

CRIMINAL JUSTICE RESTITUTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to restitution in criminal cases.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to restitution in a criminal case and to past due accounts for restitution;
- ▶ expands when the Office of State Debt Collection is a real party in interest to an account receivable referred by the Board of Pardons and Parole;
- ▶ modifies provisions relating to costs for governmental transportation expenses ordered to be paid in a sentence imposed on a defendant;
- ▶ modifies provisions relating to presentence investigation reports;
- ▶ authorizes a court to find a defendant in contempt of court for a failure to pay an accounts receivable balance as required;
- ▶ modifies provisions relating to judgments for past due accounts receivable due from a criminal defendant;
- ▶ modifies the authority of the Board of Pardons and Parole with respect to ordering restitution and provides for a process for an offender who objects to the amount of restitution;
- ▶ modifies a prosecuting attorney's duties with respect to restitution;
- ▶ modifies a provision relating to the preparation of a presentence investigation



28 report; and

29 ▶ repeals a provision relating to the willful failure to pay criminal judgment accounts
30 receivable.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **63A-3-502**, as last amended by Laws of Utah 2017, Chapters 56 and 304

38 **76-3-201**, as last amended by Laws of Utah 2017, Chapter 304

39 **77-7-5**, as last amended by Laws of Utah 2016, Chapter 162

40 **77-18-1**, as last amended by Laws of Utah 2018, Chapter 334

41 **77-18-6**, as last amended by Laws of Utah 2017, Chapter 304

42 **77-27-6**, as last amended by Laws of Utah 2016, Chapter 223

43 **77-32a-103**, as enacted by Laws of Utah 2017, Chapter 304

44 **77-32a-104**, as enacted by Laws of Utah 2017, Chapter 304

45 **77-38a-201**, as enacted by Laws of Utah 2001, Chapter 137

46 **77-38a-202**, as last amended by Laws of Utah 2011, Chapter 131

47 **77-38a-204**, as enacted by Laws of Utah 2013, Chapter 74

48 **77-38a-302**, as last amended by Laws of Utah 2017, Chapter 304

49 REPEALS AND REENACTS:

50 **77-38a-203**, as last amended by Laws of Utah 2013, Chapter 74

51 REPEALS:

52 **78B-6-317**, as enacted by Laws of Utah 2017, Chapter 304

53

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

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

56 **63A-3-502. Office of State Debt Collection created -- Duties.**

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

- 59 (2) There is created the Office of State Debt Collection in the Division of Finance.
- 60 (3) The office shall:
- 61 (a) have overall responsibility for collecting and managing state receivables;
- 62 (b) assist the Division of Finance to develop consistent policies governing the
- 63 collection and management of state receivables;
- 64 (c) oversee and monitor state receivables to ensure that state agencies are:
- 65 (i) implementing all appropriate collection methods;
- 66 (ii) following established receivables guidelines; and
- 67 (iii) accounting for and reporting receivables in the appropriate manner;
- 68 (d) assist the Division of Finance to develop policies, procedures, and guidelines for
- 69 accounting, reporting, and collecting money owed to the state;
- 70 (e) provide information, training, and technical assistance to each state agency on
- 71 various collection-related topics;
- 72 (f) write an inclusive receivables management and collection manual for use by each
- 73 state agency;
- 74 (g) prepare quarterly and annual reports of the state's receivables;
- 75 (h) create or coordinate a state accounts receivable database;
- 76 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an
- 77 effective accounts receivable program;
- 78 (j) identify any state agency that is not making satisfactory progress toward
- 79 implementing collection techniques and improving accounts receivable collections;
- 80 (k) coordinate information, systems, and procedures between each state agency to
- 81 maximize the collection of past-due accounts receivable;
- 82 (l) establish an automated cash receipt process between each state agency;
- 83 (m) assist the Division of Finance to establish procedures for writing off accounts
- 84 receivable for accounting and collection purposes;
- 85 (n) establish standard time limits after which an agency will delegate responsibility to
- 86 collect state receivables to the office or its designee;
- 87 (o) be a real party in interest for an account receivable referred to the office by any
- 88 state agency or for any restitution to victims referred to the office by a court or by the Board of
- 89 Pardons and Parole; and

90 (p) allocate money collected for judgments registered under Section 77-18-6 in
91 accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

92 (4) The office may:

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

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

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

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

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

101 (d) contract with private or state agencies to collect past-due accounts;

102 (e) perform other appropriate and cost-effective coordinating work directly related to
103 collection of state receivables;

104 (f) obtain access to records and databases of any state agency that are necessary to the
105 duties of the office by following the procedures and requirements of Section 63G-2-206,
106 including the financial disclosure form described in Section 77-38a-204;

107 (g) collect interest and fees related to the collection of receivables under this chapter,
108 and establish, by following the procedures and requirements of Section 63J-1-504:

109 (i) a fee to cover the administrative costs of collection, on accounts administered by the
110 office;

111 (ii) a late penalty fee that may not be more than 10% of the account receivable on
112 accounts administered by the office;

113 (iii) an interest charge that is:

114 (A) the postjudgment interest rate established by Section 15-1-4 in judgments
115 established by the courts; or

116 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts
117 receivable for which no court judgment has been entered; and

118 (iv) fees to collect accounts receivable for higher education;

119 (h) collect reasonable attorney fees and reasonable costs of collection that are related to
120 the collection of receivables under this chapter;

121 (i) make rules that allow accounts receivable to be collected over a reasonable period
122 of time and under certain conditions with credit cards;

123 (j) file a satisfaction of judgment in the court by following the procedures and
124 requirements of the Utah Rules of Civil Procedure;

125 (k) ensure that judgments for which the office is the judgment creditor are renewed, as
126 necessary;

127 (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f)
128 with private sector vendors under contract with the state to assist state agencies in collecting
129 debts owed to the state agencies without changing the classification of any private, controlled,
130 or protected record into a public record;

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

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

138 (5) The office shall ensure that:

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

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

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

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

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

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

149 (6) (a) The office shall collect accounts receivable ordered by a court as a result of
150 prosecution for a criminal offense that have been transferred to the office under Section

151 77-32a-102.

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

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

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

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

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

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

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

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

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

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

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

173 (b) are not compensation for actual pecuniary loss.

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

175 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
176 **penalties.**

177 [~~(1) As used in this section:~~]

178 [~~(a) "Conviction" includes a:~~]

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

180 [~~(ii) plea of guilty; or~~]

181 [~~(iii) plea of no contest.~~]

182 [~~(b) "Criminal activities" means any misdemeanor or felony offense for which the~~]

183 ~~defendant is convicted or any other criminal conduct for which the defendant admits~~
184 ~~responsibility to the sentencing court with or without an admission of committing the criminal~~
185 ~~conduct.]~~

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

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

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

197 ~~[(ii) "Victim" does not include a codefendant or accomplice.]~~

198 (1) As used in this section, "convicted" means:

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

200 (b) becoming the subject of a judgment of guilty or guilty with a mental illness.

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

203 (a) to pay a fine;

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

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

206 (d) to imprisonment;

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

208 (f) to death.

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

210 (i) forfeit property;

211 (ii) dissolve a corporation;

212 (iii) suspend or cancel a license;

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

214 (v) cite for contempt; or

215 (vi) impose any other civil penalty.

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

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

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

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

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

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

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

234 (4) In addition to any other sentence the court may impose, the court shall order the
235 defendant to pay restitution as provided in Title 77, Chapter 38a, Crime Victims Restitution
236 Act.

237 (5) (a) In addition to any other sentence the court may impose, ~~[and unless otherwise~~
238 ~~ordered by the court,]~~ the court shall order the defendant [shall pay restitution of] to pay costs
239 for governmental transportation expenses if the defendant was:

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

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

243 (iii) convicted of a crime.

244 (b) The court may not order the defendant to pay ~~[restitution of]~~ costs for governmental

245 transportation expenses if any of the following apply:

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

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

249 (c) (i) ~~[Restitution of]~~ Costs for governmental transportation expenses under
250 Subsection (5)(a)(i) shall be calculated according to the following schedule:

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

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

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

254 (ii) The schedule of ~~[restitution]~~ costs under Subsection (5)(c)(i) applies to each
255 defendant transported regardless of the number of defendants actually transported in a single
256 trip.

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

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

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

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

271 (B) the reimbursement does not duplicate the reimbursement provided under Section
272 [64-13e-104](#) if the defendant is a state probationary inmate, as defined in Section [64-13e-102](#), or
273 a state parole inmate, as defined in Section [64-13e-102](#).

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

276 medical and transportation costs for the county correctional facility.

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

282 (c) In determining whether to order [~~that the restitution required~~] costs under this
283 Subsection (6) be reduced or that the defendant be exempted from [~~the restitution~~] an order to
284 pay costs, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through
285 (vi) and shall enter the reason for its order on the record.

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

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

292 Section 3. Section 77-7-5 is amended to read:

293 **77-7-5. Issuance of summons or warrant -- Time and place arrests may be made**
294 **-- Contents of warrant or summons -- Responsibility for transporting prisoners -- Court**
295 **clerk to dispense restitution for transportation.**

296 (1) A magistrate may issue a warrant for arrest in lieu of a summons for the appearance
297 of the accused only upon finding:

298 (a) probable cause to believe that the person to be arrested has committed a public
299 offense; and

300 (b) under the Utah Rules of Criminal Procedure, and this section that a warrant is
301 necessary to:

302 (i) prevent risk of injury to a person or property;

303 (ii) secure the appearance of the accused; or

304 (iii) protect the public safety and welfare of the community or an individual.

305 (2) If the offense charged is:

306 (a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

307 (b) a misdemeanor, the arrest upon a warrant can be made at night only if:
308 (i) the magistrate has endorsed authorization to do so on the warrant;
309 (ii) the person to be arrested is upon a public highway, in a public place, or in a place
310 open to or accessible to the public; or
311 (iii) the person to be arrested is encountered by a peace officer in the regular course of
312 that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for
313 arrest.

314 (3) For the purpose of Subsection (1):

315 (a) daytime hours are the hours of 6 a.m. to 10 p.m.; and

316 (b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

317 (4) (a) If the magistrate determines that the accused must appear in court, the
318 magistrate shall include in the arrest warrant the name of the law enforcement agency in the
319 county or municipality with jurisdiction over the offense charged.

320 (b) (i) The law enforcement agency identified by the magistrate under Subsection (4)(a)
321 is responsible for providing inter-county transportation of the defendant, if necessary, from the
322 arresting law enforcement agency to the court site.

323 (ii) The law enforcement agency named on the warrant may contract with another law
324 enforcement agency to have a defendant transported.

325 (c) (i) The law enforcement agency identified by the magistrate under Subsection (4)(a)
326 as responsible for transporting the defendant shall provide to the court clerk of the court in
327 which the defendant is tried, an affidavit stating that the defendant was transported, indicating
328 the law enforcement agency responsible for the transportation, and stating the number of miles
329 the defendant was transported.

330 (ii) The court clerk shall account for ~~restitution~~ costs paid under Subsection
331 76-3-201(5) for governmental transportation expenses and dispense ~~restitution~~ money
332 collected by the court to the law enforcement agency responsible for the transportation of a
333 convicted defendant.

334 Section 4. Section 77-18-1 is amended to read:

335 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
336 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
337 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**

338 **monitoring.**

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

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

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

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

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

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

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

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

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

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

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

363 (i) the type of offense;

364 (ii) the results of a risk and needs assessment;

365 (iii) the demand for services;

366 (iv) the availability of agency resources;

367 (v) public safety; and

368 (vi) other criteria established by the department to determine what level of services

369 shall be provided.

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

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

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

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

380 (4) Notwithstanding other provisions of law, the department is not required to
381 supervise the probation of an individual convicted of a class B or C misdemeanor or an
382 infraction or to conduct presentence investigation reports on a class C misdemeanor or
383 infraction. However, the department may supervise the probation of a class B misdemeanant in
384 accordance with department standards.

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

389 (b) The presentence investigation report shall include:

390 (i) a victim impact statement, according to guidelines set in Section [77-38a-203](#)

391 [~~describing~~], that:

392 (A) describes the effect of the crime on the victim and the victim's family;

393 (B) includes the names of all victims of the offense;

394 (C) describes any physical, mental, or emotional injuries suffered by a victim as a
395 result of the offense and the seriousness and permanence of the injuries;

396 (D) explains any change in a victim's personal welfare or familial relationships as a
397 result of the offense;

398 (E) includes any request for mental health services initiated by a victim or a victim's
399 family as a result of the offense; and

400 (F) includes any other information related to the impact of the offense upon a victim or
401 a victim's family that the court or Board of Pardons and Parole require;

402 (ii) [~~a specific statement of pecuniary damages, accompanied by a recommendation~~
403 ~~from the department regarding the payment of restitution with interest by the defendant]~~
404 restitution information in accordance with [Title 77,] Chapter 38a, Crime Victims Restitution
405 Act;

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

408 (iv) recommendations for treatment of the offender; and

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

412 (c) The contents of the presentence investigation report are protected and are not
413 available except by court order for purposes of sentencing as provided by rule of the Judicial
414 Council or for use by the department.

415 (6) (a) The department shall provide the presentence investigation report to the
416 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
417 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
418 presentence investigation report, which have not been resolved by the parties and the
419 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
420 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
421 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
422 court shall make a determination of relevance and accuracy on the record.

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

425 (c) The Division of Adult Probation and Parole shall document the court's findings of
426 relevance and accuracy of the presentence investigation report under Subsection (6)(a) in an
427 attachment to the presentence investigation report as ordered by the court.

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

431 on record and in the presence of the defendant.

432 (8) While on probation, and as a condition of probation, the court may require that a
433 defendant perform any or all of the following:

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

435 (b) participate in available treatment programs, including any treatment program in
436 which the defendant is currently participating, if the program is acceptable to the court;

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

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

442 (e) participate in compensatory service restitution programs, including the
443 compensatory service program provided in Section 76-6-107.1;

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

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

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

449 (9) The department shall collect and disburse the accounts receivable as defined by
450 Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

451 (a) the parole period and any extension of that period in accordance with Subsection
452 77-27-6(4); and

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

455 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), probation of an individual
456 placed on probation after December 31, 2018:

457 (A) may not exceed the individual's maximum sentence;

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

461 (C) shall be terminated in accordance with the supervision length guidelines

462 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
463 guidelines are consistent with the requirements of the law.

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

466 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
467 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
468 completion without violation of 36 months probation in felony or class A misdemeanor cases,
469 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
470 Section 64-13-21 regarding earned credits.

471 (b) (i) If, upon expiration or termination of the probation period under Subsection
472 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
473 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
474 probation for the limited purpose of enforcing the payment of the account receivable. If the
475 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
476 the court the costs associated with continued probation under this Subsection (10).

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

480 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
481 own motion, the court may require the defendant to show cause why the defendant's failure to
482 pay should not be treated as contempt of court.

483 (iv) A court may find a defendant in contempt of court for the defendant's failure to pay
484 an accounts receivable balance as required as a condition of probation if the court finds by a
485 preponderance of the evidence that the defendant:

486 (A) was aware of the obligation to pay the accounts receivable balance;

487 (B) had the capacity to pay the accounts receivable balance; and

488 (C) failed to make a good faith effort to pay the accounts receivable balance.

489 (v) A court that imposes a jail sanction for contempt of court under Subsection
490 (10)(b)(iv) may not require the defendant to serve more than one jail day for each \$100 of the
491 unpaid accounts receivable balance for which the court finds the defendant in contempt, subject
492 to a maximum of:

493 (A) five days for contempt arising from a class B misdemeanor or lesser offense; and

494 (B) 30 days for a class A misdemeanor or felony offense.

495 (vi) A jail sanction imposed under Subsection (10)(b)(iv) satisfies the criminal

496 judgment accounts receivable at the rate of \$100 per day served, in accordance with Chapter

497 38a, Crime Victims Restitution Act.

498 (vii) A financial penalty under Section [78B-6-310](#) that the court orders may become

499 due only after the satisfaction of the original criminal judgment accounts receivable.

500 (c) (i) The department shall notify the sentencing court, the Office of State Debt

501 Collection, and the prosecuting attorney in writing in advance in all cases when termination of

502 supervised probation is being requested by the department or will occur by law.

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

504 details on outstanding accounts receivable.

505 (11) (a) (i) Any time served by a probationer outside of confinement after having been

506 charged with a probation violation and prior to a hearing to revoke probation does not

507 constitute service of time toward the total probation term unless the probationer is exonerated

508 at a hearing to revoke the probation.

509 (ii) Any time served in confinement awaiting a hearing or decision concerning

510 revocation of probation does not constitute service of time toward the total probation term

511 unless the probationer is exonerated at the hearing.

512 (iii) Any time served in confinement awaiting a hearing or decision concerning

513 revocation of probation constitutes service of time toward a term of incarceration imposed as a

514 result of the revocation of probation or a graduated sanction imposed under Section

515 [63M-7-404](#).

516 (b) The running of the probation period is tolled upon the filing of a violation report

517 with the court alleging a violation of the terms and conditions of probation or upon the issuance

518 of an order to show cause or warrant by the court.

519 (12) (a) (i) Probation may be modified as is consistent with the supervision length

520 guidelines and the graduated sanctions and incentives developed by the Utah Sentencing

521 Commission under Section [63M-7-404](#).

522 (ii) The length of probation may not be extended, except upon waiver of a hearing by

523 the probationer or upon a hearing and a finding in court that the probationer has violated the

524 conditions of probation.

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

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

531 (ii) If the court determines there is probable cause, it shall cause to be served on the
532 defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show
533 cause why the defendant's probation should not be revoked, modified, or extended.

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

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

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

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

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

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

543 (iii) If the affidavit alleges that a criminal judgment accounts receivable is
544 delinquent, the prosecuting attorney shall present evidence to establish by a preponderance of
545 the evidence that the defendant:

546 (A) was aware of the obligation to pay the accounts receivable balance;

547 (B) had the capacity to pay the accounts receivable balance; and

548 (C) failed to make a good faith effort to pay the accounts receivable balance.

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

552 ~~(iv)~~ (v) The defendant may call witnesses, appear and speak in the defendant's own
553 behalf, and present evidence.

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

555 (ii) Upon a finding that the defendant violated the conditions of probation, the court
556 may order the probation revoked, modified, continued, or reinstated for all or a portion of the
557 original term of probation.

558 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a
559 defendant to remain on probation for a period of time that exceeds the length of the defendant's
560 maximum sentence.

561 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked
562 and later reinstated, the total time of all periods of probation the defendant serves, relating to
563 the same sentence, may not exceed the defendant's maximum sentence.

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

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

570 (B) the sentence previously imposed shall be executed.

571 (v) If the defendant had, prior to the imposition of a term of incarceration or the
572 execution of the previously imposed sentence under this Subsection (12), served time in jail as
573 a condition of probation or due to a violation of probation under Subsection (12)(e)(iv), the
574 time the probationer served in jail constitutes service of time toward the sentence previously
575 imposed.

576 (13) The court may order the defendant to commit the defendant to the custody of the
577 Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a
578 condition of probation or stay of sentence, only after the superintendent of the Utah State
579 Hospital or the superintendent's designee has certified to the court that:

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

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

582 (c) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for
583 treatment over the defendants described in this Subsection (13).

584 (14) Presentence investigation reports are classified protected in accordance with Title
585 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections

586 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
587 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
588 this section, the department may disclose the presentence investigation only when:

- 589 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
590 (b) requested by a law enforcement agency or other agency approved by the department
591 for purposes of supervision, confinement, and treatment of the offender;
592 (c) requested by the Board of Pardons and Parole;
593 (d) requested by the subject of the presentence investigation report or the subject's
594 authorized representative; or
595 (e) requested by the victim of the crime discussed in the presentence investigation
596 report or the victim's authorized representative, provided that the disclosure to the victim shall
597 include only information relating to statements or materials provided by the victim, to the
598 circumstances of the crime including statements by the defendant, or to the impact of the crime
599 on the victim or the victim's household.

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

602 (b) The department shall establish procedures and standards for home confinement,
603 including electronic monitoring, for all individuals referred to the department in accordance
604 with Subsection (16).

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

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

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

- 611 (i) the defendant to wear an electronic monitoring device at all times; and
612 (ii) that a device be placed in the home of the defendant, so that the defendant's
613 compliance with the court's order may be monitored.

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

- 616 (i) place the defendant on probation under the supervision of the Department of

617 Corrections;

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

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

622 (e) The department shall pay the costs of home confinement through electronic
623 monitoring only for an individual who is determined to be indigent by the court.

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

626 Section 5. Section 77-18-6 is amended to read:

627 **77-18-6. Judgment to pay fine or restitution constitutes a lien.**

628 (1) (a) In cases not supervised by the Department of Corrections, the clerk of the
629 district court [~~shall~~;(i)] may transfer the responsibility to collect past due accounts receivable to
630 the Office of State Debt Collection when the accounts receivable are 90 days or more past
631 due[;].

632 [~~(ii) before transferring~~]

633 (b) Before the court clerk transfers the responsibility to collect the past due account
634 receivable to the Office of State Debt Collection, the court shall record each judgment of
635 conviction of a crime that orders the payment of a fine, forfeiture, surcharge, cost permitted by
636 statute, or fee in the registry of civil judgments, listing the Office of State Debt Collection as
637 the judgment creditor[; ~~and~~].

638 [~~(iii) receive notification from the~~]

639 (c) The Office of State Debt Collection shall notify the court when a civil judgment
640 ordered for payment of accounts receivable in Section 77-32a-102 or 77-32a-103 has been
641 satisfied.

642 (d) The court shall provide notice to the Office of State Debt Collection of all court
643 hearings relating to the accounts receivable that occur after the court clerk transfers the
644 responsibility to collect the past due accounts receivable under Subsection (1)(a).

645 [~~(b)~~] (e) (i) The clerk of court shall record each judgment of conviction that orders the
646 payment of restitution to a victim in the registry of civil judgments, listing the victim, or the
647 estate of the victim, as the judgment creditor.

648 (ii) ~~[The]~~ If the Board of Pardons and Parole orders restitution that is not sent to the
649 Office of State Debt Collection, the Department of Corrections shall collect the judgment on
650 behalf of the victim as provided in Subsection 77-18-1(9).

651 (iii) The court shall collect the judgment on behalf of the victim when a defendant is
652 granted probation or during the term of a plea in abeyance agreement as provided in Subsection
653 78A-2-214(2).

654 (iv) The victim may collect the judgment.

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

657 (a) constitutes a lien;

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

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

662 Section 6. Section 77-27-6 is amended to read:

663 **77-27-6. Payment of restitution.**

664 (1) When a person is committed to prison, the board may:

665 (a) determine and order restitution for pecuniary damages, in accordance with Chapter
666 38a, Crime Victims Restitution Act, that were not determined by the court or that accrue after
667 sentencing, unless the board, applying the criteria under Section 77-38a-302, determines that
668 restitution is inappropriate;

669 (b) refer any court or board ordered restitution to the sentencing court to be entered on
670 the court's judgment docket for civil collection remedies; and

671 (c) impose, as a condition of parole:

672 (i) any court order for restitution; or

673 (ii) any restitution determined and ordered under this Subsection (1) that is not referred
674 to the sentencing court for civil collection remedies.

675 ~~[(1) When the Board of Pardons and Parole]~~

676 (2) (a) If the board orders the release on parole of an [inmate] offender who has been
677 sentenced by a court or the board to [make] pay restitution [pursuant to Title 77, Chapter 38a,
678 Crime Victims Restitution Act, or whom the board has ordered to make restitution], and all or

679 a portion of restitution is still owing, the board may establish a schedule~~[-including both~~
680 ~~complete and court-ordered restitution, by which]~~ for the payment of the restitution ~~[shall be~~
681 ~~made, or order compensatory or other service in lieu of or in combination with restitution. In~~
682 ~~fixing the schedule and supervising the paroled].~~

683 (b) In setting a payment schedule under Subsection (2)(a) and evaluating the offender's
684 performance, the board may consider the factors specified in Section 77-38a-302.

685 ~~[(2) (a) The board may impose any court order for restitution.]~~

686 ~~[(b) In accordance with Subsection 77-38a-302(5)(d)(iii)(A), the board may order that a~~
687 ~~defendant make restitution for pecuniary damages that were not determined by the court, unless~~
688 ~~the board applying the criteria as set forth in Section 77-38a-302 determines that restitution is~~
689 ~~inappropriate.]~~

690 ~~[(c) (3) (a) Except as provided in Subsection [(2)(d)] (3)(b), the board shall make all~~
691 ~~orders of restitution [within 60 days after the] before termination or expiration of the~~
692 ~~[defendant's] offender's sentence.~~

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

697 ~~[(3) (4) The board may also make orders of restitution for recovery of any or all costs~~
698 ~~incurred by the Department of Corrections or the state or any other agency arising out of the~~
699 ~~[defendant's] offender's needs or conduct.~~

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

707 (5) The board shall allow a full hearing to an offender who objects to the amount of
708 restitution that the board orders that was not previously ordered by the court.

709 (6) (a) The board shall refer to the district court, for collection remedies in accordance

710 with Subsection 77-27-5(5), all outstanding fines, restitution, or other assessed costs owed by
 711 an offender upon termination or expiration of the offender's sentence.

712 (b) Except as provided in Subsection (6)(c), the board shall forward a restitution order
 713 to the sentencing court no later than 60 days after termination or expiration of the sentence, to
 714 be entered on the judgment docket.

715 (c) (i) The board may retain limited jurisdiction for up to 90 days after the offender's
 716 sentence terminates or expires for the sole purpose of holding a restitution hearing and entering
 717 an order regarding restitution if, before the offender's sentence terminates or expires:

718 (A) the offender objects to the board's restitution order; and

719 (B) the board is unable to hold a restitution hearing.

720 (ii) If, following a restitution hearing, the board determines that the offender owes
 721 restitution, the board shall, within 60 days after the restitution hearing:

722 (A) enter an order determining the restitution; and

723 (B) forward the restitution order to the sentencing court for entry on the court's
 724 judgment docket.

725 (7) The entry of a restitution order under this section on the court's judgment docket
 726 constitutes a judgment lien and has the same effect as a judgment for money in a civil
 727 judgment.

728 Section 7. Section **77-32a-103** is amended to read:

729 **77-32a-103. Past due accounts or payments -- Authority to send to Office of State**
 730 **Debt Collection independent of probation status -- Expiration.**

731 ~~[(1) If a criminal judgment account receivable retained by the court becomes more than~~
 732 ~~30 days past due, the court may, without a motion or a hearing, record the unpaid balance of the~~
 733 ~~account receivable as a civil judgment and transfer the responsibility for collecting the~~
 734 ~~judgment to the Office of State Debt Collection.]~~

735 [(2)] (1) If a criminal judgment account receivable retained by the court is more than
 736 90 days past due, the district court ~~shall~~ may, without a motion or hearing, record the unpaid
 737 balance of the criminal judgment account receivable as a civil judgment and transfer the
 738 responsibility for collecting the criminal judgment account receivable to the Office of State
 739 Debt Collection.

740 ~~[(3)]~~ (2) (a) Criminal judgment accounts receivable are not subject to civil statutes of

741 limitations and expire only upon payment in full.

742 (b) This Subsection [~~(3)~~] (2) applies to all criminal judgment accounts receivable not
743 paid in full on or before May 12, 2017.

744 Section 8. Section **77-32a-104** is amended to read:

745 **77-32a-104. Delinquency and default as violation of probation.**

746 (1) If a criminal judgment accounts receivable becomes delinquent, or any installment
747 due[;] becomes delinquent, the court, upon motion of the prosecutor, a judgment creditor, or
748 upon the court's own motion, may order the defendant to appear and show cause why the
749 [~~delinquency should not be treated as contempt of court as provided in Section 78B-6-317~~]
750 defendant's probation should not be modified, revoked, or extended as provided in Section
751 77-18-1.

752 (2) After the hearing, if it appears to the satisfaction of the court that the delinquency is
753 not [~~contempt~~] a violation of the conditions of probation, the court may enter an order for any
754 of the following or any combination of the following:

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

757 (b) restructure the payment schedule;

758 (c) restructure the installment amount;

759 (d) except as limited by Subsection (4) or (5), satisfy the criminal judgment account
760 receivable or any part of the criminal judgment account receivable with proof of compensatory
761 service at a rate of credit at not less than \$10 for each hour of compensatory service;

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

764 (f) record the unpaid balance of the criminal judgment account receivable as a civil
765 judgment and transfer the responsibility for collecting the judgment to the Office of State Debt
766 Collection.

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

769 (4) If the court determines that the delinquency does constitute [~~contempt~~] a violation
770 of the conditions of probation, the court shall address the [~~contempt~~] violation as provided in
771 Section [~~78B-6-310~~] 77-18-1.

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

774 (b) Before restructuring the amount or payment schedule of court-ordered restitution,
775 the court shall give victims notice and an opportunity to be heard.

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

779 Section 9. Section **77-38a-201** is amended to read:

780 **77-38a-201. Restitution determination -- Law enforcement duties and**
781 **responsibilities.**

782 ~~[Any]~~ A law enforcement agency ~~[conducting an investigation for]~~ investigating
783 criminal conduct ~~[which would constitute a felony or class A misdemeanor]~~ shall ~~[provide]~~
784 include in the investigative reports all information about restitution for any potential victims,
785 including information about whether a claim for restitution [exists] may exist, the basis for the
786 claim, and the estimated or actual amount of the claim.

787 Section 10. Section **77-38a-202** is amended to read:

788 **77-38a-202. Restitution determination -- Prosecution duties and responsibilities.**

789 ~~[(1) At the time of entry of a conviction or entry of any plea disposition of a felony or~~
790 ~~class A misdemeanor, the attorney general, county attorney, municipal attorney, or district~~
791 ~~attorney shall provide to the district court:]~~

792 ~~[(a) the names of all victims, including third parties, asserting claims for restitution;]~~

793 ~~[(b) the actual or estimated amount of restitution determined at that time; and]~~

794 ~~[(c) whether or not the defendant has agreed to pay the restitution specified as part of~~
795 ~~the plea disposition.]~~

796 ~~[(2) In computing actual or estimated restitution, the attorney general, county attorney,~~
797 ~~municipal attorney, or district attorney shall:]~~

798 ~~[(a) use the criteria set forth in Section [77-38a-302](#) for establishing restitution amounts;~~
799 ~~and]~~

800 ~~[(b) in cases involving multiple victims, incorporate into any conviction or plea~~
801 ~~disposition all claims for restitution arising out of the investigation for which the defendant is~~
802 ~~charged.]~~

803 ~~[(3) If charges are not to be prosecuted as part of a plea disposition, restitution claims~~
804 ~~from victims of those crimes shall also be provided to the court.]~~

805 (1) In connection with the filing of criminal charges against a defendant, the
806 prosecuting attorney shall contact any known victim to gather restitution information.

807 (2) When a conviction, diversion, or plea in abeyance is entered on the record, the
808 prosecuting attorney shall provide the court complete restitution information relating to the
809 case, including:

810 (a) the name of a victim, including a third party asserting a claim for restitution; and

811 (b) the actual or estimated amount of restitution.

812 ~~[(4)]~~ (3) (a) The [attorney general, county attorney, municipal attorney, or district]
813 prosecuting attorney may be authorized by the appropriate public treasurer to deposit restitution
814 collected on behalf of crime victims into an interest bearing account in accordance with Title
815 51, Chapter 7, State Money Management Act, pending distribution of the funds.

816 (b) [In the event] If restitution funds are deposited in an interest bearing account as
817 provided under Subsection ~~[(4)]~~ (3)(a), the [attorney general, county attorney, municipal
818 attorney, or district] prosecuting attorney shall:

819 (i) distribute any interest that accrues in the account to each crime victim on a pro rata
820 basis; and

821 (ii) if all crime victims have been made whole and funds remain, distribute any
822 remaining funds to the state Division of Finance for deposit to the Utah Office for Victims of
823 Crime.

824 (c) This section does not prevent an independent judicial authority from collecting,
825 holding, and distributing restitution.

826 Section 11. Section **77-38a-203** is repealed and reenacted to read:

827 **77-38a-203. Restitution information in presentence investigation report.**

828 (1) In connection with the preparation of the presentence investigation report under
829 Section **77-18-1**, the department shall obtain restitution information from:

830 (a) the law enforcement agency and prosecuting attorney involved in the criminal
831 proceeding; and

832 (b) any victim of the crime.

833 (2) A victim seeking restitution shall provide the department:

- 834 (a) all invoices, bills, receipts, and other evidence of pecuniary damages;
- 835 (b) documentation of any compensation or reimbursement received from insurance or
- 836 any governmental entity as a direct result of the crime; and
- 837 (c) proof of identification, including the victim's date of birth, social security number,
- 838 driver license number, next of kin, home and work addresses, and telephone number.
- 839 (3) In a presentence report, the department shall:
- 840 (a) itemize any pecuniary loss suffered by a victim; and
- 841 (b) include a specific statement of the amount of restitution the department
- 842 recommends for each victim.

843 Section 12. Section **77-38a-204** is amended to read:

844 **77-38a-204. Financial declaration by defendant.**

845 (1) (a) The Judicial Council shall design and publish a financial declaration form to be

846 completed by a defendant in a case where the prosecutor has indicated that restitution may be

847 ordered.

848 (b) The financial declaration form shall:

849 (i) require a defendant to disclose all assets, income, and financial liabilities of the

850 defendant, including:

851 (A) real property;

852 (B) vehicles;

853 (C) precious metals or gems;

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

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

856 (F) bank account balances;

857 (G) cash;

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

859 (I) pensions and annuities;

860 (J) intellectual property;

861 (K) accounts receivable;

862 (L) accounts payable;

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

864 (N) restitution that has been ordered, and not fully paid, in other cases; and

865 (ii) state that a false statement made in the financial declaration form is punishable as a
866 class B misdemeanor under Section 76-8-504.

867 (2) [A] Upon entering into a plea disposition or, in the case of a trial resulting in a
868 conviction, before sentencing, a defendant shall~~[, before sentencing, or earlier if ordered by the~~
869 ~~court,]~~ complete the financial declaration described in Subsection (1).

870 Section 13. Section 77-38a-302 is amended to read:

871 **77-38a-302. Restitution criteria.**

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

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

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

884 (b) "Court-ordered restitution" means the restitution the court having criminal
885 jurisdiction orders the defendant to pay as a part of the criminal sentence.

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

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

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

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

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

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

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

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

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

905 (iv) the income lost by the victim as a result of the offense;

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

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

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

913 (i) the factors listed in Subsections (5)(a) and (b);

914 (ii) the financial resources of the defendant, as disclosed in the financial declaration
915 described in Section [77-38a-204](#);

916 (iii) the burden that payment of restitution will impose, with regard to the other
917 obligations of the defendant;

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

920 (v) the rehabilitative effect on the defendant of the payment of restitution and the
921 method of payment; and

922 (vi) other circumstances that the court determines may make restitution inappropriate.

923 (d) (i) ~~[The]~~ At the time of the plea disposition or conviction, the prosecuting agency
924 shall submit to the court all requests for complete restitution ~~[and court-ordered restitution to~~
925 ~~the court at the time of sentencing if feasible, otherwise within one year after sentencing].~~

926 (ii) If, at the time of plea disposition or conviction, the prosecuting agency does not

927 have complete restitution information due to a victim's ongoing treatment, the prosecuting
928 agency shall, at the time of plea disposition or conviction, submit to the court all restitution
929 requests reasonably available at that time.

930 (iii) If, at the time of plea disposition or conviction, the prosecuting agency fails to
931 waive restitution or submit a request for complete restitution, the court shall promptly schedule
932 a full hearing on the issue of restitution.

933 ~~[(ii)]~~ (iv) If a defendant is placed on probation pursuant to Section 77-18-1 or granted
934 another disposition alternative to a prison commitment:

935 (A) the court shall determine complete restitution and court-ordered restitution; and

936 (B) the time period for determination of complete restitution and court-ordered
937 restitution may be extended by the court upon a finding of good cause, but may not exceed the
938 period of the probation term served by the defendant.

939 ~~[(iii)]~~ (v) If the defendant is committed to prison:

940 (A) the court shall, before imposing sentence, determine complete restitution and
941 court-ordered restitution;

942 ~~[(A)]~~ (B) any pecuniary damages that have not been determined by the court [within
943 one year after sentencing] may be determined by the Board of Pardons and Parole; and

944 ~~[(B)]~~ (C) if, at the time of sentencing, the court failed to make a determination of
945 restitution, the Board of Pardons and Parole may, within one year after sentencing, refer an
946 order of judgment and commitment back to the court for determination of restitution.

947 (e) The Board of Pardons and Parole may hold a hearing to revise a determination of
948 complete restitution or court-ordered restitution if:

949 (i) the defendant is still serving a sentence, probation, or other disposition term related
950 to the case; and

951 (ii) (A) the prosecuting agency receives a new or updated restitution request that was
952 not reasonably available at the time of the original determination; or

953 (B) consideration of the factors used to determine court-ordered restitution under
954 Subsection (5)(c) would likely lead to a substantially different determination because of a
955 change in the defendant's circumstances.

956 Section 14. **Repealer.**

957 This bill repeals:

958

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