

**CRIMINAL ACCOUNTS RECEIVABLE AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

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

**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



- 28 **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 **77-27-5**, as last amended by Laws of Utah 2016, Chapter 223
- 33 **77-27-6**, as last amended by Laws of Utah 2016, Chapter 223
- 34 **77-38-3**, as last amended by Laws of Utah 2016, Chapter 223
- 35 **77-38a-102**, as last amended by Laws of Utah 2016, Chapter 223
- 36 **77-38a-301**, as enacted by Laws of Utah 2001, Chapter 137
- 37 **77-38a-302**, as last amended by Laws of Utah 2016, Chapter 223
- 38 **77-38a-404**, as last amended by Laws of Utah 2011, Chapters 131 and 208
- 39 **77-38a-501**, as last amended by Laws of Utah 2003, Chapter 280
- 40 **78B-2-115**, as last amended by Laws of Utah 2015, Chapter 434

41 ENACTS:

- 42 **77-32a-101**, Utah Code Annotated 1953
- 43 **77-32a-102**, Utah Code Annotated 1953
- 44 **77-32a-103**, Utah Code Annotated 1953
- 45 **77-32a-104**, Utah Code Annotated 1953
- 46 **77-32a-105**, Utah Code Annotated 1953
- 47 **77-32a-106**, Utah Code Annotated 1953
- 48 **78B-6-317**, Utah Code Annotated 1953

49 RENUMBERS AND AMENDS:

- 50 **77-32a-107**, (Renumbered from 77-32a-2, as last amended by Laws of Utah 1999,
- 51 Chapter 21)
- 52 **77-32a-108**, (Renumbered from 77-32a-3, as enacted by Laws of Utah 1980, Chapter
- 53 15)
- 54 **77-32a-109**, (Renumbered from 77-32a-4, as enacted by Laws of Utah 1980, Chapter
- 55 15)
- 56 **77-32a-110**, (Renumbered from 77-32a-14, as enacted by Laws of Utah 1980, Chapter
- 57 15)

58 REPEALS:

- 59 [76-3-201.1](#), as last amended by Laws of Utah 2015, Chapter 434
- 60 [77-32a-1](#), as last amended by Laws of Utah 2002, Chapter 35
- 61 [77-32a-5](#), as enacted by Laws of Utah 1980, Chapter 15
- 62 [77-32a-6](#), as enacted by Laws of Utah 1980, Chapter 15
- 63 [77-32a-7](#), as enacted by Laws of Utah 1980, Chapter 15
- 64 [77-32a-8](#), as enacted by Laws of Utah 1980, Chapter 15
- 65 [77-32a-9](#), as enacted by Laws of Utah 1980, Chapter 15
- 66 [77-32a-10](#), as enacted by Laws of Utah 1980, Chapter 15
- 67 [77-32a-11](#), as enacted by Laws of Utah 1980, Chapter 15
- 68 [77-32a-12](#), as enacted by Laws of Utah 1980, Chapter 15
- 69 [77-32a-13](#), as enacted by Laws of Utah 1980, Chapter 15

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

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

73 **63A-3-502. Office of State Debt Collection created -- Duties.**

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

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

77 (3) The office shall:

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

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

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

82 (i) implementing all appropriate collection methods;

83 (ii) following established receivables guidelines; and

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

85 (d) assist the Division of Finance to develop policies, procedures, and guidelines for  
86 accounting, reporting, and collecting money owed to the state;

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

89 (f) write an inclusive receivables management and collection manual for use by each

90 state agency;

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

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

93 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an

94 effective accounts receivable program;

95 (j) identify any state agency that is not making satisfactory progress toward

96 implementing collection techniques and improving accounts receivable collections;

97 (k) coordinate information, systems, and procedures between each state agency to

98 maximize the collection of past-due accounts receivable;

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

100 (m) assist the Division of Finance to establish procedures for writing off accounts

101 receivable for accounting and collection purposes;

102 (n) establish standard time limits after which an agency will delegate responsibility to

103 collect state receivables to the office or its designee;

104 (o) be a real party in interest for an account receivable referred to the office by any

105 state agency or for any restitution to victims referred to the office by a court; and

106 (p) allocate money collected for judgments registered under Section 77-18-6 in

107 accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

108 (4) The office may:

109 (a) recommend to the Legislature new laws to enhance collection of past-due accounts

110 by state agencies;

111 (b) collect accounts receivables for higher education entities, if the higher education

112 entity agrees;

113 (c) prepare a request for proposal for consulting services to:

114 (i) analyze the state's receivable management and collection efforts; and

115 (ii) identify improvements needed to further enhance the state's effectiveness in

116 collecting its receivables;

117 (d) contract with private or state agencies to collect past-due accounts;

118 (e) perform other appropriate and cost-effective coordinating work directly related to

119 collection of state receivables;

120 (f) obtain access to records and databases of any state agency that are necessary to the

121 duties of the office by following the procedures and requirements of Section 63G-2-206,  
122 including the financial disclosure form described in Section 77-38a-204;

123 (g) collect interest and fees related to the collection of receivables under this chapter,  
124 and establish, by following the procedures and requirements of Section 63J-1-504:

125 (i) a fee to cover the administrative costs of collection, on accounts administered by the  
126 office;

127 (ii) a late penalty fee that may not be more than 10% of the account receivable on  
128 accounts administered by the office;

129 (iii) an interest charge that is:

130 (A) the postjudgment interest rate established by Section 15-1-4 in judgments  
131 established by the courts; or

132 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts  
133 receivable for which no court judgment has been entered; and

134 (iv) fees to collect accounts receivable for higher education;

135 (h) collect reasonable attorney fees and reasonable costs of collection that are related to  
136 the collection of receivables under this chapter;

137 (i) make rules that allow accounts receivable to be collected over a reasonable period  
138 of time and under certain conditions with credit cards;

139 (j) file a satisfaction of judgment in the court by following the procedures and  
140 requirements of the Utah Rules of Civil Procedure;

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

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

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

150 (n) collect accounts receivable for a political subdivision of the state, if the political  
151 subdivision enters into an agreement or contract with the office under Title 11, Chapter 13,

152 Interlocal Cooperation Act, for the office to collect the political subdivision's accounts  
153 receivable.

154 (5) The office shall ensure that:

155 (a) a record obtained by the office or a private sector vendor as referred to in

156 Subsection (4)(l):

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

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

159 (b) any person employed by, or formerly employed by, the office or a private sector

160 vendor as referred to in Subsection (4)(l) is subject to:

161 (i) the same duty of confidentiality with respect to the record imposed by law on

162 officers and employees of the state agency from which the record was obtained; and

163 (ii) any civil or criminal penalties imposed by law for violations of lawful access to a

164 private, controlled, or protected record.

165 (6) (a) The office shall collect accounts receivable ordered by a court as a result of

166 prosecution for a criminal offense that have been transferred to the office under [Subsection

167 ~~76-3-201.1(5)(h) or (8)] Section 77-32a-102.~~

168 (b) The office may not assess the interest charge established by the office under

169 Subsection (4) on an account receivable subject to the postjudgment interest rate established by

170 Section ~~15-1-4.~~

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

172 (a) transfer collection responsibilities to the office or its designee according to time

173 limits established by the office;

174 (b) make annual progress towards implementing collection techniques and improved

175 accounts receivable collections;

176 (c) use the state's accounts receivable system or develop systems that are adequate to

177 properly account for and report their receivables;

178 (d) develop and implement internal policies and procedures that comply with the

179 collections policies and guidelines established by the office;

180 (e) provide internal accounts receivable training to staff involved in the management

181 and collection of receivables as a supplement to statewide training;

182 (f) bill for and make initial collection efforts of its receivables up to the time the

183 accounts must be transferred; and

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

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

188 (9) The summary shall include:

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

190 (b) any attempted collection activity; and

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

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

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

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

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

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

199 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**  
200 **penalties.**

201 (1) As used in this section:

202 (a) "Conviction" includes a:

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

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

205 (iii) plea of no contest.

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

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

214 expenses.

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

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

221 (ii) "Victim" does not include a codefendant or accomplice.

222 (2) Within the limits prescribed by this chapter, a court may sentence a person  
223 convicted of an offense to any one of the following sentences or combination of them:

224 (a) to pay a fine;

225 (b) to removal or disqualification from public or private office;

226 (c) to probation unless otherwise specifically provided by law;

227 (d) to imprisonment;

228 (e) on or after April 27, 1992, to life in prison without parole; or

229 (f) to death.

230 (3) (a) This chapter does not deprive a court of authority conferred by law to:

231 (i) forfeit property;

232 (ii) dissolve a corporation;

233 (iii) suspend or cancel a license;

234 (iv) permit removal of a person from office;

235 (v) cite for contempt; or

236 (vi) impose any other civil penalty.

237 (b) A civil penalty may be included in a sentence.

238 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary  
239 damages, in addition to any other sentence it may impose, the court shall order that the  
240 defendant make restitution to the victims, or for conduct for which the defendant has agreed to  
241 make restitution as part of a plea agreement.

242 (b) In determining whether restitution is appropriate, the court shall follow the criteria  
243 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

244 (c) In addition to any other sentence the court may impose, the court, pursuant to the



245 provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

246 (i) a civil judgment for complete restitution for the full amount of expenses paid on  
247 behalf of the victim by the Utah Office for Victims of Crime; and

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

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

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

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

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

260 (iii) convicted of a crime.

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

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

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

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

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

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

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

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

273 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,  
274 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the  
275 county to which he has been returned, the court may, in addition to any other sentence it may

276 impose, order that the defendant make restitution for costs expended by any governmental  
277 entity for the extradition.

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

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

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

286 (B) the reimbursement does not duplicate the reimbursement provided under Section  
287 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or  
288 a state parole inmate, as defined in Section 64-13e-102.

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

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

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

301 (d) If on appeal the defendant is found not guilty of the criminal activity under  
302 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall  
303 reimburse the defendant for restitution the defendant paid for costs of incarceration under  
304 Subsection (6)(a).

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

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

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

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

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

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

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

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

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

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

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

328 (iv) Court probation may include an administrative level of services, including  
329 notification to the court of scheduled periodic reviews of the probationer's compliance with  
330 conditions.

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

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

336 (i) the type of offense;

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

338 (iii) the demand for services;  
339 (iv) the availability of agency resources;  
340 (v) public safety; and  
341 (vi) other criteria established by the department to determine what level of services  
342 shall be provided.

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

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

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

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

353 (4) Notwithstanding other provisions of law, the department is not required to  
354 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to  
355 conduct presentence investigation reports on class C misdemeanors or infractions. However,  
356 the department may supervise the probation of class B misdemeanants in accordance with  
357 department standards.

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

362 (b) The presentence investigation report shall include:

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

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

368 (iii) findings from any screening and any assessment of the offender conducted under

369 Section 77-18-1.1;

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

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

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

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

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

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

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

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

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

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

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

399 ~~[(iv)]~~ (ii) participate in available treatment programs, including any treatment program

400 in which the defendant is currently participating, if the program is acceptable to the court;

401 ~~[(v)]~~ (iii) if on probation for a felony offense, serve a period of time, not to exceed one

402 year, in a county jail designated by the department, after considering any recommendation by

403 the court as to which jail the court finds most appropriate;

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

405 monitoring;

406 ~~[(vii)]~~ (v) participate in compensatory service restitution programs, including the

407 compensatory service program provided in Section [76-6-107.1](#);

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

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

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

411 ~~[(x)]~~ (viii) comply with other terms and conditions the court considers appropriate to

412 ensure public safety or increase a defendant's likelihood of success on probation; and

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

414 (i) complete high school classwork and obtain a high school graduation diploma, a

415 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has

416 not received the diploma, GED certificate, or vocational certificate prior to being placed on

417 probation; or

418 (ii) provide documentation of the inability to obtain one of the items listed in

419 Subsection (8)(b)(i) because of:

420 (A) a diagnosed learning disability; or

421 (B) other justified cause.

422 (9) The department shall collect and disburse the ~~[account]~~ accounts receivable as

423 defined by Section ~~[76-3-201.1]~~ [77-32a-101](#), with interest and any other costs assessed under

424 Section [64-13-21](#) during:

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

426 [77-27-6\(4\)](#); and

427 (b) the probation period in cases for which the court orders supervised probation and

428 any extension of that period by the department in accordance with Subsection (10).

429 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or

430 upon completion without violation of 36 months probation in felony or class A misdemeanor

431 cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant  
432 to Section [64-13-21](#) regarding earned credits.

433 (ii) (A) If, upon expiration or termination of the probation period under Subsection  
434 (10)(a)(i), there remains an unpaid balance upon the ~~[account]~~ accounts receivable as defined  
435 in Section ~~[76-3-201.1]~~ [77-32a-101](#), the court may retain jurisdiction of the case and continue  
436 the defendant on bench probation for the limited purpose of enforcing the payment of the  
437 account receivable. If the court retains jurisdiction for this limited purpose, the court may  
438 order the defendant to pay to the court the costs associated with continued probation under this  
439 Subsection (10).

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

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

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

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

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

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

458 (iii) Any time served in confinement awaiting a hearing or decision concerning  
459 revocation of probation constitutes service of time toward a term of incarceration imposed as a  
460 result of the revocation of probation or a graduated sanction imposed under Section  
461 [63M-7-404](#).

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

504 (iv) If the defendant had, prior to the imposition of a term of incarceration or the  
505 execution of the previously imposed sentence under this Subsection (12), served time in jail as  
506 a condition of probation or due to a violation of probation under Subsection  
507 [77-18-1](12)(e)(iii), the time the probationer served in jail constitutes service of time toward  
508 the sentence previously imposed.

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

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

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

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

517 (14) Presentence investigation reports are classified protected in accordance with Title  
518 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections  
519 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a  
520 presentence investigation report. Except for disclosure at the time of sentencing pursuant to  
521 this section, the department may disclose the presentence investigation only when:

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

523 (b) requested by a law enforcement agency or other agency approved by the department

524 for purposes of supervision, confinement, and treatment of the offender;

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

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

528 (e) requested by the victim of the crime discussed in the presentence investigation  
529 report or the victim's authorized representative, provided that the disclosure to the victim shall  
530 include only information relating to statements or materials provided by the victim, to the  
531 circumstances of the crime including statements by the defendant, or to the impact of the crime  
532 on the victim or the victim's household.

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

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

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

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

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

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

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

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

549 (i) place the defendant on probation under the supervision of the Department of  
550 Corrections;

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

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

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

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

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

560 **77-18-6. Judgment to pay fine or restitution constitutes a lien.**

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

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

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

569 (iii) receive notification from the Office of State Debt Collection when a civil  
570 judgment ordered for payment of accounts receivable[~~as defined~~] in Section [~~76-3-201.1~~],  
571 [77-32a-102](#) or [77-32a-103](#) has been satisfied.

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

575 (ii) The Department of Corrections shall collect the judgment on behalf of the victim as  
576 provided in Subsection [77-18-1\(9\)](#).

577 (iii) The court shall collect the judgment on behalf of the victim as provided in  
578 Subsection [78A-2-214\(2\)](#).

579 (iv) The victim may collect the judgment.

580 (v) The victim is responsible for timely renewal of the judgment under Section  
581 [78B-5-202](#).

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

584 (a) constitutes a lien;

585 (b) has the same effect and is subject to the same rules as a judgment for money in a

586 civil action; and

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

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

590 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**  
591 **undertaking.**

592 (1) Bail may be posted:

593 (a) in cash;

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

595 or

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

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

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

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

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

608 Section 6. Section **77-27-5** is amended to read:

609 **77-27-5. Board of Pardons and Parole authority.**

610 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and  
611 under what conditions, subject to this chapter and other laws of the state, persons committed to  
612 serve sentences in class A misdemeanor cases at penal or correctional facilities which are under  
613 the jurisdiction of the Department of Corrections, and all felony cases except treason or  
614 impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered  
615 to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences  
616 commuted or terminated.

617 (b) The board may sit together or in panels to conduct hearings. The chair shall  
618 appoint members to the panels in any combination and in accordance with rules promulgated  
619 by the board, except in hearings involving commutation and pardons. The chair may  
620 participate on any panel and when doing so is chair of the panel. The chair of the board may  
621 designate the chair for any other panel.

622 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,  
623 pardon, or commutation granted or sentence terminated, except after a full hearing before the  
624 board or the board's appointed examiner in open session. Any action taken under this  
625 subsection other than by a majority of the board shall be affirmed by a majority of the board.

626 (d) A commutation or pardon may be granted only after a full hearing before the board.

627 (e) The board may determine restitution as provided in Section 77-27-6 and Subsection  
628 77-38a-302(5)(d)(~~(iii)(A)~~(ii).

629 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation  
630 hearings, timely prior notice of the time and location of the hearing shall be given to the  
631 defendant, the county or district attorney's office responsible for prosecution of the case, the  
632 sentencing court, law enforcement officials responsible for the defendant's arrest and  
633 conviction, and whenever possible, the victim or the victim's family.

634 (b) Notice to the victim, his representative, or his family shall include information  
635 provided in Section 77-27-9.5, and any related rules made by the board under that section.  
636 This information shall be provided in terms that are reasonable for the lay person to  
637 understand.

638 (3) Decisions of the board in cases involving paroles, pardons, commutations or  
639 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not  
640 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a  
641 civil judgment, including restitution as provided in Section 77-27-6.

642 (4) This chapter may not be construed as a denial of or limitation of the governor's  
643 power to grant respite or reprieves in all cases of convictions for offenses against the state,  
644 except treason or conviction on impeachment. However, respites or reprieves may not extend  
645 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall  
646 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the  
647 offense as provided. In the case of conviction for treason, the governor may suspend execution

648 of the sentence until the case is reported to the Legislature at its next session. The Legislature  
649 shall then either pardon or commute the sentence, or direct its execution.

650 (5) In determining when, where, and under what conditions offenders serving sentences  
651 may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted,  
652 or their sentences commuted or terminated, the board shall consider whether the persons have  
653 made or are prepared to make restitution as ascertained in accordance with the standards and  
654 procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or  
655 forfeitures, or commutation or termination of sentence.

656 (6) In determining whether parole may be terminated, the board shall consider the  
657 offense committed by the parolee, the parole period as provided in Section 76-3-202, and in  
658 accordance with Section 77-27-13.

659 Section 7. Section 77-27-6 is amended to read:

660 **77-27-6. Payment of restitution.**

661 (1) When the Board of Pardons and Parole orders the release on parole of an inmate  
662 who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims  
663 Restitution Act, or whom the board has ordered to make restitution, and all or a portion of  
664 restitution is still owing, the board may establish a schedule, including both complete and  
665 court-ordered restitution, by which payment of the restitution shall be made, or order  
666 compensatory or other service in lieu of or in combination with restitution. In fixing the  
667 schedule and supervising the paroled offender's performance, the board may consider the  
668 factors specified in Section 77-38a-302.

669 (2) (a) The board may impose any court order for restitution.

670 (b) In accordance with Subsection 77-38a-302(5)(d)[~~(iii)(A)~~](ii), the board may order  
671 that a defendant make restitution for pecuniary damages that were not determined by the court,  
672 unless the board applying the criteria as set forth in Section 77-38a-302 determines that  
673 restitution is inappropriate.

674 (c) Except as provided in Subsection (2)(d), the board shall make all orders of  
675 restitution within 60 days after the termination or expiration of the defendant's sentence.

676 (d) If, upon termination or expiration of a defendant's sentence, the board has  
677 continuing jurisdiction over the defendant for a separate criminal offense, the board may defer  
678 making an order of restitution until termination or expiration of all sentences for that

679 defendant.

680 (3) The board may also make orders of restitution for recovery of any or all costs  
681 incurred by the Department of Corrections or the state or any other agency arising out of the  
682 defendant's needs or conduct.

683 (4) If the defendant, upon termination or expiration of the sentence owes outstanding  
684 fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60  
685 days after the termination or expiration of the defendant's sentence, the matter shall be referred  
686 to the district court for civil collection remedies. The Board of Pardons and Parole shall  
687 forward a restitution order to the sentencing court to be entered on the judgment docket. The  
688 entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil  
689 judgment.

690 Section 8. Section **77-32a-101** is enacted to read:

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

692 **77-32a-101. Definitions.**

693 As used in this chapter:

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

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

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

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

703 Section 9. Section **77-32a-102** is enacted to read:

704 **77-32a-102. Creation of criminal judgment account receivable.**

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

708 (2) After creating the account receivable, the court:

709 (a) shall, in the case of felonies where a prison sentence is imposed and not suspended,

710 enter any unpaid criminal judgment account receivable as a civil judgment and transfer the  
711 responsibility for collecting the judgment to the Office of State Debt Collection;

712 (b) may, in other cases, permit a defendant to pay the criminal judgment account  
713 receivable by a date certain or in installments; or

714 (c) may, in other cases where the court finds that collection of the account by the court  
715 would not be feasible, enter any unpaid criminal judgment account receivable as a civil  
716 judgment and transfer the responsibility for collecting the judgement to the Office of State Debt  
717 Collection.

718 (3) A court allowing installment payments does not limit the ability of a judgment  
719 creditor to pursue collection by any means allowable by law.

720 (4) If the court makes restitution or another financial decision at a time after sentencing  
721 that increase the total amount owed in a case, the criminal accounts receivable balance shall be  
722 adjusted to include the new amounts determined by the court.

723 (5) The court may modify the amount and number of any delayed payments, as justice  
724 requires, at any time before the time for default as outlined in Subsection [77-32a-103\(2\)](#).

725 (6) In the district court, the delayed payment shall include post judgment interest.

726 Section 10. Section **77-32a-103** is enacted to read:

727 **77-32a-103. Past due accounts or payments -- Authority to send to Office of State**  
728 **Debt collection independent of probation status.**

729 (1) If a criminal judgment account receivable retained by the court becomes more than  
730 30 days past due, the court may, without a motion or a hearing, record the unpaid balance of the  
731 account receivable as a civil judgment and transfer the responsibility for collecting the  
732 judgment to the Office of State Debt Collection.

733 (2) If a criminal judgment account receivable retained by the court is more than 90 days  
734 past due, the district court shall, without a motion or hearing, record the unpaid balance of the  
735 criminal judgment account receivable as a civil judgment and transfer the responsibility for  
736 collecting the criminal judgment account receivable to the Office of State Debt Collection.

737 Section 11. Section **77-32a-104** is enacted to read:

738 **77-32a-104. Delinquency and default as contempt of court.**

739 (1) If a criminal judgment accounts receivable, or any installment due, becomes  
740 delinquent, the court, upon motion of the prosecutor, a judgment creditor, or upon the court's



741 own motion, may order the defendant to appear and show cause why the delinquency should  
742 not be treated as contempt of court as provided in Section [78B-6-317](#).

743 (2) After the hearing, if it appears to the satisfaction of the court that the default is not  
744 contempt, the court may enter an order for any of the following or any combination of the  
745 following:

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

748 (b) restructure the payment schedule;

749 (c) restructure the installment amount;

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

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

755 (f) record the unpaid balance of the criminal judgment account receivable as a civil  
756 judgment and transfer the responsibility for collecting the judgment to the Office of State Debt  
757 Collection.

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

760 (4) If the court determines that the nonpayment does constitute contempt the court shall  
761 address the contempt as provided in Section [78B-6-317](#).

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

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

767 Section 12. Section **77-32a-105** is enacted to read:

768 **77-32a-105. Accounts with balances at termination of probation.**

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

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

774           Section 13. Section **77-32a-106** is enacted to read:

775           **77-32a-106. Transfer of collection responsibility does not affect probation.**

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

780           Section 14. Section **77-32a-107**, which is renumbered from Section 77-32a-2 is  
781 renumbered and amended to read:

782           ~~[77-32a-2].~~   **77-32a-107. Costs -- What constitute.**

783           Costs shall be limited to expenses specially incurred by the state or any political  
784 subdivision in investigating, searching for, apprehending, and prosecuting the defendant,  
785 including attorney fees of counsel assigned to represent the defendant, ~~[interpreter fees,]~~ and  
786 investigators' fees. Costs ~~[cannot]~~ may not include expenses inherent in providing a  
787 constitutionally guaranteed trial or expenditures in connection with the maintenance and  
788 operation of government agencies that must be made by the public irrespective of specific  
789 violations of law. Costs ~~[cannot]~~ may not include ~~[attorneys']~~ attorney fees for prosecuting  
790 attorneys.

791           Section 15. Section **77-32a-108**, which is renumbered from Section 77-32a-3 is  
792 renumbered and amended to read:

793           ~~[77-32a-3].~~   **77-32a-108. Ability to pay considered.**

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

799           Section 16. Section **77-32a-109**, which is renumbered from Section 77-32a-4 is  
800 renumbered and amended to read:

801           ~~[77-32a-4].~~   **77-32a-109. Petition for remission of payment of costs.**

802           A defendant who has been ~~[sentenced]~~ ordered to pay costs and who is not ~~[in~~

803 ~~contumacious default]~~ delinquent in the payment thereof may at any time petition the  
 804 sentencing court [~~which sentenced him for remission of the payment of costs or of]~~ to reduce  
 805 any unpaid portion [~~thereof]~~ of those costs. If it appears to the satisfaction of the court that  
 806 payment of the amount due will impose manifest hardship on the defendant or [~~his]~~ the  
 807 defendant's immediate family, the court may remit all or part of the amount due in costs, or  
 808 modify the method of payment under Section [~~77-32a-5]~~ 77-32a-104.

809 Section 17. Section **77-32a-110**, which is renumbered from Section 77-32a-14 is  
 810 renumbered and amended to read:

811 [~~77-32a-14~~]. **77-32a-110. Verified statement of time and expenses of**  
 812 **counsel for indigent defendants.**

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

816 Section 18. Section **77-38-3** is amended to read:

817 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**  
 818 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**  
 819 **order.**

820 (1) Within seven days of the filing of felony criminal charges against a defendant, the  
 821 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable  
 822 victims of the crime contained in the charges, except as otherwise provided in this chapter.

823 (2) The initial notice to the victim of a crime shall provide information about electing  
 824 to receive notice of subsequent important criminal justice hearings listed in Subsections  
 825 77-38-2(5)(a) through (f) and rights under this chapter.

826 (3) The prosecuting agency shall provide notice to a victim of a crime [~~-(a)]~~ for the  
 827 important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which  
 828 the victim has requested [~~-, and]~~.

829 [~~(b) for restitution requests to be submitted as provided in Subsection~~  
 830 77-38a-302(5)(d)].

831 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices  
 832 in any reasonable manner, including telephonically, electronically, orally, or by means of a  
 833 letter or form prepared for this purpose.

834 (b) In the event of an unforeseen important criminal justice hearing, listed in  
835 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith  
836 attempt to contact the victim by telephone shall be considered sufficient notice, provided that  
837 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

838 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices  
839 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for  
840 victims of crimes to be notified.

841 (b) The court shall also consider whether any notification system it might use to  
842 provide notice of judicial proceedings to defendants could be used to provide notice of those  
843 same proceedings to victims of crimes.

844 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give  
845 notice to the responsible prosecuting agency of any motion for modification of any  
846 determination made at any of the important criminal justice hearings provided in Subsections  
847 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the  
848 prosecuting agency may comply with its notification obligation.

849 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and  
850 Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

851 (b) The board may provide notice in any reasonable manner, including telephonically,  
852 electronically, orally, or by means of a letter or form prepared for this purpose.

853 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give  
854 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through  
855 (f) only where the victim has responded to the initial notice, requested notice of subsequent  
856 proceedings, and provided a current address and telephone number if applicable.

857 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for  
858 notice or information about crime victim rights from victims to the responsible prosecuting  
859 agency.

860 (b) In a case in which the Board of Pardons and Parole is involved, the responsible  
861 prosecuting agency shall forward any request for notice it has received from a victim to the  
862 Board of Pardons and Parole.

863 (10) In all cases where the number of victims exceeds 10, the responsible prosecuting  
864 agency may send any notices required under this chapter in its discretion to a representative

865 sample of the victims.

866 (11) (a) A victim's address, telephone number, and victim impact statement maintained  
867 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice  
868 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of  
869 providing notice under this section, is classified as protected as provided in Subsection  
870 [63G-2-305\(10\)](#).

871 (b) The victim's address, telephone number, and victim impact statement is available  
872 only to the following persons or entities in the performance of their duties:

- 873 (i) a law enforcement agency, including the prosecuting agency;
- 874 (ii) a victims' right committee as provided in Section [77-37-5](#);
- 875 (iii) a governmentally sponsored victim or witness program;
- 876 (iv) the Department of Corrections;
- 877 (v) the Utah Office for Victims of Crime;
- 878 (vi) the Commission on Criminal and Juvenile Justice; and
- 879 (vii) the Board of Pardons and Parole.

880 (12) The notice provisions as provided in this section do not apply to misdemeanors as  
881 provided in Section [77-38-5](#) and to important juvenile justice hearings as provided in Section  
882 [77-38-2](#).

883 (13) (a) When a defendant is charged with a felony crime under Sections [76-5-301](#)  
884 through [76-5-310](#) regarding kidnapping, human trafficking, and human smuggling; Sections  
885 [76-5-401](#) through [76-5-413](#) regarding sexual offenses; or Section [76-10-1306](#) regarding  
886 aggravated exploitation of prostitution, the court may, during any court hearing where the  
887 defendant is present, issue a pretrial criminal no contact order:

- 888 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise  
889 communicating with the victim directly or through a third party;
- 890 (ii) ordering the defendant to stay away from the residence, school, place of  
891 employment of the victim, and the premises of any of these, or any specified place frequented  
892 by the victim or any designated family member of the victim directly or through a third party;  
893 and
- 894 (iii) ordering any other relief that the court considers necessary to protect and provide  
895 for the safety of the victim and any designated family or household member of the victim.

896 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a  
897 third degree felony.

898 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no  
899 contact order that has been issued if the victim can be located with reasonable effort.

900 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide  
901 domestic violence network in accordance with Section [78B-7-113](#).

902 Section 19. Section **77-38a-102** is amended to read:

903 **77-38a-102. Definitions.**

904 As used in this chapter:

905 (1) "Conviction" includes a:

906 (a) judgment of guilt;

907 (b) a plea of guilty; or

908 (c) a plea of no contest.

909 (2) "Criminal activities" means:

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

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

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

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

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

918 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet  
919 incurred, [~~including those~~] which a person could recover in a civil action arising out of the  
920 facts or events constituting the defendant's criminal activities and includes the fair market value  
921 of property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings[;]  
922 ~~including those and other travel expenses reasonably incurred as a result of participation in~~  
923 ~~criminal proceedings, and medical and other~~ and medical expenses, but excludes punitive or  
924 exemplary damages and pain and suffering.

925 (7) "Plea agreement" means an agreement entered between the prosecution and  
926 defendant setting forth the special terms and conditions and criminal charges upon which the

927 defendant will enter a plea of guilty or no contest.

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

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

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

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

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

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

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

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

950 (13) "Screening" means the process used by a prosecuting attorney to terminate  
951 investigative action, proceed with prosecution, move to dismiss a prosecution that has been  
952 commenced, or cause a prosecution to be diverted.

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

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

957 Section 20. Section **77-38a-301** is amended to read:

958 **77-38a-301. Restitution -- Convicted defendant may be required to pay.**

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

961 Section 21. Section **77-38a-302** is amended to read:

962 **77-38a-302. Restitution criteria.**

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

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

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

975 (b) "Court-ordered restitution" means the restitution the court having criminal  
976 jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of  
977 sentencing or within one year after sentencing.

978 (c) Complete restitution and court-ordered restitution shall be determined as provided  
979 in Subsection (5).

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

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

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



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

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

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

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

997 (iv) the income lost by the victim as a result of the offense if the offense resulted in  
998 bodily injury to a victim;

999 (v) up to five days of the individual victim's [~~reasonable~~] determinable wages that are  
1000 lost due to theft of or damage to tools or equipment items of a trade that were owned by the  
1001 victim and were essential to the victim's current employment at the time of the offense; and

1002 (vi) the cost of necessary funeral and related services if the offense resulted in the death  
1003 of a victim.

1004 (c) In determining the monetary sum and other conditions for court-ordered restitution,  
1005 the court shall consider:

1006 (i) the factors listed in Subsections (5)(a) and (b);

1007 (ii) the financial resources of the defendant, as disclosed in the financial declaration  
1008 described in Section ~~77-38a-204~~;

1009 (iii) the burden that payment of restitution will impose, with regard to the other  
1010 obligations of the defendant;

1011 (iv) the ability of the defendant to pay restitution on an installment basis or on other  
1012 conditions to be fixed by the court;

1013 (v) the rehabilitative effect on the defendant of the payment of restitution and the  
1014 method of payment; and

1015 (vi) other circumstances that the court determines may make restitution inappropriate.

1016 (d) (i) [~~The prosecuting agency shall submit all requests for~~] Except as provided in  
1017 Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered  
1018 restitution [to the court], and make all restitution orders at the time of sentencing if feasible,  
1019 otherwise within one year after sentencing.

1020 [~~(ii) If a defendant is placed on probation pursuant to Section [77-18-1](#);~~  
1021 [~~(A) the court shall determine complete restitution and court ordered restitution; and~~  
1022 [~~(B) the time period for determination of complete restitution and court ordered~~  
1023 restitution may be extended by the court upon a finding of good cause, but may not exceed the

1024 period of the probation term served by the defendant.]

1025 [~~(iii) If the defendant is committed to prison;~~  
1026 [~~(A) any~~] (ii) Any pecuniary damages that have not been determined by the court  
1027 within one year after sentencing may be determined by the Board of Pardons and Parole~~[-and]~~.  
1028 [~~(B) the~~] (e) The Board of Pardons and Parole may, within one year after sentencing,  
1029 refer an order of judgment and commitment back to the court for determination of restitution.

1030 Section 22. Section ~~77-38a-404~~ is amended to read:  
1031 **77-38a-404. Priority.**  
1032 (1) Restitution payments made pursuant to a court order shall be disbursed to victims  
1033 within 60 days of receipt from the defendant by the court or department provided:  
1034 (a) the victim has complied with Subsection [77-38a-203\(1\)\(b\)](#);  
1035 (b) if the defendant has tendered a negotiable instrument, funds from the financial  
1036 institution are actually received; and  
1037 (c) the payment to the victim is at least \$5, unless the payment is the final payment.  
1038 (2) If restitution to more than one person, agency, or entity is required at the same time,  
1039 the department shall establish the following priorities of payment, except as provided in  
1040 Subsection (4):  
1041 (a) the crime victim;  
1042 (b) the Utah Office for Victims of Crime;  
1043 (c) any other government agency which has provided reimbursement to the victim as a  
1044 result of the offender's criminal conduct;  
1045 (d) the person, entity, or governmental agency that has offered and paid a reward under  
1046 Section [~~76-3-201.1~~] [77-32a-101](#) or [78A-6-117](#);  
1047 (e) any insurance company which has provided reimbursement to the victim as a result  
1048 of the offender's criminal conduct; and  
1049 (f) any county correctional facility to which the defendant is required to pay restitution  
1050 under Subsection [76-3-201\(6\)](#).

1051 (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and  
1052 surcharges are paid.

1053 (4) If the offender is required under Section 53-10-404 to reimburse the department for  
1054 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
1055 restitution to the crime victim under Subsection (2)(a).

1056 (5) All money collected for court-ordered obligations from offenders by the department  
1057 will be applied:

1058 (a) first, to victim restitution, except the current and past due amount of \$30 per month  
1059 required to be collected by the department under Section 64-13-21, if applicable; and

1060 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection  
1061 (4).

1062 (6) Restitution owed to more than one victim shall be disbursed to each victim  
1063 according to the percentage of each victim's share of the total restitution order.

1064 Section 23. Section 77-38a-501 is amended to read:

1065 **77-38a-501. Default and sanctions.**

1066 (1) When a defendant defaults in the payment of a judgment for restitution or any  
1067 installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim,  
1068 or on its own motion may impose sanctions against the defendant as provided in Section  
1069 ~~[76-3-201.1]~~ 77-32a-104.

1070 (2) The court may not impose a sanction against the defendant under Subsection (1) if:

1071 (a) the defendant's sole default in the payment of a judgement for restitution is the  
1072 failure to pay restitution ordered under Subsection 76-3-201(6) regarding costs of incarceration  
1073 in a county correctional facility; and

1074 (b) the sanction would extend the defendant's term of probation or parole.

1075 Section 24. Section 78B-2-115 is amended to read:

1076 **78B-2-115. Actions by state or other governmental entity.**

1077 Except for the provisions of Section 78B-2-116, and the collection of criminal fines,  
1078 fees, and restitution by the Office of State Debt Collection in accordance with [Sections]  
1079 Section 63A-3-502 and ~~[76-3-201.1]~~ Title 77, Chapter 32a, Criminal Accounts Receivable and  
1080 Defense Costs, the limitations in this chapter apply to actions brought in the name of or for the  
1081 benefit of the state or other governmental entity the same as to actions by private parties.

1082 Section 25. Section **78B-6-317** is enacted to read:

1083 **78B-6-317. Willful failure to pay criminal judgment accounts receivable.**

1084 (1) If a criminal judgment accounts receivable has become delinquent as defined in  
1085 Section [77-32a-101](#), the court, by motion of the prosecutor, a judgment creditor, the Office of  
1086 State Debt Collection, or on the court's own motion, may order the defendant to appear and  
1087 show cause why the delinquency should not be treated as contempt of court, as provided in this  
1088 section.

1089 (2) (a) The moving party or a court clerk shall provide a declaration outlining the  
1090 nature of the debt and the delinquency.

1091 (b) Upon receipt of that declaration, the court shall set the matter for a hearing and  
1092 provide notice of the hearing to the defendant by mailing notice of the hearing to the  
1093 defendant's last known address and by any other means the court finds likely to provide  
1094 defendant notice of the hearing.

1095 (i) If it appears to the court that the defendant is not likely to appear at the hearing, the  
1096 court may issue an arrest warrant with a bail amount reasonably likely to guarantee the  
1097 defendant's appearance.

1098 (ii) If the defendant is a corporation or an unincorporated association, the court shall  
1099 cite the person authorized to make disbursement from the assets of the corporation or  
1100 association to appear to answer for the alleged contempt.

1101 (3) At the hearing the defendant is entitled to be represented by counsel and, if the  
1102 court is considering a period of incarceration as a potential sanction, appointed counsel if the  
1103 defendant is indigent.

1104 (4) To find the defendant in contempt, the court shall find by a preponderance of the  
1105 evidence that the defendant:

1106 (a) was aware of the obligation to pay the criminal judgment accounts receivable;

1107 (b) had the capacity to:

1108 (i) pay the criminal judgment accounts receivable in the manner ordered by the court;

1109 or

1110 (ii) seek an extension of the payments before they became delinquent; and

1111 (c) did not make a good faith effort to make the payments or seek an extension.

1112 (5) If the court finds the defendant in contempt for nonpayment, the court may impose

1113 the sanctions for contempt as provided in Section 78B-6-310, subject to the limitations in  
 1114 Subsections (6) through (8).

1115 (6) If the court imposes a jail sanction for the contempt, the number of jail days may  
 1116 not exceed one day for each \$100 of the amount the court finds was contemptuously unpaid, up  
 1117 to a maximum of five days for contempt arising from a class B misdemeanor or lesser offense,  
 1118 and 30 days for a class A misdemeanor or felony offense.

1119 (7) Any jail sanction imposed for contempt under this section shall serve to satisfy the  
 1120 criminal judgment account receivable at \$100 for each day served. Amounts satisfied under this  
 1121 Subsection (7) may not include restitution amounts ordered by the court in accordance with  
 1122 Title 77, Chapter 38a, Crime Victims Restitution Act.

1123 (8) Any financial penalty authorized by Section 78B-6-310 and ordered by the court  
 1124 may only become due after the satisfaction of the original criminal account receivable.

1125 (9) The order of the court finding the defendant in contempt and ordering sanctions is a  
 1126 final appealable order.

1127 Section 26. **Repealer.**

1128 This bill repeals:

1129 Section 76-3-201.1, **Collection of criminal judgment accounts receivable.**

1130 Section 77-32a-1, **Convicted defendant may be required to pay costs.**

1131 Section 77-32a-5, **Time and method of payment.**

1132 Section 77-32a-6, **Payment as condition of probation or suspended sentence.**

1133 Section 77-32a-7, **Default in payment as contempt -- Order to show cause --**

1134 **Warrant of arrest.**

1135 Section 77-32a-8, **Default in payment as contempt -- What constitutes contempt --**

1136 **Imprisonment.**

1137 Section 77-32a-9, **Costs imposed on corporation or association -- Duty to pay --**

1138 **Contempt.**

1139 Section 77-32a-10, **Imprisonment for contempt -- Limitations.**

1140 Section 77-32a-11, **Default not constituting contempt -- Relief allowed.**

1141 Section 77-32a-12, **Collection of payment in default -- Execution.**

1142 Section 77-32a-13, **Docketing judgment for costs.**

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**