

1 **AMENDMENTS TO DEPARTMENT OF**
2 **CORRECTIONS' OPERATIONS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Paul Ray**

6 Senate Sponsor: Jon J. Greiner

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions regarding the Department of Corrections, the Criminal
11 Code, and the Code of Criminal Procedure regarding diagnostic evaluations of
12 defendants.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ repeals provisions allowing courts to commit a defendant to the custody of the
16 Department of Corrections for a 90-day diagnostic evaluation prior to sentencing;
17 and
18 ▶ removes provisions in the code referring to providing diagnostic evaluations as part
19 of the presentence information prepared for the sentencing court.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **62A-15-501**, as renumbered and amended by Laws of Utah 2002, Fifth Special
27 Session, Chapter 8

28 **64-13-20**, as last amended by Laws of Utah 2008, Chapter 382

29 **77-18-1**, as last amended by Laws of Utah 2008, Chapters 3 and 382

30 REPEALS:

31 **76-3-404**, as last amended by Laws of Utah 1991, Chapter 206



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

34 Section 1. Section **62A-15-501** is amended to read:

35 **62A-15-501. DUI -- Legislative policy -- Rehabilitation treatment and evaluation**
36 **-- Use of victim impact panels.**

37 The Legislature finds that drivers impaired by alcohol or drugs constitute a major
38 problem in this state and that the problem demands a comprehensive detection, intervention,
39 education, and treatment program including emergency services, outpatient treatment,
40 detoxification, residential care, inpatient care, [~~diagnostic evaluation,~~] medical and
41 psychological care, social service care, vocational rehabilitation, and career counseling
42 through public and private agencies. It is the policy of this state to provide those programs at
43 the expense of persons convicted of driving while under the influence of intoxicating liquor or
44 drugs. It is also the policy of this state to utilize victim impact panels to assist persons
45 convicted of driving under the influence of intoxicating liquor or drugs to gain a full
46 understanding of the severity of their offense.

47 Section 2. Section **64-13-20** is amended to read:

48 **64-13-20. Investigative services -- Presentence investigation reports.**

49 (1) The department shall:

50 (a) provide investigative [~~and diagnostic~~] services and prepare reports to:

51 (i) assist the courts in sentencing;

52 (ii) assist the Board of Pardons and Parole in its decision-making responsibilities
53 regarding offenders;

54 (iii) assist the department in managing offenders; and

55 (iv) assure the professional and accountable management of the department;

56 (b) establish standards for providing investigative [~~and diagnostic~~] services based on
57 available resources, giving priority to felony cases; and

58 (c) employ staff for the purpose of conducting:
59 (i) thorough presentence investigations of the social, physical, and mental conditions
60 and backgrounds of offenders; and

61 (ii) examinations when required by the court or the Board of Pardons and Parole[;
62 ~~and~~].

63 [~~iii) thorough diagnostic evaluations of offenders as the court finds necessary to~~
64 ~~supplement the presentence investigation report under Section 76-3-404.~~]

65 (2) The department may provide recommendations concerning appropriate measures
66 to be taken regarding offenders.

67 (3) (a) The presentence [~~diagnostic evaluation and~~] investigation reports prepared by
68 the department are protected as defined in Section 63G-2-305 and after sentencing may not be
69 released except by express court order or by rules made by the Department of Corrections.

70 (b) The reports are intended only for use by:

71 (i) the court in the sentencing process;

72 (ii) the Board of Pardons and Parole in its decisionmaking responsibilities; and

73 (iii) the department in the supervision, confinement, and treatment of the offender.

74 (4) Presentence [~~diagnostic evaluation and~~] investigation reports shall be made
75 available upon request to other correctional programs within the state if the offender who is
76 the subject of the report has been committed or is being evaluated for commitment to the
77 facility for treatment as a condition of probation or parole.

78 (5) (a) The presentence investigation reports shall include a victim impact statement in
79 all felony cases and in misdemeanor cases if the defendant caused bodily harm or death to the
80 victim.

81 (b) Victim impact statements shall:

82 (i) identify the victim of the offense;

83 (ii) itemize any economic loss suffered by the victim as a result of the offense;

84 (iii) identify any physical, mental, or emotional injuries suffered by the victim as a
85 result of the offense, and the seriousness and permanence;

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

88 (v) identify any request for mental health services initiated by the victim or the
89 victim's family as a result of the offense; and

90 (vi) contain any other information related to the impact of the offense upon the victim
91 or the victim's family that the court requires.

92 (6) If the victim is deceased; under a mental, physical, or legal disability; or otherwise
93 unable to provide the information required under this section, the information may be obtained
94 from the personal representative, guardian, or family members, as necessary.

95 (7) The department shall employ staff necessary to pursue investigations of complaints
96 from the public, staff, or offenders regarding the management of corrections programs.

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

98 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
99 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
100 **conditions -- Termination, revocation, modification, or extension -- Hearings --**
101 **Electronic monitoring.**

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

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

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

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

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

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

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

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

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

119 (i) the type of offense;

120 (ii) the demand for services;

121 (iii) the availability of agency resources;

122 (iv) the public safety; and

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

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

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

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

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

135 (4) Notwithstanding other provisions of law, the department is not required to
136 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
137 conduct presentence investigation reports on class C misdemeanors or infractions. However,
138 the department may supervise the probation of class B misdemeanants in accordance with
139 department standards.

140 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of
141 the defendant, continue the date for the imposition of sentence for a reasonable period of time

142 for the purpose of obtaining a presentence investigation report from the department or
143 information from other sources about the defendant.

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

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

151 (d) The presentence investigation report shall include:

152 (i) findings from any screening and any assessment of the offender conducted under
153 Section 77-18-1.1; and

154 (ii) recommendations for treatment of the offender.

155 (e) The contents of the presentence investigation report~~[, including any diagnostic~~
156 ~~evaluation report ordered by the court under Section 76-3-404,]~~ are protected and are not
157 available except by court order for purposes of sentencing as provided by rule of the Judicial
158 Council or for use by the department.

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

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

169 (7) At the time of sentence, the court shall receive any testimony, evidence, or

170 information the defendant or the prosecuting attorney desires to present concerning the
171 appropriate sentence. This testimony, evidence, or information shall be presented in open
172 court on record and in the presence of the defendant.

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

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

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

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

179 (iii) provide for the support of others for whose support the defendant is legally liable;

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

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

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

187 (vii) participate in compensatory service restitution programs, including the
188 compensatory service program provided in Section 76-6-107.1;

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

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

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

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

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

198 (ii) provide documentation of the inability to obtain one of the items listed in
199 Subsection (8)(b)(i) because of:
200 (A) a diagnosed learning disability; or
201 (B) other justified cause.

202 (9) The department shall collect and disburse the account receivable as defined by
203 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
204 (a) the parole period and any extension of that period in accordance with Subsection
205 77-27-6(4); and
206 (b) the probation period in cases for which the court orders supervised probation and
207 any extension of that period by the department in accordance with Subsection (10).

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

211 (ii) (A) If, upon expiration or termination of the probation period under Subsection
212 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
213 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
214 probation for the limited purpose of enforcing the payment of the account receivable.

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

218 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon
219 its own motion, the court may require the defendant to show cause why the defendant's failure
220 to pay should not be treated as contempt of court.

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

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

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

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

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

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

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

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

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

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

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

251 (iii) The order to show cause shall inform the defendant of a right to be represented by
252 counsel at the hearing and to have counsel appointed [~~for him~~] if the defendant is indigent.

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

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

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

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

260 (iv) The defendant may call witnesses, appear and speak in the defendant's own
261 behalf, and present evidence.

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

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

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

268 (13) The court may order the defendant to commit himself to the custody of the
269 Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a
270 condition of probation or stay of sentence, only after the superintendent of the Utah State
271 Hospital or the superintendent's designee has certified to the court that:

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

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

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

277 (14) Presentence investigation reports[~~,-including presentence diagnostic evaluations,]~~
278 are classified protected in accordance with Title 63G, Chapter 2, Government Records Access
279 and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State
280 Records Committee may not order the disclosure of a presentence investigation report. Except
281 for disclosure at the time of sentencing pursuant to this section, the department may disclose

282 the presentence investigation only when:

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

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

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

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

289 (e) requested by the victim of the crime discussed in the presentence investigation
290 report or the victim's authorized representative, provided that the disclosure to the victim shall
291 include only information relating to statements or materials provided by the victim, to the
292 circumstances of the crime including statements by the defendant, or to the impact of the
293 crime on the victim or the victim's household.

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

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

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

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

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

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

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

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

- 310 (i) place the defendant on probation under the supervision of the Department of
311 Corrections;
- 312 (ii) order the department to place an electronic monitoring device on the defendant and
313 install electronic monitoring equipment in the residence of the defendant; and
- 314 (iii) order the defendant to pay the costs associated with home confinement to the
315 department or the program provider.
- 316 (e) The department shall pay the costs of home confinement through electronic
317 monitoring only for those persons who have been determined to be indigent by the court.
- 318 (f) The department may provide the electronic monitoring described in this section
319 either directly or by contract with a private provider.

320 **Section 4. Repealer.**

321 This bill repeals:

322 **Section 76-3-404, Presentence investigation and diagnostic evaluation --**
323 **Commitment of defendant -- Sentencing procedure.**