

## SB0218S02 compared with SB0218

~~deleted text~~ shows text that was in SB0218 but was deleted in SB0218S02.

inserted text shows text that was not in SB0218 but was inserted into SB0218S02.

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Senator Jen Plumb proposes the following substitute bill:

### PRIVATE PROBATION AND COURT ORDERED SERVICES

#### AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jen Plumb**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions related to persons providing certain services to criminal defendants.

##### Highlighted Provisions:

This bill:

- ▶ prohibits private probation providers and other court ordered service providers from soliciting clients on court property, with some exceptions;
- ▶ requires a criminal justice coordinating council to prepare a list of private probation providers;
- ▶ requires a court that orders probation to make available to a defendant a list of

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private probation providers under certain circumstances;

- ▶ requires assessors to provide a list of licensed providers of required treatment and services, with some exceptions;
- ▶ requires private probation providers to notify the court if the private probation provider is providing supervision services to a defendant;
- ▶ prohibits a private probation provider from simultaneously providing other services except in certain circumstances;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

17-55-201, as enacted by Laws of Utah 2022, Chapter 187

58-50-9, as last amended by Laws of Utah 2022, Chapter 115

77-18-105, as last amended by Laws of Utah 2022, Chapters 115, 359

ENACTS:

**62A-2-129**, Utah Code Annotated 1953

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

Section 1. Section 17-55-201 is amended to read:

**17-55-201. Criminal justice coordinating councils -- Creation -- Strategic plan --**

### **Reporting requirements.**

(1) (a) Beginning January 1, 2023, a county shall:

(i) create a criminal justice coordinating council; or

(ii) jointly with another county or counties, create a criminal justice coordinating council.

(b) The purpose of a council is to coordinate and improve components of the criminal justice system in the county or counties.

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- (2) (a) A council shall include:
- (i) one county commissioner or county council member;
  - (ii) the county sheriff or the sheriff's designee;
  - (iii) one chief of police of a municipality within the county or the chief's designee;
  - (iv) the county attorney or the attorney's designee;
  - (v) one public defender or attorney who provides public defense within the county;
  - (vi) one district court judge;
  - (vii) one justice court judge;
  - (viii) one representative from the Division of Adult Probation and Parole within the Department of Corrections;
  - (ix) one representative from the local mental health authority within the county; and
  - (x) one individual who is:
    - (A) a crime victim; or
    - (B) a victim advocate, as defined in Section 77-38-403.
- (b) A council may include:
- (i) an individual representing:
    - (A) local government;
    - (B) human services programs;
    - (C) higher education;
    - (D) peer support services;
    - (E) workforce services;
    - (F) local housing services;
    - (G) mental health or substance use disorder providers;
    - (H) a health care organization within the county;
    - (I) a local homeless council;
    - (J) family counseling and support groups; or
    - (K) organizations that work with families of incarcerated individuals; or
  - (ii) an individual with lived experiences in the criminal justice system.
- (3) The member described in Subsection (2)(a)(i) shall serve as chair of the council.
- (4) (a) A council shall develop and implement a strategic plan for the county's or counties' criminal justice system that includes:

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- (i) mapping of all systems, resources, assets, and services within the county's or counties' criminal justice system;
- (ii) a plan for data sharing across the county's or counties' criminal justice system;
- (iii) recidivism reduction objectives; and
- (iv) community reintegration goals.

(b) The commission may assist a council in the development of a strategic plan.

(5) As part of the council's duties described in Subsection (4)(a)(i), the council shall prepare a list of private probation providers for a court to provide to defendants as described in Section 77-18-105.

(5) (6) Before November 30 of each year, a council shall provide a written report to the commission regarding:

- (a) the implementation of a strategic plan described in Subsection (4); and
- (b) any data on the impact of the council on the criminal justice system in the county or counties.

Section ~~(1)~~2. Section **58-50-9** is amended to read:

**58-50-9. Standards of conduct for private probation providers -- Contracts --**

### **Reports.**

(1) As used in this section, "licensee" means the same as that term is defined in Section 62A-2-101.

(2) The private probation provider:

- (a) shall maintain impartiality toward all parties;
- (b) shall ensure that all parties understand the nature of the process, the procedure, the particular role of the private probation provider, and the parties' relationship to the private probation provider;

(c) shall maintain confidentiality or, in cases where confidentiality is not protected, the private probation provider shall so advise the parties;

(d) shall:

(i) disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may reasonably raise a question as to the private probation provider's impartiality; and

(ii) if the contract probation supervisor perceives or believes a conflict of interest to

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exist, the contract probation supervisor shall refrain from entering into those probation services;

(e) shall adhere to the standards regarding private probation services adopted by the licensing board;

(f) shall:

(i) comply with orders of court and perform services as directed by judges in individual cases; and

(ii) notify the court that the private probation provider is providing supervision services to a defendant;

(g) shall perform duties established under Section 77-18-105, as ordered by the court;

(h) beginning July 1, 2022, may not provide private probation in a county where an agency of local government provides probation services unless the private probation provider has entered into a contract with the agency of local government; [~~and~~]

(i) shall provide a report each month to each county sheriff where the private probation provider provides private probation identifying:

(i) each individual currently supervised in the county by the private probation provider;

(ii) the crimes each individual supervised committed;

(iii) the level of supervision that is being provided for each individual; and

(iv) any other information related to the provision of private probation that the county sheriff determines is relevant[-]; and

(j) may not solicit defendants as supervision clients on any property that operates as a court of justice as described in Section 78A-1-101.

~~{ (3) If a court orders supervised probation and determines that a public probation provider is unavailable or inappropriate to supervise the defendant, the court shall make available to the defendant a list of private probation providers.~~

{ ~~(4)3~~ If, after conducting a screening of a defendant's risk and needs, a private probation provider determines that a defendant requires a specific assessment, treatment, or other services, the private probation provider shall:

(a) provide the defendant a list of all available licensees that provide the assessment, treatment, or other services; and

(b) permit the defendant to select a licensee described in Subsection ~~(4)3~~(a) with

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which to complete the required assessment, treatment, or other services.

~~(5)4~~ (a) Except as provided in Subsection ~~(5)4~~(b), a private probation provider that is a licensee may not simultaneously provide to a defendant private probation services and other services for which the private probation provider receives compensation, including:

(i) mental health therapy services;

(ii) education services; or

(iii) rehabilitation services.

(b) A private probation provider that is a licensee may simultaneously provide private probation services and other services as described in Subsection (4)(a) if:

(i) no other licensees that provide the services are located within 50 miles of the defendant's residence; and

(ii) the private probation provider obtains the defendant's written informed consent.

(c) The written informed consent described in Subsection (4)(b) shall include:

(i) a description of the services other than private probation services the private probation provider will provide;

(ii) a separate paragraph describing how the defendant can withdraw consent;

(iii) a separate paragraph describing grievance procedures, including how to contact and file a complaint with the division's investigation office; and

(iv) a separate paragraph informing the defendant of the potential conflict of interest.

~~(2)~~ ~~(6)5~~ A contract described in Subsection ~~[(1)(h)]~~ ~~(2)(h)~~ shall include a description of the fees the private probation provider will charge a defendant who is supervised by the private probation provider.

Section ~~(2)3~~. Section **62A-2-129** is enacted to read:

**62A-2-129. Obligations of persons providing assessment and treatment services.**

(1) As used in this section:

(a) "Assessor" means a licensee that provides an assessment as ordered by a court in a criminal case.

(b) "Criminal case" means a case in which a court of justice described in Section 78A-1-101 has ordered an individual to comply with certain terms and conditions of probation related to a criminal offense.

(c) "Licensee" means the same as that term is defined in Section 62A-2-101.

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(2) (a) ~~Am~~ Except as provided in Subsection (4), an assessor that determines that the individual requires specific treatment shall:

(i) provide the individual a list of all available licensees that provide the treatment; and

(ii) permit the individual to select a licensee described in Subsection (2)(a)(i) with which to complete the treatment.

(b) The list described in Subsection (2)(a)(i) may include the assessor, if the assessor is a licensee that provides the required treatment described in Subsection (2)(a).

~~(3) An assessor shall comply with orders of the court and perform services as directed by judges in individual cases.~~

~~(4) An~~ Except as provided in Subsection (4), an assessor or other licensee may not solicit defendants as clients on any property that operates as a court of justice as described in Section 78A-1-101.

(4) An assessor that performs services for a problem-solving court approved by the Judicial Council is not required to comply with this section.

Section 4. Section 77-18-105 is amended to read:

**77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation -- Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench supervision for payments on criminal accounts receivable.**

(1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance:

(a) in accordance with Chapter 2a, Pleas in Abeyance; and

(b) under the terms of the plea in abeyance agreement.

(2) If a defendant is convicted, the court:

(a) shall impose a sentence in accordance with Section 76-3-201; and

(b) subject to Subsection (5), may suspend the execution of the sentence and place the defendant:

(i) on probation under the supervision of the department;

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

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

(3) (a) The legal custody of all probationers under the supervision of the department is

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with the department.

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

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

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

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

(c) If a court orders supervised probation and determines that a public probation provider is unavailable or inappropriate to supervise the defendant, the court shall make available to the defendant the list of private probation providers prepared by a criminal justice coordinating council under Section 17-55-201.

(5) (a) Before ordering supervised probation, the court shall consider the supervision costs to the defendant for each entity that can supervise the defendant.

(b) (i) A court may order an agency of a local government to supervise the probation for an individual convicted of any crime if:

(A) the agency has the capacity to supervise the individual; and

(B) the individual's supervision needs will be met by the agency.

(ii) A court may only order:

(A) the department to supervise the probation for an individual convicted of a class A misdemeanor or any felony; or

(B) a private organization to supervise the probation for an individual convicted of a class A, B, or C misdemeanor or an infraction.

(c) A court may not order a specific private organization to supervise an individual unless there is only one private organization that can provide the specific supervision services required to meet the individual's supervision needs.

(6) (a) If a defendant is placed on probation, the court may order the defendant as a condition of the defendant's probation:

(i) to provide for the support of persons for whose support the defendant is legally



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liable;

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

(iii) be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

(iv) if the defendant is on probation for a felony offense, to serve a period of time as an initial condition of probation that does not 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;

(v) to serve a term of home confinement in accordance with Section 77-18-107;

(vi) to participate in compensatory service programs, including the compensatory service program described in Section 76-6-107.1;

(vii) to pay for the costs of investigation, probation, or treatment services;

(viii) to pay restitution to a victim with interest in accordance with Chapter 38b, Crime

Victims Restitution Act; or

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

(b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a defendant to include a period of time that is served in a county jail immediately before the termination of probation as long as that period of time does not exceed one year.

(ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply to the period of time that the court orders the defendant to serve in a county jail under this Subsection (6)(b)(ii).

(7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on probation after December 31, 2018:

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

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

(iii) shall be terminated in accordance with the supervision length guidelines

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established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

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

(c) Probation of an individual placed on probation on or after October 1, 2015, but before January 1, 2019, 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 in accordance with Section 64-13-21 regarding earned credits.

(d) This Subsection (7) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal accounts receivable for the defendant upon termination of the probation period for the defendant under Subsection (7), the court may require the defendant to continue to make payments towards the criminal accounts receivable in accordance with the payment schedule established by the court under Section 77-32b-103.

(b) A court may not require the defendant to make payments as described in Subsection (8)(a) beyond the expiration of the defendant's sentence.

(c) If the court requires a defendant to continue to pay in accordance with the payment schedule for the criminal accounts receivable under this Subsection (8) and the defendant defaults on the criminal accounts receivable, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable for the defendant as described in Section 77-18-114.

(d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's own motion, the court may require a defendant to show cause as to why the defendant's failure to pay in accordance with the payment schedule should not be treated as contempt of court.

(ii) A court may hold a defendant in contempt for failure to make payments for a criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

(e) This Subsection (8) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(9) When making any decision regarding probation, the court shall consider

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information provided by the Department of Corrections regarding a defendant's individual case action plan, including any progress the defendant has made in satisfying the case action plan's completion requirements.