

1 **CRIMINAL CODE AND CRIMINAL PROCEDURE**

2 **AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Eric K. Hutchings**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Criminal Code and the Utah Code of Criminal Procedure
11 regarding penalties.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies criminal law provisions and criminal procedure provisions regarding
15 certain penalty provisions;
- 16 ▶ amends restrictions imposed due to possession of controlled substances;
- 17 ▶ modifies provisions regarding probation supervision and services; and
- 18 ▶ modifies the earned time program for incarcerated offenders.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **76-6-206**, as last amended by Laws of Utah 2015, Chapter 412

26 **76-10-503**, as last amended by Laws of Utah 2015, Chapter 412

27 **77-18-1**, as last amended by Laws of Utah 2015, Chapters 412 and 413



28 77-27-5.4, as enacted by Laws of Utah 2015, Chapter 412



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

31 Section 1. Section 76-6-206 is amended to read:

32 **76-6-206. Criminal trespass.**

33 (1) As used in this section, "enter" means intrusion of the entire body.

34 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
35 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section
36 76-10-2402 regarding commercial obstruction:

37 (a) the person enters or remains unlawfully on property and:

38 (i) intends to cause annoyance or injury to any person or damage to any property,
39 including the use of graffiti as defined in Section 76-6-107;

40 (ii) intends to commit any crime, other than theft or a felony; or

41 (iii) is reckless as to whether his presence will cause fear for the safety of another;

42 (b) knowing the person's entry or presence is unlawful, the person enters or remains on
43 property as to which notice against entering is given by:

44 (i) personal communication to the actor by the owner or someone with apparent
45 authority to act for the owner;

46 (ii) fencing or other enclosure obviously designed to exclude intruders; or

47 (iii) posting of signs reasonably likely to come to the attention of intruders; or

48 (c) the person enters a condominium unit in violation of Subsection 57-8-7(8).

49 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was
50 committed in a dwelling, in which event it is a class A misdemeanor.

51 (b) A violation of Subsection (2)(c) is an infraction.

52 [~~(4) It is a defense to prosecution under this section that:~~]

53 [~~(a) the property was at the time open to the public; and~~]

54 [~~(b) the actor complied with all lawful conditions imposed on access to or remaining
55 on the property.]~~

56 Section 2. Section 76-10-503 is amended to read:

57 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of
58 dangerous weapons by certain persons -- Exceptions.**

- 59 (1) For purposes of this section:
- 60 (a) A Category I restricted person is a person who:
- 61 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
- 62 (ii) is on probation or parole for any felony;
- 63 (iii) is on parole from a secure facility as defined in Section 62A-7-101;
- 64 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
- 65 committed by an adult would have been a violent felony as defined in Section 76-3-203.5;
- 66 (v) is an alien who is illegally or unlawfully in the United States; or
- 67 (vi) is on probation for a conviction of possessing:
- 68 (A) a substance classified in Section 58-37-4 as a Schedule I [~~or H~~] controlled
- 69 substance other than marijuana, or as a Schedule II controlled substance;
- 70 (B) a controlled substance analog; or
- 71 (C) a substance listed in Section 58-37-4.2.
- 72 (b) A Category II restricted person is a person who:
- 73 (i) has been convicted of any felony;
- 74 (ii) within the last seven years has been adjudicated delinquent for an offense which if
- 75 committed by an adult would have been a felony;
- 76 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
- 77 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
- 78 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;
- 79 (v) has been found not guilty by reason of insanity for a felony offense;
- 80 (vi) has been found mentally incompetent to stand trial for a felony offense;
- 81 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
- 82 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
- 83 to a mental institution;
- 84 (viii) has been dishonorably discharged from the armed forces; or
- 85 (ix) has renounced his citizenship after having been a citizen of the United States.
- 86 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
- 87 an offense which would be a felony if committed by an adult does not include:
- 88 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust
- 89 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the

90 regulation of business practices not involving theft or fraud; or

91 (ii) a conviction or adjudication of delinquency which, according to the law of the
92 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by
93 court order, pardoned or regarding which the person's civil rights have been restored unless the
94 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person
95 may not ship, transport, possess, or receive firearms.

96 (d) It is the burden of the defendant in a criminal case to provide evidence that a
97 conviction or adjudication of delinquency is subject to an exception provided in Subsection
98 (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the
99 conviction or adjudication of delinquency is not subject to that exception.

100 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
101 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or
102 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
103 the person's custody or control:

104 (a) any firearm is guilty of a second degree felony; or

105 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.

106 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
107 possesses, uses, or has under the person's custody or control:

108 (a) any firearm is guilty of a third degree felony; or

109 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

110 (4) A person may be subject to the restrictions of both categories at the same time.

111 (5) If a higher penalty than is prescribed in this section is provided in another section
112 for one who purchases, transfers, possesses, uses, or has under this custody or control any
113 dangerous weapon, the penalties of that section control.

114 (6) It is an affirmative defense to a charge based on the definition in Subsection
115 (1)(b)(iv) that the person was:

116 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
117 for use of a member of the person's household or for administration to an animal owned by the
118 person or a member of the person's household; or

119 (b) otherwise authorized by law to possess the substance.

120 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon

121 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

122 (i) was possessed by the person or was under the person's custody or control before the
123 person became a restricted person;

124 (ii) was not used in or possessed during the commission of a crime or subject to
125 disposition under Section 24-3-103;

126 (iii) is not being held as evidence by a court or law enforcement agency;

127 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

128 (v) unless a different time is ordered by the court, was transferred within 10 days of the
129 person becoming a restricted person.

130 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
131 of a firearm or other dangerous weapon by a restricted person.

132 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
133 dangerous weapon to any person, knowing that the recipient is a person described in
134 Subsection (1)(a) or (b).

135 (b) A person who violates Subsection (8)(a) when the recipient is:

136 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
137 guilty of a second degree felony;

138 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
139 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
140 the weapon for any unlawful purpose, is guilty of a third degree felony;

141 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
142 guilty of a third degree felony; or

143 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
144 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
145 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

146 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
147 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
148 circumstances which the person knows would be a violation of the law.

149 (b) A person may not provide to a dealer or other person any information that the
150 person knows to be materially false information with intent to deceive the dealer or other
151 person about the legality of a sale, transfer or other disposition of a firearm or dangerous

152 weapon.

153 (c) "Materially false information" means information that portrays an illegal transaction
154 as legal or a legal transaction as illegal.

155 (d) A person who violates this Subsection (9) is guilty of:

156 (i) a third degree felony if the transaction involved a firearm; or

157 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
158 firearm.

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

160 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
161 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
162 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
163 **monitoring.**

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

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

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

172 (ii) on probation ~~[with]~~ under the supervision of an agency of local government or with
173 a private organization; or

174 (iii) on ~~[bench]~~ court probation under the jurisdiction of the sentencing court.

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

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

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

180 (iv) Court probation may include an administrative level of services, including
181 notification to the court of scheduled periodic reviews of the probationer's compliance with
182 conditions.

183 (c) Supervised probation services provided by the department, an agency of local
184 government, or a private organization shall specifically address the offender's risk of
185 reoffending as identified by a validated risk and needs screening or assessment.

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

188 (i) the type of offense;

189 (ii) the results of a risk and needs assessment;

190 (iii) the demand for services;

191 (iv) the availability of agency resources;

192 (v) public safety; and

193 (vi) other criteria established by the department to determine what level of services
194 shall be provided.

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

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

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

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

205 (4) Notwithstanding other provisions of law, the department is not required to
206 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
207 conduct presentence investigation reports on class C misdemeanors or infractions. However,
208 the department may supervise the probation of class B misdemeanants in accordance with
209 department standards.

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

- 214 (b) The presentence investigation report shall include:
- 215 (i) a victim impact statement according to guidelines set in Section 77-38a-203
- 216 describing the effect of the crime on the victim and the victim's family;
- 217 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
- 218 from the department regarding the payment of restitution with interest by the defendant in
- 219 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;
- 220 (iii) findings from any screening and any assessment of the offender conducted under
- 221 Section 77-18-1.1;
- 222 (iv) recommendations for treatment of the offender; and
- 223 (v) the number of days since the commission of the offense that the offender has spent
- 224 in the custody of the jail and the number of days, if any, the offender was released to a
- 225 supervised release or alternative incarceration program under Section 17-22-5.5.
- 226 (c) The contents of the presentence investigation report are protected and are not
- 227 available except by court order for purposes of sentencing as provided by rule of the Judicial
- 228 Council or for use by the department.
- 229 (6) (a) The department shall provide the presentence investigation report to the
- 230 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
- 231 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
- 232 presentence investigation report, which have not been resolved by the parties and the
- 233 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
- 234 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
- 235 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
- 236 court shall make a determination of relevance and accuracy on the record.
- 237 (b) If a party fails to challenge the accuracy of the presentence investigation report at
- 238 the time of sentencing, that matter shall be considered to be waived.
- 239 (7) At the time of sentence, the court shall receive any testimony, evidence, or
- 240 information the defendant or the prosecuting attorney desires to present concerning the
- 241 appropriate sentence. This testimony, evidence, or information shall be presented in open court
- 242 on record and in the presence of the defendant.
- 243 (8) While on probation, and as a condition of probation, the court may require that the
- 244 defendant:

- 245 (a) perform any or all of the following:
- 246 (i) pay, in one or several sums, any fine imposed at the time of being placed on
247 probation;
- 248 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;
- 249 (iii) provide for the support of others for whose support the defendant is legally liable;
- 250 (iv) participate in available treatment programs, including any treatment program in
251 which the defendant is currently participating, if the program is acceptable to the court;
- 252 (v) serve a period of time, not to exceed one year, in a county jail designated by the
253 department, after considering any recommendation by the court as to which jail the court finds
254 most appropriate;
- 255 (vi) serve a term of home confinement, which may include the use of electronic
256 monitoring;
- 257 (vii) participate in compensatory service restitution programs, including the
258 compensatory service program provided in Section 76-6-107.1;
- 259 (viii) pay for the costs of investigation, probation, and treatment services;
- 260 (ix) make restitution or reparation to the victim or victims with interest in accordance
261 with Title 77, Chapter 38a, Crime Victims Restitution Act; and
- 262 (x) comply with other terms and conditions the court considers appropriate; and
- 263 (b) if convicted on or after May 5, 1997:
- 264 (i) complete high school classwork and obtain a high school graduation diploma, a
265 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
266 not received the diploma, GED certificate, or vocational certificate prior to being placed on
267 probation; or
- 268 (ii) provide documentation of the inability to obtain one of the items listed in
269 Subsection (8)(b)(i) because of:
- 270 (A) a diagnosed learning disability; or
- 271 (B) other justified cause.
- 272 (9) The department shall collect and disburse the account receivable as defined by
273 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
- 274 (a) the parole period and any extension of that period in accordance with Subsection
275 77-27-6(4); and

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

278 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
279 upon completion without violation of 36 months probation in felony or class A misdemeanor
280 cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant
281 to Section 64-13-21 regarding earned credits.

282 (ii) (A) If, upon expiration or termination of the probation period under Subsection
283 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
284 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
285 probation for the limited purpose of enforcing the payment of the account receivable. If the
286 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
287 the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

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

306 (iii) Any time served in confinement awaiting a hearing or decision concerning

307 revocation of probation constitutes service of time toward a term of incarceration imposed as a
308 result of the revocation of probation or a graduated sanction imposed under Section
309 63M-7-404.

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

313 (12) (a) (i) Probation may [~~not~~] be modified [~~or extended~~] as is consistent with the
314 graduated sanctions and incentives developed by the Sentencing Commission under Section
315 63M-7-404, but the length of probation may not be extended, except upon waiver of a hearing
316 by the probationer or upon a hearing and a finding in court that the probationer has violated the
317 conditions of probation.

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

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

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

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

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

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

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

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

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

336 (iii) The persons who have given adverse information on which the allegations are
337 based shall be presented as witnesses subject to questioning by the defendant unless the court

338 for good cause otherwise orders.

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

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

342 (ii) Upon a finding that the defendant violated the conditions of probation, the court
343 may order the probation revoked, modified, continued, or [~~that the entire probation term~~
344 ~~commence anew~~] reinstated for all or a portion of the original term of probation.

345 (iii) If a period of incarceration is imposed for a violation, the defendant shall be
346 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to
347 Subsection 63M-7-404(4), unless the judge determines that:

348 (A) the defendant needs substance abuse or mental health treatment, as determined by a
349 validated risk and needs screening or assessment, that warrants treatment services that are
350 immediately available in the community; or

351 (B) the sentence previously imposed shall be executed.

352 (iv) If the defendant had, prior to the imposition of a term of incarceration or the
353 execution of the previously imposed sentence under this Subsection (12), served time in jail as
354 a condition of probation or due to a violation of probation under Subsection 77-18-1(12)(e)(iii),
355 the time the probationer served in jail constitutes service of time toward the sentence
356 previously imposed.

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

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

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

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

365 (14) Presentence investigation reports are classified protected in accordance with Title
366 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
367 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
368 presentence investigation report. Except for disclosure at the time of sentencing pursuant to

369 this section, the department may disclose the presentence investigation only when:

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

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

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

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

376 (e) requested by the victim of the crime discussed in the presentence investigation
377 report or the victim's authorized representative, provided that the disclosure to the victim shall
378 include only information relating to statements or materials provided by the victim, to the
379 circumstances of the crime including statements by the defendant, or to the impact of the crime
380 on the victim or the victim's household.

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

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

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

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

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

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

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

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

397 (i) place the defendant on probation under the supervision of the Department of
398 Corrections;

399 (ii) order the department to place an electronic monitoring device on the defendant and

400 install electronic monitoring equipment in the residence of the defendant; and

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

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

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

407 Section 4. Section 77-27-5.4 is amended to read:

408 **77-27-5.4. Earned time program.**

409 (1) The board shall establish an earned time program that reduces the period of
410 incarceration for offenders who successfully complete specified programs, the purpose of
411 which is to reduce the risk of recidivism.

412 (2) The earned time program shall:

413 (a) provide not less than four months of earned time credit each for the completion of
414 [~~the highest ranked priority in the offender's case action plan;~~] up to two programs that:

415 (i) are approved by the board in collaboration with the Department of Corrections; and

416 (ii) are recommended programs that are part of the offender's case action plan; and

417 [~~(b) provide not less than four months of earned time credit for completion of one of~~
418 ~~the recommended programs in the offender's case action plan; or]~~

419 [~~(c)~~] (b) allow the board to grant in its discretion earned time credit in addition to the
420 earned time credit provided under [~~Subsections~~] Subsection (2)(a) [~~and (b)~~].

421 (3) The earned time program may not provide earned time credit for offenders:

422 (a) whose previously ordered release date does not provide enough time, including time
423 for transition services, for the Board of Pardons and Parole to grant the earned time credit;

424 (b) who have been sentenced by the court to a term of life without the possibility of
425 parole; [~~or~~]

426 (c) who have been ordered by the Board of Pardons and Parole to serve a life
427 sentence[-];

428 (d) who do not have a current release date; or

429 (e) who have not met a contingency requirement for release that has been ordered by
430 the board.

431 (4) The board may order the forfeiture of earned time credits under this section if [the
432 offender commits a major disciplinary infraction] it determines a rescission hearing is
433 necessary.

434 (5) The department shall notify the board not more than 30 days after an offender
435 completes [~~a priority in the case action plan~~] a program as defined in Subsection
436 77-27-5.4(2)(a).

437 (6) The board shall collect data for the fiscal year regarding the operation of the earned
438 time credit program, including:

439 (a) the number of offenders who have earned time credit under this section in the prior
440 year;

441 (b) the amount of time credit earned in the prior year;

442 (c) the number of offenders who forfeited earned time credit; and

443 (d) additional related information as requested by the Commission on Criminal and
444 Juvenile Justice.

445 (7) The board shall collaborate with the Department of Corrections in the
446 establishment of the earned time credit program.

447 (8) To the extent possible, programming and hearings shall be provided early enough
448 in an offender's incarceration to allow the offender to earn time credit.

Legislative Review Note
Office of Legislative Research and General Counsel