

Representative Blake D. Chard proposes to substitute the following bill:

SENTENCING OF CONVICTED FELONS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Blake D. Chard

AN ACT RELATING TO CORRECTIONS AND CRIMINAL PROCEDURE; AMENDING PROVISIONS REGARDING FELONS SERVING JAIL TIME AS PART OF PROBATION; PROVIDING DEFINITIONS OF COMPONENTS OF INMATE COSTS; AND PROCEDURES FOR ESTABLISHING COSTS FOR REIMBURSEMENT TO COUNTIES WHO HOUSE STATE INMATES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-18-1, as last amended by Chapter 94, Laws of Utah 1998

ENACTS:

64-13c-101, Utah Code Annotated 1953

64-13c-201, Utah Code Annotated 1953

64-13c-301, Utah Code Annotated 1953

64-13c-302, Utah Code Annotated 1953

64-13c-303, Utah Code Annotated 1953

64-13c-304, Utah Code Annotated 1953

REPEALS:

64-13b-101, as enacted by Chapter 268, Laws of Utah 1993

64-13b-201, as enacted by Chapter 268, Laws of Utah 1993

64-13b-301, as enacted by Chapter 268, Laws of Utah 1993

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

Section 1. Section **64-13c-101** is enacted to read:

26 **CHAPTER 13c. STATE REIMBURSEMENT TO COUNTY**
27 **CORRECTIONAL FACILITIES**

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" means felony probationers sentenced to county jail under Subsection
40 77-18-1(8), inmates of the state prison system, and parolees.

41 (5) "Inmate costs" includes core inmate incarceration costs, and also inmate transportation
42 services and inmate medical care.

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

44 **64-13c-201. County housing of state prisoners.**

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

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

53 (c) The department shall give preference over private entities to county correctional facility
54 bed spaces for which the department has contracted under Subsection (1)(b).

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

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

58 **64-13c-301. Expendable trust fund created -- Funding -- Purposes.**

59 (1) (a) There is created the expendable trust fund known as the Inmate Costs
60 Reimbursement Trust Fund.

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

62 (2) The director of the Department of Corrections shall use the fund monies for the sole
63 purpose of reimbursing counties for costs incurred by housing inmates pursuant 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) 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 (2) Each county shall negotiate directly with the department to establish reimbursement
75 rates for providing transportation services and medical care for inmates housed under Section
76 64-13c-201.

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

78 **64-13c-303. Payment of reimbursement -- Any shortfall.**

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

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

84 (2) If it becomes apparent that monies in the fund will be insufficient to pay all
85 reimbursement due under this chapter in a timely manner, the department and the counties and
86 entities affected shall report the shortfall at the next meeting of the interim or standing legislative
87 Law Enforcement and Criminal Justice Committee as is appropriate for that time of year.

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

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

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

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

94 (ii) by contract with the department; and

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

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

97 **64-13c-304. Report to Legislature.**

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

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

101 (b) participating counties and entities;

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

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

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

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

108 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**
109 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**
110 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
111 **monitoring.**

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

115 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime
116 or offense, the court may suspend the imposition or execution of sentence and place the defendant
117 on probation. The court may place the defendant:

118 (i) on probation under the supervision of the Department of Corrections except in cases

119 of class C misdemeanors or infractions;

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

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

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

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

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

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

129 (i) the type of offense;

130 (ii) the demand for services;

131 (iii) the availability of agency resources;

132 (iv) the public safety; and

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

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

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

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

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

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

149 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the

150 defendant, continue the date for the imposition of sentence for a reasonable period of time for the
151 purpose of obtaining a presentence investigation report from the department or information from
152 other sources about the defendant.

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

155 (i) identify the victim of the offense;

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

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

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

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

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

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

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

175 (6) (a) The department shall provide the presentence investigation report to the defendant's
176 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,
177 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation
178 report, which have not been resolved by the parties and the department prior to sentencing, shall
179 be brought to the attention of the sentencing judge, and the judge may grant an additional ten
180 working days to resolve the alleged inaccuracies of the report with the department. If after ten

181 working days the inaccuracies cannot be resolved, the court shall make a determination of
182 relevance and accuracy on the record.

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

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

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

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

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

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

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

195 (iv) participate in available treatment programs;

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

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

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

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

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

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

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

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

211 (ii) provide documentation of the inability to obtain one of the items listed in Subsection

212 (8)(b)(i) because of:

213 (A) a diagnosed learning disability; or

214 (B) other justified cause.

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

218 (a) the parole period and any extension of that period in accordance with Subsection
219 77-27-6(4); and

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

222 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon
223 completion without violation of 36 months probation in felony or class A misdemeanor cases, or
224 12 months in cases of class B or C misdemeanors or infractions.

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

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

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

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

241 (ii) Any time served in confinement awaiting a hearing or decision concerning revocation
242 of probation does not constitute service of time toward the total probation term unless the

243 probationer is exonerated at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

271 (iv) The defendant may call witnesses, appear and speak in his own behalf, and present
272 evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

302 (e) requested by the victim of the crime discussed in the presentence investigation report
303 or the victim's authorized representative, provided that the disclosure to the victim shall include
304 only information relating to statements or materials provided by the victim, to the circumstances

305 of the crime including statements by the defendant, or to the impact of the crime on the victim or
306 the victim's household.

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

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

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

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

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

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

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

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

323 (i) place the defendant on probation under the supervision of the Department of
324 Corrections;

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

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

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

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

333 Section 8. **Repealer.**

334 This act repeals:

335 Section **64-13b-101, Definitions.**

336 Section **64-13b-201, Reimbursement for incarceration of state prisoners.**

337 Section **64-13b-301, Budget for jail reimbursement.**