

1 **DRUG OFFENDER REFORM ACT**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: D. Chris Buttars**

5

6 **LONG TITLE**

7 **General Description:**

8 This bill amends provisions regarding the Utah Substance Abuse and Anti-Violence
9 Coordinating Council and the Code of Criminal Procedure to implement provisions
10 regarding screening and assessment of offenders regarding substance abuse. These
11 provisions are referred to as the Drug Offender Reform Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires the Utah Substance Abuse and Anti-Violence Coordinating Council to
15 coordinate and evaluate the implementation of the screening and assessment
16 program;
- 17 ▶ requires that on and after July 1, 2005, offenders convicted of an offense in
18 violation of Title 58, Chapter 37, Utah Controlled Substances Act, participate in the
19 screening and assessment process;
- 20 ▶ requires that on and after July 1, 2006, offenders convicted of any felony offense
21 participate in the screening and assessment process; and
- 22 ▶ requires that the results of any screening and assessment of an offender be provided
23 to the court prior to sentencing.

24 **Monies Appropriated in this Bill:**

25 This bill appropriates:

- 26 ▶ as an ongoing appropriation subject to future budget constraints, \$50,000 from the
27 General Fund, for fiscal year 2005-06, to the Commission on Criminal and Juvenile



28 Justice;

29 ▶ as an ongoing appropriation subject to future budget constraints, \$1,814,720 from
30 the General Fund, for fiscal year 2005-06, to the Department of Corrections;

31 ▶ as an ongoing appropriation subject to future budget constraints, \$4,297,480 from
32 the General Fund, for fiscal year 2005-06, to the Department of Human Services, of
33 which a specified portion is to be used for drug courts; and

34 ▶ as an ongoing appropriation subject to future budget constraints, \$94,500 from the
35 General Fund, for fiscal year 2005-06, to the Administrative Office of the Courts.

36 **Other Special Clauses:**

37 This bill takes effect on July 1, 2005.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **17-43-201**, as last amended by Chapters 80 and 228, Laws of Utah 2004

41 **63-25a-203**, as last amended by Chapter 115, Laws of Utah 2002

42 **77-18-1**, as last amended by Chapter 290, Laws of Utah 2003

43 **77-27-9**, as last amended by Chapter 149, Laws of Utah 2003

44 ENACTS:

45 **63-25a-205.5**, Utah Code Annotated 1953

46 **77-18-1.1**, Utah Code Annotated 1953



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

49 Section 1. Section **17-43-201** is amended to read:

50 **17-43-201. Local substance abuse authorities -- Responsibilities.**

51 (1) (a) (i) In each county operating under a county executive-council form of
52 government under Section 17-52-504, the county legislative body is the local substance abuse
53 authority, [~~provided however~~] except that any contract for plan services shall be administered
54 by the county executive.

55 (ii) In each county operating under a council-manager form of government under
56 Section 17-52-505, the county manager is the local substance abuse authority.

57 (iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the
58 county legislative body is the local substance abuse authority.

59 (b) Within legislative appropriations and county matching funds required by this
60 section, and under the policy direction of the board and the administrative direction of the
61 division, each local substance abuse authority shall:

62 (i) develop substance abuse prevention and treatment services plans; and

63 (ii) provide substance abuse services to residents of the county.

64 (2) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal
65 Cooperation Act, two or more counties may join to provide substance abuse prevention and
66 treatment services.

67 (b) The legislative bodies of counties joining to provide services may establish
68 acceptable ways of apportioning the cost of substance abuse services.

69 (c) Each agreement for joint substance abuse services shall:

70 (i) (A) designate the treasurer of one of the participating counties or another person as
71 the treasurer for the combined substance abuse authorities and as the custodian of moneys
72 available for the joint services; and

73 (B) provide that the designated treasurer, or other disbursing officer authorized by the
74 treasurer, may make payments from the moneys for the joint services upon audit of the
75 appropriate auditing officer or officers representing the participating counties;

76 (ii) provide for the appointment of an independent auditor or a county auditor of one of
77 the participating counties as the designated auditing officer for the combined substance abuse
78 authorities;

79 (iii) (A) provide for the appointment of the county or district attorney of one of the
80 participating counties as the designated legal officer for the combined substance abuse
81 authorities; and

82 (B) authorize the designated legal officer to request and receive the assistance of the
83 county or district attorneys of the other participating counties in defending or prosecuting
84 actions within their counties relating to the combined substance abuse authorities; and

85 (iv) provide for the adoption of management, clinical, financial, procurement,
86 personnel, and administrative policies as already established by one of the participating
87 counties or as approved by the legislative body of each participating county or interlocal board.

88 (d) An agreement for joint substance abuse services may provide for joint operation of
89 services and facilities or for operation of services and facilities under contract by one

90 participating local substance abuse authority for other participating local substance abuse
91 authorities.

92 (3) (a) Each local substance abuse authority is accountable to the department, the
93 Department of Health, and the state with regard to the use of state and federal funds received
94 from those departments for substance abuse services, regardless of whether the services are
95 provided by a private contract provider.

96 (b) Each local substance abuse authority shall comply, and require compliance by its
97 contract provider, with all directives issued by the department and the Department of Health
98 regarding the use and expenditure of state and federal funds received from those departments
99 for the purpose of providing substance abuse programs and services. The department and
100 Department of Health shall ensure that those directives are not duplicative or conflicting, and
101 shall consult and coordinate with local substance abuse authorities with regard to programs and
102 services.

103 (4) Each local substance abuse authority shall:

104 (a) review and evaluate substance abuse prevention and treatment needs and services,
105 including substance abuse needs and services for individuals incarcerated in a county jail or
106 other county correctional facility;

107 (b) annually prepare and submit to the division a plan approved by the county
108 legislative body for funding and service delivery that includes:

109 (i) provisions for services, either directly by the substance abuse authority or by
110 contract, for adults, youth, and children, including those incarcerated in a county jail or other
111 county correctional facility; and

112 (ii) primary prevention, targeted prevention, early intervention, and treatment services;

113 (c) establish and maintain, either directly or by contract, programs licensed under Title
114 62A, Chapter 2, Licensure of Programs and Facilities;

115 (d) appoint directly or by contract a full or part time director for substance abuse
116 programs, and prescribe the director's duties;

117 (e) provide input and comment on new and revised policies established by the board;

118 (f) establish and require contract providers to establish administrative, clinical,
119 procurement, personnel, financial, and management policies regarding substance abuse services
120 and facilities, in accordance with the policies of the board, and state and federal law;

- 121 (g) establish mechanisms allowing for direct citizen input;
- 122 (h) annually contract with the division to provide substance abuse programs and
123 services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and
124 Mental Health Act;
- 125 (i) comply with all applicable state and federal statutes, policies, audit requirements,
126 contract requirements, and any directives resulting from those audits and contract requirements;
- 127 (j) promote or establish programs for the prevention of substance abuse within the
128 community setting through community-based prevention programs;
- 129 (k) except as provided in Subsection (8), provide funding equal to at least 20% of the
130 state funds that it receives to fund services described in the plan;
- 131 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
132 Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts
133 Act, and Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions,
134 Interlocal Organizations, and Other Local Entities Act;
- 135 (m) for persons convicted of driving under the influence in violation of Subsection
136 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:
- 137 (i) a screening;
- 138 (ii) an assessment;
- 139 (iii) an educational series; and
- 140 (iv) substance abuse treatment; and
- 141 (n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to
142 supplement the cost of providing the services described in Subsection (4)(m).
- 143 (5) Before disbursing any public funds, each local substance abuse authority shall
144 require that each entity that receives any public funds from the local substance abuse authority
145 agrees in writing that:
- 146 (a) the entity's financial records and other records relevant to the entity's performance
147 of the services provided to the local substance abuse authority shall be subject to examination
148 by:
- 149 (i) the division;
- 150 (ii) the local substance abuse authority director;
- 151 (iii) (A) the county treasurer and county or district attorney; or

152 (B) if two or more counties jointly provide substance abuse services under an
153 agreement under Subsection (2), the designated treasurer and the designated legal officer;

154 (iv) the county legislative body; and

155 (v) in a county with a county executive that is separate from the county legislative
156 body, the county executive;

157 (b) the county auditor may examine and audit the entity's financial and other records
158 relevant to the entity's performance of the services provided to the local substance abuse
159 authority; and

160 (c) the entity will comply with the provisions of Subsection (3)(b).

161 (6) A local substance abuse authority may receive property, grants, gifts, supplies,
162 materials, contributions, and any benefit derived therefrom, for substance abuse services. If
163 those gifts are conditioned upon their use for a specified service or program, they shall be so
164 used.

165 ~~[(7) (a) As used in this section, "public funds" means the same as that term is defined~~
166 ~~in Section 17-43-203.]~~

167 ~~[(b)]~~ (7) Public funds received for the provision of services pursuant to the local
168 substance abuse plan may not be used for any other purpose except those authorized in the
169 contract between the local substance abuse authority and the provider for the provision of plan
170 services.

171 (8) Local substance abuse authorities are not required to provide matching funding for
172 state funds received for providing services under Section 77-18-1.1. This Subsection (8) takes
173 precedence over Subsection (4)(k).

174 (9) As used in this section, "public funds" has the same meaning as in Section
175 17-43-203.

176 Section 2. Section **63-25a-203** is amended to read:

177 **63-25a-203. Duties of council.**

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

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

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

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

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

186 (e) coordinate recommendations made by any subcommittees created under Section
187 63-25a-202; ~~and~~

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

190 (g) coordinate the implementation of Section 77-18-1.1 and related provisions in
191 Subsections 77-18-1(5)(d) and 77-27-9(2)(g) as provided in Section 63-25a-205.5.

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

194 (3) The council shall report its recommendations annually to the commission,
195 governor, Legislature, and judicial council.

196 Section 3. Section **63-25a-205.5** is enacted to read:

197 **63-25a-205.5. Drug Offender Reform Act -- Coordination.**

198 (1) As used in this section:

199 (a) "Council" means the Utah Substance Abuse and Anti-Violence Coordinating
200 Council.

201 (b) "Drug Offender Reform Act" and "act" mean Section 77-18-1.1 and related
202 provisions in Subsections 77-18-1(5)(d) and 77-27-9(2)(g).

203 (2) The council shall provide ongoing oversight of the implementation and functions of
204 the Drug Offender Reform Act.

205 (3) The council shall evaluate the impact and results of the Drug Offender Reform Act.

206 (4) The council shall develop an implementation plan for the Drug Offender Reform
207 Act. The plan shall:

208 (a) include guidelines on how funds appropriated under the act should be used;

209 (b) require that treatment plans under the act are appropriate for criminal offenders;

210 and

211 (c) include guidelines on the membership of local planning groups.

212 (5) (a) Local substance abuse authorities shall establish local planning groups and

213 submit a plan to the council detailing how the Drug Offender Reform Act funds are intended to

214 be used. The uses shall be in accordance with the guidelines established by the council under
215 Subsection (4).

216 (b) Upon approval of the plan by the council, the Department of Human Services shall
217 allocate the funds.

218 (c) Local substance abuse authorities shall submit to the Department of Human
219 Services and to the council, at least annually, reports detailing use of the funds and the impact
220 and results of the use of the funds.

221 (6) (a) The Department of Corrections shall establish a planning group and submit a
222 plan to the council detailing how the Drug Offender Reform Act funds are intended to be used.
223 The uses shall be in accordance with the guidelines established by the council under Subsection
224 (4).

225 (b) The Department of Corrections shall submit to the council, at least annually, a
226 report detailing use of the funds and the impacts and results of the use of the funds.

227 Section 4. Section **77-18-1** is amended to read:

228 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
229 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
230 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
231 **monitoring.**

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

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

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

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

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

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

244 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court

245 is vested as ordered by the court.

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

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

249 (i) the type of offense;

250 (ii) the demand for services;

251 (iii) the availability of agency resources;

252 (iv) the public safety; and

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

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

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

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

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

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

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

274 (b) The presentence investigation report shall include a victim impact statement
275 according to guidelines set in Section 77-38a-203 describing the effect of the crime on the

276 victim and the victim's family.

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

281 (d) The presentence investigation report shall include findings from any screening and
282 any assessment of the defendant that occurs pursuant to Section 77-18-1.1 prior to sentencing.

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

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

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

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

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

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

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

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

- 307 (iii) provide for the support of others for whose support he is legally liable;
- 308 (iv) participate in available treatment programs, including any treatment program in
309 which the defendant is currently participating, if the program is acceptable to the court;
- 310 (v) serve a period of time, not to exceed one year, in a county jail designated by the
311 department, after considering any recommendation by the court as to which jail the court finds
312 most appropriate;
- 313 (vi) serve a term of home confinement, which may include the use of electronic
314 monitoring;
- 315 (vii) participate in compensatory service restitution programs, including the
316 compensatory service program provided in Section 78-11-20.7;
- 317 (viii) pay for the costs of investigation, probation, and treatment services;
- 318 (ix) make restitution or reparation to the victim or victims with interest in accordance
319 with Title 77, Chapter 38a, Crime Victims Restitution Act; and
- 320 (x) comply with other terms and conditions the court considers appropriate; and
- 321 (b) if convicted on or after May 5, 1997:
- 322 (i) complete high school classwork and obtain a high school graduation diploma, a
323 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
324 not received the diploma, GED certificate, or vocational certificate prior to being placed on
325 probation; or
- 326 (ii) provide documentation of the inability to obtain one of the items listed in
327 Subsection (8)(b)(i) because of:
- 328 (A) a diagnosed learning disability; or
329 (B) other justified cause.
- 330 (9) The department shall collect and disburse the account receivable as defined by
331 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
- 332 (a) the parole period and any extension of that period in accordance with Subsection
333 77-27-6(4); and
- 334 (b) the probation period in cases for which the court orders supervised probation and
335 any extension of that period by the department in accordance with Subsection (10).
- 336 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
337 upon completion without violation of 36 months probation in felony or class A misdemeanor

338 cases, or 12 months in cases of class B or C misdemeanors or infractions.

339 (ii) (A) If, upon expiration or termination of the probation period under Subsection
340 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
341 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
342 probation for the limited purpose of enforcing the payment of the account receivable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 400 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- 401 (b) treatment space at the hospital is available for the defendant; and
- 402 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for
- 403 treatment over the defendants described in this Subsection (13).

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

- 410 (a) ordered by the court pursuant to Subsection 63-2-202(7);
- 411 (b) requested by a law enforcement agency or other agency approved by the department
- 412 for purposes of supervision, confinement, and treatment of the offender;
- 413 (c) requested by the Board of Pardons and Parole;
- 414 (d) requested by the subject of the presentence investigation report or the subject's
- 415 authorized representative; or
- 416 (e) requested by the victim of the crime discussed in the presentence investigation
- 417 report or the victim's authorized representative, provided that the disclosure to the victim shall
- 418 include only information relating to statements or materials provided by the victim, to the
- 419 circumstances of the crime including statements by the defendant, or to the impact of the crime
- 420 on the victim or the victim's household.

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

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

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

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

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

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

433 (ii) that a device be placed in the home of the defendant, so that the defendant's

434 compliance with the court's order may be monitored.

435 (d) If a court orders a defendant to participate in home confinement through electronic

436 monitoring as a condition of probation under this section, it shall:

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

438 Corrections;

439 (ii) order the department to place an electronic monitoring device on the defendant and

440 install electronic monitoring equipment in the residence of the defendant; and

441 (iii) order the defendant to pay the costs associated with home confinement to the

442 department or the program provider.

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

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

445 (f) The department may provide the electronic monitoring described in this section

446 either directly or by contract with a private provider.

447 Section 5. Section **77-18-1.1** is enacted to read:

448 **77-18-1.1. Screening and assessment.**

449 (1) As used in this section:

450 (a) "Assessment" has the same meaning as in Subsection 41-6-44(1).

451 (b) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,

452 guilty and mentally ill, or no contest, and conviction of any crime or offense.

453 (c) "Screening" has the same meaning as in Subsection 41-6-44(1).

454 (2) On and after July 1, 2005, the court shall order every offender convicted of a felony

455 offense under Title 58, Chapter 37, Utah Controlled Substances Act, to:

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

457 (b) participate in an assessment prior to sentencing if it is indicated to be appropriate

458 by the screening.

459 (3) On and after July 1, 2006, the court shall order every offender convicted of a felony

460 to:

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

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

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

466 Section 6. Section **77-27-9** is amended to read:

467 **77-27-9. Parole proceedings.**

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

472 (b) The board may not release any offender before the minimum term has been served
473 unless the board finds mitigating circumstances which justify the release and unless the board
474 has granted a full hearing, in open session, after previous notice of the time and place of the
475 hearing, and recorded the proceedings and decisions of the board.

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

480 (d) The release of an offender shall be at the initiative of the board, which shall
481 consider each case as the offender becomes eligible. However, a prisoner may submit his own
482 application, subject to the rules of the board promulgated in accordance with Title 63, Chapter
483 46a, Utah Administrative Rulemaking Act.

484 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony
485 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
486 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
487 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
488 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
489 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
490 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
491 until the offender has fully completed serving the minimum mandatory sentence imposed by
492 the court. This Subsection (2)(a) supersedes any other provision of law.

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

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

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

501 (c) For a crime committed on or after April 29, 1996, the board may parole any
502 offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in [~~Section~~
503 ~~77-27-9~~] this section.

504 (d) The board may not pardon or parole any offender or commute or terminate the
505 sentence of any offender who is sentenced to life in prison without parole except as provided in
506 Subsection (6).

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

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

511 (g) (i) As used in this Subsection (2)(g):

512 (A) "Assessment" has the same meaning as in Subsection 41-6-44(1).

513 (B) "Screening" has the same meaning as in Subsection 41-6-44(1).

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

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

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

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

521 (A) participates in a screening; and

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

523 (3) (a) The board may issue subpoenas to compel the attendance of witnesses and the

524 production of evidence, to administer oaths, and to take testimony for the purpose of any
525 investigation by the board or any of its members or by a designated hearing examiner in the
526 performance of its duties.

527 (b) A person who willfully disobeys a properly served subpoena issued by the board is
528 guilty of a class B misdemeanor.

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

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

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

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

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

542 Section 7. **Appropriation.**

543 (1) As an ongoing appropriation subject to future budget constraints, there is
544 appropriated from the General Fund for fiscal year 2005-06, \$50,000 to the Commission on
545 Criminal and Juvenile Justice to be used for research and evaluation of the Drug Offender
546 Reform Act, as defined in Subsection 63-25a-205.5(1).

547 (2) As an ongoing appropriation subject to future budget constraints, there is
548 appropriated from the General Fund for fiscal year 2005-06, \$1,814,720 to the Department of
549 Corrections to be used for drug treatment of offenders in prison, including assessments, case
550 management, and drug testing as follows:

551 (a) \$414,720 for assessments; and

552 (b) \$1,400,000 for drug treatment, case management, and drug testing.

553 (3) As an ongoing appropriation subject to future budget constraints, there is
554 appropriated from the General Fund for fiscal year 2005-06, \$4,297,480 to the Department of

555 Human Services to be used for drug treatment of criminal offenders, including assessments,
556 case management, and drug testing as follows:

557 (a) \$447,480 for assessments; and

558 (b) \$3,850,000 for drug treatment, case management, and drug testing in the
559 community.

560 (4) (a) At least 20% of the funds appropriated under Subsection (3)(b) shall be used to
561 further the statewide expansion of drug courts; and

562 (b) Thirteen percent of the funds under Subsection (4)(a) shall be allocated to the
563 Administrative Office of the Courts.

564 (5) As an ongoing appropriation subject to future budget constraints, there is
565 appropriated from the General Fund for fiscal year 2005-06, \$94,500 to the Administrative
566 Office of the Courts to be used for the costs of court clerks.

567 Section 8. **Effective date.**

568 This bill takes effect on July 1, 2005.

Legislative Review Note
as of 12-7-04 8:44 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-08-04 1:28 PM

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

State Impact

This bill appropriates from the General Fund, a total of \$6,256,700 for FY 2006, as an ongoing appropriation, as follows: \$50,000 to the Commission on Criminal and Juvenile Justice, \$1,814,720 to the Department of Corrections, \$4,297,480 to the Department of Human Services, and \$94,500 to the Administrative Office of the Courts. This appropriation is the first installment of a three year funding plan to provide a total of \$16.6 million, including over \$14 million for treatment services. Provisions in this bill mandates expanded screening and evaluations of inmates in FY 2007, estimated to require another \$400,000 in that year. Research indicates that providing appropriate screening and treatment to offenders with substance abuse problems will reduce their reliance on public services and should result in some marginal decrease of costs to the criminal justice and public assistance systems.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$6,256,700	\$6,656,700	\$0	\$0
TOTAL	<u><u>\$6,256,700</u></u>	<u><u>\$6,656,700</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>

Individual and Business Impact

Private providers of screening, assessment, and treatment services would financially benefit from participation in provisions of this legislation. As the impact of this Act begins to be felt, there could be a positive impact on communities, businesses and individuals through decreased drug-related crime activities.

Office of the Legislative Fiscal Analyst