

CRIMINAL ACCOUNTS RECEIVABLE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Marc K. Roberts

LONG TITLE

General Description:

This bill makes changes in the monitoring and collection of criminal judgment accounts receivable.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ specifies when criminal judgment accounts receivable may be assigned to the Office of State Debt Collection;
- ▶ allows the court to modify amounts and payment schedules in order to avoid a default;
- ▶ provides that the court may hold a delinquent or defaulting defendant in contempt;
- ▶ outlines possible consequences for a delinquent or defaulting defendant; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-3-502, as last amended by Laws of Utah 2016, Chapter 129

76-3-201, as last amended by Laws of Utah 2015, Chapter 147

- 29 **77-18-1**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 4
- 30 **77-18-6**, as last amended by Laws of Utah 2014, Chapter 170
- 31 **77-20-4**, as last amended by Laws of Utah 2016, Chapter 234
- 32 **77-38a-102**, as last amended by Laws of Utah 2016, Chapter 223
- 33 **77-38a-301**, as enacted by Laws of Utah 2001, Chapter 137
- 34 **77-38a-302**, as last amended by Laws of Utah 2016, Chapter 223
- 35 **77-38a-404**, as last amended by Laws of Utah 2011, Chapters 131 and 208
- 36 **77-38a-501**, as last amended by Laws of Utah 2003, Chapter 280
- 37 **78B-2-115**, as last amended by Laws of Utah 2015, Chapter 434

38 ENACTS:

- 39 **77-32a-101**, Utah Code Annotated 1953
- 40 **77-32a-102**, Utah Code Annotated 1953
- 41 **77-32a-103**, Utah Code Annotated 1953
- 42 **77-32a-104**, Utah Code Annotated 1953
- 43 **77-32a-105**, Utah Code Annotated 1953
- 44 **77-32a-106**, Utah Code Annotated 1953
- 45 **78B-6-317**, Utah Code Annotated 1953

46 RENUMBERS AND AMENDS:

- 47 **77-32a-107**, (Renumbered from 77-32a-2, as last amended by Laws of Utah 1999,
- 48 Chapter 21)
- 49 **77-32a-108**, (Renumbered from 77-32a-3, as enacted by Laws of Utah 1980, Chapter
- 50 15)
- 51 **77-32a-109**, (Renumbered from 77-32a-4, as enacted by Laws of Utah 1980, Chapter
- 52 15)
- 53 **77-32a-110**, (Renumbered from 77-32a-14, as enacted by Laws of Utah 1980, Chapter
- 54 15)

55 REPEALS:

- 56 **76-3-201.1**, as last amended by Laws of Utah 2015, Chapter 434
- 57 **77-32a-1**, as last amended by Laws of Utah 2002, Chapter 35
- 58 **77-32a-5**, as enacted by Laws of Utah 1980, Chapter 15
- 59 **77-32a-6**, as enacted by Laws of Utah 1980, Chapter 15
- 60 **77-32a-7**, as enacted by Laws of Utah 1980, Chapter 15
- 61 **77-32a-8**, as enacted by Laws of Utah 1980, Chapter 15
- 62 **77-32a-9**, as enacted by Laws of Utah 1980, Chapter 15
- 63 **77-32a-10**, as enacted by Laws of Utah 1980, Chapter 15
- 64 **77-32a-11**, as enacted by Laws of Utah 1980, Chapter 15
- 65 **77-32a-12**, as enacted by Laws of Utah 1980, Chapter 15
- 66 **77-32a-13**, as enacted by Laws of Utah 1980, Chapter 15

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

69 Section 1. Section **63A-3-502** is amended to read:

70 **63A-3-502. Office of State Debt Collection created -- Duties.**

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

73 (2) There is created the Office of State Debt Collection in the Division of Finance.

74 (3) The office shall:

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

76 (b) assist the Division of Finance to develop consistent policies governing the
 77 collection and management of state receivables;

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

79 (i) implementing all appropriate collection methods;

80 (ii) following established receivables guidelines; and

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

82 (d) assist the Division of Finance to develop policies, procedures, and guidelines for

83 accounting, reporting, and collecting money owed to the state;

84 (e) provide information, training, and technical assistance to each state agency on
85 various collection-related topics;

86 (f) write an inclusive receivables management and collection manual for use by each
87 state agency;

88 (g) prepare quarterly and annual reports of the state's receivables;

89 (h) create or coordinate a state accounts receivable database;

90 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an
91 effective accounts receivable program;

92 (j) identify any state agency that is not making satisfactory progress toward
93 implementing collection techniques and improving accounts receivable collections;

94 (k) coordinate information, systems, and procedures between each state agency to
95 maximize the collection of past-due accounts receivable;

96 (l) establish an automated cash receipt process between each state agency;

97 (m) assist the Division of Finance to establish procedures for writing off accounts
98 receivable for accounting and collection purposes;

99 (n) establish standard time limits after which an agency will delegate responsibility to
100 collect state receivables to the office or its designee;

101 (o) be a real party in interest for an account receivable referred to the office by any
102 state agency or for any restitution to victims referred to the office by a court; and

103 (p) allocate money collected for judgments registered under Section 77-18-6 in
104 accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

105 (4) The office may:

106 (a) recommend to the Legislature new laws to enhance collection of past-due accounts
107 by state agencies;

108 (b) collect accounts receivables for higher education entities, if the higher education
109 entity agrees;

- 110 (c) prepare a request for proposal for consulting services to:
- 111 (i) analyze the state's receivable management and collection efforts; and
- 112 (ii) identify improvements needed to further enhance the state's effectiveness in
- 113 collecting its receivables;
- 114 (d) contract with private or state agencies to collect past-due accounts;
- 115 (e) perform other appropriate and cost-effective coordinating work directly related to
- 116 collection of state receivables;
- 117 (f) obtain access to records and databases of any state agency that are necessary to the
- 118 duties of the office by following the procedures and requirements of Section 63G-2-206,
- 119 including the financial disclosure form described in Section 77-38a-204;
- 120 (g) collect interest and fees related to the collection of receivables under this chapter,
- 121 and establish, by following the procedures and requirements of Section 63J-1-504:
- 122 (i) a fee to cover the administrative costs of collection, on accounts administered by the
- 123 office;
- 124 (ii) a late penalty fee that may not be more than 10% of the account receivable on
- 125 accounts administered by the office;
- 126 (iii) an interest charge that is:
- 127 (A) the postjudgment interest rate established by Section 15-1-4 in judgments
- 128 established by the courts; or
- 129 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts
- 130 receivable for which no court judgment has been entered; and
- 131 (iv) fees to collect accounts receivable for higher education;
- 132 (h) collect reasonable attorney fees and reasonable costs of collection that are related to
- 133 the collection of receivables under this chapter;
- 134 (i) make rules that allow accounts receivable to be collected over a reasonable period
- 135 of time and under certain conditions with credit cards;
- 136 (j) file a satisfaction of judgment in the court by following the procedures and

137 requirements of the Utah Rules of Civil Procedure;

138 (k) ensure that judgments for which the office is the judgment creditor are renewed, as
139 necessary;

140 (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f)
141 with private sector vendors under contract with the state to assist state agencies in collecting
142 debts owed to the state agencies without changing the classification of any private, controlled,
143 or protected record into a public record;

144 (m) enter into written agreements with other governmental agencies to obtain
145 information for the purpose of collecting state accounts receivable and restitution for victims;
146 and

147 (n) collect accounts receivable for a political subdivision of the state, if the political
148 subdivision enters into an agreement or contract with the office under Title 11, Chapter 13,
149 Interlocal Cooperation Act, for the office to collect the political subdivision's accounts
150 receivable.

151 (5) The office shall ensure that:

152 (a) a record obtained by the office or a private sector vendor as referred to in
153 Subsection (4)(l):

154 (i) is used only for the limited purpose of collecting accounts receivable; and

155 (ii) is subject to federal, state, and local agency records restrictions; and

156 (b) any person employed by, or formerly employed by, the office or a private sector
157 vendor as referred to in Subsection (4)(l) is subject to:

158 (i) the same duty of confidentiality with respect to the record imposed by law on
159 officers and employees of the state agency from which the record was obtained; and

160 (ii) any civil or criminal penalties imposed by law for violations of lawful access to a
161 private, controlled, or protected record.

162 (6) (a) The office shall collect accounts receivable ordered by a court as a result of
163 prosecution for a criminal offense that have been transferred to the office under [Subsection

164 ~~76-3-201.1(5)(h) or (8)]~~ Section 77-32a-102.

165 (b) The office may not assess the interest charge established by the office under
166 Subsection (4) on an account receivable subject to the postjudgment interest rate established by
167 Section 15-1-4.

168 (7) The office shall require a state agency to:

169 (a) transfer collection responsibilities to the office or its designee according to time
170 limits established by the office;

171 (b) make annual progress towards implementing collection techniques and improved
172 accounts receivable collections;

173 (c) use the state's accounts receivable system or develop systems that are adequate to
174 properly account for and report their receivables;

175 (d) develop and implement internal policies and procedures that comply with the
176 collections policies and guidelines established by the office;

177 (e) provide internal accounts receivable training to staff involved in the management
178 and collection of receivables as a supplement to statewide training;

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

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

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

185 (9) The summary shall include:

186 (a) the type of revenue that is owed to the agency;

187 (b) any attempted collection activity; and

188 (c) any costs incurred in the collection process.

189 (10) The office shall annually provide copies of each agency's summary to the governor
190 and to the Legislature.

191 (11) All interest, fees, and other amounts authorized to be charged by the office under
192 Subsection (4):

193 (a) are penalties that may be charged by the office; and

194 (b) are not compensation for actual pecuniary loss.

195 Section 2. Section **76-3-201** is amended to read:

196 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
197 **penalties.**

198 (1) As used in this section:

199 (a) "Conviction" includes a:

200 (i) judgment of guilt; [~~and~~]

201 (ii) plea of guilty[-]; or

202 (iii) plea of no contest.

203 (b) "Criminal activities" means any misdemeanor or felony offense [~~of~~] for which the
204 defendant is convicted or any other criminal conduct for which the defendant admits
205 responsibility to the sentencing court with or without an admission of committing the criminal
206 conduct.

207 (c) "Pecuniary damages" means all special damages, but not general damages, which a
208 person could recover against the defendant in a civil action arising out of the facts or events
209 constituting the defendant's criminal activities and includes the money equivalent of property
210 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
211 expenses.

212 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
213 victim, and payment for expenses to a governmental entity for extradition or transportation and
214 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

215 (e) (i) "Victim" means any person or entity, including the Utah Office for Victims of
216 Crime, who the court determines has suffered pecuniary damages as a result of the defendant's
217 criminal activities.

- 218 (ii) "Victim" does not include a codefendant or accomplice.
- 219 (2) Within the limits prescribed by this chapter, a court may sentence a person
220 convicted of an offense to any one of the following sentences or combination of them:
- 221 (a) to pay a fine;
- 222 (b) to removal or disqualification from public or private office;
- 223 (c) to probation unless otherwise specifically provided by law;
- 224 (d) to imprisonment;
- 225 (e) on or after April 27, 1992, to life in prison without parole; or
- 226 (f) to death.
- 227 (3) (a) This chapter does not deprive a court of authority conferred by law to:
- 228 (i) forfeit property;
- 229 (ii) dissolve a corporation;
- 230 (iii) suspend or cancel a license;
- 231 (iv) permit removal of a person from office;
- 232 (v) cite for contempt; or
- 233 (vi) impose any other civil penalty.
- 234 (b) A civil penalty may be included in a sentence.
- 235 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary
236 damages, in addition to any other sentence it may impose, the court shall order that the
237 defendant make restitution to the victims, or for conduct for which the defendant has agreed to
238 make restitution as part of a plea agreement.
- 239 (b) In determining whether restitution is appropriate, the court shall follow the criteria
240 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.
- 241 (c) In addition to any other sentence the court may impose, the court, pursuant to the
242 provisions of Sections 63M-7-503 and 77-38a-401, shall enter:
- 243 (i) a civil judgment for complete restitution for the full amount of expenses paid on
244 behalf of the victim by the Utah Office for Victims of Crime; and

245 (ii) an order of restitution for restitution payable to the Utah Office for Victims of
246 Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).

247 (d) In determining whether to order that the restitution required under Subsection (4)(c)
248 be reduced or that the defendant be exempted from the restitution, the court shall consider the
249 criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and provide findings of its decision
250 on the record.

251 (5) (a) In addition to any other sentence the court may impose, and unless otherwise
252 ordered by the court, the defendant shall pay restitution of governmental transportation
253 expenses if the defendant was:

254 (i) transported pursuant to court order from one county to another within the state at
255 governmental expense to resolve pending criminal charges;

256 (ii) charged with a felony or a class A, B, or C misdemeanor; and

257 (iii) convicted of a crime.

258 (b) The court may not order the defendant to pay restitution of governmental
259 transportation expenses if any of the following apply:

260 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
261 warrant is issued for an infraction; or

262 (ii) the defendant was not transported pursuant to a court order.

263 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)
264 shall be calculated according to the following schedule:

265 (A) \$100 for up to 100 miles a defendant is transported;

266 (B) \$200 for 100 up to 200 miles a defendant is transported; and

267 (C) \$350 for 200 miles or more a defendant is transported.

268 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant
269 transported regardless of the number of defendants actually transported in a single trip.

270 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,
271 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the

272 county to which he has been returned, the court may, in addition to any other sentence it may
273 impose, order that the defendant make restitution for costs expended by any governmental
274 entity for the extradition.

275 (6) (a) In addition to any other sentence the court may impose, and unless otherwise
276 ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the
277 county for the cost of incarceration and costs of medical care provided to the defendant while
278 in the county correctional facility before and after sentencing if:

279 (i) the defendant is convicted of criminal activity that results in incarceration in the
280 county correctional facility; and

281 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility
282 through a contract with the Department of Corrections; or

283 (B) the reimbursement does not duplicate the reimbursement provided under Section
284 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or
285 a state parole inmate, as defined in Section 64-13e-102.

286 (b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by
287 the county correctional facility, but may not exceed the daily inmate incarceration costs and
288 medical and transportation costs for the county correctional facility.

289 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred
290 by the county correctional facility in providing reasonable accommodation for an inmate
291 qualifying as an individual with a disability as defined and covered by the federal Americans
292 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental
293 health treatment for the inmate's disability.

294 (c) In determining whether to order that the restitution required under this Subsection
295 (6) be reduced or that the defendant be exempted from the restitution, the court shall consider
296 the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for its
297 order on the record.

298 (d) If on appeal the defendant is found not guilty of the criminal activity under

299 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall
300 reimburse the defendant for restitution the defendant paid for costs of incarceration under
301 Subsection (6)(a).

302 (7) In addition to any other sentence the court may impose, the court shall determine
303 whether costs are appropriate pursuant to Section 77-32a-107.

304 Section 3. Section 77-18-1 is amended to read:

305 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
306 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
307 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
308 **monitoring.**

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

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

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

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

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

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

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

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

325 (iv) Court probation may include an administrative level of services, including

326 notification to the court of scheduled periodic reviews of the probationer's compliance with
327 conditions.

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

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

333 (i) the type of offense;

334 (ii) the results of a risk and needs assessment;

335 (iii) the demand for services;

336 (iv) the availability of agency resources;

337 (v) public safety; and

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

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

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

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

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

350 (4) Notwithstanding other provisions of law, the department is not required to
351 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
352 conduct presentence investigation reports on class C misdemeanors or infractions. However,

353 the department may supervise the probation of class B misdemeanants in accordance with
354 department standards.

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

359 (b) The presentence investigation report shall include:

360 (i) a victim impact statement according to guidelines set in Section 77-38a-203
361 describing the effect of the crime on the victim and the victim's family;

362 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
363 from the department regarding the payment of restitution with interest by the defendant in
364 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

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

367 (iv) recommendations for treatment of the offender; and

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

371 (c) The contents of the presentence investigation report are protected and are not
372 available except by court order for purposes of sentencing as provided by rule of the Judicial
373 Council or for use by the department.

374 (6) (a) The department shall provide the presentence investigation report to the
375 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
376 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
377 presentence investigation report, which have not been resolved by the parties and the
378 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
379 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the

380 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
381 court shall make a determination of relevance and accuracy on the record.

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

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

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

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

391 ~~[(i) pay, in one or several sums, any fine imposed at the time of being placed on~~
392 ~~probation;]~~

393 ~~[(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;]~~

394 ~~[(iii)]~~ (i) provide for the support of others for whose support the defendant is legally
395 liable;

396 ~~[(iv)]~~ (ii) participate in available treatment programs, including any treatment program
397 in which the defendant is currently participating, if the program is acceptable to the court;

398 ~~[(v)]~~ (iii) if on probation for a felony offense, serve a period of time, not to exceed one
399 year, in a county jail designated by the department, after considering any recommendation by
400 the court as to which jail the court finds most appropriate;

401 ~~[(vi)]~~ (iv) serve a term of home confinement, which may include the use of electronic
402 monitoring;

403 ~~[(vii)]~~ (v) participate in compensatory service restitution programs, including the
404 compensatory service program provided in Section 76-6-107.1;

405 ~~[(viii)]~~ (vi) pay for the costs of investigation, probation, and treatment services;

406 ~~[(ix)]~~ (vii) make restitution or reparation to the victim or victims with interest in

407 accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

408 [~~(x)~~] (viii) comply with other terms and conditions the court considers appropriate to
409 ensure public safety or increase a defendant's likelihood of success on probation; and

410 (b) if convicted on or after May 5, 1997:

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

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

417 (A) a diagnosed learning disability; or

418 (B) other justified cause.

419 (9) The department shall collect and disburse the [~~account~~] accounts receivable as
420 defined by Section [~~76-3-201.1~~] 77-32a-101, with interest and any other costs assessed under
421 Section 64-13-21 during:

422 (a) the parole period and any extension of that period in accordance with Subsection
423 77-27-6(4); and

424 (b) the probation period in cases for which the court orders supervised probation and
425 any extension of that period by the department in accordance with Subsection (10).

426 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
427 upon completion without violation of 36 months probation in felony or class A misdemeanor
428 cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant
429 to Section 64-13-21 regarding earned credits.

430 (ii) (A) If, upon expiration or termination of the probation period under Subsection
431 (10)(a)(i), there remains an unpaid balance upon the [~~account~~] accounts receivable as defined
432 in Section [~~76-3-201.1~~] 77-32a-101, the court may retain jurisdiction of the case and continue
433 the defendant on bench probation for the limited purpose of enforcing the payment of the

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

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

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

443 (b) (i) The department shall notify the sentencing court, the Office of State Debt
444 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
445 supervised probation is being requested by the department or will occur by law.

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

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

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

455 (iii) Any time served in confinement awaiting a hearing or decision concerning
456 revocation of probation constitutes service of time toward a term of incarceration imposed as a
457 result of the revocation of probation or a graduated sanction imposed under Section
458 63M-7-404.

459 (b) The running of the probation period is tolled upon the filing of a violation report
460 with the court alleging a violation of the terms and conditions of probation or upon the issuance

461 of an order to show cause or warrant by the court.

462 (12) (a) (i) Probation may be modified as is consistent with the graduated sanctions and
463 incentives developed by the Utah Sentencing Commission under Section 63M-7-404, but the
464 length of probation may not be extended, except upon waiver of a hearing by the probationer or
465 upon a hearing and a finding in court that the probationer has violated the conditions of
466 probation.

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

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

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

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

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

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

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

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

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

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

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

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

491 (ii) Upon a finding that the defendant violated the conditions of probation, the court
492 may order the probation revoked, modified, continued, or reinstated for all or a portion of the
493 original term of probation.

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

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

500 (B) the sentence previously imposed shall be executed.

501 (iv) If the defendant had, prior to the imposition of a term of incarceration or the
502 execution of the previously imposed sentence under this Subsection (12), served time in jail as
503 a condition of probation or due to a violation of probation under Subsection
504 ~~[77-18-1]~~(12)(e)(iii), the time the probationer served in jail constitutes service of time toward
505 the sentence previously imposed.

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

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

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

512 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for
513 treatment over the defendants described in this Subsection (13).

514 (14) Presentence investigation reports are classified protected in accordance with Title

515 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
516 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
517 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
518 this section, the department may disclose the presentence investigation only when:

- 519 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- 520 (b) requested by a law enforcement agency or other agency approved by the department
521 for purposes of supervision, confinement, and treatment of the offender;
- 522 (c) requested by the Board of Pardons and Parole;
- 523 (d) requested by the subject of the presentence investigation report or the subject's
524 authorized representative; or
- 525 (e) requested by the victim of the crime discussed in the presentence investigation
526 report or the victim's authorized representative, provided that the disclosure to the victim shall
527 include only information relating to statements or materials provided by the victim, to the
528 circumstances of the crime including statements by the defendant, or to the impact of the crime
529 on the victim or the victim's household.

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

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

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

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

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

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

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

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

546 (i) place the defendant on probation under the supervision of the Department of
547 Corrections;

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

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

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

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

556 Section 4. Section **77-18-6** is amended to read:

557 **77-18-6. Judgment to pay fine or restitution constitutes a lien.**

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

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

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

566 (iii) receive notification from the Office of State Debt Collection when a civil
567 judgment ordered for payment of accounts receivable[~~as defined~~] in Section [~~76-3-201.1;~~
568 [77-32a-102](#) or [77-32a-103](#)] has been satisfied.

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

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

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

576 (iv) The victim may collect the judgment.

577 ~~[(v) The victim is responsible for timely renewal of the judgment under Section~~
578 ~~78B-5-202.]~~

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

581 (a) constitutes a lien;

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

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

586 Section 5. Section 77-20-4 is amended to read:

587 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**
588 **undertaking.**

589 (1) Bail may be posted:

590 (a) in cash;

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

592 or

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

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

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

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

601 (5) Before refunding bail that is posted by the defendant in cash, by credit card, or by
602 debit card, the court may apply the amount posted toward accounts receivable, as defined in
603 Section ~~[76-3-201.1]~~ 77-32a-101, that are owed by the defendant in the priority set forth in
604 Section 77-38a-404.

605 Section 6. Section **77-32a-101** is enacted to read:

606 **CHAPTER 32a. CRIMINAL ACCOUNTS RECEIVABLE AND DEFENSE COSTS**

607 **77-32a-101. Definitions.**

608 As used in this chapter:

609 (1) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures,
610 surcharges, costs, interest, penalties, restitution to victims, third party claims, claims,
611 reimbursement of a reward, and damages.

612 (2) "Criminal judgment accounts receivable" means any amounts owed by a criminal
613 defendant arising from a criminal judgment that has not been paid. This includes fines,
614 surcharges, costs, interest, and restitution.

615 (3) "Default" means an account receivable that is overdue by at least 90 days.

616 (4) "Delinquent" means an account receivable or installment payment that is overdue
617 by more than 28 but less than 90 days.

618 Section 7. Section **77-32a-102** is enacted to read:

619 **77-32a-102. Creation of criminal judgment account receivable.**

620 (1) At the time of sentencing or acceptance of a plea in abeyance, the court shall
621 establish the criminal accounts receivable, as determined in this chapter including all amounts
622 then owing, including, as applicable, fines, fees, surcharges, costs, restitution, and interest.

623 (2) After creating the account receivable, the court:
624 (a) shall, in the case of felonies where a prison sentence is imposed and not suspended,
625 enter any unpaid criminal judgment account receivable as a civil judgment and transfer the
626 responsibility for collecting the judgment to the Office of State Debt Collection;
627 (b) may, in other cases, permit a defendant to pay the criminal judgment account
628 receivable by a date certain or in installments; or
629 (c) may, in other cases where the court finds that collection of the account by the court
630 would not be feasible, enter any unpaid criminal judgment account receivable as a civil
631 judgment and transfer the responsibility for collecting the judgement to the Office of State Debt
632 Collection.
633 (3) A court allowing installment payments does not limit the ability of a judgment
634 creditor to pursue collection by any means allowable by law.
635 (4) If the court makes restitution or another financial decision at a time after sentencing
636 that increases the total amount owed in a case, the criminal accounts receivable balance shall
637 be adjusted to include the new amounts determined by the court.
638 (5) The court may modify the amount and number of any installment payments, as
639 justice requires, at any time before the time for default as outlined in Subsection
640 [77-32a-103\(2\)](#).
641 (6) In the district court, delinquent accounts may incur post judgment interest.
642 Section 8. Section **77-32a-103** is enacted to read:
643 **77-32a-103. Past due accounts or payments -- Authority to send to Office of State**
644 **Debt Collection independent of probation status -- Expiration.**
645 (1) If a criminal judgment account receivable retained by the court becomes more than
646 30 days past due, the court may, without a motion or a hearing, record the unpaid balance of the
647 account receivable as a civil judgment and transfer the responsibility for collecting the
648 judgment to the Office of State Debt Collection.
649 (2) If a criminal judgment account receivable retained by the court is more than 90 days

650 past due, the district court shall, without a motion or hearing, record the unpaid balance of the
651 criminal judgment account receivable as a civil judgment and transfer the responsibility for
652 collecting the criminal judgment account receivable to the Office of State Debt Collection.

653 (3) (a) Criminal judgment accounts receivable are not subject to civil statutes of
654 limitations and expire only upon payment in full.

655 (b) This Subsection (3) applies to all criminal judgment accounts receivable not paid in
656 full on or before May 12, 2017.

657 Section 9. Section **77-32a-104** is enacted to read:

658 **77-32a-104. Delinquency and default as contempt of court.**

659 (1) If a criminal judgment accounts receivable, or any installment due, becomes
660 delinquent, the court, upon motion of the prosecutor, a judgment creditor, or upon the court's
661 own motion, may order the defendant to appear and show cause why the delinquency should
662 not be treated as contempt of court as provided in Section [78B-6-317](#).

663 (2) After the hearing, if it appears to the satisfaction of the court that the delinquency is
664 not contempt, the court may enter an order for any of the following or any combination of the
665 following:

666 (a) require the defendant to pay the criminal judgment account receivable or a specified
667 part of the criminal judgment account receivable by a date certain;

668 (b) restructure the payment schedule;

669 (c) restructure the installment amount;

670 (d) except as limited by Subsection (4), satisfy the criminal judgment account
671 receivable or any part of the criminal judgment account receivable with proof of compensatory
672 service at a rate of credit at not less than \$10 for each hour of compensatory service;

673 (e) except as limited by Subsection (4), reduce or revoke the unpaid amount of the
674 criminal judgment account receivable; or

675 (f) record the unpaid balance of the criminal judgment account receivable as a civil
676 judgment and transfer the responsibility for collecting the judgment to the Office of State Debt

677 Collection.

678 (3) The court may add postjudgment interest to the total accounts receivable if not
679 previously ordered or included.

680 (4) If the court determines that the delinquency does constitute contempt the court shall
681 address the contempt as provided in Section [78B-6-310](#).

682 (5) In issuing an order under this section, the court may not modify the amount of the
683 judgment of complete restitution.

684 (6) If the defendant is a corporation or unincorporated association, any contempt
685 proceeding authorized by this section shall cite the person authorized to make disbursement
686 from the assets of the corporation or association.

687 Section 10. Section **77-32a-105** is enacted to read:

688 **77-32a-105. Accounts with balances at termination of probation.**

689 (1) When a defendant successfully terminates probation and has a nondelinquent
690 criminal judgment account receivable with an outstanding balance, the court shall retain the
691 account and allow the defendant to continue paying off the account.

692 (2) Should any balance become delinquent or in default, the court shall take
693 appropriate action pursuant to Section [77-32a-103](#) or [77-32a-104](#).

694 Section 11. Section **77-32a-106** is enacted to read:

695 **77-32a-106. Transfer of collection responsibility does not affect probation.**

696 If a court transfers a criminal account receivable to the Office of State Debt Collection
697 that includes an amount of court-ordered restitution, the payment of which is a term of
698 probation pursuant to Subsection [77-18-1\(8\)](#), the transfer may not affect the court's ability to
699 monitor the payment as a condition of probation.

700 Section 12. Section **77-32a-107**, which is renumbered from Section 77-32a-2 is
701 renumbered and amended to read:

702 ~~[77-32a-2].~~ **77-32a-107. Costs -- What constitute.**

703 Costs shall be limited to expenses specially incurred by the state or any political

704 subdivision in investigating, searching for, apprehending, and prosecuting the defendant,
705 including attorney fees of counsel assigned to represent the defendant, [~~interpreter fees,~~] and
706 investigators' fees. Costs [~~cannot~~] may not include expenses inherent in providing a
707 constitutionally guaranteed trial or expenditures in connection with the maintenance and
708 operation of government agencies that must be made by the public irrespective of specific
709 violations of law. Costs [~~cannot~~] may not include [~~attorneys'~~] attorney fees for prosecuting
710 attorneys.

711 Section 13. Section **77-32a-108**, which is renumbered from Section 77-32a-3 is
712 renumbered and amended to read:

713 ~~[77-32a-3].~~ **77-32a-108. Ability to pay considered.**

714 The court [~~shall~~] may not include in the judgment a sentence that a defendant pay costs
715 unless the defendant is or will be able to pay them. In determining the amount [~~and method of~~
716 ~~payment~~] of costs, the court shall take into account [~~of~~] the financial resources of the defendant
717 [~~and~~], the nature of the burden that payment of costs will impose, and that restitution [~~be~~] is the
718 first priority.

719 Section 14. Section **77-32a-109**, which is renumbered from Section 77-32a-4 is
720 renumbered and amended to read:

721 ~~[77-32a-4].~~ **77-32a-109. Petition for remission of payment of costs.**

722 A defendant who has been [~~sentenced~~] ordered to pay costs and who is not [~~in~~
723 ~~contumacious default~~] delinquent in the payment thereof may at any time petition the
724 sentencing court [~~which sentenced him for remission of the payment of costs or of~~] to reduce
725 any unpaid portion [~~thereof~~] of those costs. If it appears to the satisfaction of the court that
726 payment of the amount due will impose manifest hardship on the defendant or [~~his~~] the
727 defendant's immediate family, the court may remit all or part of the amount due in costs, or
728 modify the method of payment under Section [~~77-32a-5~~] 77-32a-104.

729 Section 15. Section **77-32a-110**, which is renumbered from Section 77-32a-14 is
730 renumbered and amended to read:

731 ~~[77-32a-14]~~. **77-32a-110. Verified statement of time and expenses of**
732 **counsel for indigent defendants.**

733 The court may require a verified statement of time and expenses from appointed
734 counsel or the nonprofit legal aid or other association providing counsel to convicted indigent
735 defendants in order to establish the costs, if any, which will be included in the judgment.

736 Section 16. Section **77-38a-102** is amended to read:

737 **77-38a-102. Definitions.**

738 As used in this chapter:

739 (1) "Conviction" includes a:

740 (a) judgment of guilt;

741 (b) a plea of guilty; or

742 (c) a plea of no contest.

743 (2) "Criminal activities" means:

744 (a) any misdemeanor or felony offense of which the defendant is convicted; or

745 (b) any other criminal conduct for which the defendant admits responsibility to the
746 sentencing court with or without an admission of committing the criminal conduct.

747 (3) "Department" means the Department of Corrections.

748 (4) "Diversion" means suspending criminal proceedings prior to conviction on the
749 condition that a defendant agree to participate in a rehabilitation program, make restitution to
750 the victim, or fulfill some other condition.

751 (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

752 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet
753 incurred, including those which a person could recover in a civil action arising out of the facts
754 or events constituting the defendant's criminal activities and includes the fair market value of
755 property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings,
756 including those and other travel expenses reasonably incurred as a result of participation in
757 criminal proceedings, and medical and other expenses, but excludes punitive or exemplary

758 damages and pain and suffering.

759 (7) "Plea agreement" means an agreement entered between the prosecution and
760 defendant setting forth the special terms and conditions and criminal charges upon which the
761 defendant will enter a plea of guilty or no contest.

762 (8) "Plea disposition" means an agreement entered into between the prosecution and
763 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement
764 by which the defendant may enter a plea in any other jurisdiction or where charges are
765 dismissed without a plea.

766 (9) "Plea in abeyance" means an order by a court, upon motion of the prosecution and
767 the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that
768 time, entering judgment of conviction against him nor imposing sentence upon him on
769 condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

770 (10) "Plea in abeyance agreement" means an agreement entered into between the
771 prosecution and the defendant setting forth the specific terms and conditions upon which,
772 following acceptance of the agreement by the court, a plea may be held in abeyance.

773 (11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
774 victim, including prejudgment interest, the accrual of interest from the time of sentencing,
775 insured damages, reimbursement for payment of a reward, and payment for expenses to a
776 governmental entity for extradition or transportation and as may be further defined by law.

777 (12) (a) "Reward" means a sum of money:

778 (i) offered to the public for information leading to the arrest and conviction of an
779 offender; and

780 (ii) that has been paid to a person or persons who provide this information, except that
781 the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

782 (b) "Reward" does not include any amount paid in excess of the sum offered to the
783 public.

784 (13) "Screening" means the process used by a prosecuting attorney to terminate

785 investigative action, proceed with prosecution, move to dismiss a prosecution that has been
786 commenced, or cause a prosecution to be diverted.

787 (14) (a) "Victim" means any person or entity, including the Utah Office for Victims of
788 Crime, who the court determines has suffered pecuniary damages as a result of the defendant's
789 criminal activities.

790 (b) "Victim" may not include a codefendant or accomplice.

791 Section 17. Section **77-38a-301** is amended to read:

792 **77-38a-301. Restitution -- Convicted defendant may be required to pay.**

793 In a criminal action, the court may require a defendant who enters into a plea
794 disposition or is convicted [~~defendant~~] to make restitution.

795 Section 18. Section **77-38a-302** is amended to read:

796 **77-38a-302. Restitution criteria.**

797 (1) When a defendant enters into a plea disposition or is convicted of criminal activity
798 that has resulted in pecuniary damages, in addition to any other sentence or term of a plea in
799 abeyance it may impose, the court shall order that the defendant make restitution to victims of
800 crime as provided in this chapter, or for conduct for which the defendant has agreed to make
801 restitution as part of a plea disposition. For purposes of restitution, [~~a victim has the meaning~~
802 ~~as~~] "victim" means the same as that term is defined in Subsection 77-38a-102(14) [and in]. In
803 determining whether restitution is appropriate, the court shall follow the criteria and procedures
804 as provided in Subsections (2) through (5).

805 (2) In determining restitution, the court shall determine complete restitution and
806 court-ordered restitution.

807 (a) "Complete restitution" means restitution necessary to compensate a victim for all
808 losses caused by the defendant.

809 (b) "Court-ordered restitution" means the restitution the court having criminal
810 jurisdiction orders the defendant to pay as a part of the criminal sentence.

811 (c) Complete restitution and court-ordered restitution shall be determined as provided

812 in Subsection (5).

813 (3) If the court determines that restitution is appropriate or inappropriate under this
814 part, the court shall make the reasons for the decision part of the court record.

815 (4) If the defendant objects to the imposition, amount, or distribution of the restitution,
816 the court shall allow the defendant a full hearing on the issue.

817 (5) (a) For the purpose of determining restitution for an offense, the offense shall
818 include any criminal conduct admitted by the defendant to the sentencing court or to which the
819 defendant agrees to pay restitution. A victim of an offense that involves as an element a
820 scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by
821 the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

822 (b) In determining the monetary sum and other conditions for complete restitution, the
823 court shall consider all relevant facts, including:

824 (i) the cost of the damage or loss if the offense resulted in damage to or loss or
825 destruction of property of a victim of the offense;

826 (ii) the cost of necessary medical and related professional services and devices relating
827 to physical or mental health care, including nonmedical care and treatment rendered in
828 accordance with a method of healing recognized by the law of the place of treatment;

829 (iii) the cost of necessary physical and occupational therapy and rehabilitation;

830 (iv) the income lost by the victim as a result of the offense;

831 (v) the individual victim's reasonable determinable wages that are lost due to theft of or
832 damage to tools or equipment items of a trade that were owned by the victim and were essential
833 to the victim's current employment at the time of the offense; and

834 (vi) the cost of necessary funeral and related services if the offense resulted in the death
835 of a victim.

836 (c) In determining the monetary sum and other conditions for court-ordered restitution,
837 the court shall consider:

838 (i) the factors listed in Subsections (5)(a) and (b);

839 (ii) the financial resources of the defendant, as disclosed in the financial declaration
840 described in Section 77-38a-204;

841 (iii) the burden that payment of restitution will impose, with regard to the other
842 obligations of the defendant;

843 (iv) the ability of the defendant to pay restitution on an installment basis or on other
844 conditions to be fixed by the court;

845 (v) the rehabilitative effect on the defendant of the payment of restitution and the
846 method of payment; and

847 (vi) other circumstances that the court determines may make restitution inappropriate.

848 (d) (i) The prosecuting agency shall submit all requests for complete restitution and
849 court-ordered restitution to the court at the time of sentencing if feasible, otherwise within one
850 year after sentencing.

851 (ii) If a defendant is placed on probation pursuant to Section 77-18-1:

852 (A) the court shall determine complete restitution and court-ordered restitution; and

853 (B) the time period for determination of complete restitution and court-ordered
854 restitution may be extended by the court upon a finding of good cause, but may not exceed the
855 period of the probation term served by the defendant.

856 (iii) If the defendant is committed to prison:

857 (A) any pecuniary damages that have not been determined by the court within one year
858 after sentencing may be determined by the Board of Pardons and Parole; and

859 (B) the Board of Pardons and Parole may, within one year after sentencing, refer an
860 order of judgment and commitment back to the court for determination of restitution.

861 Section 19. Section 77-38a-404 is amended to read:

862 **77-38a-404. Priority.**

863 (1) Restitution payments made pursuant to a court order shall be disbursed to victims
864 within 60 days of receipt from the defendant by the court or department provided:

865 (a) the victim has complied with Subsection 77-38a-203(1)(b);

866 (b) if the defendant has tendered a negotiable instrument, funds from the financial
867 institution are actually received; and

868 (c) the payment to the victim is at least \$5, unless the payment is the final payment.

869 (2) If restitution to more than one person, agency, or entity is required at the same time,
870 the department shall establish the following priorities of payment, except as provided in
871 Subsection (4):

872 (a) the crime victim;

873 (b) the Utah Office for Victims of Crime;

874 (c) any other government agency which has provided reimbursement to the victim as a
875 result of the offender's criminal conduct;

876 (d) the person, entity, or governmental agency that has offered and paid a reward under
877 Section ~~[76-3-201.1]~~ [77-32a-101](#) or [78A-6-117](#);

878 (e) any insurance company which has provided reimbursement to the victim as a result
879 of the offender's criminal conduct; and

880 (f) any county correctional facility to which the defendant is required to pay restitution
881 under Subsection [76-3-201\(6\)](#).

882 (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and
883 surcharges are paid.

884 (4) If the offender is required under Section [53-10-404](#) to reimburse the department for
885 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after
886 restitution to the crime victim under Subsection (2)(a).

887 (5) All money collected for court-ordered obligations from offenders by the department
888 will be applied:

889 (a) first, to victim restitution, except the current and past due amount of \$30 per month
890 required to be collected by the department under Section [64-13-21](#), if applicable; and

891 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection
892 (4).

893 (6) Restitution owed to more than one victim shall be disbursed to each victim
894 according to the percentage of each victim's share of the total restitution order.

895 Section 20. Section **77-38a-501** is amended to read:

896 **77-38a-501. Default and sanctions.**

897 (1) When a defendant defaults in the payment of a judgment for restitution or any
898 installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim,
899 or on its own motion may:

900 (a) impose sanctions against the defendant as provided in Section [~~76-3-201.1.~~]
901 77-32a-104; or

902 (b) if the payment of restitution to a victim was a term of probation, begin probation
903 violation proceedings as provided in Subsection 77-18-1(12).

904 (2) The court may not impose a sanction against the defendant under Subsection (1) if:

905 (a) the defendant's sole default in the payment of a judgement for restitution is the
906 failure to pay restitution ordered under Subsection ~~76-3-201~~(6) regarding costs of incarceration
907 in a county correctional facility; and

908 (b) the sanction would extend the defendant's term of probation or parole.

909 Section 21. Section **78B-2-115** is amended to read:

910 **78B-2-115. Actions by state or other governmental entity.**

911 Except for the provisions of Section ~~78B-2-116~~, and the collection of criminal fines,
912 fees, and restitution by the Office of State Debt Collection in accordance with [~~Sections~~]
913 Section 63A-3-502 and [~~76-3-201.1~~] Title 77, Chapter 32a, Criminal Accounts Receivable and
914 Defense Costs, the limitations in this chapter apply to actions brought in the name of or for the
915 benefit of the state or other governmental entity the same as to actions by private parties.

916 Section 22. Section **78B-6-317** is enacted to read:

917 **78B-6-317. Willful failure to pay criminal judgment accounts receivable.**

918 (1) If a criminal judgment accounts receivable has become delinquent as defined in
919 Section 77-32a-101, the court, by motion of the prosecutor, a judgment creditor, the Office of

920 State Debt Collection, or on the court's own motion, may order the defendant to appear and
921 show cause why the delinquency should not be treated as contempt of court, as provided in this
922 section.

923 (2) (a) The moving party or a court clerk shall provide a declaration outlining the
924 nature of the debt and the delinquency.

925 (b) Upon receipt of that declaration, the court shall set the matter for a hearing and
926 provide notice of the hearing to the defendant by mailing notice of the hearing to the
927 defendant's last known address and by any other means the court finds likely to provide
928 defendant notice of the hearing.

929 (i) If it appears to the court that the defendant is not likely to appear at the hearing, the
930 court may issue an arrest warrant with a bail amount reasonably likely to guarantee the
931 defendant's appearance.

932 (ii) If the defendant is a corporation or an unincorporated association, the court shall
933 cite the person authorized to make disbursement from the assets of the corporation or
934 association to appear to answer for the alleged contempt.

935 (3) At the hearing the defendant is entitled to be represented by counsel and, if the
936 court is considering a period of incarceration as a potential sanction, appointed counsel if the
937 defendant is indigent.

938 (4) To find the defendant in contempt, the court shall find beyond a reasonable doubt
939 that the defendant:

940 (a) was aware of the obligation to pay the criminal judgment accounts receivable;

941 (b) had the capacity to pay the criminal judgment accounts receivable in the manner
942 ordered by the court; and

943 (c) did not make a good faith effort to make the payments.

944 (5) If the court finds the defendant in contempt for nonpayment, the court may impose
945 the sanctions for contempt as provided in Section [78B-6-310](#), subject to the limitations in
946 Subsections (6) through (8).

947 (6) If the court imposes a jail sanction for the contempt, the number of jail days may
948 not exceed one day for each \$100 of the amount the court finds was contemptuously unpaid, up
949 to a maximum of five days for contempt arising from a class B misdemeanor or lesser offense,
950 and 30 days for a class A misdemeanor or felony offense.

951 (7) Any jail sanction imposed for contempt under this section shall serve to satisfy the
952 criminal judgment account receivable at \$100 for each day served. Amounts satisfied under this
953 Subsection (7) may not include restitution amounts ordered by the court in accordance with
954 Title 77, Chapter 38a, Crime Victims Restitution Act.

955 (8) Any financial penalty authorized by Section 78B-6-310 and ordered by the court
956 may only become due after the satisfaction of the original criminal account receivable.

957 (9) The order of the court finding the defendant in contempt and ordering sanctions is a
958 final appealable order.

959 **Section 23. Repealer.**

960 This bill repeals:

961 Section **76-3-201.1, Collection of criminal judgment accounts receivable.**

962 Section **77-32a-1, Convicted defendant may be required to pay costs.**

963 Section **77-32a-5, Time and method of payment.**

964 Section **77-32a-6, Payment as condition of probation or suspended sentence.**

965 Section **77-32a-7, Default in payment as contempt -- Order to show cause --**

966 **Warrant of arrest.**

967 Section **77-32a-8, Default in payment as contempt -- What constitutes contempt --**

968 **Imprisonment.**

969 Section **77-32a-9, Costs imposed on corporation or association -- Duty to pay --**

970 **Contempt.**

971 Section **77-32a-10, Imprisonment for contempt -- Limitations.**

972 Section **77-32a-11, Default not constituting contempt -- Relief allowed.**

973 Section **77-32a-12, Collection of payment in default -- Execution.**

974

Section **77-32a-13**, **Docketing judgment for costs.**