

2016

## **The State of Utah, Plaintiff/Appellee v. Amelia Suzanne Hoffman, Defendant/Appellant**

Utah Court of Appeals

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39149

No. 20150894-CA

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**IN THE UTAH COURT OF APPEALS**

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THE STATE OF UTAH,  
*Plaintiff/Appellee*

v.

AMELIA SUZANNE HOFFMAN,  
*Defendant/Appellant.*

Appellant is not incarcerated.

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**BRIEF OF APPELLANT**

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Appeal from a judgment of conviction for attempted possession or use of a controlled substance, a Class A. Misdemeanor, in violation of Utah Code § 58-37-8; in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Royal I. Hansen presiding.

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UTAH APPELLATE COURTS

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**IN THE UTAH COURT OF APPEALS**

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*Plaintiff/Appellee*

v.

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Appellant is not incarcerated.

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**BRIEF OF APPELLANT**

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**JURISDICTIONAL STATEMENT**

Jurisdiction is conferred upon this Court pursuant to Utah Code § 78A-4-103(2)(e). *See* Addendum A (Sentence, Judgment, Commitment).

**ISSUE AND STANDARD OF REVIEW**

Issue: Whether the trial court erred by ordering Ms. Hoffman to complete 12-months supervised probation with drug and alcohol treatment conditions and restrictions.

Standard of Review: “The sentencing decision of a trial court is reviewed for abuse of discretion.” *State v. Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167. “However, the exercise of that discretion is not unlimited.” *State v. Howell*, 707 P.2d 115, 117 (Utah 1985). A trial court’s “[a]buse of discretion may be manifest if the actions of the judge in sentencing were inherently unfair or if the

judge imposed a clearly excessive sentence.” *State v. Schweitzer*, 943 P.2d 649, 651 (Utah Ct. App. 1997) (quotations omitted).

Preservation: This issue is not preserved. Unpreserved claims may be reached under rule 22(e), Utah Rules of Criminal Procedure, or the doctrine of plain error, which are exceptions to the preservation rule. *See State v. Cram*, 2002 UT 37, ¶4, 46 P.3d 230; Utah R. Crim. P. 22(e); *but see* R:95 (defense counsel and State jointly recommended 12-months of probation, substance abuse evaluation and recommended treatment, community service, and urinary analysis testing); *State v. Alfatlawi*, 2006 UT App 511, ¶26, 153 P.3d 804 (“invited error prevents [this Court’s] review of [] issue[s] under plain error”).

#### STATUTORY AND RULES PROVISIONS

The text of the following relevant provision is provided in full in Addendum B: Utah Code §§58-37-8, 77-18-1; Utah R. Crim. P. 22(e).

#### STATEMENT OF THE CASE AND FACTS

On May 28, 2014, Ms. Hoffman was charged by Information with Possession or Use of a Controlled Substance, a third degree felony, in violation of Utah Code §58-37-8(2)(a)(i). R:1-2.

Ms. Hoffman waived her right to a preliminary hearing, and on October 16, 2015 she entered a no contest plea to an amended charge of Attempted Possession or Use of a Controlled Substance, a class A misdemeanor. R:58-60, 64-65. The following facts provided a basis for her no contest plea: “On or about May 20, 2015, in Salt Lake County, State of Utah, . . . the State would show

evidence to a jury that the defendant did knowingly, intentionally attempt to have drugs on her person.” R:93.

Ms. Hoffman waived her time for sentencing. R:95. Defense counsel and the State jointly recommended that Ms. Hoffman serve 12-months of probation supervised by Salt Lake County probation services. R:95. In addition, it was jointly recommended that she “obtain a substance abuse eval[uation] and do any recommended treatment, that she complete 50 hours of community service, [] that she pay a \$50 recoupment fee” and submit to urinary analysis (UA) testing. R:95.

The trial court sentenced Ms. Hoffman to 365-days in jail and a fine of \$4,625. R:95. The court suspended the jail sentence and fine placing Ms. Hoffman on 12-months of supervised probation. R:95-96. Ms. Hoffman was ordered to obtain a substance abuse evaluation and to “follow through with all recommended treatment within 90-days.” R:96. She was also ordered to complete 50 hours of community service, not to consume drugs or alcohol, submit to UA testing, pay a \$50 recoupment fee, and to comply with other standard terms and conditions of probation. R:96-97.

Ms. Hoffman timely appealed her sentence. R:70-77.

### SUMMARY OF ARGUMENT

Ms. Hoffman claims that the trial court erred when it ordered that she be placed on 12-months of supervised probation and to complete a substance abuse



evaluation and recommended treatment, and to comply with the other standard terms and conditions of probation including not consuming drugs or alcohol.

### ARGUMENT

#### **The trial court erred by requiring Ms. Hoffman to serve 12-months of supervised probation and to comply with the terms and conditions imposed as a part of probation.**

Ms. Hoffman argues that the court erred when it ordered that she be placed on 12-months of supervised probation, to complete a substance abuse evaluation and recommended treatment, and to comply with the other standard terms and conditions of probation including, not consuming drugs or alcohol. R:95-97. *But see* R.95 (defense counsel and State jointly recommend 12-months probation, substance abuse evaluation and recommended treatment, community service, and urinary analysis testing); *State v. Alfatlawi*, 2006 UT App 511, ¶26, 153 P.3d 804 (“invited error prevents [this Court’s] review of [] issue[s] under plain error”).

To prevail on a claim of plain error, a defendant must demonstrate that “(i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant.” *State v. Dean*, 2004 UT 63, ¶15, 95 P.3d 276.

Moreover, “[t]he sentencing decision of a trial court is reviewed for abuse of discretion.” *State Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167. Utah Code section 77-18-1(2)(a) (probation statute) permits a trial court on a plea of no

contest to “suspend the execution of the sentence and place the defendant on probation.” *Id.* The trial court is given the discretion to place a defendant “on probation under the supervision of an agency of local government. . . .” *Id.*

(2)(a)(ii). The supervising agency is required to “specifically address the offender’s risk of reoffending as identified by a validated risk and needs screening or assessment.” *Id.* (2)(c). In its exercise of discretion, the probation statute allows a trial court to order “as a condition of probation” that the defendant “participate in available treatment programs” Utah Code § 77-18-1(8)(a)(iv), and to “comply with other terms and conditions the court considers appropriate.” *Id.* (8)(a)(x).

But a trial court’s “[a]buse of discretion may be manifest if the actions of the judge in sentencing were inherently unfair or if the judge imposed a clearly excessive sentence.” *State v. Schweitzer*, 943 P.2d 649, 651 (quotations omitted). “[A] trial court’s sentencing decision will not be overturned unless it exceeds statutory or constitutional limits, the judge failed to consider all the legally relevant factors, or the actions of the judge were so inherently unfair as to constitute abuse of discretion.” *State v. Killpack*, 2008 UT 49, ¶59, 191 P.3d 17 (quotations omitted).

Ms. Hoffman strongly believes that the trial court erred by requiring 12-months of supervised probation, completion of a substance abuse evaluation and recommended treatment, and compliance with the other standard terms and conditions of probation including not consuming drugs or alcohol was

“inherently unfair.” *Schweitzer*, 943 P.2d at 651; R:95-97. She feels that requiring her to serve 12-months of supervised probation by Salt Lake County probation services—as opposed to unsupervised or court probation—and to comply with the other terms and conditions imposed was also “excessive” given her offense and was not the best option to suit her personal needs. *Schweitzer*, 943 P.2d at 651-52.

It is Ms. Hoffman’s position that the trial court’s decision to impose supervised probation, with it accompanying terms and conditions, was error of an obvious nature. *But see Valdovinos*, 2003 UT App 432, ¶14 (“[t]he sentencing decision of a trial court is reviewed for abuse of discretion”); R.95 (defense counsel and State jointly recommend 12-months of supervised probation, substance abuse evaluation and recommended treatment, community service, and urinary analysis testing). She maintains that she suffered prejudice because absent the court’s error, she would not have to comply with unneeded treatment, supervision, testing or otherwise have her rights restricted.

Rule 22(e), Utah Rules of Criminal Procedure, also provides this Court with jurisdiction to hear Ms. Hoffman’s argument regardless of whether he properly preserved it below. *Id.* (allowing this Court to “correct an illegal sentence, or a sentence imposed in an illegal manner, at any time”). Under rule 22(e), this Court will correct an illegal sentence “at any time,” so long as the appeal deals with the sentence alone and not with the guilty plea or underlying convictions. *See State v. Nicholls*, 2006 UT 76, ¶15, 148 P.3d 990 (holding

“appellate court may not review the legality of a sentence under rule 22(e) when the substance of the appeal is . . . a challenge, not to the sentence itself, but to the underlying conviction” (citation omitted)). As argued above, Ms. Hoffman believes that the sentence imposed by the trial court was illegal because it was “fundamentally unfair,” [and] violative of due process” requiring that it be vacated. *State v. Yazzie*, 2009 UT 14, ¶14, 203 P.3d 984 (quotations and citation omitted). Accordingly, Ms. Hoffman argues that this Court has jurisdiction, under rule 22(e), to hear her sentencing issue. Utah R. Crim. P. 22(e); *State v. Wanosik*, 2001 UT App 241, ¶28 n.11, 31 P.3d 615.

#### CONCLUSION

For the reasons given above, Ms. Hoffman respectfully asks this Court to reverse the trial court’s imposition of supervised probation along with its terms and conditions.

SUBMITTED this 14<sup>th</sup> day of November, 2016.

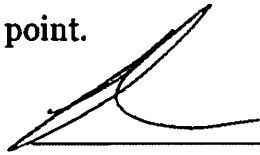


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DEBRA M. NELSON  
Attorney for Defendant/Appellant

CERTIFICATE OF COMPLIANCE

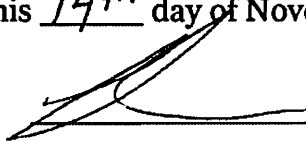
In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains less than 14,000 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. App. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Georgia 13 point.



DEBRA M. NELSON

CERTIFICATE OF DELIVERY

I, DEBRA M. NELSON, hereby certify that I have caused to be hand-delivered an original and six copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and three copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114, this 14<sup>th</sup> day of November, 2016.



DEBRA M. NELSON

DELIVERED this \_\_\_\_ day of November, 2016.

\_\_\_\_\_

Tab A

3RD DISTRICT COURT - SALT LAKE  
SALT LAKE COUNTY, STATE OF UTAH

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STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SCHEDULING CONF
	:	CHANGE OF PLEA
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 141905983 FS
AMELIA SUZANNE HOFFMAN,	:	Judge: ROYAL I HANSEN
Defendant.	:	Date: October 16, 2015

---

PRESENT

Clerk: rebeccaf

Prosecutor: BLANCH, ADAM B

Defendant

Defendant's Attorney(s): JACOBS, JESSICA A

DEFENDANT INFORMATION

Date of birth: April 24, 1991

Sheriff Office#: 342277

Audio

Tape Number: W49 Tape Count: 11.56-

CHARGES

1. ATTEMPTED POSSESSION OR USE OF A CONTROLLED SUBSTANCE (amended) - Class A  
Misdemeanor

Plea: No Contest - Disposition: 10/16/2015 No Contest

Defendant waives the reading of the Information.

Court advises defendant of rights and penalties.

Defendant waives time for sentence.

The defendant is advised that this offense may be used as an enhancement to the  
penalties for a subsequent offense.

HEARING

Defendant waives Preliminary Hearing. Case is bound over to District Court.

SENTENCE JAIL

Based on the defendant's conviction of ATTEMPTED POSSESSION OR USE OF A CONTROLLED  
SUBSTANCE a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)  
The total time suspended for this charge is 365 day(s).

SENTENCE FINE

Charge # 1            Fine: \$4625.00  
                      Suspended: \$4625.00  
                      Surcharge: \$

                      Total Fine: \$4625.00  
                      Total Suspended: \$4625.00  
                      Total Surcharge: \$0  
Total Principal Due: \$0  
                                 Plus Interest

COMMUNITY SERVICE

Complete 50 hour(s) of community service.  
Community service to be completed through Salt Lake Co Probation Service.  
Community service is to be completed by October 16, 2016.  
SENTENCE COMMUNITY SERVICE NOTE

Defendant to complete community service hours at the rate of not less than 5 hours a month beginning on 11/15 and due on or before the 15th of every month thereafter.  
Defendant to provide proof to the Court.

Attorney Fees            Amount: \$50.00 Plus Interest  
Pay in behalf of: SALT LAKE COUNTY TREASURER

ORDER OF PROBATION

The defendant is placed on probation for 12 month(s).  
Probation is to be supervised by Salt Lake Co Probation Service.  
PROBATION CONDITIONS

Usual and ordinary conditions required by Salt Lake County Probation.  
Obtain a substance abuse evaluation and successfully complete any recommended treatment.  
Comply with all standard drug and alcohol conditions imposed by probation agency.  
Do not use, consume, or possess alcohol or illegal drugs; nor associate with any persons using, possessing or consuming alcohol or illegal drugs.  
Do not frequent any place where drugs are used, sold or otherwise distributed illegally.  
Submit to drug testing.  
Submit to breath and/or urine testing for drugs or alcohol upon the request of any law enforcement officer.  
No spice, ivory wave or items of the nature.  
Submit to random UA's and/or ETG testing.  
Refrain from the use of alcoholic beverages.  
Not to possess alcohol nor frequent places where alcohol is the chief item of sale.



Obtain and/or maintain full-time verifiable employment and/or schooling.

Pay monthly supervision fee as determined by probation agency.

Pay recoupment fee (attorney fees) as ordered.

Defendant is to complete the substance abuse evaluation within 30 days after being released from custody and comply with any recommended treatment.

Defendant to report to Salt Lake County Probation services within 24 hours of being released from custody.

Defendant to pay recoupment fee within 90 days of being released from custody.

CUSTODY

The defendant is present in the custody of the Salt Lake County jail.

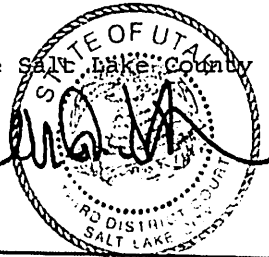
Date: \_\_\_\_\_

10-16-15

By \_\_\_\_\_

STAMP USED AT DIRECTION OF JUDGE  
ROYAL I HANSEN

District Court Judge



Tab B

## Utah Code § 58-37-8

### § 58-37-8. Prohibited acts--Penalties

(1) Prohibited acts A--Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

- (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;
- (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;
- (iii) possess a controlled or counterfeit substance with intent to distribute; or
- (iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in any violation of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted

for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(e) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(2) Prohibited acts B--Penalties and reporting:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or

(ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and on a third or subsequent conviction is guilty of a third degree felony.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

- (A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and
  - (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and
  - (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.
  - (f) Any person convicted of violating Subsection (2)(a)(ii) or(iii) is:
    - (i) on a first conviction, guilty of a class B misdemeanor;
    - (ii) on a second conviction, guilty of a class A misdemeanor; and
    - (iii) on a third or subsequent conviction, guilty of a third degree felony.
  - (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:
    - (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and
    - (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.
  - (h) A person who violates Subsection (2)(g) by having in the person's body:
    - (i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;
    - (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or
    - (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.
  - (i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.
  - (j) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).
- (3) Prohibited acts C--Penalties:
- (a) It is unlawful for any person knowingly and intentionally:
    - (i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;
    - (ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any

person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b)(i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.

(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.

(c) A violation of Subsection (3)(a)(iv) is a third degree felony.

(4) Prohibited acts D--Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;

(iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within any area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b)(i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first

degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d)(i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6)(a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:

(i) from a separate criminal episode than the current charge; and

(ii) from a conviction that is separate from any other conviction used to enhance the current charge.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8)(a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12)(a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c)(i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.



(13)(a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:

(i) was engaged in medical research; and

(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.

b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.

(16)(a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(ii) reports in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

(b) The offenses referred to in Subsection (16)(a) are:

(i) the possession or use of less than 16 ounces of marijuana;

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,

Imitation Controlled Substances Act.

(c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

(19)(a) If a minor who is under 18 years of age is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

- (i) order the minor to complete a screening as defined in Section 41-6a-501;
- (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

(b) If a minor who is under 18 years of age is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

- (i) order the minor to complete a screening as defined in Section 41-6a-501;
- (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

## Credits

Laws 1971, c. 145, § 8; Laws 1972, c. 22, § 1; Laws 1977, c. 29, § 6; Laws 1979, c. 12, § 5; Laws 1985, c. 146, § 1; Laws 1986, c. 196, § 1; Laws 1987, c. 92, § 100; Laws 1987, c. 190, § 3; Laws 1988, c. 95, § 1; Laws 1989, c. 50, § 2; Laws 1989, c. 56, § 1; Laws 1989, c. 178, § 1; Laws 1989, c. 187, § 2; Laws 1989, c. 201, § 1; Laws 1990, c. 161, § 1; Laws 1990, c. 163, §§ 2, 3; Laws 1991, c. 80, § 1; Laws 1991, c. 198, § 4; Laws 1991, c. 268, § 7; Laws 1995, c. 284, § 1, eff. May 1, 1995; Laws 1996, c. 1, § 8, eff. Jan. 31, 1996; Laws 1997, c. 64, § 6, eff. May 5, 1997; Laws 1998, c. 139, § 1, eff. May 4, 1998; Laws 1999, c. 12, § 1, eff. May 3, 1999; Laws 1999, c. 303, § 1, eff. May 3, 1999; Laws 2003, c. 10, § 1, eff. May 5, 2003; Laws 2003, c. 33, § 6, eff. May 5, 2003; Laws 2004, c. 36, § 1, eff. March 15, 2004; Laws 2005, c. 30, § 1, eff. May 2, 2005; Laws 2006, c. 8, § 4, eff. May 1, 2006; Laws 2006, c. 30, § 1, eff. May 1, 2006; Laws 2007, c. 374, § 1, eff. April 30, 2007; Laws 2008, c. 295, § 1, eff. May 5, 2008; Laws 2009, c. 214, § 3, eff. May 12, 2009; Laws 2010, c. 64, § 2, eff. March 22, 2010; Laws 2011, c. 12, § 8, eff. Feb. 25, 2011;

c. 19, § 1, eff. March 20, 2014; Laws 2014, c. 51, § 1, eff. May 13, 2014; Laws 2015, c. 165, § 5, eff. May 12, 2015; Laws 2015, c. 412, § 165, eff. Oct. 1, 2015; Laws 2016, c. 99, § 2, eff. May 10, 2016; Laws 2016, c. 348, § 44, eff. May 10, 2016.

## Utah Code § 77-18-1

§ 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 with a mental illness, 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 under the supervision of an agency of local government or with a private organization; or
- (iii) on court 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.

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

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

(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 results of a risk and needs assessment;
- (iii) the demand for services;
- (iv) the availability of agency resources;
- (v) public safety; and
- (vi) 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) Before 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:

(i) 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;

(ii) 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;

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

(iv) recommendations for treatment of the offender; and

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

(c) The contents of the presentence investigation report 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 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 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 the defendant 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 76-6-107.1;
- (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, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

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

(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 the defendant's 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 is being requested by the department or 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.

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

(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 be modified as is consistent with the graduated sanctions and incentives developed by the Utah Sentencing Commission under Section 63M-7-404, but the length of probation may not be 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 the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's 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 if the defendant 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 the defendant's 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 reinstated for all or a portion of the original term of probation.

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

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

(B) the sentence previously imposed shall be executed.

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

(13) The court may order the defendant to commit himself or herself 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 the superintendent's 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 are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-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 63G-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.

## **Credits**

Laws 1980, c. 15, § 2; Laws 1981, c. 59, § 2; Laws 1982, c. 9, § 1; Laws 1983, c. 47, § 1; Laws 1983, c. 68, § 1; Laws 1983, c. 85, § 2; Laws 1984, c. 20, § 1; Laws 1985, c. 212, § 17; Laws 1985, c. 229, § 1; Laws 1987, c. 114, § 1; Laws 1989, c. 226, § 1; Laws 1990, c. 134, § 2; Laws 1991, c. 66, § 5; Laws 1991, c. 206, § 6; Laws 1992, c. 14, § 3; Laws 1993, c. 82, § 7; Laws 1993, c. 220, § 3; Laws 1994, c. 13, § 24; Laws 1994, c. 198, § 1; Laws 1994, c. 230, § 1; Laws 1995, c. 20, § 146, eff. May 1, 1995; Laws 1995, c. 117, § 2, eff. May 1, 1995; Laws 1995, c. 184, § 1, eff. May 1, 1995; Laws 1995, c. 301, § 3, eff. May 1, 1995; Laws 1995, c. 337, § 11, eff. May 1, 1995; Laws 1995, c. 352, § 6, eff. May 1, 1995; Laws 1996, c. 79, § 103, eff. April 29, 1996; Laws 1997, c. 390, § 2, eff. May 5, 1997; Laws 1998, c. 94, § 10, eff. May 4, 1998; Laws 1999, c. 279, § 8, eff. May 3, 1999; Laws 1999, c. 287, § 7, eff. May 3, 1999; Laws 2001, c. 137, § 1, eff. April 30, 2001; Laws 2002, c. 35, § 7, eff. May 6, 2002; Laws 2002, 5th Sp.Sess., c. 8, § 137, eff. Sept. 8, 2002; Laws 2003, c. 290, § 3, eff. May 5, 2003; Laws 2005, 1st Sp.Sess., c. 14, § 3, eff. July 1, 2005; Laws 2007, c. 218, § 3, eff. July 1, 2007; Laws 2008, c. 3, § 252, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2193, eff. May 5, 2008; Laws 2009, c. 81, § 3, eff. May 12, 2009; Laws 2011, c. 366, § 176, eff. May 10, 2011; Laws 2014, c. 120, § 3, eff. May 13, 2014; Laws 2014, c. 170, § 1, eff. May 13, 2014; Laws 2015, c. 412, § 205, eff. Oct. 1, 2015; Laws 2015, c. 413, § 1, eff. May 12, 2015; Laws 2016, 3rd Sp. Sess., c. 4, § 1, eff. July 17, 2016.

## **Utah R. Crim. P. 22**

### **Rule 22. Sentence, judgment and commitment.**

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than two nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment, or to show any legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence.

(b) On the same grounds that a defendant may be tried in defendant's absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to appear for sentence, a warrant for defendant's arrest may be issued by the court.

(c)(1) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the sentence. Following imposition of sentence, the court shall advise the defendant of defendant's right to appeal and the time within which any appeal shall be filed.

(c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in Utah Code Section 77-36-1, the court shall advise the defendant orally or in writing that, as a result of the conviction, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

(d) When a jail or prison sentence is imposed, the court shall issue its commitment setting forth the sentence. The officer delivering the defendant to the jail or prison shall deliver a true copy of the commitment to the jail or prison and shall make the officer's return on the commitment and file it with the court.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human

Services as provided by Utah Code Ann. § 77-16a-202(1)(b), the court shall so specify in the sentencing order.