

HOUSE BILL NO. HB0053

Probation and parole-incentives and sanctions.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure and sentencing;
2 establishing an incentives and sanctions system for probation
3 and parole supervision as specified; specifying authorized
4 sanctions; providing procedure for imposing sanctions;
5 providing definitions; providing for the award of credit
6 against original sentences for parolees; requiring the use of
7 validated risk and need assessments; clarifying requirements
8 for placement in an intensive supervision program; making
9 conforming amendments; specifying applicability; providing
10 rulemaking; providing obsolete provisions; and providing for
11 effective dates.

12

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

14

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

1

2

ARTICLE 18

3

PROBATION AND PAROLE INCENTIVES AND SANCTIONS

4

5

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

6

7

(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:

8

9

(i) Request a warrant;

10

11

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

12

1 (iii) Seek departmental approval to use custodial
2 sanctions.

3
4 (b) To implement and continuously improve the
5 incentives and sanctions system, the department shall:

6
7 (i) Provide information and training on the system
8 to probation and parole agents and supervisors and to members
9 and staff of the state board of parole;

10
11 (ii) Offer information and training on the system
12 to the Wyoming supreme court, district court judges, circuit
13 court judges, district attorneys, defense attorneys, law
14 enforcement officers, corrections and detention officers,
15 contracted service providers and other interested personnel;

16
17 (iii) Review the system at least one (1) time
18 every five (5) years to ensure that the system adheres to
19 evidence-based practices and that the use of incentives and
20 sanctions by probation and parole agents is consistent
21 throughout the state;

22

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

4

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

7

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

11

12 (c) As used in this article:

13

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

19

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

22

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

3

4 **7-13-1802. Authorized sanctions.**

5

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

8

9 (i) Loss or restriction of privileges;

10

11 (ii) Community service;

12

13 (iii) Placement in an intensive supervision
14 program established under W.S. 7-13-1102 or a nonresidential
15 community correctional program established under W.S.
16 7-18-103 or 7-18-104;

17

18 (iv) Custodial sanctions authorized under
19 subsection (b) of this section, subject to any procedure
20 required under W.S. 7-13-1803 and any rules promulgated under
21 W.S. 7-13-1801(a).

22

1 (b) Subject to the requirements in W.S. 7-13-1803(c),
2 custodial sanctions authorized by W.S. 7-13-1801(a)(iv) for
3 compliance violations shall be:

4

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

8

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

12

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

16

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

23

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

4
5 (vi) Incarceration in a state penal institution
6 for up to ninety (90) days coupled with substance abuse
7 treatment, cognitive-behavioral programming to address
8 criminal thinking or other programming that the department
9 deems appropriate.

10
11 **7-13-1803. Procedure for imposing sanctions; housing**
12 **violators; civil actions against officials.**

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

1 or conditional release through the sanctions provided in W.S.
2 7-13-1802.

3

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

17

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

20

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

1

2 (ii) The total of all confinement under W.S.
3 7-13-1802(b)(i) and (ii) shall not exceed eighteen (18) days
4 during the term of probation, parole or conditional release;

5

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

10

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

14

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

17

18 (ii) The probationer is a qualified offender
19 sanctioned pursuant to W.S. 7-13-1303(d); or

20

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

23

1 (e) Upon agreement of the sheriff and the director of
2 the department of corrections, the probationer, parolee or
3 conditional releasee may be maintained at the county jail at
4 an agreed per diem rate to be paid by the department. The
5 department shall pay for any medical treatment of the
6 probationer, parolee or conditional releasee, other than for
7 conditions demanding immediate medical attention which can be
8 treated at the county jail for which the county is liable
9 under W.S. 18-6-303(c)(i). Except for emergency medical
10 treatment, no treatment which is the responsibility of the
11 department under this subsection shall be provided without
12 the prior approval of the department.

13

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

1 expense to assist in the defense of any action referred to in
2 this subsection.

3

4 (g) Probationers, parolees and conditional releasees
5 committed to the county jail or a residential community
6 correctional program pursuant to this section shall be housed
7 in accordance with subsection (e) of this section or W.S.
8 7-18-115(b).

9

10 **Section 2.** W.S. 7-13-303(a)(iv), by creating a new
11 paragraph (vi) and (b), 7-13-304(a), 7-13-401(a) by creating
12 a new paragraph (xv), 7-13-403(b) and by creating a new
13 subsection (c), 7-13-404, 7-13-407(a)(i) and (v), 7-13-408(a)
14 and (b), 7-13-1101(a) by creating a new paragraph (iii),
15 7-13-1102(b)(ii), 7-13-1103(b), 7-13-1104(a)(intro),
16 7-13-1105 by creating a new subsection (d), 7-13-1107 by
17 creating a new subsection (e), 7-13-1301(b), 7-13-1303(c)(iv)
18 and (d), 7-18-102(a) by creating a new paragraph (ix) and by
19 renumbering (ix) as (x), 7-18-108(b)(ii), (iii), by creating
20 a new paragraph (iv) and (f) and 7-18-115(b)(iii), (iv), by
21 creating a new paragraph (v) and (g) are amended to read:

22

1 7-13-303. Investigation preceding probation or
2 suspension of sentence.

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

9
10 (iv) If practicable, statements from the victim;
11 and

12
13 (vi) The results of a validated risk and need
14 assessment.

15
16 (b) No defendant charged with a felony, and, unless the
17 court directs otherwise, no defendant charged with a
18 misdemeanor, shall be placed on probation, placed in an
19 intensive supervision program established under W.S.
20 7-13-1102 or released under suspension of sentence until the
21 report of the investigation under this section is presented
22 to and considered by the court. If the defendant is sentenced
23 to the custody of the department of corrections to serve a

1 term of incarceration in a state penal institution, a copy of
2 the report of the investigation shall be sent to the
3 department of corrections at the time of sentencing. In all
4 felony cases the clerk of court shall forward copies of the
5 report to the department of corrections, together with copies
6 of all orders entered by the court.

7

8 **7-13-304. Imposition or modification of conditions;**
9 **performance of work by defendant.**

10

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

17

18 **7-13-401. Definitions; creation of board; officers;**
19 **compensation; hearing panels; meetings.**

20

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

22

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

4
5 (A) An arrest for a new misdemeanor or felony
6 offense; or

7
8 (B) Absconding from supervision, which
9 includes the defendant, probationer or parolee deliberately
10 making his whereabouts unknown to his probation and parole
11 agent, the department or court or failing to report for the
12 purpose of avoiding supervision, where reasonable efforts by
13 the probation and parole agent to locate the defendant,
14 probationer or parolee have been unsuccessful.

15
16 **7-13-403. Custody of parolee; return upon violation.**

17
18 (b) Unless otherwise ordered by the board or when the
19 parole violator is ordered to complete a sanction under W.S.
20 7-13-1801 through 7-13-1803, a parole violator shall be
21 returned to the custody of the department to serve the
22 remainder of the original sentence.

23

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

5

6 **7-13-404. Computing remainder of sentence for parole**
7 **violation.**

8

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

15

16 **7-13-407. Duties of probation and parole agents.**

17

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

20

21 (i) Except as otherwise directed by the director,
22 devote full time to the performance of their duties in
23 carrying out the provisions of W.S. 7-9-104, 7-9-107,

1 7-13-303, 7-13-401 through 7-13-424, 7-13-1101 through
2 ~~7-13-1107~~7-13-1105, 7-13-1601 through 7-13-1615, 7-13-1801
3 through 7-13-1803 and 35-7-1043;

4

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

11

12 **7-13-408. Probation, parole and conditional release**
13 **administrative jail or adult community correction program**
14 **sanction and revocation hearing procedures.**

15

16 (a) The probation and parole agent shall notify the
17 department and the board or the appropriate court if it is
18 determined consideration should be given to retaking or
19 reincarcerating a person under the supervision of the
20 department who has violated a condition of his probation,
21 parole or other conditional release and is subject to
22 revocation of supervision. Prior to notification, a hearing
23 shall be held in accordance with this section within a

1 reasonable time, unless a hearing is waived by the
2 probationer, parolee or conditional releasee. In the case of
3 a parolee for whom the violation is based on a new felony
4 conviction, a preliminary hearing is not required under this
5 section. In the case of a probationer, the hearing is only
6 required when the probationer has been reincarcerated and a
7 legal warrant has not been obtained within ten (10) days. As
8 soon as practicable, following termination of any hearing,
9 the appropriate officer or agent shall report to the
10 department and the court or board, furnish a copy of the
11 hearing record, report on the prior use of incentives and
12 sanctions under W.S. 7-13-1801 through 7-13-1803 for the
13 probationer, parolee or conditional releasee and make
14 recommendations regarding the disposition to be made of the
15 probationer, parolee or conditional releasee. Compliance
16 violations shall be sanctioned under W.S. 7-13-1801 and
17 7-13-1802. Pending any proceeding pursuant to this section,
18 the appropriate agent may take custody of and detain the
19 probationer, parolee or conditional releasee involved for a
20 reasonable period of time prior to the hearing. If it appears
21 to the hearing officer or agent that retaking or
22 reincarceration is likely to follow, the agent may take
23 custody of and detain the probationer, parolee or conditional

1 releasee for a reasonable period after the hearing or waiver
2 as may be necessary to arrange for the retaking or
3 reincarceration.

4

5 (b) Any hearing pursuant to this section or W.S.
6 7-13-1803 may be before the field services administrator, his
7 designated hearing officer or any other person authorized
8 pursuant to the laws of this state to hear cases of alleged
9 probation, parole or conditional release violations, except
10 that no hearing officer shall be the person making the
11 allegation of violation. In cases of alleged parole
12 violations by persons who were paroled by the board, hearings
13 pursuant to this section shall be before the executive
14 director of the board or his designated hearing officer.

15

16 **7-13-1101. Definitions.**

17

18 (a) As used in this article:

19

20 (iii) "Validated risk-need assessment" means an
21 actuarial assessment tool that assesses the dynamic and
22 static factors that drive criminal behavior. The validated
23 risk-need assessment shall determine a person's risk to

1 reoffend and the needs of a person that, when addressed, would
2 reduce the risk to reoffend.

3

4 **7-13-1102. Authority to establish programs; rulemaking**
5 **authority.**

6

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

9

10 (ii) Community service work, family, educational
11 or vocational counseling, cognitive-behavioral programming to
12 address criminal thinking, treatment for substance abuse,
13 mental health treatment and monitoring of restitution orders
14 and fines previously imposed on the participant. For purposes
15 of this paragraph, cognitive-behavioral programming means as
16 defined in W.S. 7-13-1801(c)(i); and

17

18 **7-13-1103. Program participation not a matter of right.**

19

20 (b) No person shall be allowed to participate in a
21 program authorized by this article unless the person agrees
22 in writing to abide by all the rules and regulations of the
23 department relating to the operation of the program and agrees

1 to submit to ~~administrative~~the incentives and sanctions
2 which may be imposed under W.S. ~~7-13-1107~~7-13-1801 through
3 7-13-1803.

4

5 **7-13-1104. Program participation as a condition of**
6 **parole.**

7

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

13

14 **7-13-1105. Placement of probationer in program by**
15 **sentencing court; eligibility.**

16

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

1

2 **7-13-1107. Administrative rewards and sanctions for**
3 **program violations.**

4

5 (e) Probationers and parolees who violate the rules and
6 restrictions of an intensive supervision program established
7 under this article shall be sanctioned in accordance with
8 W.S. 7-13-1801 through 7-13-1803.

9

10 **7-13-1301. Definitions.**

11

12 (b) For purposes of this act "incarceration" or
13 "incarcerated" shall not include periods of confinement
14 allowed under the provisions of W.S. 7-13-1102 or
15 ~~7-13-1107(b)~~ 7-13-1801 through 7-13-1803.

16

17 **7-13-1303. Suspended sentence for qualified offenders.**

18

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

22

1 (iv) The offender commits a felony, sells or
2 otherwise delivers controlled substances while in a program
3 pursuant to this section, or engages in other behavior that
4 poses an unreasonable risk to public safety while in the
5 program. Notwithstanding any other provision of law, in the
6 absence of the commission of these acts, those programs and
7 sanctions set forth in W.S. 7-13-1102 and ~~7-13-1107(b)~~
8 7-13-1801 through 7-13-1803 may be used at the discretion of
9 the probation officer or court to address other violations of
10 the sentencing or probation order.

11

12 (d) In the event probation is revoked, the court may
13 impose one (1) or more of the sanctions set forth in W.S.
14 7-13-1102 or ~~7-13-1107(b)~~ 7-13-1801 through 7-13-1803 unless
15 the court, in its sole discretion, finds that another
16 disposition, including imprisonment, is necessary under the
17 facts of the case.

18

19 **7-18-102. Definitions.**

20

21 (a) As used in this act:

22

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

3
4 ~~(ix)~~(x) "This act" means W.S. 7-18-101 through
5 7-18-115.

6
7 **7-18-108. Placement of offender in program by court;**
8 **placement by department as administrative sanction.**

9
10 (b) Placement of an offender in an adult community
11 correctional facility or program under this section shall be
12 made only if:

13
14 (ii) Funding for the placement is available; ~~and~~

15
16 (iii) The offender is acceptable to the
17 corrections board; ~~and~~ and

18
19 (iv) The offender is assessed through a validated
20 risk-need assessment as a high risk for reoffending or
21 violating a condition of probation.

22

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

9
10 **7-18-115. Assignment of parolee to program by state**
11 **board of parole; placement by department as administrative**
12 **sanction.**

13
14 (b) Placement of a parolee in an adult community
15 correctional facility or program under this section shall be
16 made only if:

17
18 (iii) The parolee has been accepted by the
19 corrections board; ~~and~~

20
21 (iv) Funding for the placement is available; ~~and~~ and

22

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

4
5 (g) Subject to subsection (b) of this section, the
6 department may, as an administrative sanction pursuant to
7 W.S. ~~7-13-1107~~7-13-1801 through 7-13-1803, require any
8 parolee participating in an intensive supervision program who
9 violates the rules and restrictions of the program to
10 participate in an adult residential community correctional
11 program for a period not to exceed sixty (60) days as an
12 alternative to parole revocation.

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

16
17 **Section 4.** The provisions of this act shall apply to
18 all persons who are sentenced on or after the effective date
19 of this act.

20
21 **Section 5.** The department of corrections shall
22 promulgate rules no later than July 1, 2019 to establish the

1 incentives and sanctions system required by W.S. 7-13-1801 as
2 created by this act.

3

4 **Section 6.**

5

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

8

9 (b) Section 5 of this act is effective immediately upon
10 completion of all acts necessary for a bill to become law as
11 provided by Article 4, Section 8 of the Wyoming Constitution.

12

13

(END)