

1 **CRIMINAL NONSUPPORT AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karianne Lisonbee**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes to criminal nonsupport.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that criminal nonsupport is an ongoing offense; and
- 13 ▶ exempts criminal nonsupport from certain probation limitations.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **76-7-201**, as last amended by Laws of Utah 1999, Chapter 89

21 **77-18-1**, as last amended by Laws of Utah 2019, Chapters 28 and 429

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

24 Section 1. Section **76-7-201** is amended to read:

25 **76-7-201. Criminal nonsupport.**

26 (1) A person commits criminal nonsupport if, having a spouse, a child, or children
27 under the age of 18 years, ~~he~~ the person knowingly fails to provide for the support of ~~the~~ a
28 spouse, child, or children when any one of them:

- 29 (a) is in needy circumstances; or

30 (b) would be in needy circumstances but for support received from a source other than
31 the defendant or paid on the defendant's behalf.

32 (2) Except as provided in Subsection (3), criminal nonsupport is a class A
33 misdemeanor.

34 (3) Criminal nonsupport is a felony of the third degree if the [~~actor~~] defendant:

35 (a) has been convicted one or more times of nonsupport, whether in this state, any
36 other state, or any court of the United States;

37 (b) committed the offense while residing outside of Utah; or

38 (c) commits the crime of nonsupport in each of 18 individual months within any
39 24-month period, or the total arrearage is in excess of \$10,000.

40 (4) For purposes of this section "child" includes a child born out of wedlock whose
41 paternity has been admitted by the [~~actor~~] defendant or has been established in a civil suit.

42 (5) (a) In a prosecution for criminal nonsupport under this section, it is an affirmative
43 defense that the [~~accused~~] defendant is unable to provide support. Voluntary unemployment or
44 underemployment by the defendant does not give rise to that defense.

45 (b) Not less than 20 days before trial the defendant shall file and serve on the
46 prosecuting attorney a notice, in writing, of [~~his~~] the defendant's intention to claim the
47 affirmative defense of inability to provide support. The notice shall specifically identify the
48 factual basis for the defense and the names and addresses of the witnesses who the defendant
49 proposes to examine in order to establish the defense.

50 (c) Not more than 10 days after receipt of the notice described in Subsection (5)(b), or
51 at such other time as the court may direct, the prosecuting attorney shall file and serve the
52 defendant with a notice containing the names and addresses of the witnesses who the state
53 proposes to examine in order to contradict or rebut the defendant's claim.

54 (d) Failure to comply with the requirements of Subsection (5)(b) or (5)(c) entitles the
55 opposing party to a continuance to allow for preparation. If the court finds that a party's failure
56 to comply is the result of bad faith, it may impose appropriate sanctions.

57 (6) Criminal nonsupport is a continuing offense.

58 Section 2. Section 77-18-1 is amended to read:

59 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
60 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
61 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
62 **monitoring.**

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

66 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any
67 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
68 and place the defendant:

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

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

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

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

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

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

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

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

85 (3) (a) The department shall establish supervision and presentence investigation

86 standards for all individuals referred to the department based on:

- 87 (i) the type of offense;
- 88 (ii) the results of a risk and needs assessment;
- 89 (iii) the demand for services;
- 90 (iv) the availability of agency resources;
- 91 (v) public safety; and
- 92 (vi) other criteria established by the department to determine what level of services
- 93 shall be provided.

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

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

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

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

104 (4) Notwithstanding other provisions of law, the department is not required to
105 supervise the probation of an individual convicted of a class B or C misdemeanor or an
106 infraction or to conduct presentence investigation reports on a class C misdemeanor or
107 infraction. However, the department may supervise the probation of a class B misdemeanant in
108 accordance with department standards.

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

113 (b) The presentence investigation report shall include:

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

116 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
117 from the department regarding the payment of restitution with interest by the defendant in
118 accordance with Chapter 38a, Crime Victims Restitution Act;

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

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

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

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

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

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

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

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

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

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

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

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

152 (e) participate in compensatory service restitution programs, including the
153 compensatory service program provided in Section 76-6-107.1;

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

155 (g) make restitution or reparation to the victim or victims with interest in accordance
156 with Chapter 38a, Crime Victims Restitution Act; and

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

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

161 (a) the parole period and any extension of that period in accordance with Subsection
162 77-27-6(4); and

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

165 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), probation of an individual
166 placed on probation after December 31, 2018:

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

168 (B) shall be for a period of time that is in accordance with the supervision length
169 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the

170 extent the guidelines are consistent with the requirements of the law; and

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

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

176 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
177 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
178 completion without violation of 36 months probation in felony or class A misdemeanor cases,
179 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
180 Section 64-13-21 regarding earned credits.

181 (b) (i) If, upon expiration or termination of the probation period under Subsection
182 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
183 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
184 probation for the limited purpose of enforcing the payment of the account receivable. If the
185 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
186 the court the costs associated with continued probation under this Subsection (10).

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

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

193 (c) Subsections (10)(a) and (b) do not apply to Section 76-7-201, criminal nonsupport.

194 ~~[(c)]~~ (d) (i) The department shall notify the court, the Office of State Debt Collection,
195 and the prosecuting attorney in writing in advance in all cases when termination of supervised
196 probation is being requested by the department or will occur by law.

197 (ii) The notification shall include a probation progress report and complete report of

198 details on outstanding accounts receivable.

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

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

206 (iii) Any time served in confinement awaiting a hearing or decision concerning
207 revocation of probation constitutes service of time toward a term of incarceration imposed as a
208 result of the revocation of probation or a graduated sanction imposed under Section
209 [63M-7-404](#).

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

213 (12) (a) (i) Probation may be modified as is consistent with the supervision length
214 guidelines and the graduated sanctions and incentives developed by the Utah Sentencing
215 Commission under Section [63M-7-404](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

252 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked
253 and later reinstated, the total time of all periods of probation the defendant serves, relating to

254 the same sentence, may not exceed the defendant's maximum sentence.

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

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

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

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

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

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

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

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

275 (14) Presentence investigation reports are classified protected in accordance with Title
276 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
277 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
278 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
279 this section, the department may disclose the presentence investigation only when:

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

281 (b) requested by a law enforcement agency or other agency approved by the department

282 for purposes of supervision, confinement, and treatment of the offender;

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

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

286 (e) requested by the victim of the crime discussed in the presentence investigation
287 report or the victim's authorized representative, provided that the disclosure to the victim shall
288 include only information relating to statements or materials provided by the victim, to the
289 circumstances of the crime including statements by the defendant, or to the impact of the crime
290 on the victim or the victim's household; or

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

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

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

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

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

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

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

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

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

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

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

- 310 (i) the defendant to wear an electronic monitoring device at all times; and
311 (ii) that a device be placed in the home of the defendant, so that the defendant's
312 compliance with the court's order may be monitored.
- 313 (d) If a court orders a defendant to participate in home confinement through electronic
314 monitoring as a condition of probation under this section, it shall:
- 315 (i) place the defendant on probation under the supervision of the Department of
316 Corrections;
- 317 (ii) order the department to place an electronic monitoring device on the defendant and
318 install electronic monitoring equipment in the residence of the defendant; and
- 319 (iii) order the defendant to pay the costs associated with home confinement to the
320 department or the program provider.
- 321 (e) The department shall pay the costs of home confinement through electronic
322 monitoring only for an individual who is determined to be indigent by the court.
- 323 (f) The department may provide the electronic monitoring described in this section
324 either directly or by contract with a private provider.