

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2019 GENERAL SESSION

AN ACT relating to criminal procedure and sentencing; establishing an incentives and sanctions system for probation and parole supervision as specified; specifying authorized sanctions; providing a procedure for imposing sanctions; providing definitions; providing for the award of credit against original sentences for parolees; requiring the use of validated risk and need assessments; clarifying requirements for placement in an intensive supervision program; making conforming amendments; specifying applicability; providing rulemaking; repealing obsolete provisions; providing an appropriation; requiring reports; and providing for effective dates.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 7-13-1801 through 7-13-1803 are created to read:

ARTICLE 18  
PROBATION AND PAROLE INCENTIVES AND SANCTIONS

**7-13-1801. Incentives and sanctions system; duties of the department of corrections; definitions.**

(a) The department shall by rule and regulation establish, maintain and implement an incentives and sanctions system to utilize as responses to positive and negative behavior by probationers, parolees and conditional releasees under the department's supervision. The system shall provide for graduated responses to compliance violations and other violations of supervision conditions in a swift, certain and proportional manner and shall include guidance and procedures to determine when and how to:

(i) Request a warrant;

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(ii) Initiate and conduct any hearing required under W.S. 7-13-1803; and

(iii) Seek departmental approval to use custodial sanctions.

(b) To implement and continuously improve the incentives and sanctions system, the department shall:

(i) Provide information and training on the system to probation and parole agents and supervisors and to members and staff of the state board of parole;

(ii) Offer information and training on the system to the Wyoming supreme court, district court judges, circuit court judges, district attorneys, defense attorneys, law enforcement officers, corrections and detention officers, contracted service providers and other interested personnel;

(iii) Review the system at least one (1) time every five (5) years to ensure that the system adheres to evidence-based practices and that the use of incentives and sanctions by probation and parole agents is consistent throughout the state;

(iv) Ensure that the responses, guidance and procedures established in the system consider community safety and the needs of the victim and offender;

(v) Collect data relating to placement decisions determined by using the system;

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(vi) Aggregate collected data and submit a report by September 1 of each year to the joint judiciary interim committee.

(c) As used in this article:

(i) "Cognitive-behavioral programming" means programming or therapy that utilize cognitive-behavioral and social learning theories to target a person's dysfunctional beliefs, thoughts and patterns of behavior that contribute or lead to criminal behaviors;

(ii) "Compliance violation" means as defined in W.S. 7-13-401(a)(xv);

(iii) "Department" means the department of corrections.

**7-13-1802. Authorized sanctions.**

(a) The sanctions authorized under W.S. 7-13-1801(a) may include:

(i) Loss or restriction of privileges;

(ii) Community service;

(iii) Placement in an intensive supervision program established under W.S. 7-13-1102 or a nonresidential community correctional program established under W.S. 7-18-103 or 7-18-104;

(iv) Custodial sanctions authorized under subsection (b) of this section, subject to any procedure

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required under W.S. 7-13-1803 and any rules promulgated under W.S. 7-13-1801(a).

(b) Subject to the requirements in W.S. 7-13-1803(c), custodial sanctions authorized by W.S. 7-13-1801(a) for compliance violations shall include one (1) or more of the following:

(i) A sanction of time served in custody between arrest and hearing or between arrest and the disposition of the alleged violation if a hearing is not held;

(ii) Immediate confinement in a consenting Wyoming county jail, to be imposed as a two (2) or three (3) day consecutive period;

(iii) Confinement in a consenting Wyoming county jail for up to fifteen (15) consecutive days in addition to any time served between arrest and hearing;

(iv) Confinement for up to ninety (90) days in a residential community correction program established under W.S. 7-18-103 or 7-18-104 coupled with substance abuse treatment, cognitive-behavioral programming to address criminal thinking or other programming that the department deems appropriate;

(v) Confinement for up to ninety (90) days in a consenting Wyoming county jail coupled with substance abuse treatment contracted with and paid for by the department;

(vi) Incarceration in a state penal institution for up to ninety (90) days coupled with substance abuse treatment, cognitive-behavioral programming to address

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criminal thinking or other programming that the department deems appropriate.

**7-13-1803. Procedure for imposing sanctions; housing violators; civil actions against officials.**

(a) A probation and parole agent who reasonably believes that a defendant, probationer, parolee or conditional releasee has committed one (1) or more compliance violations that require a sanction shall utilize sanctions available within the incentives and sanctions system to determine an appropriate response. Subject to subsection (d) of this section, the agent shall initiate a hearing in accordance with subsection (b) of this section and W.S. 7-13-408 and shall attempt to gain the person's compliance with the conditions of probation, parole or conditional release through the sanctions provided in W.S. 7-13-1802.

(b) Any hearing under this section shall be before the field services administrator, his designated hearing officer or any other person authorized pursuant to the laws of this state to hear cases of alleged probation, parole or conditional release violations, except that no hearing officer shall be the person making the allegation of violation. If the hearing officer determines by a preponderance of the evidence that the defendant, probationer, parolee or conditional releasee has violated a condition of probation, parole or conditional release, the hearing officer shall utilize the incentives and sanctions system to determine an appropriate response, which may include the sanctions authorized under W.S. 7-13-1802.

(c) Any imposition of custodial sanctions shall be subject to the following conditions:

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(i) All time in custody related to the compliance violation shall be credited toward the defendant's, probationer's, parolee's or conditional releasee's sentence;

(ii) The total of all confinement under W.S. 7-13-1802(b)(i) and (ii) shall not exceed eighteen (18) days during the term of probation, parole or conditional release;

(iii) Cumulative custodial sanctions imposed under W.S. 7-13-1802(b)(i) through (iii) shall not exceed ninety (90) days during the term of probation, parole or conditional release prior to any revocation.

(d) A hearing shall be held before custodial sanctions are imposed. The imposition of sanctions shall not require a hearing if:

(i) The probationer or parolee is a participant in the intensive supervision program pursuant to W.S. 7-13-1105;

(ii) The probationer is a qualified offender whose probation has been previously revoked pursuant to W.S. 7-13-1303(d); or

(iii) The probationer or parolee consents to the administrative sanction without a hearing.

(e) Upon agreement of the sheriff and the director of the department of corrections, the probationer, parolee or conditional releasee may be maintained at the county jail at an agreed per diem rate to be paid by the department. The department shall pay for any medical treatment of the probationer, parolee or conditional releasee, other than for conditions demanding immediate medical attention which can be treated at the county jail for which the county is liable

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under W.S. 18-6-303(c)(i). Except for emergency medical treatment, no treatment which is the responsibility of the department under this subsection shall be provided without the prior approval of the department.

(f) If any civil action is brought against any sheriff, his undersheriff, deputy, agent or employee, by reason of acts committed or allegedly committed in the performance of necessary duties in connection with the housing and care of a probation, parole or conditional release violator under this section, the state shall indemnify and hold harmless the officers, agents or employees from all civil liability incurred or adjudged except punitive damage awards. Upon request, the state shall provide legal counsel at the state's expense to assist in the defense of any action referred to in this subsection.

(g) Probationers, parolees and conditional releases committed to the county jail or a residential community correctional program pursuant to this section shall be housed in accordance with subsection (e) of this section or W.S. 7-18-115(b).

**Section 2.** W.S. 7-13-303(a)(iv), by creating a new paragraph (vi) and (b), 7-13-304(a), 7-13-401(a) by creating a new paragraph (xv), 7-13-403(b) and by creating a new subsection (c), 7-13-404, 7-13-407(a)(i) and (v), 7-13-408(a) and (b), 7-13-1101(a) by creating a new paragraph (iii), 7-13-1102(b)(ii), 7-13-1103(b), 7-13-1104(a)(intro), 7-13-1105 by creating a new subsection (d), 7-13-1107 by creating a new subsection (e), 7-13-1301(b), 7-13-1303(c)(iv) and (d), 7-18-102(a) by creating a new paragraph (ix) and by renumbering (ix) as (x), 7-18-108(b)(ii), (iii), by creating a new paragraph (iv) and (f) and 7-18-115(b)(iii), (iv), by creating a new paragraph (v) and (g) are amended to read:

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**7-13-303. Investigation preceding probation or suspension of sentence.**

(a) When directed by the court, the district attorney, a probation and parole agent as defined in W.S. 7-13-401 or, in the case of a minor, a counselor as defined by W.S. 5-3-501(a)(ii) or the department of family services shall investigate and report to the court in writing:

(iv) If practicable, statements from the victim;  
and

(vi) The results of a validated risk and need assessment.

(b) No defendant charged with a felony, and, unless the court directs otherwise, no defendant charged with a misdemeanor, shall be placed on probation, placed in an intensive supervision program established under W.S. 7-13-1102 or released under suspension of sentence until the report of the investigation under this section is presented to and considered by the court. If the defendant is sentenced to the custody of the department of corrections to serve a term of incarceration in a state penal institution, a copy of the report of the investigation shall be sent to the department of corrections at the time of sentencing. In all felony cases the clerk of court shall forward copies of the report to the department of corrections, together with copies of all orders entered by the court.

**7-13-304. Imposition or modification of conditions; performance of work by defendant.**



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(a) The court may impose, and at any time modify, any condition of probation or suspension of sentence. The court may not impose new custodial restrictions on liberty unless in response to a compliance violation, a new violation of law or absconding from supervision and only after providing notice and a hearing if required under W.S. 7-13-1803.

**7-13-401. Definitions; creation of board; officers; compensation; hearing panels; meetings.**

(a) As used in W.S. 7-13-401 through 7-13-424:

(xv) "Compliance violation" means a violation of a condition of probation, parole or conditional release but shall not include:

(A) An arrest for a new misdemeanor or felony offense; or

(B) Absconding from supervision, which includes the defendant, probationer or parolee deliberately making his whereabouts unknown to his probation and parole agent, the department or court or failing to report for the purpose of avoiding supervision, where reasonable efforts by the probation and parole agent to locate the defendant, probationer or parolee have been unsuccessful.

**7-13-403. Custody of parolee; return upon violation.**

(b) Unless otherwise ordered by the board or when the parole violator is ordered to complete a sanction under W.S. 7-13-1801 through 7-13-1803, a parole violator shall be returned to the custody of the department to serve the remainder of the original sentence.

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(c) The board shall consider imposing a sanction under W.S. 7-13-1801 through 7-13-1803 before ordering a parole violator to be returned to the custody of the department to serve the remainder of the original sentence.

**7-13-404. Computing remainder of sentence for parole violator.**

In computing the remainder of the sentence to be served by a parole violator, ~~no~~ credit shall be ~~given against~~ awarded toward his original sentence for any portion of the time that the person has not violated a condition of parole between his release on parole and his return to the institution unless the board directs otherwise.

**7-13-407. Duties of probation and parole agents.**

(a) Under direction and supervision of the director, probation and parole agents shall:

(i) Except as otherwise directed by the director, devote full time to the performance of their duties in carrying out the provisions of W.S. 7-9-104, 7-9-107, 7-13-303, 7-13-401 through 7-13-424, 7-13-1101 through ~~7-13-1107~~ 7-13-1105, 7-13-1601 through 7-13-1615, 7-13-1801 through 7-13-1803 and 35-7-1043;

(v) Use all practicable and suitable methods, not inconsistent with the conditions imposed by the court, department or board and including the use of incentives and sanctions under W.S. 7-13-1801 through 7-13-1803, to aid and encourage persons on probation, parole or conditional release to bring about improvement in their conditions and conduct;

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**7-13-408. Probation, parole and conditional release administrative jail or adult community correction program sanction and revocation hearing procedures.**

(a) The probation and parole agent shall notify the department and the board or the appropriate court if it is determined consideration should be given to retaking or reincarcerating a person under the supervision of the department who has violated a condition of his probation, parole or other conditional release and is subject to revocation of supervision. Prior to notification, a hearing shall be held in accordance with this section within a reasonable time, unless a hearing is waived by the probationer, parolee or conditional releasee. In the case of a parolee for whom the violation is based on a new felony conviction, a preliminary hearing is not required under this section. In the case of a probationer, the hearing is only required when the probationer has been reincarcerated and a legal warrant has not been obtained within ten (10) days. As soon as practicable, following termination of any hearing, the appropriate officer or agent shall report to the department and the court or board, furnish a copy of the hearing record, report on the prior use of incentives and sanctions under W.S. 7-13-1801 through 7-13-1803 for the probationer, parolee or conditional releasee and make recommendations regarding the disposition to be made of the probationer, parolee or conditional releasee. Compliance violations not leading to retaking or reincarceration shall be sanctioned under W.S. 7-13-1801 and 7-13-1802. Pending any proceeding pursuant to this section, the appropriate agent may take custody of and detain the probationer, parolee or conditional releasee involved for a reasonable period of time prior to the hearing. If it appears to the hearing officer or agent that retaking or reincarceration is likely to follow, the agent may take custody of and detain the probationer,

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parolee or conditional releasee for a reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section or W.S. 7-13-1803 may be before the field services administrator, his designated hearing officer or any other person authorized pursuant to the laws of this state to hear cases of alleged probation, parole or conditional release violations, except that no hearing officer shall be the person making the allegation of violation. In cases of alleged parole violations by persons who were paroled by the board, hearings pursuant to this section shall be before the executive director of the board or his designated hearing officer.

**7-13-1101. Definitions.**

(a) As used in this article:

(iii) "Validated risk-need assessment" means an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior. The validated risk-need assessment shall determine a person's risk to reoffend and the needs of a person that, when addressed, would reduce the risk to reoffend.

**7-13-1102. Authority to establish programs; rulemaking authority.**

(b) An intensive supervision program established under this article may require:

(ii) Community service work, family, educational or vocational counseling, cognitive-behavioral programming to address criminal thinking, treatment for substance abuse,

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mental health treatment and monitoring of restitution orders and fines previously imposed on the participant. For purposes of this paragraph, cognitive-behavioral programming means as defined in W.S. 7-13-1801(c)(i); and

**7-13-1103. Program participation not a matter of right.**

(b) No person shall be allowed to participate in a program authorized by this article unless the person agrees in writing to abide by all the rules and regulations of the department relating to the operation of the program and agrees to submit to ~~administrative~~ the incentives and sanctions which may be imposed under W.S. ~~7-13-1107-7-13-1801~~ through 7-13-1803.

**7-13-1104. Program participation as a condition of parole.**

(a) The state board of parole may, as a condition of parole, require a parolee who is assessed through a validated risk-need assessment as a high risk for reoffending or violating a condition of parole to participate in a program established under this article, provided:

**7-13-1105. Placement of probationer in program by sentencing court; eligibility.**

(d) A defendant shall not be placed in a program established under W.S. 7-13-1102 unless the defendant receives a validated risk-need assessment and scores as a high risk for reoffending or for violating conditions of probation except that a defendant may be placed in a program established under W.S. 7-13-1102 for good cause shown upon the record.

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**7-13-1107. Administrative rewards and sanctions for program violations.**

(e) Probationers and parolees who violate the rules and restrictions of an intensive supervision program established under this article shall be sanctioned in accordance with W.S. 7-13-1801 through 7-13-1803 or may be subject to revocation proceedings.

**7-13-1301. Definitions.**

(b) For purposes of this act "incarceration" or "incarcerated" shall not include periods of confinement allowed under the provisions of W.S. 7-13-1102 or ~~7-13-1107(b)~~ 7-13-1801 through 7-13-1803.

**7-13-1303. Suspended sentence for qualified offenders.**

(c) A qualified offender or person sentenced under this act may be incarcerated if the court concludes on the basis of the evidence that:

(iv) The offender commits a felony, sells or otherwise delivers controlled substances while in a program pursuant to this section, or engages in other behavior that poses an unreasonable risk to public safety while in the program. Notwithstanding any other provision of law, in the absence of the commission of these acts, those programs and sanctions set forth in W.S. 7-13-1102 and ~~7-13-1107(b)~~ 7-13-1801 through 7-13-1803 may be used at the discretion of the probation officer or court to address other violations of the sentencing or probation order.

(d) In the event probation is revoked, the court may impose one (1) or more of the sanctions set forth in W.S.

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7-13-1102 or ~~7-13-1107(b)~~ 7-13-1801 through 7-13-1803 unless the court, in its sole discretion, finds that another disposition, including imprisonment, is necessary under the facts of the case.

**7-18-102. Definitions.**

(a) As used in this act:

(ix) "Validated risk-need assessment" means as defined in W.S. 7-13-1101(a)(iii);

~~(ix)~~ (x) "This act" means W.S. 7-18-101 through 7-18-115.

**7-18-108. Placement of offender in program by court; placement by department as administrative sanction.**

(b) Placement of an offender in an adult community correctional facility or program under this section shall be made only if:

(ii) Funding for the placement is available; ~~and~~

(iii) The offender is acceptable to the corrections board; ~~and~~ and

(iv) The offender is assessed through a validated risk-need assessment as a high risk for reoffending or violating a condition of probation.

(f) Subject to subsection (b) of this section, the department may, as an administrative sanction pursuant to W.S. ~~7-13-1107~~ 7-13-1801 through 7-13-1803, require any probationer participating in an intensive supervision program

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who violates the rules and restrictions of the program to participate in a residential adult community correctional program for a period not to exceed sixty (60) days as an alternative to probation revocation.

**7-18-115. Assignment of parolee to program by state board of parole; placement by department as administrative sanction.**

(b) Placement of a parolee in an adult community correctional facility or program under this section shall be made only if:

(iii) The parolee has been accepted by the corrections board;~~and~~

(iv) Funding for the placement is available; ~~and~~

(v) The offender is assessed through a validated risk-need assessment as a high risk of reoffending or violating a condition of parole.

(g) Subject to subsection (b) of this section, the department may, as an administrative sanction pursuant to W.S. ~~7-13-1107~~ 7-13-1801 through 7-13-1803, require any parolee participating in an intensive supervision program who violates the rules and restrictions of the program to participate in an adult residential community correctional program for a period not to exceed sixty (60) days as an alternative to parole revocation.

**Section 3.** W.S. 7-13-408(e), 7-13-1106, 7-13-1107(a) through (d) and 7-18-115(b)(i) are repealed.



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**Section 4.** The provisions of this act shall apply to all persons who are sentenced on or after the effective date of this act.

**Section 5.** There is appropriated one million six hundred twenty-three thousand two hundred forty-eight dollars (\$1,623,248.00) from the general fund to the department of corrections. This appropriation shall be for the period beginning July 1, 2019 and ending June 30, 2020. This appropriation shall only be expended for the purpose of implementing the sanctions authorized in this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on July 1, 2020. This appropriation shall not be included in the department's 2021-2022 standard biennial budget request.

**Section 6.** The department of corrections shall, not later than December 1, 2019 and not later than June 30, 2020, report to the joint judiciary interim committee and the joint appropriations committee regarding the implementation of this act.

**Section 7.** The department of corrections shall promulgate rules no later than July 1, 2019 to establish the incentives and sanctions system required by W.S. 7-13-1801 as created by this act.

**Section 8.**

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2019.

ORIGINAL HOUSE  
BILL NO. HB0053

ENGROSSED

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(b) Section 7 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk