

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:

43779

Date filed:

6-10-2019

State Admin Rule Filing Id:

Time filed:

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 50	-
Changed to Admin. Code Ref. (R no.):	R	-	-

1. **Agency:** Commerce/Division of Occupational and Professional Licensing

Room no.:

Building: Heber M. Wells Building

Street address 1: 160 East 300 South

Street address 2:

City, state, zip: Salt Lake City UT 84111-2316

Mailing address 1: PO Box 146741

Mailing address 2:

City, state, zip: Salt Lake City UT 84114-6741

Contact person(s):

Name:	Phone:	Fax:	E-mail:
Jana Johansen	801-530-6621	801-530-6511	janajohansen@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section (catchline):**

Private Probation Provider Licensing Act Rule

3. **Type of notice:**

New ___; Amendment XXXX Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

After a comprehensive review of the rule and recommendations made by the Private Probation Provider Licensing Board, the working group, and the public in attendance at the Board meetings, the proposed amendments clarify private probation service standards throughout the entire rule.

5. **This change is a response to comments from the Administrative Rules Review Committee.**

No XXX Yes ___

6. **Summary of the rule or change:**

See attachment for summary of the rule or change

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes

No state government entities will be directly affected by these amendments because the constrained parties consist only of licensed private probation providers and the businesses that employ them. Additionally, there are no state government entities acting as businesses that will be impacted. As a result, this rule is not expected to impact the state beyond a minimal cost to the Division of approximately \$75 to print and distribute the rule and updating current rule posting locations and materials once the proposed amendments are made effective.

B) Local government:

Affected: No Yes

No local government entities will be directly affected by these amendments because the constrained parties consist only of licensed private probation providers and the businesses that employ them. Additionally, there are no local government entities acting as businesses that will be impacted. As a result, this rule is not expected to impact local government.

C) Small businesses ("small business" means a business employing fewer than 50 persons):

Affected: No ; Yes

There are a total of 127 licensed private probation providers in Utah (NAICS 624190), of which all are small businesses. These small businesses may experience an indirect fiscal cost from providing the addition paperwork containing the grievance procedures required for their employees to keep active licensure. Small businesses could incur costs for additional training in the proposed additions to rule. However, this is not likely to happen as the industry partners who participated with this Rule's working group indicated that the proposed changes reflect current industry practices. As a result, this rule is not expected to impact small business.

D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

Affected: No Yes

There are a total of 127 licensed private probation providers in Utah. This proposed rule change may have an indirect fiscal cost associated with providing the addition paperwork containing the grievance procedures. Other Persons could incur costs for additional training in the proposed additions to rule. However, this is not likely to happen as the proposed changes reflect current industry practices. As a result, this rule is not expected to affect other persons.

8. Compliance costs for affected persons:

There are a total of 127 licensed private probation providers in Utah. This proposed rule change may have an indirect fiscal cost associated with providing the addition paperwork containing the grievance procedures. Licensees could incur costs for additional training in the proposed additions to rule. However, this is not likely to happen as the proposed changes reflect current industry practices. As a result, this rule is not expected to affect licensees.

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

See attachment for Department Head comments

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Gian, Executive Director

10 This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV):

Section 58-50-1

Subsection 58-1-106(1)

Subsection 58-1-202(1)(a)

Subsection 58-50-5(1)

R156-50 - Private Probation Provider Licensing Act Rule

Box 6 - Summary of rule or change

Section R156-50-102: These proposed changes add the definition of "Client" and "Evidence based assessment tool" to the Rule bringing it more in line with terminology used throughout the profession and the justice system in general.

Section R156-50-502: These proposed changes add failing to comply with the Utah Sentencing Commission Supervision Length Guideline's to unprofessional conduct. Formatting changes are made throughout for clarity.

Section R156-50-601: The Probation Supervision requirements are modified as follows: (1) The word "assessment" was clarified as an evidence based risk/needs screening. Clarification was made as to after a screening is completed, a risk/needs assessment must be performed if dictated by the screening. The time schedule for interviewing clients was revised to be more in line with current research and industry practices. (2) The probation provider will be required to have a current list of fees for services and make that list available to the client. This proposed change also makes a notice of grievance procedures, with the Division's contact information, a requirement for providers to make available to clients. Timelines for communication with the sentencing court have been extended to be more in line with generally accepted court requirements. In addition, the details of what must be included in that communication have been added. (3) Formatting changes are made throughout for clarity.

Section R156-50-602: The Presentence Investigative Report requirements are modified to include additional resources for information gathering to facilitate the preparation of presentencing reports. Clarification was also made as to who must be interviewed in relation to each client. Formatting changes are made throughout for clarity.

Section R156-50-603: The duties and responsibilities of the private probation provider and staff requirements are modified detailing the duties and responsibilities of each private probation provider and adding clarification as to what must be accomplished with/for each client.

Section R156-50-604: The distribution of fines, restitution, and service fees requirements have been deleted from this section to be in line with current court and industry practices. New disclosure and financial responsibility standards are added which include when and how fees must be disclosed and what is not allowed by a provider when it pertains to financial gain.

Section R156-50-605: Requirements for providing additional services, informed consent, and displaying of licensure are added. These additions prohibit the private probation provider from providing services, where licensure is required, simultaneously with probation clients. They require the probation provider to obtain from the client a signed informed consent for probation services. In addition, it details what that informed consent must include and for how long the consent must be retained. Finally, the requirement for display of licensure at the location where the probation provider is working has been added.

Box 9A - Department Head comments

After a comprehensive review of the rule and recommendations made by the Private Probation Provider Licensing Board, the working group, and the public in attendance at the Board meetings, the proposed amendments clarify private probation service standards throughout the entire rule.

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Small Business: There are a total of 127 licensed private probation providers in Utah (NAICS 624190), of which all are small businesses. These small businesses may experience an indirect fiscal cost from providing the additional paperwork containing the grievance procedures required for their employees to keep active licensure. Small businesses could incur costs for additional training in the proposed additions to rule. However, this is not likely to happen as the industry partners who participated with this Rule's working group indicated that the proposed changes reflect current industry practices. As a result, this rule is not expected to impact small business.

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$60	\$60	\$60
Non-Small Businesses	\$60	\$60	\$60
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$60	\$60	\$60
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$60	\$60	\$60
Non-Small Businesses	\$60	\$60	\$60
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$60	\$60	\$60
Net Fiscal Benefits:	\$0	\$0	\$0

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

There are a total of 127 licensed private probation providers in Utah (NAICS 624190), none of which are non-small businesses.

Include agency head sign-off here. The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.

R156-50. Private Probation Provider Licensing Act Rule.

R156-50-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 50, as used in Title 58, Chapter 50 or this rule:

(1) "Direct supervision of staff" means that the licensee is responsible to direct and control the activities of employees, subordinates, assistants, clerks, contractors, etc., and shall review, approve and sign off on all staff duties and responsibilities. Members of staff shall not engage in those duties and functions performed exclusively by the licensee as defined under R156-50-603.

(2) "Client" means a criminal justice involved person.

(3) "Evidence-based assessment tool" means a validated criminogenic tool that has been psychometrically tested for reliability, validity, sensitivity, and is widely recognized by human service professionals.

(~~2~~)4 "Probation agreement" means the ~~[court order which outlines]~~ agreement outlining the terms and conditions the probationer shall comply with during ~~[the time period of]~~ probation in accordance with the court order.

(~~3~~)5 "Unprofessional conduct" as defined in Title 58, Chapters 1 and 50, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-50-502.

R156-50-502. Unprofessional Conduct.

In accordance with Subsection 58-50-2(5), "[U]nprofessional conduct" includes the following:

(1) failing to comply with the continuing professional education requirement of Section R156-50-304;

(2) failing to comply with the operating standards required for a presentence report;

(3) failing to properly supervise the ~~[offender]~~ client as set forth in the probation agreement;

(4) failing to disclose any potential conflict of interest relating to supervision of a ~~[n offender]~~ client as set forth in Subsection 58-50-2(5), including ~~[, but not limited to]~~ the following circumstances:

(a) simultaneously providing mental health therapy services and private probation services to the same ~~[offender]~~ client;

(b) simultaneously providing education and/or rehabilitation services and private probation services to the same ~~[offender]~~ client; or

(c) while providing private probation services to a ~~[n offender]~~ client, also providing any other service to the ~~[offender]~~ client for which the licensee receives compensation;

(5) accepting any amount of money or gratuity from a ~~[n offender]~~ client other than ~~[that]~~ the fees which is set forth in the probation agreement; ~~[-or]~~

(6) failing to report any violation of the probation

agreement; or

(7) failing to comply with Utah Sentencing Commission Supervision Length Guidelines.

R156-50-601. Private Probation Services Standards - Probation Supervision.

In accordance with Subsection 58-50-9(5), the private probation services standards ~~[concerning]~~ for probation supervision are established and defined as follows:

(1) ~~[The]~~ A private probation provider shall perform the following minimum services for each ~~[offender]~~ client ~~[who is]~~ referred by the court:

(a) ~~conduct an initial client interview~~ conduct an initial client interview ~~[/assessment with each offender]~~ that includes an evidence-based risk/needs screening, and establish a plan of supervision ~~[which shall be known as]~~ (the "case plan");

(b) if indicated necessary by the risk/needs screening, conduct a risk/needs assessment using an evidence-based assessment tool;

~~[(b)c]~~ review the court order ~~[ed agreement]~~ with ~~[each offender]~~ the client and have the ~~[offender]~~ client sign the probation agreement;

~~[(c)d]~~ review with ~~[each offender]~~ the client:

(i) the court ordered ~~[payment contract which shall provide for the collection and distribution of fines and restitution payments, and]~~ fines and other financial obligations; and

(ii) the fees for services to be charged to the client, pursuant to Section R156-50-604 ~~[performed by the licensee];~~

~~[(d)e]~~ after the initial client interview and any risk/needs assessment, conduct an individual, face-to-face ~~[personal]~~ interview with ~~[each offender]~~ the client in accordance with the case plan and any risk/needs assessment as often ~~[not less than once each month and as many additional times]~~ as necessary to determine that the ~~[offender]~~ client is in compliance with the probation agreement ~~[7]~~ and case plan, and not less than:

(i) monthly for a high risk client;

(ii) every two months for a moderate risk client; and

(iii) every three months for a low risk client; and

~~[(e)f]~~ submit written reports as required by the court ~~[probation agreement].~~

(2) ~~[The private probation provider shall maintain and make available for inspection a current list of fees for services to be charged to the offender which shall be reviewed and approved by the court.]~~ A private probation provider shall post a notice of grievance procedures in a conspicuous location at the provider's place(s) of business, or make that notice otherwise available to each client. The notice shall include information on how to contact and file a complaint with the Division's investigation office.

(3) ~~[The]~~ A private probation provider shall ~~[be required to~~

]report to the court within [~~two~~]three working days, or as directed by the court:

(a) any new known criminal law violations committed by the [offender]client; and

(b) [~~or report~~]any failure by the client to comply with the terms and conditions of the probation agreement, including payment of fines or other financial obligations [~~, restitution and fees~~].

(4)(a) [~~The~~]At least 30 business days prior to the date of termination of any supervised probation, a private probation provider shall notify in writing the [~~sentencing~~]court and the office of the prosecuting attorney [~~not less than ten working days prior to the date of termination of any supervised probation. The~~]; and

(b) include with the notification [~~shall include~~]a report outlining the [~~probationer's~~]client's compliance with terms and conditions of the probation agreement including payment of any fines and other financial obligations [~~, restitution and fees~~].

(5)(a) At least 30 business days prior to an early termination date, a private probation provider shall submit a report to the court with supporting rationale for early termination based on the Utah Sentencing Commission's Supervision Length Guidelines; and

(b) include in the report:

(i) Recent Response and Incentive Matrix (RIM) History;

(ii) information on any new criminal conduct;

(iii) Case Action Plan (CAP) or risk reduction progress;

(iv) treatment and programming progress;

(v) restitution payment history;

(vi) employment history, residence, and any other relevant factors;

(vii) a recommendation on the termination of supervision; and

(viii) for a client convicted of a sexual offense, the results from an exit polygraph conducted to determine any inappropriate conduct while on probation.

R156-50-602. Private Probation Services Standards - Preparing Presentence Investigative Reports.

In accordance with Subsection 58-50-9(5), the private probation services standards [~~concerning~~]for preparing presentence investigative reports are established and defined as follows:

(1) [~~The~~]A private probation provider shall gather the following [~~relevant~~]information, if applicable and available:

(a) juvenile arrest and disposition records;

(b) adult arrest and disposition records;

(c) county attorney or city prosecutor file information;

(d) arresting officer's report;

(e) victim impact statement;

(f) driving history record, if the present offense is a driving offense;

(g) blood/breath alcohol content test results;

(h) treatment evaluations six months or newer; [~~and~~
(i) [~~medical reports.~~] custody status and number of jail days served;

(j) findings from the risk/needs screening and any risk/needs assessments; and

(k) current situation, to include:

(i) employment;

(ii) living situation;

(iii) level of education;

(iv) military status;

(v) behavioral and physical health status; and

(vi) personal relationship status.

(2) [The]A private probation provider shall conduct interviews with the client, and with the following when relevant and available:

(a) [~~the defendant,~~

~~(b) the victim, and~~

~~(c) the following when relevant and available:~~

~~(i)] family;~~

(~~ii~~)b) friends;

(c) victim(s);

~~(iii) school;~~

(~~iv~~)d) employers;

(~~v~~)e) military; and

(~~vi~~)f) past and present treatment providers.

(3) [The]A private probation provider shall: [~~recommend restitution, when appropriate,~~

~~(4) The private probation provider shall refer to outside agencies, when appropriate, for additional evaluation;~~

~~(5) The private probation provider shall]~~

(a) develop and provide report recommendations based upon [a]the risk/needs screening and any risk/needs assessment; [~~and~~

(b) refer in the report to client information obtained from outside agencies, when appropriate for additional evaluation; and

(c) recommend restitution, when appropriate.

(6) [The]A private probation provider shall [complete and] submit the report to the court, defense attorney, and prosecutor at least three business days [~~within not less than 24 hours~~] prior to sentencing.

R156-50-603. Private Probation Services Standards - Duties and Responsibilities of the Private Probation Provider and Staff.

In accordance with Subsection 58-50-9(5), the respective duties and responsibilities of the private probation provider and staff are established as follows:

(1) [In accordance with Subsection 58-50-9(5),]the duties and responsibilities of the private probation provider shall include the following:

(a) review, approve and sign all reports required under this chapter or ordered by the court;

- (b) conduct with each client:
 - (i) [the]an initial interview that includes an evidence-based risk/needs screening; and
 - (ii) an evidence-based risk needs [/]assessment, if indicated[-with each offender];
 - (c) establish each client's case plan;
 - (~~c~~)d) conduct [at least one]personal interviews with each [offender each month]client as determined by the risk/needs screening and any risk/needs assessment, to include:
 - (i) review of case plan; and
 - (ii) probation agreement compliance;
 - (~~d~~)e) conduct all interviews required in the preparation of the presentence report;
 - (f) when available, review Bureau of Criminal Investigation, Controlled Substance Database, Utah Court XChange, and other applicable data; and
 - (g) attend all evidentiary hearings as requested by the court.

(2) The duties and responsibilities of the staff under direct supervision of the private probation provider include the following:

- (a) assist in the gathering of information and the preparation of reports;
- (b) perform other monthly interviews;
- (c) contact [~~offenders~~]client by telephone or in person to determine compliance with the case plan;
- (d) collect fines, restitutions and fees for services; and
- (e) other clerical duties as assigned by the licensee.

R156-50-604. Private Probation Services Standards - [~~Distribution of Fines, Restitutions, and Service Fees~~]Disclosures and Financial Responsibility.

In accordance with Subsection 58-50-9(5), [~~private probation providers shall distribute court ordered fines and restitutions and private probation service fees which are collected by the private probation provider at least every month in equal proportions to the court, the victim, the licensee and any other parties ordered by the court until each party entitled to the monies are paid in full as determined by the court order and case plan.]the private probation service standards for disclosures and financial responsibility regarding services, are established and defined as follows:~~

- (1) A private probation provider shall provide to each client in writing, and personally review with the client:
 - (a) the provider's current fee schedules for services, including fees for failure to pay for services; and
 - (b) the prohibition against providers providing services outside of the scope of their license.
- (2) A private probation provider may not:
 - (a) split fees, send or receive any commission or rebate, or

accept any other form of remuneration for referral of a client for professional services;

(b) accept any amount of money or gratuity from a client other than the fee set forth in the probation agreement;

(c) use the provider's relationship with the client for personal gain, or for the profit of any entity, agency, or commercial enterprise of any kind; or

(d) charge a client for services not rendered.

(3) A private probation provider shall:

(a) maintain and make available for inspection by the Division the provider's fee schedules; and

(b) make the provider's fee schedules available for review and approval by a court upon request.

R156-50-605. Private Probation Service Standard - Providing Additional Services, Informed Consent, Display of Licensure.

In accordance with Subsection 58-50-9(5), the private probation service standards for providing additional services, informed consent, and display of licensure are established and defined as follows:

(1) A private probation provider may not simultaneously provide private probation services and other services to the same client, when the probation provider is also the licensed, registered, or certified provider of the other services.

(2)(a) A private probation provider shall obtain a client's prior written consent if private probation services will be provided by the licensee, and the licensee is the owner, officer, director, partner, proprietor, or responsible management personnel of any entity, agency, or commercial enterprise of any kind that will simultaneously provide other services to the client for compensation.

(b) Written consent shall be obtained by means of an informed consent form, signed and dated by the client before receiving private probation services, that includes at least the following:

(i) a description of other services, including any:

(A) behavioral health services;

(B) educational services;

(C) substance use disorder services; or

(D) rehabilitation services;

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

(iii) a separate paragraph describing client grievance procedures, that includes information on how to contact and file a complaint with the Division's investigation office; and

(iv) a separate paragraph containing an acknowledgment of being informed of the potential conflict of interest.

(d) A signed and dated informed consent form shall be retained for three years from the termination of probation with the client.

(3) A private probation provider shall display a current copy

of their Utah Private Probation Provider license in a conspicuous location at the provider's place of business. If a licensee provides private probation services at multiple business locations, the license shall be displayed at each location.

KEY: licensing, probation, private probation provider

Date of Enactment or Last Substantive Amendment: [~~January 18, 2005~~]2019

Notice of Continuation: September 14, 2015

Authorizing, and Implemented or Interpreted Law: 58-50-1; 58-1-106(1); 58-1-202(1)(a); 58-50-5(1); 58-50-9(5)