

DRUG OFFENDER REFORM ACT AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Ron Bigelow

LONG TITLE

General Description:

This bill modifies provisions regarding the Utah Substance Abuse and Anti-Violence Coordinating Council and the Code of Criminal Procedure regarding substance abuse screening, assessment, treatment, and supervision for felony offenders.

Highlighted Provisions:

This bill:

- ▶ requires the Utah Substance Abuse and Anti-Violence Coordinating Council to coordinate the implementation of provisions of the Drug Offender Reform Act in specified areas as funding allows;
- ▶ provides that the Utah Substance Abuse and Anti-Violence Coordinating Council is to designate which local substance abuse authorities are to receive funding to implement the Drug Offender Reform Act;
- ▶ provides that on and after July 1, 2009, offenders who are convicted of a felony offense in courts located within the designated local substance abuse authority areas shall participate in a substance abuse screening as funding allows, may participate in an assessment if indicated, and may also participate in substance abuse treatment if indicated;
- ▶ deletes the provisions requiring screening and assessment prior to parole; and
- ▶ requires annual progress reports to the Legislature regarding the implementation, impact, and results of the Drug Offender Reform Act.

Monies Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 This bill takes effect on July 1, 2009.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63M-7-303**, as renumbered and amended by Laws of Utah 2008, Chapter 382

35 **63M-7-305**, as renumbered and amended by Laws of Utah 2008, Chapter 382

36 **77-18-1.1**, as last amended by Laws of Utah 2007, Chapter 218

37 **77-27-9**, as last amended by Laws of Utah 2008, Chapter 382



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

40 Section 1. Section **63M-7-303** is amended to read:

41 **63M-7-303. Duties of council.**

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

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

44 substance abuse and community violence;

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

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

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

50 (e) coordinate recommendations made by any subcommittees created under Section
51 63M-7-302;

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

54 (g) coordinate the implementation of Section 77-18-1.1 and related provisions in
55 Subsections 77-18-1(5)(d) and (e) [~~and 77-27-9(2)(g)~~], as provided in Section 63M-7-305.

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

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

60 Section 2. Section **63M-7-305** is amended to read:

61 **63M-7-305. Drug Offender Reform Act -- Coordination.**

62 (1) As used in this section:

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

65 (b) "Drug Offender Reform Act" and "act" mean the screening, assessment, [~~and~~]
66 substance abuse treatment, and supervision provided to[:(i)] convicted offenders under
67 Subsection 77-18-1.1(2) [~~with funds appropriated by the Legislature under Subsection~~
68 ~~77-18-1.1(4); and (ii) offenders released on parole under Subsection 77-27-9(2)(g)(iv).] to:~~

69 (i) determine offenders' specific substance abuse treatment needs as early as possible
70 in the judicial process;

71 (ii) expand treatment resources for offenders in the community;

72 (iii) integrate treatment of offenders with supervision by the Department of
73 Corrections; and

74 (iv) reduce the incidence of substance abuse and related criminal conduct.

75 (c) "Substance abuse authority" has the same meaning as in Section 17-43-201.

76 (2) The council shall provide ongoing oversight of the implementation [~~and~~],
77 functions, and evaluation of the Drug Offender Reform Act.

78 [~~(3) The council shall evaluate the impact and results of the Drug Offender Reform~~
79 ~~Act.]~~

80 [(~~4~~)] (3) The council shall develop an implementation plan for the Drug Offender
81 Reform Act. The plan shall:

82 (a) identify local substance abuse authority areas where the act will be implemented,
83 in cooperation with the Division of Substance Abuse and Mental Health, the Department of
84 Corrections, and the local substance abuse authorities;

85 [~~(a)~~] (b) include guidelines on how funds appropriated under the act should be used;

86 ~~[(b)]~~ (c) require that treatment plans under the act are appropriate for criminal
87 offenders;
88 ~~[(c)]~~ (d) include guidelines on the membership of local planning groups; ~~[and]~~
89 ~~[(d)]~~ (e) include guidelines on the membership of the Department of Corrections'
90 planning group under Subsection ~~[(6)]~~ (5); and
91 (f) provide guidelines for the Commission on Criminal and Juvenile Justice to conduct
92 an evaluation of the implementation, impact, and results of the act.

93 ~~[(5)]~~ (4) (a) Each local substance abuse authority designated under Subsection (3) to
94 implement the act shall establish a local planning group and shall submit a plan to the council
95 detailing how the authority proposes to use the ~~[Drug Offender Reform Act]~~ act funds. The
96 uses shall be in accordance with the guidelines established by the council under Subsection
97 ~~[(4)]~~ (3).

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

100 (c) Local substance abuse authorities shall annually, on or before October 1, submit to
101 the Department of Human Services and to the council reports detailing use of the funds and
102 the impact and results of the use of the funds during the prior fiscal year ending June 30.

103 ~~[(6)]~~ (5) (a) The Department of Corrections shall establish a planning group and shall
104 submit a plan to the council detailing how the department proposes to use the ~~[Drug Offender~~
105 ~~Reform Act]~~ act funds. The uses shall be in accordance with the guidelines established by the
106 council under Subsection ~~[(4)]~~ (3).

107 (b) The Department of Corrections shall annually, on or before October 1, submit to
108 the council a report detailing use of the funds and the impact and results of the use of the
109 funds during the prior fiscal year ending June 30.

110 (6) The Council shall monitor the progress and evaluation of the act and shall provide
111 a written report on the implementation, impact, and results of the act to the Law Enforcement
112 and Criminal Justice and the Health and Human Services legislative interim committees
113 annually on or before November 1.

114 Section 3. Section **77-18-1.1** is amended to read:

115 **77-18-1.1. Screening, assessment, and treatment.**

116 (1) As used in this section:

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

118 (b) "Convicted" means:

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

121 (ii) conviction of any crime or offense.

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

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

125 (2) On or after July 1, ~~[2007]~~ 2009, the ~~[court]~~ courts of the judicial districts where
126 the Drug Offender Reform Act under Section 63M-7-305 is implemented shall, in
127 coordination with the local substance abuse authority regarding available resources, order
128 ~~[every offender]~~ offenders convicted of a felony to:

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

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

132 (c) participate in substance abuse treatment if:

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

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

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

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

140 (4) Monies appropriated by the Legislature to assist in the funding of the screening,
141 assessment, ~~[and]~~ substance abuse treatment, and supervision provided under this section are

142 not subject to any requirement regarding matching funds from a state or local governmental
143 entity.

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

145 **77-27-9. Parole proceedings.**

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

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

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

158 (d) The release of an offender shall be at the initiative of the board, which shall
159 consider each case as the offender becomes eligible. However, a prisoner may submit the
160 prisoner's own application, subject to the rules of the board promulgated in accordance with
161 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

162 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony
163 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
164 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
165 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
166 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
167 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
168 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
169 until the offender has fully completed serving the minimum mandatory sentence imposed by

170 the court. This Subsection (2)(a) supersedes any other provision of law.

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

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

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

179 (c) For a crime committed on or after April 29, 1996, the board may parole any
180 offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.

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

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

186 (f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come
187 before the Board of Pardons and Parole on or after April 27, 1992.

188 [~~(g) (i) As used in this Subsection (2)(g):~~]

189 [~~(A) "Assessment" has the same meaning as in Section 41-6a-501.~~]

190 [~~(B) "Screening" has the same meaning as in Section 41-6a-501.~~]

191 [~~(C) "Substance abuse treatment" has the same meaning as in Section 77-18-1.1.~~]

192 [~~(ii) Except as provided in Subsection (2)(g)(iii), the board may not parole any
193 offender who has not:~~]

194 [~~(A) participated in a screening within six months prior to the parole date; and]~~

195 [~~(B) participated in an assessment within six months prior to the parole date, if an
196 assessment is indicated to be appropriate by the screening.~~]

197 [~~(iii) The board may parole an offender who has not met the requirements of~~

198 Subsection (2)(g)(ii) upon the condition that the offender, within 45 days of being paroled:]
199 ~~[(A) participates in a screening; and]~~
200 ~~[(B) participates in an assessment if it is indicated to be appropriate by the screening.]~~
201 ~~[(iv) When the board grants an offender parole, it shall order as a condition of parole~~
202 ~~that the offender participate in substance abuse treatment if:]~~
203 ~~[(A) the assessment conducted under this Subsection (2)(g) indicates substance abuse~~
204 ~~treatment is appropriate; and]~~
205 ~~[(B) the board finds the offender to be an appropriate candidate for community-based~~
206 ~~supervision.]~~
207 ~~[(v) Moneys appropriated by the Legislature for the funding of the screening,~~
208 ~~assessment, and substance abuse treatment provided under this section are not subject to any~~
209 ~~requirement regarding matching funds from a state or local governmental entity.]~~
210 (3) (a) The board may issue subpoenas to compel the attendance of witnesses and the
211 production of evidence, to administer oaths, and to take testimony for the purpose of any
212 investigation by the board or any of its members or by a designated hearing examiner in the
213 performance of its duties.
214 (b) A person who willfully disobeys a properly served subpoena issued by the board is
215 guilty of a class B misdemeanor.
216 (4) (a) The board may adopt rules consistent with law for its government, meetings
217 and hearings, the conduct of proceedings before it, the parole and pardon of offenders, the
218 commutation and termination of sentences, and the general conditions under which parole may
219 be granted and revoked.
220 (b) The rules shall ensure an adequate opportunity for victims to participate at
221 hearings held under this chapter, as provided in Section 77-27-9.5.
222 (c) The rules may allow the board to establish reasonable and equitable time limits on
223 the presentations by all participants in hearings held under this chapter.
224 (5) The board does not provide counseling or therapy for victims as a part of their
225 participation in any hearing under this chapter.

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

229 Section 5. **Effective date.**

230 This bill takes effect on July 1, 2009.