

JUDICIAL DEBT COLLECTION AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Joseph G. Murray

Perry L. Buckner

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

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

AMENDS:

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

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

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

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

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

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

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

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

ENACTS:

78-7-33, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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

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

15-1-4. Interest on judgments.

(1) As used in this section, "federal postjudgment interest rate" means the interest rate

established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

- (2) The county attorney:
- (a) may appear and prosecute in all civil cases in which the state may be interested; and
 - (b) shall render assistance as required by the attorney general in all civil cases that may be appealed to the Supreme Court and prosecute the appeal from any violation of a county ordinance.
- (3) The county attorney shall:
- (a) draw all informations for violations of a county ordinance;
 - (b) cause all persons informed against to be speedily arraigned;
 - (c) cause all witnesses for the county to be subpoenaed to appear before the court;
 - (d) upon the order of the court, institute proceedings in the name of the county for recovery upon the forfeiture of any appearance or other bonds running to the county and enforce the collection of them; and
 - (e) perform other duties as required by law.
- ~~[(4) The county attorney shall:]~~
- ~~[(a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and forfeitures and take action to collect the past due amounts;]~~
- ~~[(b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and]~~
- ~~[(c) proceed against any officer and sureties under this subsection for any neglect of duty.]~~
- ~~[(5)]~~ (4) The county attorney shall:
- (a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;
 - (b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and
 - (c) file a copy of the list in the office of the state auditor and of the attorney general.
- ~~[(6)]~~ (5) The county attorney shall:
- (a) defend all actions brought against the county;

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

(c) give, when required and without fee, an opinion in writing to county, district, precinct, and prosecution district officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

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

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

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

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

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

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

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

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

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

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

(3) The office shall:

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

(b) develop consistent policies governing the collection and management of state

receivables;

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

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

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

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

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

(f) write an inclusive receivables management and collection manual for use by all state agencies;

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

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

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

(j) identify those state agencies that are not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

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

(l) establish an automated cash receipt process between state agencies;

(m) establish procedures for writing-off accounts receivable for accounting and collection purposes; [and]

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

(o) be a real party in interest for an account receivable referred to the office by any state agency; and

(p) allocate monies collected for judgments registered under Section 77-18-6 in accordance with Sections 63-63a-2, 63A-8-302, and 78-3-14.5.

- (4) The office may:
 - (a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;
 - (b) collect accounts receivables for higher education entities, if the higher education entity agrees;
 - (c) prepare a request for proposal for consulting services to:
 - (i) analyze the state's receivable management and collection efforts; and
 - (ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;
 - (d) contract with private agencies to collect past-due accounts;
 - (e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;
 - (f) obtain access to records of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63-2-206;
 - (g) by following the procedures and requirements of Section 63-38-3.2 establish:
 - (i) a fee to cover the administrative costs of collection;
 - (ii) a late penalty fee that may not be more than 10% of the account receivable;
 - (iii) an interest charge that is:
 - (A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or
 - (B) not more than 2% above the prime rate for accounts receivable for which no court judgment has been entered;
 - (iv) fees to collect accounts receivable for higher education; [and]
 - (h) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards[-];
 - (i) file a satisfaction of judgment in the district court by following the procedures and requirements of the Utah Rules of Civil Procedure; and
 - (j) ensure that judgments for which the office is the judgment creditor are renewed, as

necessary.

(5) (a) The office [may institute collection efforts on criminal fines, restitution, and other court-ordered debts.] shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).

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

(6) The office shall require state agencies to:

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

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

(c) use the state's accounts receivable system or, with the consent of the board, develop systems that are adequate to properly account for and report their receivables;

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

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

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

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

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

(ii) The summary shall include:

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

(B) any attempted collection activity; and

(C) any costs incurred in the collection process.

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

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

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

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

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

(3) The fund consists of:

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

(b) fees ~~[collected]~~ and interest established by the office under ~~[authority of this chapter]~~
Section 63A-8-201; and

(c) except as otherwise provided by law, all postjudgment interest collected by the office or the state except postjudgment interest on restitution.

(4) Monies in this fund shall be used to~~[(a) provide grants to other state agencies for specific collection enhancement projects; and (b)]~~ offset systems, administrative, legal, and other collection costs of the office or the state agency.

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

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

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

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

63A-8-302. Allocation of funds.

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

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

(a) federal cost allocation requirements for specific accounts receivable related to programs that are supported by federal funds take precedence over other cost allocation methods provided in

this section; and

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

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

64-13-6. Department duties.

(1) The department shall:

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

(b) implement court-ordered punishment of offenders;

(c) provide program opportunities for offenders;

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

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

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

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

(h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility; and

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

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

(i) criminal conduct of departmental employees;

(ii) felony crimes resulting in serious bodily injury;

(iii) death of any person; or

- (iv) aggravated kidnaping.
- (b) Prior to investigating any occurrence specified in Subsection (2)(a), the department shall:
 - (i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (2)(a) has occurred; and
 - (ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (2)(a).
- (3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.
- (4) In accordance with Section 63-55-264, the department shall provide data to the Commission on Criminal and Juvenile Justice to show the criteria for determining sex offender treatability, the implementation and effectiveness of sex offender treatment, and the results of ongoing assessment and objective diagnostic testing. The Commission on Criminal and Juvenile Justice will then report these data to the Judiciary Interim Committee and to the appropriate appropriations subcommittee annually.
- (5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).

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

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

(1) As used in this section:

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

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

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

collection of a civil judgment.

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

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

(c) Upon default in the payment of a criminal judgment account receivable or upon default in the payment of any installment of that receivable, the criminal judgment account receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.

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

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

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

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

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

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

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

(b) restructure the payment schedule;

(c) restructure the installment amount;

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

(e) start the period of probation anew;

(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to community service;

(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(h) in the district court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

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

(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection 63A-8-201(4) and postjudgment interest.

(8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether or not to record the unpaid balance of the account receivable as a civil judgment.

(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(b) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is past due, the district court may, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection.

(c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

[(3)] (9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make

disbursement from the assets of the corporation or association shall pay the ~~[fine or make the restitution]~~ obligation from those assets. ~~[His failure]~~

~~(b) Failure to [do so] pay the obligation~~ may be held to be contempt ~~[unless he makes the showing required in]~~ under Subsection ~~[(2)]~~ (3).

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

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

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

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

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

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

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

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

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

(i) on probation under the supervision of the Department of Corrections except in cases of

class C misdemeanors or infractions;

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

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

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

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

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

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

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

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

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

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

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

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

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

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

(i) identify the victim of the offense;

(ii) include a specific statement of the recommended amount of complete restitution as defined in Subsection 76-3-201(4), accompanied by a recommendation from the department regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the defendant;

(iii) identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

(iv) describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(v) identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and

(vi) contain any other information related to the impact of the offense upon the victim or the victim's family that is relevant to the trial court's sentencing determination.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

(d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,

three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

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

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

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

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

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

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

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

(iv) participate in available treatment programs;

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

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

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

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

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

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

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

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

certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation;
or

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

(A) a diagnosed learning disability; or

(B) other justified cause.

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

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

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

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

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

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

(iii) Upon motion of the Office of State Debt Collection, prosecutor ~~[or]~~, victim, or upon its

own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court [~~or why the suspended jail or prison term should not be imposed~~].

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

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

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

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

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

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

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

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

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his

probation should not be revoked, modified, or extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) (i) The clerk of court shall record each judgment of conviction that orders the payment

of restitution to a victim under Section 76-3-201 in the registry of civil judgments, listing the victim, or the estate of the victim, as the judgment creditor.

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

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

(iv) The victim may collect the judgment.

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

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

(a) constitutes a lien;

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

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

Section 10. Section **78-7-33** is enacted to read:

78-7-33. Collection of accounts receivable.

(1) As used in this section:

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

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

(2) If the Department of Corrections does not have responsibility under Section 77-18-1 for collecting an account receivable and if the Office of State Debt Collection does not have responsibility under Subsection 63A-8-201(5), the district court shall collect the account receivable.

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

(b) The juvenile court shall allocate monies collected above the cost of collection on a pro

rata basis to the various revenue types that generated the accounts receivable.

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