

1 **PRESENTENCE INVESTIGATION AND PROBATION**

2 **REPORT AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Daniel W. Thatcher

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Utah Code of Criminal Procedure relating to
11 presentence investigation reports and affidavits reporting a probation violation.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that, under certain circumstances, the Department of Corrections may
15 provide a copy of a defendant's presentence investigation report to a sex offender
16 treatment provider working with the defendant;

17 ▶ provides that an unsworn declaration may be used to report a probation violation;

18 and

19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 77-18-1, as last amended by Laws of Utah 2017, Chapter 304



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

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

30 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
31 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
32 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
33 **monitoring.**

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

37 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any
38 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
39 and place the defendant [~~on probation. The court may place the defendant~~]:

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

42 (ii) on probation under the supervision of an agency of local government or with a
43 private organization; or

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

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

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

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

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

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

56 (3) (a) The department shall establish supervision and presentence investigation
57 standards for all individuals referred to the department[~~. These standards shall be~~] based on:

58 (i) the type of offense;

59 (ii) the results of a risk and needs assessment;
60 (iii) the demand for services;
61 (iv) the availability of agency resources;
62 (v) public safety; and
63 (vi) other criteria established by the department to determine what level of services
64 shall be provided.

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

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

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

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

75 (4) Notwithstanding other provisions of law, the department is not required to
76 supervise the probation of [~~persons~~] an individual convicted of a class B or C [~~misdemeanors~~
77 ~~or infractions~~] misdemeanor or an infraction or to conduct presentence investigation reports on
78 a class C [~~misdemeanors or infractions~~] misdemeanor or infraction. However, the department
79 may supervise the probation of a class B [~~misdemeanants~~] misdemeanant in accordance with
80 department standards.

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

85 (b) The presentence investigation report shall include:

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

88 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
89 from the department regarding the payment of restitution with interest by the defendant in

90 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

91 (iii) findings from any screening and any assessment of the offender conducted under
92 Section 77-18-1.1;

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

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

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

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

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

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

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

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

117 (i) provide for the support of others for whose support the defendant is legally liable;

118 (ii) participate in available treatment programs, including any treatment program in
119 which the defendant is currently participating, if the program is acceptable to the court;

120 (iii) if on probation for a felony offense, serve a period of time, not to exceed one year,

121 in a county jail designated by the department, after considering any recommendation by the
122 court as to which jail the court finds most appropriate;

123 (iv) serve a term of home confinement, which may include the use of electronic
124 monitoring;

125 (v) participate in compensatory service restitution programs, including the
126 compensatory service program provided in Section 76-6-107.1;

127 (vi) pay for the costs of investigation, probation, and treatment services;

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

130 (viii) comply with other terms and conditions the court considers appropriate to ensure
131 public safety or increase a defendant's likelihood of success on probation; and

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

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

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

139 (A) a diagnosed learning disability; or

140 (B) other justified cause.

141 (9) The department shall collect and disburse the accounts receivable as defined by
142 Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

143 (a) the parole period and any extension of that period in accordance with Subsection
144 77-27-6(4); and

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

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

151 (ii) (A) If, upon expiration or termination of the probation period under Subsection

152 (10)(a)(i), there remains an unpaid balance upon the accounts receivable as defined in Section
153 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
154 probation for the limited purpose of enforcing the payment of the account receivable. If the
155 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
156 the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

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

175 (iii) Any time served in confinement awaiting a hearing or decision concerning
176 revocation of probation constitutes service of time toward a term of incarceration imposed as a
177 result of the revocation of probation or a graduated sanction imposed under Section
178 63M-7-404.

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

182 (12) (a) (i) Probation may be modified as is consistent with the graduated sanctions and

183 incentives developed by the Utah Sentencing Commission under Section [63M-7-404](#), but the
184 length of probation may not be extended, except upon waiver of a hearing by the probationer or
185 upon a hearing and a finding in court that the probationer has violated the conditions of
186 probation.

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

189 (b) (i) Upon the filing of an affidavit, or an unsworn written declaration executed in
190 substantial compliance with Section [78B-5-705](#), alleging with particularity facts asserted to
191 constitute violation of the conditions of probation, the court that authorized probation shall
192 determine if the affidavit or unsworn written declaration establishes probable cause to believe
193 that revocation, modification, or extension of probation is justified.

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

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

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

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

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

204 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit
205 or unsworn written declaration.

206 (ii) If the defendant denies the allegations of the affidavit or unsworn written
207 declaration, the prosecuting attorney shall present evidence on the allegations.

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

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

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

214 (ii) Upon a finding that the defendant violated the conditions of probation, the court
215 may order the probation revoked, modified, continued, or reinstated for all or a portion of the
216 original term of probation.

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

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

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

224 (iv) If the defendant had, prior to the imposition of a term of incarceration or the
225 execution of the previously imposed sentence under this Subsection (12), served time in jail as
226 a condition of probation or due to a violation of probation under Subsection(12)(e)(iii), the
227 time the probationer served in jail constitutes service of time toward the sentence previously
228 imposed.

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

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

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

235 (c) [~~persons~~] individuals described in Subsection 62A-15-610(2)(g) are receiving
236 priority for treatment over the defendants described in this Subsection (13).

237 (14) Presentence investigation reports are classified protected in accordance with Title
238 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
239 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
240 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
241 this section, the department may disclose the presentence investigation only when:

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

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

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

246 (d) requested by the subject of the presentence investigation report or the subject's
247 authorized representative; ~~[or]~~

248 (e) requested by the victim of the crime discussed in the presentence investigation
249 report or the victim's authorized representative, provided that the disclosure to the victim shall
250 include only information relating to statements or materials provided by the victim, to the
251 circumstances of the crime including statements by the defendant, or to the impact of the crime
252 on the victim or the victim's household[-]; or

253 (f) requested by a sex offender treatment provider who is certified to provide treatment
254 under the program established in Subsection 64-13-25(3) and who, at the time of the request:

255 (i) is providing sex offender treatment to the offender who is the subject of the
256 presentence investigation report; and

257 (ii) provides written assurance to the department that the report:

258 (A) is necessary for the treatment of the offender;

259 (B) will be used solely for the treatment of the offender; and

260 (C) will not be disclosed to an individual or entity other than the offender.

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

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

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

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

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

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

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

275 (d) If a court orders a defendant to participate in home confinement through electronic

276 monitoring as a condition of probation under this section, it shall:

277 (i) place the defendant on probation under the supervision of the Department of
278 Corrections;

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

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

283 (e) The department shall pay the costs of home confinement through electronic
284 monitoring only for [~~those persons who have been~~] an individual who is determined to be
285 indigent by the court.

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

Legislative Review Note
Office of Legislative Research and General Counsel