

DRUG OFFENDERS REFORM ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Buttars

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill modifies provisions of the Utah Substance Abuse and Anti-Violence Coordinating Council and the Code of Criminal Procedure to implement provisions relating to screening, assessment, and substance abuse treatment for offenders. These provisions are referred to as the Drug Offender Reform Act.

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, 2007, 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:

This bill appropriates as nonlapsing funds:

- ▶ as an ongoing appropriation subject to future budget constraints, ~~Ⓕ~~→ [\$50,000] \$27,000 ←~~Ⓕ~~ from the General Fund, for fiscal year 2007-08 to the Commission on Criminal and Juvenile Justice;
- ▶ as an ongoing appropriation subject to future budget constraints, ~~Ⓕ~~→ [\$6,364,800] ~~Ⓕ~~→ [\$6,331,860 ←~~Ⓕ~~] \$3,419,500 ←~~Ⓕ~~ from

S.B. 50



28 the General Fund, for fiscal year 2007-08, to the Department of Corrections;

29 ▶ as an ongoing appropriation subject to future budget constraints, ~~Ŝ~~→ [\$10,156,000]

29a ~~Ĥ~~→ [~~10,103,440~~ ← ~~Ŝ~~] \$5,432,300 ← ~~Ĥ~~ from

30 the General Fund, for fiscal year 2007-08, to the Department of Human Services;

31 ~~Ŝ~~→ [and] ← ~~Ŝ~~

32 ▶ as an ongoing appropriation subject to future budget constraints, ~~Ĥ~~→ [\$94,500]

32a \$80,700 ← ~~Ĥ~~ from the

33 General Fund, for fiscal year 2007-08, to the Administrative Office of the Courts ~~Ŝ~~→ [:-] ; and

33a ▶ as an ongoing appropriation subject to future budget constraints, ~~Ĥ~~→ [\$75,000]

33b1 \$40,500 ← ~~Ĥ~~ to the

33b Board of Pardons and Parole. ← ~~Ŝ~~

34 **Other Special Clauses:**

35 This bill takes effect on July 1, 2007.

36 **Utah Code Sections Affected:**

37 **AMENDS:**

38 **63-25a-203**, as last amended by Chapter 14, Laws of Utah 2005, First Special Session

39 **63-25a-205.5**, as last amended by Chapter 61, Laws of Utah 2006

40 **77-18-1**, as last amended by Chapter 14, Laws of Utah 2005, First Special Session

41 **77-18-1.1**, as last amended by Chapter 61, Laws of Utah 2006

42 **77-27-9**, as last amended by Chapter 149, Laws of Utah 2003

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

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

46 **63-25a-203. Duties of council.**

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

48 (a) provide leadership and generate unity for Utah's ongoing efforts to combat

49 substance abuse and community violence;

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

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

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

55 (e) coordinate recommendations made by any subcommittees created under Section

56 **63-25a-202;**

57 (f) analyze and provide an objective assessment of all proposed legislation concerning
58 alcohol and other drug issues and community violence issues; and

59 (g) coordinate the implementation of Section 77-18-1.1 and related provisions in
 60 [~~Subsection~~] Subsections 77-18-1(5)(d) and (e) and 77-27-9(2)(g), as provided in Section
 61 63-25a-205.5.

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

64 (3) The council shall report its recommendations annually to the commission,
 65 governor, the Legislature, and the Judicial Council.

66 Section 2. Section **63-25a-205.5** is amended to read:

67 **63-25a-205.5. Drug Offender Reform Act -- Coordination.**

68 (1) As used in this section:

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

71 (b) "Drug Offender Reform [~~Pilot Study~~] Act" and ["study"] "act" mean the screening,
 72 assessment, and substance abuse treatment provided to:

73 (i) ~~convicted offenders [as part of a study described in this section and conducted as~~
 74 ~~described in Section 77-18-1.1 in the courts of the Third Judicial District located in Salt Lake~~
 75 ~~County:] under Subsection 77-18-1.1(2) with funds appropriated by the Legislature under~~
 76 ~~Subsection 77-18-1.1(4); and~~

77 (ii) offenders released on parole under Subsection 77-27-9(2)(g)(iv).

78 (c) "Substance abuse authority" [~~means the Salt Lake County substance abuse authority~~
 79 ~~operating within the Third Judicial District]~~ has the same meaning as in Section 17-43-201.

80 [~~There is established a Drug Offender Reform Pilot Study in the courts of the Third~~
 81 ~~Judicial District located in Salt Lake County.]~~

82 [~~The study shall operate on and after July 1, 2005, through June 30, 2008, subject to~~
 83 ~~legislative funding.]~~

84 [(i) ~~The study shall conduct screening under Subsection 77-18-1.1(2)(a) through June~~
 85 ~~30, 2007, and shall conduct assessments and substance abuse treatment based on this screening~~
 86 ~~under Subsections 77-18-1.1(2)(b) and (c).]~~

87 [(ii) ~~The assessments and treatment based on screening conducted on and before June~~
 88 ~~30, 2007, shall be conducted by the study through June 30, 2008, the final date of the study.]~~

89 [(b) ~~The study shall provide screening and assessment under Section 77-18-1.1 to~~

90 offenders convicted in the courts of the Third Judicial District in Salt Lake County of a felony
91 offense.]

92 ~~[(c) The study shall provide substance abuse treatment under Section 77-18-1.1 to a
93 maximum of 250 offenders convicted under Subsection (2)(b) and who are sentenced to
94 probation in Salt Lake County if:]~~

95 ~~[(i) the assessment indicates treatment is appropriate; and]~~

96 ~~[(ii) the court finds treatment to be appropriate for the offender.]~~

97 ~~[(3) The council shall provide ongoing oversight of the implementation and functions
98 of the study.]~~

99 ~~[(4) The council shall develop an implementation plan for the study, which shall:]~~

100 ~~[(a) include guidelines on how funds appropriated for the study should be used;]~~

101 ~~[(b) include guidelines on the membership of the Salt Lake County planning group
102 under Subsection (5); and]~~

103 ~~[(c) require that treatment plans under the study are appropriate for criminal offenders.]~~

104 ~~[(5) (a) The Salt Lake County substance abuse authority located within the Third
105 Judicial District shall establish a local planning group to develop and submit a plan to the
106 council detailing the intended use of the study funds. The uses shall be in accordance with the
107 guidelines established by the council under Subsection (4).]~~

108 ~~[(b) Upon approval of the plan by the council, the Department of Human Services shall
109 allocate the funds to the substance abuse authority.]~~

110 ~~[(c) The substance abuse authority shall submit to the Department of Human Services
111 and the council, on or before October 1 of each year, reports detailing use of the funds and the
112 impact and results of the use of the funds.]~~

113 ~~[(6) The council shall evaluate the progress of the study and shall provide a written
114 report to the Law Enforcement and Criminal Justice Interim Committee and the Health and
115 Human Services Interim Committee annually on or before November 1, and shall provide to
116 these interim committees a final written report on the impact and results of the study on or
117 before November 1, 2008.]~~

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

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

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

- 123 (a) include guidelines on how funds appropriated under the act should be used;
- 124 (b) require that treatment plans under the act are appropriate for criminal offenders;
- 125 (c) include guidelines on the membership of local planning groups; and
- 126 (d) include guidelines on the membership of the Department of Corrections' planning
127 group under Subsection (6).

128 (5) (a) Each local substance abuse authority shall establish a local planning group and
129 shall submit a plan to the council detailing how the authority proposes to use the Drug
130 Offender Reform Act funds. The uses shall be in accordance with the guidelines established by
131 the council under Subsection (4).

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

134 (c) Local substance abuse authorities shall annually submit to the Department of
135 Human Services and to the council reports detailing use of the funds and the impact and results
136 of the use of the funds.

137 (6) (a) The Department of Corrections shall establish a planning group and shall submit
138 a plan to the council detailing how the department proposes to use the Drug Offender Reform
139 Act funds. The uses shall be in accordance with the guidelines established by the council under
140 Subsection (4).

141 (b) The Department of Corrections shall annually submit to the council a report
142 detailing use of the funds and the impact and results of the use of the funds.

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

144 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
145 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
146 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
147 **monitoring.**

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

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

152 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
153 and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

165 (i) the type of offense;

166 (ii) the demand for services;

167 (iii) the availability of agency resources;

168 (iv) the public safety; and

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

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

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

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

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

181 (4) Notwithstanding other provisions of law, the department is not required to
182 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to

183 conduct presentence investigation reports on class C misdemeanors or infractions. However,
184 the department may supervise the probation of class B misdemeanants in accordance with
185 department standards.

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

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

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

197 (d) The presentence investigation report shall include:

198 (i) findings from any screening and any assessment of the offender conducted under
199 Section 77-18-1.1; and

200 (ii) recommendations for treatment of the offender.

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

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

213 (b) If a party fails to challenge the accuracy of the presentence investigation report at

214 the time of sentencing, that matter shall be considered to be waived.

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

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

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

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

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

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

226 (iv) participate in available treatment programs, including any treatment program in
227 which the defendant is currently participating, if the program is acceptable to the court;

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

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

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

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

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

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

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

240 (i) complete high school classwork and obtain a high school graduation diploma, a
241 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
242 not received the diploma, GED certificate, or vocational certificate prior to being placed on
243 probation; or

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

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

246 (A) a diagnosed learning disability; or

247 (B) other justified cause.

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

250 (a) the parole period and any extension of that period in accordance with Subsection
251 77-27-6(4); and

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

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

257 (ii) (A) If, upon expiration or termination of the probation period under Subsection
258 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
259 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
260 probation for the limited purpose of enforcing the payment of the account receivable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

307 evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

338 on the victim or the victim's household.

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

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

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

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

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

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

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

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

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

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

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

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

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

365 Section 4. Section **77-18-1.1** is amended to read:

366 **77-18-1.1. Screening, assessment, and treatment.**

367 (1) As used in this section:

368 (a) "Assessment" has the same meaning as in Section 41-6a-501.

369 (b) "Convicted" means:

370 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty and mentally ill,
371 or no contest; and

372 (ii) conviction of any crime or offense.

373 (c) "Screening" has the same meaning as in Section 41-6a-501.

374 (d) "Substance abuse treatment" means treatment obtained through a substance abuse
375 program that is licensed by the Office of Licensing within the Department of Human Services.

376 ~~[(2) On and after July 1, 2005, through June 30, 2007, the courts of the Third Judicial
377 District located in Salt Lake County:]~~

378 ~~[(a) shall order every offender convicted of a felony offense to participate in a
379 screening prior to sentencing;]~~

380 ~~[(b) may order offenders screened under Subsection (2)(a) to participate in an
381 assessment prior to sentencing if the screening indicates an assessment to be appropriate; and]~~

382 ~~[(c) shall order a maximum of 250 offenders assessed under Subsection (2)(b) and
383 sentenced to probation in Salt Lake County to participate in substance abuse treatment if:]~~

384 ~~[(i) the assessment indicates treatment is appropriate; and]~~

385 ~~[(ii) the court finds treatment to be appropriate for the offender.]~~

386 (2) On or after July 1, 2007, the court shall order every offender convicted of a felony
387 to:

388 (a) participate in a screening prior to sentencing;

389 (b) participate in an assessment prior to sentencing if the screening indicates an
390 assessment to be appropriate; and

391 (c) participate in substance abuse treatment if:

392 (i) the assessment indicates treatment to be appropriate;

393 (ii) the court finds treatment to be appropriate for the offender; and

394 (iii) the court finds the offender to be an appropriate candidate for community-based
395 supervision.

396 (3) The findings from any screening and any assessment conducted under this section
397 shall be part of the presentence investigation report submitted to the court prior to sentencing
398 of the offender.

399 (4) Monies appropriated by the Legislature to assist in the funding of the screening,

400 assessment, and substance abuse treatment provided under this section are not subject to any
401 requirement regarding matching funds from a state or local governmental entity.

402 Section 5. Section **77-27-9** is amended to read:

403 **77-27-9. Parole proceedings.**

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

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

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

416 (d) The release of an offender shall be at the initiative of the board, which shall
417 consider each case as the offender becomes eligible. However, a prisoner may submit his own
418 application, subject to the rules of the board promulgated in accordance with Title 63, Chapter
419 46a, Utah Administrative Rulemaking Act.

420 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony
421 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
422 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
423 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
424 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
425 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
426 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
427 until the offender has fully completed serving the minimum mandatory sentence imposed by
428 the court. This Subsection (2)(a) supersedes any other provision of law.

429 (b) The board may not parole any offender or commute or terminate the sentence of
430 any offender before the offender has served the minimum term for the offense, if the offender

431 was sentenced prior to April 29, 1996, and if:

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

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

437 (c) For a crime committed on or after April 29, 1996, the board may parole any
438 offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in [~~Section~~
439 ~~77-27-9~~] this section.

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

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

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

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

448 (A) "Assessment" has the same meaning as in Section 41-6a-501.

449 (B) "Screening" has the same meaning as in Section 41-6a-501.

450 (C) "Substance abuse treatment" has the same meaning as in Section 77-18-1.1.

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

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

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

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

458 (A) participates in a screening; and

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

460 (iv) When the board grants an offender parole, it shall order as a condition of parole
461 that the offender participate in substance abuse treatment if:

462 (A) the assessment conducted under this Subsection (2)(g) indicates substance abuse
463 treatment is appropriate; and

464 (B) the board finds the offender to be an appropriate candidate for community-based
465 supervision.

466 (v) Moneys appropriated by the Legislature for the funding of the screening,
467 assessment, and substance abuse treatment provided under this section are not subject to any
468 requirement regarding matching funds from a state or local governmental entity.

469 (3) (a) The board may issue subpoenas to compel the attendance of witnesses and the
470 production of evidence, to administer oaths, and to take testimony for the purpose of any
471 investigation by the board or any of its members or by a designated hearing examiner in the
472 performance of its duties.

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

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

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

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

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

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

488 **Section 6. Appropriation.**

489 (1) As an ongoing appropriation subject to future budget constraints, there is
490 appropriated from the General Fund for fiscal year 2007-08, ~~Ĥ~~→ [\$50,000] \$27,000 ←~~Ĥ~~ to the
490a Commission on
491 Criminal and Juvenile Justice to be used for administration, research, and evaluation of the
492 Drug Offender Reform Act, as defined in Subsection 63-25a-205.5(1).

- 493 (2) As an ongoing appropriation subject to future budget constraints, there is
 494 appropriated from the General Fund for fiscal year 2007-08, ~~S→ [\$6,364,800]~~ ~~H→ [\$6,331,860 ←S]~~
 494a1 ~~\$3,419,500 ←H~~ to the
 494a Department of
 495 Corrections to be used for drug abuse treatment of offenders in prison, and supervision of
 496 offenders placed in the community under Sections 63-25a-205.5 and 77-18-1.1, including
 497 assessments, case management, and drug testing.
- 498 (3) As an ongoing appropriation subject to future budget constraints, there is
 499 appropriated from the General Fund for fiscal year 2007-08, ~~S→ [\$10,156,000]~~ ~~H→ [\$10,103,440 ←S]~~
 499a1 ~~\$5,432,300 ←H~~ to
 499a the Department of
 500 Human Services to be used for drug abuse treatment of criminal offenders, including
 501 assessments, case management, and drug testing.
- 502 (4) As an ongoing appropriation subject to future budget constraints, there is
 503 appropriated from the General Fund for fiscal year 2007-08, ~~S→ [\$94,500]~~ ~~H→ [\$105,000 ←S]~~
 503a1 ~~\$80,700 ←H~~ to the
 503a Administrative
 504 Office of the Courts to be used for the costs of court clerks.
- 505 (5) ~~S→~~ As an ongoing appropriation subject to future budget constraints, there is
 505a appropriated from the General Fund for fiscal year 2007-08, ~~H→ [\$75,000]~~ ~~\$40,500 ←H~~ to the
 505b1 Board of Pardons
 505b and Parole to be used for processing and case analysis.
- 505c (6) ~~S~~ The appropriations under this section are nonlapsing.
 506 Section 7. Effective date.
 507 This bill takes effect on July 1, 2007.

Legislative Review Note
 as of 1-5-07 11:15 AM

Office of Legislative Research and General Counsel

S.B. 50 - Drug Offenders Reform Act - As Amended

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will appropriate \$9,000,000 in ongoing General Fund revenues beginning in FY 2008 to expand the Drug Offenders Reform Act statewide. The bill also appropriates a negative (\$1,000,000) in one-time General Fund revenues in FY 2008 only. The funds will be distributed as follows: To the Commission on Criminal and Juvenile Justice \$27,000 ongoing and (\$3,000) one-time; to the Administrative Office of the Courts \$56,700 ongoing and (\$6,300) one-time; to the Department of Corrections \$3,419,500 ongoing and (\$379,900) one-time; to the Board of Pardons and Parole \$40,500 ongoing and (\$4,500) one-time; and to the Department of Human Services \$5,456,300 ongoing and (\$606,300) one-time. This funding will provide staff for the Department of Corrections and the Administrative Offices of the Courts. It will also provide assessment and treatment services. This bill creates non-lapsing authority for the amounts appropriated in the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$9,000,000	\$9,000,000	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$1,000,000)	\$0	\$0	\$0	\$0
Total	\$0	\$8,000,000	\$9,000,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Providers of substance abuse treatment services would see additional opportunities to provide services.