

**JAIL CONTRACTING AND REIMBURSEMENT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael E. Noel**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**General Description:**

This bill modifies the Code of Criminal Procedure regarding jail as a term of probation.

**Highlighted Provisions:**

This bill:

► provides that when an offender is sentenced to serve time in a county jail, as a condition of felony probation, the jail provisions shall be arranged for by contract between the Department of Corrections and the county jail.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-18-1**, as last amended by Laws of Utah 2009, Chapter 81

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

Section 1. 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**



28 **monitoring.**

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

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

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

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

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

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

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

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

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

46 (i) the type of offense;

47 (ii) the demand for services;

48 (iii) the availability of agency resources;

49 (iv) the public safety; and

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

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

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

57 (d) The Judicial Council and the department shall annually consider modifications to  
58 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider

59 appropriate.

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

62 (4) Notwithstanding other provisions of law, the department is not required to  
63 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to  
64 conduct presentence investigation reports on class C misdemeanors or infractions. However,  
65 the department may supervise the probation of class B misdemeanants in accordance with  
66 department standards.

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

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

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

78 (d) The presentence investigation report shall include:

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

81 (ii) recommendations for treatment of the offender.

82 (e) The contents of the presentence investigation report are protected and are not  
83 available except by court order for purposes of sentencing as provided by rule of the Judicial  
84 Council or for use by the department.

85 (6) (a) The department shall provide the presentence investigation report to the  
86 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the  
87 court for review, three working days prior to sentencing. Any alleged inaccuracies in the  
88 presentence investigation report, which have not been resolved by the parties and the  
89 department prior to sentencing, shall be brought to the attention of the sentencing judge, and

90 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the  
91 report with the department. If after 10 working days the inaccuracies cannot be resolved, the  
92 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

105 (iii) provide for the support of others for whose support the defendant is legally liable;

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

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

111 (B) if the defendant is serving the sentence under Subsection (8)(a)(v)(A) for a felony  
112 conviction, the county jail shall be arranged for by contract between the department and the  
113 county jail;

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

116 (vii) participate in compensatory service restitution programs, including the  
117 compensatory service program provided in Section 76-6-107.1;

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

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

- 121 (x) comply with other terms and conditions the court considers appropriate; and
- 122 (b) if convicted on or after May 5, 1997:
  - 123 (i) complete high school classwork and obtain a high school graduation diploma, a
  - 124 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
  - 125 not received the diploma, GED certificate, or vocational certificate prior to being placed on
  - 126 probation; or
  - 127 (ii) provide documentation of the inability to obtain one of the items listed in
  - 128 Subsection (8)(b)(i) because of:
    - 129 (A) a diagnosed learning disability; or
    - 130 (B) other justified cause.
  - 131 (9) The department shall collect and disburse the account receivable as defined by
  - 132 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
    - 133 (a) the parole period and any extension of that period in accordance with Subsection
    - 134 77-27-6(4); and
    - 135 (b) the probation period in cases for which the court orders supervised probation and
    - 136 any extension of that period by the department in accordance with Subsection (10).
  - 137 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
  - 138 upon completion without violation of 36 months probation in felony or class A misdemeanor
  - 139 cases, or 12 months in cases of class B or C misdemeanors or infractions.
    - 140 (ii) (A) If, upon expiration or termination of the probation period under Subsection
    - 141 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
    - 142 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
    - 143 probation for the limited purpose of enforcing the payment of the account receivable.
    - 144 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
    - 145 judgments any unpaid balance not already recorded and immediately transfer responsibility to
    - 146 collect the account to the Office of State Debt Collection.
    - 147 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
    - 148 own motion, the court may require the defendant to show cause why the defendant's failure to
    - 149 pay should not be treated as contempt of court.
  - 150 (b) (i) The department shall notify the sentencing court, the Office of State Debt
  - 151 Collection, and the prosecuting attorney in writing in advance in all cases when termination of

152 supervised probation will occur by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

189 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,  
190 and present evidence.

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

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

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

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

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

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

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

205 (14) Presentence investigation reports are classified protected in accordance with Title  
206 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections  
207 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a  
208 presentence investigation report. Except for disclosure at the time of sentencing pursuant to  
209 this section, the department may disclose the presentence investigation only when:

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

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

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

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

216 (e) requested by the victim of the crime discussed in the presentence investigation  
217 report or the victim's authorized representative, provided that the disclosure to the victim shall  
218 include only information relating to statements or materials provided by the victim, to the  
219 circumstances of the crime including statements by the defendant, or to the impact of the crime  
220 on the victim or the victim's household.

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

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

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

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

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

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

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

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

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

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

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

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



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

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**Legislative Review Note**  
**as of 1-29-10 4:46 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 136 - Jail Contracting and Reimbursement**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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