

**VICTIM RESTITUTION AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad R. Wilson**

Senate Sponsor: Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the payment of restitution by a defendant.

**Highlighted Provisions:**

This bill:

- ▶ requires the court to maintain jurisdiction of a case and continue probation for a defendant who has unpaid accounts receivable related to fines, fees, or restitution;
- ▶ requires the Office of State Debt Collection to notify the court clerk when a civil judgment ordered for the payment of accounts receivable has been satisfied; and
- ▶ provides that, before refunding bail that is posted in cash, by credit card, or by debit card, the court shall, after applying the amount posted toward any fine ordered by the court, apply the remaining amount toward restitution.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-18-1**, as last amended by Laws of Utah 2011, Chapter 366

**77-18-6**, as last amended by Laws of Utah 2008, Chapter 3

**77-20-4**, as last amended by Laws of Utah 2013, Chapter 74



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

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

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

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

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

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

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

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

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

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

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

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

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

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

(b) Proposed supervision and investigation standards shall be submitted to the Judicial

59 Council and the Board of Pardons and Parole on an annual basis for review and comment prior  
60 to adoption by the department.

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

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

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

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

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

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

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

84 (d) The presentence investigation report shall include:

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

87 (ii) recommendations for treatment of the offender.

88 (e) The contents of the presentence investigation report are protected and are not  
89 available except by court order for purposes of sentencing as provided by rule of the Judicial

90 Council or for use by the department.

91 (6) (a) The department shall provide the presentence investigation report to the  
92 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the  
93 court for review, three working days prior to sentencing. Any alleged inaccuracies in the  
94 presentence investigation report, which have not been resolved by the parties and the  
95 department prior to sentencing, shall be brought to the attention of the sentencing judge, and  
96 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the  
97 report with the department. If after 10 working days the inaccuracies cannot be resolved, the  
98 court shall make a determination of relevance and accuracy on the record.

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

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

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

107 (a) perform any or all of the following:

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

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

111 (iii) provide for the support of others for whose support the defendant is legally liable;

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

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

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

119 (vii) participate in compensatory service restitution programs, including the  
120 compensatory service program provided in Section [76-6-107.1](#);

- 121 (viii) pay for the costs of investigation, probation, and treatment services;
- 122 (ix) make restitution or reparation to the victim or victims with interest in accordance
- 123 with Title 77, Chapter 38a, Crime Victims Restitution Act; and
- 124 (x) comply with other terms and conditions the court considers appropriate; and
- 125 (b) if convicted on or after May 5, 1997:
  - 126 (i) complete high school classwork and obtain a high school graduation diploma, a
  - 127 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
  - 128 not received the diploma, GED certificate, or vocational certificate prior to being placed on
  - 129 probation; or
  - 130 (ii) provide documentation of the inability to obtain one of the items listed in
  - 131 Subsection (8)(b)(i) because of:
    - 132 (A) a diagnosed learning disability; or
    - 133 (B) other justified cause.
  - 134 (9) The department shall collect and disburse the account receivable as defined by
  - 135 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
    - 136 (a) the parole period and any extension of that period in accordance with Subsection
    - 137 77-27-6(4); and
    - 138 (b) the probation period in cases for which the court orders supervised probation and
    - 139 any extension of that period by the department in accordance with Subsection (10).
  - 140 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
  - 141 upon completion without violation of 36 months probation in felony or class A misdemeanor
  - 142 cases, or 12 months in cases of class B or C misdemeanors or infractions.
  - 143 (ii) (A) If, upon expiration or termination of the probation period under Subsection
  - 144 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
  - 145 76-3-201.1, the court ~~may~~ shall retain jurisdiction of the case and continue the defendant on
  - 146 bench probation for the limited purpose of enforcing the payment of the account receivable.
  - 147 The defendant shall pay to the court the costs associated with continued probation under this
  - 148 Subsection (10).
  - 149 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
  - 150 judgments any unpaid balance not already recorded and immediately transfer responsibility to
  - 151 collect the account to the Office of State Debt Collection.

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

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

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

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

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

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

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

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

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

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

182 (c) (i) The order to show cause shall specify a time and place for the hearing and shall

183 be served upon the defendant at least five days prior to the hearing.

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

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

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

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

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

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

194 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,  
195 and present evidence.

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

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

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

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

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

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

208 (c) persons described in Subsection [62A-15-610\(2\)\(g\)](#) are receiving priority for  
209 treatment over the defendants described in this Subsection (13).

210 (14) Presentence investigation reports are classified protected in accordance with Title  
211 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections  
212 [63G-2-403](#) and [63G-2-404](#), the State Records Committee may not order the disclosure of a  
213 presentence investigation report. Except for disclosure at the time of sentencing pursuant to

214 this section, the department may disclose the presentence investigation only when:

- 215 (a) ordered by the court pursuant to Subsection [63G-2-202\(7\)](#);
- 216 (b) requested by a law enforcement agency or other agency approved by the department  
217 for purposes of supervision, confinement, and treatment of the offender;
- 218 (c) requested by the Board of Pardons and Parole;
- 219 (d) requested by the subject of the presentence investigation report or the subject's  
220 authorized representative; or
- 221 (e) requested by the victim of the crime discussed in the presentence investigation  
222 report or the victim's authorized representative, provided that the disclosure to the victim shall  
223 include only information relating to statements or materials provided by the victim, to the  
224 circumstances of the crime including statements by the defendant, or to the impact of the crime  
225 on the victim or the victim's household.

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

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

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

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

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

- 237 (i) the defendant to wear an electronic monitoring device at all times; and
- 238 (ii) that a device be placed in the home of the defendant, so that the defendant's  
239 compliance with the court's order may be monitored.

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

- 242 (i) place the defendant on probation under the supervision of the Department of  
243 Corrections;
- 244 (ii) order the department to place an electronic monitoring device on the defendant and

245 install electronic monitoring equipment in the residence of the defendant; and

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

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

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

252 Section 2. Section 77-18-6 is amended to read:

253 **77-18-6. Judgment to pay fine or restitution constitutes a lien.**

254 (1) (a) In cases not supervised by the Department of Corrections, the clerk of the  
255 district court shall:

256 (i) transfer the responsibility to collect past due accounts receivable to the Office of  
257 State Debt Collection when the accounts receivable are 90 days or more past due; [~~and~~]

258 (ii) before transferring the responsibility to collect the past due account receivable to  
259 the Office of State Debt Collection, record each judgment of conviction of a crime that orders  
260 the payment of a fine, forfeiture, surcharge, cost permitted by statute, or fee in the registry of  
261 civil judgments, listing the Office of State Debt Collection as the judgment creditor[-]; and

262 (iii) receive notification from the Office of State Debt Collection when a civil  
263 judgment ordered for payment of accounts receivable, as defined in Section 76-3-201.1, has  
264 been satisfied.

265 (b) (i) The clerk of court shall record each judgment of conviction that orders the  
266 payment of restitution to a victim in the registry of civil judgments, listing the victim, or the  
267 estate of the victim, as the judgment creditor.

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

270 (iii) The court shall collect the judgment on behalf of the victim as provided in  
271 Subsection 78A-2-214(2).

272 (iv) The victim may collect the judgment.

273 (v) The victim is responsible for timely renewal of the judgment under Section  
274 78B-5-202.

275 (2) When a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry

276 of civil judgments, the judgment:

277 (a) constitutes a lien;

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

280 (c) may be collected by any means authorized by law for the collection of a civil  
281 judgment.

282 Section 3. Section **77-20-4** is amended to read:

283 **77-20-4. Bail to be posted in cash, by credit or debit card, or written undertaking.**

284 (1) Bail may be posted:

285 (a) in cash;

286 (b) by written undertaking with or without sureties at the discretion of the magistrate;

287 or

288 (c) by credit or debit card, at the discretion of the judge or bail commissioner.

289 (2) Bail may not be accepted without receiving in writing at the time the bail is posted  
290 the current mailing address and telephone number of the surety.

291 (3) Bail posted by debit or credit card, less the fee charged by the financial institution,  
292 shall be tendered to the courts.

293 (4) Bail refunded by the court may be refunded by credit to the debit or credit card, or  
294 cash. The amount refunded shall be the full amount received by the court under Subsection  
295 (3), which may be less than the full amount of the bail set by the court.

296 (5) Before refunding bail that is posted in cash, by credit card, or by debit card, the  
297 court shall apply the amount posted toward accounts receivable, as defined in Section  
298 76-3-201.1, that are owed by the defendant in the priority set forth in Section 77-38a-404.

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**Legislative Review Note**

**as of 2-24-14 10:42 AM**

**Office of Legislative Research and General Counsel**