

**SENTENCING OF CONVICTED FELONS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Blake D. Chard**

AN ACT RELATING TO CORRECTIONS AND CRIMINAL PROCEDURE; AMENDING PROVISIONS REGARDING FELONS SERVING JAIL TIME AS PART OF PROBATION; PROVIDING DEFINITIONS OF COMPONENTS OF INMATE COSTS; PROVIDING PROCEDURES FOR ESTABLISHING COSTS FOR REIMBURSEMENT TO COUNTIES WHO HOUSE STATE INMATES; AND PROVIDING A DELAYED EFFECTIVE DATE FOR SPECIFIED PROVISIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**77-18-1**, as last amended by Chapter 94, Laws of Utah 1998

ENACTS:

**64-13c-101**, Utah Code Annotated 1953

**64-13c-201**, Utah Code Annotated 1953

**64-13c-301**, Utah Code Annotated 1953

**64-13c-302**, Utah Code Annotated 1953

**64-13c-303**, Utah Code Annotated 1953

**64-13c-304**, Utah Code Annotated 1953

REPEALS:

**64-13b-101**, as enacted by Chapter 268, Laws of Utah 1993

**64-13b-201**, as enacted by Chapter 268, Laws of Utah 1993

**64-13b-301**, as enacted by Chapter 268, Laws of Utah 1993

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

Section 1. Section **64-13c-101** is enacted to read:

**CHAPTER 13c. STATE REIMBURSEMENT TO COUNTY  
CORRECTIONAL FACILITIES**

**64-13c-101. Definitions.**

As used in this chapter:

(1) (a) "Core inmate incarceration costs" means the county correctional facility's direct costs of incarcerating an inmate, including housing, feeding, and clothing. These costs also include the costs of programs the facility provides for inmates, but these costs do not include programs provided only for inmates housed at the facility under this chapter.

(b) "Core inmate incarceration costs" do not include costs of inmate transportation services or medical care.

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

(3) "Inmate" means felony probationers sentenced to county jail under Subsection 77-18-1(8), inmates of the state prison system, and parolees.

(4) "Inmate costs" includes core inmate incarceration costs, and also inmate transportation services and inmate medical care.

(5) "Program" means the Inmate Costs Reimbursement Program created in Section 64-13c-301.

Section 2. Section **64-13c-201** is enacted to read:

**64-13c-201. County housing of state prisoners.**

(1) (a) When a person convicted of a felony is committed to serve time in a county correctional facility as a condition of probation under Subsection 77-18-1(8), a county shall accept and house the prisoner in a county correctional facility, subject to available resources. If a county is unable to accept a person due to lack of resources, the county shall negotiate with another county to accept and house the person.

(b) The department may contract with a county to house inmates, other than those committed under Subsection 77-18-1(8) as a term of probation, in a county or other correctional facility.

(c) The department shall give preference over private entities to county correctional facility bed spaces for which the department has contracted under Subsection (1)(b).

(2) On and after July 1, 2000, compensation to a county for inmates incarcerated under this chapter shall be made by the department based on Section 64-13c-301.

Section 3. Section **64-13c-301** is enacted to read:

**64-13c-301. Reimbursement program created -- Funding -- Purposes.**

(1) (a) There is created a program known as the Inmate Costs Reimbursement Program.

(b) The program shall be funded by appropriations from the Legislature.

(2) The director of the Department of Corrections shall use the program monies for the sole purpose of reimbursing counties for costs incurred by housing inmates pursuant to this chapter.

(3) The program monies may not be used for the costs of administering the Inmate Cost Reimbursement Program under this chapter. Those costs shall be covered by legislative appropriation.

(4) All funding for the program is nonlapsing.

Section 4. Section **64-13c-302** is enacted to read:

**64-13c-302. Procedures for setting county reimbursement for core inmate incarceration costs, and medical and transportation costs.**

(1) In order for counties to receive reimbursement under this chapter, the Utah Sheriffs Association and the department shall annually before July 1 negotiate for the fiscal year beginning on July 1 a single reimbursement rate, applicable to all counties, for daily core inmate incarceration costs.

(2) Each county shall negotiate directly with the department to establish reimbursement rates for providing transportation services and medical care for inmates housed under Section 64-13c-201.

Section 5. Section **64-13c-303** is enacted to read:

**64-13c-303. Payment of reimbursement -- Any shortfall.**

(1) (a) The director of the department shall reimburse counties for daily inmate costs according to the amounts established under Section 64-13c-302, and to the extent monies are available in the program.

(b) The department shall by rule establish procedures for the distribution of reimbursement from the program.

(2) If it becomes apparent that monies in the program will be insufficient to pay all reimbursement due under this chapter in a timely manner, the department and the counties affected shall report the shortfall at the next meeting of the interim or standing legislative Law Enforcement and Criminal Justice Committee as is appropriate for that time of year.

(3) Counties that receive reimbursement from the department under this chapter shall annually on or before June 30 submit a report to the department that includes:

(a) the costs to the county of housing inmates under Section 64-13c-201 and a comparison of these costs to the reimbursement rate established under Section 64-13c-302;

(b) the number of inmates the county housed under this chapter as:

(i) a condition of a sentence of probation; and

(ii) by contract with the department; and

(c) the total number of inmate days of incarceration provided.

Section 6. Section **64-13c-304** is enacted to read:

**64-13c-304. Report to Legislature.**

(1) The department shall provide to the legislative Law Enforcement and Criminal Justice Interim Committee a report regarding housing of inmates under this chapter, including:

(a) core inmate costs established under this chapter;

(b) participating counties;

(c) the costs established for each participating county for transportation and medical care;

and

(d) the numbers of inmates housed as a condition of probation and housed by contract with the department.

(2) The report shall be submitted annually on or before September 1.

Section 7. Section **77-18-1** is amended to read:

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

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

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or

offense, the court may suspend the imposition or execution of sentence and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

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

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

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

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

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

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

(5) (a) Prior to the imposition of any sentence, 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 presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement describing the effect of the crime on the victim and the victim's family. The victim impact statement shall:

(i) identify the victim of the offense;

(ii) include a specific statement of the recommended amount of complete restitution as defined in Subsection 76-3-201(4), accompanied by a recommendation from the department regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the defendant;

(iii) identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

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

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

(vi) contain any other information related to the impact of the offense upon the victim or the victim's family that is relevant to the trial court's sentencing determination.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

(d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the

department.

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

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

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

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

(a) [~~may be required to~~] perform any or all of the following:

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

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

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

(iv) participate in available treatment programs;

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

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

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

- (viii) pay for the costs of investigation, probation, and treatment services;
- (ix) make restitution or reparation to the victim or victims with interest in accordance with Subsection 76-3-201(4); and
- (x) comply with other terms and conditions the court considers appropriate; and
- (b) if convicted on or after May 5, 1997[~~, shall be required to~~]:
  - (i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or
  - (ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:
    - (A) a diagnosed learning disability; or
    - (B) other justified cause.
- (9) The department, upon order of the court, shall collect and disburse fines, restitution with interest in accordance with Subsection 76-3-201(4), and any other costs assessed under Section 64-13-21 during:
  - (a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and
  - (b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection 77-18-1(10).
- (10) (a) (i) Probation 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, or 12 months in cases of class B or C misdemeanors or infractions.
  - (ii) If the defendant, upon expiration or termination of the probation period, owes outstanding fines, restitution, or other assessed costs, the court may retain jurisdiction of the case and continue the defendant on bench probation or place the defendant on bench probation for the limited purpose of enforcing the payment of fines, restitution, including interest, if any, in accordance with Subsection 76-3-201(4), and other amounts outstanding.
  - (iii) Upon motion of the prosecutor or victim, or upon its own motion, the court may require



the defendant to show cause why his failure to pay should not be treated as contempt of court or why the suspended jail or prison term should not be imposed.

(b) The department shall notify the sentencing court and prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law. The notification shall include a probation progress report and complete report of details on outstanding fines, restitution, and other amounts outstanding.

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

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

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

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

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

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

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

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

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

(iii) The order to show cause 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.

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

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

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

(iii) 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.

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

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

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

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

(13) Restitution imposed under this chapter and interest accruing in accordance with Subsection 76-3-201(4) is considered a debt for willful and malicious injury for purposes of exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.

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

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

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

(c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment over the defendants described in this Subsection (14).

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

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

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

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

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

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

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

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (17).

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

(b) The electronic monitoring shall alert the department and the appropriate law enforcement

unit of the defendant's whereabouts.

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

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

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

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

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

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

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

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

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

**Section 8. Repealer.**

This act repeals:

**Section 64-13b-101, Definitions.**

**Section 64-13b-201, Reimbursement for incarceration of state prisoners.**

**Section 64-13b-301, Budget for jail reimbursement.**

**Section 9. Effective date.**

This act takes effect on May 3, 1999, except that Sections 64-13c-301 and 64-13c-303 take effect on July 1, 2000.