

Senator Derrin R. Owens proposes the following substitute bill:

**UTAH STATE CORRECTIONAL FACILITY OPERATIONAL
AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill addresses Department of Corrections operations, including treatment and program opportunities for offenders.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Corrections to offer offenders program opportunities that are evidence-based and evidence-informed;
- ▶ requires the Department of Corrections to implement direct supervision where appropriate to reduce violence and enhance offenders' voluntary participation in program opportunities;
- ▶ requires the Department of Corrections to develop an individual case action plan for each offender that includes program priorities based on assessments of the offender's risk, needs, and responsivity;
- ▶ requires the Department of Corrections to share an individual's case action plan, including changes to or progress made in the plan, with the sentencing and release authority;



26 ▶ requires the sentencing and release authority to consider an individual's case action
27 plan when making decisions;

28 ▶ requires the Department of Corrections to provide training in direct supervision and
29 trauma-informed care; and

30 ▶ exempts the Department of Corrections shooting ranges from public access.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill provides a coordination clause.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **47-3-305**, as enacted by Laws of Utah 2013, Chapter 155 and further amended by
38 Revisor Instructions, Laws of Utah 2013, Chapter 155

39 **64-13-1**, as last amended by Laws of Utah 2016, Chapter 243

40 **64-13-6**, as last amended by Laws of Utah 2018, Chapter 200

41 **64-13-14**, as last amended by Laws of Utah 2007, Chapter 306

42 **64-13-24**, as last amended by Laws of Utah 1987, Chapter 116

43 **77-18-1**, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354

44 **77-27-5**, as last amended by Laws of Utah 2019, Chapter 148

45 **Utah Code Sections Affected by Coordination Clause:**

46 **77-18-1**, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354

47 **77-18-105**, Utah Code Annotated 1953



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

50 Section 1. Section **47-3-305** is amended to read:

51 **47-3-305. Exceptions and prohibitions.**

52 (1) This part does not apply to:

53 (a) shooting ranges that are otherwise open to the public;

54 (b) shooting ranges that are operated as a public shooting range staffed by and operated
55 by Division of Wildlife Resources;

56 (c) the Utah National Guard ranges located at Camp Williams and the Salt Lake

57 International Airport; ~~and~~

58 (d) Department of Corrections ranges; and

59 ~~[(d)]~~ (e) ranges owned, operated, or currently leased as of March 26, 2013, by a state or
60 local public safety agency.

61 (2) Firearms may not be allowed in a school building, except under the provision of
62 Section 76-10-505.5, unless there is an outdoor entrance to the shooting range and the most
63 direct access to the range is used. An outdoor entrance to a shooting range may not be blocked
64 by fences, structures, or gates for the purpose of blocking the outdoor entrance.

65 (3) Only air guns may be used in public ranges where the ventilation systems do not
66 meet current OSHA standards as applied to the duration of exposure of the participants. For
67 the purposes of this part, an air gun does not include larger caliber pneumatic weapons,
68 paintball guns, or air shotguns.

69 (4) Group range use is a lawful, approved activity under Subsection 76-10-505.5(4)(a).
70 Section 2. Section **64-13-1** is amended to read:

71 **64-13-1. Definitions.**

72 As used in this chapter:

73 (1) "Case action plan" means a document developed by the Department of Corrections
74 that identifies:

75 (a) the program priorities for the treatment of the offender, including the criminal risk
76 factors as determined by ~~[a risk and needs assessment]~~ risk, needs, and responsivity
77 assessments conducted by the department~~[-]; and~~

78 (b) clearly defined completion requirements.

79 (2) "Community correctional center" means a nonsecure correctional facility operated
80 by the department.

81 (3) "Correctional facility" means any facility operated to house offenders, either in a
82 secure or nonsecure setting:

83 (a) by the department; or

84 (b) under a contract with the department.

85 (4) "Criminal risk factors" means a person's characteristics and behaviors that:

86 (a) affect that person's risk of engaging in criminal behavior; and

87 (b) are diminished when addressed by effective treatment, supervision, and other

88 support resources, resulting in a reduced risk of criminal behavior.

89 (5) "Department" means the Department of Corrections.

90 (6) "Direct supervision" means a housing and supervision system that is designed to
91 meet the goals described in Subsection 64-13-14(5) and has the elements described in
92 Subsection 64-13-14(6).

93 [~~6~~] (7) "Emergency" means any riot, disturbance, homicide, inmate violence
94 occurring in any correctional facility, or any situation that presents immediate danger to the
95 safety, security, and control of the department.

96 (8) "Evidence-based" means a program or practice that has had multiple randomized
97 control studies or a meta-analysis demonstrating that the program or practice is effective for a
98 specific population or has been rated as effective by a standardized program evaluation tool.

99 (9) "Evidence-informed" means a program or practice that is based on research and the
100 experience and expertise of the department.

101 [~~7~~] (10) "Executive director" means the executive director of the Department of
102 Corrections.

103 [~~8~~] (11) "Inmate" means any person who is committed to the custody of the
104 department and who is housed at a correctional facility or at a county jail at the request of the
105 department.

106 [~~9~~] (12) "Offender" means any person who has been convicted of a crime for which
107 he may be committed to the custody of the department and is at least one of the following:

- 108 (a) committed to the custody of the department;
- 109 (b) on probation; or
- 110 (c) on parole.

111 [~~10~~] (13) "Risk and needs assessment" means an actuarial tool validated on criminal
112 offenders that determines:

- 113 (a) an individual's risk of reoffending; and
- 114 (b) the criminal risk factors that, when addressed, reduce the individual's risk of
115 reoffending.

116 [~~11~~] (14) "Secure correctional facility" means any prison, penitentiary, or other
117 institution operated by the department or under contract for the confinement of offenders,
118 where force may be used to restrain them if they attempt to leave the institution without

119 authorization.

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

121 **64-13-6. Department duties.**

122 (1) The department shall:

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

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

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

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

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

133 [~~(d)~~] (f) provide treatment for sex offenders who are found to be treatable based upon
134 criteria developed by the department;

135 [~~(e)~~] (g) provide the results of ongoing clinical assessment of sex offenders and
136 objective diagnostic testing to sentencing and release authorities;

137 [~~(f)~~] (h) manage programs that take into account the needs and interests of victims,
138 where reasonable;

139 [~~(g)~~] (i) supervise probationers and parolees as directed by statute and implemented by
140 the courts and the Board of Pardons and Parole;

141 [~~(h)~~] (j) subject to Subsection (2), investigate criminal conduct involving offenders
142 incarcerated in a state correctional facility;

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

146 [~~(j)~~] (l) implement the provisions of Title 77, Chapter 28c, Interstate Compact for
147 Adult Offender Supervision;

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

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

153 ~~[(ii)]~~ (B) if the offender is committed to the custody of the department, the case action
154 plan shall be established for the offender not more than 120 days after the commitment; ~~[and]~~

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

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

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

163 ~~[(n)]~~ (n) ensure that any training or certification required of a public official or public
164 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter
165 22, State Training and Certification Requirements, if the training or certification is required:

- 166 (i) under this title;
- 167 (ii) by the department; or
- 168 (iii) by an agency or division within the department.

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

170 (a) impose graduated sanctions, as established by the Utah Sentencing Commission
171 under Subsection [63M-7-404](#)(6), for an individual's violation of one or more terms of the
172 probation or parole; and

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

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

- 179 (i) criminal conduct of departmental employees;
- 180 (ii) felony crimes resulting in serious bodily injury;

181 (iii) death of any person; or

182 (iv) aggravated kidnaping.

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

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

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

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

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

197 (b) Beginning in the 2022 interim, the department shall provide an annual report to the
198 Law Enforcement and Criminal Justice Interim Committee regarding the department's
199 implementation of and offender participation in evidence-based and evidence-informed
200 treatment and program opportunities designed to reduce the criminogenic and recidivism risks
201 of offenders over time.

202 [~~5~~] (6) The Department of Corrections shall collect accounts receivable ordered by
203 the district court as a result of prosecution for a criminal offense according to the requirements
204 and during the time periods established in Subsection 77-18-1(9).

205 Section 4. Section **64-13-14** is amended to read:

206 **64-13-14. Secure correctional facilities.**

207 (1) The department shall maintain and operate secure correctional facilities for the
208 incarceration of offenders.

209 (2) For each compound of secure correctional facilities, as established by the executive
210 director, wardens shall be appointed as the chief administrative officers by the executive
211 director.

212 (3) The department may transfer offenders from one correctional facility to another and
213 may, with the consent of the sheriff, transfer any offender to a county jail.

214 (4) Where new or modified facilities are designed appropriately, the department shall
215 implement an evidence-based direct supervision system in accordance with Subsections (5) and
216 (6).

217 (5) A direct supervision system shall be designed to meet the goals of:

218 (a) reducing offender violence;

219 (b) enhancing offenders' participation in treatment, program, and work opportunities;

220 (c) managing and reducing offender risk;

221 (d) promoting pro-social offender behaviors;

222 (e) providing a tiered-housing structure that:

223 (i) rewards an offender's pro-social behaviors and progress toward the completion
224 requirements of the offender's individual case action plan with less restrictive housing and
225 increased privileges; and

226 (ii) houses similarly behaving offenders together; and

227 (f) reducing departmental costs.

228 (6) A direct supervision system shall include the following elements:

229 (a) department staff will interact continuously with offenders to actively manage
230 offenders' behavior and to identify problems at early stages;

231 (b) department staff will use management techniques designed to prevent and
232 discourage negative offender behavior and encourage positive offender behavior;

233 (c) department staff will establish and maintain a professional supervisory relationship
234 with offenders; and

235 (d) barriers separating department staff and offenders shall be removed.

236 (7) Beginning in the 2022 interim, the department shall provide an annual report to the
237 Law Enforcement and Criminal Justice Interim Committee regarding the status of the
238 implementation of direct supervision.

239 Section 5. Section **64-13-24** is amended to read:

240 **64-13-24. Standards for staff training.**

241 To assure the safe and professional operation of correctional programs, the department
242 shall establish policies setting minimum standards for the basic training of all staff upon

243 employment, and the subsequent regular training of staff, including training on direct
244 supervision and trauma-informed care. The training standards of correctional officers who are
245 designated as peace officers shall be not less than those established by the Peace Officer
246 Standards and Training Council.

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

248 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
249 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
250 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
251 **monitoring.**

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

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

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

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

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

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

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

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

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

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

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

- 276 (i) the type of offense;
- 277 (ii) the results of a risk and needs assessment;
- 278 (iii) the demand for services;
- 279 (iv) the availability of agency resources;
- 280 (v) public safety; and
- 281 (vi) other criteria established by the department to determine what level of services
282 shall be provided.

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

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

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

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

293 (4) Notwithstanding other provisions of law, the department is not required to
294 supervise the probation of an individual convicted of a class B or C misdemeanor or an
295 infraction or to conduct presentence investigation reports on a class C misdemeanor or
296 infraction. However, the department may supervise the probation of a class B misdemeanant in
297 accordance with department standards.

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

302 (b) The presentence investigation report shall include:

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

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

308 (iii) findings from any screening and any assessment of the offender conducted under
309 Section 77-18-1.1;

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

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

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

317 (6) (a) The department shall provide the presentence investigation report to the
318 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
319 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
320 presentence investigation report, which have not been resolved by the parties and the
321 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
322 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
323 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
324 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

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

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

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

346 (e) participate in compensatory service restitution programs, including the
347 compensatory service program provided in Section 76-6-107.1;

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

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

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

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

355 (a) the parole period and any extension of that period in accordance with Subsection
356 77-27-6(4); and

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

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

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

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

365 (C) shall be terminated in accordance with the supervision length guidelines
366 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the

367 guidelines are consistent with the requirements of the law.

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

370 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
371 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
372 completion without violation of 36 months probation in felony or class A misdemeanor cases,
373 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
374 Section 64-13-21 regarding earned credits.

375 (b) (i) If, upon expiration or termination of the probation period under Subsection
376 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
377 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
378 probation for the limited purpose of enforcing the payment of the account receivable. If the
379 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
380 the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

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

397 (ii) Any time served in confinement awaiting a hearing or decision concerning

398 revocation of probation does not constitute service of time toward the total probation term
399 unless the probationer is exonerated at the hearing.

400 (iii) Any time served in confinement awaiting a hearing or decision concerning
401 revocation of probation constitutes service of time toward a term of incarceration imposed as a
402 result of the revocation of probation or a graduated sanction imposed under Section
403 [63M-7-404](#).

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

407 (12) (a) (i) Probation may be modified as is consistent with the supervision length
408 guidelines and the graduated sanctions and incentives developed by the Utah Sentencing
409 Commission under Section [63M-7-404](#).

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

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

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

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

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

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

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

- 429 (iv) The order shall also inform the defendant of a right to present evidence.
- 430 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit
431 or unsworn written declaration.
- 432 (ii) If the defendant denies the allegations of the affidavit or unsworn written
433 declaration, the prosecuting attorney shall present evidence on the allegations.
- 434 (iii) The persons who have given adverse information on which the allegations are
435 based shall be presented as witnesses subject to questioning by the defendant unless the court
436 for good cause otherwise orders.
- 437 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
438 and present evidence.
- 439 (e) (i) After the hearing the court shall make findings of fact.
- 440 (ii) Upon a finding that the defendant violated the conditions of probation, the court
441 may order the probation revoked, modified, continued, or reinstated for all or a portion of the
442 original term of probation.
- 443 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a
444 defendant to remain on probation for a period of time that exceeds the length of the defendant's
445 maximum sentence.
- 446 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked
447 and later reinstated, the total time of all periods of probation the defendant serves, relating to
448 the same sentence, may not exceed the defendant's maximum sentence.
- 449 (iv) If a period of incarceration is imposed for a violation, the defendant shall be
450 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to
451 Subsection [63M-7-404](#)(4), unless the judge determines that:
- 452 (A) the defendant needs substance abuse or mental health treatment, as determined by a
453 validated risk and needs screening and assessment, that warrants treatment services that are
454 immediately available in the community; or
- 455 (B) the sentence previously imposed shall be executed.
- 456 (v) If the defendant had, prior to the imposition of a term of incarceration or the
457 execution of the previously imposed sentence under this Subsection (12), served time in jail as
458 a condition of probation or due to a violation of probation under Subsection (12)(e)(iv), the
459 time the probationer served in jail constitutes service of time toward the sentence previously

460 imposed.

461 (13) The court may order the defendant to commit the defendant to the custody of the
462 Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a
463 condition of probation or stay of sentence, only after the superintendent of the Utah State
464 Hospital or the superintendent's designee has certified to the court that:

465 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

466 (b) treatment space at the hospital is available for the defendant; and

467 (c) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for
468 treatment over the defendants described in this Subsection (13).

469 (14) Presentence investigation reports are classified protected in accordance with Title
470 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
471 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
472 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
473 this section, the department may disclose the presentence investigation only when:

474 (a) ordered by the court pursuant to Subsection 63G-2-202(7);

475 (b) requested by a law enforcement agency or other agency approved by the department
476 for purposes of supervision, confinement, and treatment of the offender;

477 (c) requested by the Board of Pardons and Parole;

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

480 (e) requested by the victim of the crime discussed in the presentence investigation
481 report or the victim's authorized representative, provided that the disclosure to the victim shall
482 include only information relating to statements or materials provided by the victim, to the
483 circumstances of the crime including statements by the defendant, or to the impact of the crime
484 on the victim or the victim's household; or

485 (f) requested by a sex offender treatment provider who is certified to provide treatment
486 under the program established in Subsection 64-13-25(3) and who, at the time of the request:

487 (i) is providing sex offender treatment to the offender who is the subject of the
488 presentence investigation report; and

489 (ii) provides written assurance to the department that the report:

490 (A) is necessary for the treatment of the offender;

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

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

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

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

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

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

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

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

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

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

509 (i) place the defendant on probation under the supervision of the Department of
510 Corrections;

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

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

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

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

519 (17) When making any decision regarding probation, the court shall consider
520 information provided by the Department of Corrections regarding a defendant's individual case
521 action plan, including any progress the defendant has made in satisfying the case action plan's

522 completion requirements.

523 Section 7. Section 77-27-5 is amended to read:

524 **77-27-5. Board of Pardons and Parole authority.**

525 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and
526 under what conditions any convictions, except for treason or impeachment, may be pardoned or
527 commuted, subject to this chapter and other laws of the state.

528 (b) The Board of Pardons and Parole shall determine by majority decision when and
529 under what conditions, subject to this chapter and other laws of the state, individuals
530 committed to serve sentences at penal or correctional facilities that are under the jurisdiction of
531 the Department of Corrections, except treason or impeachment convictions or as otherwise
532 limited by law, may be released upon parole, ordered to pay restitution, or have their fines,
533 forfeitures, or restitution remitted, or their sentences terminated.

534 (c) The board may sit together or in panels to conduct hearings. The chair shall appoint
535 members to the panels in any combination and in accordance with rules made in accordance
536 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the board. The chair may
537 participate on any panel and when doing so is chair of the panel. The chair of the board may
538 designate the chair for any other panel.

539 (d) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,
540 pardon, or commutation granted or sentence terminated, except after a full hearing before the
541 board or the board's appointed examiner in open session. Any action taken under this
542 subsection other than by a majority of the board shall be affirmed by a majority of the board.

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

544 (f) The board may determine restitution as provided in Section 77-27-6 and Subsection
545 77-38a-302(5)(d)(iii)(A).

546 (2) (a) In the case of any hearings, timely prior notice of the time and location of the
547 hearing shall be given to the offender.

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

551 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
552 notified of original hearings and any hearing after that if notification is requested and current

553 contact information has been provided to the board.

554 (d) Notice to the victim or the victim's representative shall include information
555 provided in Section 77-27-9.5, and any related rules made by the board under that section. This
556 information shall be provided in terms that are reasonable for the lay person to understand.

557 (3) Decisions of the board in cases involving paroles, pardons, commutations or
558 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not
559 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a
560 civil judgment, including restitution as provided in Section 77-27-6.

561 (4) This chapter may not be construed as a denial of or limitation of the governor's
562 power to grant respite or reprieves in all cases of convictions for offenses against the state,
563 except treason or conviction on impeachment. However, respites or reprieves may not extend
564 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall
565 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the
566 offense as provided. In the case of conviction for treason, the governor may suspend execution
567 of the sentence until the case is reported to the Legislature at its next session. The Legislature
568 shall then either pardon or commute the sentence, or direct its execution.

569 (5) In determining when, where, and under what conditions an offender serving a
570 sentence may be paroled, pardoned, have restitution ordered, or have the offender's fines or
571 forfeitures remitted, or the offender's sentence commuted or terminated, the board shall:

572 (a) consider whether the offender has made or is prepared to make restitution as
573 ascertained in accordance with the standards and procedures of Section 77-38a-302, as a
574 condition of any parole, pardon, remission of fines or forfeitures, or commutation or
575 termination of sentence; ~~and~~

576 (b) develop and use a list of criteria for making determinations under this Subsection
577 (5)~~[-];~~

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

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

584 (6) In determining whether parole may be terminated, the board shall consider:
585 (a) the offense committed by the parolee; and
586 (b) the parole period as provided in Section 76-3-202, and in accordance with Section
587 77-27-13.

588 (7) For offenders placed on parole after December 31, 2018, the board shall terminate
589 parole in accordance with the supervision length guidelines established by the Utah Sentencing
590 Commission under Section 63M-7-404, to the extent the guidelines are consistent with the
591 requirements of the law.

592 Section 8. **Coordinating S.B. 139 with H.B. 260 -- Technical and substantive**
593 **amendments.**

594 If this S.B. 139 and H.B. 260, Criminal Justice Modifications, both pass and become
595 law, it is the intent of the Legislature that the Office of Legislative Research and General
596 Counsel shall prepare the Utah Code database for publication by:

597 (1) not making the changes to Section 77-18-1 in this S.B.139; and

598 (2) adding a new subsection (9) to Section 77-18-105 in H.B. 260:

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