

CRIMINAL RESTITUTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to criminal restitution.

Highlighted Provisions:

This bill:

- ▶ amends provisions regarding the payment of restitution or reparations as a condition of probation;
- ▶ clarifies the sentencing court's jurisdiction over a defendant's case in regards to the remittance of a criminal accounts receivable;
- ▶ amends provisions related to the payment of a criminal accounts receivable by electronic payment;
- ▶ defines terms related to criminal restitution; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18-105, as enacted by Laws of Utah 2021, Chapter 260 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 246



- 28 77-18-114, as enacted by Laws of Utah 2021, Chapter 260
- 29 77-18-118, as enacted by Laws of Utah 2021, Chapter 260
- 30 77-32b-103, as enacted by Laws of Utah 2021, Chapter 260
- 31 77-38b-102, as last amended by Laws of Utah 2021, Chapter 262

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

34 Section 1. Section 77-18-105 is amended to read:

35 **77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**
36 **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench**
37 **supervision for payments on criminal accounts receivable.**

38 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in
39 abeyance agreement, the court may hold the plea in abeyance:

- 40 (a) in accordance with Chapter 2a, Pleas in Abeyance; and
- 41 (b) under the terms of the plea in abeyance agreement.

42 (2) If a defendant is convicted, the court:

- 43 (a) shall impose a sentence in accordance with Section 76-3-201; and
- 44 (b) may suspend the execution of the sentence and place the defendant:

45 (i) on probation under the supervision of the department, except as provided in
46 Subsection (5);

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

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

50 (3) (a) The legal custody of all probationers under the supervision of the department is
51 with the department.

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

54 (c) The court has continuing jurisdiction over all probationers.

55 (4) (a) Court probation may include an administrative level of services, including
56 notification to the sentencing court of scheduled periodic reviews of the probationer's
57 compliance with conditions.

58 (b) Supervised probation services provided by the department, an agency of a local

59 government, or a private organization shall specifically address the defendant's risk of
60 reoffending as identified by a screening or an assessment.

61 (5) A court may not order the department to supervise the probation of an individual
62 who is convicted of a class B or C misdemeanor or an infraction.

63 (6) (a) If a defendant is placed on probation, the court may order the defendant as a
64 condition of the defendant's probation:

65 (i) to provide for the support of persons for whose support the defendant is legally
66 liable;

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

69 (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and
70 Mental Health for treatment at the Utah State Hospital in accordance with Section [77-18-106](#);

71 (iv) if the defendant is on probation for a felony offense, to serve a period of time as an
72 initial condition of probation that does not exceed one year in a county jail designated by the
73 department, after considering any recommendation by the court as to which jail the court finds
74 most appropriate;

75 (v) to serve a term of home confinement in accordance with Section [77-18-107](#);

76 (vi) to participate in compensatory service programs, including the compensatory
77 service program described in Section [76-6-107.1](#);

78 (vii) to pay for the costs of investigation, probation, or treatment services;

79 (viii) to pay [~~a criminal accounts receivable established for the defendant under Section~~
80 [77-32b-103](#)] restitution or reparations to a victim with interest in accordance with Section
81 [63M-7-503](#) and Chapter 38b, Crime Victims Restitution Act; or

82 (ix) to comply with other terms and conditions the court considers appropriate to
83 ensure public safety or increase a defendant's likelihood of success on probation.

84 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a
85 defendant to include a period of time that is served in a county jail immediately before the
86 termination of probation as long as that period of time does not exceed one year.

87 (ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation
88 violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply
89 to the period of time that the court orders the defendant to serve in a county jail under this

90 Subsection (6)(b)(ii).

91 (7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on
92 probation after December 31, 2018:

93 (i) may not exceed the individual's maximum sentence;

94 (ii) shall be for a period of time that is in accordance with the supervision length
95 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the
96 extent the guidelines are consistent with the requirements of the law; and

97 (iii) shall be terminated in accordance with the supervision length guidelines
98 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
99 guidelines are consistent with the requirements of the law.

100 (b) Probation of an individual placed on probation after December 31, 2018, whose
101 maximum sentence is one year or less, may not exceed 36 months.

102 (c) Probation of an individual placed on probation on or after October 1, 2015, but
103 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
104 completion without violation of 36 months probation in felony or class A misdemeanor cases,
105 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance
106 with Section 64-13-21 regarding earned credits.

107 (d) This Subsection (7) does not apply to the probation of an individual convicted of an
108 offense for criminal nonsupport under Section 76-7-201.

109 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal
110 accounts receivable for the defendant upon termination of the probation period for the
111 defendant under Subsection (7), the court may require the defendant to continue to make
112 payments towards the criminal accounts receivable in accordance with the payment schedule
113 established by the court under Section 77-32b-103.

114 (b) A court may not require the defendant to make payments as described in Subsection
115 (8)(a) beyond the expiration of the defendant's sentence.

116 (c) If the court requires a defendant to continue to pay in accordance with the payment
117 schedule for the criminal accounts receivable under this Subsection (8) and the defendant
118 defaults on the criminal accounts receivable, the court shall proceed with an order for a civil
119 judgment of restitution and a civil accounts receivable for the defendant as described in Section
120 77-18-114.

121 (d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's
122 own motion, the court may require a defendant to show cause as to why the defendant's failure
123 to pay in accordance with the payment schedule should not be treated as contempt of court.

124 (ii) A court may hold a defendant in contempt for failure to make payments for a
125 criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

126 (e) This Subsection (8) does not apply to the probation of an individual convicted of an
127 offense for criminal nonsupport under Section [76-7-201](#).

128 (9) When making any decision regarding probation, the court shall consider
129 information provided by the Department of Corrections regarding a defendant's individual case
130 action plan, including any progress the defendant has made in satisfying the case action plan's
131 completion requirements.

132 Section 2. Section **77-18-114** is amended to read:

133 **77-18-114. Unpaid balance at termination of sentence -- Past due account --**
134 **Notice -- Account or judgment paid in full -- Effect of civil accounts receivable and civil**
135 **judgment of restitution.**

136 (1) When a defendant's sentence is terminated by law or by the decision of the court or
137 the board:

138 (a) the board shall provide an accounting of the unpaid balance of the defendant's
139 criminal accounts receivable to the court if the defendant was on parole or incarcerated at the
140 time of termination; and

141 (b) except as provided in Subsection [77-18-118\(1\)\(g\)](#), within 90 days after the day on
142 which a defendant's sentence is terminated, the court shall:

143 (i) enter an order for a civil accounts receivable and a civil judgment of restitution for a
144 defendant on the civil judgment docket;

145 (ii) transfer the responsibility of collecting the civil accounts receivable and the civil
146 judgment of restitution to the Office of State Debt Collection; and

147 (iii) identify in the order under this Subsection (1):

148 (A) the Office of State Debt Collection as a judgment creditor for the civil accounts
149 receivable and the civil judgment of restitution; and

150 (B) the victim as a judgment creditor for the civil judgment of restitution.

151 (2) If a criminal accounts receivable for the defendant is more than 90 days past due

152 and the court has ordered that a defendant does not owe restitution to any victim, or the time
153 period in Subsection 77-38b-205(5) has passed and the court has not ordered restitution, the
154 court may:

155 (a) enter an order for a civil accounts receivable for the defendant on the civil judgment
156 docket;

157 (b) identify, in the order under Subsection (2)(a), the Office of State Debt Collection as
158 a judgment creditor for the civil accounts receivable; and

159 (c) transfer the responsibility of collecting the civil accounts receivable to the Office of
160 State Debt Collection.

161 (3) An order for a criminal accounts receivable is no longer in effect after the court
162 enters an order for a civil accounts receivable or a civil judgment of restitution under
163 Subsection (1) or (2).

164 (4) The court shall provide notice to the Office of State Debt Collection and the
165 prosecuting attorney of any hearing that affects an order for the civil accounts receivable or the
166 civil judgment of restitution.

167 (5) The Office of State Debt Collection shall:

168 (a) notify the court when a civil judgment of restitution or a civil accounts receivable is
169 satisfied; and

170 (b) provide the court with an accounting of any distribution made by the Office of State
171 Debt Collection for the civil accounts receivable and the civil judgment of restitution.

172 (6) When a fine, forfeiture, surcharge, cost, or fee is recorded in an order for a civil
173 accounts receivable on the civil judgment docket, or when restitution is recorded as an order
174 for a civil judgment of restitution on the civil judgment docket, the order:

175 (a) constitutes a lien on the defendant's real property until the judgment is satisfied; and

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

178 (7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of
179 restitution are not subject to the civil statutes of limitation and expire only upon payment in
180 full.

181 (8) (a) If a defendant asserts that a payment was made to a victim or third party for a
182 civil judgment of restitution, or enters into any other transaction that does not involve the

183 Office of State Debt Collection, and the defendant asserts that the payment results in a credit
184 towards the civil judgment of restitution for the defendant:

185 (i) the defendant shall provide notice to the Office of State Debt Collection and the
186 prosecuting attorney within 30 days after the day on which the payment or other transaction is
187 made; and

188 (ii) the payment may only be credited towards the principal of the civil judgment of
189 restitution and does not affect any other amount owed to the Office of State Debt Collection
190 under Section 63A-3-502.

191 (b) Nothing in this Subsection (8) shall be construed to prevent a victim or a third party
192 from providing notice of a payment towards a civil judgment of restitution to the Office of
193 State Debt Collection.

194 Section 3. Section 77-18-118 is amended to read:

195 **77-18-118. Continuing jurisdiction of a sentencing court.**

196 (1) A sentencing court shall retain jurisdiction over a defendant's criminal case:

197 (a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);

198 (b) if the defendant is on probation and the probation period has terminated under
199 Subsection 77-18-105(7), to require the defendant to continue to make payments towards a
200 criminal accounts receivable until the defendant's sentence expires;

201 (c) within the time periods described in Subsection 77-38b-205(5), to enter or modify
202 an order for a criminal accounts receivable in accordance with Section 77-32b-103;

203 (d) within the time periods described in Subsection 77-38b-205(5), to enter or modify
204 an order for restitution in accordance with Section 77-38b-205;

205 (e) until a defendant's sentence is terminated, to correct an error for a criminal accounts
206 receivable in accordance with Subsection 77-32b-105(1)(a);

207 (f) until a defendant's sentence is terminated, to modify a payment schedule for a
208 criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);

209 ~~[(g) if a defendant files a petition for remittance under Subsection 77-32b-105(1)(c)
210 before the defendant's sentence is terminated, for 90 days from the day on which the petition is
211 filed to determine whether to remit, in whole or in part, the defendant's criminal accounts
212 receivable;]~~

213 ~~[(h)]~~ (g) if a defendant files a petition for remittance under Subsection 77-32b-106(1)

214 within 90 days from the day on which the defendant's sentence is terminated, to determine
215 whether to remit, in whole or in part, the defendant's criminal accounts receivable; and
216 ~~[(f)]~~ (h) to enter an order for a civil accounts receivable and a civil judgment of
217 restitution in accordance with Section 77-18-114.

218 (2) This section does not prevent a court from exercising jurisdiction over:

219 (a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3,
220 Contempt; or

221 (b) enforcement of a civil accounts receivable or a civil judgment of restitution.

222 Section 4. Section 77-32b-103 is amended to read:

223 **77-32b-103. Establishment of a criminal accounts receivable -- Responsibility --**
224 **Payment schedule -- Delinquency or default.**

225 (1) (a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or
226 acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts
227 receivable for the defendant.

228 (b) The court is not required to create a criminal accounts receivable for the defendant
229 under Subsection (1) if the court finds that the defendant does not owe restitution and there are
230 no other fines or fees to be assessed against the defendant.

231 (c) Subject to Subsection 77-38b-205(5), if the court does not create a criminal
232 accounts receivable for a defendant under Subsection (1), the court shall enter an order to
233 establish a criminal accounts receivable for the defendant at the time the court enters an order
234 for restitution under Section 77-38b-205.

235 (2) After establishing a criminal accounts receivable for a defendant, the court shall:

236 (a) if a prison sentence is imposed and not suspended for the defendant:

237 (i) accept any payment for the criminal accounts receivable that is tendered on the date
238 of sentencing; and

239 (ii) transfer the responsibility of receiving, distributing, and processing payments for
240 the criminal accounts receivable to the Office of State Debt Collection; and

241 (b) for all other cases:

242 (i) retain the responsibility for receiving, processing, and distributing payments for the
243 criminal accounts receivable until the court enters a civil accounts receivable or civil judgment
244 of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and

245 (ii) record each payment by the defendant on the case docket.

246 (c) For a criminal accounts receivable that a court retains responsibility for receiving,
247 processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may
248 establish rules to require a defendant to pay the cost, or a portion of the cost, for an electronic
249 payment fee that is charged by a financial institution for the use of a credit or debit card [~~by the~~
250 ~~defendant~~] to make payments towards the criminal accounts receivable.

251 (3) (a) Upon entering an order for a criminal accounts receivable, the court shall
252 establish a payment schedule for the defendant to make payments towards the criminal
253 accounts receivable.

254 (b) In establishing the payment schedule for the defendant, the court shall consider:

255 (i) the needs of the victim if the criminal accounts receivable includes an order for
256 restitution under Section 77-38b-205;

257 (ii) the financial resources of the defendant, as disclosed in the financial declaration
258 under Section 77-38b-204;

259 (iii) the burden that the payment schedule will impose on the defendant regarding the
260 other reasonable obligations of the defendant;

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

263 (v) the rehabilitative effect on the defendant of the payment of restitution and method
264 of payment; and

265 (vi) any other circumstance that the court determines is relevant.

266 (4) A payment schedule for a criminal accounts receivable does not limit the ability of
267 a judgment creditor to pursue collection by any means allowable by law.

268 (5) If the court orders restitution under Section 77-38b-205, or makes another financial
269 decision, after sentencing that increases the total amount owed in a defendant's case, the
270 defendant's criminal accounts receivable balance shall be adjusted to include any new amount
271 ordered by the court.

272 (6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as
273 defined in Section 64-13-1, or the defendant is involuntarily committed under Section
274 62A-15-631:

275 (i) all payments for a payment schedule shall be suspended for the period of time that

276 the defendant is incarcerated or involuntarily committed, unless the court, or the board if the
277 defendant is under the jurisdiction of the board, expressly orders the defendant to make
278 payments according to the payment schedule; and

279 (ii) the defendant shall provide the court with notice of the incarceration or involuntary
280 commitment.

281 (b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day
282 in which the defendant is released from incarceration or commitment.

283 Section 5. Section **77-38b-102** is amended to read:

284 **77-38b-102. Definitions.**

285 As used in this chapter:

286 (1) "Civil accounts receivable" means the same as that term is defined in Section
287 [77-32b-102](#).

288 (2) "Civil judgment of restitution" means the same as that term is defined in Section
289 [77-32b-102](#).

290 [~~(1)~~] (3) (a) "Conviction" means:

291 (i) a plea of:

292 (A) guilty;

293 (B) guilty with a mental illness; or

294 (C) no contest; or

295 (ii) a judgment of:

296 (A) guilty; or

297 (B) guilty with a mental illness.

298 (b) "Conviction" does not include:

299 (i) a plea in abeyance until a conviction is entered for the plea in abeyance;

300 (ii) a diversion agreement; or

301 (iii) an adjudication of a minor for an offense under Section [80-6-701](#).

302 (4) "Criminal accounts receivable" means the same as that term is defined in Section
303 [77-32b-102](#).

304 [~~(2)~~] (5) "Criminal conduct" means:

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

306 (b) any other criminal behavior for which the defendant admits responsibility to the

307 sentencing court with or without an admission of committing the criminal behavior.

308 ~~[(3)]~~ (6) (a) "Defendant" means an individual who has been convicted of, or entered
309 into a plea disposition for, criminal conduct.

310 (b) "Defendant" does not include a minor, as defined in Section 80-1-102, who is
311 adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6,
312 Juvenile Justice.

313 ~~[(4)]~~ (7) "Department" means the Department of Corrections.

314 ~~[(5)]~~ (8) "Diversion agreement" means an agreement entered into by the prosecuting
315 attorney and the defendant that suspends criminal proceedings before conviction on the
316 condition that a defendant agree to participate in a rehabilitation program, pay restitution to the
317 victim, or fulfill some other condition.

318 ~~[(6)]~~ (9) "Office" means the Office of State Debt Collection created in Section
319 63A-3-502.

320 ~~[(7)]~~ (10) "Party" means the prosecuting attorney, the defendant, or the department
321 involved in a prosecution.

322 ~~[(8)]~~ (11) "Payment schedule" means the same as that term is defined in Section
323 77-32b-102.

324 ~~[(9)]~~ (12) (a) "Pecuniary damages" means all demonstrable economic injury, losses,
325 and expenses regardless of whether the economic injury, losses, and expenses have yet been
326 incurred.

327 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
328 damages.

329 ~~[(10)]~~ (13) "Plea agreement" means an agreement entered between the prosecuting
330 attorney and the defendant setting forth the special terms and conditions and criminal charges
331 upon which the defendant will enter a plea of guilty or no contest.

332 ~~[(11)]~~ (14) "Plea disposition" means an agreement entered into between the
333 prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a
334 plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any
335 other jurisdiction or where charges are dismissed without a plea.

336 ~~[(12)]~~ (15) "Plea in abeyance" means an order by a court, upon motion of the
337 prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the

338 defendant but not, at that time, entering judgment of conviction against the defendant nor
339 imposing sentence upon the defendant on condition that the defendant comply with specific
340 conditions as set forth in a plea in abeyance agreement.

341 ~~[(13)]~~ (16) "Plea in abeyance agreement" means an agreement entered into between the
342 prosecuting attorney and the defendant setting forth the specific terms and conditions upon
343 which, following acceptance of the agreement by the court, a plea may be held in abeyance.

344 ~~[(14)]~~ (17) "Restitution" means the payment of pecuniary damages to a victim.

345 ~~[(15)]~~ (18) (a) "Victim" means any person who has suffered pecuniary damages that are
346 proximately caused by the criminal conduct of the defendant.

347 (b) "Victim" includes:

348 (i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes
349 a payment to a victim under Section [63M-7-519](#);

350 (ii) the estate of a deceased victim; and

351 (iii) a parent, spouse, or sibling of a victim.

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