

**GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Government Records Access and Management Act. This act allows any person to subpoena a private, controlled, or protected record. This act makes technical and conforming changes.

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

AMENDS:

31A-17-503, as enacted by Chapter 305, Laws of Utah 1993

52-4-7.5, as enacted by Chapter 89, Laws of Utah 1994

52-4-10, as enacted by Chapter 89, Laws of Utah 1994

63-2-202, as last amended by Chapter 312, Laws of Utah 1994

77-18-1, as last amended by Chapters 279 and 287, Laws of Utah 1999

REPEALS:

63-2-207, as last amended by Chapter 303, Laws of Utah 1998

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

Section 1. Section **31A-17-503** is amended to read:

31A-17-503. Actuarial opinion of reserves.

(1) This section becomes operative on December 31, 1993.

(2) General: Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered to be necessary to its



28 scope.

29 (3) Actuarial analysis of reserves and assets supporting reserves:

30 (a) Every life insurance company, except as exempted by or pursuant to rule, shall also
31 annually include in the opinion required by Subsection (2), an opinion of the same qualified
32 actuary as to whether the reserves and related actuarial items held in support of the policies and
33 contracts specified by the commissioner by rule, when considered in light of the assets held by the
34 company with respect to the reserves and related actuarial items, including but not limited to the
35 investment earnings on the assets and the considerations anticipated to be received and retained
36 under the policies and contracts, make adequate provision for the company's obligations under the
37 policies and contracts, including but not limited to the benefits under the expenses associated with
38 the policies and contracts.

39 (b) The commissioner may provide by rule for a transition period for establishing any
40 higher reserves which the qualified actuary may consider necessary in order to render the opinion
41 required by this section.

42 (4) Requirement for opinion under Subsection (3): Each opinion required by Subsection
43 (3) shall be governed by the following provisions:

44 (a) A memorandum, in form and substance acceptable to the commissioner as specified
45 by rule, shall be prepared to support each actuarial opinion.

46 (b) If the insurance company fails to provide a supporting memorandum at the request of
47 the commissioner within a period specified by rule or the commissioner determines that the
48 supporting memorandum provided by the insurance company fails to meet the standards prescribed
49 by the rule or is otherwise unacceptable to the commissioner, the commissioner may engage a
50 qualified actuary at the expense of the company to review the opinion and the basis for the opinion
51 and prepare such supporting memorandum as is required by the commissioner.

52 (5) Requirement for all opinions: Every opinion shall be governed by the following
53 provisions:

54 (a) The opinion shall be submitted with the annual statement reflecting the valuation of
55 the reserve liabilities for each year ending on or after December 31, 1993.

56 (b) The opinion shall apply to all business in force including individual and group health
57 insurance plans, in form and substance acceptable to the commissioner as specified by rule.

58 (c) The opinion shall be based on standards adopted from time to time by the Actuarial

59 Standards Board and on such additional standards as the commissioner may by rule prescribe.

60 (d) In the case of an opinion required to be submitted by a foreign or alien company, the
61 commissioner may accept the opinion filed by that company with the insurance supervisory official
62 of another state if the commissioner determines that the opinion reasonably meets the requirements
63 applicable to a company domiciled in this state.

64 (e) For the purposes of this section, "qualified actuary" means a member in good standing
65 of the American Academy of Actuaries who meets the requirements set forth by department rule.

66 (f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for
67 damages to any person, other than the insurance company and the commissioner, for any act, error,
68 omission, decision, or conduct with respect to the actuary's opinion.

69 (g) Disciplinary action by the commissioner against the company or the qualified actuary
70 shall be defined in rules by the commissioner.

71 (h) (i) Any memorandum in support of the opinion, and any other material provided by the
72 company to the commissioner in connection therewith, are considered protected records under
73 Section 63-2-304 [~~and may not be made public and are not subject to subpoena under Subsection~~
74 ~~63-2-202(7), other than for the purpose of defending an action seeking damages from any person~~
75 ~~by reason of any action required by this section or rules promulgated under this section~~]. However,
76 the memorandum or other material may otherwise be released by the commissioner:

77 [(i)] (A) with the written consent of the company; or

78 [(ii)] (B) to the American Academy of Actuaries upon request stating that the memorandum
79 or other material is required for the purpose of professional disciplinary proceedings and setting
80 forth procedures satisfactory to the commissioner for preserving the confidentiality of the
81 memorandum or other material.

82 (ii) Once any portion of the confidential memorandum is cited in its marketing or is cited
83 before any governmental agency other than the department or is released to the news media, all
84 portions of the memorandum are no longer confidential.

85 Section 2. Section **52-4-7.5** is amended to read:

86 **52-4-7.5. Record of closed meetings.**

87 (1) If a public body closes a meeting to discuss the character, professional competence, or
88 physical or mental health of an individual under Subsection 52-4-5(1)(a)(i) or to discuss the
89 deployment of security personnel, devices, or systems under Subsection 52-4-5(1)(a)(vi), the

90 person presiding shall sign a sworn statement affirming that the sole purpose for closing the
91 meeting was to discuss:

92 (a) the character, professional competence, or physical or mental health of an individual;

93 or

94 (b) the deployment of security personnel, devices, or systems.

95 (2) (a) If a public body closes a meeting under Subsection 52-4-5(1) for any purpose other
96 than to discuss the character, professional competence, or physical or mental health of an
97 individual or to discuss the deployment of security personnel, devices, or systems, the public body
98 shall either tape record the closed portion of the meeting or keep detailed written minutes that
99 disclose the content of the closed portion of the meeting.

100 (b) [(i)] Tape recordings and written minutes of closed meetings are protected records
101 under Title 63, Chapter 2, Government Records Access and Management Act, and any person who
102 violates the provisions of Section 63-2-801 is subject to the criminal penalties contained in that
103 section.

104 [~~(ii) Notwithstanding the provisions of Subsection 63-2-202(4)(c), tape recordings and~~
105 ~~written minutes of closed meetings, as protected records, may be disclosed pursuant to a court~~
106 ~~order only as provided in Section 52-4-10.]~~

107 Section 3. Section **52-4-10** is amended to read:

108 **52-4-10. Action challenging closed meeting.**

109 (1) [~~Notwithstanding the procedure established in Subsection 63-2-202(7), in~~] In any
110 action brought under the authority of this chapter to challenge the legality of a closed meeting held
111 by a public body, the court shall:

112 (a) review the tape recording or written minutes of the closed meeting in camera; and

113 (b) decide the legality of the closed meeting.

114 (2) (a) If the judge determines that the public body did not violate the law governing closed
115 meetings, the judge shall dismiss the case without disclosing or revealing any information from
116 the tape recording or minutes of the closed meeting.

117 (b) If the judge determines that the public body violated the law governing closed
118 meetings, the judge shall publicly disclose or reveal from the tape recordings or minutes of the
119 closed meeting all information about the portion of the meeting that was illegally closed.

120 Section 4. Section **63-2-202** is amended to read:

- 121 **63-2-202. Access to private, controlled, and protected documents.**
- 122 (1) Upon request, a governmental entity shall disclose a private record to:
- 123 (a) the subject of the record;
- 124 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
- 125 record;
- 126 (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
- 127 (d) any other individual who:
- 128 (i) has a power of attorney from the subject of the record;
- 129 (ii) submits a notarized release from the subject of the record or his legal representative
- 130 dated no more than 90 days before the date the request is made; or
- 131 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health
- 132 care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information in the
- 133 record is consistent with normal professional practice and medical ethics; or
- 134 (e) any person to whom the record must be provided pursuant to ~~[court order as provided~~
- 135 ~~in Subsection (7)]~~ a subpoena or a legislative subpoena as provided in Title 36, Chapter 14.
- 136 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- 137 (i) a physician, psychologist, certified social worker, insurance provider or agent, or a
- 138 government public health agency upon submission of a release from the subject of the record that
- 139 is dated no more than 90 days prior to the date the request is made and a signed acknowledgment
- 140 of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
- 141 (ii) any person to whom the record must be disclosed pursuant to ~~[court order as provided~~
- 142 ~~in Subsection (7)]~~ a subpoena or a legislative subpoena as provided in Title 36, Chapter 14.
- 143 (b) A person who receives a record from a governmental entity in accordance with
- 144 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
- 145 including the subject of the record.
- 146 (3) If there is more than one subject of a private or controlled record, the portion of the
- 147 record that pertains to another subject shall be segregated from the portion that the requester is
- 148 entitled to inspect.
- 149 (4) Upon request, a governmental entity shall disclose a protected record to:
- 150 (a) the person who submitted the record;
- 151 (b) any other individual who:

152 (i) has a power of attorney from all persons, governmental entities, or political
153 subdivisions whose interests were sought to be protected by the protected classification; or

154 (ii) submits a notarized release from all persons, governmental entities, or political
155 subdivisions whose interests were sought to be protected by the protected classification or from
156 their legal representatives dated no more than 90 days prior to the date the request is made; or

157 (c) any person to whom the record must be provided pursuant to [~~a court order as provided~~
158 ~~in Subsection (7)] a subpoena or a legislative subpoena as provided in Title 36, Chapter 14.~~

159 (5) A governmental entity may disclose a private, controlled, or protected record to another
160 governmental entity, political subdivision, another state, the United States, or a foreign government
161 only as provided by Section 63-2-206.

162 (6) Before releasing a private, controlled, or protected record, the governmental entity shall
163 obtain evidence of the requester's identity.

164 [~~(7) A governmental entity shall disclose a record pursuant to the terms of a court order~~
165 ~~signed by a judge from a court of competent jurisdiction, provided that:]~~

166 [~~(a) the record deals with a matter in controversy over which the court has jurisdiction;]~~

167 [~~(b) the court has considered the merits of the request for access to the record; and]~~

168 [~~(c) the court has considered and, where appropriate, limited the requester's use and further~~
169 ~~disclosure of the record in order to protect privacy interests in the case of private or controlled~~
170 ~~records, business confidentiality interests in the case of records protected under Subsections~~
171 ~~63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected~~
172 ~~records;]~~

173 [~~(d) to the extent the record is properly classified private, controlled, or protected, the~~
174 ~~interests favoring access, considering limitations thereon, outweigh the interests favoring~~
175 ~~restriction of access; and]~~

176 [~~(e) where access is restricted by a rule, statute, or regulation referred to in Subsection~~
177 ~~63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.]~~

178 [~~(8)~~ (7) (a) A governmental entity may disclose or authorize disclosure of private or
179 controlled records for research purposes if the governmental entity:

180 (i) determines that the research purpose cannot reasonably be accomplished without use
181 or disclosure of the information to the researcher in individually identifiable form;

182 (ii) determines that the proposed research is bona fide, and that the value of the research

183 outweighs the infringement upon personal privacy;

184 (iii) requires the researcher to assure the integrity, confidentiality, and security of the
185 records and requires the removal or destruction of the individual identifiers associated with the
186 records as soon as the purpose of the research project has been accomplished;

187 (iv) prohibits the researcher from disclosing the record in individually identifiable form,
188 except as provided in Subsection (7)(b), or from using the record for purposes other than the
189 research approved by the governmental entity; and

190 (v) secures from the researcher a written statement of his understanding of and agreement
191 to the conditions of this Subsection (7) and his understanding that violation of the terms of this
192 subsection may subject him to criminal prosecution under Section 63-2-801.

193 (b) A researcher may disclose a record in individually identifiable form if the record is
194 disclosed for the purpose of auditing or evaluating the research program and no subsequent use or
195 disclosure of the record in individually identifiable form will be made by the auditor or evaluator
196 except as provided by this section.

197 (c) A governmental entity may require indemnification as a condition of permitting
198 research under this Subsection (7).

199 ~~[(9)]~~ (8) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may
200 disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to
201 persons other than those specified in this section.

202 (b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure
203 of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected
204 under Section 63-2-304 to persons other than those specified in this section.

205 (c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are
206 private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section
207 63-2-304 to persons other than those specified in this section.

208 Section 5. Section **77-18-1** is amended to read:

209 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**
210 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**
211 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
212 **monitoring.**

213 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in

214 abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a,
215 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

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

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

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

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

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

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

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

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

230 (i) the type of offense;

231 (ii) the demand for services;

232 (iii) the availability of agency resources;

233 (iv) the public safety; and

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

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

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

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

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

245 (4) Notwithstanding other provisions of law, the department is not required to supervise
246 the probation of persons convicted of class B or C misdemeanors or infractions or to conduct
247 presentence investigation reports on class C misdemeanors or infractions. However, the
248 department may supervise the probation of class B misdemeanants in accordance with department
249 standards.

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

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

256 (i) identify the victim of the offense;

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

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

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

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

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

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

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

276 (6) (a) The department shall provide the presentence investigation report to the defendant's
277 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,
278 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation
279 report, which have not been resolved by the parties and the department prior to sentencing, shall
280 be brought to the attention of the sentencing judge, and the judge may grant an additional ten
281 working days to resolve the alleged inaccuracies of the report with the department. If after ten
282 working days the inaccuracies cannot be resolved, the court shall make a determination of
283 relevance and accuracy on the record.

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

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

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

292 (a) perform any or all of the following:

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

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

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

296 (iv) participate in available treatment programs;

297 (v) serve a period of time, not to exceed one year, in a county jail designated by the
298 department, after considering any recommendation by the court as to which jail the court finds
299 most appropriate;

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

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

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

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

- 307 (x) comply with other terms and conditions the court considers appropriate; and
- 308 (b) if convicted on or after May 5, 1997:
 - 309 (i) complete high school classwork and obtain a high school graduation diploma, a GED
 - 310 certificate, or a vocational certificate at the defendant's own expense if the defendant has not
 - 311 received the diploma, GED certificate, or vocational certificate prior to being placed on probation;
 - 312 or
 - 313 (ii) provide documentation of the inability to obtain one of the items listed in Subsection
 - 314 (8)(b)(i) because of:
 - 315 (A) a diagnosed learning disability; or
 - 316 (B) other justified cause.
 - 317 (9) The department shall collect and disburse the account receivable as defined by Section
 - 318 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
 - 319 (a) the parole period and any extension of that period in accordance with Subsection
 - 320 77-27-6(4); and
 - 321 (b) the probation period in cases for which the court orders supervised probation and any
 - 322 extension of that period by the department in accordance with Subsection 77-18-1(10).
 - 323 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon
 - 324 completion without violation of 36 months probation in felony or class A misdemeanor cases, or
 - 325 12 months in cases of class B or C misdemeanors or infractions.
 - 326 (ii) (A) If, upon expiration or termination of the probation period under Subsection
 - 327 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
 - 328 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
 - 329 probation for the limited purpose of enforcing the payment of the account receivable.
 - 330 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
 - 331 judgments any unpaid balance not already recorded and immediately transfer responsibility to
 - 332 collect the account to the Office of State Debt Collection.
 - 333 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
 - 334 own motion, the court may require the defendant to show cause why his failure to pay should not
 - 335 be treated as contempt of court.
 - 336 (b) (i) The department shall notify the sentencing court, the Office of State Debt
 - 337 Collection, and the prosecuting attorney in writing in advance in all cases when termination of

338 supervised probation will occur by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

400 (a) [~~ordered by the court pursuant to Subsection 63-2-202(7)~~] served with a valid
401 subpoena;

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

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

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

407 (e) requested by the victim of the crime discussed in the presentence investigation report
408 or the victim's authorized representative, provided that the disclosure to the victim shall include
409 only information relating to statements or materials provided by the victim, to the circumstances
410 of the crime including statements by the defendant, or to the impact of the crime on the victim or
411 the victim's household.

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

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

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

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

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

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

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

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

428 (i) place the defendant on probation under the supervision of the Department of
429 Corrections;

430 (ii) order the department to place an electronic monitoring device on the defendant and

431 install electronic monitoring equipment in the residence of the defendant; and

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

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

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

438 Section 6. **Repealer.**

439 This act repeals:

440 Section **63-2-207, Subpoenas -- Court ordered disclosure for discovery.**

Legislative Review Note

as of 1-29-01 10:23 AM

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

Office of Legislative Research and General Counsel