

Effective 5/4/2022

Superseded 5/3/2023

77-18-105 Pleas held in abeyance -- Suspension of a sentence -- Probation -- Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench supervision for payments on criminal accounts receivable.

- (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance:
 - (a) in accordance with Chapter 2a, Pleas in Abeyance; and
 - (b) under the terms of the plea in abeyance agreement.
- (2) If a defendant is convicted, the court:
 - (a) shall impose a sentence in accordance with Section 76-3-201; and
 - (b) subject to Subsection (5), may suspend the execution of the sentence and place the defendant:
 - (i) on probation under the supervision of the department;
 - (ii) on probation under the supervision of an agency of a local government or a private organization; or
 - (iii) on court probation under the jurisdiction of the sentencing court.
- (3)
 - (a) The legal custody of all probationers under the supervision of the department is with the department.
 - (b) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.
 - (c) The court has continuing jurisdiction over all probationers.
- (4)
 - (a) Court probation may include an administrative level of services, including notification to the sentencing court of scheduled periodic reviews of the probationer's compliance with conditions.
 - (b) Supervised probation services provided by the department, an agency of a local government, or a private organization shall specifically address the defendant's risk of reoffending as identified by a screening or an assessment.
- (5)
 - (a) Before ordering supervised probation, the court shall consider the supervision costs to the defendant for each entity that can supervise the defendant.
 - (b)
 - (i) A court may order an agency of a local government to supervise the probation for an individual convicted of any crime if:
 - (A) the agency has the capacity to supervise the individual; and
 - (B) the individual's supervision needs will be met by the agency.
 - (ii) A court may only order:
 - (A) the department to supervise the probation for an individual convicted of a class A misdemeanor or any felony; or
 - (B) a private organization to supervise the probation for an individual convicted of a class A, B, or C misdemeanor or an infraction.
 - (c) A court may not order a specific private organization to supervise an individual unless there is only one private organization that can provide the specific supervision services required to meet the individual's supervision needs.
- (6)

- (a) If a defendant is placed on probation, the court may order the defendant as a condition of the defendant's probation:
 - (i) to provide for the support of persons for whose support the defendant is legally liable;
 - (ii) to participate in available treatment programs, including any treatment program in which the defendant is currently participating if the program is acceptable to the court;
 - (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;
 - (iv) if the defendant is on probation for a felony offense, to serve a period of time as an initial condition of probation that does not exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;
 - (v) to serve a term of home confinement in accordance with Section 77-18-107;
 - (vi) to participate in compensatory service programs, including the compensatory service program described in Section 76-6-107.1;
 - (vii) to pay for the costs of investigation, probation, or treatment services;
 - (viii) to pay restitution to a victim with interest in accordance with Chapter 38b, Crime Victims Restitution Act; or
 - (ix) to comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation.
- (b)
 - (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a defendant to include a period of time that is served in a county jail immediately before the termination of probation as long as that period of time does not exceed one year.
 - (ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply to the period of time that the court orders the defendant to serve in a county jail under this Subsection (6)(b)(ii).
- (7)
 - (a) Except as provided in Subsection (7)(b), probation of an individual placed on probation after December 31, 2018:
 - (i) may not exceed the individual's maximum sentence;
 - (ii) shall be for a period of time that is in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law; and
 - (iii) shall be terminated in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.
 - (b) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less, may not exceed 36 months.
 - (c) Probation of an individual placed on probation on or after October 1, 2015, but before January 1, 2019, may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance with Section 64-13-21 regarding earned credits.
 - (d) This Subsection (7) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.
- (8)

- (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal accounts receivable for the defendant upon termination of the probation period for the defendant under Subsection (7), the court may require the defendant to continue to make payments towards the criminal accounts receivable in accordance with the payment schedule established by the court under Section 77-32b-103.
 - (b) A court may not require the defendant to make payments as described in Subsection (8)(a) beyond the expiration of the defendant's sentence.
 - (c) If the court requires a defendant to continue to pay in accordance with the payment schedule for the criminal accounts receivable under this Subsection (8) and the defendant defaults on the criminal accounts receivable, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable for the defendant as described in Section 77-18-114.
 - (d)
 - (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's own motion, the court may require a defendant to show cause as to why the defendant's failure to pay in accordance with the payment schedule should not be treated as contempt of court.
 - (ii) A court may hold a defendant in contempt for failure to make payments for a criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.
 - (e) This Subsection (8) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.
- (9) When making any decision regarding probation, the court shall consider information provided by the Department of Corrections regarding a defendant's individual case action plan, including any progress the defendant has made in satisfying the case action plan's completion requirements.