(C) inform the defendant of the right to be represented by counsel at the hearing, the right to have counsel appointed if the defendant is indigent, and the right to present evidence at the hearing.

(iii) The defendant shall show good cause for a continuance of the hearing.

(c) At the hearing, the defendant shall admit or deny the allegations of the affidavit or unsworn written declaration.

(d) (i) If the defendant denies the allegations of the affidavit or unsworn written declaration, the prosecuting attorney shall present evidence on the allegations.

(ii) If the affidavit, or unsworn written declaration, alleges that a defendant is delinquent, or in default, on a criminal accounts receivable, the prosecuting attorney shall present evidence to establish, by a preponderance of the evidence, that the defendant:

## SB0200S01 compared with SB0200

(A) was aware of the defendant's obligation to pay the balance of the criminal accounts receivable;

(B) failed to pay on the balance of the criminal accounts receivable as ordered by the court; and

(C) had the ability to make a payment on the balance of the criminal accounts receivable if the defendant opposes an order to show cause, in writing, and presents evidence that the defendant was unable to make a payment on the balance of the criminal accounts receivable.

(e) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant, unless the court for good cause otherwise orders.

(f) At the hearing, the defendant may:

(i) call witnesses;

(ii) appear and speak in the defendant's own behalf; and

(iii) present evidence.

(g) (i) After the hearing, the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the terms of the defendant's probation, the court may order the defendant's probation terminated, revoked, modified, continued, or reinstated for all or a portion of the original term of probation.

(4) (a) (i) Except as provided in Subsection 77-18-105(7), the court may not require a defendant to remain on probation for a period of time that exceeds the length of the defendant's maximum sentence.

(ii) Except as provided in Subsection 77-18-105(7), if a defendant's probation is revoked and later reinstated, the total time of all periods of probation that the defendant serves, in relation to the same sentence, may not exceed the defendant's maximum sentence.

(b) If the court orders a sanction for a defendant who violated terms of probation, the court may:

(i) order a period of incarceration that is consistent with the ~~[guidelines established by the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4)]~~ adult sentencing and supervision length guidelines, as defined in Section

~~{63M-7-101}~~ 63M-7-401. ~~{5}~~ 1;

## SB0200S01 compared with SB0200

- (ii) order a period of incarceration that deviates from the guidelines with an explanation for the deviation on the record;
  - (iii) order treatment services that are immediately available in the community for a defendant that needs substance abuse or mental health treatment, as determined by a screening and assessment;
  - (iv) execute the sentence previously imposed; or
  - (v) order any other appropriate sanction.
- (c) If the defendant had, before the imposition of a term of incarceration or the execution of the previously imposed sentence under this section, served time in jail as a term of probation or due to a violation of probation, the time that the defendant served in jail constitutes service of time toward the sentence previously imposed.

(5) (a) Any time served by a defendant:

- (i) outside of confinement after having been charged with a probation violation, and before a hearing to revoke probation, does not constitute service of time toward the total probation term, unless the defendant is exonerated at a hearing to revoke the defendant's probation;
- (ii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation does not constitute service of time toward the total probation term, unless the defendant is exonerated at the hearing to revoke probation; or
- (iii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated and evidence-based response imposed under the ~~[guidelines established by the Utah Sentencing Commission in accordance with Section 63M-7-404]~~ adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401.~~{5}1.~~

(b) The running of the probation period is tolled upon:

- (i) the filing of a report with the court alleging a violation of the terms of the defendant's probation; or

(ii) the issuance of an order or a warrant under Subsection (3).

Section ~~{18}25~~. Section 77-27-5 is amended to read:

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

## **SB0200S01 compared with SB0200**

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

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

(i) be released upon parole;

(ii) have a fine or forfeiture remitted;

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

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

(v) have the offender's sentence terminated.

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

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

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

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

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

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

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

(B) release the offender on parole; or

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

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

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

(2) (a) In the case of any hearings, timely prior notice of the time and location of the

## **SB0200S01 compared with SB0200**

hearing shall be given to the offender.

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

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

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

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

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

- (i) a pardon, parole, commutation, or termination of an offender's sentence;
- (ii) the modification of an offender's payment schedule for restitution; or
- (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(a) the offense committed by the parolee; and

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

(7) For an offender placed on parole after December 31, 2018, the board shall terminate parole in accordance with the [~~supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404~~] adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~ 63M-7-401, ~~{5}~~ 1, to the extent the guidelines are

## SB0200S01 compared with SB0200

consistent with the requirements of the law.

Section ~~{19}~~26. Section 77-27-10 is amended to read:

### **77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking -- Intensive early release parole program.**

(1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall, in accordance with Section 64-13-21, issue to the parolee a certificate setting forth the conditions of parole, including the graduated and evidence-based responses to a violation of a condition of parole established [~~by the Sentencing Commission in accordance with Section 64-13-21~~] in the ~~adult~~ sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~63M-7-401.~~{5}~~1, which the offender shall accept and agree to as evidenced by the offender's signature affixed to the agreement.

(b) The parole agreement shall require that the inmate agree in writing that the board may issue a warrant and conduct a parole revocation hearing if:

(i) the board determines after the grant of parole that the inmate willfully provided to the board false or inaccurate information that the board finds was significant in the board's determination to grant parole; or

(ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and

(B) the board did not have information regarding the conduct at the time parole was granted.

(c) (i) A copy of the agreement shall be delivered to the Department of Corrections and a copy shall be given to the parolee.

(ii) The original agreement shall remain with the board's file.

(2) (a) If an offender convicted of violating or attempting to violate Section 76-5-301.1, 76-5-302, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-404.3, or 76-5-405, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole.

(b) The board shall develop standards and conditions of parole under this Subsection (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) This Subsection (2) does not apply to intensive early release parole.

(3) (a) (i) In addition to the conditions set out in Subsection (1), the board may place offenders in an intensive early release parole program.

## **SB0200S01 compared with SB0200**

(ii) The board shall determine the conditions of parole which are reasonably necessary to protect the community as well as to protect the interests of the offender and to assist the offender to lead a law-abiding life.

(b) The offender is eligible for this program only if the offender:

(i) has not been convicted of a sexual offense; or

(ii) has not been sentenced pursuant to Section 76-3-406.

(c) The department shall:

(i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for operation of the program;

(ii) adopt and implement internal management policies for operation of the program;

(iii) determine whether or not to refer an offender into this program within 120 days from the date the offender is committed to prison by the sentencing court; and

(iv) make the final recommendation to the board regarding the placement of an offender into the program.

(d) The department may not consider credit for time served in a county jail awaiting trial or sentencing when calculating the 120-day period.

(e) The prosecuting attorney or sentencing court may refer an offender for consideration by the department for participation in the program.

(f) The board shall determine whether or not to place an offender into this program within 30 days of receiving the department's recommendation.

(4) This program shall be implemented by the department within the existing budget.

(5) During the time the offender is on parole, the department shall collect from the offender the monthly supervision fee authorized by Section 64-13-21.

(6) When a parolee commits a violation of the parole agreement, the department may:

(a) respond in accordance with the graduated and evidence-based responses established in accordance with Section 64-13-21; or

(b) when the graduated and evidence-based responses established in accordance with Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation of parole.

Section ~~20~~27. Section 77-27-11 is amended to read:

**77-27-11. Revocation of parole.**

## **SB0200S01 compared with SB0200**

(1) The board may revoke the parole of any individual who is found to have violated any condition of the individual's parole.

(2) (a) If a parolee is confined by the department or any law enforcement official for a suspected violation of parole, the department:

(i) shall immediately report the alleged violation to the board, by means of an incident report; and

(ii) make any recommendation regarding the incident.

(b) A parolee may not be held for a period longer than 72 hours, excluding weekends and holidays, without first obtaining a warrant.

(3) Any member of the board may:

(a) issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee; and

(b) upon arrest of the parolee, determine, or direct the department to determine, if there is probable cause to believe that the parolee has violated the conditions of the parolee's parole.

(4) Upon a finding of probable cause, a parolee may be further detained or imprisoned again pending a hearing by the board or the board's appointed examiner.

(5) (a) The board or the board's appointed examiner shall conduct a hearing on the alleged violation, and the parolee shall have written notice of the time and location of the hearing, the alleged violation of parole, and a statement of the evidence against the parolee.

(b) The board or the board's appointed examiner shall provide the parolee the opportunity:

(i) to be present;

(ii) to be heard;

(iii) to present witnesses and documentary evidence;

(iv) to confront and cross-examine adverse witnesses, absent a showing of good cause for not allowing the confrontation; and

(v) to be represented by counsel when the parolee is mentally incompetent or pleading not guilty.

(c) (i) If heard by an appointed examiner, the examiner shall make a written decision which shall include a statement of the facts relied upon by the examiner in determining the guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the

## SB0200S01 compared with SB0200

alleged violation occurred.

(ii) The appointed examiner shall then refer the case to the board for disposition.

(d) (i) A final decision shall be reached by a majority vote of the sitting members of the board.

(ii) A parolee shall be promptly notified in writing of the board's findings and decision.

(6) (a) If a parolee is found to have violated the terms of parole, the board, at the board's discretion, may:

(i) return the parolee to parole;

(ii) modify the payment schedule for the parolee's criminal accounts receivable in accordance with Section 77-32b-105;

(iii) order the parolee to pay pecuniary damages that are proximately caused by a defendant's violation of the terms of the defendant's parole;

(iv) order the parolee to be imprisoned, but not to exceed the maximum term of imprisonment for the parolee's sentence; or

(v) order any other conditions for the parolee.

(b) If the board returns the parolee to parole, the length of parole may not be for a period of time that exceeds the length of the parolee's maximum sentence.

(c) If the board revokes parole for a violation and orders incarceration, the board may impose a period of incarceration:

(i) consistent with the [~~guidelines under Subsection 63M-7-404(5)] adult sentencing and supervision length guidelines, as defined in Section ~~63M-7-101~~63M-7-401.5~~1~~; or~~

(ii) subject to Subsection (6)(a)(iv), impose a period of incarceration that differs from the guidelines.

(d) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)(c):

(i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and

(ii) time served in jail by a parolee due to a violation of parole under Subsection 64-13-6(2).

Section ~~21~~28. Section 77-27-32 is amended to read:

**77-27-32. Reporting requirements.**

## SB0200S01 compared with SB0200

(1) The board shall publicly display metrics on the board's website, including:

(a) a measure of recidivism;

(b) a measure of time under board jurisdiction;

(c) a measure of prison releases by category;

(d) a measure of parole revocations;

(e) a measure of alignment of board decisions with the ~~[guidelines established by the Sentencing Commission under Section 63M-7-404]~~ adult sentencing and supervision length guidelines, as defined in Section ~~{63M-7-101}~~ 63M-7-401, ~~{5}1~~; and

(f) a measure of the aggregate reasons for departing from the guidelines described in Subsection (1)(e).

(2) On or before September 30 of each year, the board shall submit to the commission and the Law Enforcement and Criminal Justice Interim Committee a report for the previous fiscal year that summarizes the metrics in Subsection (1).

Section ~~{22}~~ 29. Section **80-6-307** is amended to read:

### **80-6-307. Dispositional report required in minors' cases -- Exceptions.**

(1) A juvenile probation officer, ~~{}~~ or other agency designated by the juvenile ~~{}~~ court, shall make a dispositional report in writing in all minors' cases in which a petition has been filed, except in cases involving violations of traffic laws or ordinances, violations of wildlife laws and boating laws, and other minor cases.

(2) When preparing a dispositional report and recommendation in a minor's case, the juvenile probation officer, ~~{}~~ or other agency designated by the juvenile court, shall consider the juvenile disposition guidelines ~~[developed in accordance with Section 63M-7-404]~~ ~~{}~~, as defined in Section ~~{63M-7-101}~~ 63M-7-401, ~~{5}1~~, and any other factors relevant to the disposition designated in the juvenile disposition guidelines .

(3) Where the allegations of a petition filed under Section 80-6-305 ~~{}~~ are denied, the investigation may not be made until the juvenile court has made an adjudication.

Section ~~{23}~~ 30. Section **80-6-607** is amended to read:

### **80-6-607. Case planning and appropriate responses.**

(1) For a minor adjudicated and placed on probation under Section 80-6-702 ~~{}~~ or committed to the division ~~{}~~ under Section 80-6-703, a case plan shall be created and:

(a) developed in collaboration with the minor and the minor's family;

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(b) individualized to the minor;

(c) informed by the results of a validated risk and needs assessment under Section 80-6-606; and

(d) tailored to the minor's offense and history.

(2) (a) The Administrative Office of the Courts and the division shall develop a statewide system of appropriate responses to guide responses to the behaviors of minors:

(i) undergoing nonjudicial adjustments;

(ii) whose case is under the jurisdiction of the juvenile court; and

(iii) in the custody of the division.

(b) The system of responses shall include both sanctions and incentives that:

(i) are swift and certain;

(ii) include a continuum of community based responses for minors living at home;

(iii) target a minor's criminogenic risks and needs, as determined by the results of a validated risk and needs assessment under Section 80-6-606, and the severity of the violation; and

(iv) authorize earned discharge credits as one incentive for compliance.

(c) After considering the ~~juvenile disposition guidelines~~ established by the ~~Sentencing Commission, in accordance with Section 63M-7-404~~ juvenile disposition guidelines, as defined in Section ~~63M-7-101~~ 63M-7-401.1, the system of appropriate responses under Subsections (2)(a) and (b) shall be developed.

(3) (a) A response to compliant or noncompliant behavior under Subsection (2) shall be documented in the minor's case plan.

(b) Documentation under Subsection (3)(a) shall include:

(i) positive behaviors and incentives offered;

(ii) violations and corresponding sanctions; and

(iii) whether the minor has a subsequent violation after a sanction.

(4) Before referring a minor to a juvenile court for judicial review, or to the authority if the minor is under the jurisdiction of the authority, in response to a contempt filing under Section 78A-6-353 or an order to show cause, ~~a~~ a pattern of appropriate responses shall be documented in the minor's case plan in accordance with Subsections (3)(a) and (b) .

(5) Notwithstanding Subsection (4), if a minor violates a protective order or an ex parte

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protective order listed in Section 78B-7-803, the violation may be filed directly with the juvenile court.

Section ~~{24}~~31. **Repealer.**

This bill repeals:

~~{~~ ~~Section 63M-7-401, Creation -- Members -- Appointment -- Qualifications:~~

~~Section 63M-7-402, Terms of members -- Vacancies -- Reappointment.~~

~~}~~ Section 63M-7-403, Vacancies.

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

~~{~~ ~~Section 63M-7-406, Publication of reports.~~

~~}~~ Section ~~{25}~~32. **Effective date.**

This bill takes effect on May 1, 2024.