

1 **76-3-201 Definitions -- Sentences or combination of sentences allowed -- Civil**
2 **penalties.**

3 (1) As used in this section:

4 (a) "Conviction" includes a:

5 (i) judgment of guilt;

6 (ii) plea of guilty or no contest; or

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

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

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

20 (e)

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

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

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

27 (a) to pay a fine;

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

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

30 (d) to imprisonment;

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

32 (f) to death.

33 (3)

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

35 (i) forfeit property;

36 (ii) dissolve a corporation;

37 (iii) suspend or cancel a license;

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

39 (v) cite for contempt; or

40 (vi) impose any other civil penalty.

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

42 (4)

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

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

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

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

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

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

60 (5)

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

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

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

67 (iii) convicted of a crime.

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

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

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

73 (c)

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

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

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

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

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

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

87 (6)

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

92 (i) the defendant is convicted of criminal activity that results in incarceration in the

93 county correctional facility; and

94 (ii)

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

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

100 (b)

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

105 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses
106 incurred by the county correctional facility in providing reasonable accommodation
107 for an inmate qualifying as an individual with a disability as defined and covered by
108 the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through
109 12213, including medical and mental health treatment for the inmate's disability.

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

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

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

120
121 **77-18-1 Suspension of sentence -- Pleas held in abeyance -- Probation --**
122 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms**
123 **and conditions -- Termination, revocation, modification, or extension -- Hearings -**
124 **- Electronic monitoring.**

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

129 (2)

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

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

136 (ii) on probation with an agency of local government or with a private organization;
137 or

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

- 139 (b)
140 (i) The legal custody of all probationers under the supervision of the department is
141 with the department.
142 (ii) The legal custody of all probationers under the jurisdiction of the sentencing
143 court is vested as ordered by the court.
144 (iii) The court has continuing jurisdiction over all probationers.

- 145 (3)
146 (a) The department shall establish supervision and presentence investigation
147 standards for all individuals referred to the department. These standards shall be
148 based on:
149 (i) the type of offense;
150 (ii) the results of a risk and needs assessment;
151 (iii) the demand for services;
152 (iv) the availability of agency resources;
153 (v) public safety; and
154 (vi) other criteria established by the department to determine what level of services
155 shall be provided.

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

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

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

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

166 (4) Notwithstanding other provisions of law, the department is not required to supervise
167 the probation of persons convicted of class B or C misdemeanors or infractions or to
168 conduct presentence investigation reports on class C misdemeanors or infractions.
169 However, the department may supervise the probation of class B misdemeanants in
170 accordance with department standards.

171 (5)
172 (a) Before the imposition of any sentence, the court may, with the concurrence of the
173 defendant, continue the date for the imposition of sentence for a reasonable period of
174 time for the purpose of obtaining a presentence investigation report from the
175 department or information from other sources about the defendant.

- 176 (b) The presentence investigation report shall include:
177 (i) a victim impact statement according to guidelines set in Section 77-38a-203
178 describing the effect of the crime on the victim and the victim's family;
179 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
180 from the department regarding the payment of restitution with interest by the
181 defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;
182 (iii) findings from any screening and any assessment of the offender conducted
183 under Section 77-18-1.1;
184 (iv) recommendations for treatment of the offender; and

185 (v) the number of days since the commission of the offense that the offender has
186 spent in the custody of the jail and the number of days, if any, the offender was
187 released to a supervised release or alternative incarceration program under Section
188 17-22-5.5.

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

192 (6)

193 (a) The department shall provide the presentence investigation report to the
194 defendant's attorney, or the defendant if not represented by counsel, the prosecutor,
195 and the court for review, three working days prior to sentencing. Any alleged
196 inaccuracies in the presentence investigation report, which have not been resolved by
197 the parties and the department prior to sentencing, shall be brought to the attention of
198 the sentencing judge, and the judge may grant an additional 10 working days to
199 resolve the alleged inaccuracies of the report with the department. If after 10 working
200 days the inaccuracies cannot be resolved, the court shall make a determination of
201 relevance and accuracy on the record.

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

204 (7) At the time of sentence, the court shall receive any testimony, evidence, or
205 information the defendant or the prosecuting attorney desires to present concerning the
206 appropriate sentence. This testimony, evidence, or information shall be presented in
207 open court on record and in the presence of the defendant.

208 (8) While on probation, and as a condition of probation, the court may require that the
209 defendant:

210 (a) perform any or all of the following:

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

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

215 (iii) for a felony, serve a period of time, not to exceed one year, in a county jail
216 designated by the department, after considering any recommendation by the court
217 as to which jail the court finds most appropriate;

218 (iv) serve a term of home confinement, which may include the use of electronic
219 monitoring;

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

222 (vi) pay for the costs of investigation, probation, and treatment services;

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

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

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

229 (i) complete high school classwork and obtain a high school graduation diploma, a
230 GED certificate, or a vocational certificate at the defendant's own expense if the

231 defendant has not received the diploma, GED certificate, or vocational certificate
232 prior to being placed on probation; or
233 (ii) provide documentation of the inability to obtain one of the items listed in
234 Subsection (8)(b)(i) because of:
235 (A) a diagnosed learning disability; or
236 (B) other justified cause.

237 (9) The department shall collect and disburse the account receivable as defined by
238 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21
239 during:
240 (a) the parole period and any extension of that period in accordance with Subsection
241 77-27-6(4); and
242 (b) the probation period in cases for which the court orders supervised probation and
243 any extension of that period by the department in accordance with Subsection (10).
244 (10)
245 (a)
246 (i) Probation may be terminated at any time at the discretion of the court or upon
247 completion without violation of 36 months probation in felony or class A
248 misdemeanor cases, 12 months in cases of class B or C misdemeanors or
249 infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.
250 (ii)
251 (A) If, upon expiration or termination of the probation period under Subsection
252 (10)(a)(i), there remains an unpaid balance upon the account receivable as
253 defined in Section 76-3-201.1, the court may retain jurisdiction of the case and
254 continue the defendant on bench probation for the limited purpose of enforcing
255 the payment of the account receivable. If the court retains jurisdiction for this
256 limited purpose, the court may order the defendant to pay to the court the costs
257 associated with continued probation under this Subsection (10).
258 (B) In accordance with Section 77-18-6, the court shall record in the registry of
259 civil judgments any unpaid balance not already recorded and immediately
260 transfer responsibility to collect the account to the Office of State Debt Collection.
261 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon
262 its own motion, the court may require the defendant to show cause why the
263 defendant's failure to pay should not be treated as contempt of court.

264 (b)
265 (i) The department shall notify the sentencing court, the Office of State Debt
266 Collection, and the prosecuting attorney in writing in advance in all cases when
267 termination of supervised probation is being requested by the department or will
268 occur by law.
269 (ii) The notification shall include a probation progress report and complete report of
270 details on outstanding accounts receivable.

271 (11)
272 (a)
273 (i) Any time served by a probationer outside of confinement after having been
274 charged with a probation violation and prior to a hearing to revoke probation does
275 not constitute service of time toward the total probation term unless the probationer
276 is exonerated at a hearing to revoke the probation.

277 (ii) Any time served in confinement awaiting a hearing or decision concerning
278 revocation of probation does not constitute service of time toward the total
279 probation term unless the probationer is exonerated at the hearing.
280 (iii) Any time served in confinement awaiting a hearing or decision concerning
281 revocation of probation constitutes service of time toward a term of incarceration
282 imposed as a result of the revocation of probation.
283 (b) The running of the probation period is tolled upon the filing of a violation report
284 with the court alleging a violation of the terms and conditions of probation or upon the
285 issuance of an order to show cause or warrant by the court.

286 (12)

287 (a)

288 (i) Probation may not be modified or extended except upon waiver of a hearing by
289 the probationer or upon a hearing and a finding in court that the probationer has
290 violated the conditions of probation.

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

293 (b)

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

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

302 (c)

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

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

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

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

310 (d)

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

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

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

317 (iv) The defendant may call witnesses, appear and speak in the defendant's own
318 behalf, and present evidence.

319 (e)

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

321 (ii) Upon a finding that the defendant violated the conditions of probation, the court
322 may order the probation revoked, modified, continued, or that the entire probation

323 term commence anew.

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

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

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

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

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

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

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

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

345 (14) Presentence investigation reports are classified protected in accordance with Title
346 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding
347 Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the
348 disclosure of a presentence investigation report. Except for disclosure at the time of
349 sentencing pursuant to this section, the department may disclose the presentence
350 investigation only when:

351 (a) ordered by the court pursuant to Subsection 63G-2-202(7);

352 (b) requested by a law enforcement agency or other agency approved by the
353 department for purposes of supervision, confinement, and treatment of the offender;

354 (c) requested by the Board of Pardons and Parole;

355 (d) requested by the subject of the presentence investigation report or the subject's
356 authorized representative; or

357 (e) requested by the victim of the crime discussed in the presentence investigation
358 report or the victim's authorized representative, provided that the disclosure to the
359 victim shall include only information relating to statements or materials provided by
360 the victim, to the circumstances of the crime including statements by the defendant,
361 or to the impact of the crime on the victim or the victim's household.

362 (15)

363 (a) The court shall consider home confinement as a condition of probation under the
364 supervision of the department, except as provided in Sections 76-3-406 and 76-5-
365 406.5.

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

- 369 (16)
370 (a) If the court places the defendant on probation under this section, it may order the
371 defendant to participate in home confinement through the use of electronic monitoring
372 as described in this section until further order of the court.
373 (b) The electronic monitoring shall alert the department and the appropriate law
374 enforcement unit of the defendant's whereabouts.
375 (c) The electronic monitoring device shall be used under conditions which require:
376 (i) the defendant to wear an electronic monitoring device at all times; and
377 (ii) that a device be placed in the home of the defendant, so that the defendant's
378 compliance with the court's order may be monitored.
379 (d) If a court orders a defendant to participate in home confinement through electronic
380 monitoring as a condition of probation under this section, it shall:
381 (i) place the defendant on probation under the supervision of the Department of
382 Corrections;
383 (ii) order the department to place an electronic monitoring device on the defendant
384 and install electronic monitoring equipment in the residence of the defendant; and
385 (iii) order the defendant to pay the costs associated with home confinement to the
386 department or the program provider.
387 (e) The department shall pay the costs of home confinement through electronic
388 monitoring only for those persons who have been determined to be indigent by the
389 court.
390 (f) The department may provide the electronic monitoring described in this section
391 either directly or by contract with a private provider.
392
393

394 **Chapter 32a Criminal Accounts Receivable and Defense Costs**

395 **77-32a-1 Definitions**

396 As used in this chapter:

397 (a) "Criminal judgment accounts receivable" means any amount owed by a
398 criminal defendant arising from a criminal judgment which has not been paid. This
399 includes fines, surcharges, costs, interest, and restitution.

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

403 (c) "Delinquent" means an account or installment payment that is overdue by
404 more than 28 but less than ninety days.

405 (d) "Default" means an account receivable that is overdue by at least ninety days.

406 **77-32a-2 Creation of Criminal Judgment Account Receivable**

407 (1) At the time of sentencing, acceptance of a plea in abeyance, the court shall
408 establish the criminal accounts receivable, as determined by 76-3-201 including

409 all amounts then owing, including as applicable, fines, fees, surcharges, costs,
410 restitution and interest.

411 (2) Having created the account receivable, the Court:

- 412 a. Shall in the case of felonies where a prison sentence is imposed and
413 not suspended, enter any unpaid criminal judgment account receivable
414 as a civil judgment and transfer the responsibility for collecting the
415 judgement to the Office of State Debt Collection;
416 b. May, in other cases, permit a defendant to pay the criminal judgment
417 accounts receivable by a date certain or in installments;
418 i. The court may modify the amount and number of such delayed
419 payments, as justice requires, at any time prior to the time for
420 default as outlined in 77-32a-3(2).
421 c. In the district court, such delayed payment shall include post judgment
422 interest;
423 d. May, in other cases, where the court finds that collection of the account
424 by the court would not be feasible, enter any unpaid criminal judgment
425 account receivable as a civil judgment and transfer the responsibility for
426 collecting the judgement to the Office of State Debt Collection;
427 e. A court allowing installment payments does not limit the ability of a
428 judgment creditor to pursue collection by any means allowable by law.

429 (3) If the court makes restitution or other financial decisions at a time after
430 sentencing which increase the total amounts owed in a case, the criminal
431 accounts receivable balance will be adjusted to include those new amounts.

432 **77-32a-3 Past Due Accounts or Payments-Authority to Send to Office of State**
433 **Debt, independent of Probation Status**

434 (1) If a criminal judgment account receivable retained by the court becomes more
435 than 30 days past due, the court may, without a motion or a hearing record
436 the unpaid balance of the account receivable as a civil judgment and transfer
437 the responsibility for collecting the judgment to the Office of State Debt
438 Collection.

439 (2) If a criminal judgment account receivable retained by the court is more than
440 90 days past due, the district court shall, without a motion or hearing, record
441 the unpaid balance of the criminal judgment account receivable as a civil
442 judgment and transfer the responsibility for collecting the criminal judgment
443 account receivable to the Office of State Debt Collection.

444

445

446 **77-32a-4 Delinquency and Default as Contempt of Court**

447 (1) If a criminal judgment accounts receivable, or any installment thereof, becomes
448 delinquent, the court, upon motion of the prosecutor, a judgment creditor or

449 upon its own motion may order the defendant to appear and show cause why
450 the delinquency should not be treated as contempt of court, as provided in 78-
451 6-317.

452 (2) After the hearing, if it appears to the satisfaction of the court that the default is
453 not contempt, the court may enter an order for any of the following or any
454 combination of the following:

- 455 a. require the defendant to pay the criminal judgment account receivable
456 or a specified part of it by a date certain;
- 457 b. restructure the payment schedule;
- 458 c. restructure the installment amount;
- 459 d. except as limited by Subsection (4), satisfy the criminal judgment
460 account receivable or any part of it with proof of compensatory service;
461 at a rate of credit at not less than ten dollars for each hour of
462 compensatory service;
- 463 e. except as limited by Subsection (4), reduce or revoke the unpaid
464 amount of the criminal judgment account receivable; or
- 465 f. record the unpaid balance of the criminal judgment account receivable
466 as a civil judgment and transfer the responsibility for collecting the
467 judgment to the Office of State Debt Collection; and
- 468 g. add to the total accounts receivable postjudgment interest, if that had
469 not previously been ordered or included.

470 (3) If the court determines that the nonpayment does constitute contempt it shall
471 address such contempt as authorized by 78B-6-317.

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

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

477 **77-32a-5 Accounts with balances at Termination of Probation**

478 (1) When a defendant successfully terminates probation and has a non-
479 delinquent criminal judgment receivable account with an outstanding balance,
480 the court shall retain that account and allow the defendant to continue paying
481 the account off.

482 (2) Should any such balance become delinquent or in default, the court shall take
483 appropriate action pursuant to 77-32a-3 or 4.

484 **77-32a-6 Transfer of Collection Responsibility does not effect Probation.**

485 1) If a court transfers a criminal accounts receivable to the Office of State Debt
486 Collection, that includes an amount of court ordered restitution, the payment
487 which is a term of probation pursuant to 77-18-1(8), that transfer does not effect
488 the court's ability to monitor the payment as a condition of probation.
489

490 **77-32a-7 Costs -- What constitute.**

491 Costs shall be limited to expenses specially incurred by the state or any political
492 subdivision in investigating, searching for, apprehending, and prosecuting the
493 defendant, including attorney fees of counsel assigned to represent the defendant, and
494 investigators' fees. Costs cannot include expenses inherent in providing a
495 constitutionally guaranteed trial or expenditures in connection with the maintenance and
496 operation of government agencies that must be made by the public irrespective of
497 specific violations of law. Costs cannot include attorneys' fees for prosecuting
498 attorneys.

499
500 **77-32a-8 Ability to pay considered.**

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

505
506
507 **77-32a-9 Petition for remission of payment of costs.**

508 A defendant who has been ordered to pay costs and who is not delinquent in the
509 payment thereof may at any time petition the court which sentenced him to reduce any
510 unpaid amount of those costs. If it appears to the satisfaction of the court that payment
511 of the amount due will impose manifest hardship on the defendant or his immediate
512 family, the court may remit all or part of the amount due in costs, or modify the method
513 of payment under Section 77-32a-4.

514
515 **77-32a-10 Verified statement of time and expenses of counsel for indigent**
516 **defendants.**

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

521
522
523
524 **77-38a-102 Definitions.**

525 As used in this chapter:

526 (1) "Conviction" includes a:

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

530 (2) "Criminal activities" means:

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

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

535 (4) "Diversion" means suspending criminal proceedings prior to conviction on the

536 condition that a defendant agree to participate in a rehabilitation program, make
537 restitution to the victim, or fulfill some other condition.

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

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

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

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

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

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

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

566 (12)

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

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

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

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

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

578 (14)

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

582 (b) "Victim" may not include a codefendant or accomplice.
583

584
585 **77-38a-301 Restitution -- Convicted defendant may be required to pay.**

586 In a criminal action, the court may require a defendant who enters into a plea
587 disposition or is convicted to make restitution.
588

589 **77-38a-302 Restitution criteria.**

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

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

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

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

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

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

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

611 (5)

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

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

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

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

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

627 (iv) the income lost by the victim as a result of the offense if the offense resulted in

628 bodily injury to a victim;
629 (v) up to five days of the individual victim's determinable wages that are lost due to
630 theft of or damage to tools or equipment items of a trade that were owned by the
631 victim and were essential to the victim's current employment at the time of the
632 offense; and
633 (vi) the cost of necessary funeral and related services if the offense resulted in the
634 death of a victim.
635 (c) In determining the monetary sum and other conditions for court-ordered restitution,
636 the court shall consider:
637 (i) the factors listed in Subsections (5)(a) and (b);
638 (ii) the financial resources of the defendant, as disclosed in the financial declaration
639 described in Section 77-38a-204;
640 (iii) the burden that payment of restitution will impose, with regard to the other
641 obligations of the defendant;
642 (iv) the ability of the defendant to pay restitution on an installment basis or on other
643 conditions to be fixed by the court;
644 (v) the rehabilitative effect on the defendant of the payment of restitution and the
645 method of payment; and
646 (vi) other circumstances that the court determines may make restitution
647 inappropriate.
648 (d)
649 (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete
650 restitution and court-ordered restitution, and shall make all restitution orders at the
651 time of sentencing if feasible, otherwise within one year after sentencing.
652 (ii) Any pecuniary damages that have not been determined by the court within one
653 year after sentencing may be determined by the Board of Pardons and Parole.
654 (e) The Board of Pardons and Parole may, within one year after sentencing, refer an
655 order of judgment and commitment back to the court for determination of restitution.
656

657 **78-6-317 Willful failure to Pay Criminal judgment Accounts Receivable**

658 (1) If a criminal judgment accounts receivable has become delinquent as defined
659 in 77-32a-1, the court, by motion of the prosecutor, a judgment creditor, the
660 State Office of Debt Collection, or on its own motion, may order the defendant
661 to appear and show cause why the delinquency should not be treated as
662 contempt of court, as provided in this section.
663 (2)
664 a. The moving party, or a court clerk shall provide a declaration outlining
665 the nature of the debt and the delinquency.
666 b. Upon receipt of that declaration, the Court shall set the matter for a
667 hearing, and mail notice to the defendant's last known address, and by
668 any other means the court finds likely to provide defendant notice of
669 the hearing.
670 i. If it appears to the court that defendant is not likely to appear at
671 the hearing, the court may issue an arrest warrant with a bail

- 672 amount reasonably likely to guarantee the defendant's
673 appearance.
- 674 ii. If the defendant is a corporation or an unincorporated
675 association, the court shall cite the person authorized to make
676 disbursement from the assets of the corporation or association
677 to appear to answer for the alleged contempt.
- 678 (3) At the hearing, the defendant is entitled to be represented by counsel, and if
679 the court is considering a period of incarceration as a potential sanction,
680 appointed counsel if the defendant is indigent.
- 681 (4) To find the defendant in contempt, the court must find by a preponderance of
682 the evidence that the defendant:
- 683 a. was aware of the obligation to pay the criminal judgment accounts
684 receivable;
- 685 b. had the capacity to
- 686 i. pay the criminal accounts receivable in the manner ordered by
687 the court; or
- 688 ii. seek an extension of such payments before they became
689 delinquent; and
- 690 c. did not make a good faith effort to make the payments or seek such
691 extension.
- 692 (5) If the Court finds the defendant in contempt for such non payment, the court
693 may impose the sanctions for contempt as provided in 78B-6-310, subject to
694 the limitations in subsections (6) through (8).
- 695 (6) If the court imposes a jail sanction for the contempt, the number of jail days
696 cannot exceed one day for each 100.00 dollars of the amount the court finds
697 was contemptuously unpaid, up to a maximum of five days for contempt
698 arising from a class b misdemeanor or lesser offense, and 30 days for a class
699 A misdemeanor or more serious offense.
- 700 (7) Any jail sanction imposed for contempt under this section shall serve to
701 satisfy the criminal judgment account receivable, at 100.00 dollars for each
702 day served, with the exception of Crime Victim Restitution, as defined in 77-
703 38a-1 et seq.
- 704 (8) Any financial penalty authorized by 78B-6-310, and ordered by the court shall
705 only become due after the satisfaction of the original criminal account
706 receivable.
- 707 (9) The order of the court finding the defendant in contempt and ordering
708 sanctions is a final appealable order.

709