

**SENTENCING AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies sentencing provisions of the Criminal Code and the Code of Criminal Procedure, and also modifies county correctional facility provisions regarding the housing of state inmates.

**Highlighted Provisions:**

This bill:

- ▶ provides that county jails shall accept felony probationers only if space has been allocated by a contract with the Department of Corrections;
- ▶ provides that if the county does not have contracted room for felony probationers, the Department of Corrections must negotiate with another county jail to accept the probationer;
- ▶ provides that the court may place a defendant on probation with a local agency or private organization only if the court does not order jail time;
- ▶ provides that the court may place a defendant on bench probation only if the offense is a misdemeanor; and
- ▶ provides that the court has continuing jurisdiction over all misdemeanor probationers.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**



None

**Utah Code Sections Affected:**

**AMENDS:**

**64-13c-201**, as last amended by Chapter 270, Laws of Utah 2002

**76-3-201**, as last amended by Chapter 280, Laws of Utah 2003

**77-18-1**, as last amended by Chapter 14, Laws of Utah 2005, First Special Session

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

Section 1. Section **64-13c-201** is amended to read:

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

(1) (a) (i) When a person convicted of a felony is committed to serve time in a county correctional facility as a condition of probation under Subsection 77-18-1(8), a county shall accept and house the prisoner in a county correctional facility, ~~[subject to available resources]~~ to the extent that bed space allocated by contract with the department is not in use.

(ii) If a county is unable to accept a person ~~[due to lack of resources, the county]~~ under Subsection (1)(a)(i), the department shall negotiate with another county to accept and house the person.

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

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

(2) On and after July 1, 2000, compensation to a county for inmates incarcerated under this chapter shall be made by the department.

Section 2. Section **76-3-201** is amended to read:

**76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties -- Hearing.**

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e) (i) "Victim" means any person who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter and Section 77-18-1, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) \$75 for up to 100 miles a defendant is transported;

(B) \$125 for 100 up to 200 miles a defendant is transported; and

(C) \$250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay court-ordered restitution to the county for the cost of incarceration in the

county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and

(ii) (A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided under Section 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a condition of probation under Subsection 77-18-1(8).

(b) (i) The costs of incarceration under Subsection (6)(a) are:

(A) the daily core inmate incarceration costs and medical and transportation costs established under Section 64-13c-302; and

(B) the costs of transportation services and medical care that exceed the negotiated reimbursement rate established under Subsection 64-13c-302(2).

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining the monetary sum and other conditions for the court-ordered restitution under this Subsection (6), the court shall consider the criteria provided under Subsections 77-38a-302(5)(c)(i) through (iv).

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

(7) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior

to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) In determining a just sentence, the court shall consider sentencing guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission.

(8) If during the commission of a crime described as child kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the highest minimum term in state prison. This Subsection (8) takes precedence over any conflicting provision of law.

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

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

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

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

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

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

183 the court does not order incarceration; or

184 (iii) on bench probation under the jurisdiction of the sentencing court if the offense is a  
185 class A, B, or C misdemeanor.

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

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

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

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

193 (i) the type of offense;

194 (ii) the demand for services;

195 (iii) the availability of agency resources;

196 (iv) the public safety; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

247 probation;

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

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

250 (iv) participate in available treatment programs, including any treatment program in

251 which the defendant is currently participating, if the program is acceptable to the court;

252 (v) serve a period of time, not to exceed one year, in a county jail designated by the

253 department, after considering any recommendation by the court as to which jail the court finds

254 most appropriate and the amount of time the court recommends;

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

256 monitoring;

257 (vii) participate in compensatory service restitution programs, including the

258 compensatory service program provided in Section 78-11-20.7;

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

260 (ix) make restitution or reparation to the victim or victims with interest in accordance

261 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

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

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

264 (i) complete high school classwork and obtain a high school graduation diploma, a

265 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has

266 not received the diploma, GED certificate, or vocational certificate prior to being placed on

267 probation; or

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

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

270 (A) a diagnosed learning disability; or

271 (B) other justified cause.

272 (9) The department shall collect and disburse the account receivable as defined by

273 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

274 (a) the parole period and any extension of that period in accordance with Subsection

275 77-27-6(4); and

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

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

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

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

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

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

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

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

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

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

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing

by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) (a) If the court places the defendant on probation under this section, it may order

the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

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

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

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

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

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

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

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

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

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

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

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**Legislative Review Note**

as of 2-14-06 4:55 PM

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**

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**Fiscal Note**  
**Bill Number HB0402**

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**Sentencing Amendments***20-Feb-06**10:51 AM*

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**State Impact**

Passage of this bill would require \$12,973,200 in FY 2007 and \$14,168,300 in FY 2008 for the Department of Corrections to fund provisions that the department contract with counties to incarcerate felony probationers that are currently administered through the jail reimbursement process. This fiscal note assumes that current Jail Reimbursement funding of \$9,605,900 would be shifted by the Legislature to fund the new contracted status proposed by this bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$12,973,200	\$14,168,300	\$0	\$0
<b>TOTAL</b>	<b>\$12,973,200</b>	<b>\$14,168,300</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**