

1 **UTAH CODE OF CRIMINAL PROCEDURE**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Katherine M. Bryson**

6 **This act clarifies provisions of the Code of Criminal Procedure relating to the withdrawal**
7 **of guilty pleas, expert testimony, suspension of sentences, and the filing of investigation**
8 **records.**

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

10 AMENDS:

11 **77-13-6**, as last amended by Chapter 16, Laws of Utah 1994

12 **77-17-13**, as last amended by Chapter 43, Laws of Utah 1999

13 **77-18-1**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

14 **77-22-4**, as last amended by Chapter 38, Laws of Utah 1993

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

16 Section 1. Section **77-13-6** is amended to read:

17 **77-13-6. Withdrawal of plea.**

18 (1) A plea of not guilty may be withdrawn at any time prior to conviction.

19 (2) (a) A plea of guilty or no contest may be withdrawn only upon [~~good cause shown~~
20 ~~and with leave of the court.~~] a showing that it was not knowingly and voluntarily made.

21 (b) Whether a guilty plea was knowingly and voluntarily made shall be determined
22 under a totality of the circumstances. Compliance with Rule 11, Utah Rules of Criminal
23 Procedure, as determined by a review of the record as a whole, creates a rebuttable presumption
24 that the plea was knowingly and voluntarily made.

25 [~~(b)~~] (c) A request to withdraw a plea of guilty or no contest [~~is~~] shall be made by
26 motion [and shall be made] before sentence is announced or within 30 days after [the entry of
27 the plea. (3) ~~This section does not restrict the rights of an imprisoned person under Rule 65B,~~



28 ~~Utah Rules of Civil Procedure.] pleading guilty or no contest, whichever occurs first. Sentence~~
29 ~~may not be announced unless the motion is denied.~~

30 (d) Any challenge to a guilty plea not made within the time period specified in
31 Subsection (2)(c) shall be pursued under Title 78, Chapter 35a, Post-Conviction Remedies Act,
32 and Rule 65C, Utah Rules of Civil Procedure.

33 Section 2. Section **77-17-13** is amended to read:

34 **77-17-13. Expert testimony generally -- Notice requirements.**

35 (1) (a) If the prosecution or the defense intends to call any expert to testify in a felony
36 case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah
37 Rules of Criminal Procedure, the party intending to call the expert shall give notice to the
38 opposing party as soon as practicable but not less than 30 days before trial or ten days before
39 the hearing.

40 (b) Notice shall include the name and address of the expert, the expert's curriculum
41 vitae, and ~~[a copy of the expert's report. (2) (a) The expert shall prepare a written report~~
42 ~~relating to the proposed testimony. (b) If the expert has not prepared a report or the report does~~
43 ~~not adequately inform concerning the substance of]~~ one of the following:

44 (i) a copy of the expert's report, if one exists; or

45 (ii) a written explanation of the expert's proposed [testimony including any opinion and
46 the bases and reasons of that opinion, the party intending to call the expert shall provide to the
47 opposing party a written explanation of the expert's anticipated] testimony sufficient to give the
48 opposing party adequate notice to prepare to meet the testimony[~~, followed by a copy of any~~
49 report prepared by the expert when available.]; and

50 (iii) a notice that the expert is available to cooperatively consult with the opposing
51 party on reasonable notice.

52 (c) The party intending to call the expert is responsible for any fee charged by the
53 expert for the consultation.

54 (2) If an expert's anticipated testimony will be based in whole or part on the results of
55 any tests or other specialized data, the party intending to call the witness shall provide to the
56 opposing party the information upon request.

57 (3) ~~(a)~~ As soon as practicable after receipt of the expert's report or the information
58 concerning the expert's proposed testimony, the party receiving notice shall provide to the other

59 party notice of witnesses whom the party anticipates calling to rebut the expert's testimony,
60 including the ~~[name and address of any expert witness and the expert's curriculum vitae. If~~
61 ~~available, a report of any rebuttal expert shall be provided to the other party]~~ information
62 required under Subsection (1)(b).

63 ~~[(b) If the rebuttal expert has not prepared a report or the report does not adequately~~
64 ~~inform concerning the substance of the expert's proposed testimony, or in the event the rebuttal~~
65 ~~witness is not an expert, the party intending to call the rebuttal witness shall provide a written~~
66 ~~explanation of the witness's anticipated rebuttal testimony sufficient to give the opposing party~~
67 ~~adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by~~
68 ~~any rebuttal expert when available.]~~

69 (4) (a) If the defendant or the prosecution fails to ~~[meet]~~ substantially comply with the
70 requirements of this section, the opposing party shall, if necessary to prevent substantial
71 prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to
72 meet the testimony.

73 (b) If the court finds that the failure to comply with this section is the result of bad faith
74 on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy
75 of exclusion of the expert's testimony will only apply if the court finds that a party deliberately
76 violated the provisions of this section.

77 (5) (a) For purposes of this section, testimony of an expert at a preliminary hearing
78 held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the
79 expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the
80 subject matter testified to by the expert at the preliminary hearing.

81 (b) Upon request, the party who called the expert at the preliminary hearing shall
82 provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable
83 prior to trial or any hearing at which the expert may be called as an expert witness.

84 (6) This section does not apply to the use of an expert who is an employee of the state
85 or its political subdivisions, so long as the opposing party is on reasonable notice through
86 general discovery that the expert may be called as a witness at trial, and the witness is made
87 available to cooperatively consult with the opposing party upon reasonable notice.

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

89 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**

90 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
91 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
92 **monitoring.**

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

96 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any
97 crime or offense, the court may, after imposing sentence, suspend the [~~imposition or~~] execution
98 of the sentence and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

110 (i) the type of offense;

111 (ii) the demand for services;

112 (iii) the availability of agency resources;

113 (iv) the public safety; and

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

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

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

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

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

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

131 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of
132 the defendant, continue the date for the imposition of sentence for a reasonable period of time
133 for the purpose of obtaining a presentence investigation report from the department or
134 information from other sources about the defendant.

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

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

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

146 (6) (a) The department shall provide the presentence investigation report to the
147 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
148 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
149 presentence investigation report, which have not been resolved by the parties and the
150 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
151 the judge may grant an additional ten working days to resolve the alleged inaccuracies of the

152 report with the department. If after ten working days the inaccuracies cannot be resolved, the
153 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

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

167 (iv) participate in available treatment programs;

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

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

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

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

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

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

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

180 (i) complete high school classwork and obtain a high school graduation diploma, a
181 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
182 not received the diploma, GED certificate, or vocational certificate prior to being placed on

183 probation; or

184 (ii) provide documentation of the inability to obtain one of the items listed in

185 Subsection (8)(b)(i) because of:

186 (A) a diagnosed learning disability; or

187 (B) other justified cause.

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

190 (a) the parole period and any extension of that period in accordance with Subsection
191 77-27-6(4); and

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

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

197 (ii) (A) If, upon expiration or termination of the probation period under Subsection
198 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
199 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
200 probation for the limited purpose of enforcing the payment of the account receivable.

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

204 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
205 own motion, the court may require the defendant to show cause why his failure to pay should
206 not be treated as contempt of court.

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

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

212 (11) (a) (i) Any time served by a probationer outside of confinement after having been
213 charged with a probation violation and prior to a hearing to revoke probation does not

214 constitute service of time toward the total probation term unless the probationer is exonerated
215 at a hearing to revoke the probation.

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

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

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

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

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

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

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

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

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

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

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

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

243 (iii) The persons who have given adverse information on which the allegations are
244 based shall be presented as witnesses subject to questioning by the defendant unless the court

245 for good cause otherwise orders.

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

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

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

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

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

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

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

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

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

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

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

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

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

274 (e) requested by the victim of the crime discussed in the presentence investigation
275 report or the victim's authorized representative, provided that the disclosure to the victim shall

276 include only information relating to statements or materials provided by the victim, to the
277 circumstances of the crime including statements by the defendant, or to the impact of the crime
278 on the victim or the victim's household.

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

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

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

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

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

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

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

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

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

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

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

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

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

305 Section 4. Section **77-22-4** is amended to read:

306 **77-22-4. Investigation records to be filed with court.**

307 In all investigations under Section 77-22-2, the attorney general, county attorney, or
308 district attorney shall maintain [~~and file with the district court~~] the following records of the
309 criminal investigation, unless otherwise ordered by the court:

310 (1) a copy of the good cause statement and application for the authorization of the
311 criminal investigation;

312 (2) a copy of all motions made to the court by the attorney general, the county attorney,
313 or the district attorney;

314 (3) a copy of all court orders;

315 (4) a copy of all subpoenas issued;

316 (5) [~~detailed descriptions~~] a list of all documents and other evidence produced in
317 response to subpoenas;

318 (6) a copy of all transcripts of testimony, or a recording or summary of testimony,
319 taken pursuant to the subpoena; and

320 (7) a copy of all written communications between the court and the attorney general,
321 county attorney, or district attorney, and staff.

Legislative Review Note

as of 1-27-03 10:53 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0238

Utah Code of Criminal Procedure Amendments

05-Feb-03

11:08 AM

State Impact

No significant State or local government fiscal impact. There could be some savings to local government. The amount cannot be quantified.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst