

INMATE PROGRAM AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns programs for inmates.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Sentencing Commission, the Board of Pardons and Parole, and the Department of Corrections (department) to develop a procedure that will provide the department with the ability to determine an inmate's earliest estimated release date from a correctional facility;
- ▶ requires the department to:
 - report on the department's inmate program implementation progress;
 - use an inmate's earliest estimated release date when determining the timing of an inmate's programs;
 - create an incentive program to encourage an inmate to complete the inmate's programs by the inmate's earliest estimated release date;
 - ensure that an inmate may continue participating in programs in certain circumstances;
 - start an inmate in at least two of the inmate's programs as soon as the inmate's case action plan is created;
 - allow an inmate to participate in more than one program at a time throughout



28 the inmate's time within the correctional facility; and

29 • periodically confer with an inmate to determine whether an inmate is on track to
30 complete the inmate's programs by the inmate's earliest estimated release date;

31 and

32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **63M-7-404**, as last amended by Laws of Utah 2022, Chapters 115, 185 and 328

40 **64-13-6**, as last amended by Laws of Utah 2022, Chapter 187

41 ENACTS:

42 **64-13-49**, Utah Code Annotated 1953



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

45 Section 1. Section **63M-7-404** is amended to read:

46 **63M-7-404. Purpose -- Duties.**

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

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

50 (i) respond to public comment;

51 (ii) relate sentencing practices and correctional resources;

52 (iii) increase equity in criminal sentencing;

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

54 (v) enhance the discretion of sentencing judges while preserving the role of the Board
55 of Pardons and Parole and the Youth Parole Authority;

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

57 (i) increase equity in criminal supervision lengths;

58 (ii) respond to public comment;

- 59 (iii) relate the length of supervision to an offender's progress;
- 60 (iv) take into account an offender's risk of offending again;
- 61 (v) relate the length of supervision to the amount of time an offender has remained
62 under supervision in the community; and
- 63 (vi) enhance the discretion of the sentencing judges while preserving the role of the
64 Board of Pardons and Parole; and
- 65 (c) appropriate, evidence-based probation and parole supervision policies and services
66 that assist individuals in successfully completing supervision and reduce incarceration rates
67 from community supervision programs while ensuring public safety, including:
- 68 (i) treatment and intervention completion determinations based on individualized case
69 action plans;
- 70 (ii) measured and consistent processes for addressing violations of conditions of
71 supervision;
- 72 (iii) processes that include using positive reinforcement to recognize an individual's
73 progress in supervision;
- 74 (iv) engaging with social services agencies and other stakeholders who provide
75 services that meet offender needs; and
- 76 (v) identifying community violations that may not warrant revocation of probation or
77 parole.
- 78 (2) (a) The commission shall modify the sentencing guidelines and supervision length
79 guidelines for adult offenders to implement the recommendations of the Commission on
80 Criminal and Juvenile Justice for reducing recidivism.
- 81 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting
82 the public and ensuring efficient use of state funds.
- 83 (3) (a) The commission shall modify the criminal history score in the sentencing
84 guidelines for adult offenders to implement the recommendations of the Commission on
85 Criminal and Juvenile Justice for reducing recidivism.
- 86 (b) The modifications to the criminal history score under Subsection (3)(a) shall
87 include factors in an offender's criminal history that are relevant to the accurate determination
88 of an individual's risk of offending again.
- 89 (4) (a) The commission shall establish sentencing guidelines for periods of

90 incarceration for individuals who are on probation and:

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

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

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

94 a court consider:

95 (i) the seriousness of any violation of the condition of probation;

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

97 (iii) the probationer's criminal history.

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

99 incarceration for individuals who are on parole and:

100 (i) who have violated a condition of parole; and

101 (ii) whose parole has been revoked by the Board of Pardons and Parole.

102 (b) For a situation described in Subsection (5)(a), the guidelines shall recommend that

103 the Board of Pardons and Parole consider:

104 (i) the seriousness of any violation of the condition of parole;

105 (ii) the individual's conduct while on parole; and

106 (iii) the individual's criminal history.

107 (6) The commission shall establish graduated and evidence-based processes to

108 facilitate the prompt and effective response to an individual's progress in or violation of the

109 terms of probation or parole by the adult probation and parole section of the Department of

110 Corrections, or other supervision services provider, to implement the recommendations of the

111 Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration,

112 including:

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

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

115 action plan;

116 (c) when a violation of a condition of probation or parole should be reported to the

117 court or the Board of Pardons and Parole; and

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

119 (i) three consecutive days; and

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

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

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

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

- 128 (i) nonjudicially adjusted;
- 129 (ii) placed on diversion;
- 130 (iii) placed on probation;
- 131 (iv) placed on community supervision;
- 132 (v) placed in an out-of-home placement; or
- 133 (vi) placed in a secure care facility.

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

- 135 (i) the seriousness of the negative and positive behavior;
- 136 (ii) the juvenile's conduct post-adjudication; and
- 137 (iii) the delinquency history of the juvenile.

138 (c) The guidelines shall include:

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

143 (9) The commission shall establish and maintain supervision length guidelines in
144 accordance with this section.

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

- 148 (i) securities fraud, Sections 61-1-1 and 61-1-21;
- 149 (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment
150 adviser representative, Sections 61-1-3 and 61-1-21;
- 151 (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;

152 (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,
153 Assault and Related Offenses;

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

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

156 (vii) theft, Section 76-6-412;

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

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

159 (x) fraudulent insurance act, Section 76-6-521;

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

161 (xii) mortgage fraud, Sections 76-6-1203 and 76-6-1204;

162 (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;

163 (xiv) communications fraud, Section 76-10-1801;

164 (xv) money laundering, Section 76-10-1904; and

165 (xvi) other offenses in the discretion of the commission.

166 (b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix
167 with proportionate escalating sanctions based on the amount of a victim's loss.

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

170 (11) (a) Before January 1, 2023, the commission shall study the offenses of sexual
171 exploitation of a minor and aggravated sexual exploitation of a minor under Sections
172 76-5b-201 and 76-5b-201.1.

173 (b) The commission shall update sentencing and release guidelines and juvenile
174 disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection
175 (11)(a), including the application of aggravating and mitigating factors specific to the offense.

176 (12) (a) On or before January 1, 2025, the commission shall coordinate with the Board
177 of Pardons and Parole and the Department of Corrections to develop a procedure that will
178 provide the Department of Corrections with the ability to determine an inmate's earliest
179 estimated release date as described in Section 64-13-49.

180 (b) The procedure described in Subsection (12)(a) shall include factors that may be
181 relevant to the determination of an estimated earliest release date for an inmate, including:

182 (i) the type and severity of offenses;

- 183 (ii) prior criminal history;
- 184 (iii) criminogenic risk factors; and
- 185 (iv) evidence-based assessments.

186 Section 2. Section **64-13-6** is amended to read:

187 **64-13-6. Department duties.**

188 (1) The department shall:

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

191 (b) implement court-ordered punishment of offenders;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230 (n) ensure that any training or certification required of a public official or public
231 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter
232 22, State Training and Certification Requirements, if the training or certification is required:

233 (i) under this title;

234 (ii) by the department; or

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

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

237 (a) respond in accordance with the graduated and evidence-based processes established
238 by the Utah Sentencing Commission under Subsection [63M-7-404\(6\)](#), to an individual's
239 violation of one or more terms of the probation or parole; and

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

244 (3) (a) By following the procedures in Subsection (3)(b), the department may

245 investigate the following occurrences at state correctional facilities:

- 246 (i) criminal conduct of departmental employees;
247 (ii) felony crimes resulting in serious bodily injury;
248 (iii) death of any person; or
249 (iv) aggravated kidnaping.

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

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

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

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

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

264 (b) Beginning in the 2022 interim, the department shall provide an annual report to the
265 Law Enforcement and Criminal Justice Interim Committee regarding:

266 (i) the department's implementation of and offender participation in evidence-based
267 and evidence-informed treatment and program opportunities designed to reduce the
268 criminogenic and recidivism risks of offenders over time[-]; and

269 (ii) the progress of the department's implementation of the inmate program
270 requirements described in Section 64-13-49.

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

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

274 (ii) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures,
275 surcharges, costs, interest, penalties, restitution to victims, third-party claims, claims,

276 reimbursement of a reward, and damages that an offender is ordered to pay.

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

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

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

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

287 (ii) If the board makes an order for restitution within 60 days from the day on which
288 the offender's sentence expires or terminates, the board shall refer the order for restitution to
289 the sentencing court to be entered as a civil judgment of restitution as described in Section
290 77-18-114.

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

292 Section 3. Section 64-13-49 is enacted to read:

293 **64-13-49. Inmate program requirements.**

294 (1) As used in this section:

295 (a) "Earliest estimated release date" means the estimated earliest release date,
296 determined by using the earliest estimated release date procedure, that an inmate may
297 reasonably be expected to be released from a correctional facility.

298 (b) "Earliest estimated release date procedure" means the procedure created in
299 accordance with Subsection 63M-7-404(12) for estimating an inmate's earliest estimated
300 release date.

301 (c) (i) "Program" means a part of an inmate's case action plan that is required or
302 optional and includes:

303 (A) sex offender treatment;

304 (B) substance use treatment;

305 (C) educational programs, including literacy programs;

306 (D) career-readiness programs; and

307 (E) transition programs meant to prepare an inmate who is about to leave a correctional
308 facility in accordance with Section [64-13-10.6](#).

309 (ii) "Program" includes online and in-person programs.

310 (2) On or before January 1, 2025, the department shall:

311 (a) use an inmate's earliest estimated release date when determining the timing of an
312 inmate's programs to ensure that an inmate will have the ability to complete all of the inmate's
313 programs by the inmate's earliest estimated release date;

314 (b) create an incentive plan to encourage an inmate to complete the inmate's programs
315 by the inmate's earliest estimated release date;

316 (c) ensure that when an inmate is transferred within a correctional facility or to a
317 different correctional facility, the inmate is able to continue all programs that the inmate has
318 already started and has not yet completed, without requiring the inmate to restart a program
319 from the beginning or wait on a waiting list for the program;

320 (d) ensure that if an inmate opts out of an optional program, the inmate is able to rejoin
321 the program within six months without being required to restart the program from the
322 beginning or wait on a waiting list;

323 (e) as soon as an inmate's case action plan is created in accordance with Subsection
324 [64-13-6\(1\)\(m\)](#), start the inmate in at least two of the inmate's programs;

325 (f) allow an inmate to participate in more than one program at a time throughout the
326 inmate's time within the correctional facility, including, if applicable, providing technological
327 methods for an inmate to participate in an online program; and

328 (g) periodically confer with an inmate and, if necessary, the Board of Pardons and
329 Parole, to determine whether the inmate is on track to complete all of the inmate's programs by
330 the inmate's earliest estimated release date.