

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



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

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

17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity of jail facilities -- Transfer or release of prisoners -- Limitation.

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

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

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

and

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

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

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

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

and

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

(i) transfer prisoners to another appropriate facility:

(A) under the sheriff's control; or

(B) available to the sheriff by contract;

(ii) release prisoners:

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

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

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

(3) (a) The sheriff shall keep records of the release status and the type of release program or alternative incarceration program for any prisoner released under Subsection (2)(b)(ii).

(b) The sheriff shall make these records available upon request to the Department of

59 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

60 [~~(3)~~] (4) This section may not be construed to authorize a sheriff to modify provisions
61 of a contract with the Department of Corrections to house in a county jail persons sentenced to
62 the Department of Corrections.

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

64 **63M-7-303. Duties of council.**

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

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

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

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

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

73 (e) coordinate recommendations made by any committee created under Section
74 [63M-7-302](#);

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

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

79 (h) comply with Section [32B-2-306](#).

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

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

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

85 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
86 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
87 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
88 **monitoring.**

89 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea

90 in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,
91 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

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

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

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

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

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

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

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

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

106 (i) the type of offense;

107 (ii) the demand for services;

108 (iii) the availability of agency resources;

109 (iv) the public safety; and

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

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

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

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

120 (e) The Judicial Council and the department shall annually prepare an impact report

121 and submit it to the appropriate legislative appropriations subcommittee.

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

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

131 (b) The presentence investigation report shall include:

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

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

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

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

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

141 [(†) (iv) recommendations for treatment of the offender[-]; ~~and~~

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

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

148 (6) (a) The department shall provide the presentence investigation report to the
149 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
150 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
151 presentence investigation report, which have not been resolved by the parties and the

152 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
153 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
154 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
155 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

189 (A) a diagnosed learning disability; or

190 (B) other justified cause.

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

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

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

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

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

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

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

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

213 (ii) The notification shall include a probation progress report and complete report of

214 details on outstanding accounts receivable.

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

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

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

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

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

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

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

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

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

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

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

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

244 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney

245 shall present evidence on the allegations.

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

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

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

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

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

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

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

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

- 270 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
271 (b) requested by a law enforcement agency or other agency approved by the department
272 for purposes of supervision, confinement, and treatment of the offender;
273 (c) requested by the Board of Pardons and Parole;
274 (d) requested by the subject of the presentence investigation report or the subject's
275 authorized representative; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 12-5-13 12:05 PM

Office of Legislative Research and General Counsel