

PROBATION AND PAROLE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions related to the Sentencing Commission.

Highlighted Provisions:

This bill:

- ▶ modifies the membership and duties of the Sentencing Commission (commission)

by:

- adding a member to the commission;
- requiring the commission to make recommendations regarding policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs; and
- directing the commission to establish processes for responding to and recognizing an individual's progress and positive behavior while under supervision; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-401, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-404, as last amended by Laws of Utah 2018, Chapter 334

- 30 **64-13-6**, as last amended by Laws of Utah 2018, Chapter 200
- 31 **64-13-21**, as last amended by Laws of Utah 2019, Chapter 27
- 32 **64-13-29**, as last amended by Laws of Utah 2020, Chapter 227
- 33 **77-18-1**, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354
- 34 **77-27-10**, as last amended by Laws of Utah 2015, Chapter 412

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

37 Section 1. Section **63M-7-401** is amended to read:

38 **63M-7-401. Creation -- Members -- Appointment -- Qualifications.**

39 (1) There is created a state commission to be known as the Sentencing Commission
 40 composed of [~~27~~] 28 members. The commission shall develop by-laws and rules in
 41 compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and elect its
 42 officers.

43 (2) The commission's members shall be:

- 44 (a) two members of the House of Representatives, appointed by the speaker of the
 45 House and not of the same political party;
- 46 (b) two members of the Senate, appointed by the president of the Senate and not of the
 47 same political party;
- 48 (c) the executive director of the Department of Corrections or a designee appointed by
 49 the executive director;
- 50 (d) the director of the Division of Juvenile Justice Services or a designee appointed by
 51 the director;
- 52 (e) the executive director of the Commission on Criminal and Juvenile Justice or a
 53 designee appointed by the executive director;
- 54 (f) the chair of the Board of Pardons and Parole or a designee appointed by the chair;
- 55 (g) the chair of the Youth Parole Authority or a designee appointed by the chair;
- 56 (h) two trial judges and an appellate judge appointed by the chair of the Judicial
 57 Council;

- 58 (i) two juvenile court judges designated by the chair of the Judicial Council;
- 59 (j) an attorney in private practice who is a member of the Utah State Bar, experienced
60 in criminal defense, and appointed by the Utah Bar Commission;
- 61 (k) an attorney who is a member of the Utah State Bar, experienced in the defense of
62 minors in juvenile court, and appointed by the Utah Bar Commission;
- 63 (l) the director of Salt Lake Legal Defenders or a designee appointed by the director;
- 64 (m) the attorney general or a designee appointed by the attorney general;
- 65 (n) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;
- 66 (o) a juvenile court prosecutor appointed by the Statewide Association of Public
67 Attorneys;
- 68 (p) a representative of the Utah Sheriff's Association appointed by the governor;
- 69 (q) a chief of police appointed by the governor;
- 70 (r) a licensed professional appointed by the governor who assists in the rehabilitation
71 of adult offenders;
- 72 (s) a licensed professional appointed by the governor who assists in the rehabilitation
73 of juvenile offenders;
- 74 (t) two members from the public appointed by the governor who exhibit sensitivity to
75 the concerns of victims of crime and the ethnic composition of the population; ~~and~~
- 76 (u) one member from the public at large appointed by the governor[-]; and
- 77 (v) a representative of an organization that specializes in civil rights or civil liberties on
78 behalf of incarcerated individuals appointed by the governor.

79 Section 2. Section **63M-7-404** is amended to read:

80 **63M-7-404. Purpose -- Duties.**

- 81 (1) The purpose of the commission is to develop guidelines and propose
82 recommendations to the Legislature, the governor, and the Judicial Council regarding:
 - 83 (a) the sentencing and release of juvenile and adult offenders in order to:
 - 84 (i) respond to public comment;
 - 85 (ii) relate sentencing practices and correctional resources;

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

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

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

96 under supervision in the community; and

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

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

102 (i) treatment and intervention completion determinations based on individualized case
103 action plans;

104 (ii) measured and consistent processes for addressing violations of conditions of
105 supervision;

106 (iii) processes that include using positive reinforcement to recognize an individual's
107 progress in supervision;

108 (iv) engaging with social services agencies and other stakeholders who provide
109 services that meet offender needs; and

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

112 (2) (a) The commission shall modify the sentencing guidelines and supervision length
113 guidelines for adult offenders to implement the recommendations of the Commission on

114 Criminal and Juvenile Justice for reducing recidivism.

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

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

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

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

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

127 (b) The guidelines shall consider the seriousness of the violation of the conditions of
128 probation, the probationer's conduct while on probation, and the probationer's criminal history.

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

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

133 (b) The guidelines shall consider the seriousness of the violation of the conditions of
134 parole, the individual's conduct while on parole, and the individual's criminal history.

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

141 [~~(a) sanctions to be used in response to a violation of the terms of probation or parole;~~]

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

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

145 ~~[(b)]~~ (c) when [violations] a violation of a condition of probation or parole should be
146 reported to the court or the Board of Pardons and Parole; and

147 ~~[(c)]~~ (d) a range of sanctions that may not exceed a period of incarceration of more
148 than:

149 (i) three consecutive days; and

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

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

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

155 (b) positive conduct that exceeds those terms.

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

158 (i) nonjudicially adjusted;

159 (ii) placed on diversion;

160 (iii) placed on probation;

161 (iv) placed on community supervision;

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

163 (vi) placed in a secure care facility.

164 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

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

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

167 (iii) the delinquency history of the juvenile.

168 (c) The guidelines shall include:

169 (i) responses that are swift and certain;

- 170 (ii) a continuum of community-based options for juveniles living at home;
 - 171 (iii) responses that target the individual's criminogenic risk and needs; and
 - 172 (iv) incentives for compliance, including earned discharge credits.
- 173 (9) The commission shall establish supervision length guidelines in accordance with
174 this section before October 1, 2018.

175 Section 3. Section **64-13-6** is amended to read:

176 **64-13-6. Department duties.**

- 177 (1) The department shall:
- 178 (a) protect the public through institutional care and confinement, and supervision in the
179 community of offenders where appropriate;
 - 180 (b) implement court-ordered punishment of offenders;
 - 181 (c) provide program opportunities for offenders;
 - 182 (d) provide treatment for sex offenders who are found to be treatable based upon
183 criteria developed by the department;
 - 184 (e) provide the results of ongoing assessment of sex offenders and objective diagnostic
185 testing to sentencing and release authorities;
 - 186 (f) manage programs that take into account the needs and interests of victims, where
187 reasonable;
 - 188 (g) supervise probationers and parolees as directed by statute and implemented by the
189 courts and the Board of Pardons and Parole;
 - 190 (h) subject to Subsection (2), investigate criminal conduct involving offenders
191 incarcerated in a state correctional facility;
 - 192 (i) cooperate and exchange information with other state, local, and federal law
193 enforcement agencies to achieve greater success in prevention and detection of crime and
194 apprehension of criminals;
 - 195 (j) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult
196 Offender Supervision;
 - 197 (k) establish a case action plan for each offender as follows:

198 (i) if an offender is to be supervised in the community, the case action plan shall be
199 established for the offender not more than 90 days after supervision by the department begins;
200 and

201 (ii) if the offender is committed to the custody of the department, the case action plan
202 shall be established for the offender not more than 120 days after the commitment; and

203 (1) ensure that any training or certification required of a public official or public
204 employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter
205 22, State Training and Certification Requirements, if the training or certification is required:

206 (i) under this title;

207 (ii) by the department; or

208 (iii) by an agency or division within the department.

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

210 (a) [~~impose graduated sanctions, as~~] respond in accordance with the graduated and
211 evidence-based processes established by the Utah Sentencing Commission under Subsection
212 63M-7-404(6), [~~for~~] to an individual's violation of one or more terms of the probation or
213 parole; and

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

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

220 (i) criminal conduct of departmental employees;

221 (ii) felony crimes resulting in serious bodily injury;

222 (iii) death of any person; or

223 (iv) aggravated kidnaping.

224 (b) Prior to investigating any occurrence specified in Subsection (3)(a), the department
225 shall:

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

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

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

233 (5) The Department of Corrections shall collect accounts receivable ordered by the
234 district court as a result of prosecution for a criminal offense according to the requirements and
235 during the time periods established in Subsection 77-18-1(9).

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

237 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**
238 **-- POST certified parole or probation officers and peace officers -- Duties -- Supervision**
239 **fee.**

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

244 (b) The department shall establish standards for the supervision of offenders in
245 accordance with sentencing guidelines and supervision length guidelines, including the
246 graduated [~~sanctions matrix~~] and evidence-based responses, established by the Utah Sentencing
247 Commission, giving priority, based on available resources, to felony offenders and offenders
248 sentenced pursuant to Subsection 58-37-8(2)(b)(ii).

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

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

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

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

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

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

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

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

- 273 (a) monitoring, investigating, and supervising a parolee's or probationer's compliance
274 with the conditions of the parole or probation agreement;
- 275 (b) investigating or apprehending any offender who has escaped from the custody of
276 the department or absconded from supervision;
- 277 (c) supervising any offender during transportation; or
- 278 (d) collecting DNA specimens when the specimens are required under Section

279 [53-10-404](#).

280 (6) (a) A monthly supervision fee of \$30 shall be collected from each offender on
281 probation or parole. The fee may be suspended or waived by the department upon a showing

282 by the offender that imposition would create a substantial hardship or if the offender owes
283 restitution to a victim.

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

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

290 (7) (a) For offenders placed on probation under Section 77-18-1 or parole under
291 Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the
292 department shall establish a program allowing an offender to earn credits for the offender's
293 compliance with the terms of the offender's probation or parole, which shall be applied to
294 reducing the period of probation or parole as provided in this Subsection (7).

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

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

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

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

310 program is completed.

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

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

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

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

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

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

322 Section 5. Section ~~64-13-29~~ is amended to read:

323 **64-13-29. Violation of parole or probation -- Detention -- Hearing.**

324 (1) (a) The department or local law enforcement agency shall ensure that the court is
325 notified of violations of the terms and conditions of probation in the case of probationers under
326 the supervision of the department, the local law enforcement agency, or the Board of Pardons
327 and Parole in the case of parolees under the department's supervision when:

328 (i) a sanction of incarceration is recommended; or

329 (ii) the department or local law enforcement agency determines that a graduated
330 ~~[sanction]~~ and evidence-based response is not an appropriate response to the offender's
331 violation and recommends revocation of probation or parole.

332 (b) In cases where the department desires to detain an offender alleged to have violated
333 his parole or probation and where it is unlikely that the Board of Pardons and Parole or court
334 will conduct a hearing within a reasonable time to determine if the offender has violated his
335 conditions of parole or probation, the department shall hold an administrative hearing within a
336 reasonable time, unless the hearing is waived by the parolee or probationer, to determine if
337 there is probable cause to believe that a violation has occurred.

338 (c) If there is a conviction for a crime based on the same charges as the probation or
339 parole violation, or a finding by a federal or state court that there is probable cause to believe
340 that an offender has committed a crime based on the same charges as the probation or parole
341 violation, the department need not hold an administrative hearing.

342 (2) The appropriate officer or officers of the department shall, as soon as practical
343 following the department's administrative hearing, report to the court or the Board of Pardons
344 and Parole, furnishing a summary of the hearing, and may make recommendations regarding
345 the disposition to be made of the parolee or probationer.

346 (3) Pending any proceeding under this section, the department may take custody of and
347 detain the parolee or probationer involved for a period not to exceed 72 hours excluding
348 weekends and holidays.

349 (4) In cases where probationers are supervised by a local law enforcement agency, the
350 agency may take custody of and detain the probationer involved for a period not to exceed 72
351 hours excluding weekends and holidays if:

352 (a) the probationer commits a major violation or repeated violations of probation; ~~and~~

353 (b) it is unlikely that the court will conduct a hearing within a reasonable time to
354 determine if the offender has violated the conditions of probation; and

355 (c) the law enforcement agency conducts an administrative hearing within a reasonable
356 time to determine if there is probable cause to believe the offender has violated the conditions
357 of probation, unless the hearing is waived by the probationer.

358 (5) If the requirements for Subsection (4) are met, the local law enforcement agency
359 shall ensure the proper court is notified.

360 (6) If the hearing officer determines that there is probable cause to believe that the
361 offender has violated the conditions of ~~his~~ the offender's parole or probation, the department
362 may detain the offender for a reasonable period of time after the hearing or waiver, as necessary
363 to arrange for the incarceration of the offender. A written order of the department is sufficient
364 authorization for any peace officer to incarcerate the offender. The department may promulgate
365 rules for the implementation of this section.

366 (7) A written order from the local law enforcement agency is sufficient authorization
367 for any peace officer to incarcerate the offender if:

- 368 (a) the probationers are supervised by a local law enforcement agency; and
- 369 (b) the appropriate officer or officers determine that there is probable cause to believe
370 that the offender has violated the conditions of probation.

371 (8) If a probationer supervised by a local law enforcement agency commits a violation
372 outside of the jurisdiction of the supervising agency, the arresting agency is not required to
373 hold or transport the probationer for the supervising agency.

374 Section 6. Section 77-18-1 is amended to read:

375 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
376 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
377 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
378 **monitoring.**

379 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea
380 in abeyance agreement, the court may hold the plea in abeyance as provided in Chapter 2a,
381 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

382 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any
383 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
384 and place the defendant:

385 (i) on probation under the supervision of the Department of Corrections except in cases
386 of class C misdemeanors or infractions;

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

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

390 (b) (i) The legal custody of all probationers under the supervision of the department is
391 with the department.

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

394 (iii) The court has continuing jurisdiction over all probationers.

395 (iv) Court probation may include an administrative level of services, including
396 notification to the court of scheduled periodic reviews of the probationer's compliance with
397 conditions.

398 (c) Supervised probation services provided by the department, an agency of local
399 government, or a private organization shall specifically address the offender's risk of
400 reoffending as identified by a validated risk and needs screening or assessment.

401 (3) (a) The department shall establish supervision and presentence investigation
402 standards for all individuals referred to the department based on:

403 (i) the type of offense;

404 (ii) the results of a risk and needs assessment;

405 (iii) the demand for services;

406 (iv) the availability of agency resources;

407 (v) public safety; and

408 (vi) other criteria established by the department to determine what level of services
409 shall be provided.

410 (b) Proposed supervision and investigation standards shall be submitted to the Judicial
411 Council and the Board of Pardons and Parole on an annual basis for review and comment prior
412 to adoption by the department.

413 (c) The Judicial Council and the department shall establish procedures to implement
414 the supervision and investigation standards.

415 (d) The Judicial Council and the department shall annually consider modifications to
416 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider
417 appropriate.

418 (e) The Judicial Council and the department shall annually prepare an impact report
419 and submit it to the appropriate legislative appropriations subcommittee.

420 (4) Notwithstanding other provisions of law, the department is not required to
421 supervise the probation of an individual convicted of a class B or C misdemeanor or an

422 infraction or to conduct presentence investigation reports on a class C misdemeanor or
423 infraction. However, the department may supervise the probation of a class B misdemeanor in
424 accordance with department standards.

425 (5) (a) Before the imposition of any sentence, the court may, with the concurrence of
426 the defendant, continue the date for the imposition of sentence for a reasonable period of time
427 for the purpose of obtaining a presentence investigation report from the department or
428 information from other sources about the defendant.

429 (b) The presentence investigation report shall include:

430 (i) a victim impact statement according to guidelines set in Section [77-38a-203](#)
431 describing the effect of the crime on the victim and the victim's family;

432 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
433 from the department regarding the payment of restitution with interest by the defendant in
434 accordance with Chapter 38a, Crime Victims Restitution Act;

435 (iii) findings from any screening and any assessment of the offender conducted under
436 Section [77-18-1.1](#);

437 (iv) recommendations for treatment of the offender; and

438 (v) the number of days since the commission of the offense that the offender has spent
439 in the custody of the jail and the number of days, if any, the offender was released to a
440 supervised release or alternative incarceration program under Section [17-22-5.5](#).

441 (c) The contents of the presentence investigation report are protected and are not
442 available except by court order for purposes of sentencing as provided by rule of the Judicial
443 Council or for use by the department.

444 (6) (a) The department shall provide the presentence investigation report to the
445 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
446 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
447 presentence investigation report, which have not been resolved by the parties and the
448 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
449 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the

450 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
451 court shall make a determination of relevance and accuracy on the record.

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

454 (7) At the time of sentence, the court shall receive any testimony, evidence, or
455 information the defendant or the prosecuting attorney desires to present concerning the
456 appropriate sentence. This testimony, evidence, or information shall be presented in open court
457 on record and in the presence of the defendant.

458 (8) While on probation, and as a condition of probation, the court may require that a
459 defendant perform any or all of the following:

460 (a) provide for the support of others for whose support the defendant is legally liable;

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

463 (c) if on probation for a felony offense, serve a period of time, as an initial condition of
464 probation, not to exceed one year, in a county jail designated by the department, after
465 considering any recommendation by the court as to which jail the court finds most appropriate:

466 (i) the court may modify probation to include a period of time served in a county jail
467 immediately prior to the termination of probation as long as the terminal period of time does
468 not exceed one year; and

469 (ii) jail days ordered as a sanction for probation violations do not apply to the
470 limitation on jail days described in Subsection (8)(c) or (8)(c)(i);

471 (d) serve a term of home confinement, which may include the use of electronic
472 monitoring;

473 (e) participate in compensatory service restitution programs, including the
474 compensatory service program provided in Section [76-6-107.1](#);

475 (f) pay for the costs of investigation, probation, and treatment services;

476 (g) make restitution or reparation to the victim or victims with interest in accordance
477 with Chapter 38a, Crime Victims Restitution Act; and

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

480 (9) The department shall collect and disburse the accounts receivable as defined by
481 Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

482 (a) the parole period and any extension of that period in accordance with Subsection
483 77-27-6(4); and

484 (b) the probation period in cases for which the court orders supervised probation and
485 any extension of that period by the department in accordance with Subsection (10).

486 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), probation of an individual
487 placed on probation after December 31, 2018:

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

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

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

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

497 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
498 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
499 completion without violation of 36 months probation in felony or class A misdemeanor cases,
500 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
501 Section 64-13-21 regarding earned credits.

502 (b) (i) If, upon expiration or termination of the probation period under Subsection
503 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
504 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
505 probation for the limited purpose of enforcing the payment of the account receivable. If the

506 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
507 the court the costs associated with continued probation under this Subsection (10).

508 (ii) In accordance with Section 77-18-6, the court shall record in the registry of civil
509 judgments any unpaid balance not already recorded and immediately transfer responsibility to
510 collect the account to the Office of State Debt Collection.

511 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
512 own motion, the court may require the defendant to show cause why the defendant's failure to
513 pay should not be treated as contempt of court.

514 (c) Subsections (10)(a) and (b) do not apply to Section 76-7-201, criminal nonsupport.

515 (d) (i) The department shall notify the court, the Office of State Debt Collection, and
516 the prosecuting attorney in writing in advance in all cases when termination of supervised
517 probation is being requested by the department or will occur by law.

518 (ii) The notification shall include a probation progress report and complete report of
519 details on outstanding accounts receivable.

520 (11) (a) (i) Any time served by a probationer outside of confinement after having been
521 charged with a probation violation and prior to a hearing to revoke probation does not
522 constitute service of time toward the total probation term unless the probationer is exonerated
523 at a hearing to revoke the probation.

524 (ii) Any time served in confinement awaiting a hearing or decision concerning
525 revocation of probation does not constitute service of time toward the total probation term
526 unless the probationer is exonerated at the hearing.

527 (iii) Any time served in confinement awaiting a hearing or decision concerning
528 revocation of probation constitutes service of time toward a term of incarceration imposed as a
529 result of the revocation of probation or a graduated [~~sanction~~] and evidence-based response
530 imposed under Section 63M-7-404.

531 (b) The running of the probation period is tolled upon the filing of a violation report
532 with the court alleging a violation of the terms and conditions of probation or upon the issuance
533 of an order to show cause or warrant by the court.

534 (12) (a) (i) Probation may be modified as is consistent with the supervision length
535 guidelines and the graduated [~~sanctions~~] and evidence-based responses and graduated
536 incentives developed by the Utah Sentencing Commission under Section 63M-7-404.

537 (ii) The length of probation may not be extended, except upon waiver of a hearing by
538 the probationer or upon a hearing and a finding in court that the probationer has violated the
539 conditions of probation.

540 (iii) Probation may not be revoked except upon a hearing in court and a finding that the
541 conditions of probation have been violated.

542 (b) (i) Upon the filing of an affidavit, or an unsworn written declaration executed in
543 substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act,
544 alleging with particularity facts asserted to constitute violation of the conditions of probation,
545 the court shall determine if the affidavit or unsworn written declaration establishes probable
546 cause to believe that revocation, modification, or extension of probation is justified.

547 (ii) If the court determines there is probable cause, it shall cause to be served on the
548 defendant a warrant for the defendant's arrest or a copy of the affidavit or unsworn written
549 declaration and an order to show cause why the defendant's probation should not be revoked,
550 modified, or extended.

551 (c) (i) The order to show cause shall specify a time and place for the hearing and shall
552 be served upon the defendant at least five days prior to the hearing.

553 (ii) The defendant shall show good cause for a continuance.

554 (iii) The order to show cause shall inform the defendant of a right to be represented by
555 counsel at the hearing and to have counsel appointed if the defendant is indigent.

556 (iv) The order shall also inform the defendant of a right to present evidence.

557 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit
558 or unsworn written declaration.

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

561 (iii) The persons who have given adverse information on which the allegations are

562 based shall be presented as witnesses subject to questioning by the defendant unless the court
563 for good cause otherwise orders.

564 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
565 and present evidence.

566 (e) (i) After the hearing the court shall make findings of fact.

567 (ii) Upon a finding that the defendant violated the conditions of probation, the court
568 may order the probation revoked, modified, continued, or reinstated for all or a portion of the
569 original term of probation.

570 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a
571 defendant to remain on probation for a period of time that exceeds the length of the defendant's
572 maximum sentence.

573 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked
574 and later reinstated, the total time of all periods of probation the defendant serves, relating to
575 the same sentence, may not exceed the defendant's maximum sentence.

576 (iv) If a period of incarceration is imposed for a violation, the defendant shall be
577 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to
578 Subsection 63M-7-404(4), unless the judge determines that:

579 (A) the defendant needs substance abuse or mental health treatment, as determined by a
580 validated risk and needs screening and assessment, that warrants treatment services that are
581 immediately available in the community; or

582 (B) the sentence previously imposed shall be executed.

583 (v) If the defendant had, prior to the imposition of a term of incarceration or the
584 execution of the previously imposed sentence under this Subsection (12), served time in jail as
585 a condition of probation or due to a violation of probation under Subsection (12)(e)(iv), the
586 time the probationer served in jail constitutes service of time toward the sentence previously
587 imposed.

588 (13) The court may order the defendant to commit the defendant to the custody of the
589 Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a

590 condition of probation or stay of sentence, only after the superintendent of the Utah State
591 Hospital or the superintendent's designee has certified to the court that:

- 592 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- 593 (b) treatment space at the hospital is available for the defendant; and
- 594 (c) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for
595 treatment over the defendants described in this Subsection (13).

596 (14) Presentence investigation reports are classified protected in accordance with Title
597 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
598 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
599 presentence investigation report. Except for disclosure at the time of sentencing pursuant to this
600 section, the department may disclose the presentence investigation only when:

- 601 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- 602 (b) requested by a law enforcement agency or other agency approved by the department
603 for purposes of supervision, confinement, and treatment of the offender;
- 604 (c) requested by the Board of Pardons and Parole;
- 605 (d) requested by the subject of the presentence investigation report or the subject's
606 authorized representative;
- 607 (e) requested by the victim of the crime discussed in the presentence investigation
608 report or the victim's authorized representative, provided that the disclosure to the victim shall
609 include only information relating to statements or materials provided by the victim, to the
610 circumstances of the crime including statements by the defendant, or to the impact of the crime
611 on the victim or the victim's household; or
- 612 (f) requested by a sex offender treatment provider who is certified to provide treatment
613 under the program established in Subsection 64-13-25(3) and who, at the time of the request:
 - 614 (i) is providing sex offender treatment to the offender who is the subject of the
615 presentence investigation report; and
 - 616 (ii) provides written assurance to the department that the report:
 - 617 (A) is necessary for the treatment of the offender;

618 (B) will be used solely for the treatment of the offender; and

619 (C) will not be disclosed to an individual or entity other than the offender.

620 (15) (a) The court shall consider home confinement as a condition of probation under
621 the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

622 (b) The department shall establish procedures and standards for home confinement,
623 including electronic monitoring, for all individuals referred to the department in accordance
624 with Subsection (16).

625 (16) (a) If the court places the defendant on probation under this section, it may order
626 the defendant to participate in home confinement through the use of electronic monitoring as
627 described in this section until further order of the court.

628 (b) The electronic monitoring shall alert the department and the appropriate law
629 enforcement unit of the defendant's whereabouts.

630 (c) The electronic monitoring device shall be used under conditions which require:

631 (i) the defendant to wear an electronic monitoring device at all times; and

632 (ii) that a device be placed in the home of the defendant, so that the defendant's
633 compliance with the court's order may be monitored.

634 (d) If a court orders a defendant to participate in home confinement through electronic
635 monitoring as a condition of probation under this section, it shall:

636 (i) place the defendant on probation under the supervision of the Department of
637 Corrections;

638 (ii) order the department to place an electronic monitoring device on the defendant and
639 install electronic monitoring equipment in the residence of the defendant; and

640 (iii) order the defendant to pay the costs associated with home confinement to the
641 department or the program provider.

642 (e) The department shall pay the costs of home confinement through electronic
643 monitoring only for an individual who is determined to be indigent by the court.

644 (f) The department may provide the electronic monitoring described in this section
645 either directly or by contract with a private provider.

646 Section 7. Section 77-27-10 is amended to read:

647 **77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking --**
648 **Intensive early release parole program.**

649 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall
650 issue to the parolee a certificate setting forth the conditions of parole, including the [~~use of~~
651 ~~graduated sanctions pursuant to~~] graduated and evidence-based responses to a violation of a
652 condition of parole established by the Sentencing Commission in accordance with Section
653 64-13-21, which the offender shall accept and agree to as evidenced by the offender's signature
654 affixed to the agreement.

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

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

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

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

663 (c) A copy of the agreement shall be delivered to the Department of Corrections and a
664 copy shall be given to the parolee. The original shall remain with the board's file.

665 (2) (a) If an offender convicted of violating or attempting to violate Section
666 76-5-301.1, Subsection 76-5-302(1), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3,
667 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, is released on parole, the board shall
668 order outpatient mental health counseling and treatment as a condition of parole.

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

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

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

674 conditions of parole which are reasonably necessary to protect the community as well as to
675 protect the interests of the offender and to assist the offender to lead a law-abiding life.

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

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

678 (ii) has not been sentenced pursuant to Section [76-3-406](#).

679 (c) The department shall:

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

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

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

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

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

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

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

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

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

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

697 (a) ~~[impose a graduated sanction pursuant to]~~ respond in accordance with the graduated
698 and evidence-based responses established in accordance with Section [64-13-21](#); or

699 (b) when ~~[the graduated sanctions matrix under Subsection [63M-7-404\(6\)](#) indicates]~~
700 the graduated and evidence-based responses established in accordance with Section [64-13-21](#)

701 indicate, refer the parolee to the Board of Pardons and Parole for revocation of parole.

702