

HB0260S03 compared with HB0260S02

~~text~~ shows text that was in HB0260S02 but was deleted in HB0260S03.

text shows text that was not in HB0260S02 but was inserted into HB0260S03.

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Representative Karianne Lisonbee proposes the following substitute bill:

CRIMINAL JUSTICE MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to sentencing, probation, parole, and court-ordered restitution, fines, fees, and other costs.

Highlighted Provisions:

This bill:

- ▶ defines and modifies terms;
- ▶ modifies the duties of the Office of State Debt Collection in relation to processing and collecting payments in criminal cases;
- ▶ prohibits the Office of State Debt Collection from assessing interest on certain accounts receivables;
- ▶ amends provisions on interest, fees, and other amounts charged by the Office of State Debt Collection;

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- ▶ authorizes the Office of State Debt Collection to make certain rules regarding a payment for a civil judgment of restitution;
- ▶ amends provisions regarding the State Debt Collection Fund;
- ▶ provides that an administrative garnishment order for a civil accounts receivable or a civil judgment of restitution is a continuation of a criminal action;
- ▶ amends provisions regarding a restitution request from the Office for Victims of Crime;
- ▶ addresses the collection of an accounts receivable by the Department of Corrections;
- ▶ amends provisions regarding accounts for offenders who are in the custody of the Department of Corrections;
- ▶ allows the Department of Corrections to establish a fine for a violation of department rules and to require the offender to pay the fine;
- ▶ amends the exceptions to a spendthrift provision of a trust to allow the Office of State Debt Collection to obtain a court order for a distribution;
- ▶ amends the orders that a court imposes at sentencing;
- ▶ requires the court to order restitution, and to collect, receive, process, and distribute payments for restitution, for a diversion agreement and a plea in abeyance agreement;
- ▶ requires a court to order restitution if a defendant does not successfully complete a plea in abeyance agreement;
- ▶ reorganizes and renumbers Title 77, Chapter 18, The Judgment;
- ▶ amends provisions on presentence investigation reports;
- ▶ amends provisions on the suspension of a sentence and the terms and conditions of probation;
- ▶ amends provisions regarding home confinement for a probationer;
- ▶ amends provisions regarding the termination, revocation, modification, or extension of probation;
- ▶ amends provisions regarding standards for supervision and presentence investigation reports;
- ▶ requires a court to enter a civil accounts receivable and a civil judgment of restitution upon the termination of a defendant's sentence if there is an unpaid

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balance of the defendant's criminal accounts receivable;

- ▶ requires the court to enter a civil accounts receivable and a civil judgment of restitution if a defendant does not owe restitution and the defendant's criminal accounts receivable is 90 days past due;
- ▶ enacts provisions regarding civil accounts receivables and civil judgments of restitution;
- ▶ allows the sentencing court to retain jurisdiction over a defendant's case for certain reasons;
- ▶ repeals the authority of the Board of Pardons and Parole to enter an order for restitution;
- ▶ allows the Board of Pardons and Parole to remit a criminal accounts receivable and modify a payment schedule for a criminal accounts receivable;
- ▶ amends provisions on the conditions for parole;
- ▶ provides that a defendant may be required to pay a criminal accounts receivable during incarceration or parole supervision;
- ▶ requires the Board of Pardons and Parole to refer an offender's case to the sentencing court if an order for restitution or a criminal accounts receivable has not been entered by the court within certain time periods;
- ▶ requires the Board of Pardons and Parole to refer an offender's case to the sentencing court for any challenges to the defendant's criminal accounts receivable;
- ▶ provides certain notice requirements for a modification of a criminal accounts receivable;
- ▶ allows the Board of Pardons and Parole to enter an order to recover certain damages;
- ▶ amends provisions related to extradition costs for a defendant;
- ▶ reorganizes and renumbers Title 77, Chapter 32a, Criminal Accounts Receivable and Defense Costs;
- ▶ enacts provisions relating to criminal accounts receivables;
- ▶ modifies provisions regarding costs that a defendant may be ordered to pay;
- ▶ allows for the remittance or modification of a criminal accounts receivable in certain circumstances;

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- ▶ provides the requirements for remittance or modification of a criminal accounts receivable, or modification of a payment schedule for a criminal accounts receivable;
- ▶ provides that certain victim information maintained by the Utah State Courts is classified as protected;
- ▶ provides that victim contact information and impact statement is available to the Utah State Courts;
- ▶ requires a victim to provide contact information to the court for restitution and hearing purposes;
- ▶ reorganizes and renumbers Title 77, Chapter 38a, Crime Victims Restitution Act;
- ▶ enacts provisions relating to restitution information collected by a law enforcement agency;
- ▶ enacts provisions relating to a prosecuting attorney's responsibilities for gathering restitution information and depositing restitution money;
- ▶ enacts provisions on the Department of Correction's responsibilities in preparing the presentence investigation report with restitution information;
- ▶ requires a victim to submit certain information in a restitution claim;
- ▶ addresses protecting a victim's identity, and a victim's family's identity, in information submitted to the court for restitution purposes;
- ▶ allows a defendant to view protected, safeguarded, or confidential information about a victim or a victim's family in certain circumstances;
- ▶ amends provisions related to a financial declaration by a defendant;
- ▶ enacts provisions relating to an order for restitution;
- ▶ enacts provisions related to the enforceability, nature, effect, and satisfaction of a civil judgment of restitution and a civil accounts receivable;
- ▶ addresses interest on a civil judgment of restitution and civil accounts receivable;
- ▶ addresses the default or delinquency of a civil accounts receivable and a civil judgment of restitution;
- ▶ provides that a civil judgment of restitution and a civil accounts receivable may not be discharged in bankruptcy;
- ▶ addresses a civil action for restitution by a victim;

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- ▶ addresses the priority of payments for a restitution, a criminal accounts receivable, a civil judgment of restitution, and a civil accounts receivable;
- ▶ amends provisions regarding the enforcement and collection of restitution;
- ▶ addresses contempt of court for delinquency or default of a civil accounts receivable or a civil judgment of restitution;
- ▶ repeals statutes relating to restitution, probation, and criminal accounts receivables; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

17-50-319, as last amended by Laws of Utah 2016, Chapter 243

32B-4-305, as enacted by Laws of Utah 2010, Chapter 276

58-50-2, as last amended by Laws of Utah 2006, Chapter 196

58-50-9, as last amended by Laws of Utah 1995, Chapters 20 and 352

58-50-10, as last amended by Laws of Utah 1995, Chapters 20 and 352

59-10-529, as last amended by Laws of Utah 2017, Chapter 270

62A-15-625, as last amended by Laws of Utah 2018, Chapter 322

63A-3-501, as last amended by Laws of Utah 2016, Chapters 129 and 298

63A-3-502, as last amended by Laws of Utah 2017, Chapters 56 and 304

63A-3-504, as renumbered and amended by Laws of Utah 2011, Chapter 79

63A-3-505, as last amended by Laws of Utah 2016, Chapter 192

63A-3-507, as last amended by Laws of Utah 2019, Chapter 269

63I-1-263, as last amended by Laws of Utah 2020, Chapters 82, 152, 154, 199, 230, 303, 322, 336, 354, 360, 375, 405 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 360

63M-7-303, as last amended by Laws of Utah 2018, Chapter 414

63M-7-305, as last amended by Laws of Utah 2016, Chapters 158 and 191

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63M-7-502, as last amended by Laws of Utah 2020, Chapters 149 and 230
63M-7-503, as last amended by Laws of Utah 2020, Chapter 149
63M-7-513, as last amended by Laws of Utah 2020, Chapter 149
64-13-1, as last amended by Laws of Utah 2016, Chapter 243
64-13-6, as last amended by Laws of Utah 2018, Chapter 200
64-13-21, as last amended by Laws of Utah 2019, Chapter 27
64-13-23, as last amended by Laws of Utah 2002, Chapter 140
64-13-33, as last amended by Laws of Utah 2009, Chapter 258
64-13e-102, as last amended by Laws of Utah 2020, Chapters 354 and 410
75-7-503, as last amended by Laws of Utah 2018, Chapter 116
76-2-404, as last amended by Laws of Utah 2015, Chapter 47
76-3-208, as last amended by Laws of Utah 2019, Chapter 222
76-3-301.5, as enacted by Laws of Utah 1988, Chapter 152
76-3-406, as last amended by Laws of Utah 2020, Chapter 214
76-6-107.1, as renumbered and amended by Laws of Utah 2008, Chapter 3
76-6-111, as last amended by Laws of Utah 2017, Chapter 345
76-6-206.2, as last amended by Laws of Utah 2009, Chapter 344
76-6-206.3, as enacted by Laws of Utah 2009, Chapter 270
76-6-1102, as last amended by Laws of Utah 2015, Chapter 258
76-6-1105, as last amended by Laws of Utah 2018, Chapter 221
76-10-1204, as last amended by Laws of Utah 2009, Chapter 345
76-10-1205, as last amended by Laws of Utah 2007, Chapter 337
76-10-1206, as last amended by Laws of Utah 2019, Chapters 189 and 382
76-10-1214, as last amended by Laws of Utah 1990, Chapter 163
76-10-1228, as last amended by Laws of Utah 2007, Chapter 123
77-1-3, as last amended by Laws of Utah 2015, Chapter 412
77-2-2, as enacted by Laws of Utah 1980, Chapter 15
77-2-5, as enacted by Laws of Utah 1980, Chapter 15
77-2a-1, as enacted by Laws of Utah 1993, Chapter 82
77-2a-3, as last amended by Laws of Utah 2008, Chapters 3, 339, and 382
77-7-5, as last amended by Laws of Utah 2019, Chapter 406

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77-7-21, as last amended by Laws of Utah 2020, Chapter 185
77-19-10, as last amended by Laws of Utah 2015, Chapter 47
77-20-4, as last amended by Laws of Utah 2020, Chapter 185
77-20b-101, as last amended by Laws of Utah 2020, Chapter 185
77-27-1, as last amended by Laws of Utah 2015, Chapter 412
77-27-2, as last amended by Laws of Utah 2020, Chapters 352 and 373
77-27-5, as last amended by Laws of Utah 2019, Chapter 148
77-27-11, as last amended by Laws of Utah 2018, Chapter 334
77-30-24, as last amended by Laws of Utah 1987, Chapter 107
77-37-3, as last amended by Laws of Utah 2014, Chapter 232
77-37-5, as last amended by Laws of Utah 2011, Chapter 131
77-38-3, as last amended by Laws of Utah 2016, Chapter 223
77-38-15, as last amended by Laws of Utah 2019, Chapter 26
77-40-102, as last amended by Laws of Utah 2020, Chapter 354
77-40-105, as last amended by Laws of Utah 2020, Chapters 177 and 218
78A-2-214, as last amended by Laws of Utah 2011, Chapter 79
78A-2-231, as last amended by Laws of Utah 2020, Chapter 12
78B-2-115, as last amended by Laws of Utah 2017, Chapter 304
78B-5-502, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-5-505, as last amended by Laws of Utah 2020, Chapter 425
78B-6-317, as enacted by Laws of Utah 2017, Chapter 304
78B-7-804, as enacted by Laws of Utah 2020, Chapter 142

ENACTS:

77-18-101, Utah Code Annotated 1953
77-18-102, Utah Code Annotated 1953
77-18-103, Utah Code Annotated 1953
77-18-105, Utah Code Annotated 1953
77-18-106, Utah Code Annotated 1953
77-18-107, Utah Code Annotated 1953
77-18-108, Utah Code Annotated 1953
77-18-109, Utah Code Annotated 1953

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77-18-114, Utah Code Annotated 1953

77-18-118, Utah Code Annotated 1953

77-27-6.1, Utah Code Annotated 1953

77-32b-101, Utah Code Annotated 1953

77-32b-103, Utah Code Annotated 1953

77-32b-105, Utah Code Annotated 1953

77-32b-106, Utah Code Annotated 1953

77-38b-201, Utah Code Annotated 1953

77-38b-202, Utah Code Annotated 1953

77-38b-203, Utah Code Annotated 1953

77-38b-205, Utah Code Annotated 1953

77-38b-301, Utah Code Annotated 1953

77-38b-302, Utah Code Annotated 1953

77-38b-303, Utah Code Annotated 1953

REPEALS AND REENACTS:

76-3-201, as last amended by Laws of Utah 2017, Chapter 304

RENUMBERS AND AMENDS:

77-2-2.1, (Renumbered from 77-2-1, as enacted by Laws of Utah 1980, Chapter 15)

77-2-2.2, (Renumbered from 77-2-1.1, as enacted by Laws of Utah 1992, Chapter 33)

77-2-2.3, (Renumbered from 77-2-1.2, as enacted by Laws of Utah 2020, Chapter 151)

77-18-104, (Renumbered from 77-18-1.1, as last amended by Laws of Utah 2016,
Chapter 158)

77-18-110, (Renumbered from 77-18-3, as last amended by Laws of Utah 2008,
Chapter 3)

77-18-111, (Renumbered from 77-18-4, as last amended by Laws of Utah 1994,
Chapter 13)

77-18-112, (Renumbered from 77-18-5, as last amended by Laws of Utah 1994,
Chapter 13)

77-18-113, (Renumbered from 77-18-5.5, as last amended by Laws of Utah 2015,
Chapter 47)

77-18-115, (Renumbered from 77-18-6.5, as enacted by Laws of Utah 1997, Chapter

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223)

77-18-116, (Renumbered from 77-18-7, as enacted by Laws of Utah 1980, Chapter 15)

77-18-117, (Renumbered from 77-18-8, as enacted by Laws of Utah 1980, Chapter 15)

77-32b-102, (Renumbered from 77-32a-101, as enacted by Laws of Utah 2017, Chapter 304)

77-32b-104, (Renumbered from 77-32a-107, as renumbered and amended by Laws of Utah 2017, Chapter 304)

77-32b-107, (Renumbered from 77-32a-110, as renumbered and amended by Laws of Utah 2017, Chapter 304)

77-38b-101, (Renumbered from 77-38a-101, as enacted by Laws of Utah 2001, Chapter 137)

77-38b-102, (Renumbered from 77-38a-102, as last amended by Laws of Utah 2020, Chapter 214)

77-38b-204, (Renumbered from 77-38a-204, as enacted by Laws of Utah 2013, Chapter 74)

77-38b-304, (Renumbered from 77-38a-404, as last amended by Laws of Utah 2020, Chapter 214)

77-38b-401, (Renumbered from 77-38a-502, as enacted by Laws of Utah 2001, Chapter 137)

77-38b-402, (Renumbered from 77-38a-601, as last amended by Laws of Utah 2009, Chapter 265)

REPEALS:

76-6-412.5, as last amended by Laws of Utah 2013, Chapter 187

77-18-1, as last amended by Laws of Utah 2020, Chapters 209, 299, and 354

77-18-6, as last amended by Laws of Utah 2017, Chapter 304

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

77-32a-102, as last amended by Laws of Utah 2018, Chapters 136 and 281

77-32a-103, as enacted by Laws of Utah 2017, Chapter 304

77-32a-104, as enacted by Laws of Utah 2017, Chapter 304

77-32a-105, as enacted by Laws of Utah 2017, Chapter 304

77-32a-106, as enacted by Laws of Utah 2017, Chapter 304

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77-32a-108, as renumbered and amended by Laws of Utah 2017, Chapter 304

77-32a-109, as renumbered and amended by Laws of Utah 2017, Chapter 304

77-38a-201, as enacted by Laws of Utah 2001, Chapter 137

77-38a-202, as last amended by Laws of Utah 2011, Chapter 131

77-38a-203, as last amended by Laws of Utah 2013, Chapter 74

77-38a-301, as last amended by Laws of Utah 2017, Chapter 304

77-38a-302, as last amended by Laws of Utah 2020, Chapter 214

77-38a-401, as last amended by Laws of Utah 2018, Chapter 281

77-38a-402, as enacted by Laws of Utah 2001, Chapter 137

77-38a-403, as enacted by Laws of Utah 2001, Chapter 137

77-38a-501, as last amended by Laws of Utah 2017, Chapter 304

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

Section 1. Section **17-50-319** is amended to read:

17-50-319. County charges enumerated.

(1) County charges are:

(a) [~~those~~] charges incurred against the county by any law;

(b) the necessary expenses of the county attorney or district attorney incurred in criminal cases arising in the county, and all other expenses necessarily incurred by the county or district attorney in the prosecution of criminal cases, except jury and witness fees;

(c) the expenses of medical care as described in Section 17-22-8, and other expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail, except as provided in Subsection (2);

(d) for a county not within the state district court administrative system, the sum required by law to be paid jurors in civil cases;

(e) all charges and accounts for services rendered by any justice court judge for services in the trial and examination of persons charged with a criminal offense not otherwise provided for by law;

(f) the contingent expenses necessarily incurred for the use and benefit of the county;

(g) every other sum directed by law to be raised for any county purposes under the direction of the county legislative body or declared a county charge;

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(h) the fees of constables for services rendered in criminal cases;

(i) the necessary expenses of the sheriff and deputies incurred in civil and criminal cases arising in the county, and all other expenses necessarily incurred by the sheriff and deputies in performing the duties imposed upon them by law;

(j) the sums required by law to be paid by the county to jurors and witnesses serving at inquests and in criminal cases in justice courts; and

(k) subject to Subsection (2), expenses incurred by a health care facility or provider in providing medical services, treatment, hospitalization, or related transportation, at the request of a county sheriff for:

(i) persons booked into a county jail on a charge of a criminal offense; or

(ii) persons convicted of a criminal offense and committed to a county jail.

(2) (a) Expenses described in Subsections (1)(c) and (1)(k) are a charge to the county only to the extent that they exceed any private insurance in effect that covers ~~[those expenses]~~ the expenses described in Subsections (1)(c) and (1)(k).

(b) The county may collect costs of medical care, treatment, hospitalization, and related transportation provided to the person described in Subsection (1)(k) who has the resources or the ability to pay, subject to the following priorities for payment:

(i) first priority shall be given to restitution; and

(ii) second priority shall be given to family support obligations.

(c) A county may seek reimbursement from a person described in Subsection (1)(k) for expenses incurred by the county in behalf of the inmate for medical care, treatment, hospitalization, or related transportation by:

(i) deducting the cost from the inmate's cash account on deposit with the detention facility during the inmate's incarceration or during a subsequent incarceration if the subsequent incarceration occurs within the same county and the incarceration is within 10 years of the date of the expense in behalf of the inmate;

(ii) placing a lien for the amount of the expense against the inmate's personal property held by the jail; and

(iii) adding the amount of expenses incurred to any other amount owed by the inmate to the jail upon the inmate's release~~[, as allowed under Subsection 76-3-201(6)(a).]~~ in accordance with Subsection 76-3-201(4)(d).

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(d) An inmate who receives medical care, treatment, hospitalization, or related transportation shall cooperate with the jail facility seeking payment or reimbursement under this section for the inmate's expenses.

(e) If there is no contract between a county jail and a health care facility or provider that establishes a fee schedule for medical services rendered, expenses under Subsection (1)(k) shall be commensurate with:

(i) for a health care facility, the current noncapitated state Medicaid rates; and

(ii) for a health care provider, 65% of the amount that would be paid to the health care provider:

(A) under the Public Employees' Benefit and Insurance Program, created in Section 49-20-103; and

(B) if the person receiving the medical service were a covered employee under the Public Employees' Benefit and Insurance Program.

(f) Subsection (1)(k) does not apply to expenses of a person held at the jail at the request of an agency of the United States.

(g) A county that receives information from the Public Employees' Benefit and Insurance Program to enable the county to calculate the amount to be paid to a health care provider under Subsection (2)(e)(ii) shall keep that information confidential.

Section 2. Section **32B-4-305** is amended to read:

32B-4-305. Additional criminal penalties.

(1) (a) [~~For purposes of this section~~] As used in this section, "business entity" means a corporation, partnership, association, limited liability company, or similar entity.

(b) In addition to the penalties provided in Title 76, Chapter 3, Punishments, this section applies.

(2) Upon a defendant's conviction of an offense defined in this title, the court may order the defendant to [~~make restitution or pay costs in accordance with Title 77, Chapter 32a, Criminal Accounts Receivable and Defense Costs.~~] pay restitution or costs in accordance with Subsection 76-3-201(4).

(3) (a) Upon a business entity's conviction of an offense defined in this title, and a failure of the business entity to pay a fine imposed upon it:

(i) if it is a domestic business entity, the powers, rights, and privileges of the business

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entity may be suspended or revoked; and

(ii) if it is a foreign business entity, it forfeits its right to do intrastate business in this state.

(b) The department shall transmit the name of a business entity described in Subsection (3)(a) to the Division of Corporations and Commercial Code. Upon receipt of the information, the Division of Corporations and Commercial Code shall immediately record the action in a manner that makes the information available to the public.

(c) A suspension, revocation, or forfeiture under this Subsection (3) is effective from the day on which the Division of Corporations and Commercial Code records the information.

(d) A certificate of the Division of Corporations and Commercial Code is prima facie evidence of a suspension, revocation, or forfeiture.

(e) This section may not be construed as affecting, limiting, or restricting a proceeding that otherwise may be taken for the imposition of any other punishment or the modes of enforcement or recovery of fines or penalties.

(4) (a) Upon the conviction of a business entity required to have a business license to operate its business activities, or upon the conviction of any of its staff of any offense defined in this title, with the knowledge, consent, or acquiescence of the business entity, the department shall forward a copy of the judgment of conviction to the appropriate governmental entity responsible for issuing and revoking the business license.

(b) A governmental entity that receives a copy of a judgment under this Subsection (4) may institute appropriate proceedings to revoke the business license.

(c) Upon revocation under this Subsection (4), a governmental entity may not issue a business license to the business entity for at least one year from the date of revocation.

(d) Upon the conviction for a second or other offense, the governmental entity may not issue a business license for at least two years from the date of revocation.

(5) (a) Upon conviction of one of the following of an offense defined in this title, the department shall forward a certified copy of the judgment of conviction to the Division of Occupational and Professional Licensing:

(i) a health care practitioner; or

(ii) an individual licensed as a veterinarian under Title 58, Chapter 28, Veterinary Practice Act.

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(b) The Division of Occupational and Professional Licensing may bring a proceeding in accordance with Title 58, Occupations and Professions, to revoke the license issued under Title 58, Occupations and Professions, of an individual described in Subsection (5)(a).

(c) Upon revocation of a license under Subsection (5)(b):

(i) the Division of Occupational and Professional Licensing may not issue a license to the individual under Title 58, Occupations and Professions, for at least one year from the date of revocation; and

(ii) if the individual is convicted of a second or subsequent offense, the Division of Occupational and Professional Licensing may not issue a license to the individual under Title 58, Occupations and Professions, for at least two years from the date of revocation.

Section 3. Section **58-50-2** is amended to read:

58-50-2. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Private Probation Provider Licensing Board created in Section 58-50-3.

(2) "Court" means the particular court [~~which~~] that orders probation in a case.

(3) "Private probation" means the preparation of presentence investigation reports and the performance of supervision services by a private probation provider and funded by a court-ordered fee, to be paid by the defendant, [~~pursuant to Section 77-18-1~~] in accordance with Subsection 77-18-105(6)(a)(vii).

(4) (a) "Private probation provider" means any private individual preparing presentence investigation reports or providing probation supervision [~~pursuant to~~] in accordance with a court order under Section [~~77-18-1~~] 77-18-105 and who is licensed under this chapter, and whose services are limited to minor offenses and misdemeanor violations.

(b) A private probation provider does not have the authority of a peace officer.

(5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failure to disclose any financial or personal interest or prior relationship with parties that affects the private probation provider's impartiality or otherwise constitutes a conflict of interest;

(b) providing contract probation services when any financial or personal interest or

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prior relationship with parties affects the private probation provider's impartiality or otherwise constitutes an actual conflict of interest;

(c) failure to clearly define to the offender the services provided by the private probation provider, the rules of conduct, the criteria used, and the fees charged;

(d) failure to provide adequate supervision, or supervision as ordered by the court, as determined by the division in collaboration with the board; and

(e) failure to comply with the standards specified in Section 58-50-9.

Section 4. Section **58-50-9** is amended to read:

58-50-9. Standards of conduct for private probation providers.

The private probation provider:

(1) shall maintain impartiality toward all parties;

(2) shall ensure that all parties understand the nature of the process, the procedure, the particular role of the private probation provider, and the parties' relationship to the private probation provider;

(3) shall maintain confidentiality or, in cases where confidentiality is not protected, the private probation provider shall so advise the parties;

(4) shall disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may reasonably raise a question as to the private probation provider's impartiality; if the contract probation supervisor perceives or believes a conflict of interest to exist, the contract probation supervisor shall refrain from entering into those probation services;

(5) shall adhere to the standards regarding private probation services adopted by the licensing board;

(6) shall comply with orders of court and perform services as directed by judges in individual cases; and

(7) shall perform duties established under Section [~~77-18-1~~] 77-18-105, as ordered by the court.

Section 5. Section **58-50-10** is amended to read:

58-50-10. Exceptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in probation supervision services subject to the stated circumstances and

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limitations without being licensed under this chapter:

- (1) employees of the Department of Corrections while performing probation services as part of their normal duties and responsibilities;
- (2) members of the armed forces and employees, agents, or representatives of the federal government while acting in their official capacity; and
- (3) agencies of local government[, pursuant to Section 77-18-1] in accordance with Section 77-18-105.

Section 6. Section **59-10-529** is amended to read:

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

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

- (a) against an income tax due from a taxpayer;
- (b) against:
 - (i) the amount of a judgment against a taxpayer, including a final judgment or order requiring payment of a fine or of restitution to a victim under Title 77, Chapter ~~38a~~ 38b, Crime Victims Restitution Act, obtained through due process of law by an entity of state or local government; or
 - (ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as determined by the Office of Recovery Services in the Department of Human Services and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection (4)(a)(iii); or
- (c) subject to Subsections (3), (5), (6), and (7), as bail to ensure the appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment.

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

- (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:
 - (a) that is due and related to a warrant that is outstanding on or after February 16, 1984; and
 - (b) in accordance with Subsections (5) and (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) If the amount allowed as a credit for tax withheld from a taxpayer exceeds the tax to which the credit relates, the excess is considered an overpayment.

(9) (a) Subject to Subsection (9)(b), a taxpayer shall claim a credit or refund of an overpayment that is attributable to a net operating loss carry back or carry forward within three years after the day on which the return for the taxable year of the net operating loss is due.

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

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

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

(12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within

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two years after the day on which a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:

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

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

(iii) file an amended return with the commission.

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

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

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

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

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

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

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

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

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

(18) A pass-through entity may claim a refund of qualifying excess withholding in accordance with Section 59-10-1403.3 in lieu of a pass-through entity taxpayer claiming a tax

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credit under Section 59-7-614.4 or Section 59-10-1103.

Section 7. Section **62A-15-625** is amended to read:

62A-15-625. Voluntary admission of adults.

(1) A local mental health authority, a designee of a local mental health authority, or another mental health facility may admit for observation, diagnosis, care, and treatment an adult who applies for voluntary admission and who has a mental illness or exhibits the symptoms of a mental illness.

(2) No adult may be committed to a local mental health authority against that adult's will except as provided in this chapter.

(3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of [~~Subsection 77-18-1(13)~~] Section 77-18-106 have been met.

Section 8. Section **63A-3-501** is amended to read:

63A-3-501. Definitions.

As used in this part:

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

(b) "Accounts receivable" includes:

(i) unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, [restitution to victims,] third-party claims, sale of goods, sale of services, claims, and damages[-];

(ii) a civil accounts receivable; and

(iii) a civil judgment of restitution.

(c) "Accounts receivable" does not include a criminal accounts receivable.

(2) "Administrative offset" means:

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

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

(3) "Civil accounts receivable" means the same as that term is defined in Section

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77-32b-102.

(4) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(5) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

~~[(3)]~~ (6) "Entity" means an individual, a corporation, partnership, or other organization that pays taxes to, or does business, with the state.

~~[(4)]~~ (7) "Office" means the Office of State Debt Collection [~~established by this part~~] created in Section 63A-3-502.

~~[(5)]~~ (8) "Past due" means any accounts receivable that the state has not received by the payment due date.

~~[(6)]~~ (9) "Political subdivision" means the same as that term is defined in Section 63G-7-102.

~~[(7) "Restitution to victims" means restitution ordered by a court to be paid to a victim of an offense in a criminal or juvenile proceeding.]~~

(10) "Restitution" means the same as that term is defined in Section 77-38b-102.

~~[(8)]~~ (11) (a) "State agency" includes:

- (i) an executive branch agency;
- (ii) the legislative branch of state government; and
- (iii) the judicial branches of state government, including justice courts.

(b) "State agency" does not include:

- (i) any institution of higher education;
- (ii) except in Subsection 63A-3-502(7)(g), the State Tax Commission; or
- (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor Commissioner under Section 34A-2-704, solely for the purposes of collecting money required to be deposited into the Uninsured Employers' Fund under:

- (A) Section 34A-1-405;
- (B) Title 34A, Chapter 2, Workers' Compensation Act; or
- (C) Title 34A, Chapter 3, Utah Occupational Disease Act.

~~[(9)]~~ (12) "Writing-off" means the removal of an accounts receivable from an agency's accounts receivable records but does not necessarily eliminate further collection efforts.

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Section 9. 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:
 - (a) the requirements of this chapter; and
 - (b) 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:
 - (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;

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

(o) be a real party in interest for:

(i) an account receivable referred to the office by any state agency ~~[or for any restitution to victims referred to the office]~~; and

(ii) a civil judgment of restitution entered on a civil judgment docket by a court; ~~[and]~~

(p) allocate money collected for ~~[judgments registered under Section 77-18-6]~~ a judgment entered on the civil judgment docket under Section 77-18-114 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110~~[-];~~ and

(q) if a criminal accounts receivable is transferred to the office under Subsection 77-32b-103(2)(a)(ii), receive, process, and distribute payments for the criminal accounts receivable.

(4) The office may:

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

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

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

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

(ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;

(d) contract with private 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]~~ declaration form described in Section 77-38b-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

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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;]~~

(j) for a case that is referred to the office or in which the office is a judgment creditor, file a motion or other document related to the office or the accounts receivable in that case, including a satisfaction of judgment, in accordance with 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) 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 and share 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.

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(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor [~~as referred to in~~] under Subsection (4)(1):

(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)(1) 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~~] a civil accounts receivable or a civil judgment of restitution ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under [~~Section 77-32a-102~~] Subsection 77-18-114(1) or (2).

(b) The office may not assess:

(i) 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[-]; and

(ii) an interest charge on a criminal accounts receivable that is transferred to the office under Subsection 77-32b-103(2)(a)(ii).

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

(a) transfer collection responsibilities to the office or [~~its~~] the office's designee according to time limits established by the office;

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

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

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(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) All interest, fees, and other amounts authorized to be [~~charged~~] collected by the office under Subsection (4)(g):

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

(b) do not require an order from a court for the office to assess or collect;

~~(b)~~ (c) are not compensation for actual pecuniary loss[-];

(d) for a civil accounts receivable:

(i) begin to accrue on the day on which the civil accounts receivable is entered on the civil judgment docket under Subsection 77-18-114(1) or (2); and

(ii) may be collected as part of the civil accounts receivable;

(e) for a civil judgment of restitution:

(i) begin to accrue on the day on which the civil judgment of restitution is entered on the civil judgment docket under Subsection 77-18-114(1); and

(ii) may be collected as part of the civil judgment of restitution;

(f) for all other accounts receivable:

(i) begin to accrue on the day on which the accounts receivable is transferred to the office, even if there is no court order on the day on which the accounts receivable is transferred; and

(ii) may be collected as part of the accounts receivable; and

(g) may be waived by:

(i) the office; or

(ii) if the interest, fee, or other amount is charged in error, the court.

Section 10. Section **63A-3-504** is amended to read:

63A-3-504. Rulemaking authority -- Collection techniques.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules:

(1) providing details, as necessary, for the distribution of debts collected in accordance with the priorities under Subsection 63A-3-505(3); [~~and~~]

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(2) to govern collection techniques, which may include the use of:

- (a) credit reporting bureaus;
- (b) collection agencies;
- (c) garnishments;
- (d) liens;
- (e) judgments; and
- (f) administrative offsets[-]; and

(3) establishing that any portion of a payment for a civil judgment of restitution be credited to principal first and, if the principal amount owed for the civil judgment of restitution has been satisfied, the remainder of the payment be credited to interest that has accrued on the principal.

Section 11. Section **63A-3-505** is amended to read:

63A-3-505. State Debt Collection Fund.

(1) There is created an expendable special revenue fund entitled the "State Debt Collection Fund."

(2) The fund consists of:

- (a) all amounts appropriated to the fund under this chapter;
- (b) fees and interest established by the office under Subsection 63A-3-502(4)(g); and
- (c) except as otherwise provided by law, all postjudgment interest collected by the office or the state, except postjudgment interest on [~~restitution~~] a civil judgment of restitution.

(3) Money in this fund shall be used to pay for:

- (a) the costs of the office in the performance of [~~its~~] the office's duties under this chapter;
- (b) [~~restitution to victims to whom the debt is owed~~] a civil judgment of restitution for which debt is owed;
- (c) interest accrued that is associated with the debt;
- (d) principal on the debt to the state agencies or other entities that placed the receivable for collection; and
- (e) other legal obligations including those ordered by a court.

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

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

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(5) The office shall ensure that money remaining in the fund at the end of the fiscal year that is not committed under the priorities established under Subsection (3) is deposited into the General Fund.

Section 12. Section **63A-3-507** is amended to read:

63A-3-507. Administrative garnishment order.

(1) [Hf] Subject to Subsection (2), if a judgment is entered against a debtor, the office may~~[, subject to Subsection (2);]~~ issue an administrative garnishment order against the debtor's personal property, including wages, in the possession of a party other than the debtor in the same manner and with the same effect as if the order was a writ of garnishment issued by a court with jurisdiction.

(2) The office may issue the administrative garnishment order if ~~[the order is]~~:

(a) the order is signed by the director or the director's designee; and

(b) the underlying debt is for:

(i) nonpayment of ~~[a criminal judgment accounts receivable as defined in Section 77-32a-101]~~ a civil accounts receivable or a civil judgment of restitution; or

(ii) nonpayment of a judgment, or abstract of judgment or award filed with a court, based on an administrative order for payment issued by an agency of the state.

(3) An administrative garnishment order issued in accordance with this section is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 70C-7-103.

(4) An administrative garnishment order issued by the office shall:

(a) contain a statement that includes:

(i) if known:

(A) the nature, location, account number, and estimated value of the property; and

(B) the name, address, and phone number of the person holding the property;

(ii) whether any of the property consists of earnings;

(iii) the amount of the judgment and the amount due on the judgment;

(iv) the name, address, and phone number of any person known to the plaintiff to claim an interest in the property; and

(v) that the plaintiff has attached or will serve the garnishee fee established in Section 78A-2-216;

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- (b) identify the defendant, including:
 - (i) the defendant's name and address; and
 - (ii) if known:
 - (A) the last four digits of the defendant's Social Security number;
 - (B) the last four digits of the defendant's driver license; and
 - (C) the state in which the driver license was issued;
 - (c) include one or more interrogatories inquiring:
 - (i) whether the garnishee is indebted to the defendant and, if so, the nature of the indebtedness;
 - (ii) whether the garnishee possesses or controls any property of the defendant, and, if so, the nature, location, and estimated value of the property;
 - (iii)(A) whether the garnishee knows of any property of the defendant in the possession or under the control of another; and
 - (B) the nature, location, and estimated value of the defendant's property in possession or under the control of another, and the name, address, and phone number of the person with possession or control;
 - (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;
 - (v) the date and manner of the garnishee's service of papers upon the defendant and any third party;
 - (vi) the dates on which previously served writs of continuing garnishment were served, if any; and
 - (vii) any other relevant information the office may request, including the defendant's position, rate, and method of compensation, pay period, or computation of the amount of the defendant's disposable earnings;
 - (d) notify the defendant of the defendant's right to reply to answers and request a hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and
 - (e) state where the garnishee may deliver property.
- (5)(a) A garnishee who acts in accordance with this section and the administrative garnishment issued by the office is released from liability unless an answer to an interrogatory

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is successfully controverted.

(b) Except as provided in Subsection (5)(c), if the garnishee fails to comply with an administrative garnishment issued by the office without a court or final administrative order directing otherwise, the garnishee is liable to the office for an amount ordered by the court, including:

- (i) the value of the property or the value of the judgment, whichever is less;
- (ii) reasonable costs; and
- (iii) attorney fees incurred by the parties as a result of the garnishee's failure.

(c) If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.

(6) A creditor who files a motion for an order to show cause under this section shall attach to the motion a statement that the creditor has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.

(7) A person is not liable as a garnishee for drawing, accepting, making, or endorsing a negotiable instrument if the instrument is not in the possession or control of the garnishee at the time of service of the administrative garnishment order.

(8)(a) A person indebted to the defendant may pay to the office the amount of the debt or an amount to satisfy the administrative garnishment.

(b) The office's receipt of an amount described in Subsection (8)(a) discharges the debtor for the amount paid.

(9) A garnishee may deduct from the property any liquidated claim against the defendant.

(10)(a) If a debt to the garnishee is secured by property, the office:

(i) is not required to apply the property to the debt when the office issues the administrative garnishment order; and

(ii) may obtain a court order authorizing the office to buy the debt and requiring the garnishee to deliver the property.

(b) Notwithstanding Subsection (10)(a)(i):

- (i) the administrative garnishment order remains in effect; and
- (ii) the office may apply the property to the debt.

(c) The office or a third party may perform an obligation of the defendant and require

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the garnishee to deliver the property upon completion of performance or, if performance is refused, upon tender of performance if:

- (i) the obligation is secured by property; and
- (ii)(A) the obligation does not require the personal performance of the defendant; and
- (B) a third party may perform the obligation.

(11)(a) The office may issue a continuing garnishment order against a nonexempt periodic payment.

(b) This section is subject to the Utah Exemptions Act.

(c) A continuing garnishment order issued in accordance with this section applies to payments to the defendant from the date of service upon the garnishee until the earlier of the following:

- (i) the last periodic payment;
- (ii) the judgment upon which the administrative garnishment order is issued is stayed, vacated, or satisfied in full; or
- (iii) the office releases the order.

(d) No later than seven days after the last day of each payment period, the garnishee shall with respect to that period:

- (i) answer each interrogatory;
- (ii) serve an answer to each interrogatory on the office, the defendant, and any other person who has a recorded interest in the property; and
- (iii) deliver the property to the office.

(e) If the office issues a continuing garnishment order during the term of a writ of continuing garnishment issued by the district court, the order issued by the office:

(i) is tolled when a writ of garnishment or other income withholding is already in effect and is withholding greater than or equal to the maximum portion of disposable earnings described in Subsection (12);

(ii) is collected in the amount of the difference between the maximum portion of disposable earnings described in Subsection (12) and the amount being garnished by an existing writ of continuing garnishment if the maximum portion of disposable earnings exceed the existing writ of garnishment or other income withholding; and

- (iii) shall take priority upon the termination of the current term of existing writs.

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(12) The maximum portion of disposable earnings of an individual subject to seizure in accordance with this section is the lesser of:

- (a) 25% of the defendant's disposable earnings for any other judgment; or
- (b) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by 30 times the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

(13) The administrative garnishment instituted in accordance with this section shall continue to operate and require that a person withhold the nonexempt portion of earnings at each succeeding earning disbursement interval until the total amount due in the garnishment is withheld or the garnishment is released in writing by the court or office.

(14) If the office issues an administrative garnishment order under this section to collect an amount owed on a civil accounts receivable or a civil judgment of restitution, the administrative garnishment order shall be construed as a continuation of the criminal action for which the civil accounts receivable or civil judgment of restitution arises if the amount owed is from a fine, fee, or restitution for the criminal action.

Section 13. Section **63I-1-263** is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

- (1) In relation to the Utah Transparency Advisory Board, on January 1, 2025:
 - (a) Subsection 63A-1-201(1) is repealed;
 - (b) Subsection 63A-1-202(2)(c), the language "using criteria established by the board" is repealed;
 - (c) Section 63A-1-203 is repealed;
 - (d) Subsections 63A-1-204(1) and (2), the language "After consultation with the board, and" is repealed; and
 - (e) Subsection 63A-1-204(1)(b), the language "using the standards provided in Subsection 63A-1-203(3)(c)" is repealed.
- (2) Subsection 63A-5b-405(5), relating to prioritizing and allocating capital improvement funding, is repealed July 1, 2024.
- (3) Section 63A-5b-1003, State Facility Energy Efficiency Fund, is repealed July 1, 2023.
- (4) Sections 63A-9-301 and 63A-9-302, related to the Motor Vehicle Review

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Committee, are repealed July 1, 2023.

(5) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2028.

(6) Title 63C, Chapter 6, Utah Seismic Safety Commission, is repealed January 1, 2025.

(7) Title 63C, Chapter 12, Snake Valley Aquifer Advisory Council, is repealed July 1, 2024.

(8) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(9) Title 63C, Chapter 18, Behavioral Health Crisis Response Commission, is repealed July 1, 2023.

(10) Title 63C, Chapter 21, Outdoor Adventure Commission, is repealed July 1, 2025.

(11) Title 63F, Chapter 2, Data Security Management Council, is repealed July 1, 2025.

(12) Section 63G-6a-805, which creates the Purchasing from Persons with Disabilities Advisory Board, is repealed July 1, 2026.

(13) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2025.

(14) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2024.

(15) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(16) Subsection 63J-1-602.1(14), Nurse Home Visiting Restricted Account is repealed July 1, 2026.

(17) (a) Subsection 63J-1-602.1(58), relating to the Utah Statewide Radio System Restricted Account, is repealed July 1, 2022.

(b) When repealing Subsection 63J-1-602.1(58), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(18) Subsection 63J-1-602.2(4), referring to dedicated credits to the Utah Marriage Commission, is repealed July 1, 2023.

(19) Subsection 63J-1-602.2(5), referring to the Trip Reduction Program, is repealed

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July 1, 2022.

(20) Subsection 63J-1-602.2(25), related to the Utah Seismic Safety Commission, is repealed January 1, 2025.

(21) Title 63J, Chapter 4, Part 5, Resource Development Coordinating Committee, is repealed July 1, 2027.

(22) Subsection 63J-4-608(3), which creates the Federal Land Application Advisory Committee, is repealed on July 1, 2021.

(23) In relation to the Utah Substance Use and Mental Health Advisory Council, on January 1, 2023:

(a) Sections 63M-7-301, 63M-7-302, 63M-7-303, 63M-7-304, and 63M-7-306 are repealed;

(b) Section 63M-7-305, the language that states "council" is replaced with "commission";

(c) Subsection 63M-7-305(1) is repealed and replaced with:

"(1) "Commission" means the Commission on Criminal and Juvenile Justice."; and

(d) Subsection 63M-7-305(2) is repealed and replaced with:

"(2) The commission shall:

(a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and

(b) coordinate the implementation of Section ~~[77-18-1.1]~~ 77-18-104 and related provisions in Subsections ~~[77-18-1(5)(b)(iii) and (iv)]~~ 77-18-103(2)(c) and (d)."

(24) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2027.

(25) Title 63M, Chapter 7, Part 6, Utah Council on Victims of Crime, is repealed July 1, 2022.

(26) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2021.

(27) Subsection 63N-1-301(4)(c), related to the Talent Ready Utah Board, is repealed January 1, 2023.

(28) Title 63N, Chapter 1, Part 5, Governor's Economic Development Coordinating Council, is repealed July 1, 2024.

(29) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028.

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(30) Section 63N-2-512 is repealed July 1, 2021.

(31) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (31)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(32) Subsections 63N-3-109(2)(e) and 63N-3-109(2)(f)(i) are repealed July 1, 2023.

(33) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed July 1, 2023.

(34) Title 63N, Chapter 7, Part 1, Board of Tourism Development, is repealed July 1, 2025.

(35) Title 63N, Chapter 9, Part 2, Outdoor Recreational Infrastructure Grant Program, is repealed January 1, 2023.

(36) Title 63N, Chapter 12, Part 5, Talent Ready Utah Center, is repealed January 1, 2023.

Section 14. Section **63M-7-303** is amended to read:

63M-7-303. Duties of council.

(1) The Utah Substance Use and Mental Health Advisory Council shall:

(a) provide leadership and generate unity for Utah's ongoing efforts to reduce and eliminate the impact of substance use and mental health disorders in Utah through a comprehensive and evidence-based prevention, treatment, and justice strategy;

(b) recommend and coordinate the creation, dissemination, and implementation of statewide policies to address substance use and mental health disorders;

(c) facilitate planning for a balanced continuum of substance use and mental health disorder prevention, treatment, and justice services;

(d) promote collaboration and mutually beneficial public and private partnerships;

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(e) coordinate recommendations made by any committee created under Section 63M-7-302;

(f) analyze and provide an objective assessment of all proposed legislation concerning substance use, mental health, and related issues;

(g) coordinate the implementation of Section [~~77-18-1.1~~] 77-18-104 and related provisions in Subsections [~~77-18-1(5)(b)(iii) and (iv)~~] 77-18-103(2)(c) and (d), as provided in Section 63M-7-305;

(h) comply with Section 32B-2-306; and

(i) oversee coordination for the funding, implementation, and evaluation of suicide prevention efforts described in Section 62A-15-1101.

(2) The council shall meet quarterly or more frequently as determined necessary by the chair.

(3) The council shall report [its] the council's recommendations annually to the commission, governor, the Legislature, and the Judicial Council.

Section 15. Section **63M-7-305** is amended to read:

63M-7-305. Drug-Related Offenses Reform Act -- Coordination.

(1) As used in this section:

(a) "Council" means the Utah Substance Use and Mental Health Advisory Council.

(b) "Drug-Related Offenses Reform Act" and "act" mean the screening, assessment, substance use disorder treatment, and supervision provided to convicted persons under Subsection [~~77-18-1.1(2)~~] 77-18-104(2) to:

(i) determine a person's specific substance use disorder treatment needs as early as possible in the judicial process;

(ii) expand treatment resources for persons in the community;

(iii) integrate a person's treatment with supervision by the Department of Corrections;

and

(iv) reduce the incidence of substance use disorders and related criminal conduct.

(c) "Substance abuse authority" [~~has the same meaning as~~] means the same as that term is defined in Section 17-43-201.

(2) The council shall provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act.

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(3) The council shall develop an implementation plan for the Drug-Related Offenses Reform Act. The plan shall:

(a) identify local substance abuse authority areas where the act will be implemented, in cooperation with the Division of Substance Abuse and Mental Health, the Department of Corrections, and the local substance abuse authorities;

(b) include guidelines for local substance abuse authorities and the Utah Department of Corrections on how funds appropriated under the act should be used, including eligibility requirements for convicted persons who participate in services funded by the act, that are consistent with the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism; and

(c) require that treatment plans under the act are appropriate for persons involved in the criminal justice system.

Section 16. Section **63M-7-502** is amended to read:

63M-7-502. Definitions.

As used in this part:

(1) "Accomplice" means an individual who has engaged in criminal conduct as described in Section 76-2-202.

(2) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Claimant" means any of the following claiming reparations under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an individual or representative who files a reparations claim on behalf of a victim.

(5) "Child" means an unemancipated individual who is under 18 years old.

(6) "Collateral source" means any source of benefits or advantages for economic loss otherwise reparable under this part [~~which~~] that the victim or claimant has received, or [~~which~~] that is readily available to the victim from:

(a) the offender;

(b) the insurance of the offender or the victim;

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(c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;

(d) social security, Medicare, and Medicaid;

(e) state-required temporary nonoccupational income replacement insurance or disability income insurance;

(f) workers' compensation;

(g) wage continuation programs of any employer;

(h) proceeds of a contract of insurance payable to the victim for the loss the victim sustained because of the criminally injurious conduct;

(i) a contract providing prepaid hospital and other health care services or benefits for disability; or

(j) veteran's benefits, including veteran's hospitalization benefits.

(7) (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

(i) is or would be subject to prosecution in this state under Section 76-1-201;

(ii) occurs or is attempted;

(iii) causes, or poses a substantial threat of causing, bodily injury or death;

(iv) is punishable by fine, imprisonment, or death if the individual engaging in the conduct possessed the capacity to commit the conduct; and

(v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

(b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

(c) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and other conduct leading to the psychological injury of an individual resulting from living in a setting that involves a bigamous relationship.

(8) (a) "Dependent" means a natural person to whom the victim is wholly or partially

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legally responsible for care or support [~~and includes~~].

(b) "Dependent" includes a child of the victim born after the victim's death.

(9) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

(10) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

(11) "Director" means the director of the office.

(12) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon an individual:

(a) convicted of a crime;

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

(13) (a) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss.

(b) "Economic loss" includes economic detriment even if caused by pain and suffering or physical impairment.

(c) "Economic loss" does not include noneconomic detriment.

(14) "Elderly victim" means an individual 60 years old or older who is a victim.

(15) "Fraudulent claim" means a filed reparations based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible.

(16) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.

(17) "Law enforcement officer" means [~~a law enforcement officer as defined in Section 53-13-103~~] the same as that term is defined in Section 53-13-103.

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(18) (a) "Medical examination" means a physical examination necessary to document criminally injurious conduct [~~but~~].

(b) "Medical examination" does not include mental health evaluations for the prosecution and investigation of a crime.

(19) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct, is subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(20) "Misconduct" [~~as provided in Subsection 63M-7-512(1)(b)~~] means conduct by the victim [~~which~~] that was attributable to the injury or death of the victim as provided by rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(21) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part.

(22) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this part.

(23) "Offender" means an individual who has violated [~~the~~] Title 76, Utah Criminal Code, through criminally injurious conduct regardless of whether the individual is arrested, prosecuted, or convicted.

(24) "Offense" means a violation of [~~the~~] Title 76, Utah Criminal Code.

(25) "Office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this part.

(26) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.

(27) "Reparations award" means money or other benefits provided to a claimant or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.

(28) "Reparations claim" means a claimant's request or application made to the office for a reparations award.

(29) (a) "Reparations officer" means an individual employed by the office to investigate claims of victims and award reparations under this part [~~, and includes~~].

(b) "Reparations officer" includes the director when the director is acting as a

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reparations officer.

(30) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.

(31) (a) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual [~~but~~].

(b) "Representative" does not include a service provider or collateral source.

(32) "Restitution" means [~~money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.~~] the same as that term is defined in Section 77-38b-102.

(33) "Secondary victim" means an individual who is traumatically affected by the criminally injurious conduct subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(34) "Service provider" means an individual or agency who provides a service to [~~crime victims~~] a victim for a monetary fee, except attorneys as provided in Section 63M-7-524.

(35) "Serious bodily injury" means the same as that term is defined in Section 76-1-601.

(36) "Substantial bodily injury" means the same as that term is defined in Section 76-1-601.

(37) (a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of:

(i) criminally injurious conduct; or [~~of~~]

(ii) the production of pornography in violation of Section 76-5b-201 if the individual is a minor.

(b) "Victim" does not include an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. Sec. 2331, committed outside of the United States.

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(38) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Section 17. Section **63M-7-503** is amended to read:

63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment of claim for restitution judgment to Reparations Office.

(1) A reparations award may not supplant [~~restitution as established under Title 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.~~] an order for restitution under Title 77, Chapter 38b, Crime Victims Restitution Act, or under any other provision of law.

(2) The court may not reduce an order [~~of~~] for restitution based on a reparations award.

(3) (a) (i) [~~If, due to reparation payments to a victim, the office is assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion of the restitution~~] If a victim receives a reparations award and the office is assigned the victim's claim for restitution, or a portion of the victim's claim for restitution, under Section 63M-7-519, the office may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts of payments made or anticipated to be made to or on behalf of the victim.

(ii) The office may provide a [~~restitution notice~~] notice of restitution to the victim or victim's representative before or at sentencing.

(iii) The office's failure to provide notice under Subsection (3)(a)(i) or (ii) does not invalidate the imposition of the judgment or [~~order of~~] an order for restitution if the defendant is given the opportunity to object and be heard as provided in this part.

(b) (i) Any objection by the defendant to the imposition or amount of restitution under Subsection (3)(a)(i) shall be:

(A) made at the time of sentencing; or

(B) made in writing within 20 days after the day on which the defendant receives the notice described in Subsection (3)(a)[~~to be~~] and filed with the court and a copy mailed to the office.

(ii) Upon [~~the filing of the~~] an objection, the court shall allow the defendant a [~~full~~]

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hearing on the issue [~~in accordance with Subsection 77-38a-302(4)~~].

(iii) After a hearing under Subsection (3)(b)(ii), the court shall:

(A) enter an order for restitution in accordance with Section 77-38b-205; and

(B) identify the office as an assignee for the order for restitution.

~~[(iii) The]~~ (iv) Subject to the right of the defendant to object, the amount of restitution sought by the office may be updated [at any time, subject to the right of the defendant to object.] and the office identified as an assignee of an order for restitution in accordance with the time periods established under Subsection 77-38b-205(5).

(4) If no objection is made or filed by the defendant under Subsection (3), [~~then upon conviction and sentencing, the court shall enter a judgment for complete restitution under Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution.~~] the court shall ~~;~~ upon conviction and sentencing:

(a) enter an order for restitution in accordance with Section 77-38b-205; and

(b) identify the office as an assignee for the order for restitution.

(5) (a) If the notice of restitution is filed after sentencing but during the term of probation or parole, the court [~~or Board of Pardons~~] shall:

(i) modify any [existing civil judgment and order of] order for restitution to include expenses paid by the office on behalf of the victim in accordance with Subsection 77-38b-205(5); and

(ii) identify the office as [the] an assignee of the [assigned portion of the judgment and order of] order for restitution. [If no judgment or order of restitution has]

(b) If an order for restitution has not been entered, the court shall ~~enter {}~~ a judgment for complete restitution and court-ordered restitution under Sections 77-38a-302 and 77-38a-401.];

(i) enter an order for restitution in accordance with Section 77-38b-205; and

(ii) identify the office as an assignee of the order for restitution.

Section 18. Section **63M-7-513** is amended to read:

63M-7-513. Collateral sources.

(1) (a) An order [~~of~~] for restitution may not be considered readily available as a collateral source.

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(b) Receipt of a reparations award under this part is considered an assignment of the victim's rights to restitution from the offender.

(2) (a) The victim may not discharge a claim against an individual or entity without the office's written permission [~~and~~].

(b) The victim shall fully cooperate with the office in pursuing the office's right of reimbursement, including providing the office with any evidence in the victim's possession.

(3) The office's right of reimbursement applies regardless of whether the victim is fully compensated for the victim's losses.

(4) Notwithstanding Subsection 63M-7-512(1)(a), a victim of a sexual offense who requests testing of the victim's self may be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

Section 19. Section ~~64-13-1~~ is amended to read:

64-13-1. Definitions.

As used in this chapter:

(1) "Case action plan" means a document developed by the Department of Corrections that identifies the program priorities for the treatment of the offender, including the criminal risk factors as determined by a risk and needs assessment conducted by the department.

(2) "Community correctional center" means a nonsecure correctional facility operated by the department.

(3) "Correctional facility" means any facility operated to house offenders [~~either~~] in a secure or nonsecure setting:

- (a) by the department; or
- (b) under a contract with the department.

(4) "Criminal risk factors" means [~~a person's~~] an individual's characteristics and behaviors that:

- (a) affect [~~that person's~~] the individual's risk of engaging in criminal behavior; and
- (b) are diminished when addressed by effective treatment, supervision, and other support resources, resulting in a reduced risk of criminal behavior.

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

(6) "Emergency" means any riot, disturbance, homicide, inmate violence occurring in any correctional facility, or any situation that presents immediate danger to the safety, security,

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and control of the department.

(7) "Executive director" means the executive director of the Department of Corrections.

(8) "Inmate" means ~~[any person]~~ an individual who is:

(a) committed to the custody of the department ~~[and who is];~~ and

(b) housed at a correctional facility or at a county jail at the request of the department.

(9) "Offender" means ~~[any person]~~ an individual who has been convicted of a crime for which ~~[he]~~ the individual may be committed to the custody of the department and is at least one of the following:

(a) committed to the custody of the department;

(b) on probation; or

(c) on parole.

(10) "Restitution" means the same as that term is defined in Section 77-38b-102.

~~[(11)]~~ (11) "Risk and needs assessment" means an actuarial tool validated on criminal offenders that determines:

(a) an individual's risk of reoffending; and

(b) the criminal risk factors that, when addressed, reduce the individual's risk of reoffending.

~~[(12)]~~ (12) "Secure correctional facility" means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain ~~[them if they attempt]~~ an offender if the offender attempts to leave the institution without authorization.

Section 20. Section **64-13-6** is amended to read:

64-13-6. Department duties.

(1) The department shall:

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

(b) implement court-ordered punishment of offenders;

(c) provide program opportunities for offenders;

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

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

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

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

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

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

(j) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision;

(k) establish a case action plan for each offender as follows:

(i) if an offender is to be supervised in the community, the case action plan shall be established for the offender not more than 90 days after supervision by the department begins; and

(ii) if the offender is committed to the custody of the department, the case action plan shall be established for the offender not more than 120 days after the commitment; and

(l) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(i) under this title;

(ii) by the department; or

(iii) by an agency or division within the department.

(2) The department may in the course of supervising probationers and parolees:

(a) impose graduated sanctions, as established by the Utah Sentencing Commission under Subsection 63M-7-404(6), for an individual's violation of one or more terms of the probation or parole; and

(b) upon approval by the court or the Board of Pardons and Parole, impose as a sanction for an individual's violation of the terms of probation or parole a period of

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incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.

(3) (a) By following the procedures in Subsection (3)(b), the department may investigate the following occurrences at state correctional facilities:

- (i) criminal conduct of departmental employees;
- (ii) felony crimes resulting in serious bodily injury;
- (iii) death of any person; or
- (iv) aggravated kidnaping.

(b) [~~Prior to~~] Before investigating any occurrence specified in Subsection (3)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (3)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (3)(a).

(4) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

~~[(5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).]~~

(5) (a) As used in this Subsection (5):

(i) "Accounts receivable" means any amount owed by an offender arising from a criminal judgment that has not been paid.

(ii) "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 that an offender is ordered to pay.

(b) The department shall collect and disburse, with any interest and any other costs assessed under Section 64-13-21, an accounts receivable for an offender during:

(i) the parole period and any extension of that period in accordance with Subsection (5)(c); and

(ii) the probation period for which the court orders supervised probation and any

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extension of that period by the department in accordance with Subsection 77-18-105(7).

(c) (i) If an offender has unpaid balance of the offender's accounts receivable at the time that the offender's sentence expires or terminates, the department shall be referred to the sentencing court for the sentencing court to enter a civil judgment of restitution and a civil accounts receivable as described in Section 77-18-114.

(ii) If the board makes an order for restitution within 60 days from the day on which the offender's sentence expires or terminates, the board shall refer the order for restitution to the sentencing court to be entered as a civil judgment of restitution as described in Section 77-18-114.

(d) This Subsection (5) only applies to offenders sentenced before ~~May 5~~ July 1, 2021.

Section 21. Section **64-13-21** is amended to read:

64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking -- POST certified parole or probation officers and peace officers -- Duties -- Supervision fee.

(1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.

(b) The department shall establish standards for the supervision of offenders in accordance with sentencing guidelines and supervision length guidelines, including the graduated sanctions matrix, established by the Utah Sentencing Commission, giving priority, based on available resources, to felony offenders and offenders sentenced pursuant to Subsection 58-37-8(2)(b)(ii).

(2) The department shall apply graduated sanctions established by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an individual's violation of the terms of probation or parole, including:

(a) sanctions to be used in response to a violation of the terms of probation or parole; and

(b) requesting approval from the court or Board of Pardons and Parole to impose a sanction for an individual's violation of the terms of probation or parole, for a period of

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incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.

(3) The department shall implement a program of graduated incentives as established by the Utah Sentencing Commission to facilitate the department's prompt and appropriate response to an offender's:

- (a) compliance with the terms of probation or parole; or
- (b) positive conduct that exceeds those terms.

(4) (a) The department shall, in collaboration with the Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of inmates, related to the use of the graduated sanctions and incentives, and offenders' outcomes.

(b) The collected information shall be provided to the Commission on Criminal and Juvenile Justice not less frequently than annually on or before August 31.

(5) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:

(a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;

(b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;

(c) supervising any offender during transportation; or

(d) collecting DNA specimens when the specimens are required under Section 53-10-404.

(6) (a) A monthly supervision fee of \$30 shall be collected from each offender on probation or parole. The fee may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

(b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.

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(ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.

(7) (a) For offenders placed on probation under Section [~~77-18-1~~] 77-18-105 or parole under Subsection 76-3-202(2)(a) on or after October 1, 2015, but before January 1, 2019, the department shall establish a program allowing an offender to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).

(b) The program shall provide that an offender earns a reduction credit of 30 days from the offender's period of probation or parole for each month the offender completes without any violation of the terms of the offender's probation or parole agreement, including the case action plan.

(c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).

(d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).

(e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment program is completed.

(f) The department shall report annually to the Commission on Criminal and Juvenile Justice on or before August 31:

(i) the number of offenders who have earned probation or parole credits under this Subsection (7) in one or more months of the preceding fiscal year and the percentage of the offenders on probation or parole during that time that this number represents;

(ii) the average number of credits earned by those offenders who earned credits;

(iii) the number of offenders who earned credits by county of residence while on

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probation or parole;

- (iv) the cost savings associated with sentencing reform programs and practices; and
- (v) a description of how the savings will be invested in treatment and

early-intervention programs and practices at the county and state levels.

Section 22. Section **64-13-23** is amended to read:

64-13-23. Offender's income and finances.

(1) The department may require each offender, while in the custody of the department or while on probation or parole, to place funds received or earned by ~~[him]~~ the offender from any source into:

- ~~(a)~~ an account administered by the department; or ~~[into]~~
- ~~(b)~~ a joint account with the department at a federally insured financial institution.

~~(1)~~ (2) The department may require each offender to maintain a minimum balance in ~~[either or both accounts]~~ an account under Subsection (1) for the particular offender's use upon:

- ~~(a)~~ discharge from the custody of the department; or ~~[upon]~~
- ~~(b)~~ completion of parole or probation.

~~(2)~~ (3) If the funds are placed in a joint account at a federally insured financial institution:

- (a) any interest accrues to the benefit of the offender account; and
- (b) the department may require that the signatures of both the offender and a

departmental representative be submitted to the financial institution to withdraw funds from the account.

~~(3)~~ (4) If the funds are placed in an account administered by the department, the department may by rule designate:

- ~~(a)~~ a certain portion of the offender's funds as interest-bearing savings~~;~~; and ~~[another]~~
- ~~(b)~~ a portion of the offender's funds as noninterest-bearing to be used for day-to-day

expenses.

~~(4)~~ (5) The department may withhold part of the offender's funds in ~~[either account]~~ an account under Subsection (1) for expenses of:

- (a) ~~[incarceration, supervision,]~~ supervision or treatment;
- (b) ~~[court-ordered]~~ restitution, reparation, fines, alimony, support payments, or similar

court-ordered payments;

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(c) obtaining the offender's DNA specimen, if the offender is required under Section 53-10-404 to provide a specimen;

(d) department-ordered [~~restitution~~] repayment of a fine that is incurred under Section 64-13-33; and

(e) any other debt to the state.

~~[(5)]~~ (6) (a) [~~Offenders~~] An offender may not be granted free process in civil actions, including petitions for a writ of habeas corpus, if, at any time from the date the cause of action arose through the date the cause of action remains pending, there are any funds in [~~either account which~~] an account under Subsection (1) that have not been withheld or are not subject to withholding under Subsection [~~(3) or (4)~~] (4) or (5).

(b) The amount assessed for the filing fee, service of process and other fees and costs shall not exceed the total amount of funds the offender has in excess of the indigence threshold established by the department but not less than \$25 including the withholdings under Subsection [~~(3) or (4)~~] (4) or (5) during the identified period of time.

(c) The amounts assessed shall not exceed the regular fees and costs provided by law.

~~[(6)]~~ (7) The department may disclose information on offender accounts to the Office of Recovery Services and other appropriate state agencies.

Section 23. Section **64-13-33** is amended to read:

64-13-33. Fines for violation of department rules -- Debt collection.

(1) (a) Following an administrative hearing, the department is authorized to:

(i) assess a reasonable fine against the offender for expenses incurred by the department as a result of the offender's violation of department rules; and

(ii) require [~~restitution~~] repayment from [~~an offender for expenses incurred by the department as a result of the offender's violation of department rules.~~] the offender for the fine under Subsection (1)(a)(i).

(b) The department is authorized to require payment from the offender's account or to place a hold on [~~it~~] the offender's account to secure compliance with this section.

(2) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time that the offender is released from parole.

Section 24. Section **64-13e-102** is amended to read:

64-13e-102. Definitions.

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As used in this chapter:

(1) "Actual county daily incarceration rate" means the median amount of jail daily incarceration costs based on the data submitted by counties in accordance with Section 64-13e-104(6)(b).

(2) "Actual state daily incarceration rate" means the average daily incarceration rate, calculated by the department based on the previous three fiscal years, that reflects the following expenses incurred by the department for housing an inmate:

- (a) executive overhead;
- (b) administrative overhead;
- (c) transportation overhead;
- (d) division overhead; and
- (e) motor pool expenses.

(3) "Alternative treatment" means:

- (a) evidence-based cognitive behavioral therapy; or
- (b) a certificate-based program provided by a Utah technical college, as defined in Section 53B-26-102.

(4) "Annual inmate jail days" means the total number of state probationary inmates housed in a county jail each day for the preceding fiscal year.

(5) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in Section 63M-7-201.

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

(7) "Division of Finance" means the Division of Finance, created in Section 63A-3-101.

(8) "Final county daily incarceration rate" means the amount equal to:

(a) the amount appropriated by the Legislature for the purpose of making payments to counties under Section 64-13e-104; divided by

(b) the average annual inmate jail days for the preceding five fiscal years.

(9) "Jail daily incarceration costs" means the following daily costs incurred by a county jail for housing a state probationary inmate on behalf of the department:

- (a) executive overhead;
- (b) administrative overhead;

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- (c) transportation overhead;
- (d) division overhead; and
- (e) motor pool expenses.

(10) "State inmate" means an individual, other than a state probationary inmate or state parole inmate, who is committed to the custody of the department.

(11) "State parole inmate" means an individual who is:

- (a) on parole, as defined in Section 77-27-1; and
- (b) housed in a county jail for a reason related to the individual's parole.

(12) "State probationary inmate" means a felony probationer sentenced to time in a county jail under Subsection [~~77-18-1(8)~~] 77-18-105(6).

(13) "Treatment program" means:

- (a) an alcohol treatment program;
- (b) a substance abuse treatment program;
- (c) a sex offender treatment program; or
- (d) an alternative treatment program.

Section 25. Section **75-7-503** is amended to read:

75-7-503. Exceptions to spendthrift provision.

(1) As used in this section:

(a) "Child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(c) "Civil restitution of judgment" means the same as that term is defined in Section 77-32b-102.

~~[(b)]~~ (d) "Restitution" means the same as that term is defined in Section [~~77-38a-102~~] 77-38b-102.

~~[(c)]~~ (e) "Victim" means the same as that term is defined in Section [~~77-38a-102~~] 77-38b-102.

(2) Even if a trust contains a spendthrift provision, the following persons may obtain [~~from a court an order attaching~~] an order from a court that attaches present or future distributions to the beneficiary:

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(a) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;

(b) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; ~~[or]~~

(c) a victim who has a judgment requiring the beneficiary to pay restitution in accordance with Title 77, ~~[Chapter 38a,]~~ Chapter 38b, Crime Victims Restitution Act, or similar provision in another state~~[-];~~ or

(d) the Office of State Debt Collection, created in Section 63A-3-502, for collecting payment on a civil accounts receivable or a civil judgment of restitution.

(3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Section 26. Section **76-2-404** is amended to read:

76-2-404. Peace officer's use of deadly force.

(1) A peace officer, or any person acting by the officer's command in providing aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection ~~[77-18-5.5]~~ 77-18-113(2), (3), or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c).

Section 27. Section **76-3-201** is repealed and reenacted to read:

76-3-201. Sentences or combination of sentences allowed -- Restitution and other

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costs -- Civil penalties.

(1) As used in this section:

(a) (i) "Convicted" means:

(A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a mental illness; or

(B) having received a judgment of guilty or a judgment of guilty with a mental illness.

(ii) "Convicted" does not include an adjudication of an offense under Section 78A-6-117.

(b) "Restitution" means the same as that term is defined in Section 77-38b-102.

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

(a) to pay a fine;

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

(c) except as otherwise provided by law, to probation in accordance with Section 77-18-105;

(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:

(i) to forfeit property;

(ii) to dissolve a corporation;

(iii) to suspend or cancel a license;

(iv) to permit removal of an individual from office;

(v) to cite for contempt; or

(vi) to impose any other civil penalty.

(b) A court may include a civil penalty in a sentence.

(4) In addition to any other sentence that a sentencing court may impose, the court shall order an individual to:

(a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victim Restitution Act;

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(b) subject to Subsection (5) and Section 77-32b-104, pay the cost of any government transportation if the individual was:

(i) transported, in accordance with a court order, from one county to another county within the state;

(ii) charged with a felony or a misdemeanor; and

(iii) convicted of an offense;

(c) subject to Section 77-32b-104, pay the cost expended by an appropriate governmental entity under Section 77-30-24 for the extradition of the individual if the individual:

(i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve pending criminal charges; and

(ii) is convicted of an offense in the county for which the individual is returned;

(d) subject to Subsection (6) and Subsections 77-32b-104(2), (3), and (4), pay the cost of medical care, treatment, hospitalization, and related transportation, as described in Section 17-50-319, that is provided by a county to the individual while the individual is in a county correctional facility before and after sentencing if:

(i) the individual is convicted of an offense that results in incarceration in the county correctional facility; and

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

(B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104 if the individual is a state probationary inmate or a state parole inmate; and

(e) pay any other cost that the court determines is appropriate under Section 77-32b-104.

(5) (a) The court may not order an individual to pay the costs of government transportation under Subsection (4)(b) if:

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

(ii) the individual was not transported in accordance with a court order.

(b) (i) The cost of governmental transportation under Subsection (4)(b) shall be calculated according to the following schedule:

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(A) \$100 for up to 100 miles that an individual is transported;

(B) \$200 for 100 miles to 200 miles that an individual is transported; and

(C) \$350 for 200 miles or more that an individual is transported.

(ii) The schedule under Subsection (5)(b)(i) applies to each individual transported regardless of the number of individuals transported in a single trip.

(6) The cost of medical care under Subsection (4)(d) does 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 Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

Section 28. Section **76-3-208** is amended to read:

76-3-208. Imprisonment -- Custodial authorities.

(1) Persons sentenced to imprisonment shall be committed to the following custodial authorities:

(a) felony commitments shall be to the Utah State Prison;

(b) (i) notwithstanding Section 76-3-204, class A misdemeanor commitments shall be to the jail, or other facility designated by the town, city, or county where the defendant was convicted, unless the defendant is also serving a felony commitment at the Utah State Prison at the commencement of the class A misdemeanor conviction, in which case, the class A misdemeanor commitment shall be to the Utah State Prison for an indeterminate term not to exceed one year with a credit for one day; and

(ii) the court may not order the imprisonment of a defendant to the Utah State Prison for a fixed term or other term that is inconsistent with this section and Section ~~[77-18-4]~~ 77-18-111; and

(c) all other misdemeanor commitments shall be to the jail or other facility designated by the town, city or county where the defendant was convicted.

(2) ~~[Custodial authorities]~~ A custodial authority may place a prisoner in a facility other than the one to which the prisoner was committed when:

(a) ~~[it]~~ the custodial authority does not have space to accommodate the prisoner; or

(b) the security of the institution or ~~[inmate requires it.]~~ prisoner requires the prisoner to be placed in a facility other than the one to which the prisoner was committed.

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Section 29. Section **76-3-301.5** is amended to read:

76-3-301.5. Uniform fine schedule -- Judicial Council.

(1) The Judicial Council shall establish a uniform recommended fine schedule for each offense under Subsection 76-3-301(1).

(a) The fine for each offense shall proportionally reflect the seriousness of the offense and other factors as determined in writing by the Judicial Council.

(b) The schedule shall be reviewed annually by the Judicial Council.

(c) The fines shall be collected [~~under Section 77-18-1.~~] as part of a criminal accounts receivable, as defined in Section 77-32b-102, that is established under Section 77-32b-103.

(2) The schedule shall incorporate:

(a) criteria for determining aggravating and mitigating circumstances; and

(b) guidelines for enhancement or reduction of the fine, based on aggravating or mitigating circumstances.

(3) Presentence investigation reports shall include documentation of aggravating and mitigating circumstances as determined under the criteria, and a recommended fine under the schedule.

(4) The Judicial Council shall also establish a separate uniform recommended fine schedule for the juvenile court and by rule provide for its implementation.

(5) This section does not prohibit the court from in its discretion imposing no fine, or a fine in any amount up to and including the maximum fine, for the offense.

Section 30. Section **76-3-406** is amended to read:

76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

(1) Notwithstanding Sections 76-3-201 and [~~77-18-1~~] 77-18-105 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

(a) Section 76-5-202, aggravated murder;

(b) Section 76-5-203, murder;

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- (c) Section 76-5-301.1, child kidnaping;
 - (d) Section 76-5-302, aggravated kidnaping;
 - (e) Section 76-5-402, rape, if the individual is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
 - (f) Section 76-5-402.1, rape of a child;
 - (g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection 76-5-402.2(1)(b), (1)(c), or (2);
 - (h) Section 76-5-402.3, object rape of a child;
 - (i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection 76-5-403(3)(b), (3)(c), or (4);
 - (j) Section 76-5-403.1, sodomy on a child;
 - (k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under Subsection 76-5-404(2)(b) or (3);
 - (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
 - (m) Section 76-5-405, aggravated sexual assault; or
 - (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- (2) Except for an offense before the district court in accordance with Section 78A-6-703.2 or 78A-6-703.5, the provisions of this section do not apply if the sentencing court finds that the defendant:
- (a) was under 18 years old at the time of the offense; and
 - (b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.

Section 31. Section **76-6-107.1** is amended to read:

76-6-107.1. Compensatory service -- Graffiti penalties.

(1) If an offender uses graffiti and is convicted under Section 76-6-106 or 76-6-206 for ~~[its use]~~ the use of graffiti, the court may, as a condition of probation under Subsection ~~[77-18-1(8)]~~ 77-18-105(6), order the offender to clean up graffiti of ~~[his own]~~ the offender and any other at a time and place within the jurisdiction of the court.

- (a) For a first conviction or adjudication, the court may require the offender to clean up graffiti for not less than eight hours.
- (b) For a second conviction or adjudication, the court may require the offender to clean

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up graffiti for not less than 16 hours.

(c) For a third conviction or adjudication, the court may require the offender to clean up graffiti for not less than 24 hours.

(2) The offender convicted under Section 76-6-106, 76-6-206, or 76-6-107 shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.

(3) The court may also require the offender to perform other alternative forms of restitution or repair to the damaged property [~~pursuant to Subsection 77-18-1(8).~~] in accordance with Subsection 77-18-105(6).

Section 32. Section **76-6-111** is amended to read:

76-6-111. Wanton destruction of livestock -- Penalties -- Restitution criteria -- Seizure and disposition of property.

(1) As used in this section:

(a) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit, including:

- (i) cattle;
- (ii) sheep;
- (iii) goats;
- (iv) swine;
- (v) horses;
- (vi) mules;
- (vii) poultry; and
- (viii) domesticated elk as defined in Section 4-39-102.

(2) Unless authorized by Section 4-25-201, 4-25-202, 4-25-401, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

- (a) injures, physically alters, releases, or causes the death of livestock; and
- (b) does so:
 - (i) intentionally or knowingly; and
 - (ii) without the permission of the owner of the livestock.

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(3) Wanton destruction of livestock is punishable as a:

(a) class B misdemeanor if the aggregate value of the livestock is \$500 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than \$500, but does not exceed \$1,500;

(c) third degree felony if the aggregate value of the livestock is more than \$1,500, but does not exceed \$5,000; and

(d) second degree felony if the aggregate value of the livestock is more than \$5,000.

(4) When a court orders a person who is convicted of wanton destruction of livestock to pay restitution under Title 77, Chapter ~~[38a]~~ 38b, Crime Victims Restitution Act, the court shall consider~~[, in addition to the restitution criteria in Section 77-38a-302, the restitution guidelines in Subsection (5) when setting the amount.]~~ the restitution guidelines in Subsection (5) when setting the amount of restitution under Section 77-38b-205.

(5) The minimum restitution value for cattle and sheep is the sum of the following, unless the court states on the record why it finds the sum to be inappropriate:

(a) the fair market value of the animal, using as a guide the market information obtained from the Department of Agriculture and Food created under Section 4-2-102; and

(b) 10 years times the average annual value of offspring, for which average annual value is determined using data obtained from the National Agricultural Statistics Service within the United States Department of Agriculture, for the most recent 10-year period available.

(6) A material, device, or vehicle used in violation of Subsection (2) is subject to forfeiture under the procedures and substantive protections established in Title 24, Forfeiture and Disposition of Property Act.

(7) A peace officer may seize a material, device, or vehicle used in violation of Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of

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the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in violation of Subsection (2).

(8) (a) A material, device, or vehicle seized under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized;

or

(iii) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Section 33. Section **76-6-206.2** is amended to read:

76-6-206.2. Criminal trespass on state park lands -- Penalties.

(1) [~~For purposes of this section~~] As used in this section:

(a) "Authorization" means specific written permission by, or contractual agreement with, the Division of Parks and Recreation.

(b) "Criminal trespass" means the elements of the crime of criminal trespass, as set forth in Section 76-6-206.

(c) "Division" means the Division of Parks and Recreation[;] created in Section 79-4-201.

(d) "State park lands" means all lands administered by the division.

(2) A person is guilty of criminal trespass on state park lands and is liable for the civil damages prescribed in Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization, the person:

(a) constructs improvements or structures on state park lands;

(b) uses or occupies state park lands for more than 30 days after the cancellation or expiration of authorization;

(c) knowingly or intentionally uses state park lands for commercial gain;

(d) intentionally or knowingly grazes livestock on state park lands, except as provided in Section 72-3-112; or

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(e) remains, after being ordered to leave by someone with actual authority to act for the division, or by a law enforcement officer.

(3) A person is not guilty of criminal trespass if that person enters onto state park lands:

(a) without first paying the required fee; and

(b) for the sole purpose of pursuing recreational activity.

(4) A violation of Subsection (2) is a class B misdemeanor.

(5) In addition to [~~restitution, as provided in Section 76-3-201~~] an order for restitution under Section 77-38b-205, a person who commits any act described in Subsection (2) may also be liable for civil damages in the amount of three times the value of:

(a) damages resulting from a violation of Subsection (2);

(b) the water, mineral, vegetation, improvement, or structure on state park lands that is removed, destroyed, used, or consumed without authorization;

(c) the historical, prehistorical, archaeological, or paleontological resource on state park lands that is removed, destroyed, used, or consumed without authorization; or

(d) the consideration which would have been charged by the division for unauthorized use of the land and resources during the period of trespass.

(6) Civil damages under Subsection (5) may be collected in a separate action by the division, and shall be deposited in the State Parks Fees Restricted Account as established in Section 79-4-402.

Section 34. Section **76-6-206.3** is amended to read:

76-6-206.3. Criminal trespass on agricultural land or range land.

(1) As used in this section:

(a) "Agricultural or range land" and "land" mean land as defined under Subsections (1)(d) and (e).

(b) "Authorization" means specific written permission by, or contractual agreement with, the owner or manager of the property.

(c) "Criminal trespass" means the elements of the crime of criminal trespass under Section 76-6-206.

(d) "Land in agricultural use" has the same meaning as in Section 59-2-502.

(e) "Range land" means privately owned land that is not fenced or divided into lots and

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that is generally unimproved. This land includes land used for livestock.

(2) A person is guilty of the class B misdemeanor criminal offense of criminal trespass on agricultural or range land and is liable for the civil damages under Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization or a right under state law, the person enters or remains on agricultural or range land regarding which notice prohibiting entry is given by:

(a) personal communication to the person by the owner of the land, an employee of the owner, or a person with apparent authority to act for the owner;

(b) fencing or other form of enclosure a reasonable person would recognize as intended to exclude intruders; or

(c) posted signs or markers that would reasonably be expected to be seen by persons in the area of the borders of the land.

(3) A person is guilty of the class B misdemeanor criminal offense of cutting, destroying, or rendering ineffective the fencing of agricultural or range land if the person willfully cuts, destroys, or renders ineffective any fencing as described under Subsection (2)(b).

(4) In addition to ~~[restitution, as provided in Section 76-3-201]~~ an order for restitution under Section 77-38b-205, a person who commits any violation of Subsection (2) or (3) may also be liable for:

(a) statutory damages in the amount of the value of damages resulting from the violation of Subsection (2) or \$500, whichever is greater; and

(b) reasonable attorney fees not to exceed \$250, and court costs.

(5) Civil damages under Subsection (4) may be collected in a separate action by the owner of the agricultural or range land or the owner's assignee.

Section 35. Section **76-6-1102** is amended to read:

76-6-1102. Identity fraud crime.

(1) As used in this part~~[-,"personal"]~~:

(a) "Personal identifying information" may include:

~~[(a)]~~ (i) name;

~~[(b)]~~ (ii) birth date;

~~[(c)]~~ (iii) address;

~~[(d)]~~ (iv) telephone number;

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~~[(e)]~~ (v) drivers license number;

~~[(f)]~~ (vi) Social Security number;

~~[(g)]~~ (vii) place of employment;

~~[(h)]~~ (viii) employee identification numbers or other personal identification numbers;

~~[(i)]~~ (ix) mother's maiden name;

~~[(j)]~~ (x) electronic identification numbers;

~~[(k)]~~ (xi) electronic signatures under Title 46, Chapter 4, Uniform Electronic

Transactions Act;

~~[(l)]~~ (xii) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.6; or

~~[(m)]~~ (xiii) a photograph or any other realistic likeness.

(b) "Restitution" means the same as that term is defined in Section 77-38b-102.

(2) (a) A person is guilty of identity fraud when that person knowingly or intentionally uses, or attempts to use, the personal identifying information of another person, whether that person is alive or deceased, with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.

(b) It is not a defense to a violation of Subsection (2)(a) that the person did not know that the personal information belonged to another person.

(3) Identity fraud is:

(a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the credit, goods, services, employment, or any other thing of value is less than \$5,000; or

(b) a second degree felony if:

(i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds \$5,000; or

(ii) the use described in Subsection (2)(a) of personal identifying information results, directly or indirectly, in bodily injury to another person.

(4) Multiple violations may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.

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(5) When a defendant is convicted of a violation of this section, the court shall order the defendant to [~~make restitution to any victim of the offense or state on the record the reason the court does not find ordering restitution to be appropriate~~] pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act.

(6) Restitution under Subsection (5) may include:

- (a) payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and
- (b) the value of the victim's time incurred due to the offense:
 - (i) in clearing the victim's credit history or credit rating;
 - (ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and
 - (iii) in attempting to remedy any other intended or actual harm to the victim incurred as a result of the offense.

Section 36. Section **76-6-1105** is amended to read:

76-6-1105. Unlawful possession of another's identification documents.

(1) As used in this section:

(a) (i) "Identifying document" means:

(A) a government issued document commonly used for identification;

(B) a vehicle registration certificate; or

(C) any other document, image, data file, or medium containing personal identifying information as defined in Subsections 76-6-1102~~[(1)(b) through (m)]~~ (1)(a)(ii) through (xiii).

(ii) "Identifying document" includes:

(A) a counterfeit identifying document; or

(B) a document containing personal identifying information of a deceased individual.

(b) "Possess" means to have physical control or electronic access.

(2) (a) Under circumstances that do not constitute a violation of Section 76-6-1102 or Section 76-6-502, an individual is guilty of a class A misdemeanor if the individual:

(i) obtains or possesses an identifying document:

(A) with knowledge that the individual is not entitled to obtain or possess the identifying document; or

(B) with intent to deceive or defraud; or

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(ii) assists another person in obtaining or possessing an identifying document:

(A) with knowledge that the person is not entitled to obtain or possess the identifying document; or

(B) with knowledge that the person intends to use the identifying document to deceive or defraud.

(b) Under circumstances that do not constitute a violation of Section 76-6-1102, an individual is guilty of a third degree felony if the individual:

(i) obtains or possesses identifying documents of more than two, but fewer than 100, individuals:

(A) with knowledge that the individual is not entitled to obtain or possess the identifying documents; or

(B) with intent to deceive or defraud; or

(ii) assists another person in obtaining or possessing identifying documents of more than two, but fewer than 100, individuals:

(A) with knowledge that the person is not entitled to obtain or possess the multiple identifying documents; or

(B) with knowledge that the person intends to use the identifying documents to deceive or defraud.

(c) Under circumstances that do not constitute a violation of Section 76-6-1102, an individual is guilty of a second degree felony if the individual:

(i) obtains or possesses identifying documents of 100 or more individuals:

(A) with knowledge that the individual is not entitled to obtain or possess the identifying documents; or

(B) with intent to deceive or defraud; or

(ii) assists another person in obtaining or possessing identifying documents of 100 or more individuals:

(A) with knowledge that the person is not entitled to obtain or possess the identifying documents; or

(B) with knowledge that the person intends to use the identifying documents to deceive or defraud.

Section 37. Section **76-10-1204** is amended to read:

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76-10-1204. Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of distributing pornographic material when the person knowingly:

(a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;

(b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;

(c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;

(d) writes, creates, or solicits the publication or advertising of pornographic material;

(e) promotes the distribution or exhibition of material the person represents to be pornographic; or

(f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.

(2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.

(3) It is a separate offense under this section for:

(a) each day's exhibition of any pornographic motion picture film; and

(b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.

(4) (a) An offense under this section committed by a person 18 years [~~of age~~] old or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) An offense under this section committed by a person 16 or 17 years [~~of age~~] old is a class A misdemeanor.

(c) An offense under this section committed by a person younger than 16 years [~~of age~~]

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old is a class B misdemeanor.

(d) Subsection (4)(a) supersedes Section [~~77-18-1~~] 77-18-105.

(5) A person 18 years [~~of age~~] old or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years [~~of age~~] old to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a).

(6) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and

(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Section 38. Section **76-10-1205** is amended to read:

76-10-1205. Inducing acceptance of pornographic material -- Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of inducing acceptance of pornographic material when he

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knowingly:

(a) requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or

(b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.

(2) (a) An offense under this section is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This Subsection (2) supersedes Section [~~77-18-1~~] 77-18-105.

(3) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and

(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution

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of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Section 39. Section **76-10-1206** is amended to read:

76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that an individual is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or an individual whom the person believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or an individual whom the person believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or an individual whom the person believes to be a minor, that is harmful to minors.

(2) (a) Except as provided in Subsection (2)(b), each separate offense under this section committed by a person 18 years [~~of age~~] old or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 18 years [~~of age~~] old or older against a minor 16 years [~~of age~~] old or older, but younger than 18 years [~~of age~~] old, is a class A misdemeanor if the person is less than seven years older than the minor at the time of the offense.

(c) Each separate offense under this section committed by a person 16 or 17 years [~~of age~~] old is a class A misdemeanor.

(d) Each separate offense under this section committed by a person younger than 16 years [~~of age~~] old is a class B misdemeanor.

(e) Subsection (2)(a) supersedes Section [~~77-18-1~~] 77-18-105.

(3) (a) Except for a defendant described in Subsection (2)(b), if a defendant 18 years [~~of~~

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~~age]~~ old or older has been previously convicted or adjudicated [~~to be under the jurisdiction of]~~ by the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years [~~of age]~~ old has been previously convicted or adjudicated [~~to be under the jurisdiction of]~~ by the juvenile court under this section, each separate subsequent offense is a third degree felony.

(c) Subsection (3)(a) supersedes Section [~~77-18-1~~] 77-18-105.

(d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:

(I) transmitting or routing data from one person to another person; or

(II) providing a connection between one person and another person;

(B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and

(C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.

(ii) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

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(C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.

(4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if the service provider complies with Section 76-10-1231.

(5) A person 18 years [~~of age~~] old or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years [~~of age~~] old to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

Section 40. Section ~~76-10-1214~~ is amended to read:

76-10-1214. Conspiracy an offense -- Punishment.

(1) (a) A conspiracy of two or more persons to commit any offense proscribed by this part is a third degree felony punishable for each separate offense by a minimum mandatory fine of not less than \$1,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than 60 days.

(b) This subsection supersedes Section [~~77-18-1~~] 77-18-105.

(2) (a) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by a minimum mandatory fine of not less than \$5,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than one year.

(b) This subsection supersedes Section [~~77-18-1~~] 77-18-105.

Section 41. Section ~~76-10-1228~~ is amended to read:

76-10-1228. Indecent public displays -- Prohibitions -- Penalty.

(1) Subject to the affirmative defense in Subsection 76-10-1208(3), a person is guilty of a class A misdemeanor who willfully or knowingly:

(a) engages in the business of selling, lending, giving away, showing, advertising for sale, or distributing to a minor or has in the person's possession with intent to engage in that business or to otherwise offer for sale or commercial distribution to a minor any material with:

(i) a description or depiction of illicit sex or sexual immorality; or

(ii) a nude or partially denuded figure; or

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(b) publicly displays at newsstands or any other establishment frequented by minors, or where the minors are or may be invited as a part of the general public, any motion picture, or any live, taped, or recorded performance, or any still picture or photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which:

(i) exploits, is devoted to, or is principally made up of one or more descriptions or depictions of illicit sex or sexual immorality; or

(ii) consists of one or more pictures of nude or partially denuded figures.

(2) (a) A violation of this section is punishable by:

(i) a minimum mandatory fine of not less than \$500; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This section supersedes Section [~~77-18-1~~] 77-18-105.

Section 42. Section **77-1-3** is amended to read:

77-1-3. Definitions.

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused, and brought to trial for a public offense.

(2) "Indictment" means an accusation in writing presented by a grand jury to the district court charging a person with a public offense.

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented, signed, and filed in the office of the clerk where the prosecution is commenced [~~pursuant to Section 77-2-1.1~~] in accordance with Section 77-2-2.2.

(4) "Magistrate" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78A-5-107, except that the authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial council. The judicial council rules shall not exceed constitutional limitations upon the delegation of judicial authority.

(5) "Risk and needs assessment" means an actuarial tool validated on offenders that determines:

(a) an individual's risk of reoffending; and

(b) the criminal risk factors that, when addressed, reduce the individual's risk of

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reoffending.

Section 43. Section ~~77-2-2~~ is amended to read:

77-2-2. Definitions.

[For the purpose of this chapter:]

~~[(1) "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;]~~

As used in this chapter:

(1) "Commencement of prosecution" means the filing of an information or an indictment.

(2) "Diversion" means suspending criminal proceedings [~~prior to~~] before conviction on the condition that a defendant agree to:

(a) participate in a rehabilitation program [~~or make~~];

(b) pay restitution to [~~the~~] a victim; or

(c) fulfill some other condition[~~; and~~].

~~[(3) "Commencement of prosecution" means the filing of an information or an indictment.]~~

(3) "Restitution" means the same as that term is defined in Section 77-38b-102.

(4) "Screening" means the process used by a prosecuting attorney to:

(a) terminate an investigative action;

(b) proceed with prosecution;

(c) move to dismiss a prosecution that has been commenced; or

(d) cause a prosecution to be diverted.

Section 44. Section ~~77-2-2.1~~, which is renumbered from Section 77-2-1 is renumbered and amended to read:

~~[77-2-1].~~ **77-2-2.1. Authorization to file information.**

[~~Unless~~] Except as otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor unless authorized by a prosecuting attorney.

Section 45. Section ~~77-2-2.2~~, which is renumbered from Section 77-2-1.1 is renumbered and amended to read:

~~[77-2-1.1].~~ **77-2-2.2. Signing and filing of information.**

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(1) The prosecuting attorney shall sign all informations.

(2) The prosecuting attorney may:

~~[(1)]~~ (a) sign the information in the presence of a magistrate; or

~~[(2)]~~ (b) present and file the information in the office of the clerk where the prosecution is commenced upon the signature of the prosecuting attorney.

Section 46. Section ~~77-2-2.3~~, which is renumbered from Section 77-2-1.2 is renumbered and amended to read:

~~[77-2-1.2]~~. **77-2-2.3. Reducing the level of an offense.**

(1) Notwithstanding any other provision of law, a prosecuting attorney may:

(a) present and file an information charging an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute if the prosecuting attorney believes that the sentence would be disproportionate to the offense because there are special circumstances relating to the offense; or

(b) subject to the approval of the court, amend an information, as part of a plea agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute.

(2) A court may:

(a) enter a judgment of conviction for an offense filed under Subsection (1) at one degree lower than classified in statute; and

(b) impose a sentence for the offense filed under Subsection (1) at one degree lower than classified in statute.

(3) A conviction of an offense at one degree lower than classified in statute under Subsection (2) does not affect the requirements for registration of the offense under Title 77, Chapter 41, Sex and Kidnap Offender Registry, or Title 77, Chapter 43, Child Abuse Offender Registry, if the elements of the offense for which the defendant is convicted are the same as the elements of an offense described in Section 77-41-102 or 77-43-102.

(4) This section does not preclude an individual from obtaining and being granted an expungement for the individual's record in accordance with Title 77, Chapter 40, Utah Expungement Act.

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Section 47. Section 77-2-5 is amended to read:

77-2-5. Diversion agreement -- Negotiation -- Contents.

(1) At any time after the [~~filing of an information or indictment and prior to~~] commencement of prosecution and before conviction, the prosecuting attorney may, by written agreement with the defendant, filed with the court, and upon approval of the court, divert a defendant to a non-criminal diversion program.

(2) A defendant shall be represented by counsel during negotiations for diversion and at the time of execution of any diversion agreement unless [~~he shall have~~] the defendant has knowingly and intelligently waived [~~his~~] the defendant's right to counsel.

(3) The defendant has the right to be represented by counsel at any court hearing relating to a diversion program.

(4) [~~Any~~] (a) A diversion agreement, entered into between [~~the prosecution and the defense~~] the prosecuting attorney and the defendant and approved by a magistrate, shall contain a full, detailed statement of the requirements agreed to by the defendant and the reasons for diversion.

(b) The diversion agreement described in Subsection (4)(a) shall include an agreement, by the parties, for a specific amount of restitution that the defendant will pay, unless the prosecuting attorney certifies that:

(i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and

(ii) the defendant does not owe any restitution.

(5) (a) If the court approves a diversion agreement that includes an agreement by the parties for the amount of restitution that the defendant will pay, the court shall order the defendant to pay restitution in accordance with the terms of the diversion agreement.

(b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the diversion agreement.

(6) A decision by a prosecuting attorney not to divert a defendant is not subject to judicial review.

[~~(5)~~] (7) Diversion programs longer than two years shall not be permitted.

[~~(6)~~] (8) A diversion agreement shall not be approved unless the defendant, before a magistrate and in the agreement, knowingly and intelligently waives [~~his~~] the defendant's

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constitutional right to a speedy trial.

Section 48. Section **77-2a-1** is amended to read:

77-2a-1. Definitions.

~~[For the purposes of this chapter:]~~

As used in this chapter:

(1) "Pecuniary damages" means the same as that term is defined in Section 77-38b-102.

~~[(1)]~~ (2) "Plea in abeyance" means an order by a court, upon motion of the ~~[prosecution]~~ prosecuting attorney 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]~~ the defendant nor imposing sentence upon ~~[him]~~ the defendant on condition that ~~[he]~~ the defendant comply with specific conditions as set forth in a plea in abeyance agreement.

~~[(2)]~~ (3) "Plea in abeyance agreement" means an agreement entered into between the ~~[prosecution]~~ prosecuting attorney 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.

(4) "Restitution" means the same as that term is defined in Section 77-38b-102.

Section 49. Section **77-2a-3** is amended to read:

77-2a-3. Manner of entry of plea -- Powers of court.

(1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with ~~[the provisions of Rule 11, Utah Rules of Criminal Procedure.]~~ the Utah Rules of Criminal Procedure, Rule 11.

(b) In cases charging offenses for which bail may be forfeited, a plea in abeyance agreement may be entered into without a personal appearance before a magistrate.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or

(b) allow withdrawal of defendant's plea and order the dismissal of the case.

(3) (a) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as

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provided in the plea in abeyance agreement or as agreed to by all parties.

(b) Upon sentencing a defendant for any lesser offense [~~pursuant to~~] in accordance with a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.

(4) The court may require the Department of Corrections to assist in the administration of the plea in abeyance agreement as if the defendant were on probation to the court under Section [~~77-18-1~~] 77-18-105.

(5) The terms of a plea in abeyance agreement may include:

(a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and which may not exceed in amount the maximum fine and surcharge which could have been imposed upon conviction and sentencing for the same offense;

~~[(b) an order that the defendant pay restitution to the victims of the defendant's actions as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;]~~

~~[(c)]~~ (b) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and

~~[(d)]~~ (c) an order that the defendant comply with any other conditions [~~which~~] that could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6) (a) The terms of a plea in abeyance shall include an order for a specific amount of restitution that the defendant will pay, as agreed to by the defendant and the prosecuting attorney, unless the prosecuting attorney certifies that:

(i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and

(ii) the defendant does not owe any restitution.

(b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the plea in abeyance agreement.

(c) If the defendant does not successfully complete the terms of the plea in abeyance, the court shall enter an order for restitution, in accordance with Title 77, Chapter 38b, Crime

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Victims Restitution Act, upon entering a sentence for the defendant.

~~[(6)]~~ (7)(a) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant.

(b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

~~[(7)]~~ (8) No plea may be held in abeyance in any case involving a sexual offense against a victim who is under ~~[the age of 14.]~~ 14 years old.

~~[(8)]~~ (9) Beginning on July 1, 2008, no plea may be held in abeyance in any case involving a driving under the influence violation under Section 41-6a-502.

Section 50. Section ~~77-7-5~~ is amended to read:

77-7-5. Issuance of summons or warrant -- Time and place arrests may be made -- Contents of warrant or summons -- Responsibility for transporting prisoners -- Court clerk to dispense costs for transportation.

(1) A magistrate may issue a warrant for arrest in lieu of a summons for the appearance of the accused only upon finding:

(a) probable cause to believe that the person to be arrested has committed a public offense; and

(b) under the Utah Rules of Criminal Procedure, and this section that a warrant is necessary to:

(i) prevent risk of injury to a person or property;

(ii) secure the appearance of the accused; or

(iii) protect the public safety and welfare of the community or an individual.

(2) If the offense charged is:

(a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

(b) a misdemeanor, the arrest upon a warrant can be made at night only if:

(i) the magistrate has endorsed authorization to do so on the warrant;

(ii) the person to be arrested is upon a public highway, in a public place, or in a place open to or accessible to the public; or

(iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(3) For the purpose of Subsection (1):

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(a) daytime hours are the hours of 6 a.m. to 10 p.m.; and

(b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

(4) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection (4)(a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

(ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.

(c) (i) The law enforcement agency identified by the magistrate under Subsection (4)(a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

(ii) The court clerk shall:

(A) account for ~~[restitution]~~ a cost paid under Subsection ~~[76-3-201(5) for governmental transportation expenses]~~ 76-3-201(4)(b) for government transportation; and

(B) dispense ~~[restitution]~~ money collected by the court under Subsection (4)(c)(ii)(A) to the law enforcement agency responsible for the transportation of a convicted defendant.

(5) The law enforcement agency identified by the magistrate under Subsection (4)(a) shall indicate to the court within 48 hours of the issuance, excluding Saturdays, Sundays, and legal holidays if a warrant issued ~~[pursuant to]~~ in accordance with this section is an extradition warrant.

(6) The law enforcement agency identified by the magistrate under Subsection (4)(a) shall report any changes to the status of a warrant issued ~~[pursuant to]~~ in accordance with this section to the Bureau of Criminal Identification.

Section 51. Section **77-7-21** is amended to read:

77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature required -- Information, when required.

(1) (a) A citation filed with the court may, with the consent of the defendant, serve in

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lieu of an information to which the defendant may plead guilty or no contest to the charge or charges listed and be sentenced accordingly.

(b) If provided by the uniform fine schedule described in Section 76-3-301.5, an individual may remit the fine and other penalties without a personal appearance before the court in any case charging a class B misdemeanor or lower offense, unless the charge is:

(i) a domestic violence offense as defined in Section 77-36-1;

(ii) a violation of Section 41-6a-502, driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration;

(iii) a violation of Section 41-6a-517, driving with any measurable controlled substance in the body;

(iv) a violation of a local ordinance similar to the offenses described in Subsections (1)(b)(i) through (iii); or

(v) a violation that appears to:

(A) affect a victim, as defined in Section ~~[77-38a-102]~~ 77-38b-102; or

(B) require restitution, as defined in Section ~~[77-38a-102]~~ 77-38b-102.

(c) The remittal of fines and other penalties shall be entered as a conviction and treated the same as if the accused pleaded no contest.

(d) If the person cited is under 18 years ~~[of age]~~ old, the court shall promptly mail a copy or notice of the citation to the address as shown on the citation, to the attention of the parent or guardian of the defendant.

(2) If the individual pleads not guilty to the offense charged, further proceedings shall be held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code.

Section 52. Section **77-18-101** is enacted to read:

77-18-101. Title.

This chapter is known as "The Judgment."

Section 53. Section **77-18-102** is enacted to read:

77-18-102. Definitions.

As used in this chapter:

(1) "Assessment" means, except as provided in Section 77-18-104, the same as the term "risk and needs assessment" in Section 77-1-3.

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(2) "Board" means the Board of Pardons and Parole.

(3) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(4) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(5) "Convicted" means the same as that term is defined in Section 76-3-201.

(6) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

(7) "Default" means the same as that term is defined in Section 77-32b-102.

(8) "Delinquent" means the same as that term is defined in Section 77-32b-102.

(9) "Department" means the Department of Corrections created in Section 64-13-2.

(10) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(11) "Restitution" means the same as that term is defined in Section 77-38b-102.

(12) "Screening" means, except as provided in Section 77-18-104, a tool or questionnaire that is designed to determine whether an individual needs further assessment or any additional resource or referral for treatment.

(13) "Substance use disorder treatment" means treatment obtained through a substance use disorder program that is licensed by the Office of Licensing within the Department of Human Services.

Section 54. Section **77-18-103** is enacted to read:

77-18-103. Presentence investigation report -- Classification of presentence investigation report -- Evidence or other information at sentencing.

(1) Before the imposition of a sentence, the court may:

(a) upon agreement of the defendant, continue the date for the imposition of the sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant; and

(b) if the defendant is convicted of a felony or a class A misdemeanor, request that the department prepare a presentence investigation report for the defendant.

(2) If a presentence investigation report is required under the standards established by

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the department described in Section 77-18-109, the presentence investigation report under Subsection (1) shall include:

(a) any impact statement provided by a victim as described in Subsection 77-38b-203(3)(c);

(b) information on restitution as described in Subsection 77-38b-203(3)(a) and (b);

(c) findings from any screening and any assessment of the defendant conducted under Section 77-18-104;

(d) recommendations for treatment for the defendant; and

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

(3) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if the defendant is not represented by counsel, the prosecuting attorney, and the court for review within three working days before the day on which the defendant is sentenced.

(4) (a) (i) If there is an alleged inaccuracy in the presentence investigation report that is not resolved by the parties and the department before sentencing:

(A) the alleged inaccuracy shall be brought to the attention of the court at sentencing; and

(B) the court may grant an additional 10 working days after the day on which the alleged inaccuracy is brought to the court's attention to allow the parties and the department to resolve the alleged inaccuracy in the presentence investigation report.

(ii) If the court does not grant additional time under Subsection (4)(a)(i)(B), or the alleged inaccuracy cannot be resolved after 10 working days, and if the court finds that there is an inaccuracy in the presentence investigation report, the court shall:

(A) enter a written finding as to the relevance and accuracy of the challenged portion of the presentence investigation report; and

(B) provide the written finding to the Division of Adult Probation and Parole.

(b) The Division of Adult Probation and Parole shall attach the written finding to the presentence investigation report as an addendum.

(c) If a party fails to challenge the accuracy of the presentence investigation report at

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the time of sentencing, the matter shall be considered waived.

(5) The contents of the presentence investigation report are protected and 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) A presentence investigation report is classified as protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report.

(7) Except for disclosure at the time of sentencing in accordance with this section, the department may disclose a presentence investigation only when:

(a) ordered by the court in accordance with 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 a defendant;

(c) requested by the board;

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

(e) requested by the victim of the offense discussed in the presentence investigation report, or the victim's authorized representative, if the disclosure is only information relating to:

(i) statements or materials provided by the victim;

(ii) the circumstances of the offense, including statements by the defendant; or

(iii) the impact of the offense on the victim or the victim's household; or

(f) requested by a sex offender treatment provider:

(i) who is certified to provide treatment under the certification program established in Subsection 64-13-25(3);

(ii) who is providing, at the time of the request, sex offender treatment to the offender who is the subject of the presentence investigation report; and

(iii) who provides written assurance to the department that the report:

(A) is necessary for the treatment of the defendant;

(B) will be used solely for the treatment of the defendant; and

(C) will not be disclosed to an individual or entity other than the defendant.

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(8) (a) At the time of sentence, the court shall receive any testimony, evidence, or information that the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.

(b) Testimony, evidence, or information under Subsection (8)(a) shall be presented in open court on record and in the presence of the defendant.

Section 55. Section ~~77-18-104~~, which is renumbered from Section 77-18-1.1 is renumbered and amended to read:

~~[77-18-1.1].~~ **77-18-104. Screening, assessment, and treatment.**

(1) As used in this section:

(a) "Assessment" has the same meaning as in Section 41-6a-501.

~~[(b) "Convicted" means:]~~

~~[(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, or no contest; and]~~

~~[(ii) conviction of any crime or offense.]~~

~~[(c)]~~ (b) "Screening" has the same meaning as in Section 41-6a-501.

~~[(d) "Substance use disorder treatment" means treatment obtained through a substance use disorder program that is licensed by the Office of Licensing within the Department of Human Services.]~~

~~[(2) On or after July 1, 2009, the courts of the judicial districts where the Drug-Related Offenses Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local substance abuse authority regarding available resources,]~~

(2) In coordination with the local substance abuse authority regarding available resources, a court in which the Drug-Related Offenses Reform Act under Section 63M-7-305 is implemented shall order [convicted persons] a convicted defendant, who is determined to be eligible in accordance with the implementation plan developed by the Utah Substance Use and Mental Health Advisory Council under Section 63M-7-305, to:

(a) participate in a screening [~~prior to~~] before sentencing;

(b) participate in an assessment [~~prior to~~] before sentencing if the screening indicates an assessment to be appropriate; and

(c) participate in substance use disorder treatment if:

(i) the assessment indicates treatment to be appropriate;

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(ii) the court finds treatment to be appropriate for the convicted [~~person~~] defendant;
and

(iii) the court finds the convicted [~~person~~] defendant to be an appropriate candidate for community-based supervision.

(3) The findings from any screening and any assessment conducted under this section shall be part of the presentence investigation report submitted to the court [~~before sentencing of the convicted person~~] under Section 77-18-103.

(4) Money appropriated by the Legislature to assist in the funding of the screening, assessment, substance use disorder treatment, and supervision provided under this section is not subject to any requirement regarding matching funds from a state or local governmental entity.

Section 56. Section **77-18-105** is enacted to read:

77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation -- Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench supervision for payments on criminal accounts receivable.

(1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance:

(a) in accordance with Chapter 2a, Pleas in Abeyance; and

(b) under the terms of the plea in abeyance agreement.

(2) If a defendant is convicted, the court:

(a) shall impose a sentence in accordance with Section 76-3-201; and

(b) may suspend the execution of the sentence and place the defendant:

(i) on probation under the supervision of the department, except as provided in

Subsection (5):

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

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

(3) (a) The legal custody of all probationers under the supervision of the department is with the department.

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

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

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

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

(5) A court may not order the department to supervise the probation of an individual who is convicted of a class B or C misdemeanor or an infraction.

(6) (a) If a defendant is placed on probation, the court may order the defendant as a condition of the defendant's probation:

(i) to provide for the support of persons for whose support the defendant is legally liable;

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

(iii) be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

(iv) if the defendant is on probation for a felony offense, to serve a period of time as an initial condition of probation that does not 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;

(v) to serve a term of home confinement in accordance with Section 77-18-107;

(vi) to participate in compensatory service programs, including the compensatory service program described in Section 76-6-107.1;

(vii) to pay for the costs of investigation, probation, or treatment services;

(viii) to pay a criminal accounts receivable established for the defendant under Section 77-32b-103; or

(ix) to comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation.

(b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a defendant to include a period of time that is served in a county jail immediately before the

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termination of probation as long as that period of time does not exceed one year.

(ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply to the period of time that the court orders the defendant to serve in a county jail under this Subsection (6)(b)(ii).

(7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on probation after December 31, 2018:

(i) may not exceed the individual's maximum sentence;

(ii) shall be for a period of time that is in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law; and

(iii) shall be terminated in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

(b) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less, may not exceed 36 months.

(c) Probation of an individual placed on probation on or after October 1, 2015, but before January 1, 2019, 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 in accordance with Section 64-13-21 regarding earned credits.

(d) This Subsection (7) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal accounts receivable for the defendant upon termination of the probation period for the defendant under Subsection (7), the court may require the defendant to continue to make payments towards the criminal accounts receivable in accordance with the payment schedule established by the court under Section 77-32b-103.

(b) A court may not require the defendant to make payments as described in Subsection (8)(a) beyond the expiration of the defendant's sentence.

(c) If the court requires a defendant to continue to pay in accordance with the payment

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schedule for the criminal accounts receivable under this Subsection (8) and the defendant defaults on the criminal accounts receivable, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable for the defendant as described in Section 77-18-114.

(d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's own motion, the court may require a defendant to show cause as to why the defendant's failure to pay in accordance with the payment schedule should not be treated as contempt of court.

(ii) A court may hold a defendant in contempt for failure to make payments for a criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

(e) This Subsection (8) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

Section 57. Section **77-18-106** is enacted to read:

77-18-106. Treatment at the Utah State Hospital -- Condition of probation or stay of sentence.

The court may order as a condition of probation, or a stay of sentence, that the defendant be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital only if the superintendent of the Utah State Hospital, or the superintendent's designee, certifies to the court that:

- (1) the defendant is appropriate for, and can benefit from, treatment at the Utah State Hospital;
- (2) there is space at the Utah State Hospital for treatment of the defendant; and
- (3) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendant.

Section 58. Section **77-18-107** is enacted to read:

77-18-107. Home confinement -- Electronic monitoring for home confinement.

- (1) The court may order 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.
- (2) The department shall establish procedures and standards for home confinement for all defendants supervised by the department for home confinement.
- (3) If the court places the defendant on probation and orders the defendant to participate in home confinement under Subsection (1), the court may order the defendant to

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participate in home confinement through the use of electronic monitoring until further order of the court.

(4) The electronic monitoring of a defendant shall alert the department and the appropriate law enforcement agency of the defendant's whereabouts.

(5) An electronic monitoring device shall be used under conditions that require:

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

(b) the device be placed in the home of the defendant to monitor the defendant's compliance with the court's order.

(6) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under Subsection (3), the court shall:

(a) place the defendant on probation under the supervision of the department;

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

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

(7) The department shall pay the costs of home confinement through electronic monitoring only for an individual who is determined to be indigent by the court.

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

Section 59. Section **77-18-108** is enacted to read:

77-18-108. Termination, revocation, modification, or extension of probation --

Violation of probation -- Hearing on violation.

(1) (a) The department shall notify the court and the prosecuting attorney, in writing:

(i) when the department is requesting termination of supervision for a defendant; or

(ii) before a defendant's supervision will be terminated by law.

(b) The notification under this Subsection (1) shall include a probation progress report.

(c) If a defendant's probation is being terminated, and the defendant's criminal accounts receivable has an unpaid balance or there is any outstanding debt with the department, the department shall notify the Office of State Debt Collection that the defendant's criminal accounts receivable has an unpaid balance or there is an outstanding debt with the department.

(2) (a) The court may modify the defendant's probation in accordance with the

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supervision length guidelines and the graduated sanctions and incentives developed by the Utah Sentencing Commission under Section 63M-7-404.

(b) The court may not:

(i) extend the length of a defendant's probation, except upon:

(A) waiver of a hearing by the defendant; or

(B) a hearing and a finding by the court that the defendant has violated the terms of probation;

(ii) revoke a defendant's probation, except upon a hearing and a finding by the court that the terms of probation have been violated; or

(iii) terminate a defendant's probation before expiration of the probation period until the court enters a finding of whether the defendant owes restitution under Section 77-38b-205.

(3) (a) Upon the filing of an affidavit, or an unsworn written declaration executed in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, alleging with particularity facts asserted to constitute violation of the terms of a defendant's probation, the court shall determine if the affidavit or unsworn written declaration establishes probable cause to believe that revocation, modification, or extension of the defendant's probation is justified.

(b) (i) If the court determines there is probable cause, the court shall order that the defendant be served with:

(A) a warrant for the defendant's arrest or a copy of the affidavit or unsworn written declaration; and

(B) an order to show cause as to why the defendant's probation should not be revoked, modified, or extended.

(ii) The order under Subsection (3)(b)(i)(B) shall:

(A) be served upon the defendant at least five days before the day on which the hearing is held;

(B) specify the time and place of the hearing; and

(C) inform the defendant of the right to be represented by counsel at the hearing, the right to have counsel appointed if the defendant is indigent, and the right to present evidence at the hearing.

(iii) The defendant shall show good cause for a continuance of the hearing.

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(c) At the hearing, the defendant shall admit or deny the allegations of the affidavit or unsworn written declaration.

(d) (i) If the defendant denies the allegations of the affidavit or unsworn written declaration, the prosecuting attorney shall present evidence on the allegations.

(ii) If the affidavit, or unsworn written declaration, alleges that a defendant is delinquent, or in default, on a criminal accounts receivable, the prosecuting attorney shall present evidence to establish, by a preponderance of the evidence, that the defendant:

(A) was aware of the defendant's obligation to pay the balance of the criminal accounts receivable;

(B) failed to pay on the balance of the criminal accounts receivable as ordered by the court; and

(C) had the ability to make a payment on the balance of the criminal accounts receivable if the defendant opposes an order to show cause, in writing, and presents evidence that the defendant was unable to make a payment on the balance of the criminal accounts receivable.

(e) 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.

(f) At the hearing, the defendant may:

(i) call witnesses;

(ii) appear and speak in the defendant's own behalf; and

(iii) present evidence.

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

(ii) Upon a finding that the defendant violated the terms of the defendant's probation, the court may order the defendant's probation terminated, revoked, modified, continued, or reinstated for all or a portion of the original term of probation.

(4) (a) (i) Except as provided in Subsection 77-18-105(7), the court may not require a defendant to remain on probation for a period of time that exceeds the length of the defendant's maximum sentence.

(ii) Except as provided in Subsection 77-18-105(7), if a defendant's probation is revoked and later reinstated, the total time of all periods of probation that the defendant serves,

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in relation to the same sentence, may not exceed the defendant's maximum sentence.

(b) If a period of incarceration is imposed for a violation of the defendant's probation, the defendant shall be sentenced within the guidelines established by the Utah Sentencing Commission in accordance with Subsection 63M-7-404(4), unless the court determines that:

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

(ii) the sentence previously imposed shall be executed.

(c) If the defendant had, before the imposition of a term of incarceration or the execution of the previously imposed sentence under this section, served time in jail as a term of probation or due to a violation of probation, the time that the defendant served in jail constitutes service of time toward the sentence previously imposed.

(5) (a) Any time served by a defendant:

(i) outside of confinement after having been charged with a probation violation, and before a hearing to revoke probation, does not constitute service of time toward the total probation term, unless the defendant is exonerated at a hearing to revoke the defendant's probation;

(ii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's probation does not constitute service of time toward the total probation term, unless the defendant is exonerated at the hearing to revoke probation; or

(iii) in confinement awaiting a hearing or a decision concerning revocation of the defendant's 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 the guidelines established by the Utah Sentencing Commission in accordance with Section 63M-7-404.

(b) The running of the probation period is tolled upon:

(i) the filing of a report with the court alleging a violation of the terms of the defendant's probation; or

(ii) the issuance of an order or a warrant under Subsection (3).

Section 60. Section **77-18-109** is enacted to read:

77-18-109. Standards for supervision and presentence investigation.

(1) The department shall establish supervision and presentence investigation standards

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for all individuals referred to the department based on:

- (a) the type of offense;
- (b) the results of a screening and an assessment;
- (c) the demand for services;
- (d) the availability of agency resources;
- (e) public safety; and
- (f) other criteria established by the department to determine what level of services shall

be provided.

(2) The department shall submit proposed supervision and presentence investigation standards annually to the Judicial Council and the board for review and comment before the department adopts the standards.

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

(4) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (1) and other criteria as the Judicial Council and the department consider appropriate.

(5) The Judicial Council and the department shall:

- (a) annually prepare an impact report; and
- (b) submit the impact report to the appropriate legislative appropriations

subcommittee.

Section 61. Section **77-18-110**, which is renumbered from Section 77-18-3 is renumbered and amended to read:

~~[77-18-3].~~ 77-18-110. Disposition of fines.

~~[Fines]~~ A fine imposed by the district court shall be paid ~~[as provided in]~~ in accordance with Section 78A-5-110.

Section 62. Section **77-18-111**, which is renumbered from Section 77-18-4 is renumbered and amended to read:

~~[77-18-4].~~ 77-18-111. Sentence -- Term -- Construction.

(1) ~~[Whenever a person]~~ If an individual is convicted of a crime and the judgment provides for a commitment to the state prison, the court shall not fix a definite term of imprisonment unless otherwise provided by law.

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(2) The sentence and judgment of imprisonment shall be for an indeterminate term of not less than the minimum and not to exceed the maximum term provided by law for the particular crime.

(3) Except as otherwise expressly provided by law, every sentence, regardless of [its] the sentence's form or terms, which purports to be for a shorter or different period of time, shall be construed to be a sentence for the term between the minimum and maximum periods of time provided by law and shall continue until the maximum period has been reached unless sooner terminated or commuted by authority of the [~~Board of Pardons and Parole~~] board.

Section 63. Section ~~77-18-112~~, which is renumbered from Section 77-18-5 is renumbered and amended to read:

~~[77-18-5].~~ **77-18-112. Reports by courts and prosecuting attorneys to Board of Pardons and Parole.**

In cases where an indeterminate sentence is imposed, the [~~judge~~] court and prosecuting attorney may, within 30 days, mail a statement to the [~~Board of Pardons and Parole~~] board setting forth the term for which the prisoner ought to be imprisoned together with any information which might aid the board in passing on the application for termination or commutation of the sentence or for parole or pardon.

Section 64. Section ~~77-18-113~~, which is renumbered from Section 77-18-5.5 is renumbered and amended to read:

~~[77-18-5.5].~~ **77-18-113. Judgment of death -- Method is lethal injection -- Exceptions for use of firing squad.**

(1) (a) When a defendant is convicted of a capital felony and the judgment of death has been imposed, lethal intravenous injection is the method of execution.

(b) Subsection (1)(a) applies to any defendant sentenced to death on or after May 3, 2004, except under Subsections (2), (3), and (4).

(2) (a) If a court holds that a defendant has a right to be executed by a firing squad, the method of execution for that defendant shall be a firing squad.

(b) This Subsection (2) applies to any defendant whose right to be executed by a firing squad is preserved by that judgment.

(3) (a) If a court holds that execution by lethal injection is unconstitutional on its face, the method of execution shall be a firing squad.

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(b) If a court holds that execution by lethal injection is unconstitutional as applied, the method of execution for that defendant shall be a firing squad.

(4) The method of execution for the defendant is the firing squad if the sentencing court determines the state is unable to lawfully obtain the substance or substances necessary to conduct an execution by lethal intravenous injection 30 or more days [~~prior to~~] before the date specified in the warrant issued upon a judgment of death under Section 77-19-6.

Section 65. Section **77-18-114** is enacted to read:

77-18-114. Unpaid balance at termination of sentence -- Past due account -- Notice -- Account or judgment paid in full -- Effect of civil accounts receivable and civil judgment of restitution.

(1) When a defendant's sentence is terminated by law or by the decision of the court or the board:

(a) the board shall provide an accounting of the unpaid balance of the defendant's criminal accounts receivable to the court if the defendant was on parole or incarcerated at the time of termination; and

(b) within 90 days after the day on which a defendant's sentence is terminated, the court shall:

(i) enter an order for a civil accounts receivable and a civil judgment of restitution for a defendant on the civil judgment docket;

(ii) transfer the responsibility of collecting the civil accounts receivable and the civil judgment of restitution to the Office of State Debt Collection; and

(iii) identify in the order under this Subsection (1):

(A) the Office of State Debt Collection as a judgment creditor for the civil accounts receivable and the civil judgment of restitution; and

(B) the victim as a judgment creditor for the civil judgment of restitution.

(2) If a criminal accounts receivable for the defendant is more than 90 days past due and the court has ordered that a defendant does not owe restitution to any victim, or the time period in Subsection 77-38b-205(5) has passed and the court has not ordered restitution, the court may:

(a) enter an order for a civil accounts receivable for the defendant on the civil judgment docket;

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(b) identify, in the order under Subsection (2)(a), the Office of State Debt Collection as a judgment creditor for the civil accounts receivable; and

(c) transfer the responsibility of collecting the civil accounts receivable to the Office of State Debt Collection.

(3) An order for a criminal accounts receivable is no longer in effect after the court enters an order for a civil accounts receivable or a civil judgment of restitution under Subsection (1) or (2).

(4) The court shall provide notice to the Office of State Debt Collection and the prosecuting attorney of any hearing that affects an order for the civil accounts receivable or the civil judgment of restitution.

(5) The Office of State Debt Collection shall:

(a) notify the court when a civil judgment of restitution or a civil accounts receivable is satisfied; and

(b) provide the court with an accounting of any distribution made by the Office of State Collection for the civil accounts receivable and the civil judgment of restitution.

(6) When a fine, forfeiture, surcharge, cost, or fee is recorded in an order for a civil accounts receivable on the civil judgment docket, or when restitution is recorded as an order for a civil judgment of restitution on the civil judgment docket, the order:

(a) constitutes a lien on the defendant's real property until the judgment is satisfied; and

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

(7) A criminal account receivable, a civil accounts receivable, and a civil judgment of restitution are not subject to the civil statutes of limitation and expire only upon payment in full.

(8) (a) If a defendant asserts that a payment was made to a victim or third party for a civil judgment of restitution, or enters into any other transaction that does not involve the Office of State Debt Collection, and the defendant asserts that the payment results in a credit towards the civil judgment of restitution for the defendant:

(i) the defendant shall provide notice to the Office of State Debt Collection and the prosecuting attorney within 30 days after the day on which the payment or other transaction is made; and

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(ii) the payment may only be credited towards the principal of the civil judgment of restitution and does not affect any other amount owed to the Office of State Debt Collection under Section 63A-3-502.

(b) Nothing in this Subsection (8) shall be construed to prevent a victim or a third party from providing notice of a payment towards a civil judgment of restitution to the Office of State Debt Collection.

Section 66. Section **77-18-115**, which is renumbered from Section 77-18-6.5 is renumbered and amended to read:

[77-18-6.5]. 77-18-115. Liability of rescued person for costs of emergency response.

(1) Any person who violates Section 76-6-206.1 and whose conduct required emergency care, rescue, assistance, or recovery services at the scene of an abandoned or inactive mine may be charged with the expenses incurred in meeting the emergency.

(2) (a) The court's order shall be a judgment [~~which~~] that orders the payment of reimbursement to any public agency or private body that incurred the expenses.

(b) The judgment shall constitute a lien when recorded in the judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action.

(3) The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

Section 67. Section **77-18-116**, which is renumbered from Section 77-18-7 is renumbered and amended to read:

[77-18-7]. 77-18-116. Costs imposed on defendant -- Restrictions.

Unless specifically authorized by statute, a defendant shall not be required to pay court costs in a criminal case [~~either as~~] as:

- (1) a part of a sentence; or [~~as~~]
- (2) a condition of probation or dismissal.

Section 68. Section **77-18-117**, which is renumbered from Section 77-18-8 is renumbered and amended to read:

[77-18-8]. 77-18-117. Fine not paid -- Commitment.

- (1) When a defendant is sentenced to pay a fine in addition to a jail or a prison sentence

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and the judgment is that the jail or prison sentence be suspended upon payment of the fine, the service of the jail or prison sentence shall satisfy the judgment.

(2) If a defendant fails to pay the fine and [~~thereafter~~] the court finds that the defendant failed to make a good faith effort to pay the fine, the court may, after a hearing, order the execution of the suspended jail or prison sentence.

(3) If a defendant is sentenced to pay a fine only, or is sentenced to jail or prison and a fine, with neither suspended, [~~he shall not~~] the defendant may not later be committed to jail for failure to pay the fine.

Section 69. Section **77-18-118** is enacted to read:

77-18-118. Continuing jurisdiction of a sentencing court.

(1) A sentencing court shall retain jurisdiction over a defendant's criminal case:

(a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);

(b) if the defendant is on probation and the probation period has terminated under Subsection 77-18-105(7), to require the defendant to continue to make payments towards a criminal accounts receivable until the defendant's sentence expires;

(c) within the time periods described in Subsection 77-38b-205(5), to enter or modify an order for a criminal accounts receivable in accordance with Section 77-32b-103;

(d) within the time periods described in Subsection 77-38b-205(5), to enter or modify an order for restitution in accordance with Section 77-38b-205;

(e) until a defendant's sentence is terminated, to correct an error for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(a);

(f) until a defendant's sentence is terminated, to modify a payment schedule for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);

(g) if a defendant files a petition for remittance under Subsection 77-32b-105(1)(c) before the defendant's sentence is terminated, for 90 days from the day on which the petition is filed to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable;

(h) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within 90 days from the day on which the defendant's sentence is terminated, to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable; and

(i) to enter an order for a civil accounts receivable and a civil judgment of restitution in

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accordance with Section 77-18-114.

(2) This section does not prevent a court from exercising jurisdiction over:

(a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3,

Contempt; or

(b) enforcement of a civil accounts receivable or a civil judgment of restitution.

Section 70. Section **77-19-10** is amended to read:

77-19-10. Judgment of death -- Location and procedures for execution.

(1) The executive director of the Department of Corrections or a designee shall ensure that the method of judgment of death specified in the warrant or as required under Section ~~[77-18-5.5]~~ 77-18-113 is carried out at a secure correctional facility operated by the department and at an hour determined by the department on the date specified in the warrant.

(2) When the judgment of death is to be carried out by lethal intravenous injection, the executive director of the department or a designee shall select two or more persons trained in accordance with accepted medical practices to administer intravenous injections, who shall each administer a continuous intravenous injection, one of which shall be of a lethal quantity of:

(a) sodium thiopental; or

(b) other equally or more effective substance sufficient to cause death.

(3) If the judgment of death is to be carried out by firing squad under Subsection ~~[77-18-5.5]~~ 77-18-113(2), (3), or (4) the executive director of the department or a designee shall select a five-person firing squad of peace officers.

(4) Compensation for persons administering intravenous injections and for members of a firing squad under Subsection ~~[77-18-5.5]~~ 77-18-113(2), (3), or (4) shall be in an amount determined by the director of the Division of Finance.

(5) Death under this section shall be certified by a physician.

(6) The department shall adopt and enforce rules governing procedures for the execution of judgments of death.

Section 71. 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 -- Specific monetary bail methods.

(1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a

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single amount per case or charge.

(b) Subject to Subsection (2), a defendant may choose to post the amount described in Subsection (1)(a) by any of the following methods:

(i) in cash;

(ii) by written undertaking with sureties;

(iii) by written undertaking without sureties, at the discretion of the judge or magistrate; or

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

(2) A judge or magistrate may limit a defendant to a specific method of posting monetary bail described in Subsection (1)(b)(i), (ii), (iii), or (iv):

(a) if, after charges are filed, the defendant fails to appear in the case on a bond and the case involves a violent offense;

(b) in order to allow the defendant to voluntarily forfeit monetary bail in accordance with Section 77-7-21 and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

(c) if the defendant has failed to respond to a citation or summons and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

(d) if a warrant is issued for the defendant solely for failure to pay a ~~[criminal judgment account receivable, as defined in Section 77-32a-101]~~ criminal accounts receivable, as defined in Section 77-32b-102, and the defendant's monetary bail is limited to the amount owed; or

(e) if a court has entered a judgment of bond forfeiture under Section 77-20b-104 in any case involving the defendant.

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

(4) Monetary bail paid by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.

(5) Monetary 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 (4), which may be less than the full amount of the monetary bail set by the court.

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(6) Before refunding monetary 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 77-32a-101~~] a criminal accounts receivable, as defined in Section 77-32b-102, that [~~are~~] is owed by the defendant in the priority set forth in Section [~~77-38a-404~~] 77-38b-304.

Section 72. Section **77-20b-101** is amended to read:

77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on failure of timely notice.

(1) If a defendant who has posted bail fails to appear before the appropriate court as required, the court shall within 30 days of the failure to appear issue a bench warrant that includes the original case number. The court shall also direct that the surety or surety insurer be given notice of the nonappearance. The clerk of the court shall:

(a) email notice of nonappearance to the surety or surety insurer at the email address provided on the bond;

(b) email a copy of the notice sent under Subsection (1)(a) to the prosecutor's office; and

(c) ensure that the name, address, business email address, and telephone number of the surety, its agent, or surety insurer as listed on the bond is stated on the bench warrant.

(2) The prosecutor may email notice of nonappearance to the address of the surety or surety insurer as listed on the bond within 37 days after the date of the defendant's failure to appear.

(3) If notice of nonappearance is not emailed to a surety or surety insurer as listed on the bond, other than the defendant, in accordance with Subsection (1) or (2), the surety or surety insurer and its bond producer are relieved of further obligation under the bond if the surety or surety insurer have listed their current name and email addresses on the bond in the court's file.

(4) (a) (i) If a defendant appears in court within 30 days after a missed, scheduled court appearance, the court may reinstate the bond without further notice to the surety or surety insurer.

(ii) If the defendant, while in custody, appears on the case for which the bond was posted, the court may not reinstate the bond without the consent of the bond company.

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(b) If a defendant fails to appear within 30 days after a scheduled court appearance, the court may not reinstate the bond without the consent of the surety or surety insurer.

(c) If the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges and the court is notified of the arrest, or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of judgment of forfeiture, the court shall exonerate the bond.

(d) Unless the court makes a finding of good cause why the bond should not be exonerated, ~~it~~ the court shall exonerate the bond if:

(i) the surety or surety insurer has delivered the defendant to the county jail booking facility in the county where the original charge or charges are pending;

(ii) the defendant has been released on a bond secured from a subsequent surety or surety insurer for the original charge and the failure to appear;

(iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release under Section 17-22-5.5;

(iv) the surety or surety insurer has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending, and the payment is in an amount equal to ~~government transportation expenses listed in Section 76-3-201~~ the cost of government transportation under Section 76-3-201; or

(v) the surety or surety insurer demonstrates by a preponderance of the evidence that:

(A) at the time the surety or surety insurer issued the bond, it had made reasonable efforts to determine that the defendant was legally present in the United States;

(B) a reasonable person would have concluded, based on the surety's or surety insurer's determination, that the defendant was legally present in the United States; and

(C) the surety or surety insurer has failed to bring the defendant before the court because the defendant is in federal custody or has been deported.

(e) Under circumstances not otherwise provided for in this section, the court may exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's or surety insurer's motion and there is good cause for the bond to be exonerated.

(f) If a surety's or surety insurer's bond has been exonerated under this section and the

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surety or surety insurer remains liable for the cost of transportation of the defendant, the surety or surety insurer may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.

Section 73. Section ~~77-27-1~~ is amended to read:

77-27-1. Definitions.

As used in this chapter:

(1) "Appearance" means any opportunity to address the board, a board member, a panel, or hearing officer, including an interview.

(2) "Board" means the Board of Pardons and Parole.

(3) (a) "Case action plan" means a document developed by the Department of Corrections that identifies the program priorities for the treatment of the offender~~[, including]~~.

(b) "Case action plan" includes the criminal risk factors as determined by a risk and needs assessment conducted by the department.

(4) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(5) "Commutation" is the change from a greater to a lesser punishment after conviction.

(6) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

~~(6)~~ (7) "Criminal risk factors" means a person's characteristics and behaviors that:

(a) affect that person's risk of engaging in criminal behavior; and

(b) are diminished when addressed by effective treatment, supervision, and other support resources resulting in reduced risk of criminal behavior.

~~(7)~~ (8) "Department" means the Department of Corrections.

~~(8)~~ (9) "Expiration" ~~[occurs]~~ means when the maximum sentence has run.

~~(9)~~ (10) "Family" means ~~[persons]~~ any individual related to the victim as a spouse, child, sibling, parent, or grandparent, or the victim's legal guardian.

~~(10)~~ (11) "Hearing" or "full hearing" means an appearance before the board, a panel, a board member or hearing examiner, at which an offender or inmate is afforded an opportunity to be present and address the board~~[, and encompasses the term "full hearing."]~~.

~~(11)~~ (12) "Location," in reference to a hearing, means the physical location at which

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the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of the location of any person participating by electronic means.

~~[(12)]~~ (13) "Open session" means any hearing, before the board, a panel, a board member, or a hearing examiner ~~[which], that~~ is open to the public, regardless of the location of any person participating by electronic means.

~~[(13)]~~ (14) "Panel" means members of the board assigned by the chairperson to a particular case.

~~[(14)]~~ (15) "Pardon" ~~[is]~~ means:

(a) an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction~~[. A pardon releases];~~

(b) the release of an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction~~[. A pardon reinstates]; and~~

(c) the reinstatement of any civil rights lost as a consequence of conviction or punishment for a criminal offense.

~~[(15)]~~ (16) "Parole" ~~[is]~~ means a release from imprisonment on prescribed conditions which, if satisfactorily performed by the parolee, enables the parolee to obtain a termination of ~~[his]~~ the parolee's sentence.

(17) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(18) "Pecuniary damages" means the same as that term is defined in Section 77-38b-102.

~~[(16)]~~ (19) "Probation" ~~[is]~~ means an act of grace by the court suspending the imposition or execution of a convicted offender's sentence upon prescribed conditions.

(20) "Remit" or "remission" means the same as that term is defined in Section 77-32b-102.

~~[(17)]~~ ~~"Reprieve or respite" is]~~

(21) "Reprieve" or "respite" means the temporary suspension of the execution of the sentence.

(22) "Restitution" means the same as that term is defined in Section 77-38b-102.

~~[(18)]~~ (23) "Termination" ~~[is]~~ means the act of discharging from parole or concluding

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the sentence of imprisonment [~~prior to~~] before the expiration of the sentence.

[(19)] (24) "Victim" means:

(a) a person against whom the defendant committed a felony or class A misdemeanor offense [~~, and regarding which offense~~] for which a hearing is held under this chapter; or

(b) the victim's family[;] if the victim is deceased as a result of the offense for which a hearing is held under this chapter.

Section 74. Section 77-27-2 is amended to read:

77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.

(1) (a) There is created the Board of Pardons and Parole.

(b) The board shall consist of five full-time members and not more than five pro tempore members to be appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies, and as provided in this section.

(c) The members of the board shall be resident citizens of the state.

(d) The governor shall establish salaries for the members of the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) (a) (i) (A) The full-time board members shall serve terms of five years.

(B) The terms of the full-time members shall be staggered so one board member is appointed for a term of five years on March 1 of each year.

(ii) (A) The pro tempore members shall serve terms of five years, beginning on March 1 of the year of appointment, with no more than one pro tempore member term beginning or expiring in the same calendar year.

(B) If a pro tempore member vacancy occurs, the board may submit the names of not fewer than three or more than five persons to the governor for appointment to fill the vacancy.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the advice and consent of the Senate [~~pursuant to~~] in accordance with this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(d) (i) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.

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(ii) A member may not engage in any occupation or business inconsistent with the member's duties.

(e) (i) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any location within or without the state, or for the purpose of exercising any duty or authority of the board. [~~Action taken by a majority of the board regarding whether parole, pardon, commutation, termination of sentence, or remission of fines or forfeitures may be granted or restitution ordered in individual cases is deemed the action of the board.~~]

(ii) An action is deemed the action of the board if the action is taken by a majority of the board regarding whether:

(A) parole, pardon, commutation, or termination of a sentence is granted in an offender's case;

(B) remission of a criminal accounts receivable, or a fines or forfeiture, is granted in an offender's case; or

(C) an offender's payment schedule for a criminal accounts receivable is modified.

(iii) A majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute. [~~However,~~]

(iv) Notwithstanding Subsection (2)(e)(iii), a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(v) A board member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

(f) (i) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board.

(ii) When [~~any of these actions are~~] an action under Subsection (2)(f)(i) is approved and confirmed by the board and filed in [its] the board's office, [they are] the action is considered to be the action of the board and [have] has the same effect as if originally made by the board.

(g) (i) When a full-time board member is absent or in other extraordinary circumstances, the chair may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member.

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(ii) Pro tempore members shall receive a per diem rate of compensation as established by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chair may request staff and administrative support as necessary from the [~~Department of Corrections~~] department.

(3) (a) Except as provided in Subsection (3)(b), the [~~Commission on Criminal and Juvenile Justice~~] commission shall:

(i) recommend five applicants to the governor for a full-time member appointment to the [~~Board of Pardons and Parole~~] board; and

(ii) consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

(b) The procedures and requirements of Subsection (3)(a) do not apply if the governor appoints a sitting board member to a new term of office.

(4) (a) (i) The board shall appoint an individual to serve as [~~its~~] the board's mental health adviser and may appoint other staff necessary to aid [~~it~~] the board in fulfilling [~~its~~] the board's responsibilities under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness.

(ii) The adviser shall prepare reports and recommendations to the board on all persons adjudicated as guilty with a mental illness, in accordance with Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness.

(b) The mental health adviser shall possess the qualifications necessary to carry out the duties imposed by the board and may not be employed by the [~~Department of Corrections~~] department or the Utah State Hospital.

(i) The [~~Board of Pardons and Parole~~] board may review outside employment by the mental health advisor.

(ii) The [~~Board of Pardons and Parole~~] board shall develop rules governing employment with entities other than the board by the mental health advisor for the purpose of prohibiting a conflict of interest.

(c) The mental health adviser shall:

(i) act as liaison for the board with the Department of Human Services and local mental health authorities;

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(ii) educate the members of the board regarding the needs and special circumstances of persons with a mental illness in the criminal justice system;

(iii) in cooperation with the [~~Department of Corrections~~] department, monitor the status of persons in the prison who have been found guilty with a mental illness;

(iv) monitor the progress of other persons under the board's jurisdiction who have a mental illness;

(v) conduct hearings as necessary in the preparation of reports and recommendations;
and

(vi) perform other duties as assigned by the board.

Section 75. Section ~~77-27-5~~ is amended to read:

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

(1) (a) [~~The Board of Pardons and Parole~~] Subject to this chapter and other laws of the state, and except for a conviction for treason or impeachment, the board shall determine by majority decision when and under what conditions [~~any convictions, except for treason or impeachment, may be pardoned or commuted, subject to this chapter and other laws of the state.~~] an offender's conviction may be pardoned or commuted.

(b) 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, individuals committed to serve sentences at penal or correctional facilities that are under the jurisdiction of the Department of Corrections, except treason or impeachment convictions or as otherwise limited by law, may be released upon parole, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences terminated.~~] an offender committed to serve a sentence at a penal or correctional facility, which is under the jurisdiction of the department, may:

(i) be released upon parole;

(ii) have a fine or forfeiture remitted;

(iii) have the offender's criminal accounts receivable remitted in accordance with Section 77-32b-105 or 77-32b-106;

(iv) have the offender's payment schedule modified in accordance with Section 77-32b-103; or

(v) have the offender's sentence terminated.

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(c) (i) The board may sit together or in panels to conduct hearings.

(ii) The chair shall appoint members to the panels in any combination and in accordance with rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the board.

(iii) The chair may participate on any panel and when doing so is chair of the panel.

(iv) The chair of the board may designate the chair for any other panel.

~~[(d) 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]~~

(d) (i) Except after a hearing before the board, or the board's appointed examiner, in an open session, the board may not:

(A) remit a fine or forfeiture for an offender or the offender's criminal accounts receivable;

(B) release the offender on parole; or

(C) commute, pardon, or terminate an offender's sentence.

(ii) An action taken under this Subsection (1) other than by a majority of the board shall be affirmed by a majority of the board.

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

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

(2) (a) In the case of any hearings, timely prior notice of the time and location of the hearing shall be given to the offender.

(b) The county or district attorney's office responsible for prosecution of the case, the sentencing court, and law enforcement officials responsible for the defendant's arrest and conviction shall be notified of any board hearings through the board's website.

(c) Whenever possible, the victim or the victim's representative, if designated, shall be notified of original hearings and any hearing after that if notification is requested and current contact information has been provided to the board.

(d) (i) Notice to the victim or the victim's representative shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. [

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~~This information]~~

~~(ii) The information under Subsection (2)(d)(i) 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 subject to judicial review.]~~

~~(3) (a) A decision by the board is final and not subject for judicial review if the decision is regarding:~~

~~(i) a pardon, parole, commutation, or termination of an offender's sentence;~~

~~(ii) the modification of an offender's payment schedule for restitution; or~~

~~(iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.~~

~~(b) Nothing in this section prevents the obtaining or enforcement of a civil judgment[; including restitution as provided in Section 77-27-6.].~~

~~(4) (a) 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,]~~

~~(b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole [and the board, at that session,].~~

~~(c) At the next session of the board, the board:~~

~~(i) shall continue or terminate the respite or reprieve[; or it]; or~~

~~(ii) may commute the punishment[;] or pardon the offense as provided.~~

~~(d) 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] the Legislature's next session.~~

~~(e) The Legislature shall [then either] pardon or commute the sentence[; or direct its execution] or direct the sentence's execution.~~

~~(5) (a) In determining when, where, and under what conditions an offender serving a sentence may be [paroled, pardoned, have restitution ordered, or have the offender's fines or forfeitures remitted, or the] paroled or pardoned, have a fine or forfeiture remitted, have the offender's criminal accounts receivable remitted, or have the offender's sentence commuted or terminated, the board shall:~~

~~[(a)] (i) [consider whether the offender has made or is prepared to make restitution as~~

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~~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; and] consider whether the offender has made restitution ordered by the court under Section 77-38b-205, or is prepared to pay restitution as a condition of any parole, pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a commutation or termination of the offender's sentence; and~~

~~(b)~~ (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for making determinations under this Subsection (5).

(b) The board shall determine whether to remit an offender's criminal accounts receivable under this Subsection (5) in accordance with Section 77-32b-105 or 77-32b-106.

(6) In determining whether parole may be terminated, the board shall consider:

(a) the offense committed by the parolee; and

(b) the parole period ~~[as provided in]~~ under Section 76-3-202, and in accordance with Section 77-27-13.

(7) For ~~[offenders]~~ an offender placed on parole after December 31, 2018, the board shall terminate parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

Section 76. Section ~~77-27-6.1~~ is enacted to read:

77-27-6.1. Payment of a criminal accounts receivable -- Failure to enter an order for restitution or create a criminal accounts receivable -- Modification of a criminal accounts receivable -- Order for recovery of costs or pecuniary damages.

(1) When an offender is committed to prison, the board may require the offender to pay the offender's criminal accounts receivable ordered by the court during the period of incarceration or parole supervision.

(2) If the board orders the release of an offender on parole and there is an unpaid balance on the offender's criminal account receivable, the board may modify the payment schedule entered by the court for the offender's criminal accounts receivable in accordance with Section 77-32b-105.

(3) (a) If the sentencing court has not entered an order of restitution for an offender who is under the jurisdiction of the board, the board shall refer the offender's case to the

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sentencing court, within the time periods described in Subsection 77-38b-205(5), to enter an order for restitution for the offender in accordance with Section 77-38b-205.

(b) If the sentencing court has not entered an order to establish a criminal accounts receivable for an offender who is under the jurisdiction of the board, the board shall refer the offender's case to the sentencing court, within the time periods described in Subsection 77-38b-205(5), to enter an order to establish a criminal accounts receivable for the offender in accordance with Section 77-32b-103.

(4) (a) If there is a challenge to an offender's criminal accounts receivable, the board shall refer the offender's case to the sentencing court, within the time periods described in Subsection 77-38b-205(5), to resolve the challenge to the criminal accounts receivable.

(b) If a sentencing court modifies a criminal accounts receivable after the offender is committed to prison, the sentencing court shall provide notice to the board of the modification.

(5) The board may enter an order to recover any cost incurred by the department, or the state or any other agency, arising out of the offender's needs or conduct.

Section 77. Section **77-27-11** is amended to read:

77-27-11. Revocation of parole.

(1) The board may revoke the parole of any individual who is found to have violated any condition of the individual's parole.

(2) (a) If a parolee is confined by the [~~Department of Corrections~~] department or any law enforcement official for a suspected violation of parole, the [~~Department of Corrections~~] department:

(i) shall immediately report the alleged violation to the board, by means of an incident report~~];~~ and

(ii) make any recommendation regarding the incident.

(b) [~~No parolee may be~~] A parolee may not be held for a period longer than 72 hours, excluding weekends and holidays, without first obtaining a warrant.

(3) Any member of the board may:

(a) issue a warrant based upon a certified warrant request to a peace officer or other persons authorized to arrest, detain, and return to actual custody a parolee~~[-, and may];~~ and

(b) upon arrest [~~or otherwise direct the Department of Corrections to~~] of the parolee, determine, or direct the department to determine, if there is probable cause to believe that the

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parolee has violated the conditions of the parolee's parole.

(4) Upon a finding of probable cause, a parolee may be further detained or imprisoned again pending a hearing by the board or ~~[its]~~ the board's appointed examiner.

(5) (a) The board or ~~[its]~~ the board's appointed examiner shall conduct a hearing on the alleged violation, and the parolee shall have written notice of the time and location of the hearing, the alleged violation of parole, and a statement of the evidence against the parolee.

(b) The board or ~~[its]~~ the board's appointed examiner shall provide the parolee the opportunity:

(i) to be present;

(ii) to be heard;

(iii) to present witnesses and documentary evidence;

(iv) to confront and cross-examine adverse witnesses, absent a showing of good cause for not allowing the confrontation; and

(v) to be represented by counsel when the parolee is mentally incompetent or pleading not guilty.

(c) (i) If heard by an appointed examiner, the examiner shall make a written decision which shall include a statement of the facts relied upon by the examiner in determining the guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the alleged violation occurred.

(ii) The appointed examiner shall then refer the case to the board for disposition.

~~[(d) Final decisions shall be reached by majority vote of the members of the board sitting and the parolee shall be promptly notified in writing of the board's findings and decision.]~~

~~[(6)(a) Parolees found to have violated the conditions of parole may, at the discretion of the board, be returned to parole, have restitution ordered, or be imprisoned again as determined by the board, not to exceed the maximum term, or be subject to any other conditions the board may impose within its discretion.]~~

(d) (i) A final decision shall be reached by a majority vote of the sitting members of the board.

(ii) A parolee shall be promptly notified in writing of the board's findings and decision.

(6) (a) If a parolee is found to have violated the terms of parole, the board, at the

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board's discretion, may:

(i) return the parolee to parole;

(ii) modify the payment schedule for the parolee's criminal accounts receivable in accordance with Section 77-32b-105;

(iii) order the parolee to pay pecuniary damages that are proximately caused by a defendant's violation of the terms of the defendant's parole;

(iv) order the parolee to be imprisoned, but not to exceed the maximum term of imprisonment for the parolee's sentence; or

(v) order any other conditions for the parolee.

(b) If the board returns the parolee to parole, the length of parole may not be for a period of time that exceeds the length of the parolee's maximum sentence.

(c) If the board revokes parole for a violation and orders incarceration, the board shall impose a period of incarceration consistent with the guidelines under Subsection 63M-7-404(5).

(d) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)(c):

(i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and

(ii) time served in jail by a parolee due to a violation of parole under Subsection 64-13-6(2).

Section 78. Section **77-30-24** is amended to read:

77-30-24. Payment of expenses -- Extradition costs.

(1) (a) When the punishment of [~~the crime~~] an offense is the confinement of the defendant in prison, the expenses shall be paid out of the state treasury on the certificate of the governor and warrant of the auditor[~~, and in~~].

(b) In all other cases [~~they~~], the expenses for confinement shall be paid out of the treasury of the county where the [~~crime~~] offense is alleged to have been committed.

(c) The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made.

~~[(2) Any person who is returned to the state under this chapter, and who is convicted of, or pleads guilty or no contest to, the criminal charge or to a lesser criminal charge may,~~

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~~under Sections 76-3-201, 77-27-5, and 77-27-6, be required to make restitution to the appropriate governmental entities for the costs of his extradition.]~~

(2) If a defendant is returned to the state under this chapter and the defendant is convicted of, or pleads guilty or no contest to, the offense or to a lesser offense, the defendant may be required to pay the costs of extradition to the appropriate governmental entity as described in Subsection 76-3-201(4)(c).

Section 79. Section ~~77-32b-101~~ is enacted to read:

CHAPTER 32b. CRIMINAL ACCOUNTS RECEIVABLE AND COSTS

77-32b-101. Title.

This chapter is known as "Criminal Accounts Receivable and Costs."

Section 80. Section ~~77-32a-101~~ **77-32b-102**, which is renumbered from Section 77-32a-101 is renumbered and amended to read:

~~[77-32a-101].~~ **77-32b-102. 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.]~~

(1) "Board" means the Board of Pardons and Parole.

(2) (a) "Civil accounts receivable" means any amount of the criminal accounts receivable that is owed by the defendant that has not been paid on or before the day on which:

(i) the defendant's sentence is terminated; or

(ii) the court enters an order for a civil accounts receivable under Subsection 77-18-114(1) or (2).

(b) "Civil accounts receivable" does not include any amount of the criminal accounts receivable that is owed by the defendant for restitution.

(3) "Civil judgment of restitution" means any amount of the criminal accounts receivable that is owed by the defendant for restitution that has not been paid on or before the day on which the defendant's sentence is terminated.

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(4) (a) "Criminal accounts receivable" means any amount owed by a defendant that arises from a criminal judgment until:

(i) the defendant's sentence terminates;

(ii) the court enters an order for a civil accounts receivable under Subsection 77-18-114(1) or (2); or

(iii) if the court requires the defendant, upon termination of the probation period for the defendant, to continue to make payments on the criminal accounts as described in Subsection 77-18-105(8), the defendant's sentence expires.

(b) "Criminal accounts receivable" includes unpaid fees, forfeitures, surcharges, costs, interest, penalties, restitution, third party claims, claims, reimbursement of a reward, and damages.

~~[(3)]~~ (5) "Default" means [an account receivable] a civil accounts receivable, a civil judgment of restitution, or a criminal accounts receivable that is overdue by at least 90 days.

~~[(4)]~~ (6) "Delinquent" means [an account receivable or installment payment] a civil accounts receivable, a civil judgment of restitution, or a criminal account receivable that is overdue by more than 28 days but less than 90 days.

(7) "Payment schedule" means the amount that is be paid by a defendant in installments, or by a certain date, to satisfy a criminal accounts receivable for the defendant.

(8) "Remit" or "remission" means to forgive or to excuse, in whole or in part, any unpaid amount of a criminal accounts receivable.

(9) "Restitution" means the same as that term is defined in Section 77-38b-102.

Section 81. Section **77-32b-103** is enacted to read:

77-32b-103. Establishment of a criminal account receivable -- Responsibility -- Payment schedule -- Delinquency or default.

(1) (a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts receivable for the defendant.

(b) The court is not required to create a criminal accounts receivable for the defendant under Subsection (1) if the court finds that the defendant does not owe restitution and there are no other fines or fees to be assessed against the defendant.

(c) Subject to Subsection 77-38b-205(5), if the court does not create a criminal

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accounts receivable for a defendant under Subsection (1), the court shall enter an order to establish a criminal accounts receivable for the defendant at the time the court enters an order for restitution under Section 77-38b-205.

(2) After establishing a criminal accounts receivable for a defendant, the court shall:

(a) if a prison sentence is imposed and not suspended for the defendant:

(i) accept any payment for the criminal accounts receivable that is tendered on the date of sentencing; and

(ii) transfer the responsibility of receiving, distributing, and processing payments for the criminal accounts receivable to the Office of State Debt Collection; and

(b) for all other cases:

(i) retain the responsibility for receiving, processing, and distributing payments for the criminal accounts receivable until the court enters a civil accounts receivable or civil judgment of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and

(ii) record each payment by the defendant on the case docket.

(c) For a criminal accounts receivable that a court retains responsibility for receiving, processing, and distributing payments under Subsection (1)(b)(i), the Judicial Council may establish rules to require a defendant to pay the cost, or a portion of the cost, that is charged by a financial institution for the use of a credit or debit card by the defendant to make payments towards the criminal accounts receivable.

(3) (a) Upon entering an order for a criminal accounts receivable, the court shall establish a payment schedule for the defendant to make payments towards the criminal accounts receivable.

(b) In establishing the payment schedule for the defendant, the court shall consider:

(i) the needs of the victim if the criminal accounts receivable includes an order for restitution under Section 77-38b-205;

(ii) the financial resources of the defendant, as disclosed in the financial declaration under Section 77-38b-204;

(iii) the burden that the payment schedule will impose on the defendant regarding the other reasonable obligations of the defendant;

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

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

(vi) any other circumstance that the court determines is relevant.

(4) A payment schedule for a criminal accounts receivable does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.

(5) If the court orders restitution under Section 77-38b-205, or makes another financial decision, after sentencing that increases the total amount owed in a defendant's case, the defendant's criminal accounts receivable balance shall be adjusted to include any new amount ordered by the court.

(6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as defined in Section 64-13-1, or the defendant is involuntarily committed under Section 62A-15-631~~;~~;

(i) all payments for a payment schedule shall be suspended for the period of time that the defendant is incarcerated or involuntarily committed, unless the court, or the board if the defendant is under the jurisdiction of the board, expressly orders the defendant to make payments according to the payment schedule; and

(ii) the defendant shall provide the court with notice of the incarceration or involuntary commitment.

(b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day in which the defendant is released from incarceration or commitment.

Section 82. Section **77-32b-104**, which is renumbered from Section 77-32a-107 is renumbered and amended to read:

~~[77-32a-107].~~ **77-32b-104. Costs -- What constitute costs -- Ability to pay.**

~~[Costs]~~ (1) Except for a cost described in Subsection 76-3-201(4), costs shall be limited to expenses ~~[specially]~~ incurred by the state or any political subdivision ~~[in]~~ of the state for investigating, searching for, apprehending, and prosecuting the defendant, including:

(a) attorney fees of counsel assigned to represent the defendant~~;~~;

(b) investigators' fees~~[- Costs may];~~; ~~or~~

(c) except for a monetary reward that is paid to a codefendant, an accomplice, or a bounty hunter, a monetary reward that is:

(i) offered to the public in exchange for information that would lead to the

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apprehension and conviction of the defendant; and

(ii) paid to a person who provided information that led to the apprehension and conviction of the defendant.

(2) A cost may not include:

(a) expenses inherent in providing a constitutionally guaranteed trial [or];

(b) expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law[~~—Costs may not include~~]; or

(c) attorney fees for prosecuting attorneys.

(3) The court may not order a defendant to pay a cost, unless there is evidence that the defendant is, or will be, able to pay the cost.

(4) In determining the amount of a cost that a defendant is ordered to pay, the court shall take into account:

(a) the financial resources of the defendant;

(b) the nature of the burden that payment of the cost will impose; and

(c) that restitution is prioritized over any cost.

Section 83. Section **77-32b-105** is enacted to read:

77-32b-105. Petition for remittance or modification of a criminal accounts receivable before termination of a sentence.

(1) At any time before a defendant's sentence terminates, the defendant may petition the sentencing court to:

(a) correct an error in a criminal accounts receivable;

(b) modify the payment schedule for the defendant's criminal accounts receivable in accordance with this section if the defendant is not under the jurisdiction of the board; or

(c) remit, in whole or in part, an unpaid amount of the defendant's criminal accounts receivable that is not the principal amount owed for restitution in accordance with this section.

(2) If a defendant files a petition under Subsection (1), and it appears to the satisfaction of the sentencing court that payment of an unpaid amount of a criminal accounts receivable will impose manifest hardship on the defendant, or the defendant's family, the court may:

(a) if the criminal accounts receivable is not delinquent or in default, remit, in whole or in part, the unpaid amount of the criminal accounts receivable that is not the principal amount

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owed for restitution; or

(b) regardless of whether the criminal accounts receivable is delinquent or in default:

(i) require the defendant to pay the criminal accounts receivable, or a specified amount of the criminal accounts receivable, by a certain date;

(ii) modify the payment schedule for the criminal accounts receivable in accordance with the factors described in Subsection 77-32b-103(3)(b) if the defendant has demonstrated that the criminal accounts receivable will impose a manifest hardship due to changed circumstances or new evidence that justifies modifying the payment schedule; or

(iii) allow the defendant to satisfy an unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution with proof of compensatory service completed by the defendant at a rate of credit not less than \$10 for each hour of compensatory service.

(3) (a) If a defendant is under the jurisdiction of the board, the defendant may petition the board, at any time before the defendant's sentence terminates, to modify the payment schedule for the defendant's criminal accounts receivable.

(b) If a defendant files a petition under Subsection (3)(a), the board may modify the payment schedule for the criminal accounts receivable in accordance with the factors described in Subsection 77-32b-103(3)(b) if the defendant has demonstrated that the criminal accounts receivable will impose a manifest hardship to the defendant, or the defendant's family, due to changed circumstances or new evidence that justifies modifying the payment schedule.

Section 84. Section **77-32b-106** is enacted to read:

77-32b-106. Petition for remittance of an unpaid balance of a criminal accounts receivable upon termination of a sentence.

(1) (a) If a defendant is not under the jurisdiction of the board, and if any amount of a defendant's criminal accounts receivable is unpaid at the termination of the defendant's sentence, the defendant may petition the sentencing court, within 90 days after the day on which the sentence is terminated, to remit, in whole or in part, the unpaid amount of the criminal accounts receivable.

(b) (i) If a defendant is under the jurisdiction of the board, and if any amount of the defendant's criminal accounts receivable is unpaid at the termination of the defendant's sentence, the defendant may petition the board within 90 days after the day on which the

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sentence is terminated, to remit, in whole or in part, the unpaid amount of the criminal accounts receivable.

(ii) If a defendant files a petition for remittance under Subsection (1)(b)(i) within 90 days from the day on which the defendant's sentence is terminated, the board retains jurisdiction over the defendant's case beyond the termination of the defendant's sentence to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable.

(2) (a) If a petition is filed under Subsection (1), a hearing shall be held, unless the court or the board determines that the petition under Subsection (1) is frivolous or the petition is uncontested.

(b) If a hearing is held under Subsection (2)(a), and the court, or the board, finds by a preponderance of the evidence that the factors listed in Subsection (3) weigh in favor of remitting, in whole or in part, the unpaid amount of a criminal accounts receivable, the court or the board may remit:

(i) any of the unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution; or

(ii) if the victim consents to remittance of the unpaid amount of the criminal accounts receivable that is restitution that the defendant owes to the victim, any of the unpaid amount of restitution that defendant owes to the victim.

(c) The court, or the board, shall give the prosecuting attorney and the victim:

(i) notice of a hearing on the remittance of a criminal accounts receivable; and

(ii) an opportunity to be heard at the hearing.

(d) Nothing in this section shall be construed to prohibit a victim from pursuing a private action against a defendant, even if the victim consents to the remission of restitution.

(3) In making a determination to remit an unpaid amount of a criminal accounts receivable, the court, or the board, shall consider:

(a) whether the defendant has made substantial and good faith efforts to make payments on the criminal accounts receivable;

(b) the needs of the victim;

(c) whether the remission would further the rehabilitation of the defendant;

(d) the ability of the defendant to continue to make payments on a civil accounts receivable; and

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(e) any other factor that the court or the board determines is relevant.

(4) If any unpaid amount of a criminal accounts receivable is not remitted by the court or the board upon termination of the defendant's sentence, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable as described in Section 77-18-114.

Section 85. Section **77-32b-107**, which is renumbered from Section 77-32a-110 is renumbered and amended to read:

~~[77-32a-110].~~ **77-32b-107. 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~~], for a convicted indigent defendant in order to establish [the costs, if any, which will be included in the judgment] any cost under Section 77-32b-104 that will be included in the judgment.

Section 86. Section **77-37-3** is amended to read:

77-37-3. Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies

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controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, [~~and Sections 62A-7-109.5, 77-38a-302, and 77-27-6.~~] Title 77, Chapter 38b, Crime Victims Restitution Act, and Section 78A-6-117. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 76-5-502;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit

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evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the

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victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

Section 87. Section ~~77-37-5~~ is amended to read:

77-37-5. Remedies -- District Victims' Rights Committee.

(1) In each judicial district, the Utah Council on Victims of Crime, established in Section 63M-7-601, shall appoint a person who shall chair a judicial district victims' rights committee consisting of:

- (a) a county attorney or district attorney;
- (b) a sheriff;
- (c) a corrections field services administrator;
- (d) an appointed victim advocate;
- (e) a municipal attorney;
- (f) a municipal chief of police; and
- (g) other representatives as appropriate.

(2) The committee shall meet at least semiannually to review progress and problems related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter [38a] 38b, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and other interested parties may submit matters of concern to the victims' rights committee. The committee may hold a hearing open to the public on any appropriate matter of concern and may publish its findings. These matters shall also be considered at the meetings of the victims' rights committee. The committee shall forward minutes of all meetings to the Utah Council on Victims of Crime for review and other appropriate action.

(3) If a victims' rights committee is unable to resolve a complaint, it may refer the complaint to the Utah Council on Victims of Crime.

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(4) The Utah Office for Victims of Crime shall provide materials to local law enforcement to inform every victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.

(5) (a) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual.

(b) For all other violations, if the committee finds a violation of a victim's right, it shall refer the matter to the appropriate court for further proceedings consistent with Subsection 77-38-11(2).

(c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

(6) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Section 88. Section **77-38-3** 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.

(1) Within seven days [~~of the filing of felony criminal charges~~] after the day on which felony criminal charges are filed 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~~

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~~77-38a-302(5)(d)~~

(b) for a restitution request to be submitted in accordance with Section 77-38b-202.

(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~~] that the court might use to provide notice of judicial proceedings to defendants could be used to provide notice of [~~those same~~] judicial proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, the Division of 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~~] the prosecuting agency's 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~~] under Subsection 77-38-2(5)(g).

(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) To facilitate the payment of restitution and the notice of hearings regarding restitution, a victim who seeks restitution and notice of restitution hearings shall provide the

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court with the victim's current address and telephone number.

~~[(9)]~~ (10) (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]~~ the prosecuting agency has received from a victim to the Board of Pardons and Parole.

~~[(10)]~~ (11) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in ~~[its]~~ the prosecuting agency's discretion to a representative sample of the victims.

~~[(11)]~~ (12) (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, Utah State Courts, and Board of Pardons and Parole, for purposes of providing notice under this section, ~~[is]~~ are classified as protected ~~[as provided in]~~ under 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)~~ (vii) the Utah State Courts; and
- ~~(viii)~~ (viii) the Board of Pardons and Parole.

~~[(12)]~~ (13) 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 77-38-2.

~~[(13)]~~ (14) (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

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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 89. Section **77-38-15** is amended to read:

77-38-15. Civil action against human traffickers and human smugglers.

(1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, human trafficking of a child under Section 76-5-308.5, aggravated human trafficking or aggravated human smuggling under Section 76-5-310, or benefitting from human trafficking under Subsection 76-5-309(4) may bring a civil action against that person.

(2) (a) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.

(b) The court may award treble damages on proof of actual damages if the court finds that the person's acts were willful and malicious.

(3) In an action under this section, the court shall award a prevailing victim reasonable attorney fees and costs.

(4) An action under this section shall be commenced no later than 10 years after the later of:

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(a) the day on which the victim was freed from the human trafficking or human smuggling situation;

(b) the day on which the victim attains 18 years ~~[of age]~~ old; or

(c) if the victim was unable to bring an action due to a disability, the day on which the victim's disability ends.

(5) The time period described in Subsection (4) is tolled during a period of time when the victim fails to bring an action due to the person:

(a) inducing the victim to delay filing the action;

(b) preventing the victim from filing the action; or

(c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.

(6) The court shall offset damages awarded to the victim under this section by any restitution paid to the victim under Title 77, Chapter ~~[38a]~~ 38b, Crime Victims Restitution Act.

(7) A victim may bring an action described in this section in any court of competent jurisdiction where:

(a) a violation described in Subsection (1) occurred;

(b) the victim resides; or

(c) the person that commits the offense resides or has a place of business.

(8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.

(9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.

Section 90. Section ~~77-38b-101~~, which is renumbered from Section 77-38a-101 is renumbered and amended to read:

CHAPTER 38b. CRIME VICTIMS RESTITUTION ACT

Part 1. General Provisions

~~[77-38a-101]~~. 77-38b-101. Title.

This chapter is known as the "Crime Victims Restitution Act."

Section 91. Section ~~77-38b-102~~, which is renumbered from Section 77-38a-102 is renumbered and amended to read:

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~~[77-38a-102].~~ 77-38b-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.]~~

(1) (a) "Conviction" means:

(i) a plea of:

(A) guilty;

(B) guilty with a mental illness; or

(C) no contest; or

(ii) a judgment of:

(A) guilty; or

(B) guilty with a mental illness.

(b) "Conviction" does not include:

(i) a plea in abeyance until a conviction is entered for the plea in abeyance;

(ii) a diversion agreement; or

(iii) an adjudication of a minor for an offense under Section 78A-6-117.

(2) "Criminal [~~activities~~] conduct" means:

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

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

(3) (a) "Defendant" means an individual who has been convicted of, or entered into a plea disposition for, [~~a criminal activity~~] criminal conduct.

(b) "Defendant" does not include a minor, as defined in Section 78A-6-105, who is adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 78A, Chapter 6, Juvenile Court Act.

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

(5) [~~"Diversion"~~] "Diversion agreement" means [~~suspending~~] an agreement entered into by the prosecuting attorney and the defendant that suspends criminal proceedings [~~prior to~~]

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before conviction on the condition that a defendant agree to participate in a rehabilitation program, ~~[make]~~ pay restitution to the victim, or fulfill some other condition.

~~(6)~~ (6) "Office" means the Office of State Debt Collection created in Section 63A-3-502.

~~[(6)]~~ (7) "Party" means the [prosecutor,] prosecuting attorney, the defendant, or the department involved in a prosecution.

~~[(7) "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 expenses, but excludes punitive or exemplary damages and pain and suffering.]~~

(8) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(9) (a) "Pecuniary damages" means all demonstrable economic injury, losses, and expenses regardless of whether the economic injury, losses, and expenses have yet been incurred.

(b) "Pecuniary damages" does not include punitive damages or pain and suffering damages.

~~[(8)]~~ (10) "Plea agreement" means an agreement entered between the [prosecution] prosecuting attorney and the defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

~~[(9)]~~ (11) "Plea disposition" means an agreement entered into between the [prosecution] prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a 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.

~~[(10)]~~ (12) "Plea in abeyance" means an order by a court, upon motion of the [prosecution] prosecuting attorney 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] the defendant nor imposing sentence upon [him] the defendant on condition that [he] the defendant comply with specific conditions as set forth in a plea in abeyance agreement.

~~[(11)]~~ (13) "Plea in abeyance agreement" means an agreement entered into between the

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~~[prosecution] prosecuting attorney~~ 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.

~~[(12) "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.]~~

~~[(13) (a) "Reward" means a sum of money:]~~

~~[(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.]~~

~~[(14) "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.]~~

~~[(15) (a) "Victim" means an individual or entity, including the Utah Office for Victims of Crime, that 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:]~~

(14) "Restitution" means the payment of pecuniary damages to a victim.

(15) (a) "Victim" means any person who has suffered pecuniary damages that are proximately caused by the criminal conduct of the defendant.

(b) "Victim" includes:

(i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes a payment to a victim under Section 63M-7-519;

(ii) the estate of a deceased victim; and

(iii) a parent, spouse, or sibling of a victim.

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

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Section 92. Section 77-38b-201 is enacted to read:

Part 2. Determination of Restitution

77-38b-201. Law enforcement responsibility for collecting restitution information.

A law enforcement agency investigating criminal conduct that would constitute a felony or a misdemeanor shall include all information about restitution for any potential victim in the investigative report, including information about:

- (1) whether a claim for restitution exists;
- (2) the basis for the claim; and
- (3) the estimated or actual amount of the claim.

Section 93. Section 77-38b-202 is enacted to read:

77-38b-202. Prosecuting attorney responsibility for collecting restitution information -- Depositing restitution on behalf of victim.

(1) If a prosecuting attorney files a criminal charge against a defendant, the prosecuting attorney shall:

(a) contact any known victim of the offense for which the criminal charge is filed, or person asserting a claim for restitution on behalf of the victim; and

(b) gather the following information from the victim or person:

- (i) the name of the victim or person; and
- (ii) the actual or estimated amount of restitution.

(2) (a) When a conviction, a diversion agreement, or a plea in abeyance is entered by the court, the prosecuting attorney shall provide the court with the information gathered by the prosecuting attorney under Subsection (1)(b).

(b) If, at the time of the plea disposition or conviction, the prosecuting attorney does not have all the information under Subsection (1)(b), the prosecuting attorney shall provide the defendant with:

(i) at the time of plea disposition or conviction, all information under Subsection (1)(b) that is reasonably available to the prosecuting attorney; and

(ii) any information under Subsection (1)(b) as the information becomes available to the prosecuting attorney.

(c) Nothing in this section shall be construed to prevent a prosecuting attorney, a

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victim, or a person asserting a claim for restitution on behalf of a victim from:

(i) submitting information on, or a request for, restitution to the court within the time periods described in Subsection 77-38b-205(5); or

(ii) submitting information on, or a request for, restitution for additional or substituted victims within the time periods described in Subsection 77-38b-205(5).

(3) (a) The prosecuting attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of a victim into an interest-bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending the distribution of the funds to the victim.

(b) If restitution is deposited into an interest-bearing account under Subsection (3)(a), the prosecuting attorney shall:

(i) distribute any interest that accrues in the account to each victim on a pro rata basis;
and

(ii) if all victims have been made whole and funds remain in the account, distribute any remaining funds to the Division of Finance, created in Section 63A-3-101, to deposit to the Utah Office for Victims of Crime.

(c) Nothing in this section prevents an independent judicial authority from collecting, holding, and distributing restitution.

Section 94. Section **77-38b-203** is enacted to read:

77-38b-203. Department of Corrections responsibility for collecting restitution information -- Presentence investigation report -- In camera review of victim information.

(1) In preparing a presentence investigation report described in Section 77-18-103, the department shall obtain information on restitution from:

(a) the law enforcement agency and the prosecuting attorney; and

(b) any victim of the offense or person asserting a claim for restitution on behalf of the victim.

(2) A victim seeking restitution, a prosecuting attorney, or a person asserting a claim for restitution on behalf of a victim, shall provide the department with:

(a) all invoices, bills, receipts, and any other evidence of pecuniary damages;

(b) all documentation of any compensation or reimbursement from an insurance company or a local, state, or federal agency that is related to the pecuniary damages for the

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offense:

(c) the victim's proof of identification, including the victim's date of birth, social security number, driver license number; and

(d) the victim's or the person's contact information, including next of kin if available, current home and work address, and telephone number.

(3) In the presentence investigation report, the department shall make every effort to:

(a) itemize any pecuniary damages suffered by the victim;

(b) include a specific statement on the amount of restitution that the department recommends for each victim; and

(c) include a victim impact statement that:

(i) provides the name of each victim and any person asserting a claim on behalf of a victim;

(ii) describes the effect of the offense on the victim and the victim's family;

(iii) describes any physical, mental, or emotional injury suffered by a victim as a result of the offense and the seriousness and permanence of the injury;

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

(v) provides any request for mental health services by a victim or a victim's family member as a result of the offense; and

(vi) provides any other relevant information regarding the impact of the offense upon a victim or the victim's family.

(4) (a) A prosecuting attorney and the department may take steps that are reasonably necessary to protect the identity of a victim and the victim's family in information that is submitted to the court under this section.

(b) If a defendant seeks to view protected, safeguarded, or confidential information about a victim or a victim's family, the court shall review the information in camera.

(c) The court may allow the defendant to view the information under Subsection (4)(b) if the court finds that:

(i) the defendant's interest in viewing the information outweighs the victim's or the victim's family safety and privacy interests; and

(ii) there are protections in place to safeguard the victim's and the victim's family safety

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and privacy interests.

Section 95. Section ~~77-38a-204~~, which is renumbered from Section 77-38a-204 is renumbered and amended to read:

~~[77-38a-204].~~ 77-38b-204. Financial declaration by defendant.

(1) (a) The Judicial Council shall design and publish a financial declaration form to be completed by a defendant [~~in a case where the prosecutor has indicated that restitution may be ordered.~~] before the sentencing court establishes a payment schedule under Section 77-38b-205.

(b) The financial declaration form shall:

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

(A) real property;

(B) vehicles;

(C) precious metals or gems;

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

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

(F) [~~bank account balances~~] the balance of any bank account and the name of the financial institution for the bank account;

(G) cash;

(H) salary, wages, commission, tips, and business income, including the name of any employer or entity from which the defendant receives a salary, wage, commission, tip, or business income;

(I) pensions and annuities;

(J) intellectual property;

(K) accounts receivable;

(L) accounts payable;

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

(N) restitution that has been ordered, and not fully paid, in other cases; and

(ii) state that a false statement made in the financial declaration form is punishable as a class B misdemeanor under Section 76-8-504.

~~[(2) A defendant shall, before sentencing, or earlier if ordered by the court, complete~~

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~~the financial declaration described in Subsection (1).]~~

(2) After a plea disposition or conviction has been entered but before sentencing, a defendant shall complete the financial declaration form described in Subsection (1).

(3) When a civil judgment of restitution or a civil accounts receivable is entered for a defendant on the civil judgment docket under Section 77-18-114, the court shall provide the Office of State Debt Collection with the defendant's financial declaration form.

Section 96. Section **77-38b-205** is enacted to read:

77-38b-205. Order for restitution.

(1) (a) (i) If a defendant is convicted, as defined in Section 76-3-201, the court shall order a defendant, as part of the sentence imposed under Section 76-3-201, to pay restitution to all victims:

(A) in accordance with the terms of any plea agreement in the case; or

(B) for the entire amount of pecuniary damages that are proximately caused to each victim by the criminal conduct of the defendant.

(ii) In determining the amount of pecuniary damages under Subsection (1)(a)(i)(B), the court shall consider all relevant facts to establish an amount that fully compensates a victim for all pecuniary damages proximately caused by the criminal conduct of the defendant.

(iii) The court shall enter the determination of the amount of restitution under Subsection (1)(a)(ii) as a finding on the record.

(b) If a court enters a plea in abeyance or a diversion agreement for a defendant that includes an agreement to pay restitution, the court shall order the defendant to pay restitution in accordance with the terms of the plea in abeyance or the diversion agreement.

(2) (a) Upon an order for a defendant to pay restitution under Subsection (1), the court shall:

(i) enter an order to establish a criminal accounts receivable as described in Section 77-32b-103; and

(ii) establish a payment schedule for the criminal accounts receivable as described in Section 77-32b-103.

(3) If the defendant objects to the order for restitution or the payment schedule, the court shall allow the defendant to have a hearing on the issue, unless the issue is addressed at the sentencing hearing for the defendant.

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(4) (a) For a defendant who is sentenced after ~~(May 5)~~ July 1, 2021, if no restitution is ordered at sentencing, the court shall schedule a hearing to determine restitution, unless the parties waive the hearing in accordance with Subsection (4)(b).

(b) The parties may only waive a hearing under Subsection (4)(a) if:

(i) the parties have stipulated to the amount of restitution owed; or

(ii) the prosecuting attorney certifies that the prosecuting attorney has consulted with the victim, including the Utah Office for Victims of Crime, and the defendant owes no restitution.

(c) The court may not enter an order for restitution without a statement from the prosecuting attorney that the prosecuting attorney has consulted with the victim, including the Utah Office for Victims of Crime.

(d) If the court does not enter an order for restitution in a hearing under Subsection (4)(a), the court shall:

(i) state, on the record, why the court did not enter an order for restitution; and

(ii) order a continuance of the hearing.

(5) A court shall enter an order for restitution in a defendant's case no later than the earlier of:

(a) the termination of the defendant's sentence; or

(b) (i) if the defendant is convicted and imprisoned for a first degree felony, within seven years after the day on which the court sentences the defendant for the first degree felony conviction;

(ii) except as provided in Subsection (5)(b)(i), and if the defendant is convicted of a felony, within three years after the day on which the court sentences the defendant for the felony conviction; and

(iii) if the defendant is convicted of a misdemeanor, within one year after the day on which the court sentences the defendant for the misdemeanor conviction.

(6) (a) Upon a motion from the prosecuting attorney or the victim, the court may modify an existing order of restitution, including the amount of pecuniary damages owed by the defendant in the order for restitution, if the prosecuting attorney or the victim shows good cause for modifying the order.

(b) A motion under Subsection (6)(a) shall be brought within the time periods

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described in Subsection (5).

Section 97. Section **77-38b-301** is enacted to read:

Part 3. Civil Accounts Receivables and Civil Judgments for Restitution

77-38b-301. Entry of judgment -- Interest -- Civil actions -- Lien -- Delinquency.

(1) As used in this section, "judgment" means an order for:

(a) a civil judgment of restitution; or

(b) a civil accounts receivable.

(2) (a) If the court has entered a judgment on the civil judgment docket under Section 77-18-114, the judgment is enforceable under the Utah Rules of Civil Procedure.

(b) (i) Notwithstanding Subsection (2)(a):

(A) a judgment is an obligation that arises out of the defendant's criminal case;

(B) civil enforcement of a judgment shall be construed as a continuation of the criminal action for which the judgment arises; and

(C) a judgment is criminal in nature.

(ii) Civil enforcement of a judgment does not divest a defendant of an obligation imposed in a criminal action as part of the defendant's punishment for an offense.

(3) (a) Notwithstanding Sections 77-18-114, 78B-2-311, and 78B-5-202, a judgment shall expire only upon payment in full, including applicable interest, collection fees, attorney fees, and liens that directly result from the judgment.

(b) Interest on a judgment may only accrue from the day on which the judgment is entered on the civil judgment docket by the court.

(c) This Subsection (3) applies to all judgments that are not paid in full on or before May 12, 2009.

(4) A judgment is considered entered on the civil judgment docket when the judgment appears on the civil judgment docket with:

(a) an amount owed by the defendant;

(b) the name of the defendant as the judgment debtor; and

(c) the name of the judgment creditors described in Subsections 77-18-114(1)(c)(iii) and (2)(b).

(5) If a civil judgment of restitution becomes delinquent, or is in default, and upon a motion from a judgment creditor, the court may order the defendant to appear and show cause

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why the defendant should not be held in contempt under Section 78B-6-317 for the delinquency or the default.

Section 98. Section **77-38b-302** is enacted to read:

77-38b-302. Nondischargability in bankruptcy.

A civil judgment of restitution and a civil accounts receivable are considered a debt from a criminal case that may not be discharged in bankruptcy.

Section 99. Section **77-38b-303** is enacted to read:

77-38b-303. Civil action by a victim for damages.

(1) (a) A provision under this part concerning restitution does not limit or impair the right of a person injured by a defendant's criminal conduct to sue and recover damages from the defendant in a civil action.

(b) A court's finding under Subsection 77-38b-205(1)(a)(iii) may be used in a civil action for a defendant's liability to a victim as presumptive proof of the victim's pecuniary damages that are proximately caused by the defendant's criminal conduct.

(c) If a conviction in a criminal trial decides the issue of a defendant's liability for pecuniary damages suffered by a victim, the issue of the defendant's liability is conclusively determined as to the defendant if the issue is involved in a subsequent civil action.

(2) (a) The sentencing court shall credit any payment in favor of the victim in a civil action for the defendant's criminal conduct toward the amount of restitution owed by the defendant to the victim.

(b) In a civil action, a court shall credit any restitution paid by the defendant to a victim for the defendant's criminal conduct towards the victim against any judgment that is in favor of the victim for the civil action.

(c) If a victim receives payment from the defendant for the civil action, the victim shall provide notice to the sentencing court and the court in the civil action of the payment within 30 days after the day on which the victim receives the payment.

(d) Nothing in this section shall prevent a defendant from providing proof of payment to the court or the office.

(3) (a) If a victim prevails in a civil action against a defendant, the court shall award reasonable attorney fees and costs to the victim.

(b) If the defendant prevails in the civil action, the court shall award reasonable costs to

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the defendant if the court finds that the victim brought the civil action for an improper purpose, including to harass the defendant or to cause unnecessary delay or needless increase in the cost of litigation.

Section 100. Section **77-38b-304**, which is renumbered from Section 77-38a-404 is renumbered and amended to read:

~~[77-38a-404].~~ **77-38b-304. Priority.**

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

(1) The court, or the office, shall disburse a payment for restitution within 60 days after the day on which the payment is received from the defendant if:

(a) the victim has complied with Subsection ~~[77-38a-203(1)(b)]~~ 77-38b-203(2);

(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 77-32a-101;]~~

~~[(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~~

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~~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.]~~

(2) The court, or the office, shall disburse money collected from a defendant for a criminal accounts receivable in the following order of priority:

(a) first, and except as provided in Subsection (4)(b), to restitution owed by the defendant in accordance with Subsection (4);

(b) second, to the cost of obtaining a DNA specimen from the defendant as described in Subsection (4)(b);

(c) third, to any criminal fine or surcharge owed by the defendant;

(d) fourth, to the cost owed by the defendant for a reward described in Section 77-32b-104;

(e) fifth, to the cost owed by the defendant for medical care, treatment, hospitalization and related transportation paid by a county correctional facility under Section 17-50-319; and

(f) sixth, to any other cost owed by the defendant.

(3) The office shall disburse money collected from a defendant for a civil accounts receivable and civil judgment of restitution in the following order of priority:

(a) first, to any past due amount owed to the department for the monthly supervision fee under Subsection 64-13-21(6)(a);

(b) second, and except as provided in Subsection (4)(b), to restitution owed by the defendant in accordance with Subsection (4);

(c) third, to the cost of obtaining a DNA specimen from the defendant in accordance with Subsection (4)(b);

(d) fourth, to any criminal fine or surcharge owed by the defendant;

(e) fifth, to the cost owed by the defendant for a reward described in Section

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77-32b-104;

(f) sixth, to the cost owed by the defendant for medical care, treatment, hospitalization and related transportation paid by a county correctional facility under Section 17-50-319; and

(g) seventh, to any other cost owed by the defendant.

(4) (a) If a defendant owes restitution to more than one person or government agency at the same time, the court, or the office, shall disburse a payment for restitution in the following order of priority:

(i) first, to the victim of the offense;

(ii) second, to the Utah Office for Victims of Crime;

(iii) third, any other government agency that has provided reimbursement to the victim as a result of the defendant's criminal conduct; and

(iv) fourth, any insurance company that has provided reimbursement to the victim as a result of the defendant's criminal conduct.

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

(c) If the defendant is required to pay restitution to more than one victim, restitution shall be disbursed to each victim according to the percentage of each victim's share of the total order for restitution.

(5) For a criminal accounts receivable, the department shall collect the current and past due amount owed by a defendant for the monthly supervision fee under Subsection 64-13-21(6)(a) until the court enters a civil accounts receivable on the civil judgment docket under Section 77-18-114.

Section 101. Section **77-38b-401**, which is renumbered from Section 77-38a-502 is renumbered and amended to read:

Part 4. Enforcement and Collection of Restitution

~~[77-38a-502].~~ **77-38b-401. Collection from inmate offenders.**

~~[In addition to the remedies provided in Section 77-38a-501, the]~~ Upon written request of the prosecuting attorney, the victim, or the parole or probation agent for the defendant, the department [upon written request of the prosecutor, victim, or parole or probation agent,] shall

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collect restitution from offender funds held by the department [~~as provided in~~] under Section 64-13-23.

Section 102. Section ~~77-38b-402~~, which is renumbered from Section 77-38a-601 is renumbered and amended to read:

~~[77-38a-601].~~ 77-38b-402. Preservation of assets.

(1) [~~Prior to or at the time~~] Before, or at the time, a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a [~~prosecutor~~] prosecuting attorney may, if in the [~~prosecutor's~~] prosecuting attorney's best judgment there is a substantial likelihood that a conviction will be obtained and restitution will be ordered in the case, petition the court to:

- (a) enter a temporary restraining order, an injunction, or both;
- (b) require the execution of a satisfactory performance bond; or
- (c) take any other action to preserve the availability of property [~~which~~] that may be necessary to satisfy an anticipated [~~restitution order~~] order for restitution.

(2) (a) Upon receiving a request from a [~~prosecutor~~] prosecuting attorney under Subsection (1), and after notice to [~~persons~~] a person appearing to have an interest in the property and affording [~~them~~] the person an opportunity to be heard, the court may take action as requested by the [~~prosecutor~~] prosecuting attorney if the court determines:

(i) there is probable cause to believe that [~~a crime~~] an offense has been committed and that the defendant committed [~~it~~] the offense, and that failure to enter the order will likely result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and

(ii) the need to preserve the availability of the property or prevent [~~its~~] the property's sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(b) In a hearing conducted [~~pursuant to~~] in accordance with this section, a court may consider reliable hearsay as defined in Utah Rules of Evidence, Rule 1102.

(c) An order for an injunction entered under this section is effective for the period of time given in the order.

(3) (a) Upon receiving a request for a temporary restraining order from a [~~prosecutor~~] prosecuting attorney under this section, a court may enter a temporary restraining order against

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an owner with respect to specific property without notice or opportunity for a hearing if:

(i) the [~~prosecutor~~] prosecuting attorney demonstrates that there is a substantial likelihood that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this chapter; and

(ii) provision of notice would jeopardize the availability of the property to satisfy any [~~restitution order or judgment~~] judgment or order for restitution.

(b) The temporary order in this Subsection (3) expires [~~not more than 10 days after it~~] no later than 10 days after the day on which the temporary order is entered unless extended for good cause shown or the party against whom [~~it~~] the temporary order is entered consents to an extension.

(4) A hearing concerning an order entered under this section shall be held as soon as possible, and [~~prior to~~] before the expiration of the temporary order.

Section 103. Section ~~77-40-102~~ is amended to read:

77-40-102. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5) (a) "Clean slate eligible case" means a case:

(i) where, except as provided in Subsection (5)(c), each conviction within the case is:

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor conviction; or

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(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40-105(5) and (6) without taking into consideration the exception in Subsection 77-40-105(8); and

(B) against whom no criminal proceedings are pending in the state; and

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:

(A) at least five years for a class C misdemeanor or an infraction;

(B) at least six years for a class B misdemeanor; and

(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(b) "Clean slate eligible case" includes a case that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:

(i) except as provided in Subsection (5)(c), each charge within the case is:

(A) a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor; or

(C) an infraction;

(ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and

(iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed.

(c) "Clean slate eligible case" does not include a case:

(i) where the individual is found not guilty by reason of insanity;

(ii) where the case establishes [~~a criminal judgment accounts receivable, as defined in Section 77-32a-101~~] a criminal accounts receivable, as defined in Section 77-32b-102, that:

(A) has been entered as a [~~civil judgment~~] civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; or

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(B) has not been satisfied according to court records; or

(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:

(A) any of the offenses listed in Subsection 77-40-105(2)(a);

(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Person;

(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

(D) sexual battery in violation of Section 76-9-702.1;

(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(G) damage to or interruption of a communication device in violation of Section 76-6-108;

(H) a domestic violence offense as defined in Section 77-36-1; or

(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(7) "Department" means the Department of Public Safety established in Section 53-1-103.

(8) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (8).

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(9) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

(10) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(11) "Minor regulatory offense" means any class B or C misdemeanor offense, and any local ordinance, except:

- (a) any drug possession offense;
- (b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- (c) Sections 73-18-13 through 73-18-13.6;
- (d) those offenses defined in Title 76, Utah Criminal Code; or
- (e) any local ordinance that is substantially similar to those offenses listed in

Subsections (11)(a) through (d).

(12) "Petitioner" means an individual applying for expungement under this chapter.

(13) (a) "Traffic offense" means:

(i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41, Chapter 6a, Traffic Code;

- (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;
- (iii) Title 73, Chapter 18, State Boating Act; and
- (iv) all local ordinances that are substantially similar to those offenses.

(b) "Traffic offense" does not mean:

- (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- (ii) Sections 73-18-13 through 73-18-13.6; or
- (iii) any local ordinance that is substantially similar to the offenses listed in

Subsections (13)(b)(i) and (ii).

Section 104. Section **77-40-105** is amended to read:

77-40-105. Requirements to apply for a certificate of eligibility to expunge conviction.

(1) An individual convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) An individual is not eligible to receive a certificate of eligibility from the bureau if:

- (a) the conviction for which expungement is sought is:

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- (i) a capital felony;
- (ii) a first degree felony;
- (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
- (iv) felony automobile homicide;
- (v) a felony conviction described in Subsection 41-6a-501(2);
- (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or
- (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
- (b) a criminal proceeding is pending against the petitioner; or
- (c) the petitioner intentionally or knowingly provides false or misleading information

on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought;

(b) the petitioner has paid in full all restitution ordered by the court [~~pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6~~] under Section 77-38b-205; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) When determining whether to issue a certificate of eligibility, the bureau may not consider:

(a) a petitioner's pending or previous:

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- (i) infraction;
- (ii) traffic offense;
- (iii) minor regulatory offense; or
- (iv) clean slate eligible case that was automatically expunged in accordance with

Section 77-40-114; or

- (b) a fine or fee related to an offense described in Subsection (4)(a).

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (8):

- (a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

- (b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

- (c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

- (d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

(6) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

- (a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

- (b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(7) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (5) if any non drug possession offense in that episode:

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(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(8) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (5) shall be increased by one.

(9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section 105. Section **78A-2-214** is amended to read:

78A-2-214. Collection of accounts receivable.

(1) As used in this section:

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

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

~~[(2) If the Department of Corrections does not have responsibility under Subsection 77-18-1(9) for collecting an account receivable and if the Office of State Debt Collection does not have responsibility under Subsection 63A-3-502(6), the district court shall collect the account receivable.]~~

(2) If a defendant is sentenced before ~~May 5~~ July 1, 2021, and the Department of Corrections, or the Office of State Debt Collection, is not responsible for collecting an accounts receivable for the defendant, the district court shall collect the accounts receivable for the defendant.

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

(b) The juvenile court shall allocate money collected above the cost of collection on a pro rata basis to the various revenue types that generated the accounts receivable.

(4) The interest charge established by the Office of State Debt Collection under Subsection 63A-3-502(4)(g)(iii) may not be assessed on an account receivable subject to the

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postjudgment interest rate established by Section 15-1-4.

Section 106. Section **78A-2-231** is amended to read:

78A-2-231. Consideration of lawful use or possession of medical cannabis.

(1) As used in this section:

(a) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

(b) "Directions of use" means the same as that term is defined in Section 26-61a-102.

(c) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

(d) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

(e) "Medical cannabis card" means the same as that term is defined in Section 26-61a-102.

(f) "Medical cannabis device" means the same as that term is defined in Section 26-61a-102.

(g) "Qualified medical provider" means the same as that term is defined in Section 26-61a-102.

(2) In any judicial proceeding in which a judge, panel, jury, or court commissioner makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the judge, panel, jury, or court commissioner may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:

(a) the individual's possession complies with Title 4, Chapter 41a, Cannabis Production Establishments;

(b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

(c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

(3) Notwithstanding Sections ~~[77-18-1]~~ 77-18-105 and 77-2a-3, for probation, release, a plea in abeyance agreement, a diversion agreement, or a tendered admission under Utah Rules of Juvenile Procedure, Rule 25, a term or condition may not require that an individual abstain from the use or possession of medical cannabis, a cannabis product, or a medical

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cannabis device, either directly or through a general prohibition on violating federal law, without an exception related to medical cannabis use, if the individual's use or possession complies with:

- (a) Title 26, Chapter 61a, Utah Medical Cannabis Act; or
- (b) Subsection 58-37-3.7(2) or (3).

Section 107. 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 [~~Section 63A-3-502 and Title 77, Chapter 32a, Criminal Accounts Receivable and Defense Costs~~] Sections 63A-3-502, 77-32b-103, and 77-18-114, 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 108. Section **78B-5-502** is amended to read:

78B-5-502. Definitions.

As used in this part:

(1) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(2) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

~~(1)~~ (3) "Debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise.

~~(2)~~ (4) "Dependent" means the spouse of an individual, and the grandchild or the natural or adoptive child of an individual who derives support primarily from that individual.

~~(3)~~ (5) "Exempt" means protected, and "exemption" means protection from subjection to a judicial process to collect an unsecured debt.

~~(4)~~ (6) "Judicial lien" means a lien on property obtained by judgment or other legal process instituted for the purpose of collecting an unsecured debt.

~~(5)~~ (7) "Levy" means the seizure of property pursuant to any legal process issued for the purpose of collecting an unsecured debt.

~~(6)~~ (8) "Lien" means a judicial, or statutory lien, in property securing payment of a

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debt or performance of an obligation.

~~[(7)]~~ (9) "Liquid assets" means deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

~~[(8)]~~ (10) "Security interest" means an interest in property created by contract to secure payment or performance of an obligation.

~~[(9)]~~ (11) "Statutory lien" means a lien arising by force of a statute, but does not include a security interest or a judicial lien.

~~[(10)]~~ (12) "Value" means fair market value of an individual's interest in property, exclusive of valid liens.

Section 109. Section **78B-5-505** is amended to read:

78B-5-505. Property exempt from execution.

(1) (a) An individual is entitled to exemption of the following property:

- (i) a burial plot for the individual and the individual's family;
- (ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;
- (iii) benefits that the individual or the individual's dependent have received or are entitled to receive from any source because of:
 - (A) disability;
 - (B) illness; or
 - (C) unemployment;
 - (iv) benefits paid or payable for medical, surgical, or hospital care to the extent that the benefits are used by an individual or the individual's dependent to pay for that care;
 - (v) veterans benefits;
 - (vi) money or property received, and rights to receive money or property for child support;
 - (vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;
 - (viii) (A) one:
 - (I) clothes washer and dryer;
 - (II) refrigerator;

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- (III) freezer;
- (IV) stove;
- (V) microwave oven; and
- (VI) sewing machine;
- (B) all carpets in use;
- (C) provisions sufficient for 12 months actually provided for individual or family use;
- (D) all wearing apparel of every individual and dependent, not including jewelry or furs; and
- (E) all beds and bedding for every individual or dependent;
- (ix) except for works of art held by the debtor as part of a trade or business, works of art:
 - (A) depicting the debtor or the debtor and the debtor's resident family; or
 - (B) produced by the debtor or the debtor and the debtor's resident family;
 - (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;
 - (xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;
 - (xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;
 - (xiii) proceeds and avails of any unmatured life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;
 - (xiv) except as provided in Subsection (1)(b), and except for a judgment described in Subsection 75-7-503(2)(c), any money or other assets held for or payable to the individual as an owner, participant, or beneficiary from or an interest of the individual as an owner,

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participant, or beneficiary in a fund or account, including an inherited fund or account, in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code, including an owner's, a participant's, or a beneficiary's interest that arises by inheritance, designation, appointment, or otherwise;

(xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code;

(xvi) unpaid earnings of the household of the filing individual due as of the date of the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family income for the household size of the filing individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid earnings are paid more often than once a month or, if unpaid earnings are not paid more often than once a month, then in the amount of 1/12 of the Utah State annual median family income for the household size of the individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers;

(xvii) except for curio or relic firearms, as defined in Section 76-10-501, any three of the following:

- (A) one handgun and ammunition for the handgun not exceeding 1,000 rounds;
- (B) one shotgun and ammunition for the shotgun not exceeding 1,000 rounds; and
- (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000 rounds; and

(xviii) money, not exceeding \$200,000, in the aggregate, that an individual deposits, more than 18 months before the day on which the individual files a petition for bankruptcy or an action is filed by a creditor against the individual, as applicable, in all tax-advantaged accounts for saving for higher education costs on behalf of a particular individual that meets the requirements of Section 529, Internal Revenue Code.

(b) (i) Any money, asset, or other interest in a fund or account that is exempt from a claim of a creditor of the owner, beneficiary, or participant under Subsection (1)(a)(xiv) does

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not cease to be exempt after the owner's, participant's, or beneficiary's death by reason of a direct transfer or eligible rollover to an inherited individual retirement account as defined in Section 408(d)(3), Internal Revenue Code.

(ii) Subsections (1)(a)(xiv) and (1)(b)(i) apply to all inherited individual retirement accounts without regard to the date on which the account was created.

(c) (i) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

(A) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or

(B) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy, except amounts directly rolled over from other funds that are exempt from attachment under this section.

(ii) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to the secured creditor's interest in proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.

(2) (a) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans benefits, as described in Subsection (1)(a)(v), may be garnished on behalf of a [child-victim] victim who is a child if the person receiving the benefits has been convicted of a felony sex offense against [a-child] the victim and ordered by the [convicting] sentencing court to pay restitution to the victim.

(b) The exemption from execution under this [section] Subsection (2) shall be reinstated upon payment of the restitution in full.

(3) [Exemptions] The exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

(4) (a) The exemptions described in Subsections (1)(a)(iii), (iv), (vi), (vii), (x), (xii), (xiii), (xiv), (xv), (xvii), and (xviii) do not apply to a civil accounts receivable or a civil judgment of restitution for an individual who is found in contempt under Section 78B-6-317.

(b) Subsection (4)(a) does not apply to the benefits described in Subsection (1)(a)(iii) if the individual's dependent received, or is entitled to receive, the benefits.

Section 110. Section **78B-6-317** is amended to read:

78B-6-317. Willful failure to pay a civil accounts receivable or a civil judgment of restitution.

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(1) As used in this section:

(a) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(b) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(c) "Default" means the same as that term is defined in Section 77-32b-102.

(d) "Delinquent" means the same as that term is defined in Section 77-32b-102.

~~[(1)]~~ (2) If a ~~[criminal judgment accounts receivable has become delinquent as defined in Section 77-32a-101]~~ [a] civil accounts receivable or a civil judgment of restitution [is] is delinquent or in default, the court, by motion of the ~~[prosecutor]~~ prosecuting attorney, 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 or default should not be treated as contempt of court~~[, as provided in this section]~~ under this section.

~~[(2)]~~ (3) (a) The moving party or ~~[a court clerk]~~ a clerk of the court shall provide a declaration outlining:

(i) the nature of the debt [and the delinquency];

(ii) the way in which the civil accounts receivable or civil judgment of restitution is delinquent or in default;

(iii) if the moving party is the Office of State Debt Collection, the attempts that have been made to collect the civil accounts receivable or the civil judgment of restitution before moving for an order to show cause; and

(iv) if the moving party is not the Office of State Debt Collection, that the defendant has failed to comply with any payment agreement that the defendant has with the Office of State Debt Collection.

(b) Upon receipt of ~~[that]~~ a declaration under Subsection (3)(a), the court shall:

(i) set the matter for a hearing; and

(ii) 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.

~~[(1)]~~ (c) 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

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defendant's appearance.

~~[(ii)]~~ (d) 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)]~~ (4) At the hearing, the defendant is entitled to be:

(a) represented by counsel; and~~;~~

(b) if the court is considering a period of incarceration as a potential sanction, appointed counsel ~~[if the defendant is indigent]~~ if the court determines that the defendant is indigent in accordance with Title 78B, Chapter 22, Indigent Defense Act.

~~[(4)]~~ (5) To find the defendant in contempt, the court shall find beyond a reasonable doubt that the defendant:

(a) was aware of the obligation to pay the ~~[criminal judgment accounts receivable]~~ civil accounts receivable or the civil judgment of restitution;

(b) had the capacity to ~~[pay the criminal judgment accounts receivable in the manner ordered by the court]~~ make a payment towards the civil accounts receivable or the civil judgment of restitution; and

(c) ~~[did not make a good faith effort to make the payments]~~ failed to make a payment towards the civil accounts receivable or the civil judgment of restitution.

~~[(5)]~~ (6) ~~[If]~~ Subject to the limitations in Subsections ~~(6+7)~~ through ~~(8+9)~~, if the court finds the defendant in contempt for nonpayment, the court may impose the sanctions for contempt ~~[as provided in]~~ under Section 78B-6-310~~;~~ subject to the limitations in Subsections ~~(6)~~ through ~~(8)~~.

~~[(6)]~~ (7) 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 with a maximum of:

(a) five days for contempt arising from a class B misdemeanor or lesser offense~~;~~ and

(b) 30 days for a class A misdemeanor or felony offense.

~~[(7)]~~ (8) (a) Any jail sanction imposed for contempt under this section shall serve to satisfy the ~~[criminal judgment account receivable]~~ civil accounts 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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(b) Subsection (~~(7)~~⁽⁸⁾(a) does not apply to a civil judgment of restitution.

~~[(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.]~~

(~~(8)~~⁽⁹⁾) A financial penalty ordered by the court under Section 78B-6-310 may only become due after the satisfaction of the civil accounts receivable or the civil judgment of restitution.

~~[(9)]~~ (10) The order of the court finding the defendant in contempt and ordering sanctions is a final appealable order.

Section 111. Section **78B-7-804** is amended to read:

78B-7-804. Sentencing and continuous protective orders for a domestic violence offense -- Modification.

(1) Before a perpetrator who has been convicted of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with a sentencing protective order that includes:

(a) an order enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(b) an order prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(c) an order requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

(d) an order prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;

(e) an order directing the perpetrator to surrender any weapons the perpetrator owns or possesses; and

(f) an order imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) (a) Because of the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of

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continued acts of violence subsequent to the release of a perpetrator who is convicted of domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the issuance of continuous protective orders under this Subsection (3) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act, and Article I, Section 28 of the Utah Constitution.

(b) If a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim unless the court determines by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse.

(c) (i) The court shall notify the perpetrator of the right to request a hearing.

(ii) If the perpetrator requests a hearing under this Subsection (3)(c), the court shall hold the hearing at the time determined by the court. The continuous protective order shall be in effect while the hearing is being scheduled and while the hearing is pending.

(d) A continuous protective order is permanent in accordance with this Subsection (3) and may include:

(i) an order enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(ii) an order prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(iii) an order prohibiting the perpetrator from going to the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or other household member;

(iv) an order directing the perpetrator to pay restitution to the victim as may apply, and shall be enforced in accordance with Title 77, Chapter ~~[38a]~~ 38b, Crime Victims Restitution Act; and

(v) any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member.

(4) A continuous protective order may be modified or dismissed only if the court determines by clear and convincing evidence that all requirements of Subsection (3) have been

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met and the victim does not have a reasonable fear of future harm or abuse.

(5) In addition to the process of issuing a continuous protective order described in Subsection (3), a district court may issue a continuous protective order at any time if the victim files a petition with the court, and after notice and hearing the court finds that a continuous protective order is necessary to protect the victim.

Section 112. **Repealer.**

This bill repeals:

Section **76-6-412.5, Property damage caused in the course of committing a theft.**

Section **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.**

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

Section **77-27-6, Payment of restitution.**

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

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

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

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

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

Section **77-32a-108, Ability to pay considered.**

Section **77-32a-109, Petition for remission of payment of costs.**

Section **77-38a-201, Restitution determination -- Law enforcement duties and responsibilities.**

Section **77-38a-202, Restitution determination -- Prosecution duties and responsibilities.**

Section **77-38a-203, Restitution determination -- Department of Corrections -- Presentence investigation.**

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

Section **77-38a-302, Restitution criteria.**

Section **77-38a-401, Entry of judgment -- Interest -- Civil actions -- Lien.**

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Section 77-38a-402, **Nondischargeability in bankruptcy.**

Section 77-38a-403, **Civil action by victim for damages.**

Section 77-38a-501, **Default and sanctions.**

Section 113. **Effective date.**

This bill takes effect on July 1, 2021.