

**DRUG OFFENDER REFORM ACT - PILOT
PROGRAM**

2005 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends provisions regarding the Utah Substance Abuse and Anti-Violence Coordinating Council and the Code of Criminal Procedure to implement the Drug Offender Reform Pilot Study, a pilot program in Salt Lake County regarding substance abuse screening, assessment, and treatment for felony offenders charged with controlled substance offenses.

Highlighted Provisions:

This bill:

- ▶ requires the Utah Substance Abuse and Anti-Violence Coordinating Council to develop, implement, and evaluate the implementation of the pilot study; and
- ▶ requires that under the pilot study:
 - on and after July 1, 2005 through June 30, 2007, all offenders in the courts of the Third Judicial District located in Salt Lake County who are convicted of a felony offense in violation of Title 58, Chapter 37, Utah Controlled Substances Act, shall participate in a substance abuse screening and may also participate in an assessment if indicated;
 - requires that the results of any screening and assessment of an offender in the study be provided to the court prior to sentencing;
 - provides that the pilot program shall include treatment for a maximum of 250 participants, who are convicted offenders on probation; and



28 ▶ requires annual progress reports during the study and a final report to the
29 Legislature regarding the impact and results of the study.

30 **Monies Appropriated in this Bill:**

31 This bill appropriates \$500,000 as a one-time appropriation from the General Fund as
32 follows:

- 33 • \$75,000 from the General Fund for fiscal year 2005-06, to the Commission on
34 Criminal and Juvenile Justice;
- 35 • \$315,000 from the General Fund for fiscal year 2005-06, to the Department of
36 Human Services;
- 37 • \$10,000 from the General Fund for fiscal year 2005-06, to the Administrative
38 Office of the Courts; and
- 39 • \$100,000 from the General Fund for fiscal year 2005-06, to the Department of
40 Corrections.

41 **Other Special Clauses:**

42 This bill takes effect on July 1, 2005.

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **63-25a-203**, as last amended by Chapter 115, Laws of Utah 2002
- 46 **77-18-1**, as last amended by Chapter 290, Laws of Utah 2003

47 ENACTS:

- 48 **63-25a-205.5**, Utah Code Annotated 1953
- 49 **77-18-1.1**, Utah Code Annotated 1953



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

52 Section 1. Section **63-25a-203** is amended to read:

53 **63-25a-203. Duties of council.**

54 (1) The Utah Substance Abuse and Anti-Violence Coordinating Council shall:

55 (a) provide leadership and generate unity for Utah's ongoing efforts to combat
56 substance abuse and community violence;

57 (b) recommend and coordinate the creation, dissemination, and implementation of a
58 statewide substance abuse and anti-violence policy;

59 (c) facilitate planning for a balanced continuum of substance abuse and community
60 violence prevention, treatment, and justice services;

61 (d) promote collaboration and mutually beneficial public and private partnerships;

62 (e) coordinate recommendations made by any subcommittees created under Section
63 63-25a-202; ~~and~~

64 (f) analyze and provide an objective assessment of all proposed legislation concerning
65 alcohol and other drug issues and community violence issues[-]; and

66 (g) coordinate the implementation of Section 77-18-1.1 and related provisions in
67 Subsection 77-18-1(5)(d) as provided in Section 63-25a-205.5.

68 (2) The council shall meet quarterly or more frequently as determined necessary by the
69 chair.

70 (3) The council shall report its recommendations annually to the commission,
71 governor, Legislature, and judicial council.

72 Section 2. Section **63-25a-205.5** is enacted to read:

73 **63-25a-205.5. Drug Offender Reform Pilot Study -- Creation.**

74 (1) As used in this section:

75 (a) "Council" means the Utah Substance Abuse and Anti-Violence Coordinating
76 Council.

77 (b) "Drug Offender Reform Pilot Study" and "study" mean the screening, assessment,
78 and substance abuse treatment provided to convicted offenders as part of a study described in
79 this section and conducted as described in Section 77-18-1.1 in the courts of the Third Judicial
80 District located in Salt Lake County.

81 (c) "Substance abuse authority" means the Salt Lake County substance abuse authority
82 operating within the Third Judicial District.

83 (2) There is established a Drug Offender Reform Pilot Study in the courts of the Third
84 Judicial District located in Salt Lake County.

85 (a) The study shall operate on and after July 1, 2005, through June 30, 2008, subject to
86 legislative funding.

87 (i) The study shall conduct screening under Subsection 77-18-1.1(2)(a) through June
88 30, 2007, and shall conduct assessments and substance abuse treatment based on this screening
89 under Subsections 77-18-1.1(2)(b) and (c).

90 (ii) The assessments and treatment based on screening conducted on and before June
91 30, 2007, shall be conducted by the study through June 30, 2008, the final date of the study.

92 (b) The study shall provide screening and assessment under Section 77-18-1.1 to
93 offenders convicted in the courts of the Third Judicial District in Salt Lake County of a felony
94 offense in violation of Title 58, Chapter 37, Utah Controlled Substances Act.

95 (c) The study shall provide substance abuse treatment under Section 77-18-1.1 to a
96 maximum of 250 offenders convicted under Subsection (2)(b) and who are sentenced to
97 probation in Salt Lake County if:

98 (i) the assessment indicates treatment is appropriate; and

99 (ii) the court finds treatment to be appropriate for the offender.

100 (3) The council shall provide ongoing oversight of the implementation and functions of
101 the study.

102 (4) The council shall develop an implementation plan for the study, which shall:

103 (a) include guidelines on how funds appropriated for the study should be used;

104 (b) include guidelines on the membership of the Salt Lake County planning group
105 under Subsection (5); and

106 (c) require that treatment plans under the study are appropriate for criminal offenders.

107 (5) (a) The Salt Lake County substance abuse authority located within the Third
108 Judicial District shall establish a local planning group to develop and submit a plan to the
109 council detailing the intended use of the study funds. The uses shall be in accordance with the
110 guidelines established by the council under Subsection (4).

111 (b) Upon approval of the plan by the council, the Department of Human Services shall
112 allocate the funds to the substance abuse authority.

113 (c) The substance abuse authority shall submit to the Department of Human Services
114 and the council, on or before October 1 of each year, reports detailing use of the funds and the
115 impact and results of the use of the funds.

116 (6) The council shall evaluate the progress of the study and shall provide a written
117 report to the Law Enforcement and Criminal Justice Interim Committee and the Health and
118 Human Services Interim Committee annually on or before November 1, and shall provide to
119 these interim committees a final written report on the impact and results of the study on or
120 before November 1, 2008.

121 Section 3. Section **77-18-1** is amended to read:

122 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
123 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
124 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
125 **monitoring.**

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

129 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any
130 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
131 and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

143 (i) the type of offense;

144 (ii) the demand for services;

145 (iii) the availability of agency resources;

146 (iv) the public safety; and

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

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

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

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

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

159 (4) Notwithstanding other provisions of law, the department is not required to
160 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
161 conduct presentence investigation reports on class C misdemeanors or infractions. However,
162 the department may supervise the probation of class B misdemeanants in accordance with
163 department standards.

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

168 (b) The presentence investigation report shall include a victim impact statement
169 according to guidelines set in Section 77-38a-203 describing the effect of the crime on the
170 victim and the victim's family.

171 (c) The presentence investigation report shall include a specific statement of pecuniary
172 damages, accompanied by a recommendation from the department regarding the payment of
173 restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime
174 Victims Restitution Act.

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
177 available except by court order for purposes of sentencing as provided by rule of the Judicial
178 Council or for use by the department.

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

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

187 (b) If a party fails to challenge the accuracy of the presentence investigation report at
188 the 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
190 information the defendant or the prosecuting attorney desires to present concerning the
191 appropriate sentence. This testimony, evidence, or information shall be presented in open court
192 on record and in the 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) 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
197 probation;

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

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

200 (iv) participate in available treatment programs, including any treatment program in
201 which the defendant is currently participating, if the program is acceptable to the court;

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

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

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

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

210 (ix) make restitution or reparation to the victim or victims with interest in accordance
211 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

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

213 (b) if convicted on or after May 5, 1997:

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

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

220 (A) a diagnosed learning disability; or

221 (B) other justified cause.

222 (9) The department shall collect and disburse the account receivable as defined by
223 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

224 (a) the parole period and any extension of that period in accordance with Subsection
225 77-27-6(4); and

226 (b) the probation period in cases for which the court orders supervised probation and
227 any extension of that period by the department in accordance with Subsection (10).

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

231 (ii) (A) If, upon expiration or termination of the probation period under Subsection
232 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
233 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
234 probation for the limited purpose of enforcing the payment of the account receivable.

235 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
236 judgments any unpaid balance not already recorded and immediately transfer responsibility to
237 collect the account to the Office of State Debt Collection.

238 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
239 own motion, the court may require the defendant to show cause why his failure to pay should
240 not be treated as contempt of court.

241 (b) (i) The department shall notify the sentencing court, the Office of State Debt
242 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
243 supervised probation will occur by law.

244 (ii) The notification shall include a probation progress report and complete report of

245 details on outstanding accounts receivable.

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

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

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

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

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

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

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

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

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

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

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

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

275 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney

276 shall present evidence on the allegations.

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

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

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

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

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

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

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

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

294 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for
295 treatment over the defendants described in this Subsection (13).

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

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

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

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

306 (d) requested by the subject of the presentence investigation report or the subject's

307 authorized representative; or

308 (e) requested by the victim of the crime discussed in the presentence investigation
309 report or the victim's authorized representative, provided that the disclosure to the victim shall
310 include only information relating to statements or materials provided by the victim, to the
311 circumstances of the crime including statements by the defendant, or to the impact of the crime
312 on the victim or the victim's household.

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

315 (b) The department shall establish procedures and standards for home confinement,
316 including electronic monitoring, for all individuals referred to the department in accordance
317 with Subsection (16).

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

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

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

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

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

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

329 (i) place the defendant on probation under the supervision of the Department of
330 Corrections;

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

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

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

337 (f) The department may provide the electronic monitoring described in this section

338 either directly or by contract with a private provider.

339 Section 4. Section **77-18-1.1** is enacted to read:

340 **77-18-1.1. Screening, assessment, and treatment.**

341 (1) As used in this section:

342 (a) "Assessment" has the same meaning as in Section 41-6a-501.

343 (b) "Convicted" means:

344 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty and mentally ill,
345 or no contest; and

346 (ii) conviction of any crime or offense.

347 (c) "Screening" has the same meaning as in Section 41-6a-501.

348 (d) "Substance abuse treatment" means treatment obtained through a substance abuse
349 program that is licensed by the Office of Licensing within the Department of Human Services.

350 (2) On and after July 1, 2005, through June 30, 2007, the courts of the Third Judicial
351 District located in Salt Lake County:

352 (a) shall order every offender convicted of a felony offense under Title 58, Chapter 37,
353 Utah Controlled Substances Act, to participate in a screening prior to sentencing;

354 (b) may order offenders screened under Subsection (2)(a) to participate in an
355 assessment prior to sentencing if the screening indicates an assessment to be appropriate; and

356 (c) shall order a maximum of 250 offenders assessed under Subsection (2)(b) and
357 sentenced to probation in Salt Lake County to participate in substance abuse treatment if:

358 (i) the assessment indicates treatment is appropriate; and

359 (ii) the court finds treatment to be appropriate for the offender.

360 (3) The findings from any screening and any assessment conducted under this section
361 shall be part of the presentence investigation report submitted to the court prior to sentencing
362 of the offender.

363 (4) Monies appropriated by the Legislature to assist in the funding of the screening,
364 assessment, and substance abuse treatment provided under this section are not subject to any
365 requirement regarding matching funds from a state or local governmental entity.

366 Section 5. **Appropriation.**

367 (1) There is appropriated \$500,000 for the costs of operating in fiscal year 2005-06 for
368 the Drug Offender Reform Pilot Study as defined in Section 63-25a-205.5, as follows:

369 (a) \$75,000 from the General Fund for fiscal year 2005-06 only, to the Commission on
370 Criminal and Juvenile Justice line item within the Governor's Office to be used for research
371 and evaluation of the Drug Offender Reform Pilot Study, as defined in Subsection
372 63-25a-205.5(1):

373 (b) \$315,000 from the General Fund for fiscal year 2005-06 only, to the Executive
374 Director Operations line item within the Department of Human Services to be used for
375 assessment, drug treatment, case management, and drug testing of offenders on probation who
376 are enrolled in the pilot study in the courts of the Third Judicial District located in Salt Lake
377 County:

378 (c) \$10,000 from the General Fund for fiscal year 2005-06 only, to the Administration
379 line item of the Judicial Council and State Court Administrator to be used for the costs of court
380 clerks in the courts of the Third Judicial District located in Salt Lake County; and

381 (d) \$100,000 from the General Fund for fiscal year 2005-06 only, to the Programs and
382 Operations line item of the Utah Department of Corrections to be used for probation
383 supervision of offenders receiving substance abuse treatment as participants in the pilot study.

384 (2) The appropriations under this Section 5 are nonlapsing.

385 Section 6. **Effective date.**

386 This bill takes effect on July 1, 2005.

Legislative Review Note
as of 4-19-05 7:47 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

This legislation implements a three-year pilot program and appropriates \$500,000 in FY 2006 to begin the pilot study. This amount is divided as follows: \$75,000 to the Commission on Criminal and Juvenile Justice, \$315,000 to the Department of Human Services, \$10,000 to the Judicial Council and State Court Administrator, and \$100,000 to the Department of Corrections. The total cost for the 250 person (maximum) pilot program is \$1,417,400, and the program will be limited to that amount. It is anticipated that state agencies involved with the pilot study will request the balance of \$917,400 from the General Fund for FY 2007 in the next general session.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$500,000	\$0	\$0	\$0
TOTAL	\$500,000	\$0	\$0	\$0

Individual and Business Impact

Private providers of screening, assessment, and treatment services would benefit financially from participation in this pilot study. As impact of this pilot program begins to be felt, there could be a positive impact on communities, businesses and individuals through decreased drug-related crime activities.
