



28 **64-13c-101. Definitions.**

29 As used in this chapter:

30 (1) (a) "Core inmate incarceration costs" means the county correctional facility's direct  
31 costs of incarcerating an inmate, including housing, feeding, and clothing. These costs also  
32 include the costs of programs the facility provides for inmates, but these costs do not include  
33 programs provided only for inmates housed at the facility under this chapter.

34 (b) "Core inmate incarceration costs" do not include costs of inmate transportation services  
35 or medical care.

36 (2) "Department" means the Department of Corrections.

37 (3) "Fund" means the Inmate Costs Reimbursement Trust Fund created in Section  
38 64-13c-301.

39 (4) "Inmate costs" includes core inmate incarceration costs, and also inmate transportation  
40 services and inmate medical care.

41 Section 2. Section **64-13c-201** is enacted to read:

42 **64-13c-201. County housing of state prisoners.**

43 (1) (a) When a person convicted of a felony is committed to serve time in a county  
44 correctional facility as a condition of probation under Subsection 77-18-1(8), a county shall accept  
45 and house the prisoner in a county correctional facility, subject to available resources. If a county  
46 is unable to accept a person due to lack of resources, the county may negotiate with another county  
47 to accept and house the person.

48 (b) The department may contract with a county or other entity to house inmates, other than  
49 those committed under Subsection 77-18-1(8) as a term of probation, in a county or other  
50 correctional facility.

51 (c) The department shall use all available county correctional facility bed spaces for which  
52 it has contracted under Subsection (1)(b) before it may contract with an entity for correctional  
53 facility bed space.

54 (2) Compensation to a county for inmates incarcerated under this chapter shall be made  
55 by the department based on Section 64-13c-301.

56 Section 3. Section **64-13c-301** is enacted to read:

57 **64-13c-301. Expendable trust fund created -- Funding -- Purposes.**

58 (1) (a) There is created the expendable trust fund known as the Inmate Costs

59 Reimbursement Trust Fund.

60 (b) Monies in the fund shall consist of appropriations from the Legislature.

61 (2) The director of the Department of Corrections shall use the fund monies for the sole  
62 purpose of reimbursing counties and other entities for costs incurred by housing inmates pursuant  
63 to this chapter.

64 (3) The fund monies may not be used for the costs of administering the inmate cost  
65 reimbursement program under this chapter. Those costs shall be covered by legislative  
66 appropriation.

67 Section 4. Section **64-13c-302** is enacted to read:

68 **64-13c-302. Procedures for setting county reimbursement for core inmate**  
69 **incarceration costs, and medical and transportation costs.**

70 (1) (a) In order for counties to receive reimbursement under this chapter, the Utah Sheriffs  
71 Association and the department shall annually before July 1 negotiate for the fiscal year beginning  
72 on July 1 a single reimbursement rate, applicable to all counties, for daily core inmate incarceration  
73 costs.

74 (b) Additional entities may participate in the negotiations if their participation is agreed  
75 upon by both the Utah Sheriff's Association and the department.

76 (c) The rates established under this Subsection (1) apply also to reimbursement for any  
77 entity accepting inmates for incarceration under this chapter.

78 (2) Each county shall negotiate directly with the department to establish reimbursement  
79 rates for providing transportation services and medical care for inmates housed under Section  
80 64-13c-201.

81 Section 5. Section **64-13c-303** is enacted to read:

82 **64-13c-303. Payment of reimbursement -- Any shortfall.**

83 (1) (a) The director of the department shall reimburse counties and other entities for daily  
84 core inmate costs according to the amounts established under Section 64-13c-302, and to the extent  
85 monies are available in the fund.

86 (b) The department shall by rule establish procedures for the distribution of reimbursement  
87 from the fund.

88 (2) If it becomes apparent that monies in the fund will be insufficient to pay all  
89 reimbursement due under this chapter in a timely manner, the department and the counties and

90 entities affected shall report the shortfall at the next meeting of the interim or standing legislative  
91 Law Enforcement and Criminal Justice Committee as is appropriate for that time of year.

92 (3) Counties and entities that receive reimbursement from the department under this  
93 chapter shall annually on or before June 30 submit a report to the department that includes:

94 (a) the costs to the county or entity of housing inmates under Section 64-13c-201 and a  
95 comparison of these costs to the reimbursement rate established under Section 64-13c-302;

96 (b) the number of inmates the county or entity housed under this chapter as:

97 (i) a condition of a sentence of probation; and

98 (ii) by contract with the department; and

99 (c) the total number of inmate days of incarceration provided.

100 Section 6. Section **64-13c-304** is enacted to read:

101 **64-13c-304. Report to Legislature.**

102 (1) The department shall provide to the legislative Law Enforcement and Criminal Justice  
103 Interim Committee a report regarding housing of inmates under this chapter, including:

104 (a) core inmate costs established under this chapter;

105 (b) participating counties and entities;

106 (c) the costs established for each participating county and entity for transportation and  
107 medical care; and

108 (d) the numbers of inmates housed as a condition of probation and housed by contract with  
109 the department.

110 (2) The report shall be submitted annually on or before September 1.

111 Section 7. Section **77-18-1** is amended to read:

112 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**  
113 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**  
114 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
115 **monitoring.**

116 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in  
117 abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a,  
118 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

119 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime  
120 or offense, the court may suspend the imposition or execution of sentence and place the defendant

121 on probation. The court may place the defendant:

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

124 (ii) on probation with an agency of local government or with a private organization; or

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

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

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

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

131 (3) (a) The department shall establish supervision and presentence investigation standards  
132 for all individuals referred to the department. These standards shall be based on:

133 (i) the type of offense;

134 (ii) the demand for services;

135 (iii) the availability of agency resources;

136 (iv) the public safety; and

137 (v) other criteria established by the department to determine what level of services shall  
138 be provided.

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

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

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

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

148 (4) Notwithstanding other provisions of law, the department is not required to supervise  
149 the probation of persons convicted of class B or C misdemeanors or infractions or to conduct  
150 presentence investigation reports on class C misdemeanors or infractions. However, the  
151 department may supervise the probation of class B misdemeanants in accordance with department

152 standards.

153 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the  
154 defendant, continue the date for the imposition of sentence for a reasonable period of time for the  
155 purpose of obtaining a presentence investigation report from the department or information from  
156 other sources about the defendant.

157 (b) The presentence investigation report shall include a victim impact statement describing  
158 the effect of the crime on the victim and the victim's family. The victim impact statement shall:

159 (i) identify the victim of the offense;

160 (ii) include a specific statement of the recommended amount of complete restitution as  
161 defined in Subsection 76-3-201(4), accompanied by a recommendation from the department  
162 regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the  
163 defendant;

164 (iii) identify any physical injury suffered by the victim as a result of the offense along with  
165 its seriousness and permanence;

166 (iv) describe any change in the victim's personal welfare or familial relationships as a  
167 result of the offense;

168 (v) identify any request for psychological services initiated by the victim or the victim's  
169 family as a result of the offense; and

170 (vi) contain any other information related to the impact of the offense upon the victim or  
171 the victim's family that is relevant to the trial court's sentencing determination.

172 (c) The presentence investigation report shall include a specific statement of pecuniary  
173 damages, accompanied by a recommendation from the department regarding the payment of  
174 restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

175 (d) The contents of the presentence investigation report, including any diagnostic  
176 evaluation report ordered by the court under Section 76-3-404, are protected and are not available  
177 except by court order for purposes of sentencing as provided by rule of the Judicial Council or for  
178 use by the department.

179 (6) (a) The department shall provide the presentence investigation report to the defendant's  
180 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,  
181 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation  
182 report, which have not been resolved by the parties and the department prior to sentencing, shall

183 be brought to the attention of the sentencing judge, and the judge may grant an additional ten  
184 working days to resolve the alleged inaccuracies of the report with the department. If after ten  
185 working days the inaccuracies cannot be resolved, the court shall make a determination of  
186 relevance and accuracy on the record.

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

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

193 (8) While on probation, and as a condition of probation, the court may require that the  
194 defendant:

195 (a) [~~may be required to~~] perform any or all of the following:

196 (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

197 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

198 (iii) provide for the support of others for whose support he is legally liable;

199 (iv) participate in available treatment programs;

200 (v) serve a period of time, not to exceed one year, in [the] a county jail [~~not to exceed one~~  
201 ~~year~~] designated by the department;

202 (vi) serve a term of home confinement, which may include the use of electronic  
203 monitoring;

204 (vii) participate in compensatory service restitution programs, including the compensatory  
205 service program provided in Section 78-11-20.7;

206 (viii) pay for the costs of investigation, probation, and treatment services;

207 (ix) make restitution or reparation to the victim or victims with interest in accordance with  
208 Subsection 76-3-201(4); and

209 (x) comply with other terms and conditions the court considers appropriate; and

210 (b) if convicted on or after May 5, 1997[~~, shall be required to~~]:

211 (i) complete high school classwork and obtain a high school graduation diploma, a GED  
212 certificate, or a vocational certificate at the defendant's own expense if the defendant has not  
213 received the diploma, GED certificate, or vocational certificate prior to being placed on probation;

214 or

215 (ii) provide documentation of the inability to obtain one of the items listed in Subsection  
216 (8)(b)(i) because of:

217 (A) a diagnosed learning disability; or

218 (B) other justified cause.

219 (9) The department, upon order of the court, shall collect and disburse fines, restitution  
220 with interest in accordance with Subsection 76-3-201(4), and any other costs assessed under  
221 Section 64-13-21 during:

222 (a) the parole period and any extension of that period in accordance with Subsection  
223 77-27-6(4); and

224 (b) the probation period in cases for which the court orders supervised probation and any  
225 extension of that period by the department in accordance with Subsection 77-18-1(10).

226 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon  
227 completion without violation of 36 months probation in felony or class A misdemeanor cases, or  
228 12 months in cases of class B or C misdemeanors or infractions.

229 (ii) If the defendant, upon expiration or termination of the probation period, owes  
230 outstanding fines, restitution, or other assessed costs, the court may retain jurisdiction of the case  
231 and continue the defendant on bench probation or place the defendant on bench probation for the  
232 limited purpose of enforcing the payment of fines, restitution, including interest, if any, in  
233 accordance with Subsection 76-3-201(4), and other amounts outstanding.

234 (iii) Upon motion of the prosecutor or victim, or upon its own motion, the court may  
235 require the defendant to show cause why his failure to pay should not be treated as contempt of  
236 court or why the suspended jail or prison term should not be imposed.

237 (b) The department shall notify the sentencing court and prosecuting attorney in writing  
238 in advance in all cases when termination of supervised probation will occur by law. The  
239 notification shall include a probation progress report and complete report of details on outstanding  
240 fines, restitution, and other amounts outstanding.

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

245 (ii) Any time served in confinement awaiting a hearing or decision concerning revocation  
246 of probation does not constitute service of time toward the total probation term unless the  
247 probationer is exonerated at the hearing.

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

251 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing  
252 by the probationer or upon a hearing and a finding in court that the probationer has violated the  
253 conditions of probation.

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

256 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute  
257 violation of the conditions of probation, the court that authorized probation shall determine if the  
258 affidavit establishes probable cause to believe that revocation, modification, or extension of  
259 probation is justified.

260 (ii) If the court determines there is probable cause, it shall cause to be served on the  
261 defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his  
262 probation should not be revoked, modified, or extended.

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

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

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

268 (iv) The order shall also inform the defendant of a right to present evidence.

269 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

270 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall  
271 present evidence on the allegations.

272 (iii) The persons who have given adverse information on which the allegations are based  
273 shall be presented as witnesses subject to questioning by the defendant unless the court for good  
274 cause otherwise orders.

275 (iv) The defendant may call witnesses, appear and speak in his own behalf, and present

276 evidence.

277 (e) (i) After the hearing the court shall make findings of fact.

278 (ii) Upon a finding that the defendant violated the conditions of probation, the court may  
279 order the probation revoked, modified, continued, or that the entire probation term commence  
280 anew.

281 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously  
282 imposed shall be executed.

283 (13) Restitution imposed under this chapter and interest accruing in accordance with  
284 Subsection 76-3-201(4) is considered a debt for willful and malicious injury for purposes of  
285 exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.

286 (14) The court may order the defendant to commit himself to the custody of the Division  
287 of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of  
288 sentence, only after the superintendent of the Utah State Hospital or his designee has certified to  
289 the court that:

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

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

292 (c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment  
293 over the defendants described in this Subsection (14).

294 (15) Presentence investigation reports, including presentence diagnostic evaluations, are  
295 classified protected in accordance with Title 63, Chapter 2, Government Records Access and  
296 Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee  
297 may not order the disclosure of a presentence investigation report. Except for disclosure at the  
298 time of sentencing pursuant to this section, the department may disclose the presentence  
299 investigation only when:

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

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

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

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

306 (e) requested by the victim of the crime discussed in the presentence investigation report

307 or the victim's authorized representative, provided that the disclosure to the victim shall include  
308 only information relating to statements or materials provided by the victim, to the circumstances  
309 of the crime including statements by the defendant, or to the impact of the crime on the victim or  
310 the victim's household.

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

313 (b) The department shall establish procedures and standards for home confinement,  
314 including electronic monitoring, for all individuals referred to the department in accordance with  
315 Subsection (17).

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

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

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

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

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

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

327 (i) place the defendant on probation under the supervision of the Department of  
328 Corrections;

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

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

333 (e) The department shall pay the costs of home confinement through electronic monitoring  
334 only for those persons who have been determined to be indigent by the court.

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

337 Section 8. **Repealer.**

- 338           This act repeals:
- 339           Section **64-13b-101, Definitions.**
- 340           Section **64-13b-201, Reimbursement for incarceration of state prisoners.**
- 341           Section **64-13b-301, Budget for jail reimbursement.**

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**Legislative Review Note**  
**as of 11-12-98 12:25 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**