

FELONY PROBATION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill clarifies provisions relating to probation.

Highlighted Provisions:

This bill:

► specifies that certain provisions relating to probation length are applicable to felony probation.

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 2018, Chapter 334

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.



28 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea
29 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:

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 under the supervision of an agency of local government or with a
37 private organization; or

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

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

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

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

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

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

50 (3) (a) The department shall establish supervision and presentence investigation
51 standards for all individuals referred to the department based on:

52 (i) the type of offense;

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

54 (iii) the demand for services;

55 (iv) the availability of agency resources;

56 (v) public safety; and

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

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

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

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

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

69 (4) Notwithstanding other provisions of law, the department is not required to
70 supervise the probation of an individual convicted of a class B or C misdemeanor or an
71 infraction or to conduct presentence investigation reports on a class C misdemeanor or
72 infraction. However, the department may supervise the probation of a class B misdemeanor in
73 accordance with department standards.

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

78 (b) The presentence investigation report shall include:

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

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

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

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

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

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

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

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

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

107 (8) While on probation, and as a condition of probation, the court may require that a
108 defendant perform any or all of the following:

109 (a) provide for the support of others for whose support the defendant is legally liable;

110 (b) participate in available treatment programs, including any treatment program in
111 which the defendant is currently participating, if the program is acceptable to the court;

112 (c) if on probation for a felony offense, serve a period of time, not to exceed one year,
113 in a county jail designated by the department, after considering any recommendation by the
114 court as to which jail the court finds most appropriate;

115 (d) serve a term of home confinement, which may include the use of electronic
116 monitoring;

117 (e) participate in compensatory service restitution programs, including the
118 compensatory service program provided in Section [76-6-107.1](#);

119 (f) pay for the costs of investigation, probation, and treatment services;

120 (g) make restitution or reparation to the victim or victims with interest in accordance

121 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

122 (h) comply with other terms and conditions the court considers appropriate to ensure
123 public safety or increase a defendant's likelihood of success on probation.

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

126 (a) the parole period and any extension of that period in accordance with Subsection
127 77-27-6(4); and

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

130 (10) (a) (i) [~~Except as provided in Subsection (10)(a)(ii), probation~~] Probation of an
131 individual placed on felony probation after December 31, 2018:

132 (A) may not exceed the individual's maximum sentence;

133 (B) shall be for a period of time that is in accordance with the supervision length
134 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the
135 extent the guidelines are consistent with the requirements of the law; and

136 (C) shall be terminated in accordance with the supervision length guidelines
137 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
138 guidelines are consistent with the requirements of the law.

139 (ii) Probation of an individual placed on probation after December 31, 2018, whose
140 maximum sentence is one year or less may not exceed 36 months.

141 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
142 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
143 completion without violation of 36 months probation in felony or class A misdemeanor cases,
144 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
145 Section 64-13-21 regarding earned credits.

146 (b) (i) If, upon expiration or termination of the probation period under Subsection
147 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
148 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
149 probation for the limited purpose of enforcing the payment of the account receivable. If the
150 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
151 the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

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

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

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

177 (12) (a) (i) Probation may be modified as is consistent with the supervision length
178 guidelines and the graduated sanctions and incentives developed by the Utah Sentencing
179 Commission under Section 63M-7-404.

180 (ii) The length of probation may not be extended, except upon waiver of a hearing by
181 the probationer or upon a hearing and a finding in court that the probationer has violated the
182 conditions of probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a
211 defendant to remain on probation for a period of time that exceeds the length of the defendant's
212 maximum sentence.

213 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked

214 and later reinstated, the total time of all periods of probation the defendant serves, relating to
215 the same sentence, may not exceed the defendant's maximum sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

268 (i) place the defendant on probation under the supervision of the Department of
269 Corrections;

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

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

274 (e) The department shall pay the costs of home confinement through electronic
275 monitoring only for an individual who is determined to be indigent by the court.

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