

1 **CRIMINAL JUSTICE REINVESTMENT AMENDMENTS**

2 2016 THIRD SPECIAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: Brian E. Shiozawa

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies provisions regarding probation, including supervision and services; and
- 14 ▶ modifies the earned time program for incarcerated offenders.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides a special effective date.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **77-18-1**, as last amended by Laws of Utah 2015, Chapters 412 and 413

22 **77-27-5.4**, as enacted by Laws of Utah 2015, Chapter 412

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

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

26 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**

27 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**



28 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
29 **monitoring.**

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

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

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

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

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

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

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

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

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

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

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

54 (i) the type of offense;

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

56 (iii) the demand for services;

57 (iv) the availability of agency resources;

58 (v) public safety; and

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

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

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

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

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

71 (4) Notwithstanding other provisions of law, the department is not required to
72 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
73 conduct presentence investigation reports on class C misdemeanors or infractions. However,
74 the department may supervise the probation of class B misdemeanants in accordance with
75 department standards.

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

80 (b) The presentence investigation report shall include:

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

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

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

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

89 (v) the number of days since the commission of the offense that the offender has spent

90 in the custody of the jail and the number of days, if any, the offender was released to a
91 supervised release or alternative incarceration program under Section 17-22-5.5.

92 (c) The contents of the presentence investigation report are protected and are not
93 available except by court order for purposes of sentencing as provided by rule of the Judicial
94 Council or for use by the department.

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

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

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

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

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

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

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

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

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

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

- 121 (vi) serve a term of home confinement, which may include the use of electronic
122 monitoring;
- 123 (vii) participate in compensatory service restitution programs, including the
124 compensatory service program provided in Section 76-6-107.1;
- 125 (viii) pay for the costs of investigation, probation, and treatment services;
- 126 (ix) make restitution or reparation to the victim or victims with interest in accordance
127 with Title 77, Chapter 38a, Crime Victims Restitution Act; and
- 128 (x) comply with other terms and conditions the court considers appropriate; and
- 129 (b) if convicted on or after May 5, 1997:
- 130 (i) complete high school classwork and obtain a high school graduation diploma, a
131 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
132 not received the diploma, GED certificate, or vocational certificate prior to being placed on
133 probation; or
- 134 (ii) provide documentation of the inability to obtain one of the items listed in
135 Subsection (8)(b)(i) because of:
- 136 (A) a diagnosed learning disability; or
137 (B) other justified cause.
- 138 (9) The department shall collect and disburse the account receivable as defined by
139 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
- 140 (a) the parole period and any extension of that period in accordance with Subsection
141 77-27-6(4); and
- 142 (b) the probation period in cases for which the court orders supervised probation and
143 any extension of that period by the department in accordance with Subsection (10).
- 144 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
145 upon completion without violation of 36 months probation in felony or class A misdemeanor
146 cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant
147 to Section 64-13-21 regarding earned credits.
- 148 (ii) (A) If, upon expiration or termination of the probation period under Subsection
149 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
150 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
151 probation for the limited purpose of enforcing the payment of the account receivable. If the

152 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
153 the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

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

172 (iii) Any time served in confinement awaiting a hearing or decision concerning
173 revocation of probation constitutes service of time toward a term of incarceration imposed as a
174 result of the revocation of probation or a graduated sanction imposed under Section
175 63M-7-404.

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

179 (12) (a) (i) Probation may [~~not~~] be modified [~~or extended~~] as is consistent with the
180 graduated sanctions and incentives developed by the Utah Sentencing Commission under
181 Section 63M-7-404, but the length of probation may not be extended, except upon waiver of a
182 hearing by the probationer or upon a hearing and a finding in court that the probationer has

183 violated the conditions of probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (iii) If a period of incarceration is imposed for a violation, the defendant shall be
212 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to
213 Subsection [63M-7-404\(4\)](#), unless the judge determines that:

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

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

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

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

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

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

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

231 (14) Presentence investigation reports are classified protected in accordance with Title
232 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
233 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
234 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
235 this section, the department may disclose the presentence investigation only when:

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

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

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

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

242 (e) requested by the victim of the crime discussed in the presentence investigation
243 report or the victim's authorized representative, provided that the disclosure to the victim shall
244 include only information relating to statements or materials provided by the victim, to the

245 circumstances of the crime including statements by the defendant, or to the impact of the crime
246 on the victim or the victim's household.

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

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

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

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

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

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

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

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

263 (i) place the defendant on probation under the supervision of the Department of
264 Corrections;

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

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

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

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

273 Section 2. Section 77-27-5.4 is amended to read:

274 **77-27-5.4. Earned time program.**

275 (1) The board shall establish an earned time program that reduces the period of

276 incarceration for offenders who successfully complete specified programs, the purpose of
277 which is to reduce the risk of recidivism.

278 (2) The earned time program shall:

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

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

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

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

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

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

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

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

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

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

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

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

300 (5) The department shall notify the board not more than 30 days after an offender
301 completes ~~[a priority in the case action plan]~~ a program as defined in Subsection
302 77-27-5.4(2)(a).

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

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

307 (b) the amount of time credit earned in the prior year;
308 (c) the number of offenders who forfeited earned time credit; and
309 (d) additional related information as requested by the Commission on Criminal and
310 Juvenile Justice.

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

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

315 Section 3. **Effective date.**

316 If approved by two-thirds of all the members elected to each house, this bill takes effect
317 upon approval by the governor, or the day following the constitutional time limit of Utah
318 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
319 the date of veto override.

Legislative Review Note
Office of Legislative Research and General Counsel