

PROBATION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions of the criminal procedure code.

Highlighted Provisions:

This bill:

▶ ~~H→ [———limits the time in which a court may terminate probation;]~~ ←H

▶ provides for notification to certain parties regarding the termination of probation H→ [;

and

~~———▶ requires the department to notify the sentencing court when the department requests the termination of probation]~~ ←H .

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18-1, as last amended by Laws of Utah 2014, Chapters 120 and 170

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

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

77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --

H.B. 353



28 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
29 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
30 **monitoring.**

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

34 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any
35 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
36 and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

48 (i) the type of offense;

49 (ii) the demand for services;

50 (iii) the availability of agency resources;

51 (iv) the public safety; and

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

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

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

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

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

64 (4) Notwithstanding other provisions of law, the department is not required to
65 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
66 conduct presentence investigation reports on class C misdemeanors or infractions. However,
67 the department may supervise the probation of class B misdemeanants in accordance with
68 department standards.

69 (5) (a) Before the imposition of any sentence, the court may, with the concurrence of
70 the defendant, continue the date for the imposition of sentence for a reasonable period of time
71 for the purpose of obtaining a presentence investigation report from the department or
72 information from other sources about the defendant.

73 (b) The presentence investigation report shall include:

74 (i) a victim impact statement according to guidelines set in Section [77-38a-203](#)
75 describing the effect of the crime on the victim and the victim's family;

76 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
77 from the department regarding the payment of restitution with interest by the defendant in
78 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

79 (iii) findings from any screening and any assessment of the offender conducted under
80 Section [77-18-1.1](#);

81 (iv) recommendations for treatment of the offender; and

82 (v) the number of days since the commission of the offense that the offender has spent
83 in the custody of the jail and the number of days, if any, the offender was released to a
84 supervised release or alternative incarceration program under Section [17-22-5.5](#).

85 (c) The contents of the presentence investigation report are protected and are not
86 available except by court order for purposes of sentencing as provided by rule of the Judicial
87 Council or for use by the department.

88 (6) (a) The department shall provide the presentence investigation report to the
89 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the

90 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
91 presentence investigation report, which have not been resolved by the parties and the
92 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
93 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
94 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
95 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

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

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

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

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

116 (vii) participate in compensatory service restitution programs, including the
117 compensatory service program provided in Section [76-6-107.1](#);

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

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

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

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

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

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

129 (A) a diagnosed learning disability; or

130 (B) other justified cause.

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

133 (a) the parole period and any extension of that period in accordance with Subsection
 134 77-27-6(4); and

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

137 (10) (a) (i) Probation may be terminated ~~H~~→ [H] **at any time** [H] ←~~H~~ at the discretion of
 137a the court ~~H~~→ [no

138 ~~sooner than 30 days after notice to the prosecutor] [; the victim, and the department] ←~~H~~~~

138a or upon
 139 completion without violation of 36 months probation in felony or class A misdemeanor cases,
 140 or 12 months in cases of class B or C misdemeanors or infractions.

141 (ii) (A) If, upon expiration or termination of the probation period under Subsection
 142 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
 143 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
 144 probation for the limited purpose of enforcing the payment of the account receivable. If the
 145 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
 146 the court the costs associated with continued probation under this Subsection (10).

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

150 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
 151 own motion, the court may require the defendant to show cause why the defendant's failure to

152 pay should not be treated as contempt of court.

153 (b) (i) The department shall notify the sentencing court, the Office of State Debt
154 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
155 supervised probation is being requested by the department or will occur by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

206 (c) persons described in Subsection [62A-15-610\(2\)\(g\)](#) are receiving priority for
207 treatment over the defendants described in this Subsection (13).

208 (14) Presentence investigation reports are classified protected in accordance with Title
209 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
210 [63G-2-403](#) and [63G-2-404](#), the State Records Committee may not order the disclosure of a
211 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
212 this section, the department may disclose the presentence investigation only when:

213 (a) ordered by the court pursuant to Subsection [63G-2-202\(7\)](#);

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

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

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

219 (e) requested by the victim of the crime discussed in the presentence investigation
220 report or the victim's authorized representative, provided that the disclosure to the victim shall
221 include only information relating to statements or materials provided by the victim, to the
222 circumstances of the crime including statements by the defendant, or to the impact of the crime
223 on the victim or the victim's household.

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

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

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

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

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

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

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

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

240 (i) place the defendant on probation under the supervision of the Department of
241 Corrections;

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

244 (iii) order the defendant to pay the costs associated with home confinement to the

245 department or the program provider.

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

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

Legislative Review Note

as of 2-12-15 11:15 AM

Office of Legislative Research and General Counsel