

## Collections

As of July 1, 2021 Criminal Justice Modifications of HB260 occurred. Until procedures can be finalized this section will just quote various chapters in Title 77 of the Utah code.

### **77-18-118(1)(b) – Continuing Jurisdiction of a sentencing court.**

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

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

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

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

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

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

**77-32b-105(1)(c)**; remit, in whole or in part, an unpaid amount of the defendant's criminal accounts receivable that is not the principal amount owed for restitution in accordance with this section.

(h) if a defendant files a petition for remittance under Subsection **77-32b-106(1)** within 90 days from the day on which the defendant's sentence is terminated, to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable: and

(i) to enter an order for civil accounts receivable and a civil judgment of restitution in accordance with Section **77-18-114**.

**77-32(b)-105 – Petition for Remittance or modification of criminal accounts receivable before termination of a sentence;**

**77-32(b)-105(2)**

(a) if the criminal accounts receivable is not delinquent or in default, remit, in whole or in part, the unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution; or

(b) regardless of whether the criminal accounts receivable is delinquent or in default:

(i) require the defendant to pay the criminal accounts receivable, or a specified amount of the criminal accounts receivable, by the certain date;

(ii) modify the payment schedule for the criminal accounts receivable in accordance with the factors described in Subsection **77-32b-104(3)(b)** if the defendant has demonstrated that the criminal accounts receivable will impose a manifest hardship due to changed circumstances or new evidence that justifies modifying the payment schedule; or

(iii) allow the defendant to satisfy an unpaid amount of the criminal accounts receivable that is not the principal amount owed for restitution with proof of compensatory service completed by the defendant at a rate of credit not less than \$10 for each hour of compensatory service.

(3)(a) If a defendant is under the jurisdiction of the board, the defendant may petition the board, at any time before the defendant's sentence terminates, to modify the payment schedule for the defendant's criminal accounts receivable.

(b) If a defendant files a petition under Subsection **(3)(a)**, the board may modify the payment schedule for the criminal accounts receivable in accordance with the factors described in Subsection **77-32b-103(b)** if the defendant has demonstrated that the criminal accounts receivable will impose a manifest hardship to the defendant, or the defendant's family, due to changed circumstances or new evidence that justifies modifying the payment schedule.

**77-32b-106 – Petition for remittance of an unpaid balance of a criminal accounts receivable upon termination of a sentence.**

(1)(a) If a defendant is not under the jurisdiction of the board, and if any amount of a defendant's criminal accounts receivable is unpaid at the termination of the defendant's sentence, the defendant may petition the sentencing court, within 90 days after the day on which the sentence is terminated, to remit, in whole or in part, the unpaid amount of the criminal accounts receivable.

(b)(i) If a defendant is under the jurisdiction of the board, and if any amount of the defendant's criminal accounts receivable is unpaid at the termination of the defendant's sentence, the defendant may petition the board within 90 days after the day on which the sentence is terminated, to remit, in whole or in part, the unpaid amount of the criminal accounts receivable.

(ii) If a defendant files a petition for remittance under Subsection (1)(b)(i) within 90 days from the day on which the defendant's sentence is terminated, the board retains jurisdiction over the defendant's case beyond the termination of the defendant's sentence to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable.

(2)(a) If a petition is filed under Subsection (1), a hearing shall be held, unless the court or the board determines that the petition under Subsection (1) is frivolous or the petition is uncontested.

### **Purpose:**

To insure that all accounts receivable for state courts are monitored timely for delinquency and accuracy in compliance with [UCA 78A-2-214](#)

### **Resources:**

- When the Court or the Department of Corrections is unable to collect the receivable for cases prior to July 1, 2021; the [\*\*Office of State Debt Collection\*\*](#) ([UCA 63A-3-505](#)) will receive the transfer of receivable from the judiciary and corrections. ([UCA 76-3-3015](#) and [UCA 77-18-6](#)) (See OSDC website: <http://dcart.utah.gov>) (See [OSDC-web access instructions](#))
- Adult Probation and Parole website: <https://cactas.udc.utah.gov> and [instructions for access.](#)
- The courts can access '[COURTOOLS](#)' to see current status of receivables.
- See also "[Best Practices in Maintaining Accurate Accounts Receivables](#)" document created to assist District courts in managing their accounts was adopted November 8, 2006.
- [Court LMS Learning Management System](#)
- For specific CORIS instruction: District [DCJUST Document](#)
- For specific CARE instruction: Juvenile [JVJUST Document](#)
- Section 04-03 Forms and Instructions contain various forms such as: [Interest calculation template](#)
- ([Legal Opinions](#))

## Policy:

1. Any non-judicial assessments that are overdue should be immediately given to the probation officer for follow-up.
2. Each judicial district (both District and Juvenile) shall establish written policies to be followed by that district. Each court location must have written procedures for monitoring and collection of accounts receivable specific to that location. The local procedures should conform with the policies for that district and be approved by the Court Executive. Written documentation of procedures must be kept for reference at each court location. Documentation of procedures should include:
  - a. A time line and procedures to track accounts for prompt collection letters to be mailed.
  - b. A procedure to reference telephone calls made/received regarding collection of accounts.
  - c. A recommended procedure for gathering information regarding personal data from defendant to help process collections work, if needed.
  - d. Which types of cases should be reviewed by a judge for determination of further action.
  - e. A time line and procedures for timely compliance in referring accounts to OSDC, if applicable.
3. Once the Office of State Debt Collection receives the case, the court can view their cases as well as cases sent by AP&P.
4. Receivables on cases for an individual who has been sentenced to prison (on a non-related case), or deported, should be sent to OSDC. OSDC will then be in a position to determine if the receivable should be pursued.
5. Once a case is with the Office of State Debt Collection, future payments should be made to that agency. Every effort should be made to keep the entire fine with one agency. Only upon order of the court shall monies be receipted to the court when not recalled.
6. For cases prior to July 1, 2021: When a case is ordered back to the court from AP&P for court probation, the court shall only set up the accounts receivable for the final amounts due as per the "OSDC Civil Judgment Audit Report"; never creating the original fine and crediting for payments previously made. Staff should ensure the following:
  - a. supervision fees are not collected by the court,
  - b. interest that AP&P reflects due on their form must be deducted from each revenue code and then tallied and entered into CORIS as the new amount for interest due (code "IR") as per [example](#). Refer to [DCJUST document](#) "Post-Sentencing Criminal Account Receivable"
7. Only in rare instances shall the court shall keep a separate accounting record of receivables due the court (i.e. Excel) other than in systems designed/supported by the Court's IT Department. These off-book records must be approved by AOC Finance and Audit if a need exists.

8. Any account overdue 61 days may be reviewed and, according to local procedures, be referred to the judge or initiate final collection efforts before transferring case to OSDC.
9. For policy on the handling of non-sufficient fund checks see 03 Daily Balancing, Section 03-07.00 and Section 04-01.00 Office of State Debt Collection.
10. Notices should be mailed to defendant in a timely manner, using the computer generated delinquent letters or documents created specifically for the court location.
11. When a bankruptcy is filed, either Chapter 7 or 13, fines and restitution are not dischargeable. The defendant is still required to pay.

## **Procedures:**

### **Responsible Action**

#### **District Courts Clerk**

1. The following reports can be used to track the accounts receivable: “Receivables” and “GASB Receivables” (which must run overnight). “The Debt Collection Report” depicts cases with past due dates. Report any receivables depicted which can not be cleaned up locally (i.e. no case number listed) to the Court’s Help Desk.
2. Any account meeting the local procedures of availability to be referred to OSDC shall be transferred to OSDC after 90 days of the past due date.

#### **Juvenile Court**

1. The probation department shall immediately address any overdue nonjudicial adjustment.
  - a. The nonjudicial adjustment shall reflect a completion date for the agreed terms and conditions that shall not exceed 90 days from the date the adjustment was signed. The probation officer may request permission from the Court for an additional 90 days.
  - b. When a minor fails to substantially comply with the nonjudicial adjustment, the probation officer may then submit the case to the prosecutor in the county where the episode occurred for review.
  - c. Failure to pay a nonjudicial fee or fine cannot be used as the sole basis for submission of a referral to the prosecutor for screening. The probation officer shall mark each nonjudicial adjustment successful or unsuccessful on the Nonjudicial tab in CARE.
  - d. The probation officer shall eFile a modification form to decrease the outstanding receivables to zero when a nonjudicial adjustment has been

- marked as unsuccessful. This adjustment should be completed prior to submission to the prosecutor for screening or the case being closed.
2. Every effort should be made to help a minor successfully resolve their account. This may be accomplished through:
    - a. a letter mailed to the minor's residence outlining the overdue obligations and processes for contacting the court and making payments.
    - b. a payment schedule agreed upon by both the youth and the Court/probation department that includes an effective date and a regular payments schedule.
    - c. the restitution work program.
  3. Order to Show Cause Hearings may be set when the minor fails to pay court-ordered fines, restitution, hours or other items and the minor fails to respond to collection efforts:
    - a. these hearings can be set before a judge. The clerk will calendar hearings, send notices, prepare orders, and close docket with appropriate follow-up.
    - b. hearings may result in additional sanctions, conversions and/or due date extensions. Due dates cannot be extended without a judicial order.
  - a. When a notice is returned from the post office as unable to locate, the case will be researched for a current address through these resources:
    - b. court staff and court records
    - c. school records
    - d. collateral agencies
    - e. telephone/city directory
  4. The probation officer shall ensure that the youth's accounting is closed or completed prior to recommending termination of court jurisdiction.
  5. A minor with delinquent accounts may be referred to the State Department of Finance for interception of their State income tax refund. The program is called "The Finders System" and is allowed by UCA 59-10-529. Youth under eighteen (18) may also be referred to the Finders System by judicial order if the youth is not making regular payments and there is reason to believe the youth was working during the year. When this program is used, it is necessary to locate a social security number to add to the case record. The tax refund check is then forwarded to the Juvenile Court. Only if the money was obtained due to a warrant does the court need to hold for forty (40) days before it can be credited to fines or restitution to allow for any response from the youth. (See [Finders Legal Opinion](#) and "Finders" in Section 06 Trust, [06-01 01 Guidelines for Releasing Money](#))
  6. If the youth is in Secure Care, review past due order accounts for referral to the judge. See UCA 78A-6-121, UCA 78A-6-120(2)(a)(ii) and UCA 78A-6-120(2)(c).