

1 **OFFENDER SUPERVISION AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karianne Lisonbee**

5 Senate Sponsor: Michael S. Kennedy

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions regarding individuals subject to probation and parole.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows a jail to hold a parolee or probationer under certain circumstances;
- 13 ▶ clarifies the information a court and the Board of Pardons and Parole shall consider
14 under the sentencing guidelines when an individual violates a provision of probation
15 or parole;
- 16 ▶ requires the department of corrections to detain an individual who violates a
17 condition of probation or parole if the violation was a particular type of offense;
- 18 ▶ requires a court to review costs that a defendant will be charged for supervisory
19 services;
- 20 ▶ clarifies which offenders, the Department of Corrections, a local government
21 agency, or a private probation provider may supervise;
- 22 ▶ modifies the duties of private probation providers;
- 23 ▶ requires law enforcement agencies to perform certain tasks regarding supervision
24 and presentence investigation reports;
- 25 ▶ requires the Department of Corrections to provide a victim notice regarding:
 - 26 • the expiration of an offender's probation or parole term; and
 - 27 • the victim's ability to obtain a continuous protective order;
- 28 ▶ allows a court and the Board of Pardons and Parole to impose a period of

29 incarceration that differs from the sentencing guidelines; and

30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **17-22-5.5**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

38 **58-50-9**, as last amended by Laws of Utah 2021, Chapter 260

39 **63M-7-404**, as last amended by Laws of Utah 2021, Chapter 173

40 **64-13-14.7**, as last amended by Laws of Utah 2008, Chapter 382

41 **64-13-29**, as last amended by Laws of Utah 2021, Chapter 173

42 **77-18-103**, as enacted by Laws of Utah 2021, Chapter 260

43 **77-18-105**, as enacted by Laws of Utah 2021, Chapter 260 and last amended by
44 Coordination Clause, Laws of Utah 2021, Chapter 246

45 **77-18-108**, as enacted by Laws of Utah 2021, Chapter 260 and last amended by
46 Coordination Clause, Laws of Utah 2021, Chapter 260

47 **77-27-11**, as last amended by Laws of Utah 2021, Chapter 260



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

50 Section 1. Section **17-22-5.5** is amended to read:

51 **17-22-5.5. Sheriff’s classification of jail facilities -- Maximum operating capacity**
52 **of jail facilities -- Transfer or release of prisoners -- Limitation -- Records regarding**
53 **release.**

54 (1) (a) Except as provided in Subsection (4), a county sheriff shall determine:

55 (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail

56 facility under the sheriff's control;

57 (ii) the nature of each program conducted at a jail facility under the sheriff's control;

58 and

59 (iii) the internal operation of a jail facility under the sheriff's control.

60 (b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any
61 applicable zoning ordinance or conditional use permit of the county or municipality.

62 (2) Except as provided in Subsection (4), each county sheriff shall:

63 (a) with the approval of the county legislative body, establish a maximum operating
64 capacity for each jail facility under the sheriff's control, based on facility design and staffing;
65 and

66 (b) upon a jail facility reaching the jail facility's maximum operating capacity:

67 (i) transfer prisoners to another appropriate facility:

68 (A) under the sheriff's control; or

69 (B) available to the sheriff by contract;

70 (ii) release prisoners:

71 (A) to a supervised release program, according to release criteria established by the
72 sheriff; or

73 (B) to another alternative incarceration program developed by the sheriff; or

74 (iii) admit prisoners in accordance with law and a uniform admissions policy imposed
75 equally upon all entities using the county jail.

76 (3) (a) The sheriff shall keep records of the release status and the type of release
77 program or alternative incarceration program for any prisoner released under Subsection
78 (2)(b)(ii).

79 (b) The sheriff shall make these records available upon request to the Department of
80 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

81 (4) This section may not be construed to authorize a sheriff to modify provisions of a
82 contract with the Department of Corrections to house in a county jail an individual sentenced to

83 the Department of Corrections.

84 (5) Regardless of whether a jail facility has reached the jail facility's maximum
85 operating capacity under Subsection (2), a sheriff may release an individual from a jail facility
86 in accordance with Section [77-20-203](#) or [77-20-204](#).

87 (6) (a) Subject to Subsection (6)(c), a jail facility shall detain an individual for up to 24
88 hours from booking if:

89 (i) the individual is on supervised probation or parole and that information is
90 reasonably available; and

91 (ii) the individual was arrested for:

92 (A) a violent felony as defined in Section [76-3-203.5](#); or

93 (B) a qualifying domestic violence offense as defined in Subsection [77-36-1.1\(4\)](#) that
94 is not a criminal mischief offense.

95 (b) The jail facility shall notify the entity supervising the individual's probation or
96 parole that the individual is being detained.

97 (c) (i) The jail facility shall release the individual:

98 (A) to the Department of Corrections if the Department of Corrections supervises the
99 individual and requests the individual's release; or

100 (B) if a court or magistrate orders release.

101 (ii) Nothing in this Subsection (6) prohibits a jail facility from holding the individual in
102 accordance with Title 77, Chapter 20, Bail, for new criminal conduct.

103 Section 2. Section **58-50-9** is amended to read:

104 **58-50-9. Standards of conduct for private probation providers -- Contracts --**

105 **Reports.**

106 (1) The private probation provider:

107 ~~(1)~~ (a) shall maintain impartiality toward all parties;

108 ~~(2)~~ (b) shall ensure that all parties understand the nature of the process, the

109 procedure, the particular role of the private probation provider, and the parties' relationship to

110 the private probation provider;

111 ~~[(3)]~~ (c) shall maintain confidentiality or, in cases where confidentiality is not
112 protected, the private probation provider shall so advise the parties;

113 ~~[(4)]~~ (d) shall disclose any circumstance that may create or give the appearance of a
114 conflict of interest and any circumstance that may reasonably raise a question as to the private
115 probation provider's impartiality; if the contract probation supervisor perceives or believes a
116 conflict of interest to exist, the contract probation supervisor shall refrain from entering into
117 those probation services;

118 ~~[(5)]~~ (e) shall adhere to the standards regarding private probation services adopted by
119 the licensing board;

120 ~~[(6)]~~ (f) shall comply with orders of court and perform services as directed by judges in
121 individual cases; ~~[and]~~

122 ~~[(7)]~~ (g) shall perform duties established under Section 77-18-105, as ordered by the
123 court[.];

124 (h) beginning July 1, 2022, may not provide private probation in a county where an
125 agency of local government provides probation services unless the private probation provider
126 has entered into a contract with the agency of local government; and

127 (i) shall provide a report each month to each county sheriff where the private probation
128 provider provides private probation identifying:

129 (i) each individual currently supervised in the county by the private probation provider;

130 (ii) the crimes each individual supervised committed;

131 (iii) the level of supervision that is being provided for each individual; and

132 (iv) any other information related to the provision of private probation that the county
133 sheriff determines is relevant.

134 (2) A contract described in Subsection (1)(h) shall include a description of the fees the
135 private probation provider will charge a defendant who is supervised by the private probation
136 provider.

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

138 **63M-7-404. Purpose -- Duties.**

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

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

142 (i) respond to public comment;

143 (ii) relate sentencing practices and correctional resources;

144 (iii) increase equity in criminal sentencing;

145 (iv) better define responsibility in criminal sentencing; and

146 (v) enhance the discretion of sentencing judges while preserving the role of the Board

147 of Pardons and Parole and the Youth Parole Authority;

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

149 (i) increase equity in criminal supervision lengths;

150 (ii) respond to public comment;

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

152 (iv) take into account an offender's risk of offending again;

153 (v) relate the length of supervision to the amount of time an offender has remained

154 under supervision in the community; and

155 (vi) enhance the discretion of the sentencing judges while preserving the role of the

156 Board of Pardons and Parole;

157 (c) appropriate, evidence-based probation and parole supervision policies and services

158 that assist individuals in successfully completing supervision and reduce incarceration rates

159 from community supervision programs while ensuring public safety, including:

160 (i) treatment and intervention completion determinations based on individualized case

161 action plans;

162 (ii) measured and consistent processes for addressing violations of conditions of

163 supervision;

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

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

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

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

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

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

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

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

183 (i) who have violated one or more conditions of probation; and

184 (ii) whose probation has been revoked by the court.

185 (b) ~~[The guidelines shall consider]~~ For a situation described in Subsection (4)(a), the
186 guidelines shall recommend that a court consider:

187 (i) the seriousness of ~~[the]~~ any violation of the ~~[conditions]~~ condition of probation~~;~~;

188 (ii) the probationer's conduct while on probation~~;~~; and

189 (iii) the probationer's criminal history.

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

191 incarceration for individuals who are on parole and:
192 (i) who have violated a condition of parole; and
193 (ii) whose parole has been revoked by the Board of Pardons and Parole.
194 (b) ~~[The guidelines shall consider]~~ For a situation described in Subsection (5)(a), the
195 guidelines shall recommend that the Board of Pardons and Parole consider:
196 (i) the seriousness of ~~[the]~~ any violation of the ~~[conditions]~~ condition of parole~~];~~
197 (ii) the individual's conduct while on parole~~];~~ and
198 (iii) the individual's criminal history.
199 (6) The commission shall establish graduated and evidence-based processes to
200 facilitate the prompt and effective response to an individual's progress in or violation of the
201 terms of probation or parole by the adult probation and parole section of the Department of
202 Corrections, or other supervision services provider, ~~[in order]~~ to implement the
203 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism
204 and incarceration, including:
205 (a) responses to be used when an individual violates a condition of probation or parole;
206 (b) responses to recognize positive behavior and progress related to an individual's case
207 action plan;
208 (c) when a violation of a condition of probation or parole should be reported to the
209 court or the Board of Pardons and Parole; and
210 (d) a range of sanctions that may not exceed a period of incarceration of more than:
211 (i) three consecutive days; and
212 (ii) a total of five days in a period of 30 days.
213 (7) The commission shall establish graduated incentives to facilitate a prompt and
214 effective response by the adult probation and parole section of the Department of Corrections
215 to an offender's:
216 (a) compliance with the terms of probation or parole; and
217 (b) positive conduct that exceeds those terms.

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

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

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

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

230 (c) The guidelines shall include:

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

235 (9) The commission shall establish and maintain supervision length guidelines in
236 accordance with this section [~~before October 1, 2018~~].

237 Section 4. Section **64-13-14.7** is amended to read:

238 **64-13-14.7. Victim notification of offender's release.**

239 (1) As used in this section:

240 (a) "Offender" means a person who committed an act of criminally injurious conduct
241 against the victim and has been sentenced to incarceration in the custody of the department.

242 (b) "Victim" means a person against whom an offender committed criminally injurious
243 conduct as defined in Section [63M-7-502](#), and who is entitled to notice of hearings regarding
244 the offender's parole under Section [77-27-9.5](#). "Victim" includes the legal guardian of a victim,

245 or the representative of the family of a victim who is deceased.

246 (2) (a) (i) ~~[A]~~ Upon submitting a signed written request of notification to the
247 Department of Corrections, a victim shall be notified of an offender's release under Sections
248 64-13-14.5 and 64-13-14.7, or any other release to or from a half-way house, to a program
249 outside of the prison such as a rehabilitation program, state hospital, community center other
250 than a release on parole, commutation or termination for which notice is provided under
251 Sections 77-27-9.5 and 77-27-9.7, transfer of the offender to an out-of-state facility, ~~[or]~~ an
252 offender's escape, ~~[upon submitting a signed written request of notification to the Department~~
253 ~~of Corrections]~~ or an offender's termination from probation or parole.

254 (ii) The request shall include a current mailing address and may include current
255 telephone numbers if the victim chooses.

256 (iii) The notice for an offender's termination from probation or parole shall notify the
257 victim that the victim may petition the court for the appropriate continuous protective order
258 under Subsection 78B-7-804(5) or 78B-7-805(5).

259 (b) (i) ~~[The]~~ Subject to Subsection (3)(b)(ii), the department shall advise the victim of
260 an offender's release or escape under Subsection (2)(a), in writing.

261 (ii) ~~[However, if]~~ If written notice is not feasible because the release is immediate or
262 the offender escapes, the department shall make a reasonable attempt to notify the victim by
263 telephone if the victim has provided a telephone number under Subsection (2)(a) and shall
264 follow up with a written notice.

265 (3) (a) Notice of victim rights under this section shall be provided to the victim in the
266 notice of hearings regarding parole under Section 77-27-9.5.

267 (b) The department shall coordinate with the Board of Pardons and Parole to ensure the
268 notice is implemented.

269 (4) A victim's request for notification under this section and any notification to a victim
270 under this section is private information that the department may not release:

271 (a) to the offender under any circumstances; or

272 (b) to any other party without the written consent of the victim.

273 (5) The department may make rules as necessary to implement this section.

274 (6) The department or its employees acting within the scope of their employment are
275 not civilly or criminally liable for failure to provide notice or improper notice under this section
276 unless the failure or impropriety is willful or grossly negligent.

277 Section 5. Section **64-13-29** is amended to read:

278 **64-13-29. Violation of parole or probation -- Detention -- Hearing.**

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

283 (i) a sanction of incarceration is recommended; ~~or~~

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

287 (iii) there is probable cause that the conduct that led to a violation of parole or
288 probation is:

289 (A) a violent felony as defined in Section [76-3-203.5](#); or

290 (B) a qualifying domestic violence offense as defined in Subsection [77-36-1.1\(4\)](#) that
291 is not a criminal mischief offense.

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

298 (c) If there is a conviction for a crime based on the same charges as the probation or

299 parole violation, or a finding by a federal or state court that there is probable cause to believe
300 that an offender has committed a crime based on the same charges as the probation or parole
301 violation, the department need not hold an administrative hearing.

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

306 (3) (a) Pending any proceeding under this section for a violation of probation or parole,
307 the department:

308 (i) except as provided in Subsection (3)(b), may take custody of and detain the parolee
309 or probationer [~~involved~~] who committed the violation for a period not to exceed 72 hours
310 excluding weekends and holidays[-]; and

311 (ii) if the department or the department's agent has probable cause that the conduct that
312 led to the violation is an offense described in Subsection (1)(a)(iii), shall take custody of and
313 detain the parolee or probationer who committed the violation for a period not to exceed 72
314 hours excluding weekends and holidays.

315 (b) The 72-hour period described in this Subsection (3) is reduced by the amount of
316 time a probationer or parolee is detained under Subsection [17-22-5.5\(6\)](#).

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

320 (a) the probationer commits a major violation or repeated violations of probation;

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

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

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

328 (6) If the hearing officer determines that there is probable cause to believe that the
329 offender has violated the conditions of the offender's parole or probation, the department may
330 detain the offender for a reasonable period of time after the hearing or waiver, as necessary to
331 arrange for the incarceration of the offender. A written order of the department is sufficient
332 authorization for any peace officer to incarcerate the offender. The department may promulgate
333 rules for the implementation of this section.

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

336 (a) the probationers are supervised by a local law enforcement agency; and

337 (b) the appropriate officer or officers determine that there is probable cause to believe
338 that the offender has violated the conditions of probation.

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

342 Section 6. Section **77-18-103** is amended to read:

343 **77-18-103. Presentence investigation report -- Classification of presentence**
344 **investigation report -- Evidence or other information at sentencing.**

345 (1) Before the imposition of a sentence, the court may:

346 (a) upon agreement of the defendant, continue the date for the imposition of the
347 sentence for a reasonable period of time for the purpose of obtaining a presentence
348 investigation report from the department [~~or information from other sources~~] or a law
349 enforcement agency, or information from any other source about the defendant; and

350 (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the
351 department or a law enforcement agency prepare a presentence investigation report for the
352 defendant.

353 (2) If a presentence investigation report is required under the standards established by
354 the department described in Section 77-18-109, the presentence investigation report under
355 Subsection (1) shall include:

356 (a) any impact statement provided by a victim as described in Subsection
357 77-38b-203(3)(c);

358 (b) information on restitution as described in [~~Subsection~~] Subsections
359 77-38b-203(3)(a) and (b);

360 (c) findings from any screening and any assessment of the defendant conducted under
361 Section 77-18-104;

362 (d) recommendations for treatment for the defendant; and

363 (e) the number of days since the commission of the offense that the defendant has spent
364 in the custody of the jail and the number of days, if any, the defendant was released to a
365 supervised release program or an alternative incarceration program under Section 17-22-5.5.

366 (3) The department or law enforcement agency shall provide the presentence
367 investigation report to the defendant's attorney, or the defendant if the defendant is not
368 represented by counsel, the prosecuting attorney, and the court for review within three working
369 days before the day on which the defendant is sentenced.

370 (4) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that is
371 not resolved by the parties and the department or law enforcement agency before sentencing:

372 (A) the alleged inaccuracy shall be brought to the attention of the court at sentencing;
373 and

374 (B) the court may grant an additional 10 working days after the day on which the
375 alleged inaccuracy is brought to the court's attention to allow the parties and the department to
376 resolve the alleged inaccuracy in the presentence investigation report.

377 (ii) If the court does not grant additional time under Subsection (4)(a)(i)(B), or the
378 alleged inaccuracy cannot be resolved after 10 working days, and if the court finds that there is
379 an inaccuracy in the presentence investigation report, the court shall:

380 (A) enter a written finding as to the relevance and accuracy of the challenged portion of
381 the presentence investigation report; and

382 (B) provide the written finding to the Division of Adult Probation and Parole or the
383 law enforcement agency.

384 (b) The Division of Adult Probation and Parole shall attach the written finding to the
385 presentence investigation report as an addendum.

386 (c) If a party fails to challenge the accuracy of the presentence investigation report at
387 the time of sentencing, the matter shall be considered waived.

388 (5) The contents of the presentence investigation report are protected and not available
389 except by court order for purposes of sentencing as provided by rule of the Judicial Council or
390 for use by the department or law enforcement agency.

391 (6) (a) A presentence investigation report is classified as protected in accordance with
392 Title 63G, Chapter 2, Government Records Access and Management Act.

393 (b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee
394 may not order the disclosure of a presentence investigation report.

395 (7) Except for disclosure at the time of sentencing in accordance with this section, the
396 department or law enforcement agency may disclose a presentence investigation only when:

397 (a) ordered by the court in accordance with Subsection 63G-2-202(7);

398 (b) requested by a law enforcement agency or other agency approved by the department
399 for purposes of supervision, confinement, and treatment of a defendant;

400 (c) requested by the board;

401 (d) requested by the subject of the presentence investigation report or the subject's
402 authorized representative;

403 (e) requested by the victim of the offense discussed in the presentence investigation
404 report, or the victim's authorized representative, if the disclosure is only information relating
405 to:

406 (i) statements or materials provided by the victim;

- 407 (ii) the circumstances of the offense, including statements by the defendant; or
- 408 (iii) the impact of the offense on the victim or the victim's household; or
- 409 (f) requested by a sex offender treatment provider:
 - 410 (i) who is certified to provide treatment under the certification program established in
 - 411 Subsection 64-13-25(3);
 - 412 (ii) who is providing, at the time of the request, sex offender treatment to the offender
 - 413 who is the subject of the presentence investigation report; and
 - 414 (iii) who provides written assurance to the department that the report:
 - 415 (A) is necessary for the treatment of the defendant;
 - 416 (B) will be used solely for the treatment of the defendant; and
 - 417 (C) will not be disclosed to an individual or entity other than the defendant.
- 418 (8) (a) At the time of sentence, the court shall receive any testimony, evidence, or
- 419 information that the defendant or the prosecuting attorney desires to present concerning the
- 420 appropriate sentence.
 - 421 (b) Testimony, evidence, or information under Subsection (8)(a) shall be presented in
 - 422 open court on record and in the presence of the defendant.
- 423 Section 7. Section 77-18-105 is amended to read:
- 424 **77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**
- 425 **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench**
- 426 **supervision for payments on criminal accounts receivable.**
 - 427 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in
 - 428 abeyance agreement, the court may hold the plea in abeyance:
 - 429 (a) in accordance with Chapter 2a, Pleas in Abeyance; and
 - 430 (b) under the terms of the plea in abeyance agreement.
 - 431 (2) If a defendant is convicted, the court:
 - 432 (a) shall impose a sentence in accordance with Section 76-3-201; and
 - 433 (b) subject to Subsection (5), may suspend the execution of the sentence and place the

434 defendant:

435 (i) on probation under the supervision of the department~~[, except as provided in~~
436 ~~Subsection (5)]~~;

437 (ii) on probation under the supervision of an agency of a local government or a private
438 organization; or

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

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

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

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

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

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

451 ~~[(5) A court may not order the department to supervise the probation of an individual~~
452 ~~who is convicted of a class B or C misdemeanor or an infraction.]~~

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

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

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

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

459 (ii) A court may only order:

460 (A) the department to supervise the probation for an individual convicted of a class A

461 misdemeanor or any felony; or

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

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

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

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

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

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

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

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

480 (vi) to participate in compensatory service programs, including the compensatory
481 service program described in Section 76-6-107.1;

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

483 (viii) to pay a criminal accounts receivable established for the defendant under Section
484 77-32b-103; or

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

487 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a

488 defendant to include a period of time that is served in a county jail immediately before the
489 termination of probation as long as that period of time does not exceed one year.

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

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

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

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

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

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

505 (c) Probation of an individual placed on probation on or after October 1, 2015, but
506 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
507 completion without violation of 36 months probation in felony or class A misdemeanor cases,
508 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance
509 with Section 64-13-21 regarding earned credits.

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

512 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal
513 accounts receivable for the defendant upon termination of the probation period for the
514 defendant under Subsection (7), the court may require the defendant to continue to make

515 payments towards the criminal accounts receivable in accordance with the payment schedule
516 established by the court under Section 77-32b-103.

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

519 (c) If the court requires a defendant to continue to pay in accordance with the payment
520 schedule for the criminal accounts receivable under this Subsection (8) and the defendant
521 defaults on the criminal accounts receivable, the court shall proceed with an order for a civil
522 judgment of restitution and a civil accounts receivable for the defendant as described in Section
523 77-18-114.

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

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

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

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

535 Section 8. Section 77-18-108 is amended to read:

536 **77-18-108. Termination, revocation, modification, or extension of probation --**
537 **Violation of probation -- Hearing on violation.**

538 (1) (a) The department shall notify the court and the prosecuting attorney, in writing:

539 (i) when the department is requesting termination of supervision for a defendant; or

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

541 (b) The notification under this Subsection (1) shall include a probation progress report.

542 (c) If a defendant's probation is being terminated, and the defendant's criminal accounts
543 receivable has an unpaid balance or there is any outstanding debt with the department, the
544 department shall notify the Office of State Debt Collection that the defendant's criminal
545 accounts receivable has an unpaid balance or there is an outstanding debt with the department.

546 (2) (a) The court may modify the defendant's probation in accordance with the
547 supervision length guidelines and the graduated and evidence-based responses and graduated
548 incentives developed by the Utah Sentencing Commission under Section [63M-7-404](#).

549 (b) The court may not:

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

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

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

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

556 (iii) terminate a defendant's probation before expiration of the probation period until
557 the court enters a finding of whether the defendant owes restitution under Section [77-38b-205](#).

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

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

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

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

569 modified, or extended.

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

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

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

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

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

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

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

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

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

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

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

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

596 (f) At the hearing, the defendant may:

597 (i) call witnesses;

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

599 (iii) present evidence.

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

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

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

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

610 ~~[(b) If a period of incarceration is imposed for a violation of the defendant's probation,~~
611 ~~the defendant shall be sentenced within]~~

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

614 (i) order a period of incarceration that is consistent with the guidelines established by
615 the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4)~~], unless the~~
616 ~~court determines that.];~~

617 ~~[(i) the defendant needs substance abuse or mental health treatment, as determined by a~~
618 ~~screening and an assessment, that warrants treatment services that are immediately available in~~
619 ~~the community; or]~~

620 (ii) order a period of incarceration that deviates from the guidelines with an
621 explanation for the deviation on the record;

622 (iii) order treatment services that are immediately available in the community for a

623 defendant that needs substance abuse or mental health treatment, as determined by a screening
624 and assessment;

625 ~~[(ii)]~~ (iv) execute the sentence previously imposed ~~[shall be executed.]; or~~

626 (v) order any other appropriate sanction.

627 (c) If the defendant had, before the imposition of a term of incarceration or the
628 execution of the previously imposed sentence under this section, served time in jail as a term of
629 probation or due to a violation of probation, the time that the defendant served in jail
630 constitutes service of time toward the sentence previously imposed.

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

632 (i) outside of confinement after having been charged with a probation violation, and
633 before a hearing to revoke probation, does not constitute service of time toward the total
634 probation term, unless the defendant is exonerated at a hearing to revoke the defendant's
635 probation;

636 (ii) in confinement awaiting a hearing or a decision concerning revocation of the
637 defendant's probation does not constitute service of time toward the total probation term, unless
638 the defendant is exonerated at the hearing to revoke probation; or

639 (iii) in confinement awaiting a hearing or a decision concerning revocation of the
640 defendant's probation constitutes service of time toward a term of incarceration imposed as a
641 result of the revocation of probation or a graduated and evidence-based response imposed
642 under the guidelines established by the Utah Sentencing Commission in accordance with
643 Section [63M-7-404](#).

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

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

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

648 Section 9. Section **77-27-11** is amended to read:

649 **77-27-11. Revocation of parole.**

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

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

654 (i) shall immediately report the alleged violation to the board, by means of an incident
655 report; and

656 (ii) make any recommendation regarding the incident.

657 (b) A parolee may not be held for a period longer than 72 hours, excluding weekends
658 and holidays, without first obtaining a warrant.

659 (3) Any member of the board may:

660 (a) issue a warrant based upon a certified warrant request to a peace officer or other
661 persons authorized to arrest, detain, and return to actual custody a parolee; and

662 (b) upon arrest of the parolee, determine, or direct the department to determine, if there
663 is probable cause to believe that the parolee has violated the conditions of the parolee's parole.

664 (4) Upon a finding of probable cause, a parolee may be further detained or imprisoned
665 again pending a hearing by the board or the board's appointed examiner.

666 (5) (a) The board or the board's appointed examiner shall conduct a hearing on the
667 alleged violation, and the parolee shall have written notice of the time and location of the
668 hearing, the alleged violation of parole, and a statement of the evidence against the parolee.

669 (b) The board or the board's appointed examiner shall provide the parolee the
670 opportunity:

671 (i) to be present;

672 (ii) to be heard;

673 (iii) to present witnesses and documentary evidence;

674 (iv) to confront and cross-examine adverse witnesses, absent a showing of good cause
675 for not allowing the confrontation; and

676 (v) to be represented by counsel when the parolee is mentally incompetent or pleading

677 not guilty.

678 (c) (i) If heard by an appointed examiner, the examiner shall make a written decision
679 which shall include a statement of the facts relied upon by the examiner in determining the
680 guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the
681 alleged violation occurred.

682 (ii) The appointed examiner shall then refer the case to the board for disposition.

683 (d) (i) A final decision shall be reached by a majority vote of the sitting members of the
684 board.

685 (ii) A parolee shall be promptly notified in writing of the board's findings and decision.

686 (6) (a) If a parolee is found to have violated the terms of parole, the board, at the
687 board's discretion, may:

688 (i) return the parolee to parole;

689 (ii) modify the payment schedule for the parolee's criminal accounts receivable in
690 accordance with Section 77-32b-105;

691 (iii) order the parolee to pay pecuniary damages that are proximately caused by a
692 defendant's violation of the terms of the defendant's parole;

693 (iv) order the parolee to be imprisoned, but not to exceed the maximum term of
694 imprisonment for the parolee's sentence; or

695 (v) order any other conditions for the parolee.

696 (b) If the board returns the parolee to parole, the length of parole may not be for a
697 period of time that exceeds the length of the parolee's maximum sentence.

698 (c) If the board revokes parole for a violation and orders incarceration, the board [~~shall~~
699 ~~impose a period of incarceration~~] may impose a period of incarceration:

700 (i) consistent with the guidelines under Subsection 63M-7-404(5)[-]; or

701 (ii) subject to Subsection (6)(a)(iv), impose a period of incarceration that differs from
702 the guidelines.

703 (d) The following periods of time constitute service of time toward the period of

704 incarceration imposed under Subsection (6)(c):
705 (i) time served in jail by a parolee awaiting a hearing or decision concerning revocation
706 of parole; and
707 (ii) time served in jail by a parolee due to a violation of parole under Subsection
708 [64-13-6\(2\)](#).