

SB0071S01 compared with SB0071

~~deleted text~~ shows text that was in SB0071 but was deleted in SB0071S01.

Inserted text shows text that was not in SB0071 but was inserted into SB0071S01.

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Senator Daniel W. Thatcher proposes the following substitute bill:

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

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- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

77-18-1, as last amended by Laws of Utah 2016, Third Special Session, Chapter 4

77-18-6, as last amended by Laws of Utah 2014, Chapter 170

77-20-4, as last amended by Laws of Utah 2016, Chapter 234

~~{ **77-27-5**, as last amended by Laws of Utah 2016, Chapter 223~~

~~— **77-27-6**, as last amended by Laws of Utah 2016, Chapter 223~~

~~— **77-38-3**, as last amended by Laws of Utah 2016, Chapter 223~~

‡ **77-38a-102**, as last amended by Laws of Utah 2016, Chapter 223

77-38a-301, as enacted by Laws of Utah 2001, Chapter 137

77-38a-302, as last amended by Laws of Utah 2016, Chapter 223

77-38a-404, as last amended by Laws of Utah 2011, Chapters 131 and 208

77-38a-501, as last amended by Laws of Utah 2003, Chapter 280

78B-2-115, as last amended by Laws of Utah 2015, Chapter 434

ENACTS:

77-32a-101, Utah Code Annotated 1953

77-32a-102, Utah Code Annotated 1953

77-32a-103, Utah Code Annotated 1953

77-32a-104, Utah Code Annotated 1953

77-32a-105, Utah Code Annotated 1953

77-32a-106, Utah Code Annotated 1953

78B-6-317, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

77-32a-107, (Renumbered from 77-32a-2, as last amended by Laws of Utah 1999,

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Chapter 21)

77-32a-108, (Renumbered from 77-32a-3, as enacted by Laws of Utah 1980, Chapter 15)

77-32a-109, (Renumbered from 77-32a-4, as enacted by Laws of Utah 1980, Chapter 15)

77-32a-110, (Renumbered from 77-32a-14, as enacted by Laws of Utah 1980, Chapter 15)

REPEALS:

76-3-201.1, as last amended by Laws of Utah 2015, Chapter 434

77-32a-1, as last amended by Laws of Utah 2002, Chapter 35

77-32a-5, as enacted by Laws of Utah 1980, Chapter 15

77-32a-6, as enacted by Laws of Utah 1980, Chapter 15

77-32a-7, as enacted by Laws of Utah 1980, Chapter 15

77-32a-8, as enacted by Laws of Utah 1980, Chapter 15

77-32a-9, as enacted by Laws of Utah 1980, Chapter 15

77-32a-10, as enacted by Laws of Utah 1980, Chapter 15

77-32a-11, as enacted by Laws of Utah 1980, Chapter 15

77-32a-12, as enacted by Laws of Utah 1980, Chapter 15

77-32a-13, as enacted by Laws of Utah 1980, Chapter 15

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

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

63A-3-502. 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 Division of Finance.

(3) The office shall:

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

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

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

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- (i) implementing all appropriate collection methods;
 - (ii) following established receivables guidelines; and
 - (iii) accounting for and reporting receivables in the appropriate manner;
 - (d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;
 - (e) provide information, training, and technical assistance to each state agency on various collection-related topics;
 - (f) write an inclusive receivables management and collection manual for use by each state agency;
 - (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 any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;
 - (k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;
 - (l) establish an automated cash receipt process between each state agency;
 - (m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;
 - (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 or for any restitution to victims referred to the office by a court; and
 - (p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.
- (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;

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- (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 or state 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 and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section 77-38a-204;
- (g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:
 - (i) a fee to cover the administrative costs of collection, on accounts administered by the office;
 - (ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;
 - (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 as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and
 - (iv) fees to collect accounts receivable for higher education;
- (h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;
- (i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;
- (j) file a satisfaction of judgment in the court by following the procedures and requirements of the Utah Rules of Civil Procedure;
- (k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;
- (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f)

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with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record;

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

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

(5) The office shall ensure that:

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

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

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

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

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

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

(6) (a) The office shall collect accounts receivable ordered by a 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)~~] Section 77-32a-102.

(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.

(7) The office shall require a state agency 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

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accounts receivable collections;

(c) use the state's accounts receivable system or 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 the 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.

(8) 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.

(9) 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.

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

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

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

(b) are not compensation for actual pecuniary loss.

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

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

(1) As used in this section:

(a) "Conviction" includes a:

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

(ii) plea of guilty[-]; or

(iii) plea of no contest.

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

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

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

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

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

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

(a) to pay a fine;

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

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

(d) to imprisonment;

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

(f) to death.

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

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

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

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

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

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

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

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

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

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

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

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

(iii) convicted of a crime.

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

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

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

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

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- (A) \$100 for up to 100 miles a defendant is transported;
- (B) \$200 for 100 up to 200 miles a defendant is transported; and
- (C) \$350 for 200 miles or more a defendant is transported.

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

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

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

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

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

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

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

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

(c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall consider

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the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for its order on the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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conditions.

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

(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 results of a risk and needs assessment;
- (iii) the demand for services;
- (iv) the availability of agency resources;
- (v) public safety; and
- (vi) 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) Before 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

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information from other sources about the defendant.

(b) The presentence investigation report shall include:

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

(ii) 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 Title 77, Chapter 38a, Crime Victims Restitution Act;

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

(iv) recommendations for treatment of the offender; and

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

(c) The contents of the presentence investigation report 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 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 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 court may require that the

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defendant:

(a) 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) (i) provide for the support of others for whose support the defendant is legally liable;~~

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

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

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

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

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

~~[(ix) (vii) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and~~

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

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

(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 shall collect and disburse the ~~[account]~~ accounts receivable as

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defined by Section [~~76-3-201.1~~] 77-32a-101, with interest 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 (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, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

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

(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, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(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 is being requested by the department or will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on 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

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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.

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

(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 be modified as is consistent with the graduated sanctions and incentives developed by the Utah Sentencing Commission under Section 63M-7-404, but the length of probation may not be 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 the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's 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 if the defendant is indigent.

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

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(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 the defendant's 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 reinstated for all or a portion of the original term of probation.

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

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

(B) the sentence previously imposed shall be executed.

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

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and 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 the superintendent's 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-15-610(2)(g) are receiving priority for

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treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-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 63G-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.

(15) (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 (16).

(16) (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.

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(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 4. Section **77-18-6** is amended 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;

(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; and

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

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

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Subsection 78A-2-214(2).

(iv) The victim may collect the judgment.

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

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

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

(1) Bail may be posted:

(a) in cash;

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

or

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

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

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

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

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

Section 6. Section ~~{77-27-5}~~ 77-32a-101 is ~~{amended to read:~~

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~~77-27-5. Board of Pardons and Parole authority.~~

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

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

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

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

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

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

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

~~(3) Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not~~

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~~subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment, including restitution as provided in Section 77-27-6.~~

~~—— (4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.~~

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

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

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

~~—— **77-27-6. Payment of restitution:**~~

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

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

~~—— (b) In accordance with Subsection 77-38a-302(5)(d)[(iii)(A)](ii), the board may order~~

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~~that a defendant make restitution for pecuniary damages that were not determined by the court, unless the board applying the criteria as set forth in Section 77-38a-302 determines that restitution is inappropriate.~~

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

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

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

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

~~—— Section 8. Section 77-32a-101 is } enacted to read:~~

CHAPTER 32a. CRIMINAL ACCOUNTS RECEIVABLE AND DEFENSE COSTS

77-32a-101. Definitions.

As used in this chapter:

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

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

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

(4) "Delinquent" means an account receivable or installment payment that is overdue

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by more than 28 but less than 90 days.

Section ~~{9}~~7. Section 77-32a-102 is enacted to read:

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

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

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

(a) shall, in the case of felonies where a prison sentence is imposed and not suspended, enter any unpaid criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection;

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

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

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

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

(5) The court may modify the amount and number of any ~~{delayed}~~installment payments, as justice requires, at any time before the time for default as outlined in Subsection 77-32a-103(2).

(6) In the district court, ~~{the delayed payment shall include}~~delinquent accounts may incur post judgment interest.

Section ~~{10}~~8. Section 77-32a-103 is enacted to read:

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

(1) If a criminal judgment account receivable retained by the court becomes more than 30 days past due, the court may, without a motion or a hearing, record the unpaid balance of the

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account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(2) If a criminal judgment account receivable retained by the court 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) (a) Criminal judgment accounts receivable are not subject to civil statutes of limitations and expire only upon payment in full.

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

Section ~~{11}~~9. Section **77-32a-104** is enacted to read:

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

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

(2) After the hearing, if it appears to the satisfaction of the court that the ~~{default}~~delinquency 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 the criminal judgment account receivable by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

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

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

(f) 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.

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

(4) If the court determines that the ~~{nonpayment}~~delinquency does constitute contempt the court shall address the contempt as provided in Section ~~{78B-6-317}~~78B-6-310.

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

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

Section ~~{12}~~10. Section 77-32a-105 is enacted to read:

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

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

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

Section ~~{13}~~11. Section 77-32a-106 is enacted to read:

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

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

Section ~~{14}~~12. Section 77-32a-107, which is renumbered from Section 77-32a-2 is renumbered and amended to read:

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

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

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violations of law. Costs ~~[cannot]~~ may not include ~~[attorneys']~~ attorney fees for prosecuting attorneys.

Section ~~{15}~~13. Section **77-32a-108**, which is renumbered from Section 77-32a-3 is renumbered and amended to read:

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

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

Section ~~{16}~~14. Section **77-32a-109**, which is renumbered from Section 77-32a-4 is renumbered and amended to read:

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

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

Section ~~{17}~~15. Section **77-32a-110**, which is renumbered from Section 77-32a-14 is renumbered and amended to read:

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

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

Section ~~{18}~~16. Section ~~{77-38-3}~~77-38a-102 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (i) a law enforcement agency, including the prosecuting agency;~~

~~—— (ii) a victims' right committee as provided in Section 77-37-5;~~

~~—— (iii) a governmentally sponsored victim or witness program;~~

~~—— (iv) the Department of Corrections;~~

~~—— (v) the Utah Office for Victims of Crime;~~

~~—— (vi) the Commission on Criminal and Juvenile Justice; and~~

~~—— (vii) the Board of Pardons and Parole:~~

~~—— (12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section~~

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~~77-38-2.~~

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

~~———— (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;~~

~~———— (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and~~

~~———— (iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.~~

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

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

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

~~———— Section 19. Section 77-38a-102 is amended to read:~~

‡ **77-38a-102. Definitions.**

As used in this chapter:

(1) "Conviction" includes a:

- (a) judgment of guilt;
- (b) a plea of guilty; or
- (c) a plea of no contest.

(2) "Criminal activities" means:

- (a) any misdemeanor or felony offense of which the defendant is convicted; or
- (b) any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~20~~17. Section 77-38a-301 is amended to read:

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

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

Section ~~21~~18. Section 77-38a-302 is amended to read:

77-38a-302. Restitution criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) In determining the monetary sum and other conditions for court-ordered restitution,

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the court shall consider:

- (i) the factors listed in Subsections (5)(a) and (b);
 - (ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;
 - (iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
 - (iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
 - (v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
 - (vi) other circumstances that the court determines may make restitution inappropriate.
- (d) (i) ~~}}~~ The prosecuting agency shall submit all requests for ~~{~~ Except as provided in Subsection (5)(d)(ii), the court shall determine } complete restitution and ~~{court-ordered}~~ court-ordered restitution ~~}}~~ to the court ~~{, and make all restitution orders}~~ at the time of sentencing if feasible, otherwise within one year after sentencing.
- ~~}}~~(ii) If a defendant is placed on probation pursuant to Section 77-18-1: ~~}}~~
- ~~}}~~(A) the court shall determine complete restitution and ~~{court-ordered}~~ court-ordered restitution; and ~~}}~~
- ~~}}~~(B) the time period for determination of complete restitution and ~~{court~~ ordered} court-ordered restitution may be extended by the court upon a finding of good cause, but may not exceed the period of the probation term served by the defendant. ~~}}~~
- ~~}}~~(iii) If the defendant is committed to prison: ~~}}~~
- ~~}}~~(A) any ~~{(ii) Any}~~ pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole ~~}}~~; and ~~}}~~
- ~~}}~~(B) the ~~{(c) The}~~ Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Section ~~{22}~~ 19. Section ~~77-38a-404~~ is amended to read:

77-38a-404. Priority.

- (1) Restitution payments made pursuant to a court order shall be disbursed to victims

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within 60 days of receipt from the defendant by the court or department provided:

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

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

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

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

(a) the crime victim;

(b) the Utah Office for Victims of Crime;

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

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

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

(f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

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

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

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

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

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

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

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Section ~~{23}~~20. Section 77-38a-501 is amended to read:

77-38a-501. Default and sanctions.

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

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

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

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

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

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

Section ~~{24}~~21. Section 78B-2-115 is amended to read:

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

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

Section ~~{25}~~22. Section 78B-6-317 is enacted to read:

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

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

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

(b) Upon receipt of that declaration, the court shall set the matter for a hearing and

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provide notice of the hearing to the defendant by mailing notice of the hearing to the defendant's last known address and by any other means the court finds likely to provide defendant notice of the hearing.

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

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

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

(4) To find the defendant in contempt, the court shall find ~~by~~ beyond a ~~preponderance of the evidence~~ reasonable doubt that the defendant:

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

(b) had the capacity to ~~f~~

~~(i)~~ pay the criminal judgment accounts receivable in the manner ordered by the court; ~~or~~ and

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

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

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

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

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

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

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

Section ~~26~~23. Repealer.

This bill repeals:

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

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

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

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

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

Warrant of arrest.

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

Imprisonment.

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

Contempt.

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

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†