

1 **REPORTS ON ALTERNATIVE SENTENCING**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Susan Duckworth**

5 Senate Sponsor: Mark B. Madsen

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Code regarding the use of alternative incarceration by
10 county sheriffs.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires a county sheriff to keep records on any prisoner released to an alternative
14 incarceration program regarding:

- 15 • the release status of the prisoner; and
- 16 • the type of release program or alternative incarceration program; and

17 ▶ requires the sheriff to make these records available to the Department of
18 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **17-22-5.5**, as last amended by Laws of Utah 2004, Chapter 301

26 **63M-7-303**, as last amended by Laws of Utah 2012, Chapter 388

27 **77-18-1**, as last amended by Laws of Utah 2011, Chapter 366

28
29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section 17-22-5.5 is amended to read:

31 **17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity**
32 **of jail facilities -- Transfer or release of prisoners -- Limitation -- Records regarding**
33 **release.**

34 (1) (a) Except as provided in Subsection [~~(3)~~] (4), a county sheriff shall determine:

35 (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail
36 facility under the sheriff's control;

37 (ii) the nature of each program conducted at a jail facility under the sheriff's control;

38 and

39 (iii) the internal operation of a jail facility under the sheriff's control.

40 (b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any
41 applicable zoning ordinance or conditional use permit of the county or municipality.

42 (2) Except as provided in Subsection [~~(3)~~] (4), each county sheriff shall:

43 (a) with the approval of the county legislative body, establish a maximum operating
44 capacity for each jail facility under the sheriff's control, based on facility design and staffing;

45 and

46 (b) upon a jail facility reaching its maximum operating capacity:

47 (i) transfer prisoners to another appropriate facility:

48 (A) under the sheriff's control; or

49 (B) available to the sheriff by contract;

50 (ii) release prisoners:

51 (A) to a supervised release program, according to release criteria established by the
52 sheriff; or

53 (B) to another alternative incarceration program developed by the sheriff; or

54 (iii) admit prisoners in accordance with law and a uniform admissions policy imposed
55 equally upon all entities using the county jail.

56 (3) (a) The sheriff shall keep records of the release status and the type of release
57 program or alternative incarceration program for any prisoner released under Subsection

58 (2)(b)(ii).

59 (b) The sheriff shall make these records available upon request to the Department of
60 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

61 [~~(3)~~] (4) This section may not be construed to authorize a sheriff to modify provisions
62 of a contract with the Department of Corrections to house in a county jail persons sentenced to
63 the Department of Corrections.

64 Section 2. Section **63M-7-303** is amended to read:

65 **63M-7-303. Duties of council.**

66 (1) The Utah Substance Abuse Advisory Council shall:

67 (a) provide leadership and generate unity for Utah's ongoing efforts to combat
68 substance abuse;

69 (b) recommend and coordinate the creation, dissemination, and implementation of a
70 statewide substance abuse policy;

71 (c) facilitate planning for a balanced continuum of substance abuse prevention,
72 treatment, and justice services;

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

74 (e) coordinate recommendations made by any committee created under Section
75 **63M-7-302**;

76 (f) analyze and provide an objective assessment of all proposed legislation concerning
77 alcohol and other drug issues;

78 (g) coordinate the implementation of Section **77-18-1.1** and related provisions in
79 Subsections **77-18-1(5)**~~(d) and (e)~~(b)(iii) and (iv), as provided in Section **63M-7-305**; and

80 (h) comply with Section **32B-2-306**.

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

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

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

86 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
87 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
88 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
89 **monitoring.**

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

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

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

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

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

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

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

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

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

107 (i) the type of offense;

108 (ii) the demand for services;

109 (iii) the availability of agency resources;

110 (iv) the public safety; and

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

113 (b) Proposed supervision and investigation standards shall be submitted to the Judicial

114 Council and the Board of Pardons and Parole on an annual basis for review and comment prior
115 to adoption by the department.

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

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

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

123 (4) Notwithstanding other provisions of law, the department is not required to
124 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
125 conduct presentence investigation reports on class C misdemeanors or infractions. However,
126 the department may supervise the probation of class B misdemeanants in accordance with
127 department standards.

128 (5) (a) Before the imposition of any sentence, the court may, with the concurrence of
129 the defendant, continue the date for the imposition of sentence for a reasonable period of time
130 for the purpose of obtaining a presentence investigation report from the department or
131 information from other sources about the defendant.

132 (b) The presentence investigation report shall include:

133 (i) a victim impact statement according to guidelines set in Section 77-38a-203
134 describing the effect of the crime on the victim and the victim's family[-];

135 [~~(c) The presentence investigation report shall include~~]

136 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
137 from the department regarding the payment of restitution with interest by the defendant in
138 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act[-];

139 [~~(d) The presentence investigation report shall include:~~]

140 [(†) (iii) findings from any screening and any assessment of the offender conducted
141 under Section 77-18-1.1; [and]

142 ~~[(iv)]~~ (iv) recommendations for treatment of the offender~~[-]; and~~
143 (v) the number of days since the commission of the offense that the offender has spent
144 in the custody of the jail and the number of days, if any, the offender was released to a
145 supervised release or alternative incarceration program under Section [17-22-5.5](#).

146 ~~[(e)]~~ (c) The contents of the presentence investigation report are protected and are not
147 available except by court order for purposes of sentencing as provided by rule of the Judicial
148 Council or for use by the department.

149 (6) (a) The department shall provide the presentence investigation report to the
150 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
151 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
152 presentence investigation report, which have not been resolved by the parties and the
153 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
154 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
155 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
156 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188 (ii) provide documentation of the inability to obtain one of the items listed in
189 Subsection (8)(b)(i) because of:

190 (A) a diagnosed learning disability; or

191 (B) other justified cause.

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

194 (a) the parole period and any extension of that period in accordance with Subsection
195 77-27-6(4); and

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

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

201 (ii) (A) If, upon expiration or termination of the probation period under Subsection
202 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
203 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
204 probation for the limited purpose of enforcing the payment of the account receivable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

253 (ii) Upon a finding that the defendant violated the conditions of probation, the court

254 may order the probation revoked, modified, continued, or that the entire probation term
255 commence anew.

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

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

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

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

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

266 (14) Presentence investigation reports are classified protected in accordance with Title
267 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
268 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
269 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
270 this section, the department may disclose the presentence investigation only when:

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

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

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

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

277 (e) requested by the victim of the crime discussed in the presentence investigation
278 report or the victim's authorized representative, provided that the disclosure to the victim shall
279 include only information relating to statements or materials provided by the victim, to the
280 circumstances of the crime including statements by the defendant, or to the impact of the crime
281 on the victim or the victim's household.

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

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

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

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

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

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

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

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

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

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

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

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

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