

**DRUG OFFENDERS REFORM ACT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: D. Chris Butters**

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**LONG TITLE**

**General Description:**

This bill amends provisions regarding the Utah Substance Abuse and Anti-Violence Coordinating Council and the Code of Criminal Procedure to implement screening and assessment of offenders regarding substance abuse.

**Highlighted Provisions:**

This bill:

- ▶ requires the Utah Substance Abuse and Anti-Violence Coordinating Council to coordinate and evaluate the implementation of the screening and assessment program;
- ▶ requires that on and after July 1, 2004, offenders convicted of an offense in violation of Title 58, Chapter 37, Utah Controlled Substances Act, participate in the screening and assessment process;
- ▶ requires that on and after July 1, 2005, offenders convicted of any felony offense participate in the screening and assessment process; and
- ▶ requires that the results of any screening and assessment of an offender be provided to the court prior to sentencing.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **63-25a-203**, as last amended by Chapter 115, Laws of Utah 2002

30 **77-18-1**, as last amended by Chapter 290, Laws of Utah 2003

31 **77-27-9**, as last amended by Chapter 149, Laws of Utah 2003

32 ENACTS:

33 **77-18-1.1**, Utah Code Annotated 1953



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

36 Section 1. Section **63-25a-203** is amended to read:

37 **63-25a-203. Duties of council.**

38 (1) The Utah Substance Abuse and Anti-Violence Coordinating Council shall:

39 (a) provide leadership and generate unity for Utah's ongoing efforts to combat  
40 substance abuse and community violence;

41 (b) recommend and coordinate the creation, dissemination, and implementation of a  
42 statewide substance abuse and anti-violence policy;

43 (c) facilitate planning for a balanced continuum of substance abuse and community  
44 violence prevention, treatment, and justice services;

45 (d) promote collaboration and mutually beneficial public and private partnerships;

46 (e) coordinate recommendations made by any subcommittees created under Section  
47 63-25a-202; ~~and~~

48 (f) analyze and provide an objective assessment of all proposed legislation concerning  
49 alcohol and other drug issues and community violence issues~~[-]; and~~

50 (g) coordinate the implementation of Section 77-18-1.1 and related provisions in

51 Subsections 77-18-1(5)(d) and 77-27-9(2)(g) by:

52 (i) developing an implementation plan;

53 (ii) providing ongoing oversight; and

54 (iii) evaluating the impact and results of the implementation of the provisions listed in  
55 this Subsection (1)(g).

56 (2) The council shall meet quarterly or more frequently as determined necessary by the  
57 chair.

58 (3) The council shall report its recommendations annually to the commission,

59 governor, Legislature, and judicial council.

60 Section 2. Section **77-18-1** is amended to read:

61 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**  
62 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**  
63 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
64 **monitoring.**

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

68 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any  
69 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence  
70 and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

82 (i) the type of offense;

83 (ii) the demand for services;

84 (iii) the availability of agency resources;

85 (iv) the public safety; and

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

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

90 to adoption by the department.

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

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

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

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

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

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

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

114 (d) The presentence investigation report shall include findings from any screening and  
115 any assessment that occurs prior to sentencing pursuant to Section 77-18-1.1.

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

120 (6) (a) The department shall provide the presentence investigation report to the

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

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

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

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

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

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

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

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

141 (iv) participate in available treatment programs;

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

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

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

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

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

- 152 (x) comply with other terms and conditions the court considers appropriate; and
- 153 (b) if convicted on or after May 5, 1997:
  - 154 (i) complete high school classwork and obtain a high school graduation diploma, a
  - 155 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
  - 156 not received the diploma, GED certificate, or vocational certificate prior to being placed on
  - 157 probation; or
  - 158 (ii) provide documentation of the inability to obtain one of the items listed in
  - 159 Subsection (8)(b)(i) because of:
    - 160 (A) a diagnosed learning disability; or
    - 161 (B) other justified cause.
  - 162 (9) The department shall collect and disburse the account receivable as defined by
  - 163 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
    - 164 (a) the parole period and any extension of that period in accordance with Subsection
    - 165 77-27-6(4); and
    - 166 (b) the probation period in cases for which the court orders supervised probation and
    - 167 any extension of that period by the department in accordance with Subsection (10).
  - 168 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
  - 169 upon completion without violation of 36 months probation in felony or class A misdemeanor
  - 170 cases, or 12 months in cases of class B or C misdemeanors or infractions.
    - 171 (ii) (A) If, upon expiration or termination of the probation period under Subsection
    - 172 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
    - 173 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
    - 174 probation for the limited purpose of enforcing the payment of the account receivable.
    - 175 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
    - 176 judgments any unpaid balance not already recorded and immediately transfer responsibility to
    - 177 collect the account to the Office of State Debt Collection.
    - 178 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
    - 179 own motion, the court may require the defendant to show cause why his failure to pay should
    - 180 not be treated as contempt of court.
  - 181 (b) (i) The department shall notify the sentencing court, the Office of State Debt
  - 182 Collection, and the prosecuting attorney in writing in advance in all cases when termination of

183 supervised probation will occur by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

275 (e) The department shall pay the costs of home confinement through electronic

276 monitoring only for those persons who have been determined to be indigent by the court.

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

279 Section 3. Section **77-18-1.1** is enacted to read:

280 **77-18-1.1. Screening and assessment.**

281 (1) As used in this section:

282 (a) "Assessment" and "screening" have the same meaning as provided in Subsection  
283 41-6-44(1).

284 (b) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,  
285 guilty and mentally ill, no contest, and conviction of any crime or offense.

286 (2) On and after July 1, 2004, the court shall order every offender convicted of a felony  
287 offense under Title 58, Chapter 37, Utah Controlled Substances Act, to:

288 (a) participate in a screening prior to sentencing; and

289 (b) participate in an assessment prior to sentencing if it is indicated to be appropriate  
290 by the screening.

291 (3) On and after July 1, 2005, the court shall order every offender convicted of a felony  
292 to:

293 (a) participate in a screening prior to sentencing; and

294 (b) participate in an assessment prior to sentencing if it is indicated to be appropriate  
295 by the screening.

296 (4) The findings resulting from any screening and any assessment conducted pursuant  
297 to this section shall be submitted to the court prior to sentencing of the offender.

298 Section 4. Section **77-27-9** is amended to read:

299 **77-27-9. Parole proceedings.**

300 (1) (a) The Board of Pardons and Parole may pardon or parole any offender or  
301 commute or terminate the sentence of any offender committed to a penal or correctional facility  
302 under the jurisdiction of the Department of Corrections for a felony or class A misdemeanor  
303 except as provided in Subsection (2).

304 (b) The board may not release any offender before the minimum term has been served  
305 unless the board finds mitigating circumstances which justify the release and unless the board  
306 has granted a full hearing, in open session, after previous notice of the time and place of the

307 hearing, and recorded the proceedings and decisions of the board.

308 (c) The board may not pardon or parole any offender or commute or terminate the  
309 sentence of any offender unless the board has granted a full hearing, in open session, after  
310 previous notice of the time and place of the hearing, and recorded the proceedings and  
311 decisions of the board.

312 (d) The release of an offender shall be at the initiative of the board, which shall  
313 consider each case as the offender becomes eligible. However, a prisoner may submit his own  
314 application, subject to the rules of the board promulgated in accordance with Title 63, Chapter  
315 46a, Utah Administrative Rulemaking Act.

316 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony  
317 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a  
318 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of  
319 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section  
320 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);  
321 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in  
322 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole  
323 until the offender has fully completed serving the minimum mandatory sentence imposed by  
324 the court. This Subsection (2)(a) supersedes any other provision of law.

325 (b) The board may not parole any offender or commute or terminate the sentence of  
326 any offender before the offender has served the minimum term for the offense, if the offender  
327 was sentenced prior to April 29, 1996, and if:

328 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,  
329 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined  
330 in Title 76, Chapter 5, Offenses Against the Person; and

331 (ii) the victim of the offense was under 18 years of age at the time the offense was  
332 committed.

333 (c) For a crime committed on or after April 29, 1996, the board may parole any  
334 offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in [~~Section~~  
335 ~~77-27-9~~] this section.

336 (d) The board may not pardon or parole any offender or commute or terminate the  
337 sentence of any offender who is sentenced to life in prison without parole except as provided in

338 Subsection (6).

339 (e) On or after April 27, 1992, the board may commute a sentence of death only to a  
340 sentence of life in prison without parole.

341 (f) The restrictions imposed in Subsections [~~77-27-9~~](2)(d) and (e) apply to all cases  
342 that come before the Board of Pardons and Parole on or after April 27, 1992.

343 (g) (i) As used in this Subsection (2)(g), "assessment" and "screening" have the same  
344 meaning as provided in Subsection 41-6-44(1).

345 (ii) Except as provided in Subsection (2)(g)(iii), the board may not parole any offender  
346 who has not:

347 (A) participated in a screening within six months prior to the parole date; and

348 (B) participated in an assessment within six months prior to the parole date, if an  
349 assessment is indicated to be appropriate by the screening.

350 (iii) The board may parole an offender who has not met the requirements of Subsection  
351 (2)(g)(ii) upon the condition that the offender, within 45 days of being paroled:

352 (A) participates in a screening; and

353 (B) participates in an assessment if it is indicated to be appropriate by the screening.

354 (3) The board may issue subpoenas to compel the attendance of witnesses and the  
355 production of evidence, to administer oaths, and to take testimony for the purpose of any  
356 investigation by the board or any of its members or by a designated hearing examiner in the  
357 performance of its duties. A person who willfully disobeys a properly served subpoena issued  
358 by the board is guilty of a class B misdemeanor.

359 (4) (a) The board may adopt rules consistent with law for its government, meetings and  
360 hearings, the conduct of proceedings before it, the parole and pardon of offenders, the  
361 commutation and termination of sentences, and the general conditions under which parole may  
362 be granted and revoked.

363 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings  
364 held under this chapter, as provided in Section 77-27-9.5.

365 (c) The rules may allow the board to establish reasonable and equitable time limits on  
366 the presentations by all participants in hearings held under this chapter.

367 (5) The board does not provide counseling or therapy for victims as a part of their  
368 participation in any hearing under this chapter.

369           (6) The board may parole a person sentenced to life in prison without parole if the  
370 board finds by clear and convincing evidence that the person is permanently incapable of being  
371 a threat to the safety of society.

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**Legislative Review Note**  
**as of 12-11-03 2:38 PM**

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-30-03 9:31 AM**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

**State Impact**

In order to implement the provisions of this bill, it is estimated that the Department of Corrections will require General Funds appropriations of \$490,700 in FY 2005 and \$548,800 each fiscal year thereafter; the Division of Substance Abuse and Mental Health will require General Funds appropriations of \$447,500 in FY 2005 and \$776,000 each fiscal year thereafter; the State Courts will require an ongoing General Funds appropriation of \$94,500 beginning FY 2005; and the Commission on Criminal and Juvenile Justice will require an ongoing General Funds appropriation of \$50,000 beginning FY 2005. The bill does not address treatment specifically and is therefore not included in this fiscal note. Anticipated treatment needs expected from the additional assessments would amount to an additional \$5,300,000 in FY 2005 and \$10,821,500 in FY 2006. Research has shown that providing appropriate treatment to individuals with substance abuse problems reduces their reliance on public services and could result in a marginal decrease of public expenditures in criminal justice and public assistance costs at the state and local levels of government.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$1,082,700	\$1,469,300	\$0	\$0
<b>TOTAL</b>	<b>\$1,082,700</b>	<b>\$1,469,300</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

Private providers of screening and assessment services may financially benefit through participation as a result of this bill.

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