

1 **JUDICIAL DEBT COLLECTION AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Joseph G. Murray**

5 AN ACT RELATING TO JUDICIAL DEBT COLLECTION; CLARIFYING INTEREST ON
6 JUDGMENTS; TRANSFERRING RESPONSIBILITY FOR COLLECTION OF MOST
7 JUDICIAL DEBTS TO THE OFFICE OF DEBT COLLECTION; CLARIFYING
8 PROCEDURES FOR COLLECTION WHEN A DEFENDANT FAILS TO PAY A JUDICIAL
9 DEBT; CLARIFYING THE PROCESS FOR REGISTERING JUDICIAL DEBTS; AND
10 MAKING TECHNICAL CORRECTIONS.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **15-1-4**, as last amended by Chapter 198, Laws of Utah 1993

14 **17-18-1.5**, as last amended by Chapter 296, Laws of Utah 1997

15 **63A-8-201**, as enacted by Chapter 354, Laws of Utah 1995

16 **63A-8-301**, as enacted by Chapter 354, Laws of Utah 1995

17 **63A-8-302**, as enacted by Chapter 354, Laws of Utah 1995

18 **64-13-6**, as last amended by Chapter 224, Laws of Utah 1996

19 **76-3-201.1**, as last amended by Chapter 107, Laws of Utah 1987

20 **77-18-1**, as last amended by Chapter 94, Laws of Utah 1998

21 ENACTS:

22 **78-7-33**, Utah Code Annotated 1953

23 REPEALS AND REENACTS:

24 **77-18-6**, as last amended by Chapter 262, Laws of Utah 1983

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

26 Section 1. Section **15-1-4** is amended to read:

27 **15-1-4. Interest on judgments.**

28 (1) As used in this section, "federal postjudgment interest rate" means the interest rate
29 established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

30 ~~[(1)]~~ (2) Any judgment rendered on a lawful contract shall conform to the contract and
31 shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

32 ~~[(2)]~~ (3) (a) Other civil and criminal judgments of the district court and justice court shall
33 bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

34 (b) The postjudgment interest rate in effect at the time of the judgment shall remain the
35 interest rate for the duration of the judgment.

36 (c) The interest on criminal judgments shall be calculated on the total amount of the
37 judgment.

38 ~~[(3) "Federal postjudgment interest rate" means the interest rate established for the federal~~
39 ~~court system under 28 U.S.C Sec. 1961, as amended.]~~

40 Section 2. Section 17-18-1.5 is amended to read:

41 **17-18-1.5. Powers -- Duties of county attorney within a prosecution district --**
42 **Prohibitions.**

43 (1) In each county which is within a state prosecution district, the county attorney is a
44 public prosecutor only for the purpose of prosecuting violations of county ordinances or as
45 otherwise provided by law and shall:

46 (a) conduct on behalf of the county all prosecutions for violations of county ordinances
47 committed within the county;

48 (b) have authority to grant transactional immunity for violations of county ordinances
49 committed within the county;

50 (c) institute proceedings before the proper magistrate for the arrest of persons charged with
51 or reasonably suspected of violations of county ordinances when in possession of information that
52 the violation has been committed, and for that purpose shall attend court in person or by deputy
53 in cases of arrests when required; and

54 (d) when it does not conflict with other official duties, attend to all legal business required
55 in the county by the attorney general without charge when the interests of the state are involved.

56 (2) The county attorney:

57 (a) may appear and prosecute in all civil cases in which the state may be interested; and

58 (b) shall render assistance as required by the attorney general in all civil cases that may be

59 appealed to the Supreme Court and prosecute the appeal from any violation of a county ordinance.

60 (3) The county attorney shall:

61 (a) draw all informations for violations of a county ordinance;

62 (b) cause all persons informed against to be speedily arraigned;

63 (c) cause all witnesses for the county to be subpoenaed to appear before the court;

64 (d) upon the order of the court, institute proceedings in the name of the county for recovery

65 upon the forfeiture of any appearance or other bonds running to the county and enforce the

66 collection of them; and

67 (e) perform other duties as required by law.

68 [~~(4) The county attorney shall:~~]

69 [~~(a) receive from the clerk of the district court a record of past-due fines, penalties, costs,~~

70 and forfeitures and take action to collect the past due amounts;]

71 [~~(b) at the close of every term of the district court prepare a statement of all fines,~~

72 penalties, and forfeitures accruing to the state that have been collected or received by any officer

73 required to collect or receive them, stating each case and the amount, and shall transmit the list to

74 the state auditor; and]

75 [~~(c) proceed against any officer and sureties under this subsection for any neglect of duty.]~~

76 [~~(5)~~] (4) The county attorney shall:

77 (a) ascertain by all practicable means what estate or property within the county has

78 escheated or reverted to the state;

79 (b) require the assessor of taxes of the county to furnish annually a list of all real or

80 personal property that may have so escheated or reverted; and

81 (c) file a copy of the list in the office of the state auditor and of the attorney general.

82 [~~(6)~~] (5) The county attorney shall:

83 (a) defend all actions brought against the county;

84 (b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing

85 to the county;

86 (c) give, when required and without fee, an opinion in writing to county, district, precinct,

87 and prosecution district officers on matters relating to the duties of their respective offices;

88 (d) deliver receipts for money or property received in an official capacity and file

89 duplicates with the county treasurer; and

90 (e) on the first Monday of each month file with the auditor an account verified by oath of
91 all money received in an official capacity during the preceding month, and at the same time pay
92 it over to the county treasurer.

93 [(7)] (6) A county attorney may not:

94 (a) in any manner consult, advise, counsel, or defend within this state any person charged
95 with any crime, misdemeanor, or breach of any penal statute or ordinance;

96 (b) be qualified to prosecute or dismiss in the name of the county any case in which the
97 county attorney has previously acted as counsel for the accused on the pending charge; or

98 (c) in any case compromise any cause or enter a nolle prosequi after the filing of an
99 information without the consent of the court.

100 [(8)] (7) The county attorney or his deputy may be sworn as a deputy district attorney for
101 the purpose of public convenience for a period of time and subject to limitations specified by the
102 district attorney.

103 Section 3. Section **63A-8-201** is amended to read:

104 **63A-8-201. Office of State Debt Collection created -- Duties.**

105 (1) The state and each state agency shall comply with the requirements of this chapter and
106 any rules established by the Office of State Debt Collection.

107 (2) There is created the Office of State Debt Collection in the Department of
108 Administrative Services.

109 (3) The office shall:

110 (a) have overall responsibility for collecting and managing state receivables;

111 (b) develop consistent policies governing the collection and management of state
112 receivables;

113 (c) oversee and monitor state receivables to ensure that state agencies are:

114 (i) implementing all appropriate collection methods;

115 (ii) following established receivables guidelines; and

116 (iii) accounting for and reporting receivables in the appropriate manner;

117 (d) develop policies, procedures, and guidelines for accounting, reporting, and collecting
118 monies owed to the state;

119 (e) provide information, training, and technical assistance to all state agencies on various
120 collection-related topics;

- 121 (f) write an inclusive receivables management and collection manual for use by all state
122 agencies;
- 123 (g) prepare quarterly and annual reports of the state's receivables;
- 124 (h) create or coordinate a state accounts receivable database;
- 125 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective
126 accounts receivable program;
- 127 (j) identify those state agencies that are not making satisfactory progress toward
128 implementing collection techniques and improving accounts receivable collections;
- 129 (k) coordinate information, systems, and procedures between state agencies to maximize
130 the collection of past-due accounts receivable;
- 131 (l) establish an automated cash receipt process between state agencies;
- 132 (m) establish procedures for writing-off accounts receivable for accounting and collection
133 purposes; [and]
- 134 (n) establish standard time limits after which an agency will delegate responsibility to
135 collect state receivables to the office or its designee[-];
- 136 (o) be the judgment creditor for money owed to the state and its agencies;
- 137 (p) file a satisfaction of judgment in the district court by following the procedures and
138 requirements of the Utah Rules of Civil Procedure;
- 139 (q) ensure that judgments for which the office is the judgment creditor are renewed, as
140 necessary; and
- 141 (r) allocate monies collected for judgments registered under Section 77-18-6 in accordance
142 with Sections 63-63a-2, 63A-8-302, and 78-3-14.5.
- 143 (4) The office may:
- 144 (a) recommend to the Legislature new laws to enhance collection of past-due accounts by
145 state agencies;
- 146 (b) collect accounts receivables for higher education entities, if the higher education entity
147 agrees;
- 148 (c) prepare a request for proposal for consulting services to:
- 149 (i) analyze the state's receivable management and collection efforts; and
- 150 (ii) identify improvements needed to further enhance the state's effectiveness in collecting
151 its receivables;

- 152 (d) contract with private agencies to collect past-due accounts;
- 153 (e) perform other appropriate and cost-effective coordinating work directly related to
- 154 collection of state receivables;
- 155 (f) obtain access to records of any state agency that are necessary to the duties of the office
- 156 by following the procedures and requirements of Section 63-2-206;
- 157 (g) by following the procedures and requirements of Section 63-38-3.2 establish:
- 158 (i) a fee to cover the administrative costs of collection;
- 159 (ii) a late penalty fee that may not be more than 10% of the account receivable;
- 160 (iii) an interest charge that is:
- 161 (A) the postjudgment interest rate established by Section 15-1-4 in judgments established
- 162 by the courts; or
- 163 (B) not more than 2% above the prime rate for accounts receivable for which no court
- 164 judgment has been entered;
- 165 (iv) fees to collect accounts receivable for higher education; and
- 166 (h) make rules that allow accounts receivable to be collected over a reasonable period of
- 167 time and under certain conditions with credit cards.
- 168 (5) (a) The office [~~may institute collection efforts on criminal fines, restitution, and other~~
- 169 ~~court-ordered debts.] shall collect accounts receivable ordered by the district court as a result of~~
- 170 prosecution for a criminal offense that have been transferred to the office under Subsection
- 171 76-3-201.1(4) or (7).
- 172 (b) The office may not assess the interest charge established by the office under Subsection
- 173 (4) on an account receivable subject to the postjudgment interest rate established by Section
- 174 15-1-4.
- 175 (6) The office shall require state agencies to:
- 176 (a) transfer collection responsibilities to the office or its designee according to time limits
- 177 established by the office;
- 178 (b) make annual progress towards implementing collection techniques and improved
- 179 accounts receivable collections;
- 180 (c) use the state's accounts receivable system or, with the consent of the board, develop
- 181 systems that are adequate to properly account for and report their receivables;
- 182 (d) develop and implement internal policies and procedures that comply with the

183 collections policies and guidelines established by the office;

184 (e) provide internal accounts receivable training to staff involved in their management and
185 collection of receivables as a supplement to statewide training;

186 (f) bill for and make initial collection efforts of its receivables up to the time the accounts
187 must be transferred; and

188 (g) submit quarterly receivable reports to the office that identify the age, collection status,
189 and funding source of each receivable.

190 (i) The office shall use the information provided by the agencies and any additional
191 information from the office's records to compile a one-page summary report of each agency.

192 (ii) The summary shall include:

193 (A) the type of revenue that is owed to the agency;

194 (B) any attempted collection activity; and

195 (C) any costs incurred in the collection process.

196 (iii) The office shall annually provide copies of each agency's summary to the governor
197 and to the Legislature.

198 Section 4. Section **63A-8-301** is amended to read:

199 **63A-8-301. State Debt Collection Fund.**

200 (1) There is created an internal service fund entitled the "State Debt Collection Fund."

201 (2) The fund shall be governed by the provisions for internal service funds in Section
202 63-38-3.5.

203 (3) The fund consists of:

204 (a) all amounts appropriated to the fund under this chapter; [and]

205 (b) fees [~~collected~~] and interest established by the office under [~~authority of this chapter~~]

206 Section 63A-8-201; and

207 (c) all postjudgment interest collected by the office or the state except postjudgment
208 interest on restitution.

209 (4) Monies in this fund shall be used to:

210 (a) [~~provide grants~~] make allocations to other state agencies for specific collection
211 enhancement projects; and

212 (b) offset systems, administrative, legal, and other collection costs of the office or the state
213 agency.

214 (5) (a) The fund may collect interest.

215 (b) All interest earned from the fund shall be deposited in the General Fund.

216 (6) The office shall ensure that monies remaining in the fund at the end of the fiscal year
217 that are not committed to allocations and offsets are deposited into the General Fund.

218 Section 5. Section **63A-8-302** is amended to read:

219 **63A-8-302. Allocation of funds.**

220 (1) Except as provided in Subsection (2), the [~~balance of~~] monies collected by the office
221 less the office's fees shall be allocated on a prorated basis to the various revenue types that
222 generated the accounts receivable.

223 (2) Notwithstanding the requirements of Subsection (1)[~~;~~]:

224 (a) federal cost allocation requirements for specific accounts receivable related to programs
225 that are supported by federal funds take precedence over other cost allocation methods provided
226 in this section; and

227 (b) the office shall use interest and fees collected on past due accounts receivable as
228 provided in Section 63A-8-301.

229 Section 6. Section **64-13-6** is amended to read:

230 **64-13-6. Department duties.**

231 (1) The department shall:

232 (a) protect the public through institutional care and confinement, and supervision in the
233 community of offenders where appropriate;

234 (b) implement court-ordered punishment of offenders;

235 (c) provide program opportunities for offenders;

236 (d) provide treatment for sex offenders who are found to be treatable based upon criteria
237 developed by the department;

238 (e) provide the results of ongoing assessment of sex offenders and objective diagnostic
239 testing to sentencing and release authorities;

240 (f) manage programs that take into account the needs and interests of victims, where
241 reasonable;

242 (g) supervise probationers and parolees as directed by statute and implemented by the
243 courts and the Board of Pardons and Parole;

244 (h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated

245 in a state correctional facility; and

246 (i) cooperate and exchange information with other state, local, and federal law enforcement
247 agencies to achieve greater success in prevention and detection of crime and apprehension of
248 criminals.

249 (2) (a) By following the procedures in Subsection (2)(b), the department may investigate
250 the following occurrences at state correctional facilities:

251 (i) criminal conduct of departmental employees;

252 (ii) felony crimes resulting in serious bodily injury;

253 (iii) death of any person; or

254 (iv) aggravated kidnaping.

255 (b) Prior to investigating any occurrence specified in Subsection (2)(a), the department
256 shall:

257 (i) notify the sheriff or other appropriate law enforcement agency promptly after
258 ascertaining facts sufficient to believe an occurrence specified in Subsection (2)(a) has occurred;
259 and

260 (ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct
261 an investigation involving an occurrence specified in Subsection (2)(a).

262 (3) Upon request, the department shall provide copies of investigative reports of criminal
263 conduct to the sheriff or other appropriate law enforcement agencies.

264 (4) In accordance with Section 63-55-264, the department shall provide data to the
265 Commission on Criminal and Juvenile Justice to show the criteria for determining sex offender
266 treatability, the implementation and effectiveness of sex offender treatment, and the results of
267 ongoing assessment and objective diagnostic testing. The Commission on Criminal and Juvenile
268 Justice will then report these data to the Judiciary Interim Committee and to the appropriate
269 appropriations subcommittee annually.

270 (5) The Department of Corrections shall collect accounts receivable ordered by the district
271 court as a result of prosecution for a criminal offense according to the requirements and during the
272 time periods established in Subsection 77-18-1(9).

273 Section 7. Section **76-3-201.1** is amended to read:

274 **76-3-201.1. Nonpayment of fine or restitution as contempt -- Imprisonment -- Relief**
275 **where default not contempt -- Collection of default.**

276 (1) As used in this section:

277 (a) "Criminal judgment accounts receivable" means any amount due the state arising from
278 a criminal judgment for which payment has not been received by the state agency that is servicing
279 the debt.

280 (b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures,
281 surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, and damages.

282 (2) (a) A criminal judgment account receivable ordered by the court as a result of
283 prosecution for a criminal offense may be collected by any means authorized by law for the
284 collection of a civil judgment.

285 (b) (i) The court may permit a defendant to pay a criminal judgment account receivable
286 in installments.

287 (ii) In the district court, if the criminal judgment account receivable is paid in installments,
288 the total amount due shall include all fines, surcharges, postjudgment interest, and fees.

289 (c) Upon default in the payment of a criminal judgment account receivable or upon default
290 in the payment of any installment of that receivable, the criminal judgment account receivable may
291 be collected as provided in this section or Subsection 77-18-1(9) or (12), and by any means
292 authorized by law for the collection of a civil judgment.

293 ~~[(1)]~~ (3) When a defendant [sentenced to pay a fine or to make restitution] defaults in the
294 payment of a criminal judgment account receivable or any installment of that receivable, the court,
295 on motion of the prosecution, victim, or upon its own motion may [require him to]:

296 (a) order the defendant to appear and show cause why [his] the default should not be
297 treated as contempt of court[, and may]; or

298 (b) issue a [show cause citation or a] warrant of arrest [for his appearance].

299 ~~[(2)]~~ (4) (a) Unless the defendant shows that [his] the default was not attributable to an
300 intentional refusal to obey the order of the court or to a failure [on his part] to make a good faith
301 effort to make the payment, the court may find that [his] the default constitutes contempt [and].

302 (b) Upon a finding of contempt, the court may order [him] the defendant committed until
303 the [fine or the restitution] criminal judgment account receivable, or a specified part of it, is paid.

304 (5) If it appears to the satisfaction of the court that the default is not contempt, the court
305 may enter an order for any of the following or any combination of the following:

306 (a) require the defendant to pay the criminal judgment account receivable or a specified

307 part of it by a date certain;

308 (b) restructure the payment schedule;

309 (c) restructure the installment amount;

310 (d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;

311 (e) start the period of probation anew;

312 (f) except as limited by Subsection (6), convert the criminal judgment account receivable

313 or any part of it to community service;

314 (g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal

315 judgment account receivable; or

316 (h) in the district court, record the unpaid balance of the criminal judgment account

317 receivable as a civil judgment and transfer the responsibility for collecting the judgment to the

318 Office of State Debt Collection.

319 (6) In issuing an order under this section, the court may not modify the amount of the

320 judgment of complete restitution.

321 (7) Whether or not a default constitutes contempt, the court may add to the amount owed

322 the fees established under Subsection 63A-8-201(4) and postjudgment interest.

323 (8) (a) If a criminal judgment account receivable is past due in a felony case, the judge

324 shall determine whether or not to record the unpaid balance of the account receivable as a civil

325 judgment and transfer the responsibility for collecting the judgment to the Office of State Debt

326 Collection.

327 (b) If a criminal judgment account receivable in a nonfelony case is past due, the district

328 court may, without a motion or hearing, record the unpaid balance of the criminal judgment

329 account receivable as a civil judgment and transfer the responsibility for collecting the account

330 receivable to the Office of State Debt Collection.

331 (c) If a criminal judgment account receivable in a nonfelony case is more than 90 days past

332 due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal

333 judgment account receivable as a civil judgment and transfer the responsibility for collecting the

334 criminal judgment account receivable to the Office of State Debt Collection.

335 [(3)] (9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order

336 of restitution is imposed on a corporation or unincorporated association, the person authorized to

337 make disbursement from the assets of the corporation or association shall pay the [fine or make

338 the restitution] obligation from those assets. [His failure]

339 (b) Failure to [do so] pay the obligation may be held to be contempt [unless he makes the
340 showing required in] under Subsection (2).

341 [~~(4) The term of imprisonment for contempt for nonpayment of fines or failure to make
342 restitution shall be set forth in the commitment order.~~]

343 [~~(5) If it appears to the satisfaction of the court that the default in the payment of a fine or
344 restitution is not contempt, the court may enter an order allowing the defendant additional time for
345 payment, reducing the amount of the payment or of each installment, or revoking the fine or order
346 of restitution or the unpaid portion in whole or in part.~~]

347 [~~(6) (a) A default in the payment of a fine or costs or failure to make restitution or any
348 installment may be collected by any means authorized by law for the enforcement of a judgment.~~]

349 [~~(b)~~] (10) The prosecuting attorney may collect restitution in behalf of a victim.

350 [~~(c) The levy of execution for the collection of a fine or restitution does not discharge a
351 defendant committed to imprisonment for contempt until the amount of the fine or restitution has
352 actually been collected.~~]

353 Section 8. Section **77-18-1** is amended to read:

354 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**
355 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**
356 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
357 **monitoring.**

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

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

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

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

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

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

369 the department.

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

372 (3) (a) The department shall establish supervision and presentence investigation standards
373 for all individuals referred to the department. These standards shall be based on:

374 (i) the type of offense;

375 (ii) the demand for services;

376 (iii) the availability of agency resources;

377 (iv) the public safety; and

378 (v) other criteria established by the department to determine what level of services shall
379 be provided.

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

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

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

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

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

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

398 (b) The presentence investigation report shall include a victim impact statement describing
399 the effect of the crime on the victim and the victim's family. The victim impact statement shall:

- 400 (i) identify the victim of the offense;
- 401 (ii) include a specific statement of the recommended amount of complete restitution as
402 defined in Subsection 76-3-201(4), accompanied by a recommendation from the department
403 regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the
404 defendant;
- 405 (iii) identify any physical injury suffered by the victim as a result of the offense along with
406 its seriousness and permanence;
- 407 (iv) describe any change in the victim's personal welfare or familial relationships as a
408 result of the offense;
- 409 (v) identify any request for psychological services initiated by the victim or the victim's
410 family as a result of the offense; and
- 411 (vi) contain any other information related to the impact of the offense upon the victim or
412 the victim's family that is relevant to the trial court's sentencing determination.
- 413 (c) The presentence investigation report shall include a specific statement of pecuniary
414 damages, accompanied by a recommendation from the department regarding the payment of
415 restitution with interest by the defendant in accordance with Subsection 76-3-201(4).
- 416 (d) The contents of the presentence investigation report, including any diagnostic
417 evaluation report ordered by the court under Section 76-3-404, are protected and are not available
418 except by court order for purposes of sentencing as provided by rule of the Judicial Council or for
419 use by the department.
- 420 (6) (a) The department shall provide the presentence investigation report to the defendant's
421 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,
422 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation
423 report, which have not been resolved by the parties and the department prior to sentencing, shall
424 be brought to the attention of the sentencing judge, and the judge may grant an additional ten
425 working days to resolve the alleged inaccuracies of the report with the department. If after ten
426 working days the inaccuracies cannot be resolved, the court shall make a determination of
427 relevance and accuracy on the record.
- 428 (b) If a party fails to challenge the accuracy of the presentence investigation report at the
429 time of sentencing, that matter shall be considered to be waived.
- 430 (7) At the time of sentence, the court shall receive any testimony, evidence, or information

431 the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.
432 This testimony, evidence, or information shall be presented in open court on record and in the
433 presence of the defendant.

434 (8) While on probation, and as a condition of probation, the defendant:

435 (a) may be required to perform any or all of the following:

436 (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

437 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

438 (iii) provide for the support of others for whose support he is legally liable;

439 (iv) participate in available treatment programs;

440 (v) serve a period of time in the county jail not to exceed one year;

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

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

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

446 (ix) make restitution or reparation to the victim or victims with interest in accordance with
447 Subsection 76-3-201(4); and

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

449 (b) if convicted on or after May 5, 1997, shall be required to:

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

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

456 (A) a diagnosed learning disability; or

457 (B) other justified cause.

458 (9) The department~~[, upon order of the court,]~~ shall collect and disburse ~~[fines, restitution]~~
459 the account receivable as defined by Section 76-3-201.1, with interest ~~[in accordance with~~
460 ~~Subsection 76-3-201(4),]~~ and any other costs assessed under Section 64-13-21 during:

461 (a) the parole period and any extension of that period in accordance with Subsection

462 77-27-6(4); and

463 (b) the probation period in cases for which the court orders supervised probation and any
464 extension of that period by the department in accordance with Subsection 77-18-1(10).

465 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon
466 completion without violation of 36 months probation in felony or class A misdemeanor cases, or
467 12 months in cases of class B or C misdemeanors or infractions.

468 (ii) (A) If ~~[the defendant]~~, upon expiration or termination of the probation period~~[, owes~~
469 ~~outstanding fines, restitution, or other assessed costs,]~~ under Subsection (10)(a)(i), there remains
470 an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may
471 retain jurisdiction of the case and continue the defendant on bench probation ~~[or place the~~
472 ~~defendant on bench probation]~~ for the limited purpose of enforcing the payment of ~~[fines,~~
473 ~~restitution, including interest, if any, in accordance with Subsection 76-3-201(4), and other~~
474 ~~amounts outstanding]~~ the account receivable.

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

478 (iii) Upon motion of the Office of State Debt Collection, prosecutor ~~[or]~~, victim, or upon
479 its own motion, the court may require the defendant to show cause why his failure to pay should
480 not be treated as contempt of court ~~[or why the suspended jail or prison term should not be~~
481 ~~imposed]~~.

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

485 (ii) The notification shall include a probation progress report and complete report of details
486 on outstanding ~~[fines, restitution, and other amounts outstanding]~~ accounts receivable.

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

491 (ii) Any time served in confinement awaiting a hearing or decision concerning revocation
492 of probation does not constitute service of time toward the total probation term unless the

493 probationer is exonerated at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

524 (ii) Upon a finding that the defendant violated the conditions of probation, the court may
525 order the probation revoked, modified, continued, or that the entire probation term commence
526 anew.

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

529 (13) Restitution imposed under this chapter and interest accruing in accordance with
530 Subsection 76-3-201(4) is considered a debt for willful and malicious injury for purposes of
531 exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.

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

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

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

538 (c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment
539 over the defendants described in this Subsection (14).

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

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

547 (b) requested by a law enforcement agency or other agency approved by the department
548 for purposes of supervision, confinement, and treatment of the offender;

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

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

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

555 of the crime including statements by the defendant, or to the impact of the crime on the victim or
556 the victim's household.

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

559 (b) The department shall establish procedures and standards for home confinement,
560 including electronic monitoring, for all individuals referred to the department in accordance with
561 Subsection (17).

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

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

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

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

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

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

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

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

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

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

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

583 Section 9. Section **77-18-6** is repealed and reenacted to read:

584 **77-18-6. Judgment to pay fine or restitution constitutes a lien.**

585 **(1) (a) The clerk of court shall:**

586 (i) transfer the responsibility to collect past due accounts receivable to the Office of State
587 Debt Collection when the accounts receivable are 90 days or more past due; and

588 (ii) before transferring the responsibility to collect the past due account receivable to the
589 Office of State Debt Collection, record each judgment of conviction of a crime that orders the
590 payment of a fine, forfeiture, surcharge, cost permitted by statute, or fee in the registry of civil
591 judgments, listing the Office of State Debt Collection as the judgment creditor.

592 (b) (i) The clerk of court shall record each judgment of conviction that orders the payment
593 of restitution to a victim under Section 76-3-201 in the registry of civil judgments, listing the
594 victim, or the estate of the victim, as the judgment creditor.

595 (ii) The Department of Corrections shall collect the judgment on behalf of the victim as
596 provided in Subsection 77-18-1(9).

597 (iii) The court shall collect the judgment on behalf of the victim as provided in Subsection
598 78-7-33(2).

599 (iv) The victim may collect the judgment.

600 (v) The victim is responsible for timely renewal of the judgment under Section 78-22-1.

601 (2) When a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry
602 of civil judgments, the judgment:

603 (a) constitutes a lien;

604 (b) has the same effect and is subject to the same rules as a judgment for money in a civil
605 action; and

606 (c) may be collected by any means authorized by law for the collection of a civil judgment.
607 Section 10. Section **78-7-33** is enacted to read:

608 **78-7-33. Collection of accounts receivable.**

609 (1) As used in this section:

610 (a) "Accounts receivable" means any amount due the state from an entity for which
611 payment has not been received by the state agency that is servicing the debt.

612 (b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines,
613 forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third party claims,
614 sale of goods, sale of services, claims, and damages.

615 (2) If the Department of Corrections does not have responsibility under Section 77-18-1
616 for collecting an account receivable and if the Office of State Debt Collection does not have

617 responsibility under Subsection 63A-8-201(5), the district court shall collect the account
618 receivable.

619 (3) (a) In the juvenile court, monies collected by the court from past due accounts
620 receivable may be used to offset system, administrative, legal, and other costs of collection.

621 (b) The juvenile court shall allocate monies collected above the cost of collection on a pro
622 rata basis to the various revenue types that generated the accounts receivable.

623 (4) The interest charge established by the Office of State Debt Collection under Subsection
624 63A-8-201(4) may not be assessed on an account receivable subject to the postjudgment interest
625 rate established by Section 15-1-4.

Legislative Review Note
as of 11-23-98 4:06 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Government Operations Interim Committee recommended this bill.