

**DRUG OFFENDER REFORM ACT - PILOT
PROGRAM**

2005 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill amends provisions regarding the Utah Substance Abuse and Anti-Violence Coordinating Council and the Code of Criminal Procedure to implement the Drug Offender Reform Pilot Study, a pilot program in Salt Lake County regarding substance abuse screening, assessment, and treatment for felony offenders charged with controlled substance offenses.

Highlighted Provisions:

This bill:

- ▶ requires the Utah Substance Abuse and Anti-Violence Coordinating Council to develop, implement, and evaluate the implementation of the pilot study; and
- ▶ requires that under the pilot study:
 - on and after July 1, 2005 through June 30, 2007, all offenders in the courts of the Third Judicial District located in Salt Lake County who are convicted of a felony offense in violation of Title 58, Chapter 37, Utah Controlled Substances Act, shall participate in a substance abuse screening and may also participate in an assessment if indicated;
 - requires that the results of any screening and assessment of an offender in the study be provided to the court prior to sentencing;
 - provides that the pilot program shall include treatment for a maximum of 250 participants, who are convicted offenders on probation; and
- ▶ requires annual progress reports during the study and a final report to the Legislature

regarding the impact and results of the study.

Monies Appropriated in this Bill:

This bill appropriates \$500,000 as a one-time appropriation from the General Fund as follows:

- \$75,000 from the General Fund for fiscal year 2005-06, to the Commission on Criminal and Juvenile Justice;
- \$315,000 from the General Fund for fiscal year 2005-06, to the Department of Human Services;
- \$10,000 from the General Fund for fiscal year 2005-06, to the Administrative Office of the Courts; and
- \$100,000 from the General Fund for fiscal year 2005-06, to the Department of Corrections.

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

AMENDS:

63-25a-203, as last amended by Chapter 115, Laws of Utah 2002

77-18-1, as last amended by Chapter 290, Laws of Utah 2003

ENACTS:

63-25a-205.5, Utah Code Annotated 1953

77-18-1.1, Utah Code Annotated 1953

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

Section 1. Section **63-25a-203** is amended to read:

63-25a-203. Duties of council.

(1) The Utah Substance Abuse and Anti-Violence Coordinating Council shall:

- (a) provide leadership and generate unity for Utah's ongoing efforts to combat substance abuse and community violence;

(b) recommend and coordinate the creation, dissemination, and implementation of a statewide substance abuse and anti-violence policy;

(c) facilitate planning for a balanced continuum of substance abuse and community violence prevention, treatment, and justice services;

(d) promote collaboration and mutually beneficial public and private partnerships;

(e) coordinate recommendations made by any subcommittees created under Section 63-25a-202; ~~and~~

(f) analyze and provide an objective assessment of all proposed legislation concerning alcohol and other drug issues and community violence issues[-]; and

(g) coordinate the implementation of Section 77-18-1.1 and related provisions in Subsection 77-18-1(5)(d) as provided in Section 63-25a-205.5.

(2) The council shall meet quarterly or more frequently as determined necessary by the chair.

(3) The council shall report its recommendations annually to the commission, governor, Legislature, and judicial council.

Section 2. Section **63-25a-205.5** is enacted to read:

63-25a-205.5. Drug Offender Reform Pilot Study -- Creation.

(1) As used in this section:

(a) "Council" means the Utah Substance Abuse and Anti-Violence Coordinating Council.

(b) "Drug Offender Reform Pilot Study" and "study" mean the screening, assessment, and substance abuse treatment provided to convicted offenders as part of a study described in this section and conducted as described in Section 77-18-1.1 in the courts of the Third Judicial District located in Salt Lake County.

(c) "Substance abuse authority" means the Salt Lake County substance abuse authority operating within the Third Judicial District.

(2) There is established a Drug Offender Reform Pilot Study in the courts of the Third Judicial District located in Salt Lake County.

(a) The study shall operate on and after July 1, 2005, through June 30, 2008, subject to

legislative funding.

(i) The study shall conduct screening under Subsection 77-18-1.1(2)(a) through June 30, 2007, and shall conduct assessments and substance abuse treatment based on this screening under Subsections 77-18-1.1(2)(b) and (c).

(ii) The assessments and treatment based on screening conducted on and before June 30, 2007, shall be conducted by the study through June 30, 2008, the final date of the study.

(b) The study shall provide screening and assessment under Section 77-18-1.1 to offenders convicted in the courts of the Third Judicial District in Salt Lake County of a felony offense in violation of Title 58, Chapter 37, Utah Controlled Substances Act.

(c) The study shall provide substance abuse treatment under Section 77-18-1.1 to a maximum of 250 offenders convicted under Subsection (2)(b) and who are sentenced to probation in Salt Lake County if:

(i) the assessment indicates treatment is appropriate; and

(ii) the court finds treatment to be appropriate for the offender.

(3) The council shall provide ongoing oversight of the implementation and functions of the study.

(4) The council shall develop an implementation plan for the study, which shall:

(a) include guidelines on how funds appropriated for the study should be used;

(b) include guidelines on the membership of the Salt Lake County planning group under Subsection (5); and

(c) require that treatment plans under the study are appropriate for criminal offenders.

(5) (a) The Salt Lake County substance abuse authority located within the Third Judicial District shall establish a local planning group to develop and submit a plan to the council detailing the intended use of the study funds. The uses shall be in accordance with the guidelines established by the council under Subsection (4).

(b) Upon approval of the plan by the council, the Department of Human Services shall allocate the funds to the substance abuse authority.

(c) The substance abuse authority shall submit to the Department of Human Services and

the council, on or before October 1 of each year, reports detailing use of the funds and the impact and results of the use of the funds.

(6) The council shall evaluate the progress of the study and shall provide a written report to the Law Enforcement and Criminal Justice Interim Committee and the Health and Human Services Interim Committee annually on or before November 1, and shall provide to these interim committees a final written report on the impact and results of the study on or before November 1, 2008.

Section 3. 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.

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

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

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

(ii) on probation with an agency of local government or with a private organization; or

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

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

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

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

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

for all individuals referred to the department. These standards shall be based on:

- (i) the type of offense;
- (ii) the demand for services;
- (iii) the availability of agency resources;
- (iv) the public safety; and
- (v) other criteria established by the department to determine what level of services shall

be provided.

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

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

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

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

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

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

(b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

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

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

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

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

- (a) perform any or all of the following:
 - (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;
 - (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;
 - (iii) provide for the support of others for whose support he is legally liable;

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

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

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

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 78-11-20.7;

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

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

(x) comply with other terms and conditions the court considers appropriate; and

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

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

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

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

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

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

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

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

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

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

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

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

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

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

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

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

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

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

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

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

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

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

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

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

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

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

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

(ii) Upon a finding that the defendant violated the conditions of probation, the court may

order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

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

- (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- (b) treatment space at the hospital is available for the defendant; and
- (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

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

- (a) ordered by the court pursuant to Subsection 63-2-202(7);
- (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
- (c) requested by the Board of Pardons and Parole;
- (d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

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

the victim's household.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Section **77-18-1.1** is enacted to read:

77-18-1.1. Screening, assessment, and treatment.

(1) As used in this section:

(a) "Assessment" has the same meaning as in Section 41-6a-501.

(b) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty and mentally ill, or no contest; and

(ii) conviction of any crime or offense.

(c) "Screening" has the same meaning as in Section 41-6a-501.

(d) "Substance abuse treatment" means treatment obtained through a substance abuse program that is licensed by the Office of Licensing within the Department of Human Services.

(2) On and after July 1, 2005, through June 30, 2007, the courts of the Third Judicial District located in Salt Lake County:

(a) shall order every offender convicted of a felony offense under Title 58, Chapter 37, Utah Controlled Substances Act, to participate in a screening prior to sentencing;

(b) may order offenders screened under Subsection (2)(a) to participate in an assessment prior to sentencing if the screening indicates an assessment to be appropriate; and

(c) shall order a maximum of 250 offenders assessed under Subsection (2)(b) and sentenced to probation in Salt Lake County to participate in substance abuse treatment if:

(i) the assessment indicates treatment is appropriate; and

(ii) the court finds treatment to be appropriate for the offender.

(3) The findings from any screening and any assessment conducted under this section shall be part of the presentence investigation report submitted to the court prior to sentencing of the offender.

(4) Monies appropriated by the Legislature to assist in the funding of the screening, assessment, and substance abuse treatment provided under this section are not subject to any requirement regarding matching funds from a state or local governmental entity.

Section 5. Appropriation.

(1) There is appropriated \$500,000 for the costs of operating in fiscal year 2005-06 for

the Drug Offender Reform Pilot Study as defined in Section 63-25a-205.5, as follows:

(a) \$75,000 from the General Fund for fiscal year 2005-06 only, to the Commission on Criminal and Juvenile Justice line item within the Governor's Office to be used for research and evaluation of the Drug Offender Reform Pilot Study, as defined in Subsection 63-25a-205.5(1);

(b) \$315,000 from the General Fund for fiscal year 2005-06 only, to the Executive Director Operations line item within the Department of Human Services to be used for assessment, drug treatment, case management, and drug testing of offenders on probation who are enrolled in the pilot study in the courts of the Third Judicial District located in Salt Lake County;

(c) \$10,000 from the General Fund for fiscal year 2005-06 only, to the Administration line item of the Judicial Council and State Court Administrator to be used for the costs of court clerks in the courts of the Third Judicial District located in Salt Lake County; and

(d) \$100,000 from the General Fund for fiscal year 2005-06 only, to the Programs and Operations line item of the Utah Department of Corrections to be used for probation supervision of offenders receiving substance abuse treatment as participants in the pilot study.

(2) The appropriations under this Section 5 are nonlapsing.

Section 6. Effective date.

This bill takes effect on July 1, 2005.