1978



**Collateral References.**

Criminal Law⚷991(1).
24 C.J.S. Criminal Law § 1577.
21 Am. Jur. 2d 523, Criminal Law § 547.

Effect of invalidation of sentence upon separate sentence which runs consecutively, 68 A. L. R. 2d 712.

DECISIONS UNDER FORMER LAW

**Construction and interpretation of section.**

This section did not conflict with 76-1-33, since repealed. In the event a person was convicted of two or more crimes and sentence had been pronounced on one, 76-1-33 controlled. McCoy v. Severson, 118 U. 502, 222 P. 2d 1058.

**77-35-15. Imprisonment or fine.**—A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every $2 of the fine.

**History: R. S. 1898 & C. L. 1907, § 4919; C. L. 1917, § 9055; R. S. 1933 & C. 1943, 105-36-15.**

**Cross-References.**

Fines, 76-3-201, 76-3-301.
Hard labor, imprisonment to be at, 77-36-7.
Justices' courts, comparable provision for, 77-57-53.

**Judgment for both fine and imprisonment.**

Section does not apply where court imposes, as sentence, definite term of imprisonment and also fine coupled with imprisonment until fine is paid. Roberts v. Howells, 22 U. 389, 62 P. 892.

If the judgment is for both fine and imprisonment, the fine is collectible by execution only; fine cannot be enforced by imprisonment. Reese v. Olsen, 44 U. 318, 139 P. 941, following 22 U. 389, 62 P. 892, and reviewed in 74 U. 121, 277 P. 401.

There being no authority to impose both fine and imprisonment under 23-3-22 for shooting game out of season, judgment of city court imposing fine "or" imprisonment was invalid as indefinite where not in alternative under 77-57-33, authorizing imprisonment until fine is paid at per diem rate. Rasmussen v. Zundel, 67 U. 456, 248 P. 135, reviewed at length in 74 U. 121, 277 P. 401.

**Collateral References.**

Fines⚷11, 12.
36A C.J.S. Fines § 11.
21 Am. Jur. 2d 557-559, Criminal Law §§ 603-606.

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Bail: right to apply cash bail to payment of fine, 92 A. L. R. 2d 1084.

Death of defendant pending appeal from criminal conviction, imposition of fine as affected by, 83 A. L. R. 2d 864.

Indigency of offender as affecting validity of imprisonment as alternative to payment of fine, 31 A. L. R. 3d 926.

**77-35-16. Judgment to pay fine constitutes a lien.**—A judgment that the defendant pay a fine constitutes a lien, in the same manner as a judgment for money rendered in a civil action.

**History: R. S. 1898 & C. L. 1907, § 4920; C. L. 1917, § 9056; R. S. 1933 & C. 1943, 105-36-16.**

**Cross-References.**

Execution on such judgment, 77-36-2.
Judgment liens, 78-22-1.

**Collateral References.**

Fines⚷3.
36A C.J.S. Fines § 15.

***77-35-17. Suspension of sentence—Probation—Conditions of probation*—Power of court to dismiss or discharge defendant—Exceptions.**—Upon a plea of guilty or conviction of any crime or offense, if it appears compatible with the public interest, the court having jurisdiction may suspend the





imposition or the execution of sentence and may place the defendant on probation for such period of time as the court shall determine.

The court may subsequently increase or decrease the probation period, and may revoke or modify any condition of probation. While on probation, the defendant may be required to pay, in one or several sums, any fine imposed at the time of being placed on probation; may be required to make restitution or reparation to the aggrieved party or parties for the actual damages or losses caused by the offense to which the defendant has pleaded guilty or for which conviction was had; and may be required to provide for the support of his wife or others for whose support he may be legally liable. Where it appears to the court from the report of the probation agent in charge of the defendant, or otherwise, that the defendant has complied with the conditions of such probation, the court may if it be compatible with the public interest either upon motion of the prosecuting attorney or of its own motion terminate the sentence or set aside the plea of guilty or conviction of the defendant, and dismiss the action and discharge the defendant. However, the provisions of this section providing for the setting aside of convictions or guilty pleas shall not apply to violations for the operation of motor vehicles under sections 41-6-43.10, 41-6-44, 41-6-44.10, 41-6-44.2 and 41-6-45, nor shall any court impose any conditions of probation which are contrary to sections 41-2-17 and 41-2-18.

**History: L. 1923, ch. 74, § 1; R. S. 1933, 105-36-17; L. 1943, ch. 24, § 1; C. 1943, Supp., 105-36-17; L. 1977, ch. 268, § 6.**

**Compiler's Notes.**

The 1943 amendment inserted "a plea of guilty or" near the beginning of the first paragraph; inserted "to which the defendant has pleaded guilty or" in the second sentence of the second paragraph; added the third sentence in the second paragraph; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "prosecuting attorney" for "district attorney" near the middle of the second paragraph; and added the last sentence of the second paragraph.

**Discretion of trial judge.**

When it appears that a trial judge has exercised discretion in suspending imposition of sentence or in revoking probation and imposing sentence, after a hearing, the judgment of the trial court should not be molested. Williams v. Harris, 106 U. 387, 149 P. 2d 640.

A temporary stay for the purpose of determining the present disposition and mental attitude of the convicted person, before granting an indefinite one, is within the discretion of the trial court. Demmick v. Harris, 107 U. 471, 155 P. 2d 170.

Whether one convicted of crime, and subject to punishment therefor, should be placed on probation is a matter within discretion of trial court, and if he is doubtful whether granting probation during good behavior is compatible with the public interest, he should make such investigation as his judgment dictates as to the attitudes of the person convicted. Demmick v. Harris, 107 U. 471, 155 P. 2d 170, reviewing State v. Zolantakis, 70 U. 296, 259 P. 1044, 54 A. L. R. 1463.

Probation is not a matter of right, but if the trial court gave as a sole reason for denial that defendant did not admit his guilt it might be an injustice under some circumstances. State v. Sibert, 6 U. (2d) 198, 310 P. 2d 388.

Where, in sentencing defendant, the trial judge indicated that he had no choice but to impose a mandatory five-year to life sentence for selling drugs, and, in fact, he had discretion to grant probation under this section, the sentence was vacated and remanded for a new sentence to be imposed without his feeling compelled to impose the statutory sentence. State v. Scott, 26 U. (2d) 302, 488 P. 2d 1046, following 25 U. (2d) 375, 483 P. 2d 236.

**Due process of law.**

Probationer who presented himself in court to make probation report could not later attack by habeas corpus court's action setting aside stay order and committing him to prison, on ground that no warrant, citation or summons was issued. Christiansen v. Harris, 109 U. 1, 163 P. 2d 314.

1980



(f) Whenever a change of judge or place of trial is ordered all documents of record concerning the case shall be transferred without delay to the judge who shall hear the case.

**77-35-30. Rule 30—Errors and Defects.**

(a) Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded.

(b) Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order.

**77-35-31. Rule 31—Rules of Court.**

District courts and circuit courts may make local rules for the conduct of criminal proceedings not inconsistent with these rules and statutes of the state. Copies of all rules made by a court shall, upon promulgation, be furnished to the supreme court and to the judicial council and shall be made available to members of the state bar and the public. Circuit courts promulgating rules shall send copies thereof to the district court having appellate jurisdiction.

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or statutes.

**77-35-32. Rule 32—Minute Entry.**

The case file shall include copies of all minute entries of proceedings and orders made in that case.

**77-35-33. Rule 33—Regulation of Conduct in the Courtroom.**

The court may make appropriate order regulating the conduct of officers, parties, spectators and witnesses prior to and during the conduct of any proceeding.

**Section 2. Effective date.**

This act shall take effect on July 1, 1980.

Approved February 14, 1980.

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## CHAPTER 15

H. B. No. 32 (Passed January 31, 1980. In effect July 1, 1980.)

## UTAH CODE OF CRIMINAL PROCEDURE

**AN ACT RELATING TO CRIMINAL PROCEDURE; ENACTING THE UTAH CODE OF CRIMINAL PROCEDURE WITH CHAPTERS RELATING TO: PRELIMINARY PROVISIONS; PROSECUTION, SCREENING AND DIVERSION; SECURITY TO KEEP THE PEACE; SUPPRESSION OF RESISTANCE TO SERVICE OF PROCESS; IMPEACHMENT;**



**REMOVAL BY JUDICIAL PROCEEDINGS; ARREST; LINEUPS; FRESH PURSUIT; GRAND JURIES; INDICTMENTS; PLEAS; AFFIRMATIVE DEFENSES; MENTAL EXAMINATIONS; TRIALS; JUDGMENT; EXECUTION; BAIL; ATTENDANCE OF WITNESSES OUTSIDE THE STATE; SUBPOENA POWER AND IMMUNITY; SEARCH AND ADMINISTRATIVE WARRANTS; INTERCEPTION OF COMMUNICATIONS; DISPOSAL OF PROPERTY RECEIVED BY PEACE OFFICER; JUSTICE'S COURTS; CRIMINAL IDENTIFICATION; PARDONS AND PAROLES; WESTERN INTERSTATE CORRECTIONS COMPACT; DISPOSITION OF DETAINERS AGAINST PRISONERS; EXTRADITION; RECIPROCAL ENFORCEMENT OF SUPPORT; COUNSEL FOR INDIGENT DEFENDANTS; DEFENSE COSTS; RENDITION OF PRISONERS AS WITNESSES; AND INTERSTATE FURLOUGH; AND PROVIDING AN EFFECTIVE DATE.**

**THIS ACT REPEALS TITLE 77, UTAH CODE ANNOTATED 1953, AND ENACTS CHAPTERS 1 THROUGH 34 OF TITLE 77, UTAH CODE ANNOTATED 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Title repealed.**

Title 77, Utah Code Annotated 1953, is repealed.

**Section 2. Chapters enacted.**

Chapters 1 through 34 of Title 77 are enacted to read:

### CHAPTER 1
### PRELIMINARY PROVISIONS

**77-1-1. Short title.**

This act shall be known and may be cited as the "Utah Code of Criminal Procedure."

**77-1-2. Criminal procedure prescribed.**

The procedure in criminal cases shall be as prescribed in this title, the rules of criminal procedure, and such further rules as may be adopted by the supreme court of Utah.

**77-1-3. Definitions—Peace officer classifications.**

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused and brought to trial for a public offense;

(2) "Indictment" means an accusation, in writing, presented by a grand jury to the district court, charging a person with a public offense;

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented and signed by a prosecuting attorney and filed in the office of the clerk where the prosecution is commenced or subscribed and sworn to by a complaining witness before a magistrate if the offense is a class B misdemeanor or a lesser offense not requiring approval of the prosecuting attorney;

(4) "Magistrate" means a justice of the supreme court, a judge of the district courts, a judge of the juvenile courts, a judge of the circuit courts and a justice of the peace or a judge of any court created by law; and

(2) In all cases, proof of the sale, furnishing, bartering or procuring of any lottery ticket, share or interest therein, or of any instrument purporting to be a ticket, or part or share of any ticket shall be evidence that the share or interest was signed and issued according to its purport.

**77-17-7. Conviction on testimony of accomplice—Instruction to jury.**

(1) A conviction may be had on the uncorroborated testimony of an accomplice.

(2) In the discretion of the court, an instruction to the jury may be given to the effect that such uncorroborated testimony should be viewed with caution, and such an instruction shall be given if the trial judge finds the testimony of the accomplice to be self contradictory, uncertain or improbable.

**77-17-8. Mistake in charging offense—Procedure.**

If at any time before verdict or judgment a mistake has been made in charging the proper offense, and it appears that there is probable cause to believe that the defendant is chargeable with another offense, the court may commit him or require him to give bail for his appearance to answer to the proper charge when filed, and may also require witnesses to give bail for their appearance.

**77-17-9. Separation or sequestration of jurors—Oath of officer having custody.**

(1) The court, at any time before the submission of the case to the jury, may permit the jury to separate or order that it be sequestered in charge of a proper officer.

(2) If the jury is sequestered the officer shall be sworn to keep the jurors together until the next meeting of the court, to prevent any person from speaking or communicating with them, and not to do so himself on any subject connected with the trial, and to return the jury to the court pursuant to its order.

**77-17-10. Court to determine law; the jury, the facts.**

(1) In a jury trial, questions of law are to be determined by the court, questions of fact by the jury.

(2) The jury may find a general verdict which includes questions of law as well as fact but they are bound to follow the law as stated by the court.

**77-17-11. Jury to retire for deliberation—Oath of officer having custody.**

After hearing the court's instructions and arguments of counsel, the jury shall retire for deliberation. An officer shall be sworn to keep them together in some private and convenient place and not permit any person to speak to or communicate with them or to do so himself except upon the order of the court, or to ask them whether they have agreed on a verdict. He shall return them to court when they have agreed and the court has so ordered, or when otherwise ordered by the court.

**77-17-12. Defendant on bail appearing for trial may be committed.**



When a defendant who has given bail appears for trial, the court may, at any time after his appearance for trial, order him to be committed to the custody of the proper officer to await the judgment or further order of the court.

## CHAPTER 18
## THE JUDGMENT

1980

**77-18-1. Suspension of sentence—Probation—Period—Conditions—Revocation.**

(1) On a plea of guilty or no contest or conviction of any crime or offense, if it appears compatible with the public interest, the court may suspend the imposition or execution of sentence and place the defendant on probation for such period of time as it determines. The legal custody of all probationers is vested in the court having jurisdiction of the offender and the chief agent of the adult probation and parole section of the state division of corrections. In cases that do not involve an indeterminate sentence, the period of probation may exceed the length of time of the maximum sentence that could be imposed.

(2) Prior to imposing any sentence for an offense for which probation may be granted, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a pre-sentence report on the defendant. The contents of the report shall be confidential. The court may disclose all or parts of the report to the defendant or his counsel as the interest of justice requires. At the time of sentence, the court shall hear any testimony or information the defendant or the prosecuting attorney may wish to present concerning the appropriate sentence. Such testimony or information shall be presented in open court on record and in the presence of the defendant.

(3) After hearing, the court may increase or decrease the probation period and may revoke or modify any condition of probation. While on probation, and as a condition thereof, the defendant may be required to pay, in one or several sums, any fine imposed at the time of being placed on probation and may be required to make restitution or reparation to the aggrieved party or parties for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant had pleaded guilty, no contest or for which a conviction was had. The defendant may be required to pay amounts required under provisions of section 77-32a-1 through 77-32a-14. He may also be required to provide for the support of others for whose support he is legally liable, to participate in rehabilitation programs as may be available, and to serve a period of time in the county jail not to exceed one year.

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

(b) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court which authorized probation shall determine whether the affidavit establishes probable cause to believe that revocation or modification of probation may be justified. If the court determines that there is probable cause, it shall cause to be served on the defendant a copy of the affidavit and an order to show cause why his probation should not be revoked or modified.

donated or transferred to any person or business entity for or in consideration of personal services, materials, property, or any other thing whatsoever.

(13) [~~The word "assist"~~] "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to so assist such person or business entity.

(14) [~~The words "governmental action" mean~~] "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including but not limited to:

(a) Any decision, determination, finding, ruling, or order; and

(b) Any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof or the failure to act in respect to.

Approved March 28, 1981.

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## CHAPTER 58

S. B. No. 261 (Passed March 10, 1981. In effect May 12, 1981.)

### POWER GENERATION BY TOWNS

**AN ACT RELATING TO CITIES AND TOWNS; PROVIDING AUTHORITY IN TOWNS TO CONSTRUCT, OPERATE, AND MAINTAIN ELECTRIC POWER GENERATION FACILITIES.**

**THIS ACT ENACTS SECTION 10-13-14.5, UTAH CODE ANNOTATED 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section enacted.**

Section 10-13-14.5, Utah Code Annotated 1953, is enacted to read:

**10-13-14.5. Electric power generation facilities authorized.**

They may construct, maintain, and operate electric power generation facilities or authorize the construction, maintenance and operation of such facilities by others, or purchase or lease such facilities from any person or corporation, and they may sell and deliver the surplus electric power not required by the town or inhabitants to others beyond the corporate limits of the town.

Approved March 27, 1981.

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# CODE OF CRIMINAL PROCEDURE

## CHAPTER 59

H. B. No. 43 (Passed February 9, 1981. In effect May 12, 1981.)

### RESTITUTION BY CRIMINALS

**AN ACT RELATING TO RESTITUTION BY CRIMINALS; PROVIDING THAT COURTS STATE REASONS FOR PROVIDING OR NOT PROVIDING RESTITUTION; PROVIDING FOR A PECUNIARY DAMAGE REPORT TO THE COURT BY ADULT PROBATION AND PAROLE; AND PROVIDING THAT RESTITUTION, AS DETERMINED BY THE COURT, SHALL BE A CONDITION OF PROBATION AND PAROLE.**

**THIS ACT AMENDS SECTION 76-3-201, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 69, LAWS OF UTAH 1979, SECTION 77-18-1, AND SECTION 77-27-3, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section amended.**

Section 76-3-201, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1979, is amended to read:

**76-3-201. Sentences or combination of sentences allowed—Civil penalties—Restitution—Definitions.**

(1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of such sentences:

(a) To pay a fine; or

(b) To removal from and/or disqualification of public or private office; or

(c) To probation; or

(d) To imprisonment; or

(e) To death.

(2) This chapter shall not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend, or cancel a license or permit removal of a person from office, cite for contempt, or impose any other civil penalty. A civil penalty may be included in a sentence.

(3) (a) When a person is adjudged guilty of criminal [~~activities~~] activity which [~~have~~] has resulted in pecuniary damages, in addition to any other sentence it may impose, the court [~~may~~] shall order that the defendant make restitution to the victim or victims of the offense of which the defendant has pleaded guilty, is convicted, or to the victim of any other criminal conduct admitted by the defendant to the sentencing court unless the court in applying the criteria in section 3 (b) of this chapter, finds that restitution is inappropriate. If the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record.

(b) In determining whether or not to order restitution, or restitution which is complete, partial or nominal, the court shall take into account:

(i) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(ii) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; [~~and~~]

(iii) The rehabilitative effect on the defendant of the payment of restitution and the method of payment [~~.~~] ; and

(iv) Other circumstances which in the opinion of the court shall make restitution inappropriate.

(c) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall at the time of sentencing allow him a full hearing on such issue.

(4) As used in subsection (3) above:

(a) "Criminal activities" means any offense with respect to which the defendant is convicted or any other criminal conduct [~~admitted by the defendant~~] for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct;

(b) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as earnings and medical expenses;

(c) "Restitution" means full, partial or nominal payment [~~of~~] for pecuniary damages to a victim, including insured damages;

(d) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any coparticipant in the defendant's criminal activities.

**Section 2. Section amended.**

Section 77-18-1, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

**77-18-1. Suspension of sentence—Probation—Period—Conditions—Revocation.**

(1) On a plea of guilty or no contest or conviction of any crime or offense, if it appears compatible with the public interest, the court may suspend the imposition or execution of sentence and place the defendant on probation for such period of time as it determines. The legal custody of all probationers is vested in the court having jurisdiction of the offender and the chief agent of the adult probation and parole section of the state division of corrections. In cases that do not involve an indeterminate sentence, the period of probation may exceed the length of time of the maximum sentence that could be imposed.



(2) Prior to [~~imposing~~] imposition of any sentence for an offense for which probation may be granted, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a pre-sentence report on the defendant. The report shall be prepared by the department of adult probation and parole. The report shall include a specific statement of pecuniary damages, accompanied by a recommendation from adult probation and parole regarding the payment of restitution by the defendant. The contents of the report shall be confidential. The court may disclose all or parts of the report to the defendant or his counsel as the interest of justice requires. At the time of sentence, the court shall hear any testimony or information the defendant or the prosecuting attorney may wish to present concerning the appropriate sentence. Such testimony or information shall be presented in open court on record and in the presence of the defendant.

(3) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal or once in jeopardy, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment in accordance with Rule 22, Utah Rules of Criminal Procedure. Whenever possible, in all offenses involving damage to persons or property, the pre-sentence report of the defendant shall be made available to the court prior to the pronouncement of judgment.

[~~(3)~~] (4) After hearing, the court may increase or decrease the probation period and may revoke or modify any condition of probation. While on probation, and as a condition thereof, the defendant may be required to pay, in one or several sums, any fine imposed at the time of being placed on probation [~~and may~~] . While on probation and as a condition thereof, the defendant shall be required to make restitution or reparation to the [~~aggrieved party or parties for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant had pleaded guilty, no contest or for which a conviction was had~~] victim or victims as defined in 76-3-201 (4) for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant has pleaded guilty, no contest, or for which a conviction was had or by any other criminal conduct admitted by the defendant to the sentencing court, unless the court in applying the criteria stated in 76-3-201 (3) finds that restitution is inappropriate. If the court determines that restitution is inappropriate, the court shall state for the court record the reasons for the decision. The defendant may be required to pay amounts required under provisions of section 77-32a-1 through 77-32a-14. He may also be required to provide for the support of others for whose support he is legally liable, to participate in rehabilitation programs as may be available, and to serve a period of time in the county jail not to exceed one year.

[~~(4)~~] (5) (a) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court which authorized probation shall determine whether the affidavit establishes probable cause to believe that revocation or modification of probation may be justified. If the court determines that there is probable cause, it shall cause to be served on the defendant a copy of the affidavit and an order to show cause why his probation should not be revoked or modified.

(c) The order to show cause shall specify a time and place for the hearing, which shall be within seven days of the service upon the defendant unless he shows good cause for a continuance, and shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent. The order shall also inform the defendant of a right to present evidence as provided in the Utah Rules of Civil Procedure.

(d) At the hearing, the defendant shall admit or deny the allegations of the affidavit. If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations, which need not be evidence admissible in a trial. The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders. The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) After hearing, the court shall make findings of fact. Upon determining that the defendant violated the conditions of probation, the court may order the probation revoked, modified or continued. If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

**Section 3. Section amended.**

Section 77-27-3, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

**77-27-3. Duties of board—Decisions final—Governor's power—Restitution as condition.**

(1) The board of pardons shall determine, by majority decision, when and under what conditions, subject to the provisions of this chapter, persons now or hereafter serving sentences, in all cases except treason or impeachments, or as otherwise limited by law, may be released upon parole, pardoned, or have their fines or forfeitures remitted, or their sentences commuted or terminated. No fine or forfeiture shall be remitted, no parole, pardon or commutation granted or sentence terminated, except after a full hearing before the board in open session and after appropriate prior notice to the defendant of the time and place of the hearing has been given. The orders and decisions of the board of pardons and any dissent thereto shall be reduced to writing.

(2) The determinations and decisions of the board of pardons in cases involving approval or denial of any action whatsoever, of paroles, pardons, commutations or terminations of sentence, or remission of fines and forfeitures shall be final.

(3) Nothing herein shall be construed as a denial of or limitation on the governor's power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment; however, such respites or reprieves shall not extend beyond the next session of the board of pardons and the board, at such session, shall continue or determine such respite or reprieve, or it may commute the punishment, or pardon the offense as herein provided. In the case of conviction for treason, the governor has the power to suspend execution of the sentence, until the case shall



be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, or direct its execution.

In determining when and where and under what conditions persons now or hereafter serving sentences may be released upon parole, pardoned or have their fines or forfeitures remitted, or their sentences commuted or terminated, the state board of pardons shall consider whether such persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, commutation or termination of sentence.

If the state board of pardons determines that restitution is inappropriate, the state board of pardons shall state in writing as a part of the record of proceedings, the reasons for the decision.

(4) Whenever the state board of pardons orders the release on parole of an inmate who has been sentenced to make restitution pursuant to section 76-3-201, but with respect to whom payment of all or a portion of the restitution was suspended until his release from imprisonment, the board may establish a schedule by which payment of the restitution may be resumed. In fixing the schedule and supervising the paroled inmate's performance thereunder the board may consider the factors specified in section 76-3-201 (3). The board may provide to the sentencing court a copy of the schedule and any modifications thereof.

Approved March 9, 1981.

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## CHAPTER 60

H. B. No. 49 (Passed February 26, 1981. In effect May 12, 1981.)

## JURY DEMAND - CRIMINAL TRIALS

**AN ACT RELATING TO CRIMINAL TRIALS; ALLOWING A DEFENDANT TEN DAYS TO MAKE WRITTEN DEMAND FOR JURY TRIAL.**

**THIS ACT AMENDS SECTION 77-35-17, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 14, LAWS OF UTAH 1980.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section amended.**

Section 77-35-17, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1980, is amended to read:

**77-35-17. Rule 17—The trial.**

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

= 1982 =



proceedings, are validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued, the valid and legally binding obligations of the entity in accordance with their terms. Nothing in this section shall be construed to affect or validate any bonds, or the organization of any entity, the legality of which is being contested at the time this act takes effect.

**Section 2. Effective date.**

This act shall take effect upon approval.

Approved February 19, 1982.

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# CODE OF CRIMINAL PROCEDURE

## CHAPTER 9

H. B. No. 32 (Passed January 30, 1982. In effect July 1, 1983.)

### COUNTY JAIL INCARCERATION AS CONDITION OF PROBATION

By Representative Walker

**AN ACT RELATING TO PROBATION FOR CONVICTED FELONS; PROVIDING FOR THE STATE TO BEAR COST OF INCARCERATION IN COUNTY JAIL AS CONDITION OF PROBATION OF SUCH CONVICTED FELON; AND PROVIDING AN EFFECTIVE DATE.**

**THIS ACT AMENDS SECTION 77-18-1, UTAH CODE ANNOTATED 1953, AS AMENDED BY CHAPTER 59, LAWS OF UTAH 1981.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section amended.**

Section 77-18-1, Utah Code Annotated 1953, as amended by Chapter 59, Laws of Utah 1981, is amended to read:

**77-18-1. Suspension of sentence—Probation—Period—Conditions—Revocation.**

(1) On a plea of guilty or no contest or conviction of any crime or offense, if it appears compatible with the public interest, the court may suspend the imposition or execution of sentence and place the defendant on probation for such period of time as it determines. The legal custody of all probationers is vested in the court having jurisdiction of the offender and the chief agent of the adult probation and parole section of the state division of corrections. In cases that do not involve an indeterminate sentence, the period of probation may exceed the length of time of the maximum sentence that could be imposed.

(2) Prior to imposition of any sentence for an offense for which probation may be granted, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of



time for the purpose of obtaining a pre-sentence report on the defendant. The report shall be prepared by the department of adult probation and parole. The report shall include a specific statement of pecuniary damages, accompanied by a recommendation from adult probation and parole regarding the payment of restitution by the defendant. The contents of the report shall be confidential. The court may disclose all or parts of the report to the defendant or his counsel as the interest of justice requires. At the time of sentence, the court shall hear any testimony or information the defendant or the prosecuting attorney may wish to present concerning the appropriate sentence. Such testimony or information shall be presented in open court on record and in the presence of the defendant.

(3) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal or once in jeopardy, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment in accordance with Rule 22, Utah Rules of Criminal Procedure. Whenever possible, in all offenses involving damage to persons or property, the pre-sentence report of the defendant shall be made available to the court prior to the pronouncement of judgment.

(4) After hearing, the court may increase or decrease the probation period and may revoke or modify any condition of probation. While on probation, and as a condition thereof, the defendant may be required to pay, in one or several sums, any fine imposed at the time of being placed on probation. While on probation and as a condition thereof, the defendant shall be required to make restitution or reparation to the victim or victims as defined in 76-3-201 (4) for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant has pleaded guilty, no contest, or for which a conviction was had or by any other criminal conduct admitted by the defendant to the sentencing court, unless the court in applying the criteria stated in 76-3-201 (3) finds that restitution is inappropriate. If the court determines that restitution is inappropriate, the court shall state for the court record the reasons for the decision. The defendant may be required to pay amounts required under provisions of section 77-32a-1 through 77-32a-14. He may also be required to provide for the support of others for whose support he is legally liable, to participate in rehabilitation programs as may be available, and to serve a period of time in the county jail not to exceed one year; provided, however, that the State of Utah shall reimburse any county for the actual costs of incarceration of a convicted felon sentenced to serve in a county jail as a condition of probation.

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

(b) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court which authorized probation shall determine whether the affidavit establishes probable cause to believe that revocation or modification of probation may be justified. If the court determines that there is probable cause, it shall cause to be served on the defendant a copy of the affidavit and an order to show cause why his probation should not be revoked or modified.

(c) The order to show cause shall specify a time and place for the hearing, which shall be within seven days of the service upon the defendant unless he shows good cause for a continuance, and shall inform the defendant of a

right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent. The order shall also inform the defendant of a right to present evidence as provided in the Utah Rules of Civil Procedure.

(d) At the hearing, the defendant shall admit or deny the allegations of the affidavit. If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations, which need not be evidence admissible in a trial. The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders. The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) After hearing, the court shall make findings of fact. Upon determining that the defendant violated the conditions of probation, the court may order the probation revoked, modified or continued. If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

**Section 2. Effective date.**

This act shall take effect July 1, 1983.

Approved February 19, 1982.

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## CHAPTER 10

H. B. No. 69 (Passed January 30, 1982. In effect April 1, 1982.)

## FOURTH AMENDMENT ENFORCEMENT ACT—1982

By Representatives McKeachnie, Selleneit

**AN ACT RELATING TO SEARCH AND SEIZURE; PROVIDING THAT EVIDENCE SEIZED IN VIOLATION OF CONSTITUTIONAL RIGHTS NOT BE SUPPRESSED UNLESS THE VIOLATION WAS SUBSTANTIAL; PROVIDING STANDARDS FOR DETERMINING WHETHER VIOLATIONS ARE SUBSTANTIAL; PROVIDING FOR CIVIL ACTIONS AGAINST PEACE OFFICERS, GOVERNMENTAL AGENCIES AND OTHERS FOR SEARCHES AND SEIZURES WHICH VIOLATE CONSTITUTIONAL RIGHTS; WAIVING SOVEREIGN IMMUNITY; PROVIDING FOR SEARCH AND SEIZURE TRAINING FOR PEACE OFFICERS; AND PROVIDING A SEVERABILITY CLAUSE.**

**THIS ACT AMENDS SECTION 63-30-10, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1975, SECTION 67-15-5, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 103, LAWS OF UTAH 1967, AND SECTION 77-35-12, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 14, LAWS OF UTAH 1980; AND ENACTS SECTIONS 77-23-12 AND 78-16-1 THROUGH 78-16-11, UTAH CODE ANNOTATED 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section amended.**



Section 63-30-10, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1975, is amended to read:

**63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee—Exceptions—Waiver for injury caused by violation of fourth amendment rights.**

(1) Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of his employment except if the injury:

[~~(1)~~] (a) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused, or

[~~(2)~~] (b) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or civil rights, or

[~~(3)~~] (c) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization, or

[~~(4)~~] (d) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property, or

[~~(5)~~] (e) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause, or

[~~(6)~~] (f) arises out of a misrepresentation by said employee whether or not such is negligent or intentional, or

[~~(7)~~] (g) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances, or

[~~(8)~~] (h) arises out of or in connection with the collection of and assessment of taxes, or

[~~(9)~~] (i) arises out of the activities of the Utah National Guard, or

[~~(10)~~] (j) arises out of the incarceration of any person in any state prison, county or city jail or other place of legal confinement, or

[~~(11)~~] (k) arises from any natural condition on state lands or the result of any activity authorized by the state land board.

(2) Immunity from suit of all governmental entities is waived for injury proximately caused or arising out of a violation of protected fourth amendment rights as provided in Chapter 16 of Title 78 which shall be the exclusive remedy for injuries to those protected rights. If section 78-16-5 or subsection 77-35-12(g) or any parts thereof are held invalid or unconstitutional, this subsection (2) shall be void and governmental entities shall remain immune from suit for violations of fourth amendment rights.

**Section 2. Section amended.**

cause for a continuance, and shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent. The order shall also inform the defendant of a right to present evidence as provided in the Utah Rules of Civil Procedure.

(d) At the hearing, the defendant shall admit or deny the allegations of the affidavit. If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations, which need not be evidence admissible in a trial. The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders. The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) After hearing, the court shall make findings of fact. Upon determining that the defendant violated the conditions of probation, the court may order the probation revoked, modified or continued. If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

Section 2. This act shall have retrospective effect as of January 1, 1982.

MANAGEMENT AND FISCAL ANALYSIS

Amended

H. B. 32

It is estimated that passage of this bill would necessitate an appropriation of $777,800 from the General Fund in order to pay the costs of the incarceration in the county jails of felons sentenced to county jails as a condition of their probation.

OFFICE OF THE LEGISLATIVE FISCAL ANALYST

location and extent [~~thereof shall have been submitted to and~~] of the project is approved by [~~such~~] the county planning commission[~~; provided, however, that in case of disapproval,~~] . If the [~~said~~] planning commission [~~shall communicate its~~] disapproves of a project, its reasons for disapproval [~~to~~] shall be given to the board of county commissioners. [~~of the county in which the public way, ground, space, building, structure, or utility is proposed to be located; and such board shall have the power to~~] The board of county commissioners may overrule [~~such disapproval~~] the planning commission by a majority vote of [~~not less than a majority of~~] its entire membership[~~, and upon such overruling said~~] in which event, [~~board or other official in charge of proposed construction or authorization~~] the project may proceed [~~therewith; provided further, however, that if the public way, ground, space, building, structure, or utility be one, the authorization or financing of which does not, under the law governing the same, fall within the province of the board of county commissioners or other county official or board, then the submission to the county planning commission shall be made by the body or official having such jurisdiction, and the said planning commission's disapproval may be overruled by said body by a vote of not less than a majority of its entire membership or by said official~~]. The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land for, or sale or lease of any road, park, or other public way, ground, place, property, or structure shall be subject to similar submission and approval, and the failure to approve may be similarly overruled. The failure of the commission to [~~set~~] act within thirty days from and after the date of official submission to it shall be deemed approval, unless a longer period be granted by the submitting board, body, or official.

Approved March 15, 1983.

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## CHAPTER 68

H. B. No. 50 (Passed March 10, 1983. In effect May 10, 1983.)

## COST OF COUNTY JAIL INCARCERATION REIMBURSEMENT

By Representative Walker

**AN ACT RELATING TO COUNTY JAILS; PROVIDING FOR DETERMINATIONS BY THE BOARD OF CORRECTIONS OF BOTH THE COST OF INCARCERATING FELONS IN COUNTY JAILS AND ALSO A FORMULA FOR REIMBURSEMENT OF THESE COSTS; FURTHER PROVIDING FOR THE ADOPTION BY COUNTY JAILS OF OPERATION STANDARDS.**

**THIS ACT AMENDS SECTION 77-18-1, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 9, LAWS OF UTAH 1982, SECTION 17-22-8, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1971, AND ENACTS SECTION 17-22-8.5, UTAH CODE ANNOTATED 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section amended.**

Section 77-18-1, Utah Code Annotated 1953, as enacted by Chapter 9, Laws of Utah 1982, is amended to read:



**77-18-1. Suspension of sentence—Probation—Period—Conditions—Restitution—Revocation.**

(1) On a plea of guilty or no contest or conviction of any crime or offense, if it appears compatible with the public interest, the court may suspend the imposition or execution of sentence and place the defendant on probation for such period of time as it determines. The legal custody of all probationers is vested in the court having jurisdiction of the offender and the chief agent of the adult probation and parole section of the state division of corrections. In cases that do not involve an indeterminate sentence, the period of probation may exceed the length of time of the maximum sentence that could be imposed.

(2) Prior to imposition of any sentence for an offense for which probation may be granted, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a pre-sentence report on the defendant. The report shall be prepared by the department of adult probation and parole. The report shall include a specific statement of pecuniary damages, accompanied by a recommendation from adult probation and parole regarding the payment of restitution by the defendant. The contents of the report shall be confidential. The court may disclose all or parts of the report to the defendant or his counsel as the interest of justice requires. At the time of sentence, the court shall hear any testimony or information the defendant or the prosecuting attorney may wish to present concerning the appropriate sentence. Such testimony or information shall be presented in open court on record and in the presence of the defendant.

(3) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal or once in jeopardy, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment in accordance with Rule 22, Utah Rules of Criminal Procedure. Whenever possible, in all offenses involving damage to persons or property, the pre-sentence report of the defendant shall be made available to the court prior to the pronouncement of judgment.

(4) After hearing, the court may increase or decrease the probation period and may revoke or modify any condition of probation. While on probation, and as a condition thereof, the defendant may be required to pay, in one or several sums, any fine imposed at the time of being placed on probation. While on probation and as a condition thereof, the defendant shall be required to make restitution or reparation to the victim or victims as defined in 76-3-201 (4) for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant has pleaded guilty, no contest, or for which a conviction was had or by any other criminal conduct admitted by the defendant to the sentencing court, unless the court in applying the criteria stated in 76-3-201 (3) finds that restitution is inappropriate. If the court determines that restitution is inappropriate, the court shall state for the court record the reasons for the decision. The defendant may be required to pay amounts required under provisions of section 77-32a-1 through 77-32a-14. He may also be required to provide for the support of others for whose support he is legally liable, to participate in available rehabilitation programs [~~as may be available~~], and to serve a period of time in the county jail not to exceed one year[~~; provided, however, that the State of Utah shall reimburse any county for the actual costs of incarceration of a convicted felon sentenced to serve in a county jail as a condition of probation~~].

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

(b) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court which authorized probation shall determine whether the affidavit establishes probable cause to believe that revocation or modification of probation may be justified. If the court determines that there is probable cause, it shall cause to be served on the defendant a copy of the affidavit and an order to show cause why his probation should not be revoked or modified.

(c) The order to show cause shall specify a time and place for the hearing, which shall be within seven days of the service upon the defendant unless he shows good cause for a continuance, and shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent. The order shall also inform the defendant of a right to present evidence as provided in the Utah Rules of Civil Procedure.

(d) At the hearing, the defendant shall admit or deny the allegations of the affidavit. If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations, which need not be evidence admissible in a trial. The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders. The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) After hearing, the court shall make findings of fact. Upon determining that the defendant violated the conditions of probation, the court may order the probation revoked, modified or continued. If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

**Section 2. Section amended.**

Section 17-22-8, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1971, is amended to read:

**17-22-8. Care of prisoners—Manner prescribed by county commissioners—Funding of services.**

The sheriff must receive all persons committed to jail by competent authority and see that they are provided with necessary food, clothing and bedding in the manner prescribed by the board of county commissioners. The expense incurred in providing the above services to prisoners shall be paid out of the county treasury except as provided in [~~section~~] sections 17-22-8.5 and 17-22-10.

**Section 3. Section enacted.**

Section 17-22-8.5, Utah Code Annotated 1953, is enacted to read:

**17-22-8.5. State reimbursement for felony convicts sentenced to jail.**

The state shall reimburse any county for the actual costs of incarceration for a person convicted of any felony and sentenced to serve in a county jail as a condition of probation. The board of corrections shall define the actual costs of incarceration and provide a formula for reimbursement. Reimbursement, however, may not exceed the funds appropriated by the legislature for that purpose in any fiscal year.



Approved March 30, 1983.

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## CHAPTER 69

H. B. No. 51 (Passed February 14, 1983. In effect July 1, 1983.)

## COUNTY RECORDER AMENDMENTS

By Representatives Walker, Bishop

**AN ACT RELATING TO COUNTY RECORDERS; AMENDING THE CONTENT AND TYPES OF DOCUMENTS TO BE FILED WITH COUNTY RECORDERS; AMENDING THE DUTIES OF COUNTY RECORDERS; INCREASING FEES FOR FILING DOCUMENTS WITH COUNTY RECORDERS; AND PROVIDING AN EFFECTIVE DATE.**

**THIS ACT AMENDS SECTION 10-2-415, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 25, LAWS OF UTAH 1979, SECTIONS 10-2-507 AND 10-2-508, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977, SECTION 17-21-1, UTAH CODE ANNOTATED 1953, SECTIONS 17-21-6 AND 21-2-3, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 20, LAWS OF UTAH 1980, AND SECTION 57-3-10, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 99, LAWS OF UTAH 1981; ENACTS SECTION 57-3-11, UTAH CODE ANNOTATED 1953; AND REPEALS SECTION 17-21-24, UTAH CODE ANNOTATED 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section amended.**

Section 10-2-415, Utah Code Annotated 1953, as enacted by Chapter 25, Laws of Utah 1979, is amended to read:

**10-2-415. Resolution or ordinance of annexation—Two-thirds vote—Filings with county recorder.**

If: (1) an annexation proposed in the policy declaration, in the judgment of the municipality, meets the standards set forth in this chapter; and (2) no protest has been filed by written application by an affected entity within five days following the public hearing, the members of the governing body may by two-thirds vote adopt a resolution or ordinance of annexation in accordance with the terms of the policy declaration adopted by the governing body, and the territory shall then and there be annexed. If an annexation proposed in the policy declaration has been protested within the allowable time by application to the local boundary commission, the governing body is subject to the decisions of that commission unless overturned by an appeal to the district court. After receiving notification of approval of the proposed action from the commission or after complying with the terms of a conditional approval, the governing body may by two-thirds vote adopt a resolution or ordinance of annexation. If the territory is annexed, a copy of the duly certified transparent reproducible plat or map shall at once be filed in the office of the county recorder, together with a certified copy of the resolution or ordinance declar-

**Section 3. Sectic nended.**

Section 41–12a–4..., Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

**41–12a–411. Duration of proof of owner's or operator's security.**

(1) Except as otherwise provided under this section, any person required to give proof of owner's or operator's security shall maintain that proof with the department for a period of three years from the date the filing of proof was last requested. Subject to Subsection (2), the department shall, upon request, consent to the immediate cancellation of any bond or certificate of insurance or the department shall direct the state treasurer to return to the person entitled to it any money or securities deposited pursuant to this chapter as proof of owner's or operator's security, or the department shall waive the requirement of filing proof, in any of the following cases:

[~~(a) If for the three years preceding the request for proof of owner's or operator's security, the department has not received record of a conviction or a forfeiture of bail which would permit suspension or revocation of the license, registration, or nonresident's operating privilege. This waiver does not excuse the person from complying with the owner's or operator's security requirement under Section 41–12a–301, but only from proof of compliance.~~]

[~~(b)~~] (a) if the person on whose behalf the proof was filed dies or becomes permanently incapacitated to operate a motor vehicle[~~.~~]; or

[~~(c)~~] (b) if the person who has given proof surrenders his driver's license and registration to the department, except that if he applies for a license or registration within three years from the date proof was originally required, the application shall be refused unless the applicant reestablishes proof of owner's or operator's security and maintains the proof for the remainder of the three–year period.

(2) The department may not consent to the cancellation of any bond or the return of any money or securities if any action for damages upon a liability covered by that proof is then pending, if any judgment upon any such liability is then unsatisfied, or if the person who filed the bond or deposited the money or securities has, within one year immediately preceding the request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable for the injury or damage, is sufficient evidence of it in the absence of contrary evidence in the records of the department.

## CHAPTER 99
**H. B. No. 56**
Passed February 23, 1988
Approved March 14, 1988
Effective April 25, 1988

### DISCIPLINE PROGRAMS IN SCHOOL DISTRICTS

By Joanne R. Milner

**AN ACT RELATING TO PUBLIC SCHOOLS; PROVIDING THAT LOCAL SCHOOL BOARDS ESTABLISH A POLICY ON DETAINING STUDENTS AFTER REGULAR SCHOOL HOURS.**

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

**ENACTS:**
53A–3–415, UTAH CODE ANNOTATED 1953

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

**Section 1. Section Enacted.**

Section 53A–3–415, Utah Code Annotated 1953, is enacted to read:

**53A–3–415. School board policy on detaining students after school.**

(1) Each local school board shall establish a policy on detaining students after regular school hours as a part of the districtwide discipline plan required under Section 53A–17–106.

(2) The policy shall apply to elementary school students, grades kindergarten through six. The board shall receive input from teachers, school administrators, and parents and guardians of the affected students before adopting the policy.

(3) The policy shall provide for notice to the parent or guardian of a student prior to holding the student after school on a particular day. The policy shall also provide for exceptions to the notice provision if detention is necessary for the student's health or safety.

## CHAPTER 100
**H. B. No. 60**
Passed February 24, 1988
Approved March 14, 1988
Effective July 1, 1990

### STATE REIMBURSEMENT OF COUNTY JAIL EXPENDITURES

By G. LaMont Richards

**AN ACT RELATING TO COUNTIES; REPEALING THE REQUIREMENT THAT THE STATE REIMBURSE COUNTIES FOR JAIL EXPENDITURES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.**





THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

**AMENDS:**
17–22–8, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1983
64–13–12, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987

**REPEALS:**
17–22–8.5, AS LAST AMENDED BY CHAPTER 212, LAWS OF UTAH 1985

**THIS ACT ENACTS NEW MATERIAL**

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

**Section 1. Section Amended.**

Section 17–22–8, as last amended by Chapter 68, Laws of Utah 1983, is amended to read:

**17–22–8. Care of prisoners — Manner prescribed by county commissioners.**

(1) The sheriff must:

(a) receive all persons committed to jail by competent authority; and

(b) see that they are provided with necessary food, clothing and bedding in the manner prescribed by the board of county commissioners.

(2) The expense incurred in providing the above services to prisoners shall be paid out of the county treasury except as provided in [~~sections 17–22–8.5 and~~] Section 17–22–10.

**Section 2. Section Amended.**

Section 64–13–12, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

**64–13–12. Assistance to sheriffs.**

[~~(1)~~] Where resources permit, the department may assist county sheriffs in the development of jail standards, in the review of jail facilities, and shall provide other services as requested by the sheriffs.

[~~(2) (a) The department shall reimburse any county for the actual costs of incarceration of an offender convicted of a felony and sentenced to serve in a county jail as a condition of probation.~~]

[~~(b) The department shall define the actual costs of incarceration and provide a formula for reimbursement. Reimbursement, however, may not exceed the funds appropriated by the Legislature for that purpose in any fiscal year.~~]

**Section 3. Informational Section.**

It is the intent of the Legislature that the Commission on Criminal and Juvenile Justice conduct a study of management issues involving jails operated by local government. This study should include an analysis of the demand for bedspace resulting from preconviction and postconviction bed needs of local, state, and federal government entities. It should also include a review of current jail use for inmates committed as a condition of probation or department of corrections inmates placed by contract in jails for management purposes. After public hearing, final recommendation of statutory, financial, and management responsibility should be presented to the Judiciary Interim Committee no later than July, 1989. Costs of the study shall be borne by the Commission on Criminal and Juvenile Justice, the Judicial Council, and executive branch agencies from existing budgets.

**Section 4. Section Repealed.**

Section 17–22–8.5, as last amended by Chapter 212, Laws of Utah 1985, is repealed.

**Section 5. Effective Date.**

This act takes effect on July 1, 1990.

## CHAPTER 101
**H. B. No. 64**
Passed February 22, 1988
Approved March 14, 1988
Effective April 25, 1988

### RECORDING OF COURT PROCEEDINGS

By R. Lee Ellertson

**AN ACT RELATING TO HEARING PROCEDURES UNDER THE CODE; PROVIDING FOR THE USE OF ELECTRONIC RECORDING DEVICES AS AN ALTERNATIVE TO COURT REPORTERS.**

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

**AMENDS:**
31A–2–307, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
54–1–6, AS ENACTED BY CHAPTER 247, LAWS OF UTAH 1983
54–7–6, AS LAST AMENDED BY CHAPTER 119, LAWS OF UTAH 1973
67–19–25, AS LAST AMENDED BY CHAPTERS 92 AND 161, LAWS OF UTAH 1987
77–22–2, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
78–7–27, AS LAST AMENDED BY CHAPTER 47, LAWS OF UTAH 1986
78–56–8, AS LAST AMENDED BY CHAPTER 90, LAWS OF UTAH 1981

**REPEALS AND REENACTS:**
78–56–1.1, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1969

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

**Section 1. Section Amended.**

Section 31A–2–307, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

C TER 268
H. . No. 162
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

## JAIL REIMBURSEMENT TO COUNTIES

By Christine R. Fox
Kelly C. Atkinson
Ray Short
Frank R. Pignanelli
John L. Valentine
Haynes R. Fuller
Grant D. Protzman
Rob W. Bishop
Dan Q. Price

**AN ACT RELATING TO COUNTIES; PROVIDING FOR RESPONSIBILITY AND REIMBURSEMENT FOR CERTAIN INCARCERATION COSTS; APPROPRIATING $250,000 FOR INCARCERATION COST REIMBURSEMENT; REQUIRING THE DEPARTMENT OF CORRECTIONS TO REQUEST APPROPRIATIONS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CALCULATE CERTAIN COSTS AND PERFORM CERTAIN ADMINISTRATIVE FUNCTIONS; AND MAKING TECHNICAL CHANGES.**

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

**ENACTS:**
64–13B–101, UTAH CODE ANNOTATED 1953
64–13B–201, UTAH CODE ANNOTATED 1953
64–13B–301, UTAH CODE ANNOTATED 1953

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

**Section 1. Section Enacted.**

Section 64–13b–101, Utah Code Annotated 1953, is enacted to read:

**64–13b–101. Definitions.**

(1) "Daily state inmate cost" means the per inmate per day cost of incarcerating department inmates at the state prison calculated as provided in Section 64–13b–201.

(2) "Department" means the Department of Corrections.

(3) "Estimated total annual jail reimbursement cost" means the daily state inmate cost multiplied times the projected number of state subsidized inmates for the next fiscal year multiplied times 365.

(4) "Estimated total jail reimbursement rate" means 80% of the total annual jail reimbursement cost.

(5) "Jail reimbursement rate" means 80% of the daily state inmate cost.

(6) "State subsidized inmates" means offenders committed to a county correctional facility as a condition of probation when they have been convicted of a felony.

**Section 2. Section Enacted.**

Section 64–13b–201, Utah Code Annotated 1953, is enacted to read:

**64–13b–201. Reimbursement for incarceration of state prisoners.**

(1) To the extent that the Legislature appropriates monies for that purpose, the department shall, as agent for the state, reimburse a county for the costs of incarcerating state subsidized inmates.

(2) The jail reimbursement rate for each state subsidized inmate incarcerated in a county jail shall be 80% of the daily state inmate cost.

(3) By July 1 of each year, the department shall calculate:

(a) the reimbursement rate;

(b) the estimated total annual jail reimbursement cost; and

(c) the estimated total jail reimbursement rate.

(4) In calculating the daily state inmate cost, the department shall include:

(a) the total annual direct costs of incarceration, including personnel costs, contract services, health care costs, and miscellaneous costs; and

(b) the total annual indirect costs of incarceration, including the Division of Institutional Operations' costs for accounting, data processing, legal representation, purchasing, personnel, finance, and insurance.

**Section 3. Section Enacted.**

Section 64–13b–301, Utah Code Annotated 1953, is enacted to read:

**64–13b–301. Budget for jail reimbursement.**

(1) Each year, the department shall calculate the estimated total annual jail reimbursement cost and the estimated total jail reimbursement rate for the next fiscal year.

(2) The department shall, in its budget requests submitted as required by Section 63–38–2, request an appropriation for the estimated total jail reimbursement rate equal to:

(a) 40% of the estimated total jail reimbursement rate for fiscal year 1994–95;

(b) 60% of the estimated total jail reimbursement rate for fiscal year 1995–96;

(c) 80% of the estimated total jail reimbursement rate for fiscal year 1996–97; and

(d) 100% of the estimated total jail reimbursement rate for fiscal year 1997–98.

(3) The governor shall include in his budget an amount for jail reimbursement.

**Section 4. Appropriation.**

There is appropriated from the General Fund for fiscal year 1993–94 $250,000 to the Department of Corrections to be used to compensate counties for the costs of incarcerating certain prisoners.





CHAPTER 269
H. B. No. 171
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

## PRIVATE PROPERTY PROTECTION ACT

By Evan L. Olsen
Met Johnson
Rob W. Bishop
Ronald J. Greensides
Neal B. Hendrickson
Bradley T. Johnson
James F. Yardley
James Gowans
Dan Q. Price
Melvin R. Brown
Eli H. Anderson
Christine R. Fox
David Ure
Bill Wright
Tom Matthews
Tim Moran
John B. Arrington
Daniel H. Tuttle
Arlo D. James
Paul Shepherd
Pete Suazo

**AN ACT RELATING TO JUDICIAL CODE; ENACTING THE PRIVATE PROPERTY PROTECTION ACT; PROVIDING THAT RULES OR ACTIONS BY STATE AGENCIES SUBSTANTIALLY INTERFERING WITH OR TAKING PRIVATE PROPERTY MUST BE COMPENSATED FOR; REQUIRING AGENCIES TO CREATE GUIDELINES TO DETERMINE WHETHER THERE IS A TAKING; PROVIDING FOR AN ASSESSMENT TO BE MADE BEFORE THE ACTION IS TAKEN; AND PROVIDING FOR EMERGENCIES WHEN HEALTH AND SAFETY IS AN ISSUE.**

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

**ENACTS:**
78–34A–1, UTAH CODE ANNOTATED 1953
78–34A–2, UTAH CODE ANNOTATED 1953
78–34A–3, UTAH CODE ANNOTATED 1953
78–34A–4, UTAH CODE ANNOTATED 1953

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

**Section 1. Section Enacted.**

Section 78–34a–1, Utah Code Annotated 1953, is enacted to read:

**78–34a–1. Short title.**

This chapter shall be known as the "Private Property Protection Act."

**Section 2. Section Enacted.**

Section 78–34a–2, Utah Code Annotated 1953, is enacted to read:

**78–34a–2. Definitions.**

As used in this chapter:

(1) "Constitutional taking" or "taking" means due to a governmental action private property is taken such that compensation to the owner of the property is required by either:

(a) The Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Article I, Section 22 of the Utah Constitution.

(2) (a) "Governmental action" or "action" means:

(i) proposed rules and emergency rules by a state agency that if adopted and enforced may limit the use of private property unless its provisions are in accordance with applicable state or federal statutes;

(ii) proposed or implemented licensing or permitting conditions, requirements, or limitations to the use of private property unless its provisions are in accordance with applicable state or federal statutes, rules, or regulations;

(iii) required dedications or exactions from owners of private property; or

(iv) statutes and rules.

(b) "Governmental action" or "action" does not mean:

(i) activity in which the power of eminent domain is exercised formally;

(ii) repealing rules discontinuing governmental programs or amending rules in a manner that lessens interference with the use of private property;

(iii) law enforcement activity involving seizure or forfeiture of private property for violations of law or as evidence in criminal proceedings;

(iv) school and institutional trust land management activities and disposal of land and interests in land conducted pursuant to Title 65A;

(v) orders and enforcement actions that are issued by a state agency or a court of law in accordance with applicable federal or state statutes.

(3) "Private property" means any school or institutional trust lands and any real or personal property in this state that is protected by either the Fifth or Fourteenth Amendment of the Constitution of the United States or Article I, Section 22 of the Utah Constitution.

(4) "State agency" means an officer or unit of the executive branch of state government that is authorized by law to adopt rules. State agency does not include the legislative or judicial branches of state government.

**Section 3. Section Enacted.**

Section 78–34a–3, Utah Code Annotated 1953, is enacted to read:

**78–34a–3. State agencies to adopt guidelines.**

(1) Each state agency shall adopt guidelines to assist them in the identification of actions that have constitutional taking implications.