

**RESTITUTION AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Mike K. McKell

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**LONG TITLE**

**General Description:**

This bill amends the Individual Income Tax Act, the Utah Code of Criminal Procedure, and provisions related to the Division of Finance to assist in, and increase, the collection of restitution for crime victims.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides for a restitution order or judgment to be paid from income tax overpayment funds;
- ▶ requires the State Office of Debt Collection to collect restitution for victims ordered in a court if the account receivable is transferred to the office by a court;
- ▶ provides that, before refunding bail that is posted in cash, by credit card, or by debit card, the court shall, after applying the amount posted towards any fine ordered by the court, apply the remaining amount toward restitution;
- ▶ requires the Judicial Council to create a financial declaration form to be completed by a defendant in a case where restitution is likely to be ordered;
- ▶ makes it a class B misdemeanor to make a false statement in a financial declaration form; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **59-10-529**, as last amended by Laws of Utah 2010, Chapters 34 and 216

34 **63A-3-501**, as renumbered and amended by Laws of Utah 2011, Chapter 79

35 **63A-3-502**, as last amended by Laws of Utah 2011, Chapter 59 and renumbered and  
36 amended by Laws of Utah 2011, Chapter 79

37 **63A-3-503**, as renumbered and amended by Laws of Utah 2011, Chapter 79

38 **76-3-201**, as last amended by Laws of Utah 2011, Chapters 64 and 131

39 **76-3-201.1**, as last amended by Laws of Utah 2011, Chapter 79

40 **77-20-4**, as last amended by Laws of Utah 2006, Chapter 55

41 **77-38a-203**, as last amended by Laws of Utah 2005, Chapter 96

42 **77-38a-302**, as last amended by Laws of Utah 2005, Chapter 96

43 ENACTS:

44 **77-38a-204**, Utah Code Annotated 1953



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

47 Section 1. Section **59-10-529** is amended to read:

48 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

49 (1) If there has been an overpayment of any tax imposed by this chapter, the amount of  
50 overpayment is credited as follows:

51 (a) against an income tax due from a taxpayer;

52 (b) against:

53 (i) the amount of a judgment against a taxpayer, including a final judgment [~~ordering~~  
54 ~~the~~] or order requiring payment of a fine or of restitution to a victim under Title 77, Chapter  
55 38a, Crime Victims Restitution Act, obtained through due process of law by an entity of state  
56 or local government; or

57 (ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as  
58 determined by the Office of Recovery Services in the Department of Human Services and after

59 notice and an opportunity for an adjudicative proceeding, as provided in Subsection (2); or

60 (c) subject to Subsection (3), (5), (6), or (7), as bail, to ensure the appearance of a  
61 taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer  
62 for which bail is due, if a court of competent jurisdiction has not approved an alternative form  
63 of payment.

64 (2) If a balance remains after an overpayment is credited in accordance with Subsection  
65 (1), the balance shall be refunded to the taxpayer.

66 (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

67 (a) that is due and related to a warrant that is outstanding on or after February 16, 1984;  
68 and

69 (b) in accordance with Subsections (5) and (6).

70 (4) (a) The amount of an overpayment may be credited against an obligation described  
71 in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the  
72 taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

73 (i) the amount of child support that is due or past due as of the date of the notice or  
74 other specified date;

75 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child  
76 support specified in the notice; and

77 (iii) that the taxpayer may contest the amount of past-due child support specified in the  
78 notice by filing a written request for an adjudicative proceeding with the office within 15 days  
79 of the notice being sent.

80 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
81 Office of Recovery Services shall establish rules to implement this Subsection (4), including  
82 procedures, in accordance with the other provisions of this section, to ensure:

83 (i) prompt reimbursement to a taxpayer of any amount of an overpayment that was  
84 credited against a child support obligation in error; and

85 (ii) prompt distribution of properly credited funds to the obligee parent.

86 (5) The amount of an overpayment may be credited against bail described in  
87 Subsection (1)(c) if:

88 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,  
89 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

90 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been  
91 sent to the taxpayer's current address on file with the commission.

92 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that  
93 issued the warrant of arrest.

94 (ii) The clerk of the court is authorized to endorse the check or commission warrant of  
95 payment on behalf of the payees and deposit the money in the court treasury.

96 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the  
97 warrant for arrest of the taxpayer if:

98 (A) the case is a case for which a personal appearance of the taxpayer is not required;  
99 and

100 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

101 (ii) In a case except for a case described in Subsection (6)(b)(i):

102 (A) the court receiving the overpayment applied as bail is not required to order the  
103 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

104 (B) the taxpayer may be arrested on the warrant.

105 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to  
106 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the  
107 overpayment applied as bail is forfeited.

108 (ii) A court may issue another warrant or allow the original warrant to remain in force  
109 if:

110 (A) the taxpayer has not complied with an order of the court;

111 (B) the taxpayer has failed to appear and respond to a criminal charge for which a  
112 personal appearance is required; or

113 (C) the taxpayer has paid partial but not full bail in a case for which a personal  
114 appearance is not required.

115 (d) If the alleged violations named in a warrant are later resolved in favor of the  
116 taxpayer, the bail amount shall be remitted to the taxpayer.

117 (7) The fine and bail forfeiture provisions of this section apply to all warrants and fines  
118 issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction described in  
119 this section, which are outstanding on or after February 16, 1984.

120 (8) If the amount allowable as a credit for tax withheld from a taxpayer exceeds the tax

121 to which the credit relates, the excess is considered an overpayment.

122 (9) (a) Subject to Subsection (9)(b), a claim for credit or refund of an overpayment that  
123 is attributable to a net operating loss carry back or carry forward shall be filed within three  
124 years from the due date of the return for the taxable year of the net operating loss.

125 (b) The three-year period described in Subsection (9)(a) shall be extended by any  
126 extension of time provided in statute for filing the return described in Subsection (9)(a).

127 (10) If there is no tax liability for a period in which an amount is paid under this  
128 chapter, the amount is an overpayment.

129 (11) If a tax under this chapter is assessed or collected after the expiration of the  
130 applicable period of limitation, that amount is an overpayment.

131 (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within  
132 two years from the date a notice of change, notice of correction, or amended return is required  
133 to be filed with the commission if the taxpayer is required to:

134 (i) report a change or correction in income reported on the taxpayer's federal income  
135 tax return;

136 (ii) report a change or correction that is treated in the same manner as if the change or  
137 correction were an overpayment for federal income tax purposes; or

138 (iii) file an amended return with the commission.

139 (b) If a report or amended return is not filed within 90 days, interest on any resulting  
140 refund or credit ceases to accrue after the 90-day period.

141 (c) The amount of the credit or refund may not exceed the amount of the reduction in  
142 tax attributable to the federal change, correction, or items amended on the taxpayer's amended  
143 federal income tax return.

144 (d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the  
145 amount or the time within which a claim for credit or refund may be filed.

146 (13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

147 (14) In the case of an overpayment of tax by an employer under Part 4, Withholding of  
148 Tax, a refund or credit shall be made to the employer only to the extent that the amount of the  
149 overpayment is not deducted and withheld from wages under this chapter.

150 (15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission  
151 may make payment to the personal representative of the taxpayer's estate.

152 (b) If there is no personal representative of the taxpayer's estate, payment may be made  
153 to those persons who establish entitlement to inherit the property of the decedent in the  
154 proportions established in Title 75, Utah Uniform Probate Code.

155 (16) If an overpayment relates to a change in net income described in Subsection  
156 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the  
157 period within which a deficiency may be assessed.

158 (17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate  
159 and in the manner prescribed in Section 59-1-402.

160 Section 2. Section **63A-3-501** is amended to read:

161 **63A-3-501. Definitions.**

162 As used in this part:

163 (1) (a) "Accounts receivable" or "receivables" means any amount due [~~the state~~] to a  
164 state agency from an entity for which payment has not been received by the state agency that is  
165 servicing the debt.

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

169 (2) "Administrative offset" means:

170 (a) a reduction of an individual's tax refund or other payments due to the individual to  
171 reduce or eliminate accounts receivable that the individual owes to [~~the state~~] a state agency;  
172 and

173 (b) a reduction of an entity's tax refund or other payments due to the entity to reduce or  
174 eliminate accounts receivable that the entity owes to [~~the state~~] a state agency.

175 (3) "Entity" means an individual, a corporation, partnership, or other organization that  
176 pays taxes to or does business with the state.

177 (4) "Office" means the Office of State Debt Collection established by this part.

178 (5) "Past due" means any accounts receivable that the state has not received by the  
179 payment due date.

180 (6) "Restitution to victims" means restitution ordered by a court to be paid to a victim  
181 of an offense in a criminal or juvenile proceeding.

182 [~~(6)~~] (7) (a) "State agency" includes:

183 (i) any department, division, commission, council, board, bureau, committee, office, or  
 184 other administrative subunit of Utah state government~~[-including];~~

185 (ii) the legislative branch of state government; and

186 (iii) the judicial branches of state government, including justice courts.

187 (b) "State agency" does not include:

188 (i) any institution of higher education;

189 (ii) except in Subsection 63A-3-502(7)(g), the State Tax Commission; or

190 (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor

191 Commissioner under Section 34A-2-704, solely for the purposes of collecting money required  
 192 to be deposited into the Uninsured Employers' Fund under:

193 (A) Section 34A-1-405;

194 (B) Title 34A, Chapter 2, Workers' Compensation Act;

195 (C) Title 34A, Chapter 3, Utah Occupational Disease Act; or

196 (D) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act.

197 ~~[(7)]~~ (8) "Writing-off" means the removal of an accounts receivable from an agency's  
 198 accounts receivable records but does not necessarily eliminate further collection efforts.

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

200 **63A-3-502. Office of State Debt Collection created -- Duties.**

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

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

204 (3) The office shall:

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

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

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

209 (i) implementing all appropriate collection methods;

210 (ii) following established receivables guidelines; and

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

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

- 214 (e) provide information, training, and technical assistance to each state agency on
- 215 various collection-related topics;
- 216 (f) write an inclusive receivables management and collection manual for use by each
- 217 state agency;
- 218 (g) prepare quarterly and annual reports of the state's receivables;
- 219 (h) create or coordinate a state accounts receivable database;
- 220 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an
- 221 effective accounts receivable program;
- 222 (j) identify any state agency that is not making satisfactory progress toward
- 223 implementing collection techniques and improving accounts receivable collections;
- 224 (k) coordinate information, systems, and procedures between each state agency to
- 225 maximize the collection of past-due accounts receivable;
- 226 (l) establish an automated cash receipt process between each state agency;
- 227 (m) assist the Division of Finance to establish procedures for writing off accounts
- 228 receivable for accounting and collection purposes;
- 229 (n) establish standard time limits after which an agency will delegate responsibility to
- 230 collect state receivables to the office or its designee;
- 231 (o) be a real party in interest for an account receivable referred to the office by any
- 232 state agency or for any restitution to victims referred to the office by a court; and
- 233 (p) allocate money collected for judgments registered under Section 77-18-6 in
- 234 accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.
- 235 (4) The office may:
- 236 (a) recommend to the Legislature new laws to enhance collection of past-due accounts
- 237 by state agencies;
- 238 (b) collect accounts receivables for higher education entities, if the higher education
- 239 entity agrees;
- 240 (c) prepare a request for proposal for consulting services to:
- 241 (i) analyze the state's receivable management and collection efforts; and
- 242 (ii) identify improvements needed to further enhance the state's effectiveness in
- 243 collecting its receivables;
- 244 (d) contract with private or state agencies to collect past-due accounts;

- 245 (e) perform other appropriate and cost-effective coordinating work directly related to  
246 collection of state receivables;
- 247 (f) obtain access to records and databases of any state agency that are necessary to the  
248 duties of the office by following the procedures and requirements of Section 63G-2-206,  
249 including the financial disclosure form described in Section 78-38a-204;
- 250 (g) collect interest and fees related to the collection of receivables under this chapter,  
251 and establish, by following the procedures and requirements of Section 63J-1-504:
- 252 (i) a fee to cover the administrative costs of collection, on accounts administered by the  
253 office;
- 254 (ii) a late penalty fee that may not be more than 10% of the account receivable on  
255 accounts administered by the office;
- 256 (iii) an interest charge that is:
- 257 (A) the postjudgment interest rate established by Section 15-1-4 in judgments  
258 established by the courts; or
- 259 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts  
260 receivable for which no court judgment has been entered; and
- 261 (iv) fees to collect accounts receivable for higher education;
- 262 (h) collect reasonable attorney fees and reasonable costs of collection that are related to  
263 the collection of receivables under this chapter;
- 264 (i) make rules that allow accounts receivable to be collected over a reasonable period  
265 of time and under certain conditions with credit cards;
- 266 (j) file a satisfaction of judgment in the [district] court by following the procedures  
267 and requirements of the Utah Rules of Civil Procedure;
- 268 (k) ensure that judgments for which the office is the judgment creditor are renewed, as  
269 necessary;
- 270 (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f)  
271 with private sector vendors under contract with the state to assist state agencies in collecting  
272 debts owed to the state agencies without changing the classification of any private, controlled,  
273 or protected record into a public record; and
- 274 (m) enter into written agreements with other governmental agencies to obtain  
275 information for the purpose of collecting state accounts receivable and restitution for victims.

276 (5) The office shall ensure that:  
277 (a) a record obtained by the office or a private sector vendor as referred to in  
278 Subsection (4)(1):  
279 (i) is used only for the limited purpose of collecting accounts receivable; and  
280 (ii) is subject to federal, state, and local agency records restrictions; and  
281 (b) any person employed by, or formerly employed by, the office or a private sector  
282 vendor as referred to in Subsection (4)(1) is subject to:  
283 (i) the same duty of confidentiality with respect to the record imposed by law on  
284 officers and employees of the state agency from which the record was obtained; and  
285 (ii) any civil or criminal penalties imposed by law for violations of lawful access to a  
286 private, controlled, or protected record.  
287 (6) (a) The office shall collect accounts receivable ordered by ~~the district~~ a court as a  
288 result of prosecution for a criminal offense that have been transferred to the office under  
289 Subsection 76-3-201.1(5)(h) or (8).  
290 (b) The office may not assess the interest charge established by the office under  
291 Subsection (4) on an account receivable subject to the postjudgment interest rate established by  
292 Section 15-1-4.  
293 (7) The office shall require a state agency to:  
294 (a) transfer collection responsibilities to the office or its designee according to time  
295 limits established by the office;  
296 (b) make annual progress towards implementing collection techniques and improved  
297 accounts receivable collections;  
298 (c) use the state's accounts receivable system or develop systems that are adequate to  
299 properly account for and report their receivables;  
300 (d) develop and implement internal policies and procedures that comply with the  
301 collections policies and guidelines established by the office;  
302 (e) provide internal accounts receivable training to staff involved in the management  
303 and collection of receivables as a supplement to statewide training;  
304 (f) bill for and make initial collection efforts of its receivables up to the time the  
305 accounts must be transferred; and  
306 (g) submit quarterly receivable reports to the office that identify the age, collection

307 status, and funding source of each receivable.

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

310 (9) The summary shall include:

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

312 (b) any attempted collection activity; and

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

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

316 Section 4. Section **63A-3-503** is amended to read:

317 **63A-3-503. Legal services.**

318 The Office of the Attorney General shall:

319 (1) provide to the office all legal services and advice related to the collection of  
320 accounts receivable;

321 (a) owed to the state; ~~and~~ or

322 (b) for which the office has collection responsibilities; and

323 (2) establish policies governing:

324 (a) legal matters involving accounts receivable; and

325 (b) litigation of past-due accounts receivable.

326 Section 5. Section **76-3-201** is amended to read:

327 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**  
328 **penalties.**

329 (1) As used in this section:

330 (a) "Conviction" includes a:

331 (i) judgment of guilt; and

332 (ii) plea of guilty.

333 (b) "Criminal activities" means any offense of which the defendant is convicted or any  
334 other criminal conduct for which the defendant admits responsibility to the sentencing court  
335 with or without an admission of committing the criminal conduct.

336 (c) "Pecuniary damages" means all special damages, but not general damages, which a  
337 person could recover against the defendant in a civil action arising out of the facts or events

338 constituting the defendant's criminal activities and includes the money equivalent of property  
339 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical  
340 expenses.

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

344 (e) (i) "Victim" means any person who the court determines has suffered pecuniary  
345 damages as a result of the defendant's criminal activities.

346 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

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

349 (a) to pay a fine;

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

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

352 (d) to imprisonment;

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

354 (f) to death.

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

356 (i) forfeit property;

357 (ii) dissolve a corporation;

358 (iii) suspend or cancel a license;

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

360 (v) cite for contempt; or

361 (vi) impose any other civil penalty.

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

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

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

369 (c) In addition to any other sentence the court may impose, the court, pursuant to the  
370 provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

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

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

375 (d) In determining whether to order that the restitution required under Subsection (4)(c)  
376 be reduced or that the defendant be exempted from the restitution, the court shall consider the  
377 criteria under Subsections 77-38a-302(5)(c)(i) through [~~(iv)~~] (vi) and provide findings of its  
378 decision on the record.

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

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

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

385 (iii) convicted of a crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

411 (B) the reimbursement does not duplicate the reimbursement provided under Section  
412 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or  
413 a state parole inmate, as defined in Section 64-13e-102.

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

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

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

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

430 Section 6. Section **76-3-201.1** is amended to read:

431 **76-3-201.1. Collection of criminal judgment accounts receivable.**

432 (1) As used in this section:

433 (a) "Criminal judgment accounts receivable" means any amount due the state arising  
434 from a criminal judgment for which payment has not been received by the state agency that is  
435 servicing the debt.436 (b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures,  
437 surcharges, costs, interest, penalties, restitution to victims, third party claims, claims,  
438 reimbursement of a reward, and damages.439 (2) (a) A criminal judgment account receivable ordered by the court as a result of  
440 prosecution for a criminal offense may be collected by any means authorized by law for the  
441 collection of a civil judgment.442 (b) (i) The court may permit a defendant to pay a criminal judgment account receivable  
443 in installments.444 (ii) In the district court, if the criminal judgment account receivable is paid in  
445 installments, the total amount due shall include all fines, surcharges, postjudgment interest, and  
446 fees.447 (c) Upon default in the payment of a criminal judgment account receivable or upon  
448 default in the payment of any installment of that receivable, the criminal judgment account  
449 receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by  
450 any means authorized by law for the collection of a civil judgment.451 (3) When a defendant defaults in the payment of a criminal judgment account  
452 receivable or any installment of that receivable, the court, on motion of the prosecution, victim,  
453 or upon its own motion may:454 (a) order the defendant to appear and show cause why the default should not be treated  
455 as contempt of court; or

456 (b) issue a warrant of arrest.

457 (4) (a) Unless the defendant shows that the default was not attributable to an  
458 intentional refusal to obey the order of the court or to a failure to make a good faith effort to  
459 make the payment, the court may find that the default constitutes contempt.460 (b) Upon a finding of contempt, the court may order the defendant committed until the  
461 criminal judgment account receivable, or a specified part of it, is paid.

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

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

466 (b) restructure the payment schedule;

467 (c) restructure the installment amount;

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

470 (e) start the period of probation anew;

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

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

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

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

480 (7) Whether or not a default constitutes contempt, the court may add to the amount  
481 owed the fees established under Subsection 63A-3-502(4)(g) and postjudgment interest.

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

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

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

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

498 (9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of  
499 restitution is imposed on a corporation or unincorporated association, the person authorized to  
500 make disbursement from the assets of the corporation or association shall pay the obligation  
501 from those assets.

502 (b) Failure to pay the obligation may be held to be contempt under Subsection (3).

503 (10) The prosecuting attorney may collect restitution in behalf of a victim.

504 Section 7. Section **77-20-4** is amended to read:

505 **77-20-4. Bail to be posted in cash, by credit or debit card, or written undertaking.**

506 (1) Bail may be posted:

507 (a) in cash;

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

509 or

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

511 (2) A bail bond may not be accepted without receiving in writing at the time the bail is  
512 posted the current mailing address and telephone number of the surety.

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

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

518 (5) Before refunding bail that is posted in cash, by credit card, or by debit card in a  
519 case, the court shall apply the amount posted toward accounts receivable, as defined in Section  
520 63A-3-501, that are owed by the defendant.

521 Section 8. Section **77-38a-203** is amended to read:

522 **77-38a-203. Restitution determination -- Department of Corrections --**

523 **Presentence investigation.**

524 (1) (a) The department shall prepare a presentence investigation report in accordance  
525 with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall  
526 provide all available victim information to the department upon request. The victim impact  
527 statement shall:

- 528 (i) identify all victims of the offense;
- 529 (ii) itemize any economic loss suffered by the victim as a result of the offense;
- 530 (iii) include for each identifiable victim a specific statement of the recommended  
531 amount of complete restitution as defined in Section 77-38a-302, accompanied by a  
532 recommendation from the department regarding the payment by the defendant of court-ordered  
533 restitution with interest as defined in Section 77-38a-302;
- 534 (iv) identify any physical, mental, or emotional injuries suffered by the victim as a  
535 result of the offense, and the seriousness and permanence;
- 536 (v) describe any change in the victim's personal welfare or familial relationships as a  
537 result of the offense;
- 538 (vi) identify any request for mental health services initiated by the victim or the  
539 victim's family as a result of the offense; and
- 540 (vii) contain any other information related to the impact of the offense upon the victim  
541 or the victim's family that the court requires.

542 (b) The crime victim shall be responsible to provide to the department upon request all  
543 invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss.  
544 The crime victim shall also provide upon request:

- 545 (i) all documentation and evidence of compensation or reimbursement from insurance  
546 companies or agencies of the state of Utah, any other state, or federal government received as a  
547 direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and
- 548 (ii) proof of identification, including date of birth, Social Security number, drivers  
549 license number, next of kin, and home and work address and telephone numbers.

550 (c) The inability, failure, or refusal of the crime victim to provide all or part of the  
551 requested information shall result in the court determining restitution based on the best  
552 information available.

553 (2) (a) The court shall order the defendant as part of the presentence investigation to:

- 554 (i) complete a financial declaration form described in Section 77-38a-204; and

555           (ii) submit to the department any additional information determined necessary to be  
556 disclosed for the purpose of ascertaining the restitution.

557           (b) The willful failure or refusal of the defendant to provide all or part of the requisite  
558 information shall constitute a waiver of any grounds to appeal or seek future amendment or  
559 alteration of the restitution order predicated on the undisclosed information.

560           (c) If the defendant objects to the imposition, amount, or distribution of the restitution  
561 recommended in the presentence investigation, the court shall set a hearing date to resolve the  
562 matter.

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

565           Section 9. Section **77-38a-204** is enacted to read:

566           **77-38a-204. Financial declaration by defendant.**

567           (1) (a) The Judicial Council shall design and publish a financial declaration form to be  
568 completed by a defendant in a case where the prosecutor has indicated that restitution may be  
569 ordered.

570           (b) The financial declaration form shall:

571           (i) require a defendant to disclose all assets, income, and financial liabilities of the  
572 defendant, including:

573           (A) real property;

574           (B) vehicles;

575           (C) precious metals or gems;

576           (D) jewelry with a value of \$1,000 or more;

577           (E) other personal property with a value of \$1,000 or more;

578           (F) bank account balances;

579           (G) cash;

580           (H) salary, wages, commission, tips, and business income;

581           (I) pensions and annuities;

582           (J) intellectual property;

583           (K) accounts receivable;

584           (L) accounts payable;

585           (M) mortgages, loans, and other debts; and

586 (N) restitution that has been ordered, and not fully paid, in other cases; and  
587 (ii) state that a false statement made in the financial declaration form is punishable as a  
588 class B misdemeanor under Section 76-8-504.

589 (2) A defendant shall, before sentencing, or earlier if ordered by the court, complete the  
590 financial declaration described in Subsection (1).

591 Section 10. Section **77-38a-302** is amended to read:

592 **77-38a-302. Restitution criteria.**

593 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary  
594 damages, in addition to any other sentence it may impose, the court shall order that the  
595 defendant make restitution to victims of crime as provided in this chapter, or for conduct for  
596 which the defendant has agreed to make restitution as part of a plea disposition. For purposes  
597 of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in  
598 determining whether restitution is appropriate, the court shall follow the criteria and procedures  
599 as provided in Subsections (2) through (5).

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

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

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

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

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

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

613 (5) (a) For the purpose of determining restitution for an offense, the offense shall  
614 include any criminal conduct admitted by the defendant to the sentencing court or to which the  
615 defendant agrees to pay restitution. A victim of an offense that involves as an element a  
616 scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by

617 the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

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

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

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

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

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

628 (v) up to five days of the individual victim's determinable wages that are lost due to  
629 theft of or damage to tools or equipment items of a trade that were owned by the victim and  
630 were essential to the victim's current employment at the time of the offense; and

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

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

635 (i) the factors listed in Subsections (5)(a) and (b) ~~[and]~~;

636 ~~[(i)]~~ (ii) the financial resources of the defendant ~~[and]~~, as disclosed in the financial  
637 declaration described in Section 77-38a-204;

638 ~~[(iii)]~~ (iii) the burden that payment of restitution will impose, with regard to the other  
639 obligations of the defendant;

640 ~~[(iv)]~~ (iv) the ability of the defendant to pay restitution on an installment basis or on  
641 other conditions to be fixed by the court;

642 ~~[(v)]~~ (v) the rehabilitative effect on the defendant of the payment of restitution and the  
643 method of payment; and

644 ~~[(vi)]~~ (vi) other circumstances ~~[which]~~ that the court determines may make restitution  
645 inappropriate.

646 (d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete  
647 restitution and court-ordered restitution, and shall make all restitution orders at the time of

648 sentencing if feasible, otherwise within one year after sentencing.

649           (ii) Any pecuniary damages that have not been determined by the court within one year  
650 after sentencing may be determined by the Board of Pardons and Parole.

651           (e) The Board of Pardons and Parole may, within one year after sentencing, refer an  
652 order of judgment and commitment back to the court for determination of restitution.

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**Legislative Review Note**  
as of 1-30-13 3:20 PM

**Office of Legislative Research and General Counsel**