

**PROBATION AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions of the criminal procedure code.

**Highlighted Provisions:**

This bill:

► provides for notification to certain parties when termination of probation is requested by the department.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-18-1**, as last amended by Laws of Utah 2014, Chapters 120 and 170

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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 monitoring.**

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,

30 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

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

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

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

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

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

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

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

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

45 (i) the type of offense;

46 (ii) the demand for services;

47 (iii) the availability of agency resources;

48 (iv) the public safety; and

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

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

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

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

58 appropriate.

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

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

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

70 (b) The presentence investigation report shall include:

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

73 (ii) a specific statement of pecuniary damages, accompanied by a recommendation  
74 from the department regarding the payment of restitution with interest by the defendant in  
75 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

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

78 (iv) recommendations for treatment of the offender; and

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

82 (c) 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) 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;

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

113 (vii) participate in compensatory service restitution programs, including the

114 compensatory service program provided in Section 76-6-107.1;

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

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

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

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

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

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

126 (A) a diagnosed learning disability; or

127 (B) other justified cause.

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

130 (a) the parole period and any extension of that period in accordance with Subsection  
131 77-27-6(4); and

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

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

137 (ii) (A) If, upon expiration or termination of the probation period under Subsection  
138 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section  
139 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench  
140 probation for the limited purpose of enforcing the payment of the account receivable. If the  
141 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to

142 the court the costs associated with continued probation under this Subsection (10).

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

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

149 (b) (i) The department shall notify the sentencing court, the Office of State Debt  
150 Collection, and the prosecuting attorney in writing in advance in all cases when termination of  
151 supervised probation is being requested by the department or will occur by law.

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

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

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

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

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

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

169 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to

170 constitute violation of the conditions of probation, the court that authorized probation shall  
171 determine if the affidavit establishes probable cause to believe that revocation, modification, or  
172 extension of probation is justified.

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

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

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

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

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

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

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

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

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

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

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

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

196 (13) The court may order the defendant to commit himself or herself to the custody of  
197 the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as

198 a condition of probation or stay of sentence, only after the superintendent of the Utah State  
199 Hospital or the superintendent's designee has certified to the court that:

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

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

- 209 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- 210 (b) requested by a law enforcement agency or other agency approved by the department  
211 for purposes of supervision, confinement, and treatment of the offender;
- 212 (c) requested by the Board of Pardons and Parole;
- 213 (d) requested by the subject of the presentence investigation report or the subject's  
214 authorized representative; or
- 215 (e) requested by the victim of the crime discussed in the presentence investigation  
216 report or the victim's authorized representative, provided that the disclosure to the victim shall  
217 include only information relating to statements or materials provided by the victim, to the  
218 circumstances of the crime including statements by the defendant, or to the impact of the crime  
219 on the victim or the victim's household.

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

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

225 (16) (a) If the court places the defendant on probation under this section, it may order



226 the defendant to participate in home confinement through the use of electronic monitoring as  
227 described in this section until further order of the court.

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

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

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

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

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

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

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

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

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

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